

FEDERATED STATES OF MICRONESIA

ANNOTATED CODE 2014

**TITLE 19
ADMIRALTY AND MARITIME**

CHAPTERS

- 1 General Provisions (§§ 101-106)**
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Editor's note: The former provisions of chapters 1 to 12 of this title were repealed in their entirety by PL 10-76 § 1 and replaced by the provisions of PL 10-76, the "National Maritime Act, 1997" codified at chapters 1 to 13 of this title. PL 10-76 took effect April 1, 1998.

**CHAPTER 1
General Provisions**

SECTIONS

- § 101. Short title.**
- § 102. Application.**
- § 103. Regulation.**
- § 104. Delegation of authority.**

§ 105. Admiralty jurisdiction.

§ 106. Definitions.

§ 101. Short title.

This Act is known and may be cited as the "National Maritime Act, 1997."

Source: PL 10-76 § 3.

Cross-reference: FSM Const., art. IX, § 2(h). The provisions of the Constitution are found in Part I of this code.

The statutory provisions on Territory, Economic Zones and Ports of Entry are found in title 18 of this code.

Editor's note: PL 10-76 took effect April 1, 1998.

The former provisions of chapters 1 to 12 of this title were repealed in their entirety by PL 10-76 § 1 and replaced by the provisions of PL 10-76, the "National Maritime Act, 1997" codified at chapters 1 to 13 of this title.

Case annotations found throughout this title may refer to the earlier provisions of the National Maritime Act of 1993 that was repealed by PL 10-76, the National Maritime Act, 1997. These annotations are retained for reference purposes as some of the language of the National Maritime Act, 1997 is similar to the language of the former National Maritime Act of 1993.

Case annotations: The concept of admiralty is related uniquely to the law of nations. It consists of rules in large part intended to govern the conduct of various nations in their shipping and commercial activities. *Lonno v. Trust*

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Territory (I), 1 FSM R. 53, 71 (Kos. 1982).

The Seaman's Protection Act (a predecessor statute to the Nat'l Maritime Act of 1993), originally enacted for entire Trust Territory by the Congress of Micronesia, relates to matters that now fall within the legislative powers of the national government under art. IX, § 2 of the Constitution, and has therefore become a national law of the FSM under art. XV. That being so, a claim asserting rights under the Act falls within the jurisdiction of the FSM Supreme Court under art. XI, § 6(b) of the Constitution as a case arising under national law. 19 F.S.M.C. 401-437. *Lonno v. Trust Territory (I)*, 1 FSM R. 53, 72 (Kos. 1982).

Maritime jurisdiction conferred on FSM Supreme Court by the Constitution is not to be decided with reference to details of U.S. cases and statutes concerning admiralty jurisdiction but instead with reference to general maritime law of seafaring nations of the world, and to the law of nations. *Federal Bus. Dev. Bank v. S.S. Thorfinn*, 4 FSM R. 367, 374 (App. 1990).

Grant of admiralty and maritime jurisdiction to nat'l courts was intended to assist in development of a uniform body of maritime law. *Pohnpei v. MV Hai Hsiang #36 (I)*, 6 FSM R. 594, 600 (Pon. 1994).

At the time when the FSM Constitution was adopted there was uncertainty as to whether, to establish U.S. federal court admiralty jurisdiction over a tort case, it was necessary to establish not only that the wrong occurred in navigable waters, but also that there was a relationship between the wrong and a traditional maritime activity. *Weilbacher v. Kosrae*, 3 FSM R. 320, 323 (Kos. S. Ct. Tr. 1988).

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A dispute arising out of injury sustained by a passenger on a vessel transporting passengers from Kosrae to Pohnpei, at a time when the vessel is 30 miles from Kosrae, falls within the exclusive admiralty jurisdiction of the FSM Supreme Court. *Weilbacher v. Kosrae*, 3 FSM R. 320, 323 (Kos. S. Ct. Tr. 1988).

FSM Supreme Court's grant of original and exclusive jurisdiction in admiralty and maritime cases implies the adoption of admiralty or maritime cases as of the drafting and adoption of FSM Constitution. *Federal Bus. Dev. Bank v. S.S. Thorfinn*, 4 FSM R. 57, 59 (Truk 1989).

A maritime contract cannot be converted into a non_maritime one by stipulation of the parties so as to divest the court of its admiralty jurisdiction. *Maruwa Shokai (Guam), Inc. v. Pyung Hwa 31*, 6 FSM R. 1, 4 (Pon. 1993).

A civil seizure and forfeiture action involving a commercial fishing vessel within FSM waters falls under the admiralty and maritime jurisdiction of the national courts. *Pohnpei v. MV Hai Hsiang #36 (I)*, 6 FSM R. 594, 599 (Pon. 1994).

§ 102. Application.

(1) Unless otherwise stated in specific sections, this title shall apply to:

(a) all vessels required to be registered in the Federated States of Micronesia, wherever located, and their owners;

(b) all other vessels and small craft which operate outside of lagoons in the waters of the Federated States of Micronesia or engage in interstate or foreign commerce,

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and their owners;

(c) all foreign vessels which enter, operate in, or are located in waters of the Federated States of Micronesia; and

(d) all seamen employed on vessels which are registered in the Federated States of Micronesia and any citizens or nationals of the Federated States of Micronesia employed on any foreign vessel.

(2) Nothing in this title shall permit any lien or authorize proceedings *in rem* against any Government Vessel engaged in non-commercial services.

Source: PL 10-76 § 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 Legislature (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

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

§ 103. Regulations.

The Secretary may promulgate regulations, including fees, to implement this title, which regulations shall have the force and effect of law.

Source: PL 10-76 § 5.

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.

§ 104. Delegation of authority.

The Secretary, Registrar, Principal Surveyor, Principal Shipping Officer, Aids to Navigation Officer, and Receiver of Wreck may delegate in writing all or any of their powers under this title, except this power of delegation.

Source: PL 10-76 § 6.

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

§ 105. Admiralty jurisdiction.

The Supreme Court of the Federated States of Micronesia shall have exclusive, original jurisdiction in maritime and admiralty matters and in all matters pertaining to this title and regulations.

Source: PL 10-76 § 7.

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Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code. The statutory provisions on Judicial Procedure are found in title 6 of this code.

The statutory provisions on Territory, Economic Zones and Ports of Entry are found in title 18 of this code.

§ 106. Definitions.

As used in this title:

(1) "Authorized officer" means any officer of the Division of Security and Investigation of the Government of the Federated States of Micronesia or any other person authorized in writing by the Attorney General to be an authorized officer.

(2) "Authorized Pilot" means a person who has a current, valid Pilotage Certificate issued by the Principal Shipping Officer certifying that the person is competent to provide pilotage services for a specified pilotage area.

(3) "Collisions Convention" means the Convention on the International Regulations for Preventing Collisions at Sea, 1972, as modified by its protocols, and as amended from time to time.

(4) "Crew" means those persons employed on board a vessel, but does not include a master, pilot, supercargo, or a person temporarily employed on board the vessel while it is in port.

(5) "Dangerous goods" means any goods classified as dangerous goods in the International Maritime Dangerous Goods Code, 1965, (IMDG Code) published by the International Maritime Organization, London, as amended from time to time.

(6) "Department" means the Department of Transportation and

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Communications of the Federated States of Micronesia.

(7) "Fishing vessel", for the purposes of this title only, means any vessel used commercially for catching fish or other living resources of the sea, except vessels exclusively used:

(a) for sport or recreation; or

(b) for research and training.

(8) "Government" means the National Government of the Federated States of Micronesia, or a state government, or any agency or instrumentality of either.

(9) "Government Vessel" means a vessel or a class of vessel that:

(a) belongs to or is chartered and controlled by the Government; or

(b) is held by any person on behalf of, or for the benefit of, the Government.

(10) "The Hague-Visby Rules" means the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, signed at Brussels on August 25, 1924, as modified by its protocols and as amended from time to time.

(11) "Limitation of Liability Convention" means the Convention on Limitation of Liability for Maritime Claims done at London on November 19, 1976 as modified by its protocols and as amended from time to time.

(12) "Load Line Convention" means the International Convention on Load Lines, 1966, as modified by its protocols and as amended from time to time.

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(13) "The MLM Convention" means the International Convention on Maritime Liens and Mortgages, 1993, as modified by its protocols and as amended from time to time.

(14) "Marine aid to navigation" means any structure, device, or apparatus the principal purpose of which is to assist in the navigation of vessels and small craft, and includes lights, radio beacons, electronic position fixing devices, buoys, fixed structures, illuminating and reflective devices and any other such apparatus.

(15) "Master" means the person having lawful command or charge of the vessel but does not include a pilot.

(16) "National Government" means the National Government of the Federated States of Micronesia.

(17) "Owner" means the owner, managing owner, demise charterer or operator of a vessel, except where the word is specifically defined differently in a chapter or section, and includes all owners, if there is more than one.

(18) "Passenger" means a person carried on board a vessel with the knowledge and consent of the owner or master, other than a person engaged in the business of the vessel.

(19) "Passenger vessel" means a vessel which is carrying or capable of carrying more than 12 passengers.

(20) "Person" means any natural person and any sole proprietorship, partnership, corporation, or any other business or commercial entity or association.

(21) "Port Authority" means that instrumentality or agency designated by the state to manage and administer the state's port

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facilities.

(22) "Principal Shipping Officer" means an employee of the National Government of the Federated States of Micronesia, Department of Transportation and Communications, appointed by the Secretary, to oversee the implementation and enforcement of the provisions of this title relating to qualifications, training, certification, welfare and employment of seamen and the qualifications, training and certification of pilots.

(23) "Principal Surveyor" means an employee of the National Government of the Federated States of Micronesia, Department of Transportation and Communications, appointed by the Secretary, to oversee the implementation and enforcement of the provisions of this title relating to vessel safety.

(24) "Proper return port" means the port, named in the Shipping Articles, which is agreed upon by the employer and a seaman to which the seaman should be returned.

(25) "Qualified Person" means a person, or entity meeting the qualification requirements to register a vessel in the Federated States of Micronesia.

(26) "Receiver" means the Receiver of Wreck.

(27) "Register" means the official written record of vessels which are registered or have been registered in the Federated States of Micronesia.

(28) "Registered Vessel" means a vessel registered under this title which is entitled to fly the flag of the Federated States of Micronesia.

(29) "Registrar" means an employee of the National Government

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of the Federated States of Micronesia, Department of Transportation and Communications, appointed by the Secretary, to maintain the Register and implement and enforce the provisions of this title relating to the registration of vessels in the Federated States of Micronesia.

(30) "Safety Convention" means the International Convention for the Safety of Life at Sea, 1974, as modified by its protocols and as amended from time to time.

(31) "Salvage Convention" means the International Convention on Salvage, 1989, as modified by its protocols and as amended from time to time.

(32) "Seaman" means a person engaged or employed in any capacity on board a vessel other than a pilot, supercargo, or a person temporarily employed on board the vessel while it is in port, and includes the master and officers.

(33) "Secretary" means the Secretary of the Department of Transportation and Communications of the Federated States of Micronesia.

(34) "Shipping Articles" means the written employment contract between the owner or master of a vessel and a seaman to be employed on board the vessel setting forth the terms and conditions of employment.

(35) "Small craft" means vessels of less than 12 meters in length of any kind or type used or capable of being used as a means of transportation on water, vessels of any length used exclusively for private, non-commercial recreation and pleasure, and traditional canoes of any length, but not including:

- (a) craft belonging to the defense forces of any nation; and

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(b) fishing vessels.

(36) "STCW Convention" means the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as modified by its protocols and as amended from time to time.

(37) "Stowaway" means a person carried to sea without the knowledge and consent of the master or other authorized person.

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

(39) "Tonnage Measurement Convention" means the International Convention on Tonnage Measurement of Ships, 1969, as modified by its protocols and as amended from time to time.

(40) "Vessel" means every type or kind of watercraft used or capable of being used as a means of transportation on water, including fishing vessels, but not including:

(a) any craft belonging to the defense forces of any nation;

(b) watercraft used exclusively for private, non-commercial recreation and pleasure; or

(c) any small craft operated solely within lagoons or on lakes and rivers.

(41) "Waters of the Federated States of Micronesia" means the internal waters, Territorial Sea, and Exclusive Economic Zone as defined in title 18 of this code.

(42) "Wreck" means a vessel or any portion thereof which has

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sustained a casualty causing damage to the vessel to the extent that the seaworthiness of the vessel is threatened or destroyed, and also includes the vessel's cargo, and any jetsam, flotsam, lagan and derelict.

Source: PL 10-76 § 8.

Cross-reference: FSM Const., art. IX, § 2(h). The provisions of the Constitution are found in Part I of this code.

The statutory provisions on Territory, Economic Zones and Ports of Entry are found in title 18 of this code.

Editor's note: PL 10-76 took effect April 1, 1998.

The former provisions of chapters 1 to 12 of this title were repealed in their entirety by PL 10-76 § 1 and replaced by the provisions of PL 10-76, the "National Maritime Act, 1997" codified at chapters 1 to 13 of this title.

CHAPTER 2 National Flag and Nationality

SECTIONS

§ 201. National flag.

§ 202. Falsely assuming nationality of the FSM.

§ 203. Concealment of nationality.

§ 204. Authentication of nationality.

Editor's note: The former provisions of chapters 1 to 12 of this title were repealed in their entirety by PL 10-76 § 1 and replaced by the provisions of PL 10-76, the "National Maritime Act, 1997" codified at chapters 1 to 13 of this title. PL 10-76 took effect April 1, 1998.

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§ 201. National flag.

(1) A Registered Vessel shall fly the national flag of the Federated States of Micronesia during daylight hours when:

(a) in the Territorial Sea of the Federated States of Micronesia;

(b) in the Territorial Sea of any other nation;

(c) outside the Territorial Sea of the Federated States of Micronesia or any other nation on the approach of any other vessel; or

(d) in port.

(2) No national colors other than the national flag of the Federated States of Micronesia shall be flown on board a Registered Vessel except as a courtesy ensign.

(3) The master of a Registered Vessel shall ensure compliance with subsections (1) and (2) of this section.

(4) A master of a Registered Vessel commits a civil offense if the master knowingly violates this section, and shall be liable to a fine not exceeding \$50,000.

Source: PL 10-76 § 10, modified.

Cross-reference: FSM Const., art. IX, § 2(h). The provisions of the Constitution are found in Part I of this code.

The statutory provisions on the FSM National flag are found in chapter 5 of title 1 of this code.

§ 202. Falsely assuming nationality of the FSM.

(1) It shall be a national offense to knowingly fly the national flag of the Federated States of Micronesia so as to falsely appear to be a Registered Vessel, punishable by a fine not exceeding \$100,000 or imprisonment for not more than one year, or both.

(2) In addition to any other penalties, flying the national flag of the Federated States of Micronesia in violation of subsection (1) of this section shall be sufficient grounds for the vessel to be forfeited to the National Government.

Source: PL 10-76 § 11.

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

§ 203. Concealment of nationality.

(1) The name and port of registry shall be clearly marked on the hull of a vessel.

(2) An owner or master of a vessel shall not conceal the nationality of the vessel.

(3) It shall be a national offense to violate this section, punishable by a fine not exceeding \$100,000 or imprisonment for not more than one year, or both.

(4) In addition to any other penalties, violation of this section shall be grounds for the vessel to be forfeited to the National Government.

Source: PL 10-76 § 12.

Cross-reference: The statutory provisions on the

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

§ 204. Authentication of nationality.

A vessel about to leave for a foreign port, may be detained until the master or person in charge has authenticated the nationality of the vessel to the relevant Government authorities by the production of the Certificate of Registry.

Source: PL 10-76 § 13.

Cross-reference: FSM Const., art. IX, § 2(h). The provisions of the Constitution are found in Part I of this code.

The statutory provisions on Territory, Economic Zones and Ports of Entry are found in title 18 of this code.

CHAPTER 3 Registration of Vessels, Mortgages and Liens

SECTIONS

- § 301. Obligation of Register.**
- § 302. Qualifications of vessel registration.**
- § 303. Declaration of Qualified Person.**
- § 304. Status of Ownership if not a qualified person.**
- § 305. Voluntary registration of other vessels wholly owned by qualified person(s).**
- § 306. Continuation of registration.**
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- § 309. Registrar and Register.**
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- § 339. Designation of owner; communications and service of process.
- § 340. Regulations governing maritime liens and mortgages.

Editor's note: The former provisions of chapters 1 to 12 of this title were repealed in their entirety by PL 10-76 § 1 and replaced by the provisions of PL 10-76, the "National Maritime Act, 1997"

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codified at chapters 1 to 13 of this title. PL 10-76 took effect April 1, 1998.

§ 301. Obligation to register.

(1) All vessels 12 meters and over which are wholly owned by Qualified Persons, if not registered under the laws of another nation, shall be registered in the Federated States of Micronesia.

(2) All vessels 12 meters and over entering or operating within the waters of the Federated States of Micronesia shall be duly registered either in accordance with the laws of the Federated States of Micronesia or another nation.

(3) An owner or master of any vessel who knowingly allows the vessel to enter the waters of the Federated States of Micronesia or operate within such waters, unless the vessel is duly registered in accordance with the laws of the Federated States of Micronesia or another nation, commits a civil offense and shall be liable to a fine not exceeding \$50,000. The burden of proof shall lie on the owner or master of the vessel to demonstrate that the vessel is duly registered.

(4) A vessel may be detained until the master of the vessel produces its Certificate of Registry.

(5) In addition to any other penalties, continued violation of this section shall be grounds for the vessel to be forfeited to the National Government.

Source: PL 10-76 § 15.

Cross-reference: FSM Const., art. IX, § 2(h). The provisions of the Constitution are found in Part I of this code.

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

Case annotation: Once an FSM ship is registered, the Registrar must issue a Certificate of Registry for it, and once a mortgage has been properly recorded with the Registrar, the Registrar must endorse on the Certificate of Registry the mortgagor's and mortgagee's names, the mortgage's amount and date of maturity, and the time and date the mortgage was recorded. *Bank of the FSM v. Pacific Foods & Servs., Inc.*, 10 FSM R. 327, 332 (Pon. 2001).

§ 302. Qualifications for vessel registration.

(1) For the purposes of this title, a Qualified Person is:

(a) a person who is a citizen of the Federated States of Micronesia, or a corporation which is established in accordance with the laws of the Federated States of Micronesia or any of its States, wholly owned by citizens, whose principal place of business is in the Federated States of Micronesia;

(b) a person holding a current and valid foreign investment permit duly issued by the National Government to operate a vessel in interstate or international commerce who or which has its principal place of business in the Federated States of Micronesia; or

(c) the National and State Governments of the Federated States of Micronesia and their instrumentalities.

(2) The Registrar shall require the production of satisfactory documentary evidence demonstrating that the owner is a Qualified

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Person and the vessel meets the requirements for registration.

(3) Ownership of any share of a vessel by a person who is not a Qualified Person shall constitute cause for removal of the vessel from the Register and forfeiture to the National Government.

(4) A vessel which has ceased to meet the requirements for registration under this chapter shall be struck off the Register.

(5) Any person who is not a Qualified Person who purports to be a Qualified Person for the purpose of registering a vessel under this title commits a national offense punishable by a fine not exceeding \$100,000 or imprisonment of not more than one year, or both.

Source: PL 10-76 § 16; PL 10-137 § 1; PL 14-89 § 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 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.

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§ 303. Declaration of Qualified Person.

A person shall not be registered as owner of a vessel unless the person has filed a Declaration of Qualified Person with the Registrar, declaring:

- (1) that the person is a Qualified Person;
- (2) that no person other than a Qualified Person has any interest in the vessel; and
- (3) in the case of a vessel to be purchased, that the person to be named as the transferee in the bill of sale is a Qualified Person.

Source: PL 10-76 § 17.

§ 304. Status of ownership if not a Qualified Person.

- (1) If a person who is not a Qualified Person:
 - (a) acquires any ownership interest in a Registered Vessel other than by purchase and does not transfer that interest to a Qualified Person or become a Qualified Person within 90 days, that interest shall be struck off the Register;
 - (b) purchases any ownership interest in a Registered Vessel and within 90 days does not remove the vessel from the Register or become a Qualified Person, that interest shall be null and void and shall not be registered under this title.
- (2) Where equity demands, the Secretary shall have discretion to extend any time period set forth in this section.

Source: PL 10-76 § 18; PL 10-137 § 2.

§ 305. Voluntary registration of other vessels wholly owned by Qualified Person(s).

Vessels which are not required by this title to be registered in the Federated States of Micronesia, but are wholly owned by Qualified Persons and not registered in any other nation, may be registered in accordance with this title.

Source: PL 10-76 § 19.

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

§ 306. Continuation of registration.

Vessels which were duly registered in the Federated States of Micronesia before the date on which this Act became law shall be deemed to be registered under this title.

Source: PL 10-76 § 20.

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

Editor's note: PL 10-76 took effect April 1, 1998.

§ 307. Liability of owners.

(1) Where a person has an undisclosed and unregistered ownership interest in a Registered Vessel and another person is registered as owner, both shall be subject to all pecuniary penalties imposed on

the owners of vessels, and proceedings may be taken against either or both of them, with or without joining the other of them.

(2) This section does not apply to holders of maritime liens or to a mortgagee, except a mortgagee in possession or control of a vessel.

Source: PL 10-76 § 21.

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

§ 308. Ports of Registry.

The Secretary may designate Ports of Registry by regulation.

Source: PL 10-76 § 22.

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

§ 309. Registrar and Register.

(1) The Registrar shall be appointed by the Secretary, and shall keep the Register and any instruments required to be deposited with the Registrar.

(2) The Register shall be open to public inspection during normal business hours.

(3) Extracts from the Register and copies of the instruments shall be obtainable from the Registrar upon payment of the fee prescribed in regulations.

Source: PL 10-76 § 23.

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

§ 310. Recording of particulars in Register.

(1) A bill of sale, conveyance, mortgage, assignment of mortgage, or the transfer of any interest in any Registered Vessel shall not be valid with respect to such vessel against any person other than the grantor or mortgagor, his or her heirs or devisees and persons having actual notice thereof, until the instrument evidencing such transaction is recorded in the Register.

