

CHAPTER 9

Wreck and Salvage

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Editor's note: The former provisions of chapters 1 to 12 of this title were repealed in their entirety by PL 10-76 § 1 and replaced by the provisions of PL 10-76, the "National Maritime Act, 1997" codified at chapters 1 to 13 of this title.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

§ 901. Application.

The provisions of this chapter relate to all vessels and small craft but shall not apply in respect of salvage to:

- (1) fixed or floating platforms or to mobile offshore drilling units when such platforms or units are on location and engaged in the exploration, exploitation or production of seabed mineral resources;
- (2) craft of defense forces or other non-commercial vessels entitled to sovereign immunity under generally recognized principles of international law, unless the flag states decide otherwise.

Source: PL 10-76 § 175.

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

§ 902. Receiver of Wreck.

- (1) The Secretary shall be the Receiver of wreck in the Federated States of Micronesia and shall superintend all matters relating to wreck.
- (2) The Receiver may delegate all or any authority and responsibility as Receiver under this chapter to the relevant state authority.

Source: PL 10-76 § 176.

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

§ 903. Preservation of wreck.

(1) When any vessel is wrecked, stranded or in distress, the Receiver may take command of all persons present, assign duties, issue directions, requisition assistance, and demand the use of any nearby vehicle or equipment, if necessary to preserve the vessel, the cargo, and lives.

(2) The Receiver shall not interfere between the master of the vessel and his crew in matters relating to the management of the vessel unless requested to do so by the master.

(3) All cargo and other articles belonging to a wrecked vessel that leave the vessel must be delivered to the Receiver, and no person, including an owner, may secrete or fail to deliver the same to the Receiver.

(4) A rescuer may pass over any adjoining lands if necessary and may deposit on such lands any cargo or article recovered. All damage caused to land or property by rescuers or cargo shall be a salvage charge on the vessel, cargo, or articles.

(5) No person, including the owner or occupier of any land over which rescuers must pass, may impede or hinder any rescuer or impede the deposit of cargo or other rescued articles.

Source: PL 10-76 § 177.

§ 904. Duty to notify Receiver.

An owner, master, or any other person finding or taking possession of any wreck shall notify the Receiver and, if requested, deliver the wreck to the Receiver.

Source: PL 10-76 § 178.

§ 905. Liability for wreck.

(1) A vessel owner and master are liable for the wrecked vessel and all damages to persons, property and the environment accruing from the wreck, its removal and any environmental clean-up operations.

(2) An authorized officer may detain the master, owner, or any crew members of a wrecked vessel to ensure compliance with the responsibilities for the wrecked vessel under this chapter.

Source: PL 10-76 § 179.

Case annotations: A cause of action exists in admiralty and maritime law for recovery of damages for oil contamination of wildlife and other natural resources in the marine environment. The type of injury includes both physical loss or injury, such as due to the grounding on the reef, as well as loss of use, either because of a government ban or because there has been a diminution of the resources because of oil contamination. Maritime nations generally recognize that parties injured by an oil spill should recover their damages, as the polluter must pay. Such a cause of action is available under the general admiralty and maritime law of the Federated States of Micronesia. *People of Rull ex rel. Ruepong v. M/V Kyowa Violet*, 14 FSM R. 403, 416 (Yap 2006).

The elements of a maritime negligence cause of action are four: 1) existence of a duty requiring a person to conform to a certain standard

of conduct in order to protect others against unreasonable risks; 2) breach of that duty by engaging in conduct that falls below the standard of conduct, which is usually called "negligence"; 3) a reasonably close causal connection between the unreasonable conduct and any resulting injury, often referred to as "proximate cause"; and 4) actual loss, injury or damage to another party. *People of Rull ex rel. Ruepong v. M/V Kyowa Violet*, 14 FSM R. 403, 416 (Yap 2006).

Causes of action for public and private nuisance are recognized in admiralty law, borrowing from traditional common law principles. Admiralty courts look to general sources of the common law for guidance, such as the Restatement (Second) of Torts. *People of Rull ex rel. Ruepong v. M/V Kyowa Violet*, 14 FSM R. 403, 416 (Yap 2006).

