

FSMC, TITLE 24. MARINE RESOURCES

Chapter 1: General Provisions

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§ 101. Statement of purpose.

The resources of the sea around the Federated States of Micronesia are a finite but renewable part of the physical heritage of our people. As the Federated States of Micronesia has only limited land-based resources, the sea provides the primary means for the development of economic viability which is necessary to provide the foundation for political stability. The resources of the sea must be managed, conserved, and developed for the benefit of the people living today and for the generations of citizens to come. For this reason the harvesting of this resource, both domestic and foreign, must be monitored, and when necessary, controlled. The purpose of this title is to promote conservation, management, and development of the marine resources of the Federated States of Micronesia, generate the maximum benefit for the Nation from foreign fishing, and to promote the development of a domestic fishing industry.

Source: COM PL 7-71 § 1; TT Code 1980, 52 TTC 1; PL 6-11 § 1.

Editor's note: The provisions of this chapter apply to sections 101 through 107 of title 18 of this code, which were enacted as part of PL 7-71.

§ 102. Definitions.

As used in this title the term:

(1) “Administrator” means the director of a regional fisheries agency or any other organization or person authorized, pursuant to section 106 of this title, to administer a regional fisheries treaty.

(2) “Applicable laws” means those laws affecting marine resources from time to time identified by the Authority by regulation.

(3) “Atoll” means a naturally formed coral reef system which has one or more islands situated on the reef system, including Ngulu, Ulithi, Sorol, Eauripik, Woleai, Faraulep, Ifalik, Olaimarao, Elato, Lamotrek, West Fayu, Polowat, Pulap, Houk, Namonuito, Kuop, Nomowin, Murilo, Losap, Namoluk, Satawan, Etal, Lukunor, Minto Reef, Oroluk, Nukuoro, Kapingamarangi, Pakin, Ant, Sapwuahfik, Mwoakiloa, and Pingelap.

(4) “Authority” means the Micronesian Fisheries Authority established by section 301 of this title.

(5) “Authorized observer” means any person authorized in writing by the Authority to act as an observer on foreign fishing vessels, including any observer authorized pursuant to a regional fisheries treaty to be an authorized observer for purposes of this title.

(6) “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 Secretary of Justice to be an authorized officer for the purposes of this title.

(7) “Based in the Federated States of Micronesia” means using land-based facilities in the Federated States of Micronesia to support fishing, including location of the home port of a vessel in the Federated States of Micronesia, selling all fish for processing within the Federated States of Micronesia, transshipping all fish harvested within the Exclusive Economic Zone, and basing operations in the Federated States of Micronesia while operating in the Exclusive Economic Zone.

(8) “Commercial pilot fishing” means any fishing for the purpose of testing the commercial viability of:

(a) new fishing methods;

(b) developing new stocks of fish; or

(c) fishing in previously unexploited areas.

(9) “Court” means the Supreme Court of the Federated States of Micronesia.

(10) “Drift net” means a gillnet or other net or a combination of nets which is more than 2.5 kilometers in length the purpose of which is to enmesh, entrap or entangle fish by drifting on the surface of or in the water.

(11) “Drift net fishing activities” means:

(a) catching, taking or harvesting fish with the use of a drift net;

(b) attempting to catch, take or harvest fish with the use of a drift net;

(c) engaging in any other activity which can reasonably be expected to result in the catching, taking or harvesting of fish with the use of a drift net, including searching for and locating fish to be taken by that method;

(d) any operations at sea in support of, or in preparation for any activity described in this paragraph, including operations of placing, searching for or recovering fish aggregating devices or associated electronic equipment such as radio beacons;

(e) aircraft use, relating to the activities described in this paragraph, except for flights in emergencies involving the health or safety of crew members or the safety of a vessel; or

(f) transporting, transshipping and processing any drift net catch, and cooperation in the provision of food, fuel and other supplies for vessels equipped for or engaged in drift net fishing.

(12) “Domestic-based fishing” means any fishing by foreign fishing vessels based in the Federated States of Micronesia, but not including commercial pilot fishing.

(13) “Domestic-based fishing agreements” means an agreement between the Government of the Federated States of Micronesia and one or more persons to permit domestic-based fishing within the Exclusive Economic Zone.

(14) “Domestic-based party” means a party to a domestic-based fishing agreement other than the Government of the Federated States of Micronesia or a State.

(15) “Domestic fishing” means any fishing by local fishing vessels longer than twenty-seven feet in overall length, but not including commercial pilot fishing.

(16) “Exclusive Economic Zone” means the exclusive economic zone defined in title 18 of the Code of the Federated States of Micronesia.

(17) “Executive director” means the executive director of the Micronesian Fisheries Authority.

(18) “Fish” means any living marine resource.

(19) “Fish aggregating device” means any manmade or partly manmade floating device, whether anchored or not, intended for the purpose of aggregating fish, and includes any floating object on a device which has been placed to facilitate its location.

(20) “Fishery” means any fishing for stocks of fish.

(21) “Fishery waters” means the Exclusive Economic Zone, the Territorial Sea, and internal waters as described in title 18 of the Code of the Federated States of Micronesia, and any other waters within the jurisdiction of the Federated States of Micronesia.

(22) “Fishing” means:

(a) the actual or attempted searching for, catching, taking, or harvesting of fish;

(b) any other activity which can reasonably be expected to result in the locating, catching, taking, or harvesting of fish;

(c) the placing, searching for, or recovery of fish aggregating devices or associated electronic equipment such as radio beacons;

(d) aircraft use relating to the activities described in this subsection, except for flights in emergencies involving the health or safety of crew members or the safety of a vessel;

(e) transshipping fish to or from any vessel;

(f) storing, processing or transporting fish harvested within the fishery waters;

(g) refueling or supplying fishing vessels; or

(h) any operations at sea in support of or in preparation for any activity described in this subsection.

(23) “Fishing gear” means any equipment, implement or other thing that can be used in the act of fishing, including any fishing net, rope, line, float, trap, hook, winch, boat carried on board a fishing vessel, aircraft or helicopter.

(24) “Fishing vessel” means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type that is normally used for:

(a) fishing;

(b) aiding or assisting one or more vessels at sea in the performance of any activity related to fishing, including, but not limited to preparation, supply, storage, refrigeration, transportation, or processing.

(25) “Foreign fishing” means any fishing not defined as domestic fishing or domestic-based fishing, but not including commercial pilot fishing or fishing from a local fishing vessel less than or equal to twenty-seven feet in overall length.

(26) “Foreign fishing agreement” means an agreement between the Authority on behalf of the Government of the Federated States of Micronesia and one or more foreign fishing interests to permit foreign vessels to harvest fish within the Exclusive Economic Zone.

(27) “Foreign fishing vessel” means any fishing vessel not defined as a local fishing vessel.

(28) “Foreign party” means a party to a foreign fishing agreement other than the Authority, the Government of the Federated States of Micronesia or a State government.

(29) “Foreign recreational fishing” means fishing by a foreign fishing vessel for recreational or sport purposes.

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

(31) "Living marine resource" means all forms of marine animal and plant life other than marine birds and includes, finfish, mollusks, and crustaceans.

(32) "Local fishing vessel" means any fishing vessel wholly owned and operated by one or more of the following:

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

(b) any citizen of the Federated States of Micronesia;

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

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

(33) "Operator" means any person who is in charge of, directs, or controls a vessel, including the owner, charterer, or the master.

(34) "Pacific Island States" means the parties to the South Pacific Forum Fisheries Agency Convention, 1979.

(35) "Permit" means the document authorizing fishing within all or part of the Exclusive Economic Zone issued pursuant to section 111 of this title or pursuant to a treaty, or any agreement or arrangement entered into pursuant to section 106 of this title.

(36) "Person" means any individual, corporation, partnership, association, or other entity, the Government of the Federated States of Micronesia or any of the States, or any political subdivision thereof, and any foreign government, subdivision of such government, or entity thereof.

(37) "Regional fisheries treaty" means a treaty between the governments of certain Pacific Island States and governments, bodies or organizations of foreign States other than Pacific Island States that relates to fishing in the waters of the Pacific Island States and has entered

into force according to its terms, and has been ratified by the Congress of the Federated States of Micronesia.

(38) “Regional fishing license” means a regional fishing license issued to a foreign fishing vessel pursuant to a regional fisheries treaty.

(39) “State” means any of the States of the Federated States of Micronesia.

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

Source: COM PL 7-71 § 1; PL IC-3 §§ 1-4; TT Code 1980, 52 TTC 2; PL 1-34 § 1; PL 5-37 § 1; PL 6-11 § 2; PL 9-47 § 1; PL 11-57 § 1, modified.

Editor’s note: Subsections (2) through (38) were misnumbered in PL 6-11. They were subsequently renumbered in PL 9-47 § 1.

§ 103. Fishing permits required — Commercial.

No domestic, domestic-based, commercial pilot, or foreign fishing is permitted in the exclusive economic zone except:

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

(2) By a regional or multilateral license issued pursuant to a treaty or agreement entered into under the authority provided in section 106 of this chapter.

Source: PL 6-11 § 4.

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

§ 104. Fishing permits required — Noncommercial.