(2) The Registrar shall record in the Register the particulars contained in the instruments as soon as they are received.

(3) The Registrar shall also record in the Register:

- (a) the name of the vessel;
- (b) the names and addresses of the parties;
- (c) the time and date of receipt of the instrument;
- (d) the interest in the vessel transferred or affected;
- (e) the amount and date of maturity of any mortgage; and
- (f) any other information prescribed by regulation.

(4) After the Registrar has recorded the particulars of the instruments deposited in the Register, the Registrar shall file the original documents in a separate file for each vessel.

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Source: PL 10-76 § 24; PL 10-137 § 3.

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

Case annotations: The statutory scheme sets up a system for the registration of FSM vessels, the recordation of ownership interests in those vessels, the priority of liens and claims against those vessels, and the methods of enforcing those claims. *Bank of the FSM v. Pacific Foods & Servs., Inc.*, 10 FSM R. 327, 332 (Pon. 2001).

The Secretary of the Department of Transportation and Communications, appoints a Registrar, who keeps a Register of FSM vessels and the instruments that must be deposited with the Registrar. A transfer of any interest, including a mortgage, in a registered vessel is not valid with respect to that vessel against any person other than the grantor or mortgagor until the instrument evidencing such transaction is recorded in the Register. The Registrar is required to record the particulars in such instruments as soon as they are received, including the amount and date of maturity of any mortgage. *Bank of the FSM v. Pacific Foods & Servs., Inc.*, 10 FSM R. 327, 332 (Pon. 2001).

Once an FSM ship is registered, the Registrar must issue a Certificate of Registry for it, and once a mortgage has been properly recorded with the Registrar, the Registrar must endorse on the Certificate of Registry the mortgagor's and mortgagee's names, the mortgage's amount and date of maturity, and the time and date the mortgage was recorded. *Bank of the FSM v. Pacific Foods & Servs., Inc.*, 10 FSM R. 327, 332 (Pon. 2001).

§ 311. Application for Registration.

An Application for Registration under this title shall be made by the owner in accordance with the regulations.

Source: PL 10-76 § 25.

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

§ 312. Tonnage Certificate.

(1) Before registration under this title, a vessel must be inspected by a qualified Surveyor appointed by the Secretary, who shall be authorized to ascertain the tonnage of the vessel and issue a tonnage survey report.

(2) On receipt of a tonnage survey report the Principal Surveyor shall, on payment of the prescribed fee, issue a Tonnage Certificate.

Source: PL 10-76 § 26.

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

§ 313. Marking.

(1) A vessel shall not be registered under this title unless it is marked permanently and in accordance with the regulations.

(2) Any person who conceals, removes, alters, defaces or obliterates any mark on any vessel commits a civil offense, and

shall be liable to a fine not exceeding \$10,000.

Source: PL 10-76 § 27.

§ 314. Improper description of vessel in required documentation or marking.

An owner or master of a Registered Vessel who permits the vessel to be described by a name other than its registered name in required documentation or marking, commits a civil offense, and shall be liable to a fine not exceeding \$50,000.

Source: PL 10-76 § 28.

§ 315. Entries in the Register.

(1) Entries in the Register shall be made in accordance with the regulations.

(2) No vessel may be registered under this title by the same name as a vessel already registered.

Source: PL 10-76 § 29.

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

§ 316. Change of ownership.

(1) Where a Registered Vessel is sold, conveyed or otherwise transferred to a Qualified Person, the vessel shall be transferred by a bill of sale in the prescribed form and executed by the transferor and the transferee and, in the case of a corporation, by affixing the corporate seal.

(2) Where an interest in a Registered Vessel changes ownership,

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the owner shall, within ten days after such change, register the vessel in accordance with the Vessel Registration Regulations, and a new Certificate of Registry shall be issued, provided the vessel still qualifies for registration.

Source: PL 10-76 § 30.

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

§ 317. Recording of bills of sale.

(1) A bill of sale or related document transferring an interest in a Registered Vessel or any other instrument related thereto shall not be recorded in the Register unless it states the interest of the grantor in the vessel and the interest sold or conveyed.

(2) Upon payment of the prescribed fee, the Registrar shall record the documents in subsection (1) of this section in the order of their receipt and sign each document stating the time and date that each was received.

Source: PL 10-76 § 31.

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

§ 318. Certificate of Registry.

(1) When all the prescribed requirements for registration have been met with respect to a vessel, the Registrar shall issue a Certificate of Registry.

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(2) The Certificate of Registry shall contain an accurate description of the vessel and list any and all ownership interests in the vessel.

(3) The Certificate of Registry shall be kept on board the vessel.

(4) The Certificate of Registry is not a document which transfers title in a vessel and shall not be subject to detention except as is provided in subsection (6) of this section.

(5) Any owner or master who knowingly uses or allows the use of a Certificate of Registry for any purpose which would mislead or deceive or have the tendency to mislead or deceive any other person, commits a civil offense and shall be liable to a fine not exceeding \$50,000.

(6) Surrender of certificate.

(a) Any person who holds a Certificate of Registry shall surrender it on demand to the person entitled to its custody for the lawful navigation of the vessel, to the Registrar, or to any other person entitled by law to require its delivery.

(b) Any person who fails to comply with this subsection commits a civil offense and shall be liable to a fine not exceeding \$50,000.

Source: PL 10-76 § 32.

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

Case annotation: Once an FSM ship is registered, the

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Registrar must issue a Certificate of Registry for it, and once a mortgage has been properly recorded with the Registrar, the Registrar must endorse on the Certificate of Registry the mortgagor's and mortgagee's names, the mortgage's amount and date of maturity, and the time and date the mortgage was recorded. *Bank of the FSM v. Pacific Foods & Servs., Inc.*, 10 FSM R. 327, 332 (Pon. 2001).

§ 319. Provisional Certificate of Registry.

(1) Where a vessel is acquired outside the Federated States of Micronesia by a Qualified Person, the Registrar may issue a Provisional Certificate of Registry.

(2) The owner or master of a provisionally Registered Vessel shall, within ten days after the arrival of the vessel in the Federated States of Micronesia, deliver the Provisional Certificate of Registry to the Registrar.

(3) The Registrar may only issue a Certificate of Registry after the vessel has fully complied with all the requirements of the Vessel Registration Regulations.

Source: PL 10-76 § 33.

§ 320. Alterations.

Where a Registered Vessel is so altered that the Tonnage Certificate or the description of the vessel contained in the Register is no longer accurate, the owner shall register the alteration within seven days after completion of the alteration.

Source: PL 10-76 § 34.

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

Ports of Entry are found in title 18 of this code.

§ 321. Duty to provide information to Registrar.

The owner of any Registered Vessel who is directed in writing by the Registrar to provide information concerning the vessel or its owners shall comply within ten days.

Source: PL 10-76 § 35.

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

§ 322. Notification of vessel loss or destruction.

The owner of a Registered Vessel shall immediately notify the Registrar in writing if the vessel is lost or destroyed, or any owner ceases to be a Qualified Person.

Source: PL 10-76 § 36.

§ 323. Liabilities of unregistered vessels.

Where a vessel is required to be registered but is not, the vessel, its owners and master shall:

- (1) not be entitled to any benefits, privileges, advantages or protections enjoyed by Registered Vessels;
- (2) not be relieved of obligations under this title and regulations by reason of the fact that the vessel is not registered;
- (3) remain liable for the payment of all dues, fees, fines or other charges, for forfeiture, and for punishment for offenses in the same manner as if the vessel were registered.

Source: PL 10-76 § 37.

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

§ 324. Recording of mortgages.

(1) A Registered Vessel may be made security for a loan or other financial obligation by way of a mortgage in the prescribed form.

(2) A mortgage shall not be recorded in the Register unless it states the interest of the mortgagor in the vessel and the term and conditions of the mortgage on the vessel.

(3) Upon payment of the prescribed fee, the Registrar shall record mortgages in the order of their receipt and sign each mortgage stating the time and date that each was received.

(4) The Registrar shall endorse on the Certificate of Registry of the vessel covered by the mortgage:

- (a) the names of the mortgagor and mortgagee;
- (b) the amount and date of maturity of the mortgage; and
- (c) the time and date the mortgage was recorded.

Source: PL 10-76 § 38; PL 10-137 § 4.

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

Case annotations: The Secretary of the Department of Transportation and Communications, appoints a Registrar, who keeps a Register of FSM vessels and the instruments that must be deposited with the Registrar. A transfer of any interest, including a mortgage, in a registered vessel is not valid with respect to that vessel against any person other than the grantor or mortgagor until the instrument evidencing such transaction is recorded in the Register. The Registrar is required to record the particulars in such instruments as soon as they are received, including the amount and date of maturity of any mortgage. *Bank of the FSM v. Pacific Foods & Servs., Inc.*, 10 FSM R. 327, 332 (Pon. 2001).

United States statutes regarding ships' mortgages will not be adopted as the common law of the Federated States of Micronesia, because their purposes are not applicable to the FSM and because their changing nature and complexity are not conducive to forming the basis of the common law of this nation. *Federal Bus. Dev. Bank v. S.S. Thorfinn*, 4 FSM R. 57, 59-60 (Truk 1989).

The enforcement of ships' mortgages does not come within the admiralty jurisdiction of the FSM Supreme Court. *Federal Bus. Dev. Bank v. S.S. Thorfinn*, 4 FSM R. 57, 60 (Truk 1989) (reversed in Appellate Division at 4 FSM R. 367, 376) (App. 1990).

The question of the enforceability of ship mortgages is a matter that falls within the maritime jurisdiction of the FSM Supreme Court under art. XI, § 6(a) of the Constitution. *Federal Bus. Dev. Bank v. S.S. Thorfinn*, 4 FSM R. 367, 376 (App. 1990).

§ 325. Recording of notices of claim of lien.

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(1) The Registrar shall upon the request of any person record in the Register notice of such person's claim to a lien on a Registered Vessel, supported by credible documentary evidence, together with the nature, date of creation, and amount of the lien and the name and address of the person.

(2) Any person who has caused notice of a claim of lien to be so recorded shall, upon discharge of the indebtedness, forthwith file a certificate of such discharge with the Registrar, who shall record the discharge of the indebtedness giving rise to the lien.

Source: PL 10-76 § 39.

Cross-reference: FSM Const., art. IX, § 2(h). The provisions of the Constitution are found in Part I of this code.

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

§ 326. Priority of maritime liens and mortgages.

(1) All claims secured by maritime liens on any Registered Vessel shall take priority over all registered mortgages and charges which have been duly recorded by the Registrar in the Register, and no other claim shall take priority over such maritime liens or over such mortgages or charges.

(2) Each of the following claims against the owner, demise charterer, manager or operator of a Registered Vessel shall be secured by a maritime lien on the vessel:

(a) claims for wages and other sums due to the master, officers and other members of the crew in respect of their

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employment on the vessel, including costs of repatriation and social insurance contributions payable on their behalf;

(b) claims in respect of loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the vessel;

(c) claims for reward for the salvage of the vessel;

(d) claims for port, canal, and other waterway dues and pilotage dues;

(e) claims based on tort arising out of physical loss or damage caused by the operation of the vessel other than loss of or damage to cargo, containers and passengers' effects carried on the vessel.

(3) (a) The maritime liens set out in subsection (2) of this section shall rank in the order listed, PROVIDED HOWEVER, that maritime liens securing claims for reward for the salvage of a vessel shall take priority over all other maritime liens which have attached to the vessel prior to the time when the salvage operations giving rise to the salvage claims were performed;

(b) Where a claim for reward for the salvage of a vessel is recorded in the Register, the maritime liens set out in each of subsections (a), (b), (d) and (e) of subsection (2) of this section shall rank *pari passu* as among themselves.

(4) The maritime liens securing claims for reward for the salvage of a vessel shall rank in the inverse order of the time when the claims secured thereby accrued. Such claims shall be deemed to have accrued on the date on which each salvage operation was terminated.

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- (5) (a) The assignment of or subrogation to a claim secured by a maritime lien entails the simultaneous assignment of or subrogation to such a maritime lien;
- (b) Claimants holding maritime liens may not be subrogated to the compensation payable to the owner of the vessel under an insurance contract.
- (6) A maritime lien shall be extinguished after a period of one year, unless extended by an order of the Supreme Court.
- (7) Where there is more than one mortgage recorded in the Register in respect of the same vessel, the mortgagees shall, notwithstanding any expressed, implied, or constructive notice, be entitled in priority one over the other according to the time and date on which each mortgage was recorded in the Register and not according to the date of each mortgage itself.
- (8) A registered mortgage shall not be affected by any act of bankruptcy or insolvency committed by the mortgagor after the date of recording of the mortgage, notwithstanding that the bankrupt or insolvent mortgagor had, at the time of the insolvency, the vessel in his possession, order or disposition.
- (9) Any such registered mortgage shall have priority over any right, claim, or interest in the vessel of the other creditors of the bankrupt or any trustee or assignee on their behalf.

Source: PL 10-76 § 40.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code. The statutory provisions on Judicial Procedure are found in title 6 of this code.

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

Case annotations: Once an FSM ship is registered, the Registrar must issue a Certificate of Registry for it, and once a mortgage has been properly recorded with the Registrar, the Registrar must endorse on the Certificate of Registry the mortgagor's and mortgagee's names, the mortgage's amount and date of maturity, and the time and date the mortgage was recorded. *Bank of the FSM v. Pacific Foods & Servs., Inc.*, 10 FSM R. 327, 332 (Pon. 2001).

An earlier recorded mortgage has priority over one recorded later according to the time and date on which each mortgage was recorded in the Register and not according to the date of each mortgage itself. *Bank of the FSM v. Pacific Foods & Servs., Inc.*, 10 FSM R. 327, 332 (Pon. 2001).

The question of mortgage priority is important because if a ship has to be sold either as forfeiture or to satisfy its or its owner's debts, the mortgagees will be paid from the proceeds according to their priority. A mortgagee with a higher priority will thus be paid in full before a subsequent mortgagee with a lower priority is paid one cent. The priority of the mortgages should be immediately apparent because they will all be recorded on the same Certificate of Registry. *Bank of the FSM v. Pacific Foods & Servs., Inc.*, 10 FSM R. 327, 332 (Pon. 2001).

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No principle of law prohibits a lender from securing with a mortgage a sum less than the full amount of what it has lent. It merely does so at its own risk. *Bank of the FSM v. Pacific Foods & Servs., Inc.*, 10 FSM R. 327, 332 (Pon. 2001).

To permit a registered ship mortgage to hold priority for an additional \$100,000 over its registered amount would destroy the statutory scheme created by Congress and one of the goals of the ship registry system that all ownership interests be recorded on the ship's Certificate of Registry, and would also hinder another purpose and goal enhancing the ability of ship owners to obtain needed financing. *Bank of the FSM v. Pacific Foods & Servs., Inc.*, 10 FSM R. 327, 333-34 (Pon. 2001).

A mortgagee cannot assert that its registered mortgage has priority over a subsequent mortgagee for a principal amount greater than the principal amount registered. *Bank of the FSM v. Pacific Foods & Servs., Inc.*, 10 FSM R. 327, 334 (Pon. 2001).

When there is more than one registered mortgagee of the same vessel, a subsequent mortgagee cannot apply to sell the vessel without the concurrence of every prior mortgagee, except under an order of the Supreme Court. *Bank of the FSM v. Pacific Foods & Servs., Inc.*, 10 FSM R. 327, 334 (Pon. 2001).

If a judgment creditor were attempting to levy execution on an FSM-registered vessel, the competing priorities are regulated by statute based on whether, and when, the security interest had been properly recorded. *UNK Wholesale, Inc. v. Robinson*, 11 FSM R. 361, 365 (Chk.

2003).

§ 327. Mortgages in default.

(1) A mortgagee of a Registered Vessel shall not by reason of the mortgage be deemed to be the owner of the vessel, nor shall the mortgagor be deemed to have ceased to be the owner of the vessel.

(2) On default of any term of a mortgage, a mortgagee may enforce a claim for outstanding indebtedness secured by the mortgaged vessel in a civil action *in personam* in the Supreme Court against the mortgagor, maker, co-maker, or guarantor for the amount of the outstanding indebtedness or any deficiency in full payment of that indebtedness.

(3) In the event of default of the mortgage, the registered mortgagee shall be entitled to recover the amount due under the mortgage by applying to the Supreme Court for an order, directing that the mortgaged vessel, or any share therein, be sold by tender or at a public auction, and that the proceeds of the sale be used to satisfy:

(a) the expenses of conducting the sale;

(b) the amount outstanding to the mortgagee under the mortgage; and

(c) the amount outstanding to subsequent mortgagees, with the balance being distributed to the mortgagor.

(4) Upon receiving an application from the mortgagee for the order mentioned in subsection (3) of this section, the Supreme Court may set a date for a hearing concerning the default of mortgage.

(5) The mortgagee shall cause notice to be personally served on

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the mortgagor and any subsequent mortgagees, but if such required notice cannot be personally served, then an application may be made to the Supreme Court providing for the date of the hearing to be publicized on at least one radio station at the location of mortgagor and subsequent mortgagees and by any other means having wider circulation, and such shall be considered to be service of adequate notice on the parties.

(6) Where the Supreme Court has found the mortgage to be in default, it may order the forced sale of the vessel, or any share therein, and for this purpose the Supreme Court shall appoint a person as an Officer of the Court to conduct the sale and distribute the proceeds in accordance with the order.

(7) An Officer of the Court shall not be liable for any act or omission in conducting the sale or distributing the proceeds if acting in good faith.

(8) Where more than one person is registered as mortgagee of the same vessel, a subsequent mortgagee shall not make an application to sell the vessel without the concurrence of every prior mortgagee, except under an order of the Supreme Court.

(9) Where a vessel has been sold in accordance with subsection (6) of this section, the Supreme Court shall, by order, vest ownership of the vessel in the purchaser, which order shall be recorded in the Register by the Registrar.

Source: PL 10-76 § 41.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code. The statutory provisions on Judicial Procedure are found in title 6 of this code.

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

Case annotations: Case annotations found throughout this title may refer to the earlier provisions of the National Maritime Act of 1993 that was repealed by PL 10-76, the National Maritime Act, 1997. These annotations are retained for reference purposes as some of the language of the National Maritime Act, 1997 is similar to the language of the former National Maritime Act of 1993.

United States statutes regarding ships' mortgages will not be adopted as the common law of the Federated States of Micronesia, because their purposes are not applicable to the FSM and because their changing nature and complexity are not conducive to forming the basis of the common law of this nation. *Federal Bus. Dev. Bank v. S.S. Thorfinn*, 4 FSM R. 57, 59-60 (Truk 1989).

The enforcement of ships' mortgages does not come within the admiralty jurisdiction of the FSM Supreme Court. *Federal Bus. Dev. Bank v. S.S. Thorfinn*, 4 FSM R. 57, 60 (Truk 1989) (Reversed in Appellate Division at 4 FSM R. 367, 376) (App. 1990).

The question of the enforceability of ship mortgages is a matter that falls within the maritime jurisdiction of the FSM Supreme Court under art. XI, § 6(a) of the Constitution. *Federal Bus. Dev. Bank v. S.S. Thorfinn*, 4

FSM R. 367, 376 (App. 1990).

§ 328. Notice of action to enforce mortgage.

(1) Actual notice of a civil action brought in the Supreme Court to enforce a mortgage shall be personally served on:

(a) the owner, master or individual in charge of the vessel or his agent for service of process;

(b) a subsequent mortgagee of an undischarged mortgage recorded under this chapter; and

(c) any person who has recorded a maritime lien on the vessel.

(2) Personal service of notice is not required if, after search satisfactory to the Supreme Court, persons entitled to such notice have not been found in the Federated States of Micronesia.

Source: PL 10-76 § 42.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code. The statutory provisions on Judicial Procedure are found in title 6 of this code.

§ 329. Operation of vessel pending disposition.

When a civil action has been commenced in the Supreme Court:

(1) the Court may appoint and authorize a person to manage and operate the mortgaged vessel but shall retain *in rem* jurisdiction over the vessel even if the vessel operates outside the Federated States of Micronesia; and

(2) the Court may request the Attorney General to direct the

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national police or other authorized officer to take possession of a mortgaged vessel even if the vessel is in the possession of or under the control of a person claiming a possessory lien.

Source: PL 10-76 § 43.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code. The statutory provisions on Judicial Procedure are found in title 6 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/>.

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

Case annotation: The hallmark of an *in rem* proceeding in admiralty is that it is an adjudication of all rights in the vessel, good against the world, not just of the rights of the parties to the action. An *in rem* proceeding against a vessel can only be had in the context of an admiralty or maritime case. *M/V Hai Hsiang #36 v. Pohnpei*, 7 FSM R. 456, 461-62 (App. 1996).

The FSM Constitution, by its plain language, grants exclusive and original jurisdiction to the FSM Supreme Court trial division for admiralty and maritime cases. It makes no exceptions. Therefore all *in rem* actions against marine vessels, even those by a state seeking forfeiture for violation of its fishing laws, must proceed in the trial division of the FSM Supreme Court. *M/V Hai Hsiang #36 v. Pohnpei*, 7 FSM R. 456, 463 (App. 1996).

§ 330. Continuation of mortgagee's interest.

(1) The interest of a mortgagee in a Registered Vessel shall not be terminated by a forfeiture of the vessel for a violation of any of the laws of the Federated States of Micronesia, unless the mortgagee authorized, consented or conspired to effect the illegal act, failure, or omission which constituted such violation.

(2) In the event of forfeiture resulting in a forced sale of the vessel by tender or public auction, the proceeds of the sale shall be used to satisfy:

(a) the expenses of conducting the sale;

(b) the amount outstanding to the mortgagee under the mortgage; and

(c) the amount outstanding to subsequent mortgagees.

(3) Any remaining balance from the proceeds of the sale shall not be paid to the mortgagor, but shall be paid into the General Fund of the Federated States of Micronesia.

Source: PL 10-76 § 44.

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

§ 331. Transfer of mortgage.

(1) A registered mortgage of a vessel may be transferred to any person by registration of an instrument of transfer of that mortgage in the prescribed form.