Causation in maritime tort law is similar to the common law causation principle. A defendant's act or omission must be the proximate cause of the plaintiff's injury. An injury is proximately caused by an act, or failure to act, whenever it appears from the evidence that the act or omission played a substantial part in bringing about or actually causing the injury or damage, and that the injury or damage was either a direct result or a reasonably probable consequence of the act or omission. *People of Rull ex rel. Ruepong v. M/V Kyowa Violet*, 14 FSM R. 403, 417 (Yap 2006).

Injured parties in maritime tort cases are typically awarded prejudgment interest. *People of Rull ex rel. Ruepong v. M/V Kyowa Violet*, 14 FSM R. 403, 420 (Yap 2006).

The FSM Supreme Court trial division has original and exclusive jurisdiction in admiralty or maritime cases but the exact scope of admiralty and maritime jurisdiction is not defined in the Constitution or elsewhere. *Ehsa v. Pohnpei Port Auth.*, 14 FSM R. 505, 507-08 (Pon. 2006).

The article XI, section 6(a) maritime jurisdiction extends to all cases which are maritime in nature. Since a maritime cause of action is one arising on the sea, ocean, great lakes, or navigable rivers, or from some act or contract concerning the commerce and navigation thereof, and when, although the plaintiffs attempt to characterize the issue as one of state law, they are essentially complaining about loss of business as a result of the penalties imposed by the port authority on the vessels resulting from the port authority's maritime-related activities, it is a maritime case and will not be remanded to state court. *Ehsa v. Pohnpei Port Auth.*, 14 FSM R. 505, 508 (Pon. 2006).

§ 906. Search allowed for secreted wreck.

Where a wreck or any cargo therefrom has been secreted or not reported to the Receiver, the Receiver may obtain a search warrant as provided by law, and search for the wreck in any place.

Source: PL 10-76 § 180.

§ 907. Notice by Receiver of having taken possession of wreck.

When the Receiver takes possession of wreck, he shall cause a description of the wreck to be:

- (1) broadcast on at least one radio station in each state;
- (2) published in the local newspaper, if any;
- (3) posted by notice describing the wreck at the Department and in appropriate public places in each state capital.

Source: PL 10-76 § 181.

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

§ 908. Removing wreck from custody of Receiver.

(1) No person shall remove or attempt to remove a wrecked vessel, its cargo, or apparel from the custody of the Receiver without the written authorization of the Receiver.

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

Source: PL 10-76 § 182.

§ 909. Owner's right to claim wreck.

Where the owner of a wrecked vessel demonstrates lawful ownership, the owner shall be entitled to claim the wrecked vessel from the Receiver, PROVIDED payment of any damages, expenses, fees, and salvage due has been made in full, and PROVIDED the owner establishes such claim within one year of the time the Receiver takes possession.

Source: PL 10-76 § 183.

§ 910. Unclaimed wreck.

If the lawful owner of a wrecked vessel fails to claim such vessel within one year from the date the Receiver takes possession, the Receiver shall sell the wreck, pay all fees and other expenses, and pay the determined amount of salvage. Such action by the Receiver shall not relieve the owner or master of any liability for damages caused by the wreck. All remaining moneys shall be deposited into the General Fund of the Federated States of Micronesia.

Source: PL 10-76 § 184.

§ 911. Vessels wrecked.

(1) Where a wrecked vessel is an obstruction or danger to interstate or foreign commerce or shipping within or outside a lagoon:

(a) The Receiver may require any owner to raise, remove or destroy the vessel or to mark its position with a light, buoy or other marker approved by the Receiver until such time as it is raised, removed or destroyed; or

(b) If the owner does not comply forthwith, the Receiver may raise, remove, destroy, sell, or otherwise deal with the wrecked vessel and any recovered property in such manner as he or she thinks fit. The Receiver shall deduct any and all expenses incurred from the sale of the wreck and pay the proceeds to the

persons entitled to them.

(2) In the event of a forced sale of the stranded or sunken vessel following its removal by the Receiver in the interest of safe navigation or the protection of the marine environment, the costs of such removal shall be paid out of the proceeds of the sale, before all other claims secured by a maritime lien on the vessel.

