MARINE RESOURCES

Traditional claims of exclusive ownership of marine resources have been recognized only in areas immediately adjacent to an island or submerged reef. Claims involving custom and tradition were recognized by the Constitution's drafters, but were restricted to areas within lagoons and near reef areas. Chuuk v. Secretary of Finance, 8 FSM R. 353, 377 (Pon. 1998).

A person holding a current and valid foreign investment permit is qualified to register a vessel in the FSM, and qualified persons may register in the FSM any vessel they wholly own. An FSM-registered vessel must fly the FSM national flag. FSM v. Kimura, 20 FSM R. 297, 304-05 (Pon. 2016).

– Exclusive Economic Zone

Congress intended that the prohibitions of 23 F.S.M.C. 105 extend throughout all the waters of the FSM. FSM v. Oliver, 3 FSM R. 469, 478 (Pon. 1988).

23 F.S.M.C. 105(3) is national law, at least as it applies beyond the twelve mile limit. FSM v. Oliver, 3 FSM R. 469, 479 (Pon. 1988).

Nothing in the language of the statute, 23 F.S.M.C. 105, or in the legislative history, indicates that Congress made an affirmative determination to enact national legislation applicable within twelve miles of prescribed baselines. Therefore, 23 F.S.M.C. 105 gives the national government regulatory power only outside the twelve mile zone. FSM v. Oliver, 3 FSM R. 469, 480 (Pon. 1988).

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

The Law of the Sea Convention first recognized that the Federated States of Micronesia as a nation has the exclusive right to exploit resources in its 200-mile EEZ. The FSM Constitution was drafted to vest authority over the EEZ in the national government with this in mind. Chuuk v. Secretary of Finance, 8 FSM R. 353, 378 & n.19 (Pon. 1998).

Issues related to the EEZ cannot be determined by relying on custom and tradition, as the commercial value of the EEZ to the Federated States of Micronesia was first realized when the nation acceded to the Law of the Sea Convention. While the rights of individual Micronesians, families and clans to living marine resources under particular circumstances might be amenable to determination by custom and tradition, the states' legal entitlement to share in fishing fees derived from commercial fishing ventures, extending to 200 miles from island baselines, is not. Chuuk v. Secretary of Finance, 8 FSM R. 353, 378 (Pon. 1998).

leads to the conclusion that it includes fishing because the FSM's fisheries are undoubtedly a natural resource, marine in character, that are subject to economic exploitation as a result of the market demand for fish. It follows that fishing in the FSM EEZ constitutes the exploitation of a natural resource that subjects a party to the personal jurisdiction of the FSM Supreme Court. FSM v. Fu Yuan Yu 096, 16 FSM R. 1, 3 (Pon. 2008).

"Fishery waters" includes the FSM Exclusive Economic Zone, territorial waters, and internal waters. FSM v. Kana Maru No. 1, 17 FSM R. 399, 404 n.2 (Chk. 2011).

Where he has reasonable cause to believe that an offense against the provisions of Title 24 or any regulations made thereunder has been committed, any authorized officer may, with or without a warrant or other process, stop, board and search inside the fishery waters, or outside after hot pursuit, any fishing vessel which he believes has been used in the commission of that offense and he may, within the fishery waters, arrest any person if he has reasonable cause to believe that such person has committed a Title 24 offense and seize any fishing vessel involved, its fishing gear, furniture, appurtenances, stores, cargo, and fish, and seize any fish which he reasonably believes to have been taken in violation of Title 24. FSM v. Kimura, 19 FSM R. 630, 633-34 (Pon. 2015).

The territorial sea is the waters within 12 nautical miles seaward of FSM island baselines, and the exclusive economic zone is the water seaward of the territorial sea outward to 200 nautical miles from the island baselines. FSM v. Kimura, 20 FSM R. 297, 302 (Pon. 2016).

When an information charges, in different counts, contamination of both the FSM territorial waters and its Exclusive Economic Zone, the FSM must prove not only that the contamination occurred but also where it occurred since it is unlikely that the contamination took place when the vessel was at a location where trash thrown overboard could contaminate both the territorial sea and the EEZ. FSM v. Kimura, 20 FSM R. 297, 302 (Pon. 2016).

Only those fisheries management agreements that require the FSM to enforce, on a reciprocal basis, the fisheries laws of foreign countries against persons who have violated the fisheries law of that foreign country, must, under 24 F.S.M.C. 120(2), implemented by National Oceanic Resource Management Authority regulation. FSM v. Kimura, 20 FSM R. 297, 304 (Pon. 2016).

A fisheries management agreement is any agreement, arrangement, or treaty in force to which the FSM 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. Such an agreement, by its nature, would not be self-executing. FSM v. Kimura, 20 FSM R. 297, 304 (Pon. 2016).

FSM citizens and FSM-flagged fishing vessels are required, on the high seas or in an area designated by a fisheries management agreement, to comply with any applicable law or agreement. FSM v. Kimura, 20 FSM R. 297, 304 (Pon. 2016).

– EEZ – Regulation of

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

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

Seizure under the FSM and Pohnpei foreign fishing statutes must be based upon probable

cause, that is, grounds to believe it is more likely than not that a violation of the act has occurred and that the vessel was used in that violation. Ishizawa v. Pohnpei, 2 FSM R. 67, 77 (Pon. 1985).

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

As defined in 24 F.S.M.C. 102(22) "fishing" includes refueling or supplying fishing vessels. FSM v. Skico, Ltd., 8 FSM R. 40, 41 (Chk. 1997).

A company that stores its fuel cargo in a tanker, stations a cargo supervisor aboard the tanker, and sends messages that tell the tanker where to go to sell the company's fuel to fishing vessels needing refueling is an operator of the tanker within the meaning of Title 24. FSM v. Skico, Ltd., 8 FSM R. 40, 42-43 (Chk. 1997).

Section 404 of Title 24 sets forth certain minimum terms that all foreign fishing agreements must contain. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 79, 84 (Pon. 1997).

Section 404 of Title 24 sets forth certain minimum terms that all foreign fishing agreements must contain. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 166, 172 (Pon. 1997).

MMA cannot contract to insulate a foreign fishing agreement signatory from criminal liability because to do so would violate 24 F.S.M.C. 404. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 166, 181 (Pon. 1997).

Article I, section 1 of the Constitution defines the FSM's national boundaries, and section 2 defines the states' boundaries in the event marine resources revenues should accrue to the state wherein the resources are found, but the Constitution's framers did not intend to confer ownership of marine resources, or revenues derived from such resources, when they defined the state boundaries. Offshore marine resources, and the division between national and state power with respect to these resources, are addressed in other articles of the Constitution. Chuuk v. Secretary of Finance, 8 FSM R. 353, 367-68 (Pon. 1998).

Article IX, section 2(m) of the FSM Constitution expressly grants to the FSM Congress the power to regulate the ownership, exploration, and exploitation of natural resources beyond 12 miles from island baselines. Chuuk v. Secretary of Finance, 8 FSM R. 353, 368 (Pon. 1998).

The express grant of power to the national government to regulate the ownership, exploration, and exploitation of natural resources, implicitly includes the power of the national government to collect revenues that are generated as a result. Thus, the national government has the authority to enact legislation related to offshore marine resources, including legislation related to collection and distribution of revenues derived therefrom. Chuuk v. Secretary of Finance, 8 FSM R. 353, 371 (Pon. 1998).

To empower the national government to regulate ownership and exploitation of fishery resources within the EEZ, without the power to collect and distribute revenues derived from these regulatory functions, would violate the intention of the Constitution's framers and unduly

limit the national government in the exercise of its exclusive power over natural resources in the area beyond 12 miles from the island baselines. Chuuk v. Secretary of Finance, 8 FSM R. 353, 371 (Pon. 1998).

Since the national government has the express authority to regulate the ownership, exploration, and exploitation of fishery resources in the EEZ, the power to promulgate legislation which generates revenue from the regulation of these resources and provides for collection and distribution of such revenue, is incidental to or implied in the express grant. Chuuk v. Secretary of Finance, 8 FSM R. 353, 371 (Pon. 1998).