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(2) On the production to the Registrar of an instrument of transfer of a registered mortgage and of the mortgage to which the instrument relates, the Registrar shall register the transfer by making an entry of the transfer in the Register, and endorse and sign the mortgage and the instrument of transfer to the effect that the entry has been made and stating the date and time of making the entry.

Source: PL 10-76 § 45.

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

§ 332. Discharge of mortgage.

The mortgagee, upon a complete discharge of the mortgage indebtedness, shall forthwith file a Certificate of Discharge of Mortgage duly executed by the mortgagee, his successors or assigns, with the Registrar, who shall forthwith record the discharge of the mortgage.

Source: PL 10-76 § 46.

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

§ 333. Status of mortgage on foreign vessel.

In addition to a mortgage made under this chapter, any mortgage or similar charge created as security on any foreign vessel duly and validly executed and registered in accordance with the laws of the nation where the vessel is registered, may be enforced in the Supreme Court if the vessel is in the waters of the Federated States of Micronesia.

Source: PL 10-76 § 47.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code. The statutory provisions on Judicial Procedure are found in title 6 of this code.

§ 334. Disclosure of liens and priority.

(1) Where the owner of a Registered Vessel has received a service or the vessel has caused loss of life or personal injury giving rise to a claim which creates a maritime lien against the vessel, the lien holder may require the Registrar to record the lien against the vessel in the Register.

(2) Irrespective of whether the maritime lien is registered in accordance with subsection (1) of this section, the person who provided the service or who has suffered injury, or the next of kin or executor of the estate of the person who has lost his or her life as a result of the action of the vessel or any other lien holder having a claim against a vessel can exercise that lien against the vessel while it is owned by the original debtor.

(3) A maritime lien against a Registered Vessel shall not be enforceable against the vessel subsequently purchased by a bona fide purchaser for value without notice unless it has been recorded in the Register.

(4) The failure of a lien holder to register a maritime lien against a Registered Vessel shall not prejudice the claim against the vessel owner who received services or whose vessel caused damage giving rise to the lien in the first instance.

(5) A mortgagor, before executing a mortgage in respect of a Registered Vessel, shall disclose to the mortgagee in writing the existence of any maritime lien, prior mortgage, or other obligation

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or liability upon the vessel to be mortgaged, which is known to the mortgagor.

(6) After the execution of such mortgage and before the mortgagee has had a reasonable time to record it and have proper endorsements made upon the Certificate of Registry of the vessel, the mortgagor, without the consent of the mortgagee, shall not incur any contractual obligation creating a lien upon the vessel, having priority over a mortgage other than liens for wages of the crew of the vessel or for salvage.

(7) A mortgagor, including an officer, director, agent or employee of a company which owns a vessel, the financing of which is secured by a mortgage, commits a civil offense, and shall be liable to a fine not exceeding \$200,000, where such mortgagor:

(a) with intent to defraud, fails to disclose the existence of any prior mortgage, maritime lien, or other obligation or liability upon the vessel; or

(b) with intent to defraud, incurs any contractual obligation giving rise to a lien before the mortgagee has had a reasonable time to record the mortgage.

(8) Upon commission of any civil offense set forth in subsection (7) of this section the mortgage indebtedness shall become immediately due and payable at the election of the mortgagee.

Source: PL 10-76 § 48; PL 10-137 § 5.

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

§ 335. Necessaries.

(1) Any person who furnishes stores, provisions, fuel, towage, repairs, use of dry dock or marine railway, or other necessaries, to any foreign or domestic vessel upon the order of the owner or person authorized by the owner, shall have a maritime lien on the vessel which shall:

(a) subject to sections 334 and 338 of this chapter, follow the vessel notwithstanding any change of ownership, registration or flag;

(b) in case of assignment or subrogation of the claim secured by a maritime lien on the vessel, entail the simultaneous assignment of or subrogation to such a maritime lien;

(c) be extinguished at the expiration of the lesser period of either:

(i) six months from the time when the claims secured thereby arose unless, prior to the expiration of such period, the vessel has been arrested or seized, such arrest or seizure leading to a forced sale; or

(ii) 60 days following a sale to a bona fide purchaser of the vessel, such period to commence on the date on which the sale is made in accordance with this chapter;

(d) rank after the maritime liens set out in section 326 of this chapter and also after registered mortgages or charges recorded in accordance with this chapter.

(2) The owner, owner's agent, master or any person to whom the

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management of the vessel is entrusted, shall be presumed to have authority from the owner to procure such necessities.

(3) This section shall not confer a lien when persons providing the services referred to in subsection (1) of this section know, or by exercise of reasonable diligence should have ascertained, that because of the terms of a charter party, agreement of sale of the vessel, or for any other reason, the person ordering necessities was without authority to bind the vessel.

Source: PL 10-76 § 49.

Cross-reference: FSM Const., art. IX, § 2(h). The provisions of the Constitution are found in Part I of this code.

The statutory provisions on Territory, Economic Zones and Ports of Entry are found in title 18 of this code.

Case annotations: Supplies and service that are necessities when provided to a vessel give rise to maritime liens. *Maruwa Shokai (Guam), Inc. v. Pyung Hwa* 31, 6 FSM R. 1, 3 (Pon. 1993).

A general agent is not barred from obtaining a maritime lien. Obtaining the lien depends on whether the supplies and services furnished the vessel are necessities, not on the contractual relation. *Maruwa Shokai (Guam), Inc. v. Pyung Hwa* 31, 6 FSM R. 1, 3 (Pon. 1993).

Necessaries are defined as those things reasonably needed in the business of the vessel. *Maruwa Shokai (Guam), Inc. v. Pyung Hwa* 31, 6 FSM R. 1, 3 (Pon. 1993).

To be entitled to a maritime lien a provider of necessities

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must rely on the credit of the vessel. General maritime law presumes that a provider of necessities relies on the credit of the vessel. *Maruwa Shokai (Guam), Inc. v. Pyung Hwa* 31, 6 FSM R. 1, 3 (Pon. 1993).

A contract provision for a line of credit that was never filled in as to amount and never funded cannot overcome presumption that a supplier of necessities relied on credit of vessel. *Maruwa Shokai (Guam), Inc. v. Pyung Hwa* 31, 6 FSM R. 1, 4 (Pon. 1993).

The term "charter party" is used in maritime law to designate the specialized form of contract for the hire of an entire ship, specified by name. "Charter party" is used synonymously with "charter." Three principal types are recognized: 1) under a time charter, the charterer engages for a fixed period of time a vessel, which remains manned and navigated by the vessel owner, to carry cargo wherever the charter instructs; 2) under a voyage charter, the charterer engages the vessel to carry goods only for a single voyage; and 3) under a demise, or bareboat charter, the charterer takes complete control of the vessel, mans it with his own crew, and is treated by law as its legal owner. *Yap v. M/V Cecilia I*, 13 FSM R. 403, 408 (Yap 2005).

A requirement for a true bareboat charter is that the charterer selects his own master and crew. If the owner provides the master and crew, tendering them as the agents of the charterer, the charter is a demise, although not technically a "bareboat" charter. Of these three varieties of charter parties, the demise charter has unique characteristics. A demise is the transfer of full possession and control of the vessel for the period covered by the contract. The charterer obtains the right to run the vessel and carry whatever cargo he chooses. The ship is manned

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and supplied by the charterer as well. *Yap v. M/V Cecilia I*, 13 FSM R. 403, 408 (Yap 2005).

The legal test of a demise charter is whether the owner of the vessel completely and exclusively relinquished possession, command and navigation to the demisee. A demise is present where the provisions of the charter show that those in charge of the vessel are intended to be the agents and servants of the demisee, not the shipowner. For most purposes, the charterer in a demise is treated as an owner, termed *pro hac vice*. *Yap v. M/V Cecilia I*, 13 FSM R. 403, 408-09 (Yap 2005).

The owner's fundamental obligation under the demise charter party is to provide a seaworthy vessel of the specified class and type at the beginning of the charter term. A warranty of seaworthiness of the vessel will be implied; it may, however, be qualified or even waived. The seaworthiness warranty extends only to the charterer's beginning; subsequent to delivery the vessel's seaworthiness is the charterer's responsibility unless otherwise stated. *Yap v. M/V Cecilia I*, 13 FSM R. 403, 409 (Yap 2005).

The demise charterer's basic obligation is to pay the charter hire stipulated in the charter party. At the end of the charter term, the vessel must be returned in the same condition as received excepting ordinary wear and tear. *Yap v. M/V Cecilia I*, 13 FSM R. 403, 409 (Yap 2005).

The charterer under a demise is responsible for the proper performance of all agreements made with third parties in connection with the ship's operation. The charterer, as owner *pro hac vice* is also potentially liable for collision, personal injuries to the master, crew, and third parties,

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pollution damages, and for loss or damage to the chartered vessel. The vessel owner normally has no personal liability, but the vessel may be liable *in rem*. The charterer, however, has an obligation to indemnify the vessel owner if the damage was incurred through the charterer's negligence or fault. *Yap v. M/V Cecilia I*, 13 FSM R. 403, 409 (Yap 2005).

§ 336. Waiver of maritime lien for necessities.

This chapter shall not prevent a person who holds a maritime lien for necessities for stores, provisions, fuel, towage, repairs, use of dry dock or marine railway, or other necessities, from waiving the right to a lien against the vessel at any time, by agreement or otherwise.

Source: PL 10-76 § 50.

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

§ 337. Arrest of vessels.

(1) A Registered Vessel may be arrested in respect of default in payment on claims secured by maritime liens or mortgages against the vessel recorded in the Register.

(2) Where sufficient evidence is provided to the Supreme Court to warrant the arrest of a Registered Vessel, the Court may issue an order for the arrest of the vessel.

(3) A vessel which has been arrested may only be released by an order of the Court if sufficient security has been provided in the amount and form satisfactory to the claimant; or, if the sufficiency and form is disputed, the Supreme Court may order that security be

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provided in an amount which shall not exceed the value of the vessel.

(4) Upon application of the owner the Court may, in its discretion, as a condition for the arrest of the vessel, impose upon the claimant the obligation to provide security of a kind and for an amount on such terms as the Court deems appropriate and for any loss which may be incurred by the owner or defendant as a result of the arrest.

(5) Where sufficient security cannot be obtained by the owner as guarantee for the payment of the maritime lien or mortgage, the lien holder or mortgagee shall file an application with the Supreme Court for an order for the forced sale of the vessel.

Source: PL 10-76 § 51.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code. The statutory provisions on Judicial Procedure are found in title 6 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/>.

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

Case annotation: The hallmark of an *in rem* proceeding in admiralty is that it is an adjudication of all rights in the vessel, good against the world, not just of the rights of the parties to the action. An *in rem* proceeding against a vessel can only be had in the context of an admiralty or maritime

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case. *M/V Hai Hsiang #36 v. Pohnpei*, 7 FSM R. 456, 461-62 (App. 1996).

The FSM Constitution, by its plain language, grants exclusive and original jurisdiction to the FSM Supreme Court trial division for admiralty and maritime cases. It makes no exceptions. Therefore all *in rem* actions against marine vessels, even those by a state seeking forfeiture for violation of its fishing laws, must proceed in the trial division of the FSM Supreme Court. *M/V Hai Hsiang #36 v. Pohnpei*, 7 FSM R. 456, 463 (App. 1996).

In an admiralty case, the court must review the verified complaint and supporting papers to determine whether the conditions for an *in rem* action appear to exist. If the court finds a sufficient basis, it may then issue an order authorizing the clerk to issue an order authorizing the vessel's arrest. *Meninzor v. M/V Caroline Voyager*, 15 FSM R. 97, 99 (Pon. 2007).

The release of vessels from arrest is governed by Supplemental Admiralty and Maritime Rule E(6), and if the parties are unable to stipulate to the amount and nature of the security, the court must fix the principal sum of the bond at an amount sufficient to cover the plaintiff's claim fairly stated with accrued interest. If the plaintiff's claim "fairly stated" exceeds the vessel's value, the amount of the bond needed to release the vessel would be limited to the vessel's value, and, if the vessel's value exceeds that of the plaintiff's claim, the bond amount would be the amount of the plaintiff's claim "fairly stated" with accrued interest. *People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III*, 16 FSM R. 543, 545 (Yap 2009).

For a court to determine the amount of a plaintiff's claim

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"fairly stated," the court can consider affidavits and look behind the complaint to ascertain the amount actually in controversy. For a plaintiff's claim to be "fairly stated," it must only be arguable. This is because "any ultimate recovery against the *res* itself [the vessel] is limited to the amount of the bond; therefore it is prudent to err on the high side. Thus, in making a preliminary assessment of plaintiff's damages claim, the court should be satisfied that the plaintiff's claims are not frivolous, but it should not require the plaintiff to prove its damages with exactitude. *People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III*, 16 FSM R. 543, 545-46 (Yap 2009).

Factual disputes that a trial would resolve need not be resolved to set a bond for an arrested vessel; the court need only conclude that the plaintiff's claims are not frivolous and are arguable. *People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III*, 16 FSM R. 543, 546 (Yap 2009).

The FSM Rules of Evidence would appear to be inapplicable to proceedings with respect to release of an arrested vessel on bond. *People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III*, 16 FSM R. 543, 546 (Yap 2009).

When, without prejudging who will ultimately prevail and to what extent, the plaintiff's claim appears arguable; the amount is "fairly stated" for the purpose of setting a bond for an arrested vessel. *People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III*, 16 FSM R. 543, 546, 546 (Yap 2009).

Whenever security is taken for the release of an arrested vessel, the court may, on motion and hearing, for good cause shown, increase or reduce the amount of security given. *People of Tomil ex rel. Mar v. M/C Jumbo Rock*

Carrier III, 16 FSM R. 543, 547 (Yap 2009).

§ 338. Forced sale of vessels.

(1) In the event of a forced sale of a Registered Vessel or a foreign vessel, the claimant shall, prior to the forced sale of the vessel, ensure that notice is provided to:

- (a) the Registrar or the registrar in the nation of the vessel's registration;
- (b) all holders of registered mortgages or charges;
- (c) all holders of maritime liens; and
- (d) the registered owner of the vessel.

(2) Such notice shall be provided at least 30 days prior to the forced sale, and shall contain the particulars concerning the forced sale as well as the proceeding leading to the forced sale.

(3) All registered mortgages or charges, except those assumed by the purchaser with the consent of the holders, and all maritime liens and other encumbrances of whatsoever nature attached to the vessel at the time of the forced sale shall cease to be attached to the vessel provided that:

- (a) at the time of the sale, the vessel is within the jurisdiction of the Supreme Court; and
- (b) the sale has been effected in accordance with this chapter.

(4) The costs and expenses arising out of the arrest or seizure and subsequent sale of the vessel shall be paid first out of the proceeds of the sale. Such costs and expenses include the costs for the

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upkeep of the vessel, the master and crew as well as wages, repatriation, social insurance contributions payable on behalf of the master and crew, and other sums and costs referred to in section 326 of this chapter incurred from the time of arrest or seizure. The balance of the proceeds shall be distributed in accordance with this chapter to the extent necessary to satisfy the respective claims. Upon satisfaction of all claimants, any residue of the proceeds shall be paid to the owner and shall be freely transferable.

(5) If at the time of the forced sale the vessel is in the possession of a builder or of a repairer who, under the laws of the Federated States of Micronesia enjoys a right of retention, such builder or repairer shall surrender possession of the vessel to the purchaser, but shall be entitled to obtain satisfaction of his claim out of the proceeds of the sale after the satisfaction of the claims of holders of maritime liens.

(6) When a vessel has been the object of a forced sale, the Registrar shall, in accordance with the order of the Supreme Court and at the request of the purchaser, issue a certificate to the effect that the vessel is sold free of all registered mortgages or charges, except those assumed by the purchaser, and of all liens and other encumbrances, provided that the requirements set out in subsections (3)(a) and (b) of this section have been complied with.

(7) Where the vessel is a Registered Vessel, the Registrar shall delete all registered mortgages or charges except those assumed by the purchaser, issue a Certificate of Deletion for the purpose of new registration, and shall, if the purchaser is a Qualified Person and wishes to register the vessel in the Federated States of Micronesia, proceed in accordance with the requirements of the Vessel Registration Regulations to have the vessel registered in the Register under the name of the purchaser as the new owner.

(8) The order of the Supreme Court shall provide that any

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proceeds of the forced sale are actually available and freely transferable.

Source: PL 10-76 § 52.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code. The statutory provisions on Judicial Procedure are found in title 6 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/>.

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

Case annotations: Interlocutory sales of arrested vessels are allowed 1) if the property that has been attached is perishable or liable to injury by being detained in custody pending the action, or 2) if the expense of keeping the property is excessive or disproportionate, or 3) if there is unreasonable delay in securing the release of the property. The plaintiffs need only demonstrate that one of these three conditions is present to justify the vessels' interlocutory sale. *People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III*, 16 FSM R. 633, 634-35 (Yap 2009).

Where there is no evidence that the vessels are currently deteriorating or liable to injury and where the defendants have unsuccessfully sought the vessels' release through a letter of undertaking and made a good faith attempt to modify the proposed letter to satisfy the plaintiffs' and the

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court's concerns but were unable to, resulting in a court denial, the four months' delay in the vessels' release cannot yet be considered unreasonable, especially when the defendants, not the plaintiffs, are currently bearing the expenses of keeping the vessels. The request for an interlocutory sale of the arrested vessels will thus be denied without prejudice, but, if the vessels' release is not obtained, there will come a time when the delay will be considered unreasonable and the vessels' interlocutory sale could be ordered. *People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III*, 16 FSM R. 633, 635-36 (Yap 2009).

§ 339. Designation of owner; communications and service of process.

(1) Where a Registered Vessel is owned by more than one person, one owner shall be designated owner.

(2) Communications from the Government may be sent to and service of legal process may be made on the owner at the address on file with the Registrar. Any communication to the owner shall be deemed to be a communication to all owners.

Source: PL 10-76 § 53.

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

§ 340. Regulations governing maritime liens and mortgages.

The Secretary may promulgate regulations relating to maritime liens and mortgages, taking into account the provisions of the MLM Convention.

Source: PL 10-76 § 54.

Cross-reference: FSM Const., art. IX, § 2(h). The provisions of the Constitution are found in Part I of this code.

Cross-reference: The statutory provisions on Administrative Procedures are found in title 17 of this code. The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on Territory, Economic Zones and Ports of Entry are found in title 18 of this code.

CHAPTER 4

Requirements for Vessels Within the FSM

SECTIONS

- § 401. Application of chapter.**
- § 402. Regulations relating to international maritime safety conventions.**
- § 403. Regulations for small craft.**
- § 404. Principal surveyor and surveyors.**
- § 405. Powers of surveyors.**
- § 406. Survey prior to registration.**
- § 407. Safety certificates.**
- § 408. Certificates to be produced before vessel goes to sea.**
- § 409. Vessel may go to sea without Safety Certificate in certain circumstances.**
- § 410. Suspension or revocation of Safety Certificate.**
- § 411. Change in the condition of the vessel.**
- § 412. Requirement to carry certain safety equipment.**
- § 413. Equivalentents.**
- § 414. Manning of vessel.**
- § 415. Vessels to carry qualified radio personnel.**
- § 416. Carriage of dangerous goods.**
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manner.

§ 419. Forfeiture of dangerous goods.

§ 420. Carriage and safety of passengers.

§ 421. Submerged load line.

§ 422. Unsafe vessels.

§ 423. Port State control relating to safety certificates.

§ 424. Duty to report danger to navigation.

§ 425. Assistance to persons in danger at sea; false distress signal.

§ 426. Duty of vessel to assist in case of collision.

§ 427. Reporting of marine incidents and casualties.

§ 428. Investigation of marine casualties.

§ 429. Preliminary investigations.

§ 430. Marine Inquiries.

§ 431. Conditions for Preliminary Investigations and Marine Inquiries.

§ 432. Powers of the Board as to certificates.

Editor's note: The former provisions of chapters 1 to 12 of this title were repealed in their entirety by PL 10-76 § 1 and replaced by the provisions of PL 10-76, the "National Maritime Act, 1997" codified at chapters 1 to 13 of this title. PL 10-76 took effect April 1, 1998.

§ 401. Application of chapter.

(1) Unless otherwise specified herein, this chapter applies to:

(a) Registered Vessels (including Government Vessels) wherever located;

(b) non-registered small craft which navigate outside lagoons, or navigate within lagoons in such a way as to affect interstate or international commerce;

(c) foreign vessels at a port or within the waters of the

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Federated States of Micronesia.

(2) This chapter does not apply to vessels which are compelled by stress of weather or force majeure to enter any of the ports or waters of the Federated States of Micronesia to take refuge.

Source: PL 10-76 § 56.

Cross-reference: FSM Const., art. IX, § 2(h). The provisions of the Constitution are found in Part I of this code.

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

Case annotation: The Seaman's Protection Act, originally enacted for the entire Trust Territory by the Congress of Micronesia, relates to matters that now fall within the legislative powers of the national government under article IX, section 2 of the Constitution, and has therefore become a national law of the Federated States of Micronesia under article XV. That being so, a claim asserting rights under the Act falls within the FSM Supreme Court's jurisdiction under article XI, section 6(b) of the Constitution as a case arising under national law. 19 F.S.M.C. 401-437. *Lonno v. Trust Territory (I)*, 1 FSM R. 53, 72 (Kos. 1982).

§ 402. Regulations relating to international maritime safety conventions.

The Secretary may promulgate regulations for maritime safety taking into account international maritime safety conventions, including without limitation, the Collisions Convention, the Load Line Convention, the Safety Convention, the Tonnage

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Measurement Convention, and the IMDG Code which regulations shall have the force and effect of law.

Source: PL 10-76 § 57.

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

§ 403. Regulations for small craft.

The Secretary may promulgate regulations necessary to provide for the safety and control of foreign and domestic small craft including those used for fishing.

Source: PL 10-76 § 58.

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.

§ 404. Principal Surveyor and Surveyors.

(1) The Secretary may appoint the Principal Surveyor who shall oversee the implementation and enforcement of this chapter.

(2) The Principal Surveyor shall be responsible for the issuing of Safety Certificates.

(3) The Secretary may also appoint any qualified surveyor or classification society to be a Surveyor of vessels.

(4) The Secretary shall determine by regulation the credentials and experience necessary to qualify for the position of Principal Surveyor or Surveyor.