(3) Upon posting a notice in the manner described in section 907 of this chapter, the Receiver may declare an area around a wrecked vessel to be a prohibited area, and no person or vessel may enter this area.

(4) The Receiver may recover from any owner of a wrecked vessel any and all expenses incurred in guarding, lighting, buoying, raising, removing or destroying the vessel, which are not recovered from the proceeds of sale.

Source: PL 10-76 § 185.

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

§ 912. Offenses relating to wreck.

(1) Anyone who knowingly obliterates or defaces any mark on a wrecked vessel or part thereof, its apparel or equipment, or any mark on cargo recovered from a wrecked vessel commits a national offense, punishable by a fine not to exceed \$100,000 or imprisonment for not more than one year, or both.

(2) Anyone who takes to any foreign port with the intention to sell any stranded, derelict or otherwise distressed vessel, its cargo or apparel, or any wreck, found in the waters of the Federated States of Micronesia commits a national offense, punishable by a fine not to exceed \$100,000 or imprisonment for not more than one year, or both.

Source: PL 10-76 § 186.

§ 913. Salvage contract.

(1) The master of a Registered Vessel requiring salvage services shall have the authority to enter into contracts for salvage operations on behalf of the owner of the vessel which shall bind the owner and be enforceable at law. The master or owner of the vessel shall have the authority to enter into contracts on behalf of the owners of the property on board the vessel which shall bind the owners of the property on board the vessel and be enforceable at law.

(2) Nothing in this section shall affect the application of section 914 of this chapter nor duties to prevent or minimize damage to the environment.

Source: PL 10-76 § 187, modified.

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

§ 914. Annulment and modification of salvage contract.

A contract for the salvage of a vessel or any property therein or any term thereof may be annulled or modified by the Supreme Court if:

- (1) the contract has been entered into under duress or undue influence resulting from the stress or immediacy of danger and its terms are deemed by the court to be inadequate or excessive; or
- (2) the payment under the salvage contract is either grossly excessive or grossly inadequate for the services actually rendered.

Source: PL 10-76 § 188.

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

§ 915. Duties of salvors.

The salvor shall owe a duty to the owner of a vessel requiring salvage or any property in danger:

- (1) to carry out the salvage operation with due care, including preventing or minimizing danger to the environment;
- (2) whenever circumstances reasonably require, to seek assistance from other salvors; and
- (3) to accept the intervention of other salvors when reasonably requested to do so by the owner or master of the vessel or other property in danger; PROVIDED HOWEVER, that the amount of the original salvor's reward shall not be prejudiced should it be found that such a request was unreasonable.

Source: PL 10-76 § 189.

§ 916. Duties of the owner or master.

The owner and master of any vessel or the owner of other property in danger within the waters of the Federated States of Micronesia which require salvage operations shall owe a duty to the salvor:

- (1) to cooperate fully with the salvor during the course of the salvage operations;
- (2) in so doing, to exercise due care to prevent or minimize damage to the environment; and
- (3) when the vessel or other property has been brought to a place of safety within the Federated States of

Micronesia, to accept redelivery when reasonably requested by the salvor to do so.

Source: PL 10-76 § 190.

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

§ 917. Authority of the Receiver relating to salvage.

(1) Nothing in this chapter shall affect the authority of the Receiver to take appropriate measures in accordance with generally accepted and recognized principles of international law to protect the coastline or any related interest within the Federated States of Micronesia from pollution or the threat of pollution following a casualty or acts relating to such casualty which may reasonably be expected to result in major harmful consequences, including the authority to give directions to salvage operations.

(2) In admitting vessels in distress into a port in the Federated States of Micronesia, or in providing facilities to salvors, the Receiver shall take into account the need for cooperation among salvors, other interested parties and public authorities in order to ensure the efficient and successful performance of salvage operations for the purpose of saving life or property in danger, as well as preventing damage to the environment in general.

(3) In fulfilling the intentions of subsection (2) of this section, the Receiver may request through the President the assistance and cooperation of other concerned offices and agencies of the Government to temporarily relax immigration, customs and fiscal laws or otherwise facilitate and expedite the dispatch of experienced personnel, specialized vessels and equipment to deal with the matter at hand in order to save life or minimize damage to property, the environment, livelihood and quality of life of all the people of the Federated States of Micronesia.