The Constitution's framers intended to vest complete control of the EEZ in the national government, and the expressed intent of legislation passed by the Interim Congress which terminated the practice of distributing fishing fees from the EEZ to the districts, or states, was to bring certain provisions of the Fishery Zone legislation into conformity with the provisions of the FSM Constitution and the powers granted to the national government under the Constitution. Chuuk v. Secretary of Finance, 8 FSM R. 353, 371-74 (Pon. 1998).

That the states currently are dissatisfied with the national government's power over the fishing fees does not change the constitutional division of powers that each of the states agreed to when it ratified the FSM Constitution and entered the Federated States of Micronesia. The states clearly delegated all power over offshore fishing resources beyond 12 miles from their baselines to the national government in the Constitution. Thus, the FSM has the power to collect and distribute the fishing fees under article IX, section 2(m). Chuuk v. Secretary of Finance, 8 FSM R. 353, 374 (Pon. 1998).

The national government's authority to collect and distribute the fishing fees derived from the FSM EEZ is indisputably of a national character and beyond the ability of a single state to control because of the numerous national powers which the national government is required to exercise in order to effectively regulate and control the FSM EEZ and because the individual states are incapable of regulating and controlling the EEZ. Chuuk v. Secretary of Finance, 8 FSM R. 353, 374-75 (Pon. 1998).

Management and control of the FSM's fishing resources in its EEZ requires the national government to exercise its exclusive treaty powers under article IX, section 2(b) of the FSM Constitution. The FSM national government has specific international rights, and has undertaken specific international obligations, with respect to its EEZ under certain treaties. Chuuk v. Secretary of Finance, 8 FSM R. 353, 375 (Pon. 1998).

Negotiating fishery agreements with foreign governments and foreign companies necessarily involves foreign affairs, another exclusive national power. Chuuk v. Secretary of Finance, 8 FSM R. 353, 375 (Pon. 1998).

The process of determining the appropriate level of the fishing fees, the best method to collect the fishing fees, and ultimately how to distribute the fishing fees, is indisputably of a national character. Thus the national government, not the states, has the power to collect and distribute the fishing fees. Chuuk v. Secretary of Finance, 8 FSM R. 353, 375 (Pon. 1998).

That Congress has legislated sharing revenues from fines and forfeitures with the states and that each of the states has a delegate on the Board of the MMA is not an admission or indication that the states are the owners of the underlying resources. Chuuk v. Secretary of

Finance, 8 FSM R. 353, 376 (Pon. 1998).

Certain issues are not of a local or traditional nature, and not amenable to determination based upon custom and tradition, such as issues related to business ventures in the FSM by non-citizens, foreign shipping agreements, and international extradition. Fishing fees derived from commercial fishing contracts, and collected primarily from foreign companies pursuant to agreements negotiated by the MMA are transactions and behaviors that are also distinctly non-customary and non-local. Chuuk v. Secretary of Finance, 8 FSM R. 353, 377 (Pon. 1998).

The MMA can establish fees and other forms of compensation in foreign fishing agreements, which can include compensation in the field of refinancing, equipment and technology relating to the fishing industry, but no particular measure is set for the fishing fee in the FSM Code. Chuuk v. Secretary of Finance, 8 FSM R. 353, 380 (Pon. 1998).

The following factors are relevant to determining whether fishing fees are taxes: 1) the source of the levy – whether the entity imposing the tax is legislative or administrative; 2) the effect of the levy on the general public – whether the assessment is imposed upon a broad or narrow class; 3) the means by which the levy is made – whether it is voluntary, and produces a benefit to the payor which is commensurate with the payment; and 4) the relationship between the levy and government costs – whether the revenue generated bears a relationship to the costs of the government in administering the particular program. Chuuk v. Secretary of Finance, 8 FSM R. 353, 382-83 (Pon. 1998).

The level of fishing fees is set at a measure of the value of the asset to the payor, a percentage of the value of the estimated weighted catch. The measure of the value of the service to the payor can be an appropriate measure for a fee. That the value received by the government exceeds the cost of administration is not dispositive when a valuable resource is being removed from the government's control by fishing fees payors. The government is entitled to compensation for its asset like any private property owner. Chuuk v. Secretary of Finance, 8 FSM R. 353, 385-86 (Pon. 1998).

The FSM national government has the exclusive right to harvest living marine resources in its EEZ, just as it has the exclusive right to harvest offshore mineral resources. As the holder of this exclusive right, the national government is allowed to dispose of this resource and receive revenue in return. Under the Convention on the Law of the Sea, each nation is entitled to exploit its marine resources to the extent it is able to achieve a maximum sustainable yield. When the FSM does not fully exploit its own resources, it is entitled to compensation at the appropriate market rate from foreign fishing vessels which it allows to fish in its waters. Chuuk v. Secretary of Finance, 8 FSM R. 353, 386 (Pon. 1998).

Revenues from natural resources are not taxes. The constitutional definition of tax was not meant to include amounts received by the national government from disposal of natural resources over which it has control. Chuuk v. Secretary of Finance, 8 FSM R. 353, 386-87 (Pon. 1998).

A four-part analysis is applied to determine whether fishing fees are taxes: 1) the source of the levy, 2) the effect of the levy on the general public, 3) the means by which the levy is made, and 4) the relationship between the levy and government costs. Chuuk v. Secretary of Finance, 9 FSM R. 99, 102 (Pon. 1999).

Whether fishing fees are uniform is immaterial to a finding that fishing fees do not constitute a tax. Chuuk v. Secretary of Finance, 9 FSM R. 99, 102 (Pon. 1999).

How Congress appropriates fishing fees is irrelevant to whether they are a tax. Chuuk v. Secretary of Finance, 9 FSM R. 99, 102 (Pon. 1999).

The FSM national government has the exclusive right to regulate and harvest living marine resources in the EEZ and is therefore entitled to a reasonable compensation from those whom it allows to share that right. A determination of ownership of the living marine resources does not affect the national government's right. Chuuk v. Secretary of Finance, 9 FSM R. 99, 102 (Pon. 1999).

Although fishing fees, as currently assessed, may be related to a percentage of the expected landed catch's value – projected income – there is no legal or constitutional requirement that they be calculated that way. They could be assessed on a flat amount per day or per voyage basis, or some other method not related to income. Chuuk v. Secretary of Finance, 9 FSM R. 424, 434 (App. 2000).

Fishing fees are not assessed under the national government's constitutional authority to impose taxes on income. They are levied instead under the national government's constitutional authority to regulate the ownership, exploration, and exploitation of natural resources within the marine space of the Federated States of Micronesia beyond 12 miles from island baselines. Chuuk v. Secretary of Finance, 9 FSM R. 424, 434 (App. 2000).

Although income-related, neither the fishing fees levied under Article IX, section 2(m) nor the social security taxes levied under Article IX, section 3(d) are income taxes within the meaning of Article IX, section 2(e) or national taxes within the meaning of section 5. Chuuk v. Secretary of Finance, 9 FSM R. 424, 435 (App. 2000).

Fishing fees are not income taxes because the national government's power to impose them does not derive from its power to tax income. Chuuk v. Secretary of Finance, 9 FSM R. 424, 435 (App. 2000).

Not less than half of the national taxes must be paid to the state where collected, but fishing fees are not national taxes because they are imposed, not under the national government's power to impose taxes, but under its power to regulate exploitation of natural resources within the FSM exclusive economic zone. Chuuk v. Secretary of Finance, 9 FSM R. 424, 435 (App. 2000).

The Constitution grants the national government the exclusive right to regulate the exploitation of the natural resources within the EEZ, which necessarily includes the generation of revenue from the EEZ and the use of that revenue. The Constitution requires that of the EEZ-generated revenues, half of the net revenues derived from ocean floor mineral resources be given to the state governments. There is no Constitutional requirement that any revenue from the EEZ's living resources be shared with the state governments although the framers could have easily included one. Chuuk v. Secretary of Finance, 9 FSM R. 424, 435-36 (App. 2000).

The national government is free to distribute or disburse its fishing fee revenues through its

normal legislative process. Chuuk v. Secretary of Finance, 9 FSM R. 424, 436 (App. 2000).