Source: PL 10-76 § 59.

§ 405. Powers of Surveyors.

(1) A Surveyor may at any reasonable time:

(a) go on board and inspect any vessel or small craft, its equipment, cargo or articles on board and any document required to be carried;

(b) upon reasonable notice to the owner or master, require the production of books, papers and documents relating to the vessel;

(c) conduct other surveys and inspections of the vessel; and

(d) require repairs be made to the vessel.

(2) The Principal Surveyor may direct any owner or master to move or otherwise prepare a vessel for survey or inspection.

(3) The Principal Surveyor may order that a vessel be detained pursuant to section 422 of this chapter.

(4) A Surveyor shall not unreasonably detain or delay a vessel.

Source: PL 10-76 § 60.

§ 406. Survey prior to registration.

It shall be a condition precedent to registration that all vessels be surveyed and issued all required Safety Certificates prescribed by regulations.

Source: PL 10-76 § 61.

Cross-reference: FSM Const., art. IX, § 2(h). The

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provisions of the Constitution are found in Part I of this code.

§ 407. Safety Certificates.

(1) Every Registered Vessel shall display in a prominent and accessible place all current Safety Certificates required to be carried under this title or regulations or a certified copy thereof.

(2) No Registered Vessel may go to sea without the required Safety Certificates displayed in accordance with subsection (1) of this section.

(3) Every vessel in the waters of the Federated States of Micronesia which is required to carry a certificate issued under any international maritime convention or law of the Federates States of Micronesia shall produce those certificates on the request of any duly authorized Surveyor.

(4) No foreign vessel may go to sea in the waters of the Federated States of Micronesia without producing the certificates in accordance with subsection (3) of this section.

(5) Any master, owner or person in charge of a vessel who violates subsections (2) or (4) of this section commits a civil offense, and shall be liable to a fine not exceeding \$50,000.

Source: PL 10-76 § 62.

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

§ 408. Certificates to be produced before vessel goes to sea.

Before a vessel goes to sea, the master must produce for inspection all required certificates or the statement referred to in section 409(2) of this chapter.

Source: PL 10-76 § 63.

§ 409. Vessel may go to sea without Safety Certificate in certain circumstances.

(1) The Principal Surveyor may allow a vessel to go to sea without a required Safety Certificate if the Principal Surveyor is satisfied that it may proceed without danger to the vessel, crew, or its passengers.

(2) If a vessel is allowed to proceed under subsection (1) of this section, the Principal Surveyor shall give to the master a written statement of the circumstances and conditions under which the vessel is allowed to go to sea, and the master shall comply with the circumstances and conditions so specified.

(3) This section does not apply to vessels which are not required to have Safety Certificates.

Source: PL 10-76 § 64.

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

§ 410. Suspension or revocation of Safety Certificate.

(1) The Principal Surveyor shall suspend or revoke any Safety Certificate issued upon false or erroneous information, or issued to a vessel which has become unseaworthy, and shall notify the owner or master of the revocation or period of suspension.

(2) An owner or master notified of the suspension or revocation of a Safety Certificate shall immediately surrender it to the Principal Surveyor.

(3) The Principal Surveyor may resurvey a vessel before issuing a new certificate or removing a suspension.

Source: PL 10-76 § 65.

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

§ 411. Change in the condition of the vessel.

Where a Registered Vessel has undergone a significant modification to its hull or superstructure or where the operation or safety of a Registered Vessel is impaired because of a change in its condition, the owner or master shall notify the Principal Surveyor within seven days.

Source: PL 10-76 § 66.

§ 412. Requirement to carry certain safety equipment.

(1) All vessels and small craft shall be equipped with and carry all safety equipment required by applicable regulations, in good order and ready for use.

(2) Any person who takes a vessel to sea without all of the safety equipment required by regulations, in good order and ready for use, commits a national offense, punishable by a fine not exceeding \$100,000 or imprisonment for not more than one year, or both.

(3) Any person who takes a small craft to sea without all of the safety equipment required by regulations, in good order and ready for use, commits a national offense, punishable by a fine not exceeding \$10,000 or imprisonment for not more than one year, or both.

Source: PL 10-76 § 67.

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

§ 413. Equivalents.

The Principal Surveyor may allow any fitting, material, appliance or apparatus to be fitted or carried or any other provision to be made, if the Principal Surveyor is satisfied that it is at least as effective as that required by the applicable regulations.

Source: PL 10-76 § 68.

§ 414. Manning of vessels.

- (1) A vessel at sea shall carry at least the number of qualified seamen required by regulations for a vessel of that size and type.
- (2) A vessel at sea which does not carry the number of qualified seamen prescribed by regulations shall be deemed to be an unsafe vessel.
- (3) No vessel shall proceed to sea without the minimum number of qualified seamen prescribed by regulations.
- (4) An owner and master of a vessel which proceeds to sea without the minimum number of qualified seamen prescribed by regulations commits a national offense, punishable by a fine not exceeding \$100,000 or imprisonment for not more than one year, or both.

Source: PL 10-76 § 69.

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

§ 415. Vessels to carry qualified radio personnel.

(1) All vessels at sea shall be required to carry qualified radio personnel.

(2) The Secretary shall prescribe by regulations the specific requirements for radio personnel according to type of vessel, and shall prescribe the delimitation of mandatory radio reporting areas in which each vessel shall be required to report its movements.

Source: PL 10-76 § 70.

§ 416. Carriage of dangerous goods.

(1) Dangerous goods shall be loaded, unloaded, stowed, carried or used in a vessel in a safe manner, as determined by regulations.

(2) Where the Principal Surveyor believes that dangerous goods would endanger a vessel or constitute a danger to human life, property, or the environment, the Principal Surveyor may:

- (a) detain the vessel;
- (b) prohibit the loading, unloading, stowage, carriage or use of any dangerous goods;
- (c) order the removal from the vessel of any dangerous goods; and
- (d) direct the manner of stowage of any dangerous goods.

Source: PL 10-76 § 71.

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

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Ports of Entry are found in title 18 of this code.

§ 417. Powers of the master in relation to dangerous goods.

Without liability, a master may refuse to take on board or open and inspect any package which the master reasonably suspects may contain dangerous goods, and may destroy or otherwise dispose of goods which appear to be dangerous goods, and which have been shipped on board the vessel without the master's consent.

Source: PL 10-76 § 72.

§ 418. Offenses regarding carriage of goods in a dangerous manner.

(1) Anyone who loads, unloads, stows, carries or uses any cargo, goods or substances in an unsafe manner so as to endanger a vessel or constitute a danger to human life, property or the environment commits a civil offense and shall be liable on conviction to a fine not exceeding \$500,000.

(2) Anyone who falsely describes any dangerous goods, with the intent to conceal their character commits a national offense, punishable by a fine not exceeding \$500,000 or imprisonment for a term not exceeding two years, or both.

Source: PL 10-76 § 73.

§ 419. Forfeiture of dangerous goods.

Any dangerous goods consigned to a vessel for interstate or foreign commerce, or shipped, carried, or used in a vessel in violation of this title or the regulations shall be subject to forfeiture to the National Government.

Source: PL 10-76 § 74.

Cross-reference: The statutory provisions on the

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

§ 420. Carriage and safety of passengers.

(1) This section applies to passenger vessels, and the Secretary may promulgate regulations to implement this section. This section shall not apply to fishing vessels.

(2) No vessel may carry more persons than the maximum number stated in its Safety Certificate. Anyone who violates this subsection commits a civil offense and shall be liable to a fine not exceeding \$100,000.

(3) No small craft may carry more persons than the maximum number stated in the regulations. Anyone who violates this subsection commits a civil offense and shall be liable to a fine not exceeding \$50,000.

(4) The Principal Surveyor shall notify the master in writing if he finds any danger or potential danger to the safety, comfort, health or well-being of passengers on the vessel.

(5) After such notice, passengers may not be carried on the vessel until the Principal Surveyor determines and notifies the master in writing that passengers may be carried without danger to their safety, comfort, health or well-being. Anyone who violates this subsection commits a civil offense and shall be liable to a fine not exceeding \$100,000.

Source: PL 10-76 § 75.

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

Case annotations: When passengers purchase passage in an ocean-going vessel for transportation, there is an implied maritime contract for passage even in the absence of written document. *Weilbacher v. Kosrae*, 3 FSM R. 320, 323 (Kos. S. Ct. Tr. 1988).

§ 421. Submerged load line.

(1) Vessels shall not be so loaded that when they are in salt water the subdivision load line mark appropriate to the particular voyage and condition of service is submerged.

(2) A vessel so loaded is an unsafe vessel subject to the provisions of section 422 of this chapter.

Source: PL 10-76 § 76, modified.

§ 422. Unsafe vessels.

(1) A vessel that is unfit to go to sea without danger to the vessel, human life, property or the environment is an unsafe vessel.

(2) Unsafe vessels shall not be sent or taken to sea or allowed to operate within the waters of the Federated States of Micronesia.

(3) The Principal Surveyor may detain an unsafe vessel, PROVIDED, however, written notice of the reasons for detention shall be immediately provided to the owner or master.

(4) Unsafe small craft may be detained by Government authorities until such time as the small craft is made safe.

(5) Any person who takes a vessel, which the Principal Surveyor has found to be unsafe, to sea commits a civil offense and shall be liable to a fine not exceeding \$500,000.

Source: PL 10-76 § 77.

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

§ 423. Port State control relating to safety certificates.

(1) While in one of the ports of the Federated States of Micronesia, every foreign vessel shall be subject to control by a Surveyor in so far as this control is directed toward verifying that the Safety Certificates required to be carried by the vessel are valid.

(2) Such certificates, if valid, shall be accepted unless there are clear grounds for believing that the condition of the vessel or of its equipment does not correspond substantially with the particulars of any of the certificates or that the vessel and its equipment are not in compliance with the provisions of the Safety Convention.

(3) In the circumstances given in subsection (2) of this section or where a certificate has expired or ceased to be valid, the Principal Surveyor shall take steps to ensure that the vessel shall not sail until it can proceed to sea or leave the port for the purpose of proceeding to the appropriate repair yard without danger to the vessel or persons on board.

(4) In the event of this control giving rise to an intervention of any kind, the Secretary shall forthwith inform in writing, through diplomatic channels, the maritime authority of the nation whose flag the vessel is entitled to fly of all the circumstances in which intervention was deemed necessary. In addition, nominated surveyors or recognized organizations responsible for the issue of the certificates shall also be notified.

(5) The Principal Surveyor shall relay all relevant information about the vessel to the authorities of the next port of call, in addition to the parties mentioned in subsection (4) of this section,

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if it is unable to take action as specified in subsections (3) and (4) of this section or if the vessel has been allowed to proceed to the next port of call.

(6) When exercising control under this section all possible efforts shall be made to avoid unduly detaining or delaying a vessel. If a vessel is unduly detained or delayed it shall be entitled to compensation for any loss or damage suffered.

Source: PL 10-76 § 78.

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

§ 424. Duty to report dangers to navigation.

(1) When any vessel is within the waters of the Federated States of Micronesia and the master has sighted or otherwise becomes aware of a danger to navigation, the master shall immediately communicate information about such danger to navigation by all means at his or her disposal to vessels in the vicinity and also to the competent authorities at the first point on the coast with which he or she can communicate.

(2) Any person who fails to act as required by subsection (1) of this section commits a civil offense and shall be liable to a fine not exceeding \$10,000.

Source: PL 10-76 § 79, modified.

§ 425. Assistance to persons in danger at sea; false distress signal.

(1) A master shall render assistance to any person found at sea and in distress or in danger of being lost if this assistance can be

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rendered without endangering the vessel, crew or passengers.

(2) Failure to render assistance in violation of subsection (1) of this section shall be a national offense punishable by a fine not exceeding \$100,000 or imprisonment for not more than one year, or both.

(3) The use or exhibition of any distress signal except for the purpose of indicating distress and need of assistance, and the use of any other signals which may be easily confused with a distress signal shall be a national offense punishable by a fine not exceeding \$100,000 or imprisonment for not more than one year, or both.

(4) This section shall not affect the right to salvage.

Source: PL 10-76 § 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 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/>.

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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/>.

Case annotation: When the unit of prosecution for 19 F.S.M.C. 425, as reflected in the legislative intent, is that there be a punishment for each violation of the law, as it relates to each person who is found at sea and who is in distress or capable of being lost at sea, but is denied assistance, the double jeopardy clause of the FSM Constitution, which parallels the double jeopardy clause of the United States Constitution, is not violated when a defendant, who commits the single act of failing to render assistance to a boat carrying four people ó all of whom are purportedly in distress ó is charged with four counts of violating the 19 F.S.M.C. 425. *FSM v. Zhang Xiaohui*, 14 FSM R. 602, 617 (Pon. 2007).

If, for the same act, both a lesser included and greater offense are proven, the court should then enter a conviction on only the greater offense. A defendant cannot be sentenced on both a higher and lesser included offense arising out of the same criminal transaction. *FSM v. Zhang Xiaohui*, 14 FSM R. 602, 615 (Pon. 2007).

When the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one is whether each provision requires proof of a fact which the other does not. If the test is met, a dual conviction will not violate the constitutional protection against double jeopardy. *FSM v. Zhang Xiaohui*, 14 FSM R. 602, 615 (Pon. 2007).

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When the alleged violations are each the same, *i.e.*, violation of 19 F.S.M.C. 425, the merger doctrine which merges higher and lesser offenses arising from a single criminal act, does not apply. *FSM v. Zhang Xiaohui*, 14 FSM R. 602, 615 (Pon. 2007).

When the language in an FSM rule or law is nearly identical to a United States counterpart, the court may look to the courts of the United States for guidance in interpreting the rule or law and may look to court decisions from the United States to assist in the interpretation of the double jeopardy clause set forth in the Declaration of Rights in the FSM Constitution, as that clause was drawn from the Bill of Rights of the United States Constitution. *FSM v. Zhang Xiaohui*, 14 FSM R. 602, 615 (Pon. 2007).

§ 426. Duty of vessel to assist in case of collision.

(1) Where two or more vessels are involved in a collision, the master or person in charge of each vessel shall, if possible without serious danger to the vessel, crew or passengers:

(a) render such assistance as is necessary;

(b) stay by the other vessel until it has no need of further assistance; and

(c) give to the master or person in charge of the other vessel its own name and home port, and the ports from and to which it is bound.

(2) Violation of this section shall be a national offense punishable by a fine not exceeding \$100,000 or imprisonment for not more than one year, or both.

Source: PL 10-76 § 81, modified.

§ 427. Reporting of marine incidents and casualties.

The master of a vessel shall immediately report to the Secretary whenever the vessel:

- (1) is involved in an accident, marine incident, or casualty resulting in damage of any kind to the vessel, property or the environment, or any personal injury or loss of life;
- (2) receives damage which may render it unsafe;
- (3) has been in a position of great peril;
- (4) fouls or does damage to a pipeline, submarine cable or marine aid to navigation; or
- (5) is in difficulty and is required to put back into a port in the Federated States of Micronesia.

Source: PL 10-76 § 82.

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

§ 428. Investigation of marine casualties.

Upon the occurrence of any event or incident set forth in section 427 of this chapter the Secretary may order a preliminary investigation or a Marine Inquiry, or both.

Source: PL 10-76 § 83, modified.

Cross-reference: The statutory provisions on the

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

§ 429. Preliminary investigations.

(1) The Secretary may appoint a person to conduct a Preliminary Investigation who may go on board any vessel involved in the casualty, make any and all inquiries, and require the production of any document or certificate relating to any vessel involved in the casualty.

(2) On receipt of the investigator's report, or pending the outcome of a Marine Inquiry, the Secretary may order the suspension of any certificate issued by the Department, including a certificate issued to a qualified seaman.

Source: PL 10-76 § 84.

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

§ 430. Marine Inquiries.

(1) The Secretary may appoint a Board of Marine Inquiry, which shall consist of a chairperson and two other members, and which shall conduct an inquiry in accordance with regulations promulgated by the Secretary.

(2) The Board may:

- (a) go on board any vessel;
- (b) subpoena witnesses and documents;
- (c) examine witnesses and producers of documents under oath; and
- (d) call upon the advice of experts.

(3) Decisions and recommendations of the Board shall be made by the majority of the members and shall be in writing, but any member may dissent.

Source: PL 10-76 § 85.

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

§ 431. Conditions for Preliminary Investigations and Marine Inquiries.

(1) The primary purpose of any Preliminary Investigation or Marine Inquiry is to ascertain the whole truth of the events leading up to and the causes of a marine incident or casualty for the purpose of avoiding future danger, and not for the purpose of assigning fault or determining liability.

(2) For the purposes of the sections in this chapter dealing with Preliminary Investigations and Marine Inquiries, and any regulations made in respect thereto, the word "confidence" shall mean that the recipient of information has a duty to ensure it is not disseminated generally, whereas if information is "privileged" a person who provided it has the right that the information will not be used to his or her disadvantage.

(3) Information gathered or provided during the course of a Preliminary Investigation or Marine Inquiry, other than physical evidence, shall be privileged and shall not be used as evidence in a court or private litigation, but shall be used only for the purpose of advancing maritime safety.

(4) No report or any part of a report of a Preliminary Investigation

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or Marine Inquiry shall be used in a court or private litigation.

(5) No safety advisory, safety information, hazard notification or other publication issued by the Department on the advice or recommendation of any Preliminary Investigation or Marine Inquiry shall be used in a court or private litigation.

(6) No officer conducting a Preliminary Investigation or a member of a Board of Marine Inquiry shall offer a guarantee of confidentiality to a witness in return for the witness's testifying as to the events leading up to and the cause of the casualty.

(7) An officer conducting a Preliminary Investigation or a member of a Board of Marine Inquiry shall advise a witness of the manner in which the information he or she provides will be treated as privileged under this section.

(8) An officer conducting a Preliminary Investigation or a member of a Board of Marine Inquiry shall not grant any witness immunity from prosecution; PROVIDED HOWEVER, that the Secretary, on the advice of the Attorney General, on being satisfied that the enhancement of safety would be advanced, may grant immunity to a witness from civil, criminal or regulatory proceedings resulting from the occurrence being investigated.

(9) Notwithstanding anything contained in this section, the Chairman of the Board of Marine Inquiry or the Secretary may release any type of information obtained during a Preliminary Investigation or Marine Inquiry at any time under such circumstances where an immediate perceived danger to life or public safety is involved, and the person releasing such information shall be relieved of any liability for any action taken in good faith under this section.

Source: PL 10-76 § 86.

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

§ 432. Powers of the Board as to certificates.

(1) The Board may recommend the suspension or revocation of any certificate issued by the Department or may censure a seaman, where the Board finds that the seaman:

(a) is unfit because of incompetence or misconduct or for any other reason which caused or contributed to the casualty; or

(b) has been seriously negligent in the discharge of duty thereby causing or contributing to the casualty.

(2) Where the Board has recommended the suspension or revocation of a certificate issued by the Department, the Secretary may suspend or revoke such certificate under procedures set forth in title 17 of this code and order the master or seaman to deliver such certificate to the Principal Shipping Officer within 15 days.

(3) When a certificate is suspended or revoked by the Secretary, the adversely affected person may appeal that decision pursuant to title 17 of this code.

Source: PL 10-76 § 87.

Cross-reference: The statutory provisions on Administrative Procedures are found in title 17 of this code.

Editor's note: PL 10-76 took effect April 1, 1998.

The former provisions of chapters 1 to 12 of this title were repealed in their entirety by PL 10-76 § 1 and replaced by

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the provisions of PL 10-76, the "National Maritime Act, 1997" codified at chapters 1 to 13 of this title.

CHAPTER 5
Certification of Seamen

SECTIONS

- § 501. Application of chapter.**
- § 502. Regulations for certificate of seamen.**
- § 503. Appointment of Principal Shipping Officer and Chipping Officers.**
- § 504. Certificates of Competency.**
- § 505. Certificates of Sea Service.**
- § 506. Identity cards and record books.**
- § 507. Register of Seamen.**
- § 508. Requirement for Certified Seamen.**
- § 509. Suspension or revocation of Certificates of Competency.**
- § 510. Appeals.**
- § 511. Port State control regarding certification of foreign seamen.**

Editor's note: The former provisions of chapters 1 to 12 of this title were repealed in their entirety by PL 10-76 § 1 and replaced by the provisions of PL 10-76, the "National Maritime Act, 1997" codified at chapters 1 to 13 of this title. PL 10-76 took effect April 1, 1998.

§ 501. Application of chapter.

Except for section 511 of this chapter which shall apply to foreign seamen of any nationality employed on foreign vessels, this chapter applies to citizens and nationals of the Federated States of Micronesia employed on any vessel, whether or not such vessel is registered, and includes citizens of the Federated States of Micronesia employed on foreign vessels.

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Source: PL 10-76 § 89.

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

Case annotations: Case annotations found throughout this title may refer to the earlier provisions of the National Maritime Act of 1993 that was repealed by PL 10-76, the National Maritime Act, 1997. These annotations are retained for reference purposes as some of the language of the National Maritime Act, 1997 is similar to the language of the former National Maritime Act of 1993.

A seaman's contract claim against the owner of the vessel upon which he served would be regarded as falling within exclusive admiralty and maritime jurisdiction of FSM Supreme Court. FSM Const. art. XI, § 6(a). *Lonno v. Trust Territory (I)*, 1 FSM R. 53, 68-71 (Kos. 1982).

The Seaman's Protection Act, originally enacted for the entire Trust Territory by the Congress of Micronesia, relates to matters that now fall within the legislative powers of the national government under art. IX, § 2 of the Constitution, and has therefore become a national law of the Federated States of Micronesia under art. XV. That being so, a claim asserting rights under the Act falls within the jurisdiction of the FSM Supreme Court under art. XI, § 6(b) of the Constitution as a case arising under national law. 19 F.S.M.C. 401-437. *Lonno v. Trust Territory (I)*, 1 FSM R. 53, 72 (Kos. 1982).

§ 502. Regulations for certification of seamen.

(1) The Secretary shall promulgate regulations relating to the

certification of seaman, taking into account the standards of training, certification and watchkeeping contained in the STCW Convention, and these regulations shall have the force and effect of law.