No scientific research, training, or foreign recreational fishing is permitted in the exclusive economic zone except by a valid and applicable permit issued by the Authority on such reasonable terms and conditions as it shall require.

Source: PL 6-11 § 5.

Case annotations: Conditions on commercial fishing permits issued by the Micronesian Maritime Authority need not be “reasonable” as with recreational permits. FSM v. Kotobuki Maru No. 23 (I), 6 FSM Intrm. 65, 73 (Pon. 1993).

§ 105. Stowage of fishing gear.

All fishing gear aboard a fishing vessel in the exclusive economic zone shall be stowed in such a manner that it is not readily available for use in fishing, except when such fishing vessel is in an area in which it is authorized to fish in accordance with this title.

Source: PL 6-11 § 6.

Case annotations: A defendant cannot be held criminally liable for failure to properly stow all fishing gear aboard a vessel in such a manner that it would not be readily available for use in fishing when the vessel was in an area in which it was authorized to fish. FSM v. Cheng Chia-W (II), 7 FSM Intrm. 205, 215 (Pon. 1995).

§ 106. Authority to enter into regional, bilateral, and multilateral fisheries agreements.

(1) Notwithstanding any other provisions of this title, the Authority may enter into agreements or arrangements, pursuant to a regional, bilateral, or multilateral fisheries treaty, agreement or arrangement with other governments to provide for:

(a) authorization of a person, body or organization to perform functions required by such a treaty, agreement or arrangement, including but not limited to, the issuance of regional fishing licenses; and

(b) an observer program.

(2) For the purpose of giving effect to a regional, bilateral, or multilateral fisheries treaty, agreement or arrangement, the Authority may adopt regulations to:

(a) exempt any foreign fishing vessel holding a valid regional, multilateral, or bilateral fishing license issued pursuant to a regional, bilateral, or multilateral fisheries treaty, agreement, or arrangement from any requirements of this title which are inconsistent with the terms of such treaty, agreement or arrangement;

(b) prescribe the conditions to be observed by operators of foreign fishing vessels exempted under paragraph (a) of this subsection; and

(c) authorize observers designated and pursuant to an observer program entered into pursuant to subsection (1)(b) of this section to:

(i) enforce the provisions of this title and any regional fisheries treaty, agreement or arrangement on behalf of the Federated States of Micronesia; and

(ii) perform such duties and responsibilities as may be required by such agreement.

(3) With respect to any observer program entered into pursuant to subsection (1)(b) of this section, standing in the Supreme Court of the Federated States of Micronesia shall be afforded to any authorized observer or the Federated States of Micronesia to bring action against any person or fishing vessel for any act or offense that is actionable under the law of the Federated States of Micronesia or is a violation of the treaty, agreement or arrangement pursuant to which the observer was authorized, which has occurred on the high seas, notwithstanding the nationality of the observer.

Source: PL 6-11 § 7.

Cross-reference: The statutory provisions on Foreign Relations are found in title 10 of this code.

§ 107. Authority to enter into domestic-based and foreign fishing agreements.

The Authority is authorized to negotiate and enter into such domestic-based and foreign fishing agreements as may be required to implement this title. Such agreements may, at the Authority's discretion, include a provision to rebate fees under such circumstances as are consistent with this title and the Authority deems appropriate.

Source: PL 6-11 § 8.

Case annotations: A vessel defined as a foreign fishing vessel for permitting purposes must enter into a foreign fishing agreement prior to receiving any fishing permits. *Katau Corp. v. Micronesian Maritime Auth.*, 6 FSM Intrm. 621, 623 (Pon. 1994).

Because the Micronesian Maritime Authority has discretion in negotiating and entering into foreign fishing agreements and because statutorily a fishing permit cannot be issued without a signed agreement a court cannot issue a writ of mandamus to compel issuance of a fishing permit because it cannot order performance of a statutorily forbidden act. *Katau Corp. v. Micronesian Maritime Auth.*, 6 FSM Intrm. 621, 624 (Pon. 1994).

§ 108. Allowable levels of fishing.

(1) The Authority may determine the total allowable level of fishing with respect to any stock of fish subject to the provisions of this title, and shall set such level in accordance with requirements of optimum sustainable yield as determined by:

(a) the scientific evidence available, including statistical and other information concerning such stocks of fish; and

(b) conservation, management and development measures contained in management plans relating to such stocks of fish.

(2) Allocations of the total allowable level of fishing with respect to any stock of fish shall be made first to domestic fishing vessels seeking permits, then to domestic-based fishing vessels, with any remaining allowable level of fishing allocated to foreign fishing vessels.

(3) Allocations issued pursuant to this title may include restrictions as to vessel type, gear type, seasons of operations, areas in which the fishing can take place, or any other restriction relevant to conservation, management, and development.

Source: PL 6-11 § 9.

§ 109. Application for permit — Contents.

(1) Each party entitled to apply for a permit under this title shall make application on prescribed forms specifying:

(a) the name, official number, and other identification of each fishing vessel for which a permit is sought, together with the name and address of the owner and operator thereof;

(b) the tonnage, capacity, processing equipment, and such other pertinent information with respect to characteristics of each such vessel as the Authority may require;

(c) the country of registration of the vessel; and

(d) if applicable, the foreign fishing agreement or domestic-based fishing agreement under which such permit is sought.

(2) The Authority may require, by regulation, such additional information for permit applications by foreign parties or domestic-based parties as is necessary to implement and enforce the provisions of this title.

Source: PL 6-11 § 10.

Case annotations: A party entitled to apply for a fishing permit must file an application on prescribed forms; otherwise the Micronesian Maritime Authority cannot issue a fishing permit. An applicant may be given an opportunity to cure any defects in a filed permit application. *Katau Corp. v. Micronesian Maritime Auth.*, 6 FSM Intrm. 621, 625 (Pon. 1994).

§ 110. Application for permit — Review.

The Authority, or such person as it may designate by regulation, shall review each application submitted pursuant to section 109 of this chapter, and may, in its discretion solicit views from appropriate persons in the States and hold public hearings where necessary.

Source: PL 6-11 § 11, modified.

§ 111. Application for permit — Issuance and denial.

(1) The Authority shall notify the applicant of the decision to issue or deny a permit within 30 days of the date of receipt of the application. If no such notification is given within 30 days, the request for a permit is deemed granted.

(2) The Authority may approve the application on such terms and conditions and with such restrictions as it deems appropriate.

(3) A permit may be denied:

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

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

(c) where the owner or charterer is the subject of proceedings under the bankruptcy laws of any jurisdiction and reasonable financial assurances have not been provided;

(d) where there has been a failure to satisfy a judgment or other determination for breach of this title or an agreement entered into pursuant to this title by the operator of the vessel in respect to which application for a permit has been made, until such time as the judgment or other determination is satisfied;

(e) where an operator of the vessel has contravened, or the vessel has been used for contravention of a fishing agreement, or has committed an offense against the laws of the Federated States of Micronesia; or

(f) where the Authority determines that the issuance of a permit would not be in the best interests of the Federated States of Micronesia.

(4) A permit shall be denied:

(a) where the Authority determines that the permit would authorize foreign fishing or domestic-based fishing on, over, or within one nautical mile of the edge of a coral reef that is wholly submerged at mean high tide within the exclusive economic zone; or

(b) where the Authority determines that the permit would authorize fishing on, over, or within one nautical mile of the edge of a coral reef that is wholly submerged at mean high tide within the exclusive economic zone, and that subsection (a) of this section does not apply to the permit application; and

(i) the Authority has submitted a copy of the application to the State, to the customary inhabitants of which, the authority to control the fishing over such reef has been traditionally ascribed. The Authority shall have the power to prescribe by regulation the ascription of such reefs to each of the States. For the purposes of this subsection (b), the State shall mean the Governor thereof, and the councils of traditional leaders established by law having the constitutional authority to affect the enactment of State legislation; and

(ii) within 30 days of such submission, the State, or any constituent part thereof, has communicated in writing to the Authority its objection to the issuance of the permit with respect to the reef or reefs traditionally ascribed to its customary inhabitants.

(c) where the Authority determines that the permit would authorize fishing with or by means of the use of a drift net or gill net or other substantially similar method of catching fish.

(5) If the Authority denies an application submitted by an applicant, the Authority shall notify such applicant of the disapproval and the reasons therefore. The applicant may then submit a revised application taking into consideration the reasons for disapproval.

Source: PL 6-11 § 12, PL 7-22 § 1.

§ 112. Suspension, revocation, or imposition of restrictions on a permit.

If any fishing vessel for which a permit has been issued pursuant to section 111 of this chapter has been used in the commission of any act prohibited by this title or other applicable law, an applicable domestic-based or foreign fisheries agreement or any permit issued in accordance with this title, or if any civil penalty or criminal fine imposed under this title has not been paid within 30 days, the Authority shall:

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

(2) Suspend such permit for the period of time deemed appropriate; or

(3) Impose additional conditions and restrictions on any permit issued pursuant to this title.

Source: PL 6-11 § 13, modified.

§ 113. Fees for scientific research, training, commercial pilot, and foreign recreational fishing permits.