Fishing fees are not an income tax because they are not a tax. The national government has the exclusive sovereign right to control access to and exploitation of the natural resources in the FSM's exclusive economic zone and when it imposes fishing fees, the national government is selling access to the exclusive economic zone's living resources to its fishing licensees and it is selling the licensees the opportunity to reduce some of those resources to the licensees' proprietary ownership. Chuuk v. Secretary of Finance, 9 FSM R. 424, 436 (App. 2000).

While the prosecution has broad discretion in determining whether to initiate litigation, once that litigation is instituted in court, the court also has responsibility for assuring that actions thereafter taken are in the public interest; therefore criminal litigation can be dismissed only by obtaining leave of the court. In a fishing case where criminal and civil cases are filed together, and the dismissal of the criminal proceeding(s) is obviously "integral" to the settlement agreement for which court approval is sought, the same policy considerations apply to the settlement of the civil proceeding(s) as apply to the criminal dismissal. FSM v. Fu Yuan Yu 398, 12 FSM R. 487, 491 (Pon. 2004).

A purpose of Title 24 is to protect marine resources, which are vital to the people of the FSM, from abusive fishing practices. FSM v. Fu Yuan Yu 398, 12 FSM R. 487, 492 (Pon. 2004).

Title 24 establishes agencies to conclude fishing agreements and establish regulations for the exploitation of FSM marine resources. In fishing cases, when the prosecution seeks a dismissal, the court should be presented with evidence that appropriate agencies have been involved in the resolution of the case(s). FSM v. Fu Yuan Yu 398, 12 FSM R. 487, 492 (Pon. 2004).

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Protecting marine resources from abusive fishing practices is an important goal. FSM v. Ching Feng 767, 12 FSM R. 498, 505 (Pon. 2004).

When the applicable statute permits the court take into account the possible fishing violation

fines, but states that the bond should not exceed the value of the property to be released and when it also provides that notwithstanding that provision, the amount determined by the court for a bond must not be less than the fair market value of the property to be released or the aggregate minimum fine for each offense charged, whichever is greater, Congress has left the court no choice but to set the vessel's bond at the aggregate minimum fine when this exceeds the vessel's value. FSM v. Kana Maru No. 1, 14 FSM R. 300, 302 (Chk. 2006).

The statutory use of the phrase "offense charged," for fishing violations, while usually indicative of a criminal prosecution and not a civil suit (in civil cases, violations are alleged, not offenses charged), appears to be intended to cover both civil and criminal violations. FSM v. Kana Maru No. 1, 14 FSM R. 300, 302 (Chk. 2006).

When the government's complaint seeks, among other things, a vessel's forfeiture under 24 F.S.M.C. 801(1), the case is, in part, an *in rem* proceeding, albeit one created by the marine resources statute. FSM v. Kana Maru No. 1, 14 FSM R. 365, 367 (Chk. 2006).

The court will not direct that the government provide countersecurity under the admiralty rules for a defendant's counterclaims in an fishing boat seizure case. FSM v. Kana Maru No. 1, 14 FSM R. 365, 367 (Chk. 2006).

The Marine Resources Act of 2002 amended the prior fisheries law for the purpose of ensuring 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. Included in the definition of "fishing" under the Act is the actual or attempted searching for fish; the placing of any fish aggregating device or associated electronic equipment such as radio beacons; and the use of an aircraft in relation to any activity described in this subsection. "Fishing gear" is equipment or other thing that can be used in the act of fishing, including any aircraft or helicopter. Helicopters, which are used to search for fish and to place radio devices near schools of fish to assist fishing boats in locating fish, fall within the express definition of fishing equipment. Therefore, since fishing in the FSM's EEZ is subject to the exclusive national government jurisdiction and regulation, and since a company's helicopters, based on fishing vessels and piloted by the company's employees, are used to search for fish within the FSM's EEZ, those helicopters are engaged in fishing for purposes of the statutory definition and thus the helicopters, which the company charters to the purse seine operators, and their pilots are subject to the national government's exclusive regulation. Helicopter Aerial Survey Pty., Ltd. v. Pohnpei, 15 FSM R. 329, 334-35 (Pon. 2007).

Since engaging in business is defined as carrying out any activity relating to the conduct of a business and expressly includes leasing property of any kind for commercial purposes, when a foreign investment permittee engaged in the business of providing operational and maintenance support to helicopters servicing fishing vessels in the FSM, its leasing helicopters is one aspect of its business that relates to its fishing activity and is therefore that leasing activity is subject to the FSM's exclusive jurisdiction and regulation for foreign investment purposes. Thus Pohnpei may not require it to apply for a foreign investment permit. Helicopter Aerial Survey Pty., Ltd. v. Pohnpei, 15 FSM R. 329, 335 (Pon. 2007).

Whether or not to pursue a citation in lieu of arresting the vessel lies within the FSM's discretion. Failure to pursue an administrative penalty under the Administrative Penalties Regulations does not render an arrest wrongful. FSM v. Koshin 31, 16 FSM R. 15, 19 (Pon. 2008).

The National Oceanic Resources Management Authority has the authority to adopt regulations for the issuance of citations and assessment of administrative penalties consistent with chapter 7 of Title 24 and for any violation of the statute or its regulations which would fall within section 920's penalty provisions, the Authority may, by regulation provide for an administrative penalty. FSM v. Koshin 31, 16 FSM R. 15, 19 (Pon. 2008).

NORMA's regulations provide for a discretionary system of citations and administrative penalties. The establishment of administrative penalties does not create any obligation on the part of the Authority or the Secretary to issue a citation instead of pursuing other legal remedies or to issue a citation prior to pursuing other legal remedies. Citations are issued by authorized officers, including Maritime Surveillance Officers, who may issue a citation under circumstances where the officer has a reasonable ground to believe that a violation has been committed. Anyone to whom a citation is issued may challenge it within 10 days of its receipt, and NORMA's executive director must issue a final decision on the challenge within 15 days thereafter. Any citation not so challenged is deemed final. FSM v. Koshin 31, 16 FSM R. 15, 19 (Pon. 2008).

With respect to the interplay between NORMA's Administrative Penalties Regulations and the FSM Code's Title 24, administrative penalties are those resulting from a citation issued by a Marine Surveillance Officer while civil penalties are those the FSM Supreme Court imposes in a civil lawsuit after a finding of liability for a Title 24 violation. The court has neither the authority nor the discretion to impose an administrative penalty for the violation in a civil lawsuit. FSM v. Koshin 31, 16 FSM R. 15, 19-20 (Pon. 2008).

While the fishing violations alleged in the complaint are subject to citation under the Administrative Penalties Regulations, the citation process is not mandatory. The citation process to assess an administrative penalty and a civil lawsuit for civil penalties proceed on two separate tracks. The fact that the FSM has not cited the vessel under the Administrative Penalty Regulations but instead has pursued Title 24 civil penalties is not a sufficient ground as a matter of law upon which to allege a cause of action for wrongful arrest against the FSM. FSM v. Koshin 31, 16 FSM R. 15, 20 (Pon. 2008).

When Congress enacted Title 24 and engaged in an executive function by formally inserting itself into the execution and implementation of a portion of that act by vesting in itself the power to control how the law regarding fishing access agreements is executed when more than nine vessels are involved, this was impermissible under the separation of powers doctrine since negotiated access agreements are not approved and licenses are not issued until Congress acts (and the parties to the negotiations presumably know this and adjust their behavior accordingly) and since negotiation and approval of commercial transactions is ordinarily an Executive power. Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth., 17 FSM R. 181, 189 (Pon. 2010).

When, if the section of Title 24 requiring congressional approval of access agreements for more than nine vessels is struck down, that section is easily severed from the rest of Title 24, which would function perfectly well without it; that is, it would function just as it already does for access agreements for nine or fewer vessels, then that section is not so vital to the whole Title 24 regulatory scheme that it cannot be severed from the rest of Title 24. Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth., 17 FSM R. 181, 189 (Pon. 2010).