(2) Where the STCW Convention requires education and training arrangements, the Secretary may provide for equivalent arrangements.

Source: PL 10-76 § 90.

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

§ 503. Appointment of Principal Shipping Officer and Shipping Officers.

(1) The Secretary shall appoint a Principal Shipping Officer who shall oversee the implementation and enforcement of the provisions of this chapter relating to training, qualifications, and certification of seamen.

(2) The Secretary shall also appoint other Shipping Officers to assist the Principal Shipping Officer in matters relating to training, qualifications and certification of seamen.

(3) The Secretary shall by regulation determine the credentials and experience necessary to qualify as a Shipping Officer.

Source: PL 10-76 § 91.

§ 504. Certificates of Competency.

(1) The Secretary shall determine by regulation the requirements for the issuance of Certificates of Competency for each class and

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designation of qualified seamen and the procedures to be followed in order to meet the requirements.

(2) The Principal Shipping Officer shall issue Certificates of Competency to seamen who meet the requirements prescribed by regulation.

(3) A Certificate of Competency is valid evidence that the holder has met all requirements for seamen in the class and designation specified on the certificate and that the holder is competent to perform all duties of seamen in such class and designation, subject to any condition which may be specified on the certificate.

(4) Upon request, a qualified seaman shall produce the seaman's Certificate of Competency to any Shipping Officer or to the owner or master of a vessel on which the seaman is employed.

(5) A person who goes to sea falsely purporting to be a seaman qualified in a class or designation for which the person has not been issued a Certificate of Competency commits a civil offense and shall be liable to a fine not exceeding \$50,000.

Source: PL 10-76 § 92.

§ 505. Certificates of Sea Service.

(1) The master of all vessels to which this chapter applies shall issue to seamen upon discharge from the vessel a Certificate of Sea Service in a form approved by the Secretary, specifying:

- (a) the name of the seaman;
- (b) the name, official number, nationality and type of vessel on which the seaman was employed;
- (c) the capacity in which the seaman was employed;

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(d) the period of the seaman's service on the vessel;

(e) the date and place of the seaman's engagement and discharge; and

(f) conduct and performance evaluations of the seaman during the period of service on the vessel.

(2) Anyone who fraudulently alters or forges a Certificate of Sea Service commits a civil offense and shall be liable to a fine not exceeding \$10,000.

Source: PL 10-76 § 93.

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

§ 506. Identity cards and record books.

The Principal Shipping Officer may issue and require seamen to carry a seaman's identity card and keep a seaman's employment record book in the form prescribed in the regulations.

Source: PL 10-76 § 94.

§ 507. Register of Seamen.

The Principal Shipping Officer shall keep a Register of Seamen at the Department, which shall be available and open for inspection by the public during normal business hours.

Source: PL 10-76 § 95.

Cross-reference: The statutory provisions on the

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

§ 508. Requirement for Certified Seamen.

(1) All Registered Vessels shall carry the proper number of certificated seamen required by regulations.

(2) No vessel shall proceed to sea without carrying the number of certificated seamen prescribed for that type and size of vessel.

(3) An owner or master who fails to comply with subsections (1) and (2) of this section commits a national offense, punishable by a fine not exceeding \$100,000 or imprisonment for not more than one year, or both.

Source: PL 10-76 § 96.

§ 509. Suspension or revocation of Certificates of Competency.

(1) Where there are reasonable grounds to believe that the holder of a Certificate of Competency is unfit for duty for any reason, the Principal Shipping Officer may immediately suspend the seaman's certificate after notice to the seaman, PROVIDED HOWEVER, that a hearing shall be set within 10 days on the action to be taken against the seaman who shall be given written notice of such hearing.

(2) The notice of hearing shall state:

(a) the time, date and place of hearing;

(b) the facts upon which the finding of unfitness was based;

(c) that the seaman's Certificate of Competency may be suspended or revoked; and

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(d) that the seaman has the right to contest any action to be taken against him.

(3) The hearing shall be conducted in accordance with title 17 of this code.

(4) A seaman may waive his right to a hearing under this section and agree to the proposed suspension or revocation, PROVIDED HOWEVER, such waiver shall be in writing, and shall contain a statement that the seaman has had the opportunity to discuss the matter with the seaman's own attorney.

(5) At the hearing, unless the hearing is waived by the seaman under subsection (4) of this section, if the finding of unfitness is sustained, and the evidence so warrants, the Secretary may suspend or revoke the seaman's Certificate of Competency, or issue a public or private reprimand to the seaman.

(6) Where the decision is to suspend or revoke a Certificate of Competency, the written notice of decision shall:

(a) state the reasons for the suspension or the revocation;

(b) state the dates of suspension or the date of revocation;
and

(c) require delivery of the certificate to the Principal Shipping Officer.

(7) A seaman whose Certificate of Competency has been revoked or suspended shall deliver the certificate to the Principal Shipping Officer within 15 days.

Source: PL 10-76 § 97.

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

§ 510. Appeals.

(1) Where a Certificate of Competency is revoked or suspended or a seaman is issued a reprimand, the seaman may seek judicial review in the Trial Division of the Supreme Court, pursuant to title 17 of this code.

(2) If an appeal is not filed within 60 days of the date on which the decision of the Secretary was made, the decision of the Secretary shall become final and may not be appealed.

(3) The decision of the Secretary shall remain in effect pending final outcome of any appeal.

Source: PL 10-76 § 98.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code. The statutory provisions on Judicial Procedure are found in title 6 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/>.

The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on Administrative Procedures are found in title 17 of this code.

§ 511. Port State control regarding certification of foreign seamen.

(1) While in any of the ports of the Federated States of Micronesia, every foreign vessel shall be subject to inspection by a Shipping Officer to verify that all seamen serving on board who are required to hold a Certificate of Competency or its equivalent are so certificated or hold an appropriate dispensation. Certificates of Competency or their equivalents issued to foreign seamen shall be accepted unless there are clear grounds for believing that a certificate has been fraudulently obtained or that the holder of a certificate is not the person to whom the certificate was originally issued.

(2) Inspections conducted by a Shipping Officer under subsection (1) of this section shall be limited to the following:

(a) verification that all seamen serving on board who are required by the STCW Convention to be certificated hold a valid Certificate of Competency or its equivalent, or a valid dispensation;

(b) assessment of the ability of the seamen on board the vessel to maintain watchkeeping standards as required by the STCW Convention if there are clear grounds for believing that such standards are not being maintained because, while in any of the ports or waters of the Federated States of Micronesia, any of the following has occurred:

(i) the vessel has been involved in a collision, grounding, or stranding;

(ii) there has been a discharge of any substance from the vessel when underway, at anchor or at berth, which discharge may violate the laws of the

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Federated States of Micronesia or any of its states, or violate an international convention to which the Federated States of Micronesia is a party, or international customary law; or

(iii) the vessel has been maneuvered in an erratic or unsafe manner, or navigational course markers or traffic separation schemes have not been followed.

(3) In the event that any deficiencies are found under subsection (1) of this section or under the inspection procedures conducted under subsection (2) of this section, the Secretary shall inform the master of the vessel in writing and, through appropriate diplomatic channels, the maritime authority of the nation whose flag the vessel is entitled to fly, so that appropriate action may be taken. Such notification shall specify the details of the deficiencies found and the grounds on which the Shipping Officer has determined that the deficiencies pose a danger to persons, property or the environment.

(4) Any of the following shall constitute deficiencies as set forth in subsection (3) of this section:

(a) failure of seamen employed on the vessel to have any certificate required under the STCW Convention, or a valid dispensation therefor;

(b) failure of navigational or engineering watch arrangements to conform to the requirements specified for the vessel by the flag nation;

(c) absence in a watch of a person qualified to operate equipment essential to safe navigation or the prevention of pollution; or

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(d) inability of the master to provide rested persons for the first watch at the commencement of a voyage and subsequent relieving watches.

(5) If, taking into account the size and type of the vessel and the length and nature of the voyage, the deficiencies referred to in subsection (4) of this section are not corrected and it is determined that any such deficiency poses a danger to persons, property or the environment, the Secretary shall direct the Principal Shipping Officer to take steps to ensure that the vessel does not sail unless and until these deficiencies have been corrected to the extent that the danger has been removed.

(6) Failure to correct the deficiencies referred to in subsection (4) of this section shall be grounds for detaining the vessel.

Source: PL 10-76 § 99.

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

CHAPTER 6 Employment and Welfare of Seamen

SECTIONS

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§ 602. Shipping Officers.

§ 603. Exemption of vessels.

§ 604. Employment of seamen.

§ 605. Freedom of association.

§ 606. Shipping Articles.

§ 607. Seaman prohibited from waiving protection of this chapter.

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- § 608. Termination of Shipping Articles.
- § 609. Minimum age for employment.
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- § 614. Advance and allotment of wages.
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- § 630. Compensation for unjustifiable discharge before completing one month of employment.
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- § 633. Desertion.
- § 634. Mutiny; Incident to mutiny.
- § 635. Riot.
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- § 637. Disciplinary Reports.
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§ 639. Corporal punishment prohibited.

§ 640. Crew accommodations, provisions, and supplies.

§ 641. Crew lists.

§ 642. Approval of employment on foreign vessels.

§ 643. Master's lien.

Editor's note: The former provisions of chapters 1 to 12 of this title were repealed in their entirety by PL 10-76 § 1 and replaced by the provisions of PL 10-76, the "National Maritime Act, 1997" codified at chapters 1 to 13 of this title. PL 10-76 took effect April 1, 1998.

§ 601. Application of chapter.

This chapter applies to all seamen employed on vessels registered in the Federated States of Micronesia, and to citizens and nationals of the Federated States of Micronesia employed on any foreign vessel.

Source: PL 10-76 § 101.

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

Case annotations: The Seaman's Protection Act (a predecessor statute to the National Maritime Act of 1993), originally enacted for the entire Trust Territory by the Congress of Micronesia, relates to matters that now fall within the legislative powers of the national government under art. IX, § 2 of the Constitution, and has therefore become a national law of the Federated States of Micronesia under art. XV. That being so, a claim asserting rights under the Act falls within the jurisdiction of the FSM Supreme Court under art. XI, § 6(b) of the Constitution as a

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case arising under national law. 19 F.S.M.C. 401-437.
Lonno v. Trust Territory (I), 1 FSM R. 53, 72 (Kos. 1982).

§ 602. Shipping Officers.

(1) The Principal Shipping Officer shall oversee the implementation and enforcement of the provisions of this chapter relating to employment and welfare of seamen.

(2) Other Shipping Officers appointed by the Secretary shall assist the Principal Shipping Officer in matters relating to employment and welfare of seamen.

Source: PL 10-76 § 102.

§ 603. Exemption of vessels.

The Secretary may by regulation exempt a vessel or class of vessels from any requirement of this chapter for a specified period or for one or more voyages.

Source: PL 10-76 § 103.

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

§ 604. Employment of seamen.

The Secretary may promulgate regulations prescribing:

(1) the condition of employment of seamen on vessels; and

(2) that a certain proportion of the crew of a Registered Vessel be citizens of the Federated States of Micronesia.

Source: PL 10-76 § 104.

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

§ 605. Freedom of association.

Seamen shall have the right to establish and to become members of any lawful organization.

Source: PL 10-76 § 105.

§ 606. Shipping Articles.

(1) The owner or master of a vessel shall enter into a written employment agreement with each and every seaman employed on board, which agreement shall be called Shipping Articles.

(2) All Shipping Articles shall provide adequate protection for the interests of the seamen, shall comply with the law, and shall be approved by the Principal Shipping Officer before they are signed by the seamen.

(3) The Principal Shipping Officer shall ensure that each seaman has read the Shipping Articles or has had them read to the seaman, and that each seaman understands the terms and conditions of employment set forth in the Shipping Articles.

(4) The term of such Shipping Articles may be for one or more voyages on a particular vessel or on one or more vessels of the same owner, but such term shall not exceed a period of one year.

(5) The owner or master shall file a copy of the Shipping Articles with the Principal Shipping Officer before a vessel goes to sea.

(6) A master shall not take a vessel to sea unless each and every seaman employed on board has signed the approved Shipping Articles.

(7) A master who takes a vessel to sea without complying with the terms of this section commits a civil offense and shall be liable to a fine not exceeding \$100,000.

Source: PL 10-76 § 106.

§ 607. Seaman prohibited from waiving protection of this chapter.

(1) The Principal Shipping Officer shall not approve the Shipping Articles if they purport to modify any rights under this chapter.

(2) Shipping Articles shall not contain a provision to waive a seaman's right to salvage unless the vessel is primarily engaged in salvage operations.

(3) The Shipping Articles shall contain a provision specifying that any vessel on which the seaman is to be employed is, and shall remain, seaworthy.

Source: PL 10-76 § 107.

§ 608. Termination of Shipping Articles.

(1) Shipping Articles may be terminated by:

- (a) mutual consent;
- (b) the total loss or inoperability of the vessel;
- (c) deregistration or deletion of the vessel from the Register;
- (d) the lawful discharge of the seaman; or
- (e) the suspension of the seaman; PROVIDED that the

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termination shall be only for the term of the suspension.

(2) Shipping Articles may not be terminated at a place away from the proper return port of the seaman without the consent of the Principal Shipping Officer.

Source: PL 10-76 § 108.

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

§ 609. Minimum age for employment.

(1) Persons under the age of 16 years shall not be employed on vessels engaged in foreign trade, except on school ships, training vessels, or vessels on which only members of the person's family are employed.

(2) The master of a vessel shall keep a register of all persons under the age of 18 years employed on board the vessel which shall be filed with the Principal Shipping Officer before the commencement of each voyage.

Source: PL 10-76 § 109.

§ 610. Working hours and overtime.

(1) This section does not apply to seamen employed on fishing vessels.

(2) The normal hours of work for seamen in port and at sea shall be eight per day; PROVIDED, that Saturdays and Sundays shall be included as regular workdays.

(3) A seaman who, in any 24 hour period, works more than eight

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hours shall be compensated at the overtime rate of one and one-half times the rate of basic pay for any period of time worked over eight hours.

(4) The number of seamen to be employed on each vessel, to ensure safety of life at sea and to avoid excessive work burdens, shall be in accordance with the manning requirements set out in the appropriate certificate of the vessel.

Source: PL 10-76 § 110.

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

§ 611. Vacation and public holidays.

Every master and seaman employed on a vessel other than a fishing vessel shall be entitled to vacation and public holidays as set forth in regulations promulgated by the Secretary.

Source: PL 10-76 § 111.

§ 612. Stowaways.

(1) A stowaway is not entitled to wages, nor to maintenance and cure as provided in this chapter.

(2) Stowaways shall be provided with, and may be required to work for, accommodation and subsistence.

(3) The master shall discharge stowaways at the first convenient port of call.

(4) It shall be a national offense to stowaway on a vessel or to aid and abet a stowaway, punishable by a fine not exceeding \$50,000 or imprisonment for not more than two years, or both.

Source: PL 10-76 § 112.

§ 613. Seamen's wages.

(1) Each seaman's wages shall commence on the day specified and agreed to in the Shipping Articles or at the time the seaman reports on board the vessel for the purpose of commencing work, whichever first occurs, and shall terminate on the day of the seaman's discharge or upon expiration of the Shipping Articles.

(2) In the absence of any agreement to the contrary, the owner or master of the vessel shall pay to every seaman the seaman's wages, overtime and any unpaid leave entitlement within two days after the expiration of the Shipping Articles or at the time when the seaman is discharged, whichever first occurs.

(3) Before the seaman is discharged or the Shipping Articles expire, every master shall deliver to the seaman a full and true account in the prescribed form of the seaman's wages, including any and all deductions made therefrom.

Source: PL 10-76 § 113.

§ 614. Advances and allotment of wages.

(1) Upon request to the master a seaman is entitled to receive one-half of the seaman's wages actually earned in local currency, less allotments and previous advances of wages, payable at every intermediate port but not more than once in any ten day period. In case of failure to pay a seaman his wages on demand, the seaman shall be entitled to file a complaint with the Principal Shipping Officer who shall investigate the complaint. If the complaint is upheld, the seaman may terminate the Shipping Articles and be entitled to payment of the balance of wages, overtime and leave earned.

(2) No master shall pay any seaman's wages before they are

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actually earned, or pay unearned wages or make any order, note or other evidence of indebtedness against future wages to any other person.

(3) The owner, master and any seaman may agree to make an allotment of a portion of the seaman's wages payable to a spouse, children, grandchildren, parents, grandparents, brothers, or sisters, or to a bank account in the name of the seaman.

Source: PL 10-76 § 114.

§ 615. Assignment of wages or salvage.

Except for allotments, assignment of wages or salvage made prior to the accruing thereof shall not bind the seaman.

Source: PL 10-76 § 115.

§ 616. Wages, personal effects and equipment exempt from attachment.

The wages, personal effects and equipment of a seaman shall not be subject to attachment or arrest by any court.

Source: PL 10-76 § 116.

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

§ 617. Agreements void as to loss of lien or right to wages.

Any agreement is null and void in which a seaman purports to:

- (1) forfeit the seaman's lien upon the vessel or be deprived of any remedy for the recovery of wages to which the seaman would otherwise have been entitled;
- (2) abandon the seaman's right to wages in the case of the loss of

the vessel or any right to salvage.

Source: PL 10-76 § 117.

§ 618. Wages not dependent on freight earned.

A seaman's right to wages shall not depend on the earning of freight by the vessel; PROVIDED, that nothing in this section shall be construed to prevent profit-sharing by seamen in addition to their established wages.

Source: PL 10-76 § 118.

§ 619. Wages, maintenance, and benefits for sick and injured seamen.

(1) When a seaman becomes unable to work as a result of illness or injury and is under Shipping Articles with an owner or master of a vessel, the seaman shall be entitled to:

(a) full wages, as long as he is sick or injured and remains on board the vessel;

(b) reasonable medical and surgical treatment and supply of proper and sufficient medicines and therapeutic appliances as are reasonably available, up to a period of 30 weeks, or until declared by a physician to have reached a maximum cure or to be incurable;

(c) where it is necessary to put the seaman ashore:

(i) board and lodging of equivalent quality to that received on board the vessel up to a maximum period of 30 weeks, PROVIDED that such entitlements shall terminate prior thereto when the seaman is declared by a physician to be fit to work and return to the vessel, to have reached maximum

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cure, or to be incurable; and

(ii) one-third of his base wages during any portion of such period subsequent to his landing from the vessel but not to exceed a maximum period of sixteen weeks commencing from the day of injury or commencement of the sickness;

(d) repatriation to the seaman's proper return port including all expenses for transportation, accommodation, and food;

(e) other benefits as listed in the disability schedule set forth in regulations promulgated by the Secretary.

(2) The seaman shall not be entitled to any of the benefits of this section:

(a) if such illness or injury resulted from the seaman's intentional act or failure to act, or misconduct;

(b) if such illness or injury developed from a condition which the seaman intentionally concealed from the owner or master at or during the seaman's engagement under the Shipping Articles;

(c) if the seaman refuses or fails to avail himself of medical treatment for such illness or injury or is denied such treatment because of misconduct or default;

(d) if, at the time of the seaman's engagement, he refused to be medically examined when requested by the owner or master.

(3) The seaman shall have a maritime lien against the vessel for any wages due the seaman under this section.

(4) The master shall take adequate measures for safeguarding property left on board by a sick, injured, or deceased seaman and shall deliver all property of a deceased seaman to a Shipping Officer.

Source: PL 10-76 § 119; PL No. 10-137, § 6.

§ 620. Death of seaman on board a vessel or on shore.

If a seaman who is under Shipping Articles dies on board the vessel or on shore, the employer shall:

- (1) forthwith return the seaman's remains to the seaman's proper return port;
- (2) defray reasonable local burial expenses;
- (3) be liable for and pay the base wages of the deceased seaman through the end of the month in which the death occurs;
- (4) pay the wages, maintenance and benefits due the seaman to his estate; and
- (5) pay the death benefit in the amount listed in the payment schedule set forth in regulations promulgated by the Secretary.

Source: PL 10-76 § 120.

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

§ 621. Procedures in respect of death on board a vessel.

- (1) In the event of a death on board a vessel, the master shall make

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an entry in the official logbook witnessed by an officer.

(2) The logbook entry shall contain the deceased's full name, gender, citizenship, date and place of birth, cause of death, place of death (latitude, longitude), date and time of death, place of address, and the names of next-of-kin, if known.

(3) If the deceased person is a seaman, the entry shall also contain the seaman's rank or rating and the number and date of issuance of the seaman's certificate.

(4) The master shall report the death to the appropriate authorities at the next port of arrival.

(5) Where an attending physician is aboard the vessel when a death occurs the physician shall also complete a written report on the cause of death.

(6) The master shall forthwith submit to the Principal Shipping Officer a signed statement containing all relevant information and copies of entries, reports and documents produced, attaching a list of personal effects and amounts of money left on board the vessel, and an account of wages for deceased seamen.

Source: PL 10-76 § 121.

§ 622. Exclusiveness of remedy.

(1) If a seaman sustains a disabling injury or illness while employed on board a vessel, he shall be entitled to recover from his employer the compensation and benefits set forth in this chapter.

(2) The right to recover such benefits and compensation shall exclude all other liability of the employer to the seaman, his spouse, next of kin, dependents, legal representative, or anyone

else who would otherwise be entitled to recover damages from the employer on account of the disabling injury, illness, or death.

(3) This section shall not apply if the employer has failed to provide the seaman with the benefits and compensation to which he is entitled under this chapter.

Source: PL 10-76 § 122.

§ 623. Liability of persons other than the employer.

(1) When a seaman sustains a work-related injury, illness or death for which benefits and compensation are payable pursuant to this chapter under circumstances creating in some person other than the employer a legal liability to pay damages on account thereof, the seaman or the seaman's estate may bring an action to recover damages from such third person.

(2) If the seaman or the seaman's estate commences an action as provided for in subsection (1) of this section, the seaman's employer shall be served with a copy of the complaint by personal service or registered mail without delay and may join the action as a party plaintiff at any time before commencement of trial.

(3) If the seaman or the seaman's estate recovers damages in a suit against a third person brought under subsection (1) of this section, the employer is entitled to reimbursement of the benefits or compensation paid to the seaman under this chapter up to the amount of the damages recovered by the seaman against the third person.