Fees for scientific research, training, commercial pilot, and foreign recreational fishing shall be established pursuant to regulations issued by the Authority.

Source: PL 6-11 § 14.

§ 114. Rebate of fees.

The Authority may accept all or a portion of the fee paid under a domestic-based or foreign fishing agreement pending rebate pursuant to the agreement. That portion of a fee that is subject to rebate shall be held in a separate trust account maintained by the Secretary of Finance until rebated to the foreign or domestic-based fishing venture or paid into the General Fund, or its successor, pursuant to the terms of the agreement.

Source: PL 6-11 § 15.

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

In the case of fees paid as goods or services rather than money, the Authority shall submit a proposed division of such goods or services to the Congress of the Federated States of Micronesia for its approval by resolution while in session, and by the Committee on Ways and Means of the Congress of the Federated States of Micronesia between sessions. If the

Congress does not approve a division of such goods and services within 60 days of the submission of a proposed division of such fees by the Authority, the proposed division shall be deemed approved.

Source: PL 6-11 § 16.

§ 116. Reporting requirements.

(1) The master of each foreign fishing vessel issued a permit or which is permitted to fish pursuant to a treaty or any agreement or arrangement referred to in section 106 of this chapter shall at all times while the vessel is in the fishery waters, cause to be maintained in the English language a fishing log in a form supplied or approved by the Authority, and shall enter the following information relating to the activities of the vessel on a daily basis:

(a) The gear type used;

(b) The noon position of the vessel and, where applicable, the set location and time;

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

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

(e) Such other information as the Authority may prescribe by regulation or as may be required by an applicable treaty, agreement, or arrangement.

(2) The original log form described in subsection (1) of this section shall be sent to the Authority by registered airmail within 30 days of entry of the vessel into port at the completion of the relevant trip, or as provided in the applicable treaty, agreement, or arrangement.

(3) The owner or operator of a local fishing vessel longer than 27 feet in overall length shall maintain a fishing log in a prescribed form issued by the Authority, in which he shall enter the following information relating to the activities of the vessel on each fishing day:

(a) the type of gear used;

(b) time and location where such fishing activities have taken place;

(c) species of fish taken and quantity of each species by weight and number as may be specified in a form issued by the Authority; and

(d) such other information as the Authority may require in a specified form.

(4) The owner or operator referred to in subsection (3) of this section shall send by registered mail or deliver such fishing logs to the Authority within seven days of the end of each calendar month's activities, or within seven days of entry of the vessel into port at the completion of a trip lasting longer than 14 days.

(5) The Authority, by regulation, may prescribe such other reporting requirements as may be required for the conservation and management of marine resources and to enforce the provisions of this title.

Source: PL 6-11 § 17, modified.

§ 117. Authority to issue State permits.

If authorized by appropriate State law, the Authority may issue permits for fishing in the Territorial Sea or internal waters in accordance with State law. Any fees collected for fishing within the Territorial Sea or internal waters shall be transferred to the State for which the permit was granted.

Source: PL 6-11 § 18.

§ 118. Authority to appoint observers.

Pursuant to regulations issued by the Authority, the executive director may appoint, in writing, any person to be an authorized observer.

Source: PL 6-11 § 19.

§ 119. Application of other laws.

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

Source: PL 6-11 § 20.

§ 120. Severability.

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

Source: PL 7-71 § 5 (uncodified); PL 6-11 § 21.

FSMC, TITLE 24. MARINE RESOURCES

Chapter 2: Domestic Fishing

§ 201. Registration fee for domestic fishing permits.

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

§ 201. Registration fee for domestic fishing permits.

A registration fee of up to \$25 may be charged for a domestic fishing permit.

Source: PL 6-11 § 22.

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

The Authority may allocate that portion of the optimum sustainable yield allocated to domestic fishing vessels among domestic fishing vessels, if unrestricted fishing by domestic fishing vessels would otherwise result in a catch level exceeding the optimum sustainable yield. In determining the allocation, the Authority shall take into consideration:

(1) The extent to which each vessel or operator of such vessel has historically fished in a particular area;

(2) The extent to which each vessel or operator of such vessel is advancing the development of a fishing industry in the Federated States of Micronesia;

(3) The extent to which each vessel or operator of such vessel has historically fished for a particular regulated species;

(4) The extent to which each vessel or operator of such vessel submits information for the conservation, management, and development of stocks of fish;

(5) The extent to which each vessel or operator of such vessel has traditional rights to fishing in an area; and

(6) Such other factors as the Authority deems appropriate.

Source: PL 6-11 § 23.

FSMC, TITLE 24. MARINE RESOURCES

Chapter 3: Management Authority

§ 301. Micronesian Fisheries Authority Established.

§ 302. Authority; Regulations.

§ 303. Duties and functions.

§ 304. Executive director.

§ 305. Compensation.

§ 306. Annual report.

§ 301. Micronesian Fisheries Authority Established.

(1) There is established a Micronesian Fisheries Authority composed of five members appointed as follows:

(a) one representative of each State appointed by the President of the Federated States of Micronesia, in consultation with the Governor and with the advice and consent of the Congress as provided in article X, section 2(d) of the Constitution; PROVIDED, however, that no such representative shall also serve as a member of the Board of Directors of the National Fisheries Corporation of the Federated States of Micronesia, or any subsidiary or affiliate thereof, during the term of his membership on the Authority; and

(b) one at-large member appointed by the President of the Federated States of Micronesia, with the advice and consent of the Congress, as provided in article X, section 2(d) of the Constitution.

(2) All appointments shall be for a term of two years. The term of office of each original member shall commence effective the date of the first meeting of the Authority after the effective date of this act. Upon the expiration of the term of an appointed member, his rights and powers of membership shall lapse and the executive director shall declare the vacancy

and notify the President of the Federated States of Micronesia in writing of such vacancy. Vacancies occurring before the expiration of a member's term shall be filled in the same manner as the original appointment for the remainder of the term of office of the vacancy.

(3) The chairman shall be chosen by the majority vote of the members of the Authority. The Authority shall meet at such times and places as may be designated by the chairman or by the Authority. The Authority shall adopt its own rules of procedure and regulations by majority vote.

Source: COM PL 7-71 § 1; PL IC-3 § 9; TT Code 1980, 52 TTC 101(1); PL 1-34 § 6; PL 3-10 § 1; PL 6-11 § 24; PL 11-57 § 2.

Editor's note: PL 11-57 contained a transition clause that read as follows:

Section 3. Nothing in this act shall be deemed to do away with, abrogate, or invalidate any act or transaction of the Authority made in reference to its previous name, after the effective date of this act. Any reference to the prior name of Micronesian Maritime Authority in any other law, communication, document, record, agreement, and so forth, shall mean, or be construed as referring to, the Micronesian Fisheries Authority. To this end, such acts, transactions, documents, or references shall be valid as acts, transactions, or documents of, or references to, the Micronesian Fisheries Authority.

§ 302. Authority; Regulations.

(1) The Authority shall have the following authority:

(a) to adopt regulations for the conservation, management, and exploitation of fish in the exclusive economic zone;

(b) to conclude foreign and domestic-based fishing agreements in accordance with sections 401 and 406 of this title;

(c) to issue domestic, domestic-based, and foreign fishing permits in accordance with procedures prescribed by the Authority or regulations promulgated pursuant to subsections (1)(a) and (2) of this section; and

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

(2) Regulations adopted by the Authority shall have the full force and effect of law.

Source: COM PL 7-71 § 1; PL IC-3 § 9; TT Code 1980, 52 TTC 101(1); PL 1-34 § 6; PL 3-10 § 2; PL 6-11 § 25.

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

§ 303. Duties and functions.

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

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

(2) to negotiate domestic-based and foreign fishing agreements in accordance with sections 404 and 406 of this title;

(3) to issue permits for fishing in the Territorial Sea or internal waters of a State as authorized pursuant to section 117 of this chapter;

(4) to submit its budget and a report regarding the expenditure of its funds to the Congress each regular session for review; and

(5) to perform such other duties and functions as may be necessary to carry out the purposes of this title.

Source: COM PL 7-71 § 1; PL 7-134 § 1; TT Code 1980, 52 TTC 101(2); PL 1-34 § 7; PL 3-10 § 3; PL 6-11 § 26.

Editor's note: Section 107 of title 18 that is referred to in subsection (1) of this section is currently on Regulations. Former section 107 was on Delimitation and read as follows:

“§ 107. Delimitation.

(1) The Government of the Federated States of Micronesia and the United States Government shall cooperate in the delimitation of the Micronesian extended fishery zone when it overlaps a zone of national jurisdiction of another nation.

(2) The boundary between the extended fishery zone established herein and the fishery zones of Palau and the Marshall Islands shall be established by agreement between the Government of the Federated States of Micronesia and the Governments of Palau and the Marshall Islands.”

§ 304. Executive director.

The Authority shall employ a full-time executive director possessing such qualifications as may be established by the Authority. The Authority may employ such other staff as it may deem necessary.

Source: COM PL 7-71 § 1; PL 7-134 § 1; TT Code 1980, 52 TTC 101(3); PL 1-34 § 8.

§ 305. Compensation.