If Congress feels that the current Title 24 statutory requirements for access agreements are

too loose or are not in the nation's best interests and should be tightened, it can enact further and stricter requirements or it can provide for that review by creating a mechanism for further review in the executive branch, since Congress, through its investigatory powers, can always keep itself informed on the Executive's execution of the laws, and enact remedial legislation when it feels that the Executive needs further guidance in executing national policy that Congress has enacted. But Congress may not execute the laws itself. Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth., 17 FSM R. 181, 189 (Pon. 2010).

An "access agreement" is a treaty, agreement or arrangement entered into by the Authority pursuant to Title 24 in relation to access to the exclusive economic zone for fishing by foreign fishing vessels. But a fishing access agreement is usually not a treaty because treaties are compacts or agreements between sovereign nations and most fishing access agreements are commercial agreements between the FSM national government and a commercial enterprise. They are business deals – not treaties. Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth., 17 FSM R. 181, 189 (Pon. 2010).

Since the Constitution specifically delegates to Congress the power to ratify treaties but does not grant Congress the power to approve or reject fishing access agreements, ruling unconstitutional the statute that requires congressional approval for fishing access agreements for more than nine vessels would not impair Congress's ability to ratify treaties and to advise and consent to presidential appointments. Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth., 17 FSM R. 181, 190 (Pon. 2010).

Since approval of commercial fishing agreements is not a power that the Constitution confers on Congress, but a power that Congress has conferred upon itself by statute, the court's conclusion that that statute is unconstitutional does not have any effect on access agreements that are actually negotiated and concluded as treaties between sovereign nations because, just like any other treaty, the President would continue to submit those to Congress for ratification. Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth., 17 FSM R. 181, 190 (Pon. 2010).

The court's conclusion that requiring Congress to approve or reject fishing access agreements is unconstitutional has no effect on Congress's constitutional treaty-ratification and advice and consent powers. Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth., 17 FSM R. 181, 190 (Pon. 2010).

Since a government act in conflict with the Constitution is invalid to the extent of conflict, Congress's rejection of a successor access agreement was invalid because 24 F.S.M.C. 405 is in conflict with the Constitution. Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth., 17 FSM R. 181, 190 (Pon. 2010).

A party to a foreign fishing agreement is bound by statute and by the foreign fishing agreement to ensure that an authorized vessel complies with the FFA and all applicable FSM laws, rules, and regulations. FSM v. Kana Maru No. 1, 17 FSM R. 399, 404 (Chk. 2011).

A statute that purports to allow Congress to step around the bill-making process and approve fishing access agreements by resolution, is surely unconstitutional because under the Constitution, Congress may make law only by statute, and may enact statutes only by bill. Congress v. Pacific Food & Servs., Inc., 17 FSM R. 542, 546 (App. 2011).

Congress's decision to approve or disapprove fishing access agreements is legislation that must be enacted by the bill-making process. Congress v. Pacific Food & Servs., Inc., 17 FSM R. 542, 547 (App. 2011).

Because an access agreement does not give exclusive rights either to negotiate permits on behalf of all foreign vessels or to exploit the FSM's EEZ, it is more properly a permit or license. Administration of a permit or license scheme is, by its nature, administrative, and thus an executive branch function. Congress v. Pacific Food & Servs., Inc., 17 FSM R. 542, 549 (App. 2011).

If Congress is truly concerned by the amount of debt carried by proposed agents, it may be more specific by creating new minimum requirements for eligibility. But once Congress delegates power to the executive, it cannot have it both ways – it cannot then take back that power or modify the extent of that delegation without amending the statute through the bill-making process. Congress v. Pacific Food & Servs., Inc., 17 FSM R. 542, 550 (App. 2011).

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).

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).

Newly-ratified fisheries management agreement can be made part of FSM domestic law by statute, or by National Oceanic Resource Management Authority regulation under 24 F.S.M.C. 204(1)(d). FSM v. Kimura, 20 FSM R. 297, 305 (Pon. 2016).

– EEZ – Regulation of – Acts Violating

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

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

A person may be held criminally liable for violating any provision of Title 24 or of any regulation or permit issued pursuant to Title 24, or any provision of, or regulation under, an applicable domestic-based or foreign fishing agreement entered into pursuant to Title 24, or any condition of any permit issued in accordance with Title 24 and any regulations made under Title 24, respectively. FSM v. Cheng Chia-W (II), 7 FSM R. 205, 211 (Pon. 1995).

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

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

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

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

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

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

A party's failure to "ensure" its vessel's compliance with FSM law constitutes a breach of its foreign fishing agreement. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 79, 86 (Pon. 1997).

When the fishing statute sets forth a list of prohibited acts in the disjunctive, commission of any one of the listed acts is unlawful, and the government may pursue separate civil penalties for each. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 79, 90 (Pon. 1997).

It is unlawful for any person to violate any provision of Title 24, or of any regulation or permit issued under it, or to violate any provision of, or regulation under, an applicable domestic-based or foreign fishing agreement entered into pursuant to 24 F.S.M.C. 401, 404-406. A person is any individual, corporation, partnership, association, or other entity, the FSM or any of the state governments, or any political subdivision thereof, and any foreign government, subdivision of such government, or entity thereof. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 166, 173-74 & n.2 (Pon. 1997).

While 24 F.S.M.C. 116(1) places a duty to maintain the daily catch log upon the vessel master, the statute does not make the vessel master's liability for failure to maintain that log exclusive. Therefore when a party to a foreign fishing agreement that says that party ensures that its authorized vessels will properly maintain such a log that party may be held liable. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 166, 174 (Pon. 1997).

An authorized vessel's master's knowledge is attributable to its foreign fishing agreement party because knowledge held by an agent or employee of a corporation may be attributed to its

principal. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 166, 180 (Pon. 1997).

A fishing association is not liable under a general theory of agency when the complaint does not make a general agency allegation, and instead asserts liability based on an agreement's language, and nothing in the agreement renders the other defendants the agents of the fishing association such that the association is liable under the respondeat superior doctrine for the damages flowing from a vessel's alleged negligent operation. Dai Wang Sheng v. Japan Far Seas Purse Seine Fishing Ass'n, 10 FSM R. 112, 115 (Kos. 2001).

Fishing agreement provisions that refer to vessels' compliance with FSM law address statutory law violations, not conduct governed by tort law principles. Dai Wang Sheng v. Japan Far Seas Purse Seine Fishing Ass'n, 10 FSM R. 112, 115 (Kos. 2001).

When a fishing agreement requires that the signatory organizations must only take "necessary steps to ensure" that their members comply with the laws, regulations, and their permits and the government has made no allegation and introduced no evidence that the signatory has failed to take any of these "necessary steps," the government cannot seek to impose some sort of strict liability on the signatory for the actions of its members' employees because the fishing agreement's terms, without more, do not create liability for the signatory organizations for each and every violation of FSM fishery law or the foreign fishing agreement that their members commit. The government is therefore not entitled to summary judgment because, as a matter of law, the foreign fishing agreement's contractual terms do not impose vicarious liability on the signatory. FSM v. National Offshore Tuna Fisheries Ass'n, 10 FSM R. 169, 173-74 (Chk. 2001).

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).

A defendant commits a separate violation of section 907(1) for each day he engages in commercial fishing without a valid fishing permit. FSM v. Katzutoku Maru, 15 FSM R. 400, 404-05 (Pon. 2007).

A vessel owner is included within the definition of operator of a vessel and an operator is prohibited from fishing in the FSM's exclusive economic zone without a permit and is also mandated to keep fishing gear stowed except in an area where the vessel is permitted to fish. FSM v. Fu Yuan Yu 096, 16 FSM R. 1, 3 (Pon. 2008).

When a Rule 12(b)(6) movant points to no factual deficiencies in the complaint, whose allegations are deemed true for purposes of the motion to dismiss, and when, taking as true, the complaint's material allegation that the captain switched on the automatic locating device or transponder as the vessel was boarded, the transponder was not on at the time of boarding, which constitutes a violation of 24 F.S.M.C. 611(4), and the complaint thus states a claim for a 24 F.S.M.C. 611(4) violation. FSM v. Koshin 31, 16 FSM R. 15, 19 (Pon. 2008).