(4) If an action has not been brought against a third person by the seaman or his estate within one year after the date of the work-related injury, illness or death for which benefits and compensation are payable under this chapter, the employer shall be subrogated to the rights of the seaman or his estate, and may bring an action

against such third person. The seaman or his estate may at any time commence an action or join in any action commenced by the employer against such third person.

(5) No release or settlement of any claim or action under this section is valid without the written consent of the employer and the seaman or the seaman's estate. Any settlement payment or judgment obtained from a third person is subject to the employer's right of reimbursement of compensation payments made under this chapter.

Source: PL 10-76 § 123.

§ 624. Wrongful death of seamen.

Whenever the death of a seaman is caused by gross negligence, misconduct, or intentional act, notwithstanding section 623 of this chapter, the personal representative of the deceased seaman may bring an action for wrongful death, for the benefit of the deceased's spouse, parent, child, or dependent relative, against the vessel, owner, employer, master, or any other party which would have been liable had death not occurred.

Source: PL 10-76 § 124, modified.

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

§ 625. Wages after wreck or loss of vessel.

A seaman whose employment is terminated because a vessel is wrecked, lost or unable to proceed is entitled to wages for 30 days after the employment is terminated.

Source: PL 10-76 § 125.

§ 626. Repatriation.

(1) Any seaman who is put ashore at a port other than the proper return port, for reasons for which the seaman is not responsible, shall be returned at no expense to the seaman to:

(a) the proper return port; or

(b) another port, agreed to between the seaman and the owner or master, if the seaman does not wish to return to the proper return port.

(2) Any seaman whose period of employment is not terminated shall continue to receive wages and benefits until the seaman has arrived at the proper return port.

(3) Any seaman whose period of employment is terminated by reason of completion of the voyage for which the seaman was engaged or by expiration of the Shipping Articles or other employment contract, shall be entitled to repatriation, at no expense to the seaman to:

(a) the proper return port; or

(b) another port, agreed to between the seaman and the owner or master.

(4) The seaman shall lose his right to repatriation if within one week from the time the seaman is in a condition to be repatriated:

(a) he fails to comply with any arrangement made for his repatriation; or

(b) he refuses to be repatriated.

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(5) A seaman shall forfeit the right of repatriation under the seaman's Shipping Articles if the seaman enters into a new employment agreement or Shipping Articles with:

- (a) the same owner after his discharge; or
- (b) a new owner within one week after his discharge.

(6) A seaman shall forfeit the seaman's right of repatriation if the seaman commits any national offense or civil offense under this chapter.

Source: PL 10-76 § 126, modified.

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

§ 627. Abandonment of seamen.

(1) No master or person in charge of a vessel in any foreign port or place may, without justifiable cause, refuse to bring any seaman to the seaman's proper return port if the seaman is physically able to proceed when the master is ready to proceed.

(2) An abandoned seaman shall retain his right to repatriation.

Source: PL 10-76 § 127.

§ 628. Seaman left behind.

A master shall notify a Shipping Officer by the quickest possible means as soon as it is learned that a seaman has been or must be left behind somewhere other than the seaman's proper return port.

Source: PL 10-76 § 128.

§ 629. Grounds for discharge.

The master may discharge a seaman for justifiable cause, including any of the following grounds:

(1) unjustified failure to report on board at such times and dates as may be specified by the master;

(2) incompetence to perform duties for which the seaman has represented himself as qualified;

(3) theft, embezzlement, or willful destruction of any part of the vessel, its cargo, or stores;

(4) serious insubordination, willful disobedience or willful refusal to perform assigned duties;

(5) mutiny or desertion;

(6) habitual intoxication, quarreling, or fighting;

(7) possession of dangerous weapons, narcotics, prohibited drugs, other illicit substances or contraband articles;

(8) smuggling;

(9) intentional concealment of a condition which resulted in illness or injury;

(10) assistance to stowaways; or

(11) violation of the laws of the Federated States of Micronesia.

Source: PL 10-76 § 129.

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

§ 630. Compensation for unjustifiable discharge before completing one month of employment.

Any seaman who has signed Shipping Articles and is unjustifiably discharged before the commencement of the voyage or before one month's wages are earned, shall be entitled to receive in addition to wages already earned, compensation amounting to one month's wages.

Source: PL 10-76 § 130.

§ 631. Offenses against the internal order of the vessel.

(1) Any seaman on a vessel who does any of the following acts commits an offense against the internal order of the vessel and may, in addition to any criminal penalties provided under this title, incur civil penalties as follows:

(a) forfeiture of up to two days' wages for any of the following offenses:

(i) failure, without reasonable cause, to join the vessel or to proceed to sea;

(ii) absence without leave at any time within 24 hours of the vessel's sailing from any port;

(iii) absence from the vessel at any time, without permission or justifiable cause;

(iv) absence from the seaman's duty station when assigned to keep watch;

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(b) forfeiture of up to four days' wages and physical restraint for any of the following offenses:

(i) intoxication from alcohol or drugs while the vessel is at sea;

(ii) willful disobedience to any lawful command;

(c) forfeiture of up to six days' wages for every 24 hours continuation of the behavior and physical restraint until cessation of the behavior which forms the basis of the offense, for any of the following offenses:

(i) intoxication from alcohol or drugs which impairs ability to perform duties;

(ii) willful disobedience to any lawful command;

(iii) willful neglect of duty;

(d) forfeiture of up to 12 days' wages for any of the following offenses:

(i) willfully damaging the vessel;

(ii) embezzling ship's funds or property, or wrongfully converting, or willfully damaging any part of the stores or cargo, whether on board the vessel, in boats, or ashore;

(iii) for any act of smuggling;

(e) forfeiture of up to 90 days wages for any of the following offenses:

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- (i) assaulting any master, pilot, or officer;
- (ii) mutiny or desertion.

(2) All wages forfeited as a result of penalties imposed by the master pursuant to this section shall be subject to review by the Principal Shipping Officer, and shall not be unreasonable under the prevailing circumstances. Forfeited wages shall first be applied to reimburse the master or owner for any loss or damage resulting from the act for which the forfeiture was imposed. Any remaining balance shall be transferred to the Principal Shipping Officer for deposit into a charitable fund for the benefit of seamen and their families. A full accounting of forfeited wages shall be provided by the master to the Principal Shipping Officer within 30 days.

Source: PL 10-76 § 131.

§ 632. Endangering vessel, cargo, or persons aboard.

It shall be a national offense, punishable by a fine not exceeding \$500,000 or imprisonment for not more than two years, or both, for a seaman or other person on any vessel to knowingly or while under the influence of alcohol or drugs to:

- (1) commit any act which causes or could cause the immediate loss or destruction of, or serious damage to, the vessel or its cargo;
- (2) commit any act which endangers or could endanger life or body or the life or body of any person belonging to or on board such vessel;
- (3) refuse or omit to do any lawful act which is necessary for the preservation of the vessel or the cargo from immediate loss, destruction, or serious damage; or

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(4) refuse or omit to do any lawful act which is necessary to protect any person on such vessel from immediate danger to life or body.

Source: PL 10-76 § 132.

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

§ 633. Desertion.

(1) Any seaman who leaves a vessel before the expiration of the seaman's Shipping Articles, and without permission, or intentionally fails to return to the vessel before its scheduled sailing time commits the national offense of desertion, punishable by a fine not exceeding \$10,000 or imprisonment for not more than one year, or both.

(2) The master shall make an entry of all desertions in the Official Logbook and file a report thereof with the Principal Shipping Officer. The master shall notify the local authorities of the port or place of desertion and request assistance in the apprehension and return of the seaman to the vessel.

Source: PL 10-76 § 133.

§ 634. Mutiny; incitement to mutiny.

(1) It shall be a national offense, punishable by a fine not exceeding \$50,000 or imprisonment for not more than ten years, or both, for a seaman other than the master of a vessel to:

(a) unlawfully and with force, or by fraud or intimidation, usurp command of the vessel from the master or other lawful officer in command;

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(b) deprive the master or a lawful officer in command of authority and command on board the vessel;

(c) resist or prevent the master or a lawful officer in command in the free and lawful exercise of his authority and command;

(d) transfer the authority and command of the master to another not lawfully entitled thereto; or

(e) physically restrain or confine the master without the master's consent.

(2) Any seaman other than the master who conspires with, solicits, or incites another to do any of the acts set forth in subsection (1) of this section, commits a national offense, punishable by a fine not exceeding \$50,000 or imprisonment for not more than ten years, or both.

Source: PL 10-76 § 134.

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

§ 635. Riot.

It shall be a national offense, punishable by a fine not exceeding \$50,000 or imprisonment for not more than five years, or both, for a seaman other than the master of a vessel to assemble with others in a tumultuous and mutinous manner while on the vessel.

Source: PL 10-76 § 135.

§ 636. Entry in Official Logbook.

(1) Every Registered Vessel shall carry an Official Logbook, Deck Logbook, Engine Logbook, and Oil Record Book; PROVIDED that the Principal Surveyor may waive this requirement for certain classes of vessels.

(2) The master of a Registered Vessel shall enter in the Official Log Book all events relating to the operation of the vessel and affairs of the crew as prescribed in regulations.

(3) The master of a Registered Vessel shall cause to be kept and accurately maintained a Deck Logbook, Engine Logbook, and Oil Record Book.

(4) Upon the commission of any offense, the master shall enter the offense in the Official Logbook, together with any penalty or forfeiture of pay imposed, on the day on which the offense was committed. The entry shall be signed by the master and witnessed by the mate or one of the crew.

(5) The offender, if still on the vessel, shall immediately be provided with a copy of the entry and have it read to him. The offender may make any reply he or she thinks fit which shall be recorded in the Official Logbook.

(6) The master shall record in the Official Logbook that the requirements of this section have been met.

Source: PL 10-76 § 136.

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

§ 637. Disciplinary Reports.

(1) Where a disciplinary offense has occurred on board a vessel, the master, upon reaching a port in the Federated States of Micronesia, shall make a Disciplinary Report to the Principal Shipping Officer of all findings of disciplinary offenses or discharges for justifiable cause since the last report. The Disciplinary Report shall include the text of the Official Logbook entry, including the seaman's reply, if any, and any other relevant facts and documents.

(2) The Principal Shipping Officer shall notify the seaman by personal service or registered mail sent to the seaman's last known address, of the seaman's right to file a written explanation or defense.

Source: PL 10-76 § 137.

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

§ 638. Principal Shipping Officer's review of disciplinary action.

(1) The Principal Shipping Officer shall conduct a review of each Disciplinary Report and the seaman's explanation, if any, filed under section 637 and within 15 days of the completion of the review, make written findings as to whether or not any sanctions taken against the seaman, including discharge, forfeiture of wages or other penalties, were justified in the circumstances. The written findings of the Principal Shipping Officer shall be kept on file at the Department together with the Disciplinary Report, the seaman's reply, if any, and all other relevant documents.

(2) The Principal Shipping Officer shall notify the master and the seaman of his or her findings under subsection (1) of this section, by personal service or by registered mail.

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(3) If the Principal Shipping Officer finds that any monetary sanctions imposed against the seaman were unjustified, the owner or master shall be required to reimburse the seaman immediately for all amounts paid or forfeited.

(4) The master and the seaman shall have the right to challenge the findings of the Principal Shipping Officer in accordance with procedures set forth in title 17 of this code.

Source: PL 10-76 § 138.

Cross-reference: The statutory provisions on Administrative Procedures are found in title 17 of this code.

§ 639. Corporal punishment prohibited.

(1) Flogging and all other forms of corporal punishment are prohibited on board any vessel.

(2) Violation of this section is a national offense, punishable by a fine not exceeding \$100,000 or imprisonment for not more than one year, or both.

Source: PL 10-76 § 139.

§ 640. Crew accommodations, provisions and supplies.

The owner or master shall not permit a vessel to go to sea if the owner or master knows or should have known that the vessel does not conform to regulations regarding:

(1) crew accommodations;

(2) provisions; and

(3) medical supplies and medical personnel.

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Source: PL 10-76 § 140.

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

§ 641. Crew lists.

The owner shall keep a crew list of each vessel in a safe place onshore, and the master shall carry a copy on the vessel.

Source: PL 10-76 § 141.

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

§ 642. Approval of employment on foreign vessels.

No person shall employ a citizen or a national of the Federated States of Micronesia as a seaman on a foreign vessel that is bound for a foreign port, without the written approval of the Principal Shipping Officer, whose approval shall be given if the requirements are met.

Source: PL 10-76 § 142.

§ 643. Master's lien.

A master shall have a maritime lien for all disbursements or liabilities properly made or incurred by the master on account of the vessel.

Source: PL 10-76 § 143.

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

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The statutory provisions on Territory, Economic Zones and Ports of Entry are found in title 18 of this code.

CHAPTER 7
Pilotage

SECTIONS

- § 701. State Port Authority is pilotage.**
- § 702. Pilotage areas.**
- § 703. Compulsory pilotage areas.**
- § 704. Pilotage services.**
- § 705. Vessels required to take Authorized Pilots on board.**
- § 706. Authorized pilot not required in certain circumstances.**
- § 707. Pilot Certificates and Pilotage Exemption Certificates.**
- § 708. Investigations; Pilotage Certificates and Pilotage Exemption Certificates.**
- § 709. Suspension of Pilotage Certificate or Pilotage Exemption Certificate pending investigation.**
- § 710. Suspension and Revocation of Pilotage Certificate and Pilotage Exemption Certificates.**
- § 711. Production of authorized pilot identification.**
- § 712. Unqualified persons not to act as Authorized Pilot.**
- § 713. Pilot misconduct.**
- § 714. Port Authority and Authorized Pilot not liable.**
- § 715. Presence of Authorized Pilot does not diminish responsibility of the master.**
- § 716. Owner and master liable for damage in compulsory pilotage areas.**
- § 717. Government and government officials not liable for loss or damage caused by pilot.**
- § 718. Pilotage charges.**
- § 719. Authorized Pilot not to be taken to sea.**

Editor's note: The former provisions of chapters 1 to 12 of this title were repealed in their entirety by PL 10-76 § 1 and replaced

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by the provisions of PL 10-76, the "National Maritime Act, 1997" codified at chapters 1 to 13 of this title. PL 10-76 took effect April 1, 1998.

§ 701. State Port Authority is pilotage authority.

The Port Authority of each of the states shall be the pilotage authority for that state, responsible for the provision of pilotage services within that state, and except as otherwise provided herein, shall regulate all pilotage services.

Source: PL 10-76 § 145.

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

§ 702. Pilotage areas.

The Secretary may by regulation declare an area within or adjacent to a port to be a pilotage area.

Source: PL 10-76 § 146.

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

§ 703. Compulsory pilotage areas.

(1) The pilotage authority may determine that pilotage is compulsory in the whole or in a specified part of its pilotage area(s).

(2) The Secretary shall by regulation declare and define compulsory pilotage areas as determined in subsection (1) of this

section.

Source: PL 10-76 § 147, modified.

§ 704. Pilotage services.

(1) The Port Authority shall, where pilotage is compulsory, and may, where pilotage is not compulsory, provide pilotage services.

(2) Each Port Authority shall ensure an adequate number of Authorized Pilots, pilot boats with safety equipment, and trained boatmen at its ports to ensure the timely and safe delivery and recovery of pilots to and from vessels subject to pilotage.

(3) Each Port Authority shall ensure that an Authorized Pilot is available when a vessel subject to pilotage requires a pilot.

Source: PL 10-76 § 148.

§ 705. Vessels required to take Authorized Pilots on board.

(1) Before a vessel enters, leaves, or moves through a compulsory pilotage area, the master of the vessel shall take on board an Authorized Pilot.

(2) The Secretary may by regulation, in consultation with the Port Authority of each state, exempt any vessel from the requirements of subsection (1) of this section.

(3) A vessel piloted by a holder of a Pilotage Exemption Certificate valid for that vessel and pilotage area, shall be exempt from the requirements of subsection (1) of this section.

(4) Where there is a special risk or danger within a pilotage area, the Port Authority may require the master of the vessel, including vessels exempted under subsections (2) and (3) of this section, to take an Authorized Pilot on board.

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(5) Any vessel required to take an Authorized Pilot on board which does not do so shall be liable to pay the same fee as if a pilot had been taken.

(6) Any vessel required to take an Authorized Pilot which does not do so on a second occasion shall be required to pay twice the fee, and on the third occasion, triple the fee, and in ensuing occasions the standard fee multiplied by the number of occasions it has not taken an Authorized Pilot.

Source: PL 10-76 § 149.

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

§ 706. Authorized pilot not required in certain circumstances.

Where a vessel or a person on board is in grave danger, and it is necessary in the circumstances that the vessel be immediately brought into, moved within, or taken out of a compulsory pilotage area, an Authorized Pilot is not required to be on board the vessel.

Source: PL 10-76 § 150.

§ 707. Pilot Certificates and Pilotage Exemption Certificates.

(1) The Secretary may by regulation, after consultation with the Port Authority, determine the number of Authorized Pilots for each of the ports and the experience required for the issuance of:

(a) a Pilotage Certificate declaring that a person is competent to be an Authorized Pilot for a particular class of vessels within a specified pilotage area; or

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(b) a Pilotage Exemption Certificate declaring that a person is competent to pilot a particular vessel or class of vessels within a specified pilotage area.

(2) The Principal Shipping Officer shall issue and renew Pilotage Certificates and Pilotage Exemption Certificates.

(3) The issuance or renewal of Pilotage Certificates and Pilotage Exemption Certificates shall be subject to such conditions as the Principal Shipping Officer endorses on the certificate.

(4) A Pilotage Certificate or Pilotage Exemption Certificate is valid only for the particular vessel or class of vessels within the pilotage area for which it is issued.

Source: PL 10-76 § 151.

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

§ 708. Investigations; Pilotage Certificates and Pilotage Exemption Certificates.

(1) The Secretary shall cause an investigation to be conducted where there is reasonable cause to believe that the holder of a Pilotage Certificate or Pilotage Exemption Certificate:

- (a) is unfit to discharge his duties;
- (b) has been negligent in the discharge of his duties; or
- (c) has engaged in misconduct or committed any violation of this title or regulations promulgated thereto.

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(2) The Principal Shipping Officer may designate an investigating officer to conduct the investigation.

(3) The investigating officer may:

(a) go on board any vessel relevant to the case;

(b) enter upon any wharf or installation adjacent to a pilotage area;

(c) make any and all inquiries; and

(d) require the production of any relevant documents or certificates.

(4) The investigating officer shall report the results of the investigation to the Principal Shipping Officer within 14 days after the investigation is completed.

Source: PL 10-76 § 152.

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

§ 709. Suspension of Pilotage Certificate or Pilotage Exemption Certificate pending investigation.

Where public safety so requires, the Principal Shipping Officer may suspend a Pilotage Certificate or Pilotage Exemption Certificate pending the outcome of an investigation conducted under section 708 of this chapter.

Source: PL 10-76 § 153.

§ 710. Suspension and Revocation of Pilotage Certificate and Pilotage Exemption Certificates.

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(1) The Principal Shipping Officer may suspend or revoke a Pilotage Certificate or Pilotage Exemption Certificate where the holder:

- (a) is unfit to discharge his duties;
- (b) has been negligent in the discharge of his duties; or
- (c) has engaged in misconduct or committed any violation of this title or regulations promulgated pursuant thereto.

(2) Proceedings for suspension or revocation of a certificate under subsection (1) of this section shall be conducted in accordance with the procedure set forth in title 17, section 109 of this code.

(3) Where a Pilotage Certificate or Pilotage Exemption Certificate is suspended or revoked, the holder of the Pilotage Certificate or Pilotage Exemption Certificate shall immediately surrender the certificate to the Principal Shipping Officer.

(4) Where a Pilotage Certificate or Pilotage Exemption Certificate is suspended or revoked, the holder may seek judicial review as set forth in section 111 of title 17 of this code, PROVIDED, however, the decision of the hearing officer shall remain in effect until all avenues of appeal have been exhausted.

Source: PL 10-76 § 154.

Cross-reference: The statutory provisions on Administrative Procedures are found in title 17 of this code.

§ 711. Production of authorized pilot identification.

(1) An Authorized Pilot shall produce proper identification issued by the Port Authority or his Pilotage Certificate for inspection when requested by the master of the vessel.

(2) An Authorized Pilot who fails to produce identification as set forth in subsection (1) of this section commits a civil offense and shall be liable to a fine not exceeding \$10,000.

Source: PL 10-76 § 155.

§ 712. Unqualified persons not to act as Authorized Pilot.

A person who is not an Authorized Pilot who holds himself out to be an Authorized Pilot or pilot a vessel for which an Authorized Pilot is requested to be on board commits a national offense, punishable by a fine not exceeding \$500,000 or imprisonment for not more than two years, or both.

Source: PL 10-76 § 157.

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

§ 713. Pilot misconduct.

It shall be a national offense, punishable by a fine not exceeding \$500,000 or imprisonment for not more than two years, or both, for a holder of a Pilotage Certificate or a Pilotage Exemption Certificate to intentionally or willfully, or while under the influence of alcohol or drugs, do any act which causes, or is likely to cause, the loss or destruction of or serious damage to a vessel or the death of or serious injury to a person on board a vessel, or fail to do anything required to be done by him or her to preserve a vessel from loss, destruction or serious damage or protect any person on board a vessel from death or serious injury.

Source: PL 10-76 § 157.

§ 714. Port Authority and Authorized Pilot not liable.

The Port Authority and an Authorized Pilot shall not be personally

liable in any civil proceeding for any damage or loss suffered as a result of any act done by the Port Authority or the Authorized Pilot or for any failure to do anything required to be done by either while acting within the scope of their duties unless such act or omission arises from intentional or willful misconduct, or from gross negligence.

Source: PL 10-76 § 158.

§ 715. Presence of Authorized Pilot does not diminish responsibility of the master.

(1) Subject to the authority of the master of a vessel, the duty of an Authorized Pilot is to pilot the vessel in pilotage areas.

(2) The master of a vessel is not relieved of responsibility for the proper conduct and safe navigation of the vessel by reason of the vessel being in pilotage charge of an Authorized Pilot.

Source: PL 10-76 § 159.