(1) Members of the Authority who are neither employees nor officials of the Government of the Federated States of Micronesia or any State government shall be compensated at the rate of \$35 dollars per day when actually on the business of the Authority.

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

(3) The executive director shall receive a remuneration for his services, the amount of which shall be fixed by the Authority in consonance with the pertinent provisions of the current annual budget of the Government of the Federated States of Micronesia. The executive director shall serve at the pleasure of the Authority and shall be exempt from the provisions of the National Public Service System Act, section 111 et seq. of title 52 of this code.

Source: COM PL 7-71 § 1; COM PL 7-134 § 1; PL IC-3 § 9; TT Code 1980, 52 TTC 101(4); PL 1-34 § 9; PL 3-10 § 4; PL 6-11 § 27.

Cross-reference: Title 52 of this code is on Public Employment.

§ 306. Annual report.

The chairman of the Authority shall report on its activities to the President of the Federated States of Micronesia, the Speaker of the Congress of the Federated States of Micronesia, and

each State governor by December 1 of each year, which report shall contain a detailed accounting of the expenditure of funds of the Authority, the number of permits and licenses issued, the fees, forfeitures, and fines collected, estimates of the effect of the current level of fishing on the stock of fish in the exclusive economic zone, and such other information regarding the implementation of this title in the preceding fiscal year as the Authority may determine.

Source: COM PL 7-71 § 1; COM PL 7-134 § 1; PL IC-3 § 9; TT Code 1980, 52 TTC 101(5); PL 3-10 § 5; PL 6-11 § 28.

FSMC, TITLE 24. MARINE RESOURCES

Chapter 4: Foreign Fishing

- § 401. Foreign fishing agreements — Required.
- § 402. Fees for foreign fishing permits.
- § 403. Allocation of allowable fishing among foreign fishing vessels.
- § 404. Foreign fishing agreements — Terms.
- § 405. Approval of foreign and domestic-based fishing agreements.
- § 406. Domestic-based fishing agreements.
- § 407. Allocation of allowable fishing between domestic-based fishing vessels.
- § 408. Agreements affecting state waters.

§ 401. Foreign fishing agreements — Required.
No foreign fishing vessel shall be issued a permit to fish in the exclusive economic zone without having entered into a foreign fishing agreement.

Source: COM PL 7-71 § 1; TT Code 1980, 52 TTC 152(1); PL 6-11 § 30.

Cross-reference: For the definition of “foreign fishing,” see section 102(23) of this title; for provisions on the exclusive economic zone, see section 104 of title 18.

Case annotations: While the FSM and Pohnpei foreign fishing statutes pose no specific requirements as grounds for the search of a fishing vessel, the power to seize is carefully conditioned upon illegal use of the vessel. *Ishizawa v. Pohnpei*, 2 FSM Intrm. 67, 75 (Pon. 1985).

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

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

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

Negotiations between FSM Nat'l Government and a U.S. owned fishing vessel reflect the new role of the national government and the methods by which the people of the Federated States of Micronesia govern their relations with other members of the community of nations. In this context, it is entirely appropriate to draw on principles of common law for guidance. *FSM v. Ocean Pearl*, 3 FSM Intrm. 87, 91 (Pon. 1987).

Regulation of the Exclusive Economic Zone rests exclusively with the Micronesian Maritime Authority, 24 FSMC 301-02. *FSM v. Kotobuki Maru No. 23 (I)*, 6 FSM Intrm. 65, 69 (Pon. 1993).

To the extent that the state is unable to police its waters and enforce its fishing regulations of its own, the national government has an obligation to provide assistance. However, to the extent that the national government must provide assistance, the power to regulate state waters is beyond the state's control and is in fact a concurrent national power. *FSM v. Kotobuki Maru No. 23 (I)*, 6 FSM Intrm. 65, 73 (Pon. 1993).

The issue of whether all vessels in a purse seiner group can be held liable for the illegal fishing of one of the vessels inside the twelve mile territorial sea is not reached when there is insufficient evidence to prove by a preponderance of the evidence that one vessel was searching for fish inside the twelve mile limit. *FSM v. Kotobuki Maru No. 23 (II)*, 6 FSM Intrm. 159, 165 (Pon. 1993).

The regulation of foreign commercial fishing in state waters — within a limit of 12 miles, is a matter of state law. *Pohnpei v. M/V Zhong Yuan Yu #606*, 6 FSM Intrm. 464, 465 (Pon. 1994).

A vessel defined as a foreign fishing vessel for permitting purposes must enter into a foreign fishing agreement prior to receiving any fishing permits. *Katau Corp. v. Micronesian Maritime Auth.*, 6 FSM Intrm. 621, 623 (Pon. 1994).

Because Micronesian Maritime Authority has discretion in negotiating and entering into foreign fishing agreements and because statutorily a fishing permit cannot be issued without a signed agreement a court cannot issue a writ of mandamus to compel issuance of a fishing

permit because it cannot order performance of a statutorily forbidden act. *Katau Corp. v. Micronesian Maritime Auth.*, 6 FSM Intrm. 621, 624 (Pon. 1994).

A party entitled to apply for a fishing permit must file an application on prescribed forms; otherwise the Micronesian Maritime Authority cannot issue a fishing permit. An applicant may be given an opportunity to cure any defects in a filed permit application. *Katau Corp. v. Micronesian Maritime Auth.*, 6 FSM Intrm. 621, 625 (Pon. 1994).

§ 402. Fees for foreign fishing permits.

Fees and other forms of compensation for the right to exploit marine resources within the exclusive economic zone by foreign fishing vessels shall be established in foreign fishing agreements entered into pursuant to sections 401, 404 and 405 of this chapter.

Source: PL 6-11 § 31.

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

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

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

(a) the extent to which vessels of such parties have historically fished the particular regulated species;

(b) the extent to which vessels of such parties have complied with the laws of the Federated States of Micronesia and any relevant treaties, agreements, or arrangements;

(c) whether such parties or their national governments have cooperated with the Federated States of Micronesia in, and made substantial contributions to, the conservation, management and development of fisheries, fishery research and the identification of marine resources;

(d) whether such parties or their national governments have cooperated with the Federated States of Micronesia in enforcement of the provisions of this title and allocations are established in accordance with this title; and

(n) use components of vessel monitoring systems as directed by the President of the Federated States of Micronesia.

(3) Foreign parties will:

(a) apply, pursuant to section 109 of this title, for any required permits;

(b) deliver promptly to the owner or operator of the appropriate fishing vessel any permit which is issued under that section for such vessel; and

(c) abide by the requirement that no foreign fishing will be permitted in the Exclusive Economic Zone without a valid and applicable permit, except as provided by foreign fishing agreements concluded pursuant to this chapter, and that all conditions and restrictions of the permit, or any applicable foreign fishing agreement, are complied with.

Source: COM PL 7-71 § 1; TT Code 1980, 52 TTC 152(2); PL 1-34 § 11; PL 3-10 § 6; PL 6-11 § 33; PL 9-57 § 1.

Case annotations: A condition on an MMA fishing permit which prohibits fishing within 12 miles of the FSM unless authorized by the state which has jurisdiction is an exercise of the national government's unexpressed concurrent national power. *FSM v. Kotobuki Maru No. 23 (I)*, 6 FSM Intrm. 65, 73 (Pon. 1993).

§ 405. Approval of foreign and domestic-based fishing agreements.

(1) To take effect within the exclusive economic zone, a foreign fishing agreement or domestic-based fishing agreement shall require the approval of the Congress of the Federated States of Micronesia by resolution.

(2) When Congress is not in session, an agreement shall take effect if approved by both the Committee on Resources and Development and the Committee on Ways and Means.

Source: PL IC-3 § 1; TT Code 1980, 52 TTC 152(10); PL 1-34 § 1; PL 3-10 § 7; PL 6-11 § 34; PL 10-75 § 1.

§ 406. Domestic-based fishing agreements.

No domestic-based fishing vessels shall be issued a permit to fish in the exclusive economic zone without having entered into a domestic-based fishing agreement. Such fishing agreement shall have the same minimum terms required of foreign fishing agreements by section 404 of this chapter.

Source: PL 6-11 § 35, modified.

§ 407. Allocation of allowable fishing between domestic-based fishing vessels.

The portion of the optimum sustainable yield allocated to domestic-based fishing vessels shall be divided by the Authority among domestic-based fishing vessels, if necessary. In determining the allocation among domestic-based fishing vessels, the Authority shall take into consideration:

(1) the extent to which each vessel or operator of such vessel has historically fished for a particular regulated species;

(2) the extent to which each vessel or operator contributes to the economic growth of the Nation;

(3) the extent to which each vessel or operator of such vessel has provided information necessary for the conservation and management of stocks of fish; and

(4) such other provisions as the Authority deems appropriate.

Source: PL 6-11 § 36.

§ 408. Agreements affecting state waters.

After the effective date of the Constitution of the Federated States of Micronesia, the provisions of this chapter are not applicable in the internal waters, Territorial Sea, and the exclusive fishery zone of any State which does not approve the appropriate foreign fishing agreement or agreements.

Source: PL IC-3 § 13, TT Code 1980, 52 TTC 155; PL 6-11 § 37.