A fishing boat operator must, by statute, ensure that appropriate position-fixing and identification equipment is installed and maintained in working order on each vessel, and thus, a fishing boat's transponder is required to be on at all times while it is within the FSM EEZ, even while in transit. FSM v. Kana Maru No. 1, 17 FSM R. 399, 404 (Chk. 2011).

The act or omission of any crew member of a fishing vessel or in association with a fishing vessel, is deemed to be that of that fishing vessel's operator, and an "operator" is 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. FSM v. Kana Maru No. 1, 17 FSM R. 399, 404 (Chk. 2011).

The statute imposes liability for a fishing civil penalty on "any person" and "person" is defined as any natural person or business enterprise or similar entity. It does not include a vessel *in rem*. The civil penalty is thus imposed jointly and severally against the fishing vessel operators only and not against the fishing vessel. But the vessel, or rather the bond posted for the vessel's release, may be considered the property or assets of an owner or operator from which a judgment against the owner or operator may be satisfied. FSM v. Kana Maru No. 1, 17 FSM R. 399, 405 (Chk. 2011).

By statute, a fishing vessel's operator must ensure the continuous monitoring of the international distress and call frequency 2182 kHz (HF) or the international safety and call frequency 156.8 MHz (channel 16, VHF-FM) to facilitate communication with the fisheries management, surveillance and enforcement authorities, and both the Foreign Fishing Agreement and the foreign fishing permit also require that the vessel continuously monitor either of two radio frequencies. FSM v. Kana Maru No. 1, 17 FSM R. 399, 405 (Chk. 2011).

When the FSM proved by a preponderance of the evidence that the fishing boat's HF radio was not on and it also proved that the vessel had a VHF radio, but there was no evidence whether the VHF radio was on or off or whether it was tuned to channel 16, the FSM's claim that the vessel was not monitoring a required radio frequency fails for lack of proof because the statute, the Foreign Fishing Agreement, and the foreign fishing permit all require that the vessel monitor only one of those two frequencies and the evidence shows that the vessel had the ability to monitor the VHF channel 16 and there is no evidence that it was not being monitored. FSM v. Kana Maru No. 1, 17 FSM R. 399, 405 (Chk. 2011).

By statute, and as required by both the foreign fishing agreement and the fishing permit, a fishing boat operator must prominently display any permit issued for the vessel in the vessel's wheelhouse. FSM v. Kana Maru No. 1, 17 FSM R. 399, 405 (Chk. 2011).

Because "display" means a fixed display such as being posted on a bulkhead, not being produced and displayed on demand, the FSM has proven a violation of the requirement to prominently display a fishing permit in the vessel's wheelhouse when the displayed permit had expired and was thus invalid, and the captain, only when asked for a current permit, promptly displayed one. FSM v. Kana Maru No. 1, 17 FSM R. 399, 405-06 (Chk. 2011).

Title 24 imposes criminal liability on any person who commits an act prohibited by that title. A person is defined as any natural person or business enterprise or similar entity. It does not include a vessel in rem. By statute, a person specifically includes a corporation, partnership, cooperative, association, or government entity. Although not an actual, living person, the law treats a company as a person for the purposes of liability. FSM v. Kimura, 19 FSM R. 617, 619 n.1 (Pon. 2014).

All licensed fishing vessels are required to send their position to NORMA when they enter or exit the FSM EEZ, and when in the FSM EEZ, the vessels are required to activate their transponder, broadcasting a unique signal to the FSM's Vessel Monitoring System which

regularly records its location. FSM v. Kimura, 19 FSM R. 630, 634 (Pon. 2015).

24 F.S.M.C. 611(5) imposes strict liability for failure to comply with certain requirements of subsection (1), which reflects the legislative purpose to require that fishing vessels undertake all the various actions necessary to transmit required information continuously, accurately and effectively. To this end, a vessel's operator is required to install a transponder, maintain it in good working order, and ensure the effective transmission of required information. FSM v. Kuo Rong 113, 20 FSM R. 27, 32 (Yap 2015).

Read in proper context, 24 F.S.M.C. 611(1)(b) and (c) are aimed at similar types of wrongdoing and uphold a public interest of the same nature. Thus, a vessel's failure to maintain its transponder in good working order, and its consequent failure to ensure transmission of required information from the transponder, is a solitary act that caused only one injury and therefore 24 F.S.M.C. 611(5) should not be construed to authorize cumulative penalties. FSM v. Kuo Rong 113, 20 FSM R. 27, 32 (Yap 2015).

Since Subsection (1) allows NORMA to require that operators perform an integrated act which, when completed in its entirety, ensures transmission of required information from a vessel's transponder and this is reflected in the use of the word "and" between 24 F.S.M.C. 611(1)(b) and (c); since the failure to perform any one part of the integrated act required under subsection 611(1) is sufficient to frustrate entirely the purpose of the subsection; and since a failure to perform multiple component parts of the act required under the subsection is no more frustrating to the statute's purpose than failure to perform only one part, the court will, in the absence of clear legislative intent to impose cumulative penalties, construe 24 F.S.M.C. 611(5) to impose only a single penalty for the failure to comply with the integrated requirements imposed on them under 24 F.S.M.C. 611(1). FSM v. Kuo Rong 113, 20 FSM R. 27, 33 (Yap 2015).

To prove a violation of section 611(1), the government has to show that a defendant: 1) entered into an access agreement or secured a fishing permit; 2) that the access agreement or permit required the defendant to conform to the requirements that NORMA is authorized to impose under section 611(1), and 3) that the defendant failed to comply with these requirements. It follows that a defendant's failure to comply with section 611(1), will, ipso facto, constitute a violation of a permit or access agreement as proscribed by section 906(1)(a),(c). FSM v. Kuo Rong 113, 20 FSM R. 27, 34 (Yap 2015).

An act in violation of 24 F.S.M.C. 611(1) is the failure to maintain the transponder in good working order and the failure to ensure the transponder was transmitting required information or data continuously, accurately and effectively to the designated receiver. FSM v. Kuo Rong 113, 22 FSM R. 515, 525 (App. 2020).

– EEZ – Regulation of – Fishing Permits

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

A vessel defined as a foreign fishing vessel for permitting purposes must enter into a foreign fishing agreement prior to receiving any fishing permits. Katau Corp. v. Micronesian Maritime

Auth., 6 FSM R. 621, 623 (Pon. 1994).

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

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

A fishing permit issued by the national government prohibiting fishing in state waters unless authorized by the state which has jurisdiction does not constitute regulation of state waters by the national government because it merely tries to prevent a vessel that fishes illegally in state waters from continuing to fish in national waters. FSM v. Hai Hsiang No. 63, 7 FSM R. 114, 116 (Chk. 1995).

Section 404 of Title 24 sets forth certain minimum terms that all foreign fishing agreements must contain. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 166, 172 (Pon. 1997).

Revocation of a fishing permit is not the government's sole remedy for violation of the permit's terms. Civil and criminal penalties are also available. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 166, 181 (Pon. 1997).

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. Pohnpei, 15 FSM R. 329, 335 (Pon. 2007).

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).

Before NORMA issues a fishing permit, it performs a review of various items, including, among other things, the country of registration of the vessel, insurance status, and court cases against the vessel. FSM v. Katzutoku Maru, 15 FSM R. 503, 505 (Pon. 2008).

When, although NORMA informed defendant's local agent that it would not issue a permit on August 17th, there is no evidence defendant's local agent communicated that information to defendant before defendant commenced fishing on August 18th, the defendant's degree of culpability does not warrant imposition of a civil penalty in the amount of $500,000, but the defendant should not have been fishing under the false and uninformed presumption that NORMA would issue the permit on August 17th so the defendant should be required to pay more than the minimum civil penalty. And when the defendant has no history of prior offenses and when the defendant did commit three separate violations by fishing without a permit for three consecutive days, but it appears that the defendant may simply have commenced fishing under the false and uninformed belief that NORMA, as in the past, would issue the permit on the requested preferred effective date, August 17th, and that defendant stopped fishing on August 20th when he found out the permit had not issued, the court determines that $400,000 is the appropriate civil penalty to apply. FSM v. Katzutoku Maru, 15 FSM R. 503, 507 (Pon. 2008).