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

§ 716. Owner and master liable for damage in compulsory pilotage areas.

The owner and the master of a vessel are jointly and severally liable for any loss or damage caused by the vessel in a compulsory pilotage area as a result of any fault in the navigation of the vessel, whether or not an Authorized Pilot was on board the vessel at the time that the loss or damage was caused; PROVIDED, however, that the Port Authority shall be responsible in cases of the Authorized Pilot's intentional or willful misconduct or gross negligence.

Source: PL 10-76 § 160.

§ 717. Government and government officials not liable for loss or damage caused by pilot.

The Government and government officials are not liable for any damage or loss suffered as a result of any act or failure to act by an Authorized Pilot while providing pilotage services to a vessel.

Source: PL 10-76 § 161.

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

§ 718. Pilotage charges.

(1) The Port Authority shall determine pilotage charges which shall then be published in a schedule set forth in regulations promulgated by the Secretary.

(2) Pilotage charges for a vessel shall be payable by the owner, master or agent of the vessel to the Port Authority or to the Authorized Pilot providing the services, as designated by the Port Authority in the state where the pilotage services are provided.

Source: PL 10-76 § 162.

§ 719. Authorized Pilot not to be taken to sea.

(1) Except in circumstances of unavoidable necessity, an Authorized Pilot shall not be taken to sea or taken beyond the limits of the pilotage area without the pilot's consent.

(2) If an Authorized Pilot is taken to sea in circumstances of unavoidable necessity, the vessel owner and master shall be liable for all expenses of the Authorized Pilot including repatriation, which shall take place at the earliest opportunity.

Source: PL 10-76 § 163.

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

CHAPTER 8
Marine Aids to Navigation

SECTIONS

§ 801. Application.

§ 802. Aid to Navigation Officer.

§ 803. Powers and duties of Aids to Navigation Officer.

§ 804. Coordination of marine aids to navigation.

§ 805. Unauthorized establishment, alteration or removal of marine aids to navigation.

§ 806. Offenses in relation to marine aids to navigation.

§ 807. Offenses in relation to submarine cables or pipelines.

§ 808. Advisory committee on marine aids to navigation.

§ 809. Dues for aids to navigation.

Editor's note: The former provisions of chapters 1 to 12 of this title were repealed in their entirety by PL 10-76 § 1 and replaced by the provisions of PL 10-76, the "National Maritime Act, 1997" codified at chapters 1 to 13 of this title. PL 10-76 took effect April 1, 1998.

§ 801. Application.

This chapter applies to all marine aids to navigation situated in waters of the Federated States of Micronesia used for guiding seamen in the safe navigation of vessels near reefs, shoals, and other dangers to navigation.

Source: PL 10-76 § 165.

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

§ 802. Aids to Navigation Officer.

The Secretary shall appoint an Aids to Navigation Officer who shall be responsible for the implementation and enforcement of this chapter.

Source: PL 10-76 § 166.

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

§ 803. Powers and duties of Aids to Navigation Officer.

(1) The Aids to Navigation Officer shall inspect marine aids to navigation on a regular basis to ensure that they remain unobstructed and in good condition.

(2) The Aids to Navigation Officer shall be allowed to enter any public or private property if required in order to gain access to a marine aid to navigation for purposes of inspection.

(3) Any person who obstructs or hinders an Aids to Navigation Officer in the performance of the officer's duties commits a civil offense, and shall be liable to a fine not exceeding \$200,000.

Source: PL 10-76 § 167.

§ 804. Coordination of marine aids to navigation.

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The Aids to Navigation Officer shall coordinate with the states in regard to the establishment, maintenance, operation, alteration or removal of marine aids to navigation in conformity with international standards to maintain uniform national standards as needed for the safe navigation of vessels in the waters of the Federated States of Micronesia.

Source: PL 10-76 § 168.

§ 805. Unauthorized establishment, alteration or removal of marine aids to navigation.

(1) Any person who alters or removes a marine aid to navigation established by the Aids to Navigation Officer without prior written approval of the Aids to Navigation Officer commits a civil offense and shall be liable to a fine not exceeding \$200,000.

(2) No person may establish or operate a private aid to navigation within any of the waters of the Federated States of Micronesia used for foreign or interstate commerce without prior written approval of the Aids to Navigation Officer.

(3) If safety or convenience requires, the Aids to Navigation Officer may, by written notice, require the owner of any private aid to navigation to move, remove, modify or alter it.

(4) Where the owner fails to comply with a request made under subsection (3) of this section, or if notice cannot be served on the owner, the Aids to Navigation Officer may take possession or control of the aid, and do anything which must be done for the safety of marine navigation, and the owner shall pay any and all costs incurred by the Government under this subsection.

Source: PL 10-76 § 169.

Cross-reference: The statutory provisions on the

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

Case annotation: The common law "incomplete privilege" of one to enter onto the land of another in times of private necessity is essentially codified by 19 F.S.M.C. 805(3), which states that "no person, including the owner or occupier of land may hinder or impede a rescuer." But it cannot have been the intent of 19 F.S.M.C. 805(3) to prevent law enforcement officials from carrying out their official duties in the face of an emergency rescue situation. *Pohnpei v. M/V Miyo Maru No. 11*, 8 FSM R. 281, 292 (Pon. 1998).

§ 806. Offenses in relation to marine aids to navigation.

In relation to marine aids to navigation:

(1) No person may:

(a) make fast to, damage, destroy or allow a vessel to foul a marine aid to navigation;

(b) cause the view of a marine aid to navigation to be obstructed in such a manner as to lessen its efficiency;

(c) interfere with a marine aid to navigation so as to limit its effectiveness; or

(d) trespass on or in a marine aid to navigation.

(2) A person who, or the master of a vessel which, damages, destroys, or interferes with a marine aid to navigation shall notify the Aids to Navigation Officer as soon as practicable.

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(3) Anyone who knowingly or intentionally interferes with or trespasses on a marine aid to navigation commits a national offense, punishable by a fine not exceeding \$500,000 or imprisonment for not more than two years, or both.

(4) In addition to any other penalty provided under this title for violation of this section, the violator shall pay to the Secretary for disbursement to the appropriate authorities, the cost of repairing or replacing the marine aid to navigation.

Source: PL 10-76 § 170.

§ 807. Offenses in relation to submarine cables or pipelines.

(1) Submarine cables or pipelines in this section mean those cables or pipelines found underwater outside of a lagoon or inside a lagoon if affecting interstate and international commerce.

(2) It shall be a violation of this section to negligently damage or destroy a submarine cable or pipeline unless the damage or destruction was caused by persons acting to save life or property.

(3) A vessel which damages, destroys, or fouls a marine aid to navigation, or a submarine cable or pipeline may be detained until the cost of repair or replacement is paid.

(4) It shall be a national offense, punishable by a fine not exceeding \$500,000 or imprisonment for not more than two years, or both, to knowingly or intentionally damage or destroy a submarine cable or pipeline.

(5) If a person laying or repairing a submarine cable or pipeline damages or destroys another cable or pipeline that person shall pay the cost of repair.

(6) If an anchor, a net or any other article belonging to a vessel is

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sacrificed to avoid injuring a submarine cable or pipeline, the owner of the cable or pipeline shall pay for the loss.

Source: PL 10-76 § 171.

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

§ 808. Advisory committee on marine aids to navigation.

The Aids to Navigation Officer may form a marine aids to navigation advisory committee, which may include at least two owners of vessels which must pay dues for aids to navigation, to assist the Aids to Navigation Officer in matters relating to marine aids to navigation.

Source: PL 10-76 § 172.

§ 809. Dues for aids to navigation.

(1) The owner or master of a vessel shall pay dues for marine aids to navigation on every entry into port.

(2) A vessel may be detained until its dues for aids to navigation are paid.

Source: PL 10-76 § 173.

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

CHAPTER 9 Wreck and Salvage

SECTIONS

- § 901. Application.
- § 902. Receiver of wreck.
- § 903. Preservation of wreck.
- § 904. Duty of notify Receiver.
- § 905. Liability for wreck.
- § 906. Search allowed for secreted wreck.
- § 907. Notice by Receiver of having taken possession of wreck.
- § 908. Removing wreck from custody of Receiver.
- § 909. Owner's right to claim wreck.
- § 910. Unclaimed wreck.
- § 911. Vessels wreck.
- § 912. Offenses relating to wreck.
- § 913. Salvage contract.
- § 914. Annulment and modification of salvage contract.
- § 915. Duties of salvors.
- § 916. Duties of the owner or master.
- § 917. Authority of the Receiver relating to salvage.
- § 918. Conditions for reward.
- § 919. Criteria for fixing the reward.
- § 920. Special compensation for salvors.
- § 921. Apportionment of reward among salvors.
- § 922. Saving persons.
- § 923. Prohibition of salvage operations and salvor's misconduct.
- § 924. Security for claims.
- § 925. Enforcement of salvage payment.
- § 926. Sale by Receiver of detained property.
- § 927. Government-owned cargoes and humanitarian cargoes.
- § 928. Limitation of actions.

Editor's note: The former provisions of chapters 1 to 12 of this title were repealed in their entirety by PL 10-76 § 1 and replaced by the provisions of PL 10-76, the "National Maritime Act, 1997" codified at chapters 1 to 13 of this title. PL 10-76 took effect April 1, 1998.

§ 901. Application.

The provisions of this chapter relate to all vessels and small craft but shall not apply in respect of salvage to:

(1) fixed or floating platforms or to mobile offshore drilling units when such platforms or units are on location and engaged in the exploration, exploitation or production of seabed mineral resources;

(2) craft of defense forces or other non-commercial vessels entitled to sovereign immunity under generally recognized principles of international law, unless the flag states decide otherwise.

Source: PL 10-76 § 175.

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

§ 902. Receiver of Wreck.

(1) The Secretary shall be the Receiver of wreck in the Federated States of Micronesia and shall superintend all matters relating to wreck.

(2) The Receiver may delegate all or any authority and responsibility as Receiver under this chapter to the relevant state authority.

Source: PL 10-76 § 176.

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

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The statutory provisions on Territory, Economic Zones and Ports of Entry are found in title 18 of this code.

§ 903. Preservation of wreck.

(1) When any vessel is wrecked, stranded or in distress, the Receiver may take command of all persons present, assign duties, issue directions, requisition assistance, and demand the use of any nearby vehicle or equipment, if necessary to preserve the vessel, the cargo, and lives.

(2) The Receiver shall not interfere between the master of the vessel and his crew in matters relating to the management of the vessel unless requested to do so by the master.

(3) All cargo and other articles belonging to a wrecked vessel that leave the vessel must be delivered to the Receiver, and no person, including an owner, may secrete or fail to deliver the same to the Receiver.

(4) A rescuer may pass over any adjoining lands if necessary and may deposit on such lands any cargo or article recovered. All damage caused to land or property by rescuers or cargo shall be a salvage charge on the vessel, cargo, or articles.

(5) No person, including the owner or occupier of any land over which rescuers must pass, may impede or hinder any rescuer or impede the deposit of cargo or other rescued articles.

Source: PL 10-76 § 177.

§ 904. Duty to notify Receiver.

An owner, master, or any other person finding or taking possession of any wreck shall notify the Receiver and, if requested, deliver the wreck to the Receiver.

Source: PL 10-76 § 178.

§ 905. Liability for wreck.

(1) A vessel owner and master are liable for the wrecked vessel and all damages to persons, property and the environment accruing from the wreck, its removal and any environmental clean-up operations.

(2) An authorized officer may detain the master, owner, or any crew members of a wrecked vessel to ensure compliance with the responsibilities for the wrecked vessel under this chapter.

Source: PL 10-76 § 179.

Case annotations: A cause of action exists in admiralty and maritime law for recovery of damages for oil contamination of wildlife and other natural resources in the marine environment. The type of injury includes both physical loss or injury, such as due to the grounding on the reef, as well as loss of use, either because of a government ban or because there has been a diminution of the resources because of oil contamination. Maritime nations generally recognize that parties injured by an oil spill should recover their damages, as the polluter must pay. Such a cause of action is available under the general admiralty and maritime law of the Federated States of Micronesia. *People of Rull ex rel. Ruepong v. M/V Kyowa Violet*, 14 FSM R. 403, 416 (Yap 2006).

The elements of a maritime negligence cause of action are four: 1) existence of a duty requiring a person to conform to a certain standard of conduct in order to protect others against unreasonable risks; 2) breach of that duty by engaging in conduct that falls below the standard of conduct, which is usually called "negligence"; 3) a

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reasonably close causal connection between the unreasonable conduct and any resulting injury, often referred to as "proximate cause"; and 4) actual loss, injury or damage to another party. *People of Rull ex rel. Ruepong v. M/V Kyowa Violet*, 14 FSM R. 403, 416 (Yap 2006).

Causes of action for public and private nuisance are recognized in admiralty law, borrowing from traditional common law principles. Admiralty courts look to general sources of the common law for guidance, such as the Restatement (Second) of Torts. *People of Rull ex rel. Ruepong v. M/V Kyowa Violet*, 14 FSM R. 403, 416 (Yap 2006).

Causation in maritime tort law is similar to the common law causation principle. A defendant's act or omission must be the proximate cause of the plaintiff's injury. An injury is proximately caused by an act, or failure to act, whenever it appears from the evidence that the act or omission played a substantial part in bringing about or actually causing the injury or damage, and that the injury or damage was either a direct result or a reasonably probable consequence of the act or omission. *People of Rull ex rel. Ruepong v. M/V Kyowa Violet*, 14 FSM R. 403, 417 (Yap 2006).

Injured parties in maritime tort cases are typically awarded prejudgment interest. *People of Rull ex rel. Ruepong v. M/V Kyowa Violet*, 14 FSM R. 403, 420 (Yap 2006).

The FSM Supreme Court trial division has original and exclusive jurisdiction in admiralty or maritime cases but the exact scope of admiralty and maritime jurisdiction is not defined in the Constitution or elsewhere. *Ehsa v. Pohnpei Port Auth.*, 14 FSM R. 505, 507-08 (Pon. 2006).

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The article XI, section 6(a) maritime jurisdiction extends to all cases which are maritime in nature. Since a maritime cause of action is one arising on the sea, ocean, great lakes, or navigable rivers, or from some act or contract concerning the commerce and navigation thereof, and when, although the plaintiffs attempt to characterize the issue as one of state law, they are essentially complaining about loss of business as a result of the penalties imposed by the port authority on the vessels resulting from the port authority's maritime-related activities, it is a maritime case and will not be remanded to state court. *Ehsa v. Pohnpei Port Auth.*, 14 FSM R. 505, 508 (Pon. 2006).

§ 906. Search allowed for secreted wreck.

Where a wreck or any cargo therefrom has been secreted or not reported to the Receiver, the Receiver may obtain a search warrant as provided by law, and search for the wreck in any place.

Source: PL 10-76 § 180.

§ 907. Notice by Receiver of having taken possession of wreck.

When the Receiver takes possession of wreck, he shall cause a description of the wreck to be:

- (1) broadcast on at least one radio station in each state;
- (2) published in the local newspaper, if any;
- (3) posted by notice describing the wreck at the Department and in appropriate public places in each state capital.

Source: PL 10-76 § 181.

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

§ 908. Removing wreck from custody of Receiver.

(1) No person shall remove or attempt to remove a wrecked vessel, its cargo, or apparel from the custody of the Receiver without the written authorization of the Receiver.

(2) Violation of subsection (1) of this section shall be a national offense, punishable by a fine not exceeding \$100,000 or imprisonment for not more than one year, or both.

Source: PL 10-76 § 182.

§ 909. Owner's right to claim wreck.

Where the owner of a wrecked vessel demonstrates lawful ownership, the owner shall be entitled to claim the wrecked vessel from the Receiver, PROVIDED payment of any damages, expenses, fees, and salvage due has been made in full, and PROVIDED the owner establishes such claim within one year of the time the Receiver takes possession.

Source: PL 10-76 § 183.

§ 910. Unclaimed wreck.

If the lawful owner of a wrecked vessel fails to claim such vessel within one year from the date the Receiver takes possession, the Receiver shall sell the wreck, pay all fees and other expenses, and pay the determined amount of salvage. Such action by the Receiver shall not relieve the owner or master of any liability for damages caused by the wreck. All remaining moneys shall be deposited into the General Fund of the Federated States of Micronesia.

Source: PL 10-76 § 184.

§ 911. Vessels wrecked.

(1) Where a wrecked vessel is an obstruction or danger to

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interstate or foreign commerce or shipping within or outside a lagoon:

(a) The Receiver may require any owner to raise, remove or destroy the vessel or to mark its position with a light, buoy or other marker approved by the Receiver until such time as it is raised, removed or destroyed; or

(b) If the owner does not comply forthwith, the Receiver may raise, remove, destroy, sell, or otherwise deal with the wrecked vessel and any recovered property in such manner as he or she thinks fit. The Receiver shall deduct any and all expenses incurred from the sale of the wreck and pay the proceeds to the persons entitled to them.

(2) In the event of a forced sale of the stranded or sunken vessel following its removal by the Receiver in the interest of safe navigation or the protection of the marine environment, the costs of such removal shall be paid out of the proceeds of the sale, before all other claims secured by a maritime lien on the vessel.

(3) Upon posting a notice in the manner described in section 907 of this chapter, the Receiver may declare an area around a wrecked vessel to be a prohibited area, and no person or vessel may enter this area.

(4) The Receiver may recover from any owner of a wrecked vessel any and all expenses incurred in guarding, lighting, buoying, raising, removing or destroying the vessel, which are not recovered from the proceeds of sale.

Source: PL 10-76 § 185.

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

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The statutory provisions on Territory, Economic Zones and Ports of Entry are found in title 18 of this code.

§ 912. Offenses relating to wreck.

(1) Anyone who knowingly obliterates or defaces any mark on a wrecked vessel or part thereof, its apparel or equipment, or any mark on cargo recovered from a wrecked vessel commits a national offense, punishable by a fine not to exceed \$100,000 or imprisonment for not more than one year, or both.

(2) Anyone who takes to any foreign port with the intention to sell any stranded, derelict or otherwise distressed vessel, its cargo or apparel, or any wreck, found in the waters of the Federated States of Micronesia commits a national offense, punishable by a fine not to exceed \$100,000 or imprisonment for not more than one year, or both.

Source: PL 10-76 § 186.

§ 913. Salvage contract.

(1) The master of a Registered Vessel requiring salvage services shall have the authority to enter into contracts for salvage operations on behalf of the owner of the vessel which shall bind the owner and be enforceable at law. The master or owner of the vessel shall have the authority to enter into contracts on behalf of the owners of the property on board the vessel which shall bind the owners of the property on board the vessel and be enforceable at law.

(2) Nothing in this section shall affect the application of section 914 of this chapter nor duties to prevent or minimize damage to the environment.

Source: PL 10-76 § 187, modified.

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

§ 914. Annulment and modification of salvage contract.

A contract for the salvage of a vessel or any property therein or any term thereof may be annulled or modified by the Supreme Court if:

- (1) the contract has been entered into under duress or undue influence resulting from the stress or immediacy of danger and its terms are deemed by the court to be inadequate or excessive; or
- (2) the payment under the salvage contract is either grossly excessive or grossly inadequate for the services actually rendered.

Source: PL 10-76 § 188.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code. The statutory provisions on Judicial Procedure are found in title 6 of this code.

§ 915. Duties of salvors.

The salvor shall owe a duty to the owner of a vessel requiring salvage or any property in danger:

- (1) to carry out the salvage operation with due care, including preventing or minimizing danger to the environment;
- (2) whenever circumstances reasonably require, to seek assistance from other salvors; and
- (3) to accept the intervention of other salvors when reasonably

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requested to do so by the owner or master of the vessel or other property in danger; PROVIDED HOWEVER, that the amount of the original salvor's reward shall not be prejudiced should it be found that such a request was unreasonable.

Source: PL 10-76 § 189.

§ 916. Duties of the owner or master.

The owner and master of any vessel or the owner of other property in danger within the waters of the Federated States of Micronesia which require salvage operations shall owe a duty to the salvor:

(1) to cooperate fully with the salvor during the course of the salvage operations;

(2) in so doing, to exercise due care to prevent or minimize damage to the environment; and

(3) when the vessel or other property has been brought to a place of safety within the Federated States of Micronesia, to accept redelivery when reasonably requested by the salvor to do so.

Source: PL 10-76 § 190.

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

§ 917. Authority of the Receiver relating to salvage.

(1) Nothing in this chapter shall affect the authority of the Receiver to take appropriate measures in accordance with generally accepted and recognized principles of international law to protect the coastline or any related interest within the Federated States of Micronesia from pollution or the threat of pollution following a casualty or acts relating to such casualty which may reasonably be expected to result in major harmful consequences,

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including the authority to give directions to salvage operations.

(2) In admitting vessels in distress into a port in the Federated States of Micronesia, or in providing facilities to salvors, the Receiver shall take into account the need for cooperation among salvors, other interested parties and public authorities in order to ensure the efficient and successful performance of salvage operations for the purpose of saving life or property in danger, as well as preventing damage to the environment in general.

(3) In fulfilling the intentions of subsection (2) of this section, the Receiver may request through the President the assistance and cooperation of other concerned offices and agencies of the Government to temporarily relax immigration, customs and fiscal laws or otherwise facilitate and expedite the dispatch of experienced personnel, specialized vessels and equipment to deal with the matter at hand in order to save life or minimize damage to property, the environment, livelihood and quality of life of all the people of the Federated States of Micronesia.

(4) The Receiver may promulgate regulations relating to salvage, taking into account the provisions of the Salvage Convention.

Source: PL 10-76 § 191.

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

§ 918. Conditions for reward.

(1) Salvage operations undertaken within the Federated States of Micronesia which have had a useful result shall create the right to reward.

(2) Except as otherwise provided, no payment is due under this chapter if the salvage operations have had no useful result.

(3) This chapter shall apply, notwithstanding that the salvaged vessel and the vessel undertaking the salvage operations belong to the same owner.

Source: PL 10-76 § 192.

§ 919. Criteria for fixing the reward.