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

FSMC, TITLE 24. MARINE RESOURCES

Chapter 5: Violations and Penalties

§ 501. Prohibited acts.

- § 502. Civil penalties.
- § 503. Criminal penalties.
- § 504. Forfeitures — Liability.
- § 505. Forfeitures — Jurisdiction.
- § 506. Forfeitures — Seizures.
- § 507. Forfeitures — Disposition of property.
- § 508. Forfeitures — Temporary disposition of property; Security.
- § 509. Forfeitures — Disposition of perishable articles.
- § 510. Revenues from fines and forfeitures.
- § 511. Jurisdiction of Courts.
- § 512. Enforcement responsibility.
- § 513. Enforcement authority.
- § 514. Enforcement of regulations and permits.
- § 515. Presumption of location of fishing.
- § 516. Immunities.

§ 501. Prohibited acts.

(1) It is unlawful for any person:

(a) to violate any provision of a fishing permit, license, agreement, arrangement, treaty, or regulation issued pursuant to this title;

(b) to refuse to permit any authorized officer to board a fishing vessel for purposes of conducting any search or inspection in connection with the enforcement of this title or any regulation, permit, or foreign or domestic-based fishing agreement or any applicable fishing treaty, agreement or arrangement;

Case annotations: A defendant may be held criminally liable for failure to maintain a daily English language catch log as required under the terms of its foreign fishing agreement and the Harmonized Minimum Terms and Conditions. *FSM v. Cheng Chia-W (II)*, 7 FSM Intrm. 205, 211-12 (Pon. 1995).

(c) to assault, obstruct, resist, delay, refuse boarding to, intimidate, or interfere with any authorized officer or authorized observer in performance of his duties, including in the conduct of any search or inspection described in paragraph (b) of this subsection; and for the purposes of this paragraph, any person who refuses to allow any authorized officer or observer, or any person acting under his order or in his aid, to exercise any of the powers conferred on an authorized officer or observer by this title or any regulations made under this title shall be deemed to be obstructing that officer, observer, or person;

Case annotations: A defendant may be held criminally liable for failure to maintain a daily English language catch log as required under the terms of its foreign fishing agreement and

the Harmonized Minimum Terms and Conditions. *FSM v. Cheng Chia-W (II)*, 7 FSM Intrm. 205, 211-12 (Pon. 1995).

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

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

(f) being on board any vessel being pursued or about to be boarded by any authorized officer, to throw overboard or destroy any fish, fishing gear, explosive, poison, or other noxious substance or thing or to avoid the detection of any offense under this title or the regulations made under this title;

(g) to resist a lawful arrest for any act prohibited by this section;

(h) to provide information required to be recorded, notified or communicated pursuant to any requirement of the provisions of this title or the regulations, knowing or having reasonable cause to believe that it is false, incomplete or misleading;

(i) to knowingly ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of any fish taken or retained in violation of this title or any regional fishing treaty, regulation, permit, foreign or domestic-based fishing agreement or any applicable law;

Case annotations: A defendant may be held criminally liable for knowingly shipping, transporting, or having custody, control, or possession of any fish taken or retained in violation of Title 24 or any regulation, permit, or foreign fishing agreement or any applicable law even when the vessel is operating under a valid permit. *FSM v. Cheng Chia-W (II)*, 7 FSM Intrm. 205, 216 (Pon. 1995).

(j) to interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that such person has committed any act prohibited by this section;

(k) to violate any provision of, or regulation under, any applicable agreement to implement a regional fisheries treaty, or any other treaty, agreement or arrangement having effect in the Federated States of Micronesia, entered into pursuant to section 106 of this title; or

(l) to use any foreign fishing vessel for fishing within one mile from submerged reefs within the EEZ, or within a two-mile radius of any fish aggregating device of the Government, a citizen, or any other body established under the laws of the Federated States of Micronesia;

(m) being a fishing vessel entitled to fly the national flag of the Federated States of Micronesia, to fish in waters under the national jurisdiction of a foreign nation unless duly authorized by the competent authorities of the foreign nation or nations concerned;

(n) to engage in driftnet fishing activities in the fishery waters;

(o) being a fishing vessel entitled to fly the national flag of the Federated States of Micronesia, to engage in driftnet fishing activities in the waters under the national jurisdiction of a foreign nation, in the high seas, or in an enclosed or semi-enclosed seas as defined in the United Nations Convention on the Law of the Sea of December 10, 1982; or

(p) to violate any provision of this title.

(2) It is unlawful for any fishing vessel, and for the crew, owner, or operator of any fishing vessel, to engage in fishing in the Exclusive Economic Zone without a valid and applicable fishing permit issued pursuant to this title or after revocation, or during the period of suspension of a permit issued pursuant to this title, where such permit is required by sections 103 and 104 of this title, and unless such fishing is permitted pursuant to section 106 of this title.

Source: COM PL 7-71 § 1; PL IC-3 § 14; TT Code 1980, 52 TTC 201; PL 1-34 § 14; PL 5-37 § 6; 6-11 § 38; PL 9-47 § 1; PL 9-69 § 1, modified.

Case annotations: A party to a foreign fishing agreement voluntarily assumes primary liability and responsibility for its own failure to comply with the law, and for similar failures on the part of its fishing vessels and vessel operators within the FSM. Such a party also assumes a legal duty to ensure that the operators of its licensed vessels comply with all applicable provisions of FSM law. *FSM v. Cheng Chia-W (II)*, 7 FSM Intrm. 205, 212 (Pon. 1995).

A defendant may be held criminally liable for failure to have a radio capable of monitoring VHF channel 16, the international safety and calling frequency, as required under the terms of its foreign fishing agreement. *FSM v. Cheng Chia-W (II)*, 7 FSM Intrm. 205, 213-14 (Pon. 1995).

A defendant may be held criminally liable for exceeding the crew size authorized under the terms of its foreign fishing permit which is a term that the permit holder cannot unilaterally alter by use of the notification of changes provision in the permit. *FSM v. Cheng Chia-W (II)*, 7 FSM Intrm. 205, 214 (Pon. 1995).

A defendant may be held criminally liable for knowingly shipping, transporting, or having custody, control, or possession of any fish taken or retained in violation of Title 24 or any regulation, permit, or foreign fishing agreement or any applicable law even when the vessel is operating under a valid permit. FSM v. Cheng Chia-W (II), 7 FSM Intrm. 205, 216 (Pon. 1995).

§ 502. Civil penalties.

(1) Any person who is found by the Supreme Court of the Federated States of Micronesia in a civil proceeding to have committed an act prohibited by section 501 of this chapter shall be liable to the Federated States of Micronesia for a civil penalty.

(2) The amount of the civil penalty shall not exceed \$5,000,000 for each violation, except as otherwise provided herein. Each day of a continuing violation shall constitute a separate offense. The Supreme Court of the Federated States of Micronesia may impose a penalty in excess of \$5,000,000 provided, in its review of the factors set forth in subsection (3) of this section, the Supreme Court finds that the defendant has committed a gross violation.

(3) In determining the amount of such penalty, the Supreme Court of the Federated States of Micronesia shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, and whether any other civil or criminal fine or any imprisonment has been imposed as a result of the specific conduct which has given rise to this action, and such other matters as justice may require.

(4) The Attorney General of the Federated States of Micronesia is authorized to initiate all proceedings under this section and to recover the amount assessed as a civil penalty.

(5) The proceeds of civil penalties shall be deposited into the General Fund of the Federated States of Micronesia. Fifty percent of these proceeds from civil penalties shall then be distributed to the State affected.

Source: COM PL 7-71 § 1, PL IC-3 § 15, TT Code 1980, 52 TTC 202; PL 3-9 § 1; PL 3-80 § 1; PL 6-37 § 1; PL 9-47 § 3.

§ 503. Criminal penalties.

(1) A person is guilty of an offense if he commits any act prohibited by section 501 of this chapter.

(2) Unless another and different penalty is specifically provided by a law enacted by Congress for an offense, any offense described as a prohibited act by subsections (1)(a), (1)(i), (1)(k), or (1)(l) of section 501 of this chapter is punishable by a fine of not less than \$10,000 and not to exceed \$500,000.

(3) Unless another and different penalty is specifically provided by a law enacted by Congress for an offense, any offense described as a prohibited act by subsections (1)(b), (1)(c), (1)(d), (1)(e), (1)(f), (1)(g), (1)(h), or (1)(j) of section 501 of this chapter is punishable by a fine of not less than \$100,000, or imprisonment for not more than two years, or both; PROVIDED that if in the commission of any such offense the person uses a dangerous weapon, engages in conduct that causes bodily injury to any officer authorized to enforce the provisions of this title, or threatens any such officer with bodily injury, the offense is punishable by a fine of not less than \$500,000, or imprisonment for not more than ten years, or both; and PROVIDED FURTHER that where a regional fisheries treaty so requires, persons arrested for violating any provisions of, or regulations under, such treaty shall not be subject to imprisonment.

(4) Any offense described as a prohibited act by subsection (1)(m) of section 501 of this chapter is punishable by a fine not to exceed \$5,000.

(5) Any offense described as a prohibited act by subsection (1)(n) or (1)(o) of section 501 of this chapter is punishable by a fine of not less than \$1 million.