– EEZ – Regulation of – Penalties

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

By statute, only the cargo actually used illegally, or the fish actually caught illegally, are subject to forfeiture, although the burden of proof (presumptions) rest on different parties depending on whether fish or cargo is involved. It is a rebuttable presumption that all fish found a board a vessel seized for Title 24 violations were illegally taken, but there is no such presumption that the cargo found aboard was "cargo used" in the alleged violation. FSM v. Skico, Ltd. (I), 7 FSM R. 550, 552 (Chk. 1996).

Where a fuel tanker illegally fueled a fishing vessel and then loaded on more fuel cargo, only the amount of fuel cargo on the tanker before it reloaded is "cargo used" in violation of Title 24 subject to forfeiture. FSM v. Skico, Ltd. (I), 7 FSM R. 550, 552 (Chk. 1996).

A contract between a foreign fishing agreement party and the owner of vessels permitted under that agreement that the vessels' owner will be responsible for criminal and civil charges for fishing violations merely provides the foreign fishing agreement party with a contractual right of indemnity against the vessels' owner and does not bar the government's imposition of penalties for fishing agreement violations on the foreign fishing agreement party. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 79, 89 (Pon. 1997).

While MMA is authorized to issue, deny, cancel, suspend or impose restrictions on FSM fishing permits for fishing law violations, this is not the government's exclusive remedy because the FSM Attorney General is separately authorized to enforce violations of the foreign fishing agreement, Title 24 or the permit through court proceedings for civil and criminal penalties and forfeitures. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 79, 92-93 (Pon. 1997).

Revocation of a fishing permit is not the government's sole remedy for violation of the permit's terms. Civil and criminal penalties are also available. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 166, 181 (Pon. 1997).

In fashioning an appropriate sentence for fishing violations, a court considers the nature, circumstances, extent, and gravity of the prohibited acts committed, the defendant's degree of culpability and history of prior offenses, whether other civil penalties or criminal fines have already been imposed for the specific conduct before the court, and such other matters as justice might require, keeping in mind the statutory purpose behind the provisions violated. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 166, 181-82 (Pon. 1997).

When assessing civil penalties for violations of the Marine Resources Act of 2002, the court is required to take into account several factors, including among other things, the degree of culpability, any history of prior offenses, whether there are multiple violations which together constitute a serious disregard of conservation and management measure and such other matters as justice may require. FSM v. Katzutoku Maru, 15 FSM R. 400, 405 (Pon. 2007).

The Marine Resources Act of 2002, requires the court to take into account several factors when assessing civil penalties for illegal fishing. These factors include the degree of culpability, any history of prior offenses, whether there are multiple violations which together constitute a serious disregard of conservation and management measures and such other matters as justice may require. 24 F.S.M.C. 901(2) sets a minimum civil penalty of $100,000 per violation and a maximum civil penalty of $1,000,000 per violation. FSM v. Katzutoku Maru, 15 FSM R. 503, 506, 507 (Pon. 2008).

When, although NORMA informed defendant's local agent that it would not issue a permit on August 17th, there is no evidence defendant's local agent communicated that information to defendant before defendant commenced fishing on August 18th, the defendant's degree of culpability does not warrant imposition of a civil penalty in the amount of $500,000, but the defendant should not have been fishing under the false and uninformed presumption that NORMA would issue the permit on August 17th so the defendant should be required to pay more than the minimum civil penalty. And when the defendant has no history of prior offenses and when the defendant did commit three separate violations by fishing without a permit for three consecutive days, but it appears that the defendant may simply have commenced fishing under the false and uninformed belief that NORMA, as in the past, would issue the permit on the requested preferred effective date, August 17th, and that defendant stopped fishing on August 20th when he found out the permit had not issued, the court determines that $400,000 is the appropriate civil penalty to apply. FSM v. Katzutoku Maru, 15 FSM R. 503, 507 (Pon. 2008).

The FSM is entitled to the proceeds of the sale of fish caught during defendant's illegal fishing activities. FSM v. Katzutoku Maru, 15 FSM R. 503, 507 (Pon. 2008).

Any person who commits a fishery violation for which no civil penalty is otherwise specified, is subject to a civil penalty of not less that $40,000 and not more than $100,000. FSM v. Koshin

31, 16 FSM R. 15, 19 (Pon. 2008).

The transponder-on violation in the Administrative Penalties Regulations is a violation of a condition of a fishing access agreement under the APRs' Violation Penalty section. Violation of an access agreement is something for which no specific penalty is provided under Title 24, and which falls within the catch-all provision of Section 920, and may be subject to administrative penalties. FSM v. Koshin 31, 16 FSM R. 15, 21-22 (Pon. 2008).

When a licensed vessel's captain had forgotten to turn the transponder back on after he had fixed and restarted the generator and the vessel was not fishing at the time, the captain's failure to turn the transponder back on immediately after fixing the generator was neither intentional nor reckless, but, at most, it was negligent. Taking into account the nature, circumstances, extent and gravity of this prohibited act, the violator's degree of culpability and any history of prior offenses, the court will determine that the minimum civil penalty permissible ($100,000) is appropriate. FSM v. Koshin 31, 16 FSM R. 350, 354 (Pon. 2009).

Since the penalty for violating 24 F.S.M.C. 611 may be imposed on "any person," it, by statute, may be imposed only on a natural person or business enterprise or similar entity and not on a vessel. FSM v. Koshin 31, 16 FSM R. 350, 354 (Pon. 2009).

In determining the amount of a Title 24 civil penalty, the court must consider the nature, circumstances, extent and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, whether there are multiple violations which together constitute a serious disregard of conservation and management measures, and such other matters as justice requires. FSM v. Kana Maru No. 1, 17 FSM R. 399, 404 (Chk. 2011).

Congress, by setting a high minimum fine, considers a fishing boat's failure to have the ALC transponder on at all times while in the FSM EEZ to be a grave violation, but when the fishing boat's failure to have the transponder on does not appear to be intentional; when it did not have any history of prior offenses; when, even taken together with the other alleged violations, the multiple violations together do not constitute a serious disregard of conservation and management measures; when the fishing boat had a valid fishing license; and when it was not fishing at the time and had not been fishing within the FSM EEZ on that voyage, the court determines that the $100,000 minimum penalty under 24 F.S.M.C. 611(5) is appropriate. FSM v. Kana Maru No. 1, 17 FSM R. 399, 405 (Chk. 2011).

When no specific civil penalty is provided for a Title 24 violation it is subject to a civil penalty of not less than $40,000 and not more than $100,000. FSM v. Kana Maru No. 1, 17 FSM R. 399, 406 (Chk. 2011).

Whether cumulative statutory penalties are permissible is properly determined by seeking out the legislative intent as expressed in the statute's language. FSM v. Kuo Rong 113, 20 FSM R. 27, 31 (Yap 2015).

Clear legislative intent for cumulative penalties can be indicated by provisions providing for separate penalties for each day of a violation, as found section 901(2) of the Marine Resources Act, or where a separate penalty is expressly imposed for each violation. FSM v. Kuo Rong 113, 20 FSM R. 27, 31 (Yap 2015).

Congress would have reasonably intended to restrict to the scope of 24 F.S.M.C. 611(5) and its civil penalty of $100,000 to $500,000, to only those acts of interference that would result in a failure to ensure transmission of required information from a transponder, and that an act of interference that falls short of that standard would be penalized under the catch-all provision in 24 F.S.M.C. 920, and would be punishable by a lesser fine of between $40,000 and $100,000. FSM v. Kuo Rong 113, 20 FSM R. 27, 32 (Yap 2015).

When the FSM's initial reliance on section 906(2) was in error but that mistake was merely a technical error in pleading since the catch-all cause of action under 24 F.S.M.C. 920 applied, and when granting leave to amend would not prejudice the defendants because the revised cause of action does not place any new facts in dispute, would not result in the need for additional discovery and would not otherwise delay the case's disposition, leave to amend the prayer for relief in four counts to seek a fine in the maximum amount of $100,000 under 24 F.S.M.C. 920 instead of $500,000 under 24 F.S.M.C. 906(2) will be granted. FSM v. Kuo Rong 113, 20 FSM R. 27, 33 (Yap 2015).

