

CHAPTER 2

Management Authority

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

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Section 1 of PL 12-34 repealed chapters 1 through 5 in their entirety.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

SECTIONS

- § 201. **National Oceanic Resource Management Authority—established.**
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§ 201. National Oceanic Resource Management Authority—established.

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

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

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

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

Act.

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

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

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

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

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

Source: PL 12-34 § 26; PL 15-38 § 1.

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

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

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

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

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

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

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

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

(c) absence of a member, except with the written consent of the President of the Federated States of

Micronesia or of the chairman, from three consecutive meetings of the members;

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

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

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

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

Source: PL 12-34 § 27; PL 15-38 § 2.

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

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§ 203. Compensation of members.

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

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

Source: PL 12-34 § 28.

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

§ 204. Authority—adoption of regulations.

(1) The Authority shall have the authority to:

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

- (b) adopt regulations applicable to related activities as defined in section 102 of this subtitle;
 - (c) adopt regulations in relation to fisheries monitoring and control;
 - (d) adopt regulations to implement access agreements and fisheries management agreements;
 - (e) adopt regulations relating to the confidentiality of information consistent with section 208 of this subtitle;
 - (f) adopt regulations for the issuance of citations and assessment of administrative penalties consistent with chapter 7 of this subtitle;
 - (g) adopt regulations relating to compliance by citizens and fishing vessels of the Federated States of Micronesia which engage in fishing outside the internal waters, the territorial sea or exclusive economic zone of the Federated States of Micronesia with applicable laws of foreign states and with applicable access agreements or fisheries management agreements;
 - (h) adopt regulations relating to marine scientific research and training;
 - (i) adopt regulations relating to observer programs and port sampling programs; and
 - (j) adopt any other regulations deemed necessary for the implementation of this subtitle.
- (2) Regulations adopted by the Authority shall have the full force and effect of law, and shall be considered an integral part of this subtitle.

Source: PL 12-34 § 29.

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

§ 205. Authority—duties and functions.

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

- (1) to provide technical assistance in the delimitation of the exclusive economic zone in accordance with section 107 of title 18 of this code;
- (2) to negotiate, conclude and implement access agreements and fisheries management agreements in accordance with sections 105 and 106 of chapter 1 of this subtitle and chapters 4 and 5 of this subtitle;
- (3) to issue fishing permits in accordance with this subtitle;
- (4) to issue permits for fishing in the territorial sea or internal waters of an FSM State as authorized pursuant to section 118 of chapter 1 of this subtitle;
- (5) to regulate related activities in accordance with this subtitle;

- (6) to coordinate and implement fisheries monitoring and control as required under this subtitle and under international treaties to which the Federated States of Micronesia is a party;
- (7) to cooperate as appropriate with other nations or territories in the region and with foreign states fishing in the region and adjacent high seas area for the conservation and management of highly migratory fish stocks;
- (8) to cooperate in and coordinate as appropriate with each FSM State on fisheries management measures in the exclusive economic zone and territorial sea;
- (9) to convene and chair a Fisheries Management and Surveillance Working Group as set forth in section 207 of this chapter;
- (10) to employ a full-time Executive Director and such other staff as it may deem necessary;
- (11) to submit the Authority's budget and report regarding the expenditure of its funds to the Congress each regular session for review;
- (12) to contribute to the planning of programs relating to fisheries, or fishing in the exclusive economic zone, in which an FSM State government or the Government of the Federated States of Micronesia, or any agency or subdivision thereof, has a proprietary interest, direct or indirect, by way of stock ownership, partnership, joint venture or otherwise; and
- (13) to perform such other duties and functions as may be necessary to carry out the purpose of this subtitle.

Source: PL 12-34 § 30.

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

§ 206. Executive Director.

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

Source: PL 12-34 § 31.

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

§ 207. Fisheries Management and Surveillance Working Group.

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

Source: PL 12-34 § 32.

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

§ 208. Duty of confidentiality.

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

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

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

(a) receive access to confidential information; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Source: PL 12-34 § 33.

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

§ 209. Conflict of interest.

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

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

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

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

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

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

(a) “Benefit” shall mean gain or advantage of any kind, and shall include financial gain, property, service, or improvement of condition.

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

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

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

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

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

Source: PL 12-34 § 34.

§ 210. Disclosure requirements.

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

(a) any financial interest he currently has or intends to acquire in any organization, business or governmental body engaged in any harvesting, processing, marketing or regulatory activity related to fish that is being, or will be undertaken within the Federated States of Micronesia or its fishery waters; and

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

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

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

Source: PL 12-34 § 35.

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

§ 211. Annual report.

The Chairman of the Authority shall present a written report annually on its activities to the President of the Federated States of Micronesia, the Speaker of the Congress of the Federated States of Micronesia, and each FSM State Governor by December 1st of each year, which report shall contain a detailed accounting of the expenditure of funds of the Authority, the number of permits and licenses issued, the fees, forfeitures and fines collected, estimates of the effect of the current level of fishing on the stock of fish in the exclusive economic zone, and such other information regarding the implementation of this subtitle in the preceding fiscal year as the Authority may determine. All departments and offices of the FSM National Government shall be provided copies of the Authority's annual report.

Source: PL 12-34 § 36.

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