(4) The Receiver may promulgate regulations relating to salvage, taking into account the provisions of the Salvage Convention.

Source: PL 10-76 § 191.

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

§ 918. Conditions for reward.

(1) Salvage operations undertaken within the Federated States of Micronesia which have had a useful result shall create the right to reward.

(2) Except as otherwise provided, no payment is due under this chapter if the salvage operations have had no useful result.

(3) This chapter shall apply, notwithstanding that the salvaged vessel and the vessel undertaking the salvage operations belong to the same owner.

Source: PL 10-76 § 192.

§ 919. Criteria for fixing the reward.

(1) The reward shall be fixed with a view to encouraging salvage operations, taking into account the following criteria:

- (a) the salvage value of the vessel and other property;
- (b) the skill and efforts of the salvors in preventing or minimizing damage to the environment;
- (c) the measure of success obtained by the salvor;
- (d) the nature and degree of the danger;
- (e) the skill and efforts of the salvors in salvaging the vessel, other property and life;
- (f) the time used and expenses and losses incurred by the salvors;
- (g) the risk of liability and other risks run by the salvors or their equipment;
- (h) the promptness of the services rendered;
- (i) the availability and use of vessels or other equipment intended for salvage operations;
- (j) the state of readiness and efficiency of the salvor's equipment and the value thereof.

(2) Payment of a reward fixed according to subsection (1) of this section shall be made by vessels and other property interests in proportion to their respective salvage value. However, the Receiver may by regulation provide that the payment of a reward has to be made by one of these interests, subject to a right of recourse of this interest against the other interests in proportion to their respective interests in the salvage of property.

(3) The rewards, exclusive of any interest and recoverable legal costs that may be payable thereon, shall not exceed the salvage value of the vessel and other property.

Source: PL 10-76 § 193.

§ 920. Special compensation for salvors.

(1) Where in the opinion of the Supreme Court a salvor who has carried out salvage operations on a vessel which by itself or due to the nature of its cargo threatened damage to the environment in the waters of the Federated States of Micronesia, and the salvor failed to earn a reward at least equivalent to the special compensation assessable in accordance with this section, that salvor shall be entitled to special compensation from the owner of the vessel equivalent to his expenses as defined herein.

(2) Where, in the circumstances set out in subsection (1) of this section, the salvor by his salvage operations has prevented or minimized damage to the environment, the special compensation payable by the owner to the salvor under subsection (1) of this section may be increased up to a maximum of 30% of the actual, audited expenses incurred

by the salvor. However, the Supreme Court, if it deems it fair and just to do so and bearing in mind the relevant criteria in subsection (1) of section 919, may increase such special compensation further, but in no event shall the total increase be more than 100% of the expenses incurred by the salvor.

(3) Salvor's expenses for the purpose of subsections (1) and (2) of this section means the out-of-pocket expenses reasonably incurred by the salvor in the salvage operation and a fair rate for equipment and personnel actually and reasonably used in the salvage operation, taking into account the criteria set out in subsections (1)(h), (i) and (j) of section 919 of this chapter.

(4) The total special compensation under this section shall be paid only if and to the extent that such compensation shall be greater than any reward recoverable by the salvor.

(5) If the salvor has been negligent and has thereby failed to prevent or minimize damage to the environment, the salvor may be deprived of the whole or part of any special compensation due under this section.

(6) Nothing in this section shall affect any right of recourse on the part of the owner of the vessel.

Source: PL 10-76 § 194.

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

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§ 921. Apportionment of reward among salvors.

(1) The apportionment of a reward under section 919 of this chapter as among salvors shall be made on the basis of the criteria contained in that section.

(2) The apportionment of the reward under section 919 of this chapter shall be distributed equally among the owner, master and other persons in the services of each salving vessel, PROVIDED that each vessel exerted the same degree of performance with respect to efforts and skills as dictated by the criteria enumerated under subsection (1) of section 919 of this chapter.

