

TITLE 24
MARINE RESOURCES

SUBTITLE I
MARINE RESOURCES ACT OF 2002

CHAPTERS

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SUBTITLE I
MARINE RESOURCES ACT OF 2002

Editor's notes: Section 1 of PL 12-34 repealed chapters 1 through 5 in their entirety.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

CHAPTER 1

General Provisions

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

SECTIONS

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§ 101. Purpose of this subtitle.

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

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

Source: PL 12-34 § 3.

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

§ 102. Definitions.

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

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

(2) “Administrator” means the director of a regional fisheries agency or any other organization or person authorized, pursuant to section 106 of chapter 1 of this subtitle, to administer a fisheries access agreement or fisheries management agreement to which the Federated States of Micronesia is party.

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

(4) “Aircraft” means any craft capable of self sustained movement through the atmosphere and includes helicopters.

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

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

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

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

(9) “Automatic location communicator” or “transponder” means a device placed on a fishing vessel that transmits, either in conjunction with another device or devices or independently, information concerning the position, fishing and other activities of the vessel.

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

(11) “Buy” includes:

(a) barter or attempt to barter;

(b) purchase or attempt to purchase;

(c) receive on account or consignment;

(d) purchase or barter for future goods or for any consideration of value; and

(e) purchase or barter as an agent for another person, and “buyer” shall have a corresponding meaning.

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

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

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

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

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

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

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

(a) new fishing methods;

(b) developing new stocks of fish; or

(c) fishing in previously unexploited areas.

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

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

(19) [Reserved]

(20) [Reserved]

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

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

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

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

(25) “Export” means to:

(a) send or take out of the country;

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

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

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

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

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

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

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

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

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

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

(32) “Fishing” means:

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

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

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

(d) any operation at sea directly in support of or in preparation for any activity described in this subsection except for operations defined as related activities in subsection (51) of this section; and

(e) the use of an aircraft in relation to any activity described in this subsection except for flights in emergencies involving the health or safety of crew members or the safety of a vessel.

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

(33) "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, beacon or locating device, aircraft or helicopter.

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

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

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

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

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

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

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

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

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

(43) "Local fishing vessel" means any fishing vessel wholly owned and controlled by:

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

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

(c) any corporation, company, society, or other association of persons incorporated or established under the laws of the Federated States of Micronesia or of any State and which is wholly owned and controlled

by one or more of the entities or persons described in paragraphs (a) or (b) of this subsection; and

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

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

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

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

(47) “Operator” means any person who is in charge of or directs or controls a fishing vessel, or for whose direct economic or financial benefit a vessel is being used, including the master, owner, and charterer.

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

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

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

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

(52) “Recreational fishing” means fishing for sport or leisure.

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

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

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

(56) “Related activities” in relation to fishing means:

(a) transshipment;

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

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

(57) “Secretary” means the Secretary of the Department of Justice.

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

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

(60) “Subsistence fishing” means fishing by a citizen or a resident substantially for personal consumption, and does not include any fishing resulting or intending or appearing to result, directly or indirectly, in the sale or trading of any fish which may be taken during the fishing operations.

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

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

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

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

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

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

Source: PL 12-34 § 4.

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

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

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

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

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

§ 103. Fishing permits required—commercial.

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

- (1) a valid and applicable permit issued under authority conferred by this subtitle; or
- (2) a valid and applicable license issued by an administrator pursuant to a multilateral access agreement entered into pursuant to section 106 of chapter 1 of this subtitle.

Source: PL 12-34 § 5.

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

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

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

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

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

§ 104. Fishing permits required—non-commercial.

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

Source: PL 12-34 § 6.

§ 105. Access agreements required.

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

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

Source: PL 12-34 § 7.

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

§ 106. Fisheries management agreements; multilateral access agreements.

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

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

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

- (a) exempt any foreign fishing vessel, holding a valid fishing license issued pursuant to a multilateral access agreement, from any requirement of this subtitle which is inconsistent with the terms of such agreement;
- (b) implement the establishment of closed areas, closed seasons and such other management measures as may be agreed upon pursuant to a fisheries management agreement;
- (c) authorize observers designated under an observer program entered into pursuant to subsection (1) (b) of this section to perform such duties and responsibilities as may be required by such agreement;
- (d) prescribe or otherwise require the conditions to be observed by operators of foreign fishing vessels exempted under paragraph (a) of this subsection;
- (e) prescribe or otherwise require the conditions to be observed by flag vessels and citizens for fishing outside the exclusive economic zone, in accordance with any access agreement or fisheries management agreement to which the Federated States of Micronesia may be party.