(1) The reward shall be fixed with a view to encouraging salvage operations, taking into account the following criteria:

- (a) the salvage value of the vessel and other property;
- (b) the skill and efforts of the salvors in preventing or minimizing damage to the environment;
- (c) the measure of success obtained by the salvor;
- (d) the nature and degree of the danger;
- (e) the skill and efforts of the salvors in salvaging the vessel, other property and life;
- (f) the time used and expenses and losses incurred by the salvors;
- (g) the risk of liability and other risks run by the salvors or their equipment;
- (h) the promptness of the services rendered;
- (i) the availability and use of vessels or other equipment intended for salvage operations;

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(j) the state of readiness and efficiency of the salvor's equipment and the value thereof.

(2) Payment of a reward fixed according to subsection (1) of this section shall be made by vessels and other property interests in proportion to their respective salvage value. However, the Receiver may by regulation provide that the payment of a reward has to be made by one of these interests, subject to a right of recourse of this interest against the other interests in proportion to their respective interests in the salvage of property.

(3) The rewards, exclusive of any interest and recoverable legal costs that may be payable thereon, shall not exceed the salvage value of the vessel and other property.

Source: PL 10-76 § 193.

§ 920. Special compensation for salvors.

(1) Where in the opinion of the Supreme Court a salvor who has carried out salvage operations on a vessel which by itself or due to the nature of its cargo threatened damage to the environment in the waters of the Federated States of Micronesia, and the salvor failed to earn a reward at least equivalent to the special compensation assessable in accordance with this section, that salvor shall be entitled to special compensation from the owner of the vessel equivalent to his expenses as defined herein.

(2) Where, in the circumstances set out in subsection (1) of this section, the salvor by his salvage operations has prevented or minimized damage to the environment, the special compensation payable by the owner to the salvor under subsection (1) of this section may be increased up to a maximum of 30% of the actual, audited expenses incurred by the salvor. However, the Supreme Court, if it deems it fair and just to do so and bearing in mind the relevant criteria in subsection (1) of section 919, may increase such

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special compensation further, but in no event shall the total increase be more than 100% of the expenses incurred by the salvor.

(3) Salvor's expenses for the purpose of subsections (1) and (2) of this section means the out-of-pocket expenses reasonably incurred by the salvor in the salvage operation and a fair rate for equipment and personnel actually and reasonably used in the salvage operation, taking into account the criteria set out in subsections (1)(h), (i) and (j) of section 919 of this chapter.

(4) The total special compensation under this section shall be paid only if and to the extent that such compensation shall be greater than any reward recoverable by the salvor.

(5) If the salvor has been negligent and has thereby failed to prevent or minimize damage to the environment, the salvor may be deprived of the whole or part of any special compensation due under this section.

(6) Nothing in this section shall affect any right of recourse on the part of the owner of the vessel.

Source: PL 10-76 § 194.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code. The statutory provisions on Judicial Procedure are found in title 6 of this code.

§ 921. Apportionment of reward among salvors.

(1) The apportionment of a reward under section 919 of this chapter as among salvors shall be made on the basis of the criteria contained in that section.

(2) The apportionment of the reward under section 919 of this

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chapter shall be distributed equally among the owner, master and other persons in the services of each salving vessel, PROVIDED that each vessel exerted the same degree of performance with respect to efforts and skills as dictated by the criteria enumerated under subsection (1) of section 919 of this chapter.

(3) Where there is no agreement as to the degree of performance among salving vessels for the apportionment of the reward, the settlement for the apportionment shall be adjudicated by the Supreme Court.

Source: PL 10-76 § 195.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code. The statutory provisions on Judicial Procedure are found in title 6 of this code.

§ 922. Saving persons.

(1) No remuneration shall be due from persons whose lives have been saved, but nothing in this section shall prevent the salvor from asserting against the owner any claims against the value of a salvaged vessel or other property and for saving the lives of passengers or personnel from the stricken vessel.

(2) A saver of human life, who has taken part in the services rendered on the occasion of the accident giving rise to salvage, shall be entitled to a fair share of the payment awarded to the salvor for salvaging the vessel or other property or preventing or minimizing damage to the environment, which entitlement shall be determined by the Supreme Court.

(3) Claims for saving lives shall be paid before all other claims for salvage.

Source: PL 10-76 § 196.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code. The statutory provisions on Judicial Procedure are found in title 6 of this code.

§ 923. Prohibition of salvage operations and salvor's misconduct.

(1) Services rendered notwithstanding the expressed and reasonable prohibition of the owner or master of a vessel or the owner of any other property in danger shall not give rise to payment under this chapter.

(2) A salvor may be deprived of the whole or part of the payment due under this chapter to the extent that salvage operations have become necessary or more difficult because of fault or neglect on the salvor's part or if the salvor has been guilty of fraud or other dishonest conduct.

Source: PL 10-76 § 197.

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

§ 924. Security for claims.

(1) Upon the request of the salvor, a person who is liable for payment due under this chapter shall provide satisfactory security for the claim, including interest and costs of the salvor.

(2) Without prejudice to subsection (1) of this section, the owner of the salvaged vessel shall use his or her best efforts to ensure that the owners of the cargo provide satisfactory security for the claims

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against them including interest and costs before the cargo is released.

(3) The salvaged vessel and other property shall not, without the consent of the salvor, be removed from the port or place at which they are first delivered after the completion of the salvage operations until satisfactory security has been put up for the salvor's claim against the relevant vessel or property.

Source: PL 10-76 § 198.

§ 925. Enforcement of salvage payment.

Notwithstanding the provisions of section 924 of this chapter, the Receiver shall detain any vessel, cargo, property or wreck until the payment for reward has been made or disposition ordered by the Supreme Court, and shall notify any known owner as soon as the property comes into possession or control of the Receiver.

Source: PL 10-76 § 199, modified.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code. The statutory provisions on Judicial Procedure are found in title 6 of this code.

§ 926. Sale by Receiver of detained property.

(1) The Receiver may sell property detained for payment of salvage if:

(a) the amount of salvage due is not disputed; and

(b) the amount due is not paid within 20 days of the date agreed upon for payment.

(2) Proceeds of the sale made under subsection (1) of this section

shall first be used to pay the fees and expenses of the Receiver for custody and safe-keeping of the property salvaged. Any remaining proceeds shall be paid to the person legally entitled to them, or, if in dispute, to the Trial Division of the Supreme Court.

Source: PL 10-76 § 200.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code. The statutory provisions on Judicial Procedure are found in title 6 of this code.

§ 927. Government-owned cargoes and humanitarian cargoes.

(1) Unless a nation recognized by the Federated States of Micronesia owns a vessel and the government of that nation consents, nothing in this chapter shall be construed to provide for the seizure, arrest or detention by any legal process of, nor any proceeding *in rem* against, non-commercial cargoes owned by a government and entitled, at the time of the salvage operations, to sovereign immunity under generally accepted and recognized principles of international law.

(2) Nothing in this chapter shall be construed to provide for the seizure, arrest or detention of humanitarian cargoes donated by a government, if such government has agreed to pay for salvage services rendered in respect of such humanitarian cargoes.

Source: PL 10-76 § 201.

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

§ 928. Limitation of actions.

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(1) Any action brought under this chapter shall be time-barred if judicial proceedings have not been instituted within a period of two years. The limitation period commences on the day on which the salvage operations are terminated or the vessel and any part of the cargo delivered to a safe port.

(2) The person against whom a claim is made may at any time during the running of the limitation period apply to the Supreme Court for an order to extend that period. This period may upon application to the Court be further extended if the Court so orders.

(3) An action of indemnity by a person liable may be instituted even after the expiration of the limitation period provided for in the preceding subsections, if brought within the time allowed by chapter 13 of this title.

Source: PL 10-76 § 202.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code. The statutory provisions on Judicial Procedure are found in title 6 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/>.

CHAPTER 10 Carriage of Goods by Sea

SECTIONS

§ 1001. Application.

§ 1002. Regulations for the carriage of goods by sea.

§ 1003. Bills of lading.

§ 1004. Jurisdiction of Supreme Court over carriage of goods within FSM.

Editor's note: The former provisions of chapters 1 to 12 of this title were repealed in their entirety by PL 10-76 § 1 and replaced by the provisions of PL 10-76, the "National Maritime Act, 1997" codified at chapters 1 to 13 of this title. PL 10-76 took effect April 1, 1998.

§ 1001. Application.

This chapter applies to all goods carried by sea:

- (1) between ports in the Federated States of Micronesia; or
- (2) to the Federated States of Micronesia under a bill of lading:
 - (a) issued in a country which is a party to the Hague-Visby Rules;
 - (b) issued at a port in a country which is a party to the Hague-Visby Rules;
- (3) from the Federated States of Micronesia to a port in a country which is a party to the Hague-Visby Rules; or
- (4) under a contract which states that the provisions of the Hague-Visby Rules are to govern the contract.

Source: PL 10-76 § 204.

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

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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/>.

§ 1002. Regulations for the carriage of goods by sea.

The Secretary may promulgate regulations relating to the carriage of goods by sea, taking into account the provisions of the Hague-Visby Rules.

Source: PL 10-76 § 205.

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

§ 1003. Bills of lading.

Every bill of lading to which section 1001 of this chapter applies shall contain an express statement that it is issued subject to the Hague-Visby Rules.

Source: PL 10-76 § 206.

§ 1004. Jurisdiction of Supreme Court over carriage of goods within FSM.

(1) All bills of lading or other contracts for the carriage of goods from any place within the Federated States of Micronesia to another place within the Federated States of Micronesia shall be interpreted and enforced according to the laws of the Federated States of Micronesia.

(2) The Supreme Court shall have exclusive original jurisdiction over all bills of lading and other contracts for the carriage of goods by sea to which section 1001(1) of this chapter applies.

(3) The Supreme Court shall have jurisdiction over all bills of lading and other contracts for the carriage of goods by sea to which section 1001, subsections (2) and (3) of this chapter apply, and any action brought in the Supreme Court shall be interpreted and enforced in accordance with the laws of the Federated States of Micronesia.

(4) Any bill of lading or other contract to which section 1001 of this chapter applies, which is inconsistent with this section, is null and void.

Source: PL 10-76 § 207.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code. The statutory provisions on Judicial Procedure are found title 6 of this code.

The FSM Supreme Court website contains court decisions, rules, calendar, and other information of the court, the

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

CHAPTER 11
Limitation of Liability

SECTIONS

§ 1101. Regulations for the limitation of liability for maritime claims.

§ 1102. Liability and division of loss.

§ 1103. No presumption of fault.

§ 1104. Maritime claims subject to limitation of liability.

§ 1105. Maritime claims exempted from limitation of liability.

§ 1106. Conduct barring limitation of liability for maritime claims.

§ 1107. The right of limitation of liability.

§ 1108. Constitution of the Limitation of Liability Fund.

Editor's note: The former provisions of chapters 1 to 12 of this title were repealed in their entirety by PL 10-76 § 1 and replaced by the provisions of PL 10-76, the "National Maritime Act, 1997" codified at chapters 1 to 13 of this title. PL 10-76 took effect April 1, 1998.

§ 1101. Regulations for the limitation of liability for maritime claims.

The Secretary may promulgate regulations to implement this chapter, taking into account the provisions of the Limitation of Liability Convention and the Tonnage Convention.

Source: PL 10-76 § 209.

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

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The statutory provisions on Territory, Economic Zones and Ports of Entry are found in title 18 of this code.

§ 1102. Liability and division of loss.

(1) Where two or more vessels cause property damage or loss, liability shall be proportional to the degree of fault, PROVIDED that, if it is not possible to establish degrees of fault, liability shall be apportioned equally.

(2) Where two or more vessels cause loss of life or personal injury to any person, liability shall be joint and several.

(3) Nothing in this section shall affect the right of any person to limit his or her liability in a manner provided by law.

Source: PL 10-76 § 210.

§ 1103. No presumption of fault.

In case of collision, a vessel shall not be deemed at fault solely because the master or person in charge has infringed any provision of the Collisions Convention.

Source: PL 10-76 § 211.

§ 1104. Maritime claims subject to limitation of liability.

(1) Subject to sections 1105, 1106, 1107 and 1108 of this chapter, the following claims, whatever the basis of liability may be, shall be subject to limitation of liability:

(a) claims for loss of life or personal injury or loss of or damage to property (including damage to harborworks, basins and waterways and marine aids to navigation), occurring on board or in direct connection with the operation of the vessel or with salvage operations, and consequential loss resulting therefrom;

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(b) claims for loss resulting from delay in the carriage by sea of cargo, passengers or their luggage;

(c) claims for loss resulting from infringement of rights other than contractual rights, occurring in direct connection with the operation of the vessel or salvage operations;

(d) claims of a person other than the person liable in respect of measures taken in order to avert or minimize loss for which the person liable may limit his or her liability in accordance with the Limitation of Liability Convention, and further loss caused by such measures.

(2) Maritime claims set forth in subsection (1) of this section shall be subject to limitation of liability even if brought by way of recourse or for indemnity under a contract or otherwise; PROVIDED, however, that claims set forth under subsection (1)(d) of this section shall not be subject to limitation of liability to the extent that they relate to remuneration under a contract with the person liable.

Source: PL 10-76 § 212, modified.

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

§ 1105. Maritime claims exempted from limitation of liability.

This chapter shall not apply to:

(1) claims for salvage or contribution to general average;

(2) claims for oil pollution damage within the meaning of the

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International Convention on Civil Liability for Oil Pollution Damage, dated November 29, 1969, or of any amendment or protocol thereto which is in force;

(3) claims subject to any international convention or national legislation governing or prohibiting limitation of liability for nuclear damage;

(4) claims against the owner of a nuclear vessel for nuclear damage;

(5) claims by officers, employees, and agents of the owner or salvor whose duties are directly connected with the operation of the vessel or the salvage operations;

(6) claims in respect of the raising, removal, destruction or the rendering harmless of a vessel which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such vessel; and

(7) claims in respect of the removal, destruction or the rendering harmless of the cargo of the vessel.

Source: PL 10-76 § 213.

§ 1106. Conduct barring limitation of liability for maritime claims.

A person liable for a maritime claim shall not be entitled to limitation of liability under this chapter if it is proved that the loss resulted from the person's personal act or omission, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result.

Source: PL 10-76 § 214.

§ 1107. The right of limitation of liability.

(1) A person may procure the release of a vessel or other property or may limit his or her liability for certain maritime claims as set forth in this chapter, provided that the person:

(a) makes timely application to the Supreme Court to establish the limit of liability, under the procedures set forth in regulations promulgated by the Secretary; and

(b) constitutes a Limitation of Liability Fund.

(2) The act of invoking limitation of liability under this chapter shall not constitute an admission of liability.

(3) An insurer of liability for claims subject to limitation under this chapter shall be entitled to the benefits of this chapter with respect to limitation of liability to the same extent as the assured.

(4) Liability of a person shall include liability in an action brought against the vessel.

Source: PL 10-76 § 215.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code. The statutory provisions on Judicial Procedure are found in title 6 of this code.

§ 1108. Constitution of the Limitation of Liability Fund.

(1) Any person alleged to be liable for a maritime claim who seeks to limit liability for maritime claims may constitute a Limitation of Liability Fund with the Trial Division of the Supreme Court.

(2) The fund shall be constituted in the sum of such amounts set out in regulations as are applicable to claims for which that person

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may be liable, together with interest thereon from the date of the occurrence giving rise to the liability until the date of the constitution of the fund.

(3) Any fund constituted under this chapter shall be available only for the payment of claims in respect of which limitation of liability can be invoked.

(4) A fund may be constituted either by depositing the sum with the Supreme Court, or by lodging with the court an irrevocable letter of credit or other form of security acceptable to the Court.

(5) The Court shall have the power to order the creation, administration and distribution of a Limitation of Liability Fund.

(6) If the Court is satisfied that the fund is properly constituted, freely transferable, and in the sum set out in regulations, it may release the vessel from arrest.

(7) If the Court is satisfied that the fund has been properly constituted, is freely transferable and in the sum set out in regulations, any person having made a claim against the fund shall be barred from exercising any right against any other assets of the person constituting the fund.

Source: PL 10-76 § 216.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code. The statutory provisions on Judicial Procedure are found in title 6 of this code.

The constitutional provision on the jurisdiction of the Trial Division of the FSM Supreme Court is found in Art. XI, § 6 of the Constitution. The provisions of the Constitution are

found in Part I 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/>.

CHAPTER 12
Safety of Navigation

SECTIONS

§ 1201. Regulations for the safety of navigation.

§ 1202. Application.

§ 1203. Offenses against safety of navigation.

§ 1204. Enforcement authority.

§ 1205. Jurisdiction of the Supreme Court.

Editor's note: The former provisions of chapters 1 to 12 of this title were repealed in their entirety by PL 10-76 § 1 and replaced by the provisions of PL 10-76, the "National Maritime Act, 1997" codified at chapters 1 to 13 of this title. PL 10-76 took effect April 1, 1998.

§ 1201. Regulations for the safety of navigation.

The Secretary may promulgate regulations to implement this chapter, taking into account the provisions of the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, Rome 1988.

Source: PL 10-76 § 218.

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

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Ports of Entry are found in title 18 of this code.

§ 1202. Application.

(1) This chapter shall apply to:

(a) all vessels navigating or scheduled to navigate into, through or from waters beyond the outer limits of the waters of the Federated States of Micronesia or the lateral limits thereof with adjacent countries;

(b) any person found in the waters of the Federated States of Micronesia to have committed or alleged to have committed any of the offenses set forth in section 1203 of this chapter.

(2) This chapter shall also apply when any of the offenses set forth in section 1203 of this chapter is committed:

(a) against or on board a Registered Vessel; or

(b) within the Federated States of Micronesia, including the waters of the Federated States of Micronesia; or

(c) by a citizen or national of the Federated States of Micronesia.

(3) This chapter shall further apply when:

(a) any of the offenses set forth in section 1203 of this chapter has been committed by a stateless person whose habitual residence is within the Federated States of Micronesia; or

(b) during the commission of any of the offenses set forth in section 1203 of this chapter a citizen or national of the

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Federated States of Micronesia is seized, threatened, injured or killed; or

(c) any of the offenses set forth in section 1203 of this chapter is committed in an attempt to compel the Government to do or abstain from doing any act.

(4) This chapter does not apply to:

(a) a vessel belonging to the defense forces of any nation;

(b) a vessel owned or operated as a naval auxiliary or for customs or police purposes; or

(c) a vessel which has been withdrawn from navigation or laid up.

(5) Nothing in this chapter shall affect the immunities of warships and other government vessels operated for non-commercial purposes.

Source: PL 10-76 § 219.

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

§ 1203. Offenses against safety of navigation.

(1) A person commits a national offense if that person unlawfully and intentionally:

(a) seizes or exercises control over a vessel by force or threat thereof or any other form of intimidation; or

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(b) performs an act of violence against a person on board a vessel if that act is likely to endanger the safe navigation of that vessel; or

(c) destroys a vessel or causes damage to a vessel or to its cargo which is likely to endanger the safe navigation of that vessel; or

(d) places or causes to be placed on a vessel, by any means whatsoever, a device or substance which is likely to destroy that vessel, or causes damage to that vessel or its cargo which endangers or is likely to endanger the safe navigation of that vessel; or

(e) destroys or seriously damages maritime navigational facilities or seriously interferes with their operation, if any such act is likely to endanger the safe navigation of a vessel; or

(f) communicates information which that person knows to be false, thereby endangering the safe navigation of a vessel; or

(g) injures or kills any persons in connection with the commission or the attempted commission of any of the offenses set forth in paragraphs (a) through (f) of this subsection.

(2) A person shall also commit a national offense if that person:

(a) attempts to commit any of the offenses in subsection (1) of this section; or

(b) abets the commission of any of the offenses set forth in subsection (1) of this section perpetrated by any person or

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is otherwise an accomplice of a person who commits such an offense; or

(c) threatens to compel a physical or juridical person to do or refrain from doing any act, to commit any of the offenses set forth in subsection (1), paragraphs (b), (c) and (e), if that threat is likely to endanger the safe navigation of the vessel in question.

(3) Anyone who commits an offense under this section commits a national offense and shall be punished:

(a) with imprisonment for not less than 20 years; or

(b) if the death of another person results from the commission or attempted commission of the offense, with imprisonment for life.

Source: PL 10-76 § 220, modified.

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

§ 1204. Enforcement authority.

(1) For the purpose of ascertaining whether there is or has been any contravention of this title or any regulations promulgated hereunder, any authorized officer may:

(a) upon the issuance of a warrant, enter any vessel or small craft; or

(b) stop, board and search any vessel or small craft within the waters of the Federated States of Micronesia.

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(2) Where an authorized officer has reasonable cause to believe that an offense against the provisions of this title or any regulations made under this title has been committed, the authorized officer may, with or without a warrant or other process:

(a) following hot pursuit in accordance with international law and commenced within the waters of the Federated States of Micronesia, stop, board, and search inside or outside the waters of the Federated States of Micronesia, any vessel or small craft which he believes has been used in the commission of that offense and bring such vessel or small craft and all persons and things on board within the waters of the Federated States of Micronesia;

(b) within the waters of the Federated States of Micronesia:

(i) arrest any person if he has reasonable cause to believe that such person has committed an offense prohibited by this title; and

(ii) seize any vessel or small craft used or employed in, or when it reasonably appears to have been used or employed in, the violation of any provision of this title or any regulations issued under this title.

(3) Any authorized officer may execute any warrant or other process issued by any court of competent jurisdiction.

(4) Any authorized officer may exercise any other lawful authority for the enforcement of this title and any regulations issued under this title.

Source: PL 10-76 § 221.

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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/>.

§ 1205. Jurisdiction of the Supreme Court.

The Supreme Court shall have jurisdiction over and prosecute any offenses which:

- (1) are committed against or on board a vessel flying the flag of the Federated States of Micronesia when the offense is committed;
- (2) are committed in the waters of the Federated States of Micronesia;
- (3) are committed by a citizen or national of the Federated States

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of Micronesia;

(4) are committed by a stateless person whose habitual residence is in the Federated States of Micronesia;

(5) involve the seizure, threat to, injury or death of a national or citizen of the Federated States of Micronesia; and

(6) are committed in an attempt to compel the Federated States of Micronesia to do or abstain from doing any act.

Source: PL 10-76 § 222.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code. The statutory provisions on Judicial Procedure are found in title 6 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/>.