(3) Where there is no agreement as to the degree of performance among salving vessels for the apportionment of the reward, the settlement for the apportionment shall be adjudicated by the Supreme Court.

Source: PL 10-76 § 195.

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

§ 922. Saving persons.

(1) No remuneration shall be due from persons whose lives have been saved, but nothing in this section shall prevent the salvor from asserting against the owner any claims against the value of a salvaged vessel or other property

and for saving the lives of passengers or personnel from the stricken vessel.

(2) A saver of human life, who has taken part in the services rendered on the occasion of the accident giving rise to salvage, shall be entitled to a fair share of the payment awarded to the salvor for salvaging the vessel or other property or preventing or minimizing damage to the environment, which entitlement shall be determined by the Supreme Court.

(3) Claims for saving lives shall be paid before all other claims for salvage.

Source: PL 10-76 § 196.

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

§ 923. Prohibition of salvage operations and salvor's misconduct.

(1) Services rendered notwithstanding the expressed and reasonable prohibition of the owner or master of a vessel or the owner of any other property in danger shall not give rise to payment under this chapter.

(2) A salvor may be deprived of the whole or part of the payment due under this chapter to the extent that salvage operations have become necessary or more difficult because of fault or neglect on the salvor's part or if the salvor has been guilty of fraud or other dishonest conduct.

Source: PL 10-76 § 197.

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

§ 924. Security for claims.

(1) Upon the request of the salvor, a person who is liable for payment due under this chapter shall provide satisfactory security for the claim, including interest and costs of the salvor.

(2) Without prejudice to subsection (1) of this section, the owner of the salvaged vessel shall use his or her best efforts to ensure that the owners of the cargo provide satisfactory security for the claims against them including interest and costs before the cargo is released.

(3) The salvaged vessel and other property shall not, without the consent of the salvor, be removed from the port or place at which they are first delivered after the completion of the salvage operations until satisfactory security has been put up for the salvor's claim against the relevant vessel or property.

Source: PL 10-76 § 198.

§ 925. Enforcement of salvage payment.

Notwithstanding the provisions of section 924 of this chapter, the Receiver shall detain any vessel, cargo, property or wreck until the payment for reward has been made or disposition ordered by the Supreme Court, and shall notify any known owner as soon as the property comes into possession or control of the Receiver.

Source: PL 10-76 § 199, modified.

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

§ 926. Sale by Receiver of detained property.

(1) The Receiver may sell property detained for payment of salvage if:

- (a) the amount of salvage due is not disputed; and
- (b) the amount due is not paid within 20 days of the date agreed upon for payment.

(2) Proceeds of the sale made under subsection (1) of this section shall first be used to pay the fees and expenses of the Receiver for custody and safe-keeping of the property salvaged. Any remaining proceeds shall be paid to the person legally entitled to them, or, if in dispute, to the Trial Division of the Supreme Court.

Source: PL 10-76 § 200.

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

§ 927. Government-owned cargoes and humanitarian cargoes.

(1) Unless a nation recognized by the Federated States of Micronesia owns a vessel and the government of that nation consents, nothing in this chapter shall be construed to provide for the seizure, arrest or detention by any legal process of, nor any proceeding *in rem* against, non-commercial cargoes owned by a government and entitled, at the time of the salvage operations, to sovereign immunity under generally accepted and recognized principles of international law.

(2) Nothing in this chapter shall be construed to provide for the seizure, arrest or detention of humanitarian cargoes donated by a government, if such government has agreed to pay for salvage services rendered in respect of such humanitarian cargoes.

Source: PL 10-76 § 201.

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

§ 928. Limitation of actions.

(1) Any action brought under this chapter shall be time-barred if judicial proceedings have not been instituted within a period of two years. The limitation period commences on the day on which the salvage operations are terminated or the vessel and any part of the cargo delivered to a safe port.

(2) The person against whom a claim is made may at any time during the running of the limitation period apply to the Supreme Court for an order to extend that period. This period may upon application to the Court be further extended if the Court so orders.

(3) An action of indemnity by a person liable may be instituted even after the expiration of the limitation period provided for in the preceding subsections, if brought within the time allowed by chapter 13 of this title.

Source: PL 10-76 § 202.

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

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