Source: PL 12-34 § 8.

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

§ 107. Application for permit—contents.

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

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

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

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

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

Source: PL 12-34 § 9.

§ 108. Application for permit—review.

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

Source: PL 12-34 § 10.

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

§ 109. Application for permit—issuance and denial.

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

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

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

- (a) the application is not in accordance with the requirements of this subtitle;
 - (b) the Executive Director is satisfied that information required to be given or reported under this subtitle is false, incomplete or misleading;
 - (c) the owner or charterer is the subject of proceedings under the bankruptcy laws of any jurisdiction or on reasonable grounds appears unable to meet any financial obligations which could arise from fishing activities and reasonable financial assurances sought by the Authority have not been provided;
 - (d) the fishing vessel does not meet required safety standards;
 - (e) the fishing vessel does not bear the required markings;
 - (f) an operator of the vessel has contravened or has committed an offense against the laws of the Federated States of Micronesia, or the vessel has been used for contravention of an access agreement; or
 - (g) the Executive Director determines that the issuance of a permit would not be in the best interests of the Federated States of Micronesia.
- (4) A permit shall be denied where:
- (a) the application is made in respect of a foreign fishing vessel that does not have good standing on the Regional Register of Foreign Fishing Vessels maintained by the South Pacific Forum Fisheries Agency;
 - (b) the operator of the vessel with respect to which application for a permit has been made has failed to satisfy a judgment or other final determination or breach of this subtitle or an access agreement or fisheries management agreement entered into pursuant to this subtitle, until such time as the judgment or other determination is satisfied; provided that a subsequent change in ownership of a vessel shall not affect the application of this provision;
 - (c) the Executive Director determines it would be inconsistent with management measures implemented in accordance with this subtitle;
 - (d) the required fees, royalties or other forms of compensation have not been paid in accordance with this subtitle and an applicable access agreement; or
 - (e) the Executive Director determines that insurance requirements of this subtitle and the applicable access agreement are not fulfilled.
- (5) If the Executive Director denies an application submitted by an applicant, the Authority shall notify such applicant of the denial and the reasons therefor. The applicant may then submit a revised application taking into consideration the reasons for disapproval. The decision of the Executive Director to deny a revised permit application is appealable only to the members of the Authority acting as a whole, whose decision shall be final and binding.

Source: PL 12-34 § 11.

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

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

§ 110. Permits—scope.

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

(2) No permit shall authorize:

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

(b) fishing by foreign fishing vessels within a two nautical mile radius of any fish aggregating device of the Government, a citizen or any other body established under the laws of the Federated States of Micronesia;

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

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

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

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

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

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

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

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

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

Source: PL 12-34 § 12.

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

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

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

- (1) revoke such permit with or without prejudice to the right of any party involved to be issued a permit for such vessel in any subsequent licensing period;
- (2) suspend such permit for a period of time he may deem appropriate; or
- (3) impose additional conditions or restrictions on any such permit.

Source: PL 12-34 § 13.

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

§ 112. Permits—period of validity.

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

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

Source: PL 12-34 § 14.

§ 113. Permits—fees and charges.

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

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

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

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

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

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

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

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

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

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

(iii) international law;

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

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

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

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

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

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

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

Source: PL 12-34 § 15; PL 14-47 § 1.

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

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

Source: PL 12-34 § 16.

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

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

§ 115. Vessel record keeping and reporting requirements.

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

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

(i) the gear type used;

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

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

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

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

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

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

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

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

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

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

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

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

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

Source: PL 12-34 § 17.

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

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

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

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

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

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

Source: PL 12-34 § 18.

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

§ 117. Permits—related activities.

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

(2) For purposes of this subtitle, “related activities” shall have the meaning set forth in section 102 of chapter

1 of this subtitle.

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

Source: PL 12-34 § 19.

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

§ 118. Authority may issue State permits.

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

Source: PL 12-34 § 20.

§ 119. Application of other laws.

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

Source: PL 12-34 § 21.

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

§ 120. Application of laws of foreign states.

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

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

Source: PL 12-34 § 22.

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

§ 121. Severability.

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

Source: PL 12-34 § 23.

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

§ 122. Ban.

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

Source: PL 13-86 § 2.

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

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

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

§ 123. Application.

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

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

Source: PL 13-86 § 3.

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

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

§ 124. Gender references.

Whenever any provision of this subtitle refers to the masculine gender, using the pronoun “he” or the possessive term “his”, such references shall include the feminine pronoun and possessive terms “she” and “her”.

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