(6) Any offense described as a prohibited act by subsection (2) of section 501 of this chapter is punishable by a fine of not less than \$500,000. Each day of continuing violation shall be considered a separate offense.

(7) A violation of any provision of this title for which no other punishment is prescribed by law enacted by Congress is punishable by a fine not to exceed \$5,000.

(8) In determining the amount of any fine and the length of any imprisonment, the Court shall take into account those factors set forth in section 502(3) of this chapter.

Source: COM PL 7-71 § 1; TT Code 1980, 52 TTC 203; PL 1-34 § 15; PL 3-34 § 1; PL 5-37 § 7; 6-11 § 39; PL 9-47 § 1; 9-69 § 1, modified.

Case annotations: A person may be held criminally liable for violating any provision of Title 24 or of any regulation or permit issued pursuant to Title 24, or any provision of, or regulation under, an applicable domestic-based or foreign fishing agreement entered into pursuant to Title 24, or any condition of any permit issued in accordance with Title 24 and any

regulations made under Title 24, respectively. *FSM v. Cheng Chia-W (II)*, 7 FSM Intrm. 205, 211 (Pon. 1995).

Congress, by prescribing a mandatory minimum penalty, has determined that the penalty is proportionate to the nature of the crimes involved. *FSM v. Cheng Chia-W (II)*, 7 FSM Intrm. 205, 219 (Pon. 1995).

§ 504. Forfeitures — Liability.

(1) Any fishing vessel involved in the commission of any act prohibited by section 501 of this chapter shall, along with its fishing gear, furniture, appurtenances, stores, or cargo used, be forfeited to the Federated States of Micronesia.

(2) Any fish taken or retained, in any manner, in connection with or as a result of the commission of any act prohibited by section 501 of this chapter shall be forfeited to the Federated States of Micronesia upon the commission of the act giving rise to forfeiture under this section.

(3) Any action for forfeiture pursuant to subsections (1) or (2) of this section shall be a civil proceeding.

Source: COM PL 7-71 § 1; TT Code 1980, 52 TTC 204(1); PL 6-11 § 40.

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

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

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

A fishing vessel involved in criminal violations of FSM fishing laws is subject to forfeiture to the government in a civil proceeding against the vessel itself. *FSM v. Zhong Yuan Yu No. 621*, 6 FSM Intrm. 584, 587 (Pon. 1994).

§ 505. Forfeitures — Jurisdiction.

The Supreme Court of the Federated States of Micronesia shall have jurisdiction, upon application by the Attorney General or the executive director on behalf of the Federated States of Micronesia, to order any forfeiture authorized under section 504 of this chapter.

Source: COM PL 7-71 § 1; PL IC-3 § 16; TT Code 1980, 52 TTC 204(2); PL 6-11 § 41.

§ 506. Forfeitures — Seizures.

If a judgment is entered for the Federated States of Micronesia in a civil forfeiture proceeding under sections 504 through 509 of this chapter, the Attorney General shall seize any property or other interest declared forfeited to the Federated States of Micronesia, which has not previously been seized pursuant to this title.

Source: COM PL 7-71 § 1; TT Code 1980, 52 TTC 204(3); PL 6-11 § 42.

§ 507. Forfeitures — Disposition of property.

The forfeited vessel, gear, furniture, appurtenances, stores, cargo, and fish may be sold and the proceeds deposited into the General Fund of the Federated States of Micronesia and distributed in accordance with section 510 of this chapter.

Source: COM PL 7-71 § 1; TT Code 1980, 52 TTC 204(4); PL 6-11 § 43.

§ 508. Forfeitures — Temporary disposition of property; Security.

(1) Pending completion of the civil forfeiture proceeding, the seized vessel, gear, furniture, appurtenances, stores, cargo, and fish, or any part thereof, may be discharged at the discretion of the Court upon deposit with the Court of a satisfactory bond or other security at least equal to the fair market value of the seized property.

(2) Such bond or other security shall be conditioned upon such person delivering such property to the appropriate Court upon order thereof, without any impairment of its value, or paying the monetary value of such property pursuant to an order of such Court.

(3) Judgement shall be recoverable on such bond or other security against both the principle and any sureties in the event that any condition thereof is breached, as determined by such Court.

Source: COM PL 7-71 § 1; TT Code 1980 52 TTC 204(5).

§ 509. Forfeitures — Disposition of perishable articles.

(1) Any fish, fish products, or other perishable articles seized or taken pursuant to this title may be sold, subject to the approval and direction of the Court. The proceeds of any such sale shall be deposited with such Court pending the disposition of the civil forfeiture proceeding.

(2) For purposes of this title, it shall be a rebuttable presumption that:

(a) All fish found on board a fishing vessel which is seized or taken in connection with an act prohibited by section 501 of this chapter were taken or retained in violation of this title; and

(b) All fish found on board a transiting fishing vessel which vessel has been used in the commission of an offense in the exclusive economic zone, shall be deemed to have been caught in the exclusive economic zone.

Source: COM PL 7-71 § 1; TT Code 1980 52 TTC 204(6), (7); PL 6-11 § 44.

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

§ 510. Revenues from fines and forfeitures.

All fines and the proceeds of sale of all forfeitures collected pursuant to the provisions of this title shall be deposited into the General Fund of the Federated States of Micronesia. Fifty percent of these revenues from fines and forfeitures shall then be distributed to the State affected.

Source: COM PL 7-71 § 1; PL IC-3 § 17; TT Code 1980, 52 TTC 205; PL 2-28 § 1.

§ 511. Jurisdiction of Courts.

(1) The Supreme Court of the Federated States of Micronesia shall have exclusive jurisdiction over any case or controversy arising under this title.

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

Source: COM PL 7-71 § 1; TT Code 1980, 52 TTC 207; PL 1-34 § 17; PL 6-11 § 45.

§ 512. Enforcement responsibility.

The Office of the Attorney General of the Federated States of Micronesia has primary responsibility for the enforcement of this title, and may authorize other entities, officials or persons to perform enforcement functions.

Source: COM PL 7-71 § 1; PL IC-3 § 19; TT Code 1980, 52 TTC 208(1); PL 1-34 § 18; PL 1-91 § 1; PL 1-104 § 1; PL 6-11 § 46.

§ 513. Enforcement authority.

(1) For the purpose of ascertaining whether there is or has been any contravention of the provisions of this title or any regulations passed thereunder, any authorized officer may:

(a) Upon the issuance of a warrant, at all reasonable hours, enter any fish processing establishment and any premises other than premises used exclusively as a dwelling-house;

(b) Stop, board and search:

(i) Any foreign or domestic-based fishing vessel within the fishery waters, or

(ii) Any domestic fishing vessel, inside or outside the fishery waters;

(c) Stop and search any vessel or vehicle transporting, or reasonably suspected of transporting, fish or fish products;

(d) Make such examination and inquiry as may appear necessary to him concerning any premises, fish processing establishment, vessel or vehicle in relation to which any of the powers conferred by this section have been, or may be exercised and take samples of any fish, or fish products, found therein;

(e) Require any person to produce his permit or his authority if it appears to the authorized officer that such person is doing any act for which a permit or other authority is required under this title and take copies of any such license or other authority;

(f) Require any person to produce any logbook, record or other document required to be held by him under this title or any regulations made under this title and take copies of such logbook, record or other document.

(2) Where he has reasonable cause to believe that an offense against the provisions of this title or any regulations made under this title has been committed, any authorized officer may, with or without a warrant or other process:

(a) Following hot pursuit in accordance with international law and commenced within the fishery waters, stop, board and search inside or outside the fishery waters any fishing vessel which he believes has been used in the commission of that offense within the fishery waters or in relation to which he believes such offense has been committed and bring such vessel and all persons and things on board within the fishery waters;

(b) Within the fishery waters:

(i) Arrest any person if he has reasonable cause to believe that such person has committed an offense prohibited by this title or any regulations issued under this title;

(ii) Seize any fishing vessel 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;

(iii) Seize any fishing gear, furniture, appurtenances, stores, cargo, and fish in or on a fishing vessel seized pursuant to this section; and

(iv) Seize any fish which he reasonably believes to have been taken or fish products produced in 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) Where following the commission of an offense under this title by a foreign fishing vessel, that vessel is pursued beyond the limits of the fishery waters, the powers conferred on authorized officers under this section shall be exercisable beyond the limits of the fishery waters in accordance with international law.

(5) Any authorized officer may exercise any other lawful authority for the enforcement of this title and any regulations issued under this title.

Source: COM PL 7-71 § 1; PL IC-3 § 19; TT Code 1980, 52 TTC 208(2); PL 6-11 § 47.

Case annotations: While the FSM and Pohnpei foreign fishing statutes pose no specific requirements as grounds for the search of a fishing vessel, the power to seize is carefully conditioned upon illegal use of the vessel. *Ishizawa v. Pohnpei*, 2 FSM Intrm. 67, 75 (Pon. 1985).

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

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

The government has probable cause to detain a fishing vessel for illegal fishing when the evidence and information indicate that the vessel was conducting fishing operations within the FSM Exclusive Economic Zone, there was freshly caught fish aboard, and the permit provided to the officers contained a name different from the actual name of the vessel. *FSM v. Zhong Yuan Yu No. 621*, 6 FSM Intrm. 584, 590-91 (Pon. 1994).