In the absence of clear legislative intent to impose cumulative penalties against a single violative act, the court will construe 24 F.S.M.C. 611(5), 906(1) and 920 to impose only one penalty for failure to comply with the integrated requirements imposed as a condition of a permit or access agreement pursuant to 24 F.S.M.C. 611(1). But since 24 F.S.M.C. 901(2) evinces clear legislative intent for the imposition of cumulative penalties by making each day of a continuing violation a separate offense for violations of subtitle I and since the entire Marine Resources Act of 2002 constitutes FSM Code Title 24, Subtitle I, it is proper to impose a separate penalty for each of the four days between April 27, 2013 and April 30, 2013, inclusive, during which the vessel violated a provision of that Act. FSM v. Kuo Rong 113, 20 FSM R. 27, 34-35 (Yap 2015).

Whether an administrative penalty could have been imposed in lieu of a civil action in a fishing case is irrelevant to the case's disposition because the citation process by which administrative penalties are imposed is not mandatory and the citation process to assess an administrative penalty and a civil law suit for civil penalties proceed on two separate tracks. That the FSM has not cited a vessel under the Administrative Penalty Regulations, but has instead pursued Title 24 civil penalties is not sufficient as a matter of law to warrant summary judgment for defendants, nor does it present a material question of fact to be reserved for trial. FSM v. Kuo Rong 113, 20 FSM R. 27, 35 (Yap 2015).

Although penalties can only be assessed against persons – natural persons or business enterprises or similar entities – and the definition of person does not include a vessel *in rem*, the vessel or a bond posted for the vessel's release, may be considered the property or assets of an owner or operator from which a judgment against the owner or operator may be satisfied so that the vessel, as security for the bond, is therefore properly a party to the action. FSM v. Kuo Rong 113, 20 FSM R. 27, 35 (Yap 2015).

Violations of 24 F.S.M.C. 611(1) that are also violations of 24 F.S.M.C. 906(1) should be penalized as one violation under 24 F.S.M.C. 611(5) and that civil penalties should be assessed pursuant to section 24 F.S.M.C. 901(1) on a daily basis under 24 F.S.M.C. 901(2). The only exception to imposition of penalties under 24 F.S.M.C. 611(5) is an act that does not rise to the level of failure to install, maintain, or ensure transmission of information from a transponder, which is to intentionally feed information or data into a transponder which is not officially

required or is meaningless, as set forth in 24 F.S.M.C. 611(4). Such an act is penalized under 24 F.S.M.C. 920. FSM v. Kuo Rong 113, 22 FSM R. 515, 524 & n.9 (App. 2020).

24 F.S.M.C. 611(1) is a strict liability statute. The pertinent inquiry is whether there was compliance with the statute, and if not, during what time period. Whether continuing "acts" occurred to cause the failure to comply is irrelevant. When the defendants were in violation of 24 F.S.M.C. 611(1) on four consecutive days, the imposition of multiple penalties under 24 F.S.M.C. 901(2) is justified. FSM v. Kuo Rong 113, 22 FSM R. 515, 526 (App. 2020).

The only relevant question when evaluating a strict liability statute is whether there was compliance. A finding of discreet or overt acts in violation of the Marine Resources Act need not be established in order to find continuing violations under 24 F.M.S.C. 901(2). Thus, when the lack of compliance continued for four days, the court will impose penalties for each day of noncompliance. FSM v. Kuo Rong 113, 22 FSM R. 515, 526-27 (App. 2020).

When the later enacted public law is silent about whether sections 611(4) and 611(5) were retroactively repealed, the law in effect at the time of the violations will control the imposition of the penalty. FSM v. Kuo Rong 113, 22 FSM R. 515, 528 (App. 2020).

– Reef Damage

Various approaches exist for monetary valuation of damages to reefs: commodity value, which is posited on a sale of the components of the damaged area; tourism value, which is based on what visitors spend to visit the site; and replacement value involves, which is the cost of replacing the damaged corals by reseeding. People of Satawal ex rel. Ramoloilug v. Mina Maru No. 3, 10 FSM R. 337, 339 (Yap 2001).

When the class plaintiffs successfully pursued two separate causes of action arising from the same incident, negligence and nuisance, and were awarded compensatory damages, including damages for the physical damage to the reef and marine area as well as their loss of use of this resource, their purported discomfort and annoyance does not generate an additional, separate award of damages since the compensatory damages that were awarded, which flowed from the negligence claim, addressed the loss related to the use of property including any discomfort or annoyance that may have been experienced. Any additional award of damages for their nuisance claim would have resulted in a double recovery. M/V Kyowa Violet v. People of Rull ex rel. Mafel, 16 FSM R. 49, 63 (App. 2008).

While it may be uncontested that the value of a reef on the main island of Yap is $600 per square meter, the court cannot presume, without evidence, that $600 a square meter is an accurate value for any particular Yap outer island reef, especially where on the outer island there may be more reef and fewer people who have the right to rely on or depend on the reef's resources. People of Sorol ex rel. Marpa v. M/Y Truk Master, 22 FSM R. 14, 22 (Yap 2018).

An appropriate measure of damages for a damaged coral reef may be the cost of restoration without grossly disproportionate expense. Or if the cost of restoration would not be an appropriate measure because it would entail a grossly disproportionate expense, damages could be measured by the economic value of the marine resources lost or diminished by the reef damage. People of Sorol ex rel. Marpa v. M/Y Truk Master, 22 FSM R. 14, 22 (Yap 2018).

– State Waters

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

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

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

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

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

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

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

A fishing permit issued by the national government prohibiting fishing in state waters unless authorized by the state which has jurisdiction does not constitute regulation of state waters by the national government because it merely tries to prevent a vessel that fishes illegally in state waters from continuing to fish in national waters. FSM v. Hai Hsiang No. 63, 7 FSM R. 114, 116 (Chk. 1995).

Even if an FSM Foreign Fishing Agreement has a regulatory effect in banning fishing in state waters, Kosrae acceded to that regulation when the Kosrae Attorney General requested that "the FSM Department of Justice institute a prosecution of the vessel and her owners and operators for fishing within state waters in violation of national law and the terms of the vessel's permit." When Kosrae requested the FSM's assistance in enforcing the national statute criminalizing the Foreign Fishing Agreement's strictures on fishing in state waters, and failing to keep fishing gear stowed in those same waters, Kosrae ratified any FSM regulation of its waters

in those two respects and on the occasion in question. FSM v. Zhong Yuan Fishery Co., 9 FSM R. 421, 423 (Kos. 2000).

A criminal prosecution for fishing in state waters will not be dismissed when even if the Foreign Fishing Agreement were to be construed as regulating commercial fishing in Kosrae's waters, the cooperative law enforcement public policy weighs in favor of Kosrae's ability to expressly ratify any such regulation by a specific request to institute a prosecution where the ratification facilitated the enforcement of a national law criminalizing conduct proscribed in the Foreign Fishing Agreement. FSM v. Zhong Yuan Fishery Co., 9 FSM R. 421, 423 (Kos. 2000).

Internal waters are those waters on the landward side, or inside, of the baselines of the territorial sea. The exclusive economic zone starts twelve nautical miles seaward of the baseline and extending outward for another 188 nautical miles. A desire to maximize the area that might be included within the baselines, subject to the FSM's international treaty obligations, cannot be interpreted as a recognition of state ownership of the ocean resources 12 to 200 nautical outside of those baselines when drawn. Chuuk v. Secretary of Finance, 9 FSM R. 424, 430-31 (App. 2000).

As a result of the Pohnpei Executive Reorganization Act, the Department of Land and Natural Resources, not the Office of Economic Affairs, has the power to authorize the harvest and marketing of trochus in Pohnpei. Therefore, any actions taken by the Office of Economic Affairs with regard to publication of solicitations to bid, designating successful bidders, or entering into contracts on the state's behalf for the sale of trochus, were *ultra vires*, or without any legal authority. Nagata v. Pohnpei, 11 FSM R. 265, 270-71 (Pon. 2002).