§ 514. Enforcement of regulations and permits.

For purposes of this chapter the terms “provisions of this title” and “violation of any provisions of this title” include the provisions of any regulation or permit issued pursuant to this title.

Source: COM PL 7-71 § 1; PL IC-3 § 19; TT Code 1980, 52 TTC 208(3).

§ 515. Presumption of location of fishing.

Where, in any legal proceedings instituted under this title or any regulations issued under this title, the place in which an event is alleged to have taken place is in issue, the place stated in a copy of the relevant entry in the logbook or other official record of an enforcement vessel or aircraft as being the place in which the event took place shall be presumed to be the place in which the event took place, unless the contrary is proved.

Source: PL 6-11 § 48.

§ 516. Immunities.

No action shall lie against the Authority, any authorized officer or observer, or any other person appointed pursuant to this title in respect of anything done or omitted to be done by

him in good faith in the execution or purported execution of his powers and duties under this title or regulations issued under this title.

Source: PL 6-11 § 49.

FSMC, TITLE 24. MARINE RESOURCES

Chapter 6: State Entities for Development of Marine Resources

- § 601. State entities authorized.
- § 602. Powers of State entities.
- § 603. Succession.
- § 604. Funding of State entities.
- § 605. Financial assistance authorization.
- § 606. Annual report.
- § 607. Succession in absence of entity.

§ 601. State entities authorized.

Each State government is authorized to establish by law an entity to promote, develop, and support commercial utilization of living marine resources within its jurisdiction. The entity shall be composed of representatives of State parties with a significant interest in the development of living marine resources.

Source: COM PL 5-21 § 10(1); TT Code 1970, 45 TTC 160(1); COM PL 7-111 § 1(part); TT Code 1980, 45 TTC 162(part); PL 1-26 § 1(part); PL 2-31 § 1(part).

§ 602. Powers of State entities.

The entity shall be provided by law with the power and authority to carry out the purpose stated above, which powers may include but need not be limited to the following:

- (1) to provide guidance to the State government in establishing marine resources development policy;
- (2) to make regulations concerning the exploitation of living marine resources as permitted by law;
- (3) to serve as a conduit for public funds to establish and operate facilities required for commercial fisheries development, to conduct pilot fishing operations, and to participate in

large scale commercial fishing and related activities which are not suitable for investment by the private sector;

(4) to establish and support programs to promote, support, and guide fishing cooperative associations;

(5) to formulate a comprehensive five-year marine resources development plan to be submitted for review and approval by the Congress as a condition precedent to a State entity's eligibility for funds authorized under section 605 of this chapter.

Source: COM PL 5-21 § 10(3); TT Code 1970, 45 TTC 160(3); COM PL 7-111 § 1(part); TT Code 1980, 45 TTC 162(part); PL 1-26 § 1(part); PL 2-31 § 1(part).

§ 603. Succession.

Upon the establishment of a State entity pursuant to this chapter the provisions of 45 TTC 151 through 161 shall cease to apply in that State and all assets, liabilities, and activities of the district fishing authority created pursuant to those provisions shall be transferred to the new State entity. The new entity shall submit to the State legislature and to the Congress of the Federated States of Micronesia, within 30 days of the transfer, a report describing the assets and liabilities received from the fishing authority.

Source: COM PL 7-111 § 2; TT Code 1980, 45 TTC 163; PL 1-26 § 2.

Editor's note: COM PL 5-21, codified as 45 TTC 151 through 161, was repealed by COM PL 7-111 § 6, effective May 1, 1979.

§ 604. Funding of State entities.

Funds for the operation and activities of the State entity created pursuant to this chapter may be provided by the Trust Territory Government, the Congress of the Federated States of Micronesia, the State legislature, the net earnings from its activities, and tax revenues generated from the sale of supplies and provisions to foreign fishing vessels entering ports within the State.

Source: COM PL 7-111 § 3; TT Code 1980, 45 TTC 164; PL 1-26 § 3.

§ 605. Financial assistance authorization.

(1) The sum of \$1,000,000, or so much thereof as may be necessary, is hereby authorized to be appropriated from the General Fund of the Federated States of Micronesia for each fiscal

year 1982 through 1985 to be made available to State entities created pursuant to section 601 of this chapter.

(2) During the four-year period of this authorization, any State entity whose marine resources development plan has been approved pursuant to section 601 of this chapter shall be eligible for a sum not to exceed \$250,000 annually; provided, however, that the State legislature concerned shall first put up matching funds on a one-to-two basis; and provided further, that no funds made available under this section shall be used to defray administrative expenses of the State entities.

Source: COM PL 7-111 § 4; TT Code 1980, 45 TTC 165; PL 1-26 § 4; PL 2-31 § 2.

§ 606. Annual report.

Each State entity created pursuant to this chapter shall prepare an annual report on its finances and activities to be submitted to the State legislature and the Congress of the Federated States of Micronesia within 20 days of the completion of each calendar year.

Source: COM PL 7-111 § 5; TT Code 1980, 45 TTC 166; PL 1-26 § 5.

§ 607. Succession in absence of entity.

If no State entity is created pursuant to this chapter prior to May 1, 1979, the Governor of each State is authorized to preserve and protect the assets of the former district fishing authority by appropriate administrative and legal action until a State entity is created. If no State entity is created prior to May 1, 1979, the loan fund established by section 7 of Public Law No. 5-21 is terminated, and the Governor of each State is authorized to collect payments on existing loans as they become due, or to take legal action to collect on loans in default. The portions of the collections on loans as were provided originally by the Congress of Micronesia, plus interest, shall be paid to the General Fund of the Congress of the Federated States of Micronesia.

Source: COM PL 7-111 § 7; TT Code 1980, 45 TTC 167; PL 1-26 § 7.

Editor's note: COM PL 5-21, codified as 45 TTC 151 through 161, was repealed by COM PL 7-111 § 6, effective May 1, 1979.

FSMC, TITLE 24. MARINE RESOURCES

Chapter 7: National Fisheries Corporation

- § 701. Short title.
- § 702. Purpose.
- § 703. Establishment of Corporation.
- § 704. Charter.
- § 705. Principal and branch offices.
- § 706. Corporation authority.
- § 707. Corporate powers.
- § 708. Board of Directors.
- § 709. Composition of the Board.
- § 710. Organizational meeting.
- § 711. Terms of office of Board members.
- § 712. Corporate bylaws.
- § 713. Officers of the Board.
- § 714. Board meetings.
- § 715. Quorum of the Board.
- § 716. Minutes of Board meetings.
- § 717. Compensation of Board members.
- § 718. Employees of the Corporation.
- § 719. Budget preparation.
- § 720. Budget request.
- § 721. Records and reporting.
- § 722. Audit.
- § 723. Corporate debts and obligations.
- § 724. Tax exemption.

§ 701. Short title.

This chapter may be cited as the “Federated States of Micronesia National Fisheries Corporation Act of 1983.”

Source: PL 3-14 § 1.

§ 702. Purpose.

The purpose of this chapter is to establish a public corporation to promote the development of pelagic fisheries and related industries within the extended fishery zone, as defined under 18 F.S.M.C. 104, for the benefit of the people of the Federated States of Micronesia.

Source: PL 3-14 § 2; PL 3-25 § 1.

§ 703. Establishment of Corporation.

The National Fisheries Corporation of the Federated States of Micronesia, hereinafter referred to as the “Corporation,” is hereby established as a public corporation under the laws of the Federated States of Micronesia.

Source: PL 3-14 § 3.

§ 704. Charter.

(1) The charter of the Corporation shall be as prescribed in this section and sections 705, 706, and 707 of this chapter.

(2) The existence of the Corporation shall be perpetual.

Source: PL 3-14 § 4.

§ 705. Principal and branch offices.

(1) The principal office of the Corporation shall be located within the territory of the Federated States of Micronesia at a place to be designated by the Board of Directors of the Corporation.

(2) There may be such subordinate or branch offices in such place or places as the Board of Directors of the Corporation may deem necessary.

Source: PL 3-14 § 5.

§ 706. Corporation authority.

(1) Subject to any existing limitation or limitations hereafter enacted, the Corporation, through its officers and agents, is authorized to engage in all commercial activities which will further the development of the fishing and fisheries industry in the Federated States of Micronesia.

(2) The Corporation's authority shall include, but not be limited to, the following:

(a) to enter into joint venture, partnership, and other agreements related to the fishing and fisheries industry with other persons including, but not limited to, foreign persons and governments;

(b) to otherwise engage or participate as owner, partner, shareholder, or other interest holder in commercial ventures related to the fishing and fisheries industry;

(c) to manage or operate commercial projects, enterprises, and ventures related to the fishing and fisheries industry;

(d) to secure both from within and from without the Federated States of Micronesia financial resources to achieve the purpose of this act and the Corporation's charter;

(e) to provide technical assistance and services for project identification, project formulation, and pre-investment studies relating to the fishing and fisheries industry;

(f) to foster economic activities and to cooperate with other institutions within and without the Federated States of Micronesia in supporting activities for fishing and fisheries development;

(g) to promote the training of Micronesian citizens in matter related to the fishing and fisheries industry; and

(h) to invest in the expansion and improvement of the fishing and fisheries industry in the Federated States of Micronesia.

Source: PL 3-14 § 6.

§ 707. Corporate powers.

In addition to the authority granted under section 706 of this chapter, the Corporation possess and exercise all powers normally exercised by a corporation, including, but not limited to, the following:

(1) to adopt, alter, and use a corporate seal;

(2) to adopt, amend, and repeal its bylaws governing the conduct of its business and the exercise of its authority; provided, that such bylaws shall be consistent with the laws of the Federated States of Micronesia;

(3) to sue and be sued in its corporate name;

(4) to acquire in any lawful manner real personal or mixed property, either tangible or intangible, and to hold, maintain, use, and operate such property, and to sell, lease, or otherwise dispose of such property;

(5) to acquire in any mode and take over the whole or any part of the business, property, goodwill, and liabilities of any other corporation or corporations, including debts, liabilities, and obligations incurred prior to the time of acquisition;

(6) to take and otherwise acquire and hold shares, stocks, mortgages, bonds, obligations, securities, and investments of all kinds, foreign and domestic, and to sell or otherwise alienate the same;

(7) to form or assist in forming any company for the purpose of carrying on any business which the corporation is authorized to carry on, or any other business which may enhance the fishing and fisheries industry;

(8) to issue corporate bonds from time to time for sale to the general public, or to other financial institutions, or Government agencies, upon such terms and under such conditions as the Board of Directors deems necessary and appropriate;

(9) to make contracts and incur liabilities, to borrow money, and to secure any or all of its obligations by mortgage or pledge of any or all of its property, franchises, or income;

(10) to lend money for its corporate purposes, and to invest or reinvest its funds;

(11) to conduct its business, carry on its operations, have offices, and to exercise the powers granted herein in any State or territory of the Federated States of Micronesia or in any foreign country;

(12) to permit the Corporation to be registered or recognized in any country, state, or place outside of the Federated States of Micronesia, and to comply with any condition necessary or expedient in order to enable the Corporation to carry on business in any such country, state, or place, and to establish local companies or branch offices within the jurisdiction of the Federated States of Micronesia;

(13) to act as agent for or of any other person or entity;

(14) to appoint, subject to other provisions of this chapter and other applicable laws, such officers and agents as the business of the Corporation requires; and

(15) to have and to exercise all powers necessary and proper to effectuate the purposes of this chapter and the Corporation's charter.

Source: PL 3-14 § 7.

§ 708. Board of Directors.

The affairs of the Corporation shall be managed and its corporate powers exercised by a Board of Directors, hereinafter referred to as the “Board.”

Source: PL 3-14 § 8.

§ 709. Composition of the Board.

The Board shall be composed of the following:

- (1) one member appointed by the President of the Federated States of Micronesia;
- (2) one member appointed by each of the Governors of the States of the Federated States of Micronesia;
- (3) the Executive Director of the Micronesian Maritime Authority; and
- (4) the Secretary of the Department of Resources and Development, who shall serve as an ex officio member and who shall have no power to vote except in the event of a tie.

Source: PL 3-14 § 9.

§ 710. Organizational meeting.

The first organizational meeting of the Board shall be held not later than 45 days after all of the appointments of the members of the Board have become effective.

Source: PL 3-14 § 10.

§ 711. Terms of office of Board members.

Those members of the Board appointed pursuant to subsections (3) and (4) of section 709 of this chapter shall serve on the Board for the duration of their appointments to their respective agencies. Those members serving on the Board pursuant to subsections (1) and (2) of section 709 of this chapter shall serve on the Board at the pleasure of the appointing officials and may be changed from time to time at the election of the officials. A Board member may be removed for cause by a two-thirds majority vote of the members.

Source: PL 3-14 § 11.

§ 712. Corporate bylaws.

The Board may, by majority vote of its entire membership, adopt, amend, or repeal bylaws of the Corporation which shall provide for the management of the business of the Corporation, the organization, meetings, and procedures of the Board, the duties of the officers and employees of the Corporation, and the preparation and submission of required reports. Bylaws may not be adopted, amended, or repealed except after one week of written notice to each director.

Source: PL 3-14 § 12.

§ 713. Officers of the Board.

The Board shall elect from among its members a chairman, a vice chairman, and a secretary-treasurer. The chairman shall ordinarily preside at the Board meetings. The vice chairman shall preside at the Board meetings in the absence of the chairman. The bylaws shall provide for determination of the presiding officer in the absence of these officers.

Source: PL 3-14 § 13.

§ 714. Board meetings.

The regular meetings of the Board shall be held at such times and places as shall be provided in the corporate bylaws. Special meetings shall be called by the chairman on his own initiative, or by petition of one-third of the entire membership of the Board.

Source: PL 3-14 § 14.

§ 715. Quorum of the Board.

A majority of the entire membership of the Board shall constitute a quorum. An affirmative vote of a majority of the members present shall be required to transact the Board's business. A majority of the entire membership of the Board shall be required to adopt, amend, or repeal the bylaws. Unless otherwise provided in the corporate bylaws or in this chapter, the Robert's Rules of Parliamentary Procedure shall be used as the rules of procedure governing the Board's proceedings.

Source: PL 3-14 § 15.

§ 716. Minutes of Board meetings.

The secretary-treasurer, or his designee, as may be provided in the bylaws, shall keep full and accurate minutes of all meetings.

Source: PL 3-14 § 16.

§ 717. Compensation of Board members.

Those members of the Board who are Government employees, both State and National, shall receive no compensation at all. Compensation of members of the Board who are not Government employees shall be established by the Board. All members of the Board shall be entitled to per diem at established Federated States of Micronesia rates when traveling on the Corporation's business. For the purpose of this section, "Government employees" includes, but is not limited to, employees of those Government agencies or entities created and funded by National or State laws.

Source: PL 3-14 § 17.

§ 718. Employees of the Corporation.

(1) The Corporation may employ a full-time executive director, who shall be appointed by a majority vote of the entire membership of the Board. The compensation, terms, and conditions of employment shall be determined by the Board. The executive director shall be accountable and answerable to the Board for the daily operation of the Corporation.

(2) The executive director may hire, subject to the approval of the Board, such supporting staff as he deems necessary and proper to effect the purpose of this chapter. The employees of the Corporation shall be exempt from the provisions of the Federated States of Micronesia National Public Service System Act.

(3) No member of the Board may at the same time serve as an employee of the Corporation.

Source: PL 3-14 § 18.

Cross-reference: The statutory provisions of the National Public Service System Act are found in title 52 of this code.

§ 719. Budget preparation.

The Board shall prepare in advance of each fiscal year an annual budget for the Corporation, taking into consideration anticipated capital, anticipated revenue, and operational expenditure. The Corporation shall use the same fiscal year as that of the National Government of the Federated States of Micronesia. The budget shall indicate the operational, capital, and maintenance requirements of the Corporation that will be met with the anticipated revenues of the Corporation and such essential requirements as cannot be met without an increase in the rate of revenues or outside financial assistance.

Source: PL 3-14 § 19; PL 3-25 § 2.

§ 720. Budget request.

The Corporation may seek appropriations from the Congress of the Federated States of Micronesia and from other lawful sources within or without the Federated States of Micronesia, in such amount and under such terms and conditions as it deems necessary and proper for the development of the fishing and fisheries industry.

Source: PL 3-14 § 20.

§ 721. Records and reporting.

The Board shall keep accurate records of the Corporation's business transactions. Such records shall include, but not limited to, accounting of all income and expenditure, and assets, both tangible and intangible, and liabilities of the Corporation. The Board shall make a monthly report of the Corporation's activities at the end of every month. That monthly report shall include, inter alia, a monthly financial report. The Corporation, through its Board, shall make a quarterly report to the President of the Federated States of Micronesia and to the Speaker of the Congress of the Federated States of Micronesia. The quarterly report shall include, inter alia, a quarterly financial statement.

Source: PL 3-14 § 21; PL 3-25 § 3.

§ 722. Audit.

The Board shall have the books of account audited by the National Public Auditor no less frequently than annually.

Source: PL 3-14 § 22.

Cross-reference: The statutory provisions on the National Public Auditor are found in chapter 5 of title 55 (Government Finance and Contracts) of this code.

§ 723. Corporate debts and obligations.

Unless otherwise expressly provided by law, the National Government shall not be liable or responsible for any debts incurred by or obligations imposed upon the Corporation.

Source: PL 3-14 § 23.

§ 724. Tax exemption.

The Corporation shall exist and operate solely for the benefit of the public and shall be exempt from any taxes or assessments except import taxes or assessments on any of its property, operations, or activities. Nothing in this section exempts employees and independent

contractors of the Corporation from tax liability for income received from the Corporation. The tax-exempt status shall not be available insofar as the Corporation associates itself in a joint venture with a foreign corporation or association.

Source: PL 3-14 § 24; PL 11-26 § 3.

Cross-reference: The statutory provisions on Taxation and Customs are found in title 54 of this code.