When the FSM had no involvement in or authority over Pohnpei's decisions not to declare a trochus harvest, summary judgment in the FSM's favor is appropriate with respect to the alleged constitutional violations concerning the plaintiff's trochus business. AHPW, Inc. v. FSM, 12 FSM R. 114, 118-19 (Pon. 2003).

Under Yap traditional rights and ownership of natural resources and marine areas inside the Yap fringing reef – the rights to use and exploit, to the exclusion of all others, the marine resources of particular areas of the submerged lands inside the fringing reef around Yap – stem from a concept called a *tabinaw*. A *tabinaw* entails rights, duties and obligations for its members, and includes families and households. But a *tabinaw* is more than a concept. A *tabinaw* includes an estate in identifiable land and specific areas within the Yap fringing reef within which a *tabinaw* member can exploit the marine resources. A *tabinaw* member can only exploit marine resources in the marine area that appertains to his *tabinaw*. Each village includes a number of *tabinaw*. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 157 (Yap 2007).

Since a *tabinaw* member can only exploit marine resources in the marine area that appertains to his *tabinaw*, the court can and will redefine the class to include only those residents whose *tabinaw* membership gives them exclusive exploitation or use rights in the affected reef area, regardless of whether the state is the ultimate owner of the reef. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 157 (Yap 2007).

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In a lawsuit for damage to the reef in a Yap municipality, a plaintiff class of all municipal residents is not sufficiently definite when the rights to exploit the reef are vested in only certain *tabinaw* and the *tabinaw*'s members. People of Gilman ex rel. Tamagken v. M/V Nationwide I, 16 FSM R. 34, 38-39 (Yap 2008).

A trial court case that when affirmed on appeal held that the decision – that the State of Pohnpei and not its municipalities owned the marine areas in Pohnpei – concerned only Pohnpei and not the other three FSM states, is clearly not controlling precedent for the resolving issues unique to the State of Yap, including the interpretation of its Constitution and Code when, unlike Pohnpei, Yap not only repealed the relevant Trust Territory Code provision, but Yap's Constitution expressly recognizes the traditional rights and ownership over the natural resources and the marine space within the state of Yap. M/V Kyowa Violet v. People of Rull ex rel. Mafel, 16 FSM R. 49, 58 (App. 2008).

The State of Yap's ownership of public lands as provided for at 9 Y.S.C. 901, is not mutually exclusive with the traditional rights of ownership over these lands and related marine resources by the people of Yap through the *tabinaw*, as recognized in the Yap Constitution. M/V Kyowa Violet v. People of Rull ex rel. Mafel, 16 FSM R. 49, 58 (App. 2008).

The mere fact that there is someone outside the class who believes that they also have an interest in the damaged marine space would not preclude an award of damages to the class plaintiffs, provided the class could demonstrate that they had such an interest. M/V Kyowa Violet v. People of Rull ex rel. Mafel, 16 FSM R. 49, 60 (App. 2008).

When the class plaintiffs successfully pursued two separate causes of action arising from the same incident, negligence and nuisance, and were awarded compensatory damages, including damages for the physical damage to the reef and marine area as well as their loss of use of this resource, their purported discomfort and annoyance does not generate an additional, separate award of damages since the compensatory damages that were awarded, which flowed from the negligence claim, addressed the loss related to the use of property including any discomfort or annoyance that may have been experienced. Any additional award of damages for their nuisance claim would have resulted in a double recovery. M/V Kyowa Violet v. People of Rull ex rel. Mafel, 16 FSM R. 49, 63 (App. 2008).

"Fishery waters" includes the FSM Exclusive Economic Zone, territorial waters, and internal waters. FSM v. Kana Maru No. 1, 17 FSM R. 399, 404 n.2 (Chk. 2011).

No one may commercially harvest, commercially process, or commercially export sea cucumbers without having a valid permit issued by Kosrae Island Resource Management Authority. Lee v. Kosrae, 20 FSM R. 160, 165 (App. 2015).

Anyone, regardless of citizenship, is required to obtain the same sea cucumber permit because the permit requirement is part of a regulatory scheme to properly manage an important marine resource and avoid its depletion. Lee v. Kosrae, 20 FSM R. 160, 165 (App. 2015).

Kosrae Island Resource Management Authority is statutorily required to adopt regulations necessary for the protection and sustainable commercial harvesting, commercial processing, and commercial exportation of sea cucumbers, and to effect this regulatory scheme, the statute vests KIRMA with the authority to issue commercial sea cucumber permits and requires that those making commercial use of sea cucumbers to obtain KIRMA permits. Making persons who have a foreign investment permit also get a KIRMA permit is consistent with this regulatory scheme because if a foreign investment permit holder did not also need to obtain a KIRMA permit, then KIRMA would be unable to effectively manage or regulate the sea cucumber resource since it would not have any contact with or knowledge of the foreign investment permit holder's activities and thus be unable to effectively regulate the resource. Lee v. Kosrae, 20 FSM R. 160, 165 (App. 2015).

A foreign investment permit holder must also hold a Kosrae Island Resource Management Authority permit in order to commercially harvest, process, or export sea cucumbers. Lee v. Kosrae, 20 FSM R. 160, 165 (App. 2015).

A Kosrae Island Resource Management Authority sea cucumber permit is the only sea cucumber permit needed so as not to violate either Kosrae State Code § 13.523(5) or § 13.523(6). A foreign citizen also needs a foreign investment permit to engage in a sea cucumber (or any other) business, and the lack of a foreign investment permit or the violation of one or more of its conditions would be charged under the foreign investment statutes, not under § 13.523(5) or § 13.523(6). Lee v. Kosrae, 20 FSM R. 229, 231 (App. 2015).

The territorial sea is the waters within 12 nautical miles seaward of FSM island baselines, and the exclusive economic zone is the water seaward of the territorial sea outward to 200 nautical miles from the island baselines. FSM v. Kimura, 20 FSM R. 297, 302 (Pon. 2016).

Irreparable harm may be threatened when, once the sea cucumber population is significantly impacted, it will take several years for the population to recover, if at all, and when the very nature of the surrounding ecosystem will suffer negative consequences as a result. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 546, 551 (Pon. 2016).

The Administrator of the Pohnpei Office of Fisheries and Aquaculture is granted the power to establish seasons for the harvesting of sea cucumbers from their natural marine habitat, and he or she shall do so with the aim of balancing the exploitation of sea cucumbers as an economic resource and the preservation of sea cucumbers as a renewable resource. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 546, 551 (Pon. 2016).

When a temporary restraining order enjoins the conduct, endorsement, or coordination of any further commercial sea cucumber harvesting in Pohnpei waters and the sale or purchase of sea cucumbers harvested in Pohnpei waters, it may also provide that any sea cucumber already harvested before the order's date may be sold and purchased pursuant to the laws and regulations and that any sea cucumber coming into the buyer's possession which was harvested before the order's date may be handled accordingly so as to prevent the unnecessary waste of those sea cucumbers. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 546, 553 (Pon. 2016).

Passage by Vietnamese through the FSM territorial waters was not innocent and therefore unlawful when it was for the purpose of illegal sea cucumber harvesting, and thus it provides a sufficient factual basis for a guilty plea to entry without a permit. FSM v. Bui Van Cua, 20 FSM R. 588, 590-91 (Pon. 2016).

The court recognizes the customary and traditional rights of municipalities, clans, families, and individuals to control the use of, or material in, marine areas below the ordinary high watermark and otherwise engage in the harvesting of fish and other marine resources from reef areas, but any traditional and customary right to control the use of, or material in, marine areas below the ordinary high watermark is subject to, and limited by, the inherent rights of the Pohnpei Public Lands Trust as the owner of such marine areas. Accordingly, the Mwoalen Wahu does not have standing on the basis that there exists a customary law that gives the traditional leaders the right to control the use of marine areas in their respective municipalities. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 641-42 & n.1 (Pon. 2016).