

TITLE 29
FISHERIES

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CHAPTER

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CHAPTER 1 FISHING IN STATE WATERS

Section

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§1-101. Short title. — This chapter is known and may be cited as the “Pohnpei State Fisheries Protection Act of 1995.”

Source: S.L. No. 3L-114-95 §1, 12/28/95

§1-102. Statement of purpose. — The state of Pohnpei, having jurisdiction over its state waters, recognizes the need to protect and preserve the marine resources therein for the people of Pohnpei. In recognition of the fact that the marine resources of these waters are a finite and renewable part of

the physical heritage of our people, we choose to limit the use of such resources to the people of Pohnpei. For this reason, the commercial harvesting of these resources is prohibited to commercial foreign and domestic enterprises within state waters. The purpose of this chapter is to enforce the general prohibition against non-recreational commercial fishing by establishing a fine structure that will effectively limit the economic feasibility of illegally fishing within state waters, to regulate allowable non-commercial and commercial recreational fishing in state waters by establishing the necessary permit system for such fishing, and to finance both the enforcement and regulatory effort.

Source: S.L. No. 3L-114-95 §2, 12/28/95

Note: S.L. No. 3L-114-95 §3 repealing provision has been omitted.

§1-103. Definitions. — As used in this chapter, unless the context clearly requires otherwise:

(1) “Atoll” means a naturally formed coral reef system that has one or more islands situated on the reef system, including Oroluk, Nukuoro, Kapingamarangi, Pakin, Ant, Sapwuahfik, Mwoakilloa, and Pingelap.

(2) “Attorney General” means the Attorney General of Pohnpei State.

(3) “Authorized officer” means any officer so designated in writing to be an authorized officer for the purposes of this chapter by the Pohnpei State Attorney General within the Office of Economic Affairs, the Office of the Attorney General, the Department of Public Safety, the Environmental Protection Agency, other agencies of the Pohnpei Government or the government of the Federated States of Micronesia, and any local government.

(4) “Baseline” means a continuous line that encircles an island or atoll. The baseline from which the 12-mile zone shall be measured is as follows:

(a) The baseline of an island or portion of an island lacking a barrier reef, fringing reef or other reef system is the low-water line of the island as marked on large-scale charts officially recognized by the government of the Federated States of Micronesia.

(b) The baseline of an atoll or island or portion of an island having a barrier reef, fringing reef or other reef system is the line that contours the seaward edge of the reef system, which line connects those outermost elevations of the reef that are above water at low tide, and which line exists as marked on large-scale charts officially recognized by the government of the Federated States of Micronesia.

(5) “Bill fish” means any and all of the following species of pelagic fish:

(a) Indo-Pacific Blue Marlin (*Makaira mazara*);

(b) Black Marlin (*Makaira indica*);

(c) Striped Marlin (*Tetrapturus audax*);

(d) Shortbill Spearfish (*Tetrapturus angustirostris*); and

(e) Indo-Pacific Sailfish (*Istiophorus platypterus*).

(6) “Commercial fishing” means any fishing undertaken for other than recreational, sport or subsistence purposes. For the purposes of this chapter, fishing by a vessel measuring 27 feet or more in overall length and fishing by more than one vessel owned by a single person for the primary purpose of selling the fish in the commercial market shall be presumed to be commercial fishing.

(7) “Commercial recreational fishing” means the hiring out of a fishing vessel or the services thereof for recreational purposes and includes sport fishing.

(8) “Commercial sport fishing,” for the purposes of this chapter, is synonymous with “commercial recreational fishing.”

(9) “Court” means the Supreme Court of Pohnpei.

(10) “Department” or “Office” means the Office of Economic Affairs.

(11) “Director” or “Administrator” means the Administrator of the Office of Economic Affairs or his designee.

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

(13) “Exclusive economic zone” means the exclusive economic zone defined in 18 FSMC (1982).

- (14) "Fish" means any living marine resource, plant or animal, except marine birds.
- (15) "Fishing" means:
- (a) The actual or attempted searching for, catching, taking or harvesting of fish;
 - (b) Any other activity which can reasonably be expected to result in the locating, catching, taking or harvesting of fish;
 - (c) The placing, searching for or recovery of fish aggregating devices or associated electronic equipment such as radio beacons;
 - (d) Aircraft use relating to the activities described in this subsection, except for flights in emergencies involving the health or safety of crew members, or of the safety of a vessel;
 - (e) Transshipping fish to or from any vessel;
 - (f) Storing, processing or transporting fish harvested within Pohnpei's internal waters or within Pohnpei's 12-mile zone;
 - (g) Refueling or supplying fishing vessels; or
 - (h) Any operations within Pohnpei's internal waters or within Pohnpei's 12-mile zone in support of or in preparation for any activity described in this subsection.
- (16) "Fishing gear" means any equipment, implement or other thing that can be used in the act of fishing, including any fishing net, rope, line, float, trap, hook, winch, boat carried on board a fishing vessel, aircraft or helicopter.
- (17) "Fishing vessel" means any vessel, boat, ship or other craft that is used for, equipped to be used for, or of a type that is normally used for:
- (a) Fishing; or
 - (b) Aiding or assisting one or more vessels at sea in the performance of any activity related to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation or processing.
- (18) "Foreign fishing" means any commercial fishing or commercial recreational fishing by a foreign fishing vessel.
- (19) "Foreign fishing vessel" means any foreign-owned or foreign-operated fishing vessel that conducts commercial fishing or commercial recreational fishing as defined by this chapter.
- (20) "Internal waters" means waters in Pohnpei landward of the baseline defined in Subsection (4) of this section, including the lagoons of atolls or islands.
- (21) "Island" means a naturally formed area of land surrounded by water, which area of land is above water at high tide.
- (22) "Marine mammal" means any species of the mammal class whose principal natural habitat is on or within the sea.
- (23) "Person" means any individual, corporation, partnership, association or other entity, the government of any of the states of the Federated States of Micronesia, or any political subdivision thereof, and any foreign government, subdivision of such government, or entity thereof.
- (24) "Reef fish" means any species of fish that predominantly inhabits inland waters, lagoons at whatever depth, and reef areas, inclusive of outer and submerged reefs to a depth of 50 fathoms.
- (25) "State waters" means the internal waters of Pohnpei or waters within the state of Pohnpei's 12-mile zone as defined in Subsection (30) of this section.
- (26) "Stock of fish" means a species, subspecies or other category of fish identified on the basis of geographical, scientific, technical, recreational, and economic characteristics that can be treated as a unit for purposes of conservation and management.
- (27) "Submerged reef" means a coral reef forming a geographical and ecological unity that is wholly submerged at high tide.
- (28) "Subsistence fishing" means fishing undertaken by citizens of Pohnpei to ensure the livelihood of the immediate or extended family as may be further defined by regulation.
- (29) "Transshipment privilege fee" means a fee charged to all foreign and domestic fishing vessels for the privilege of transshipping fish out of Pohnpei ports.

(30) “Twelve-mile zone” (“12-mile zone”) means the area of ocean, the inside boundary of which is the baseline as defined in Subsection (4) of this section, and the outer boundary of which is a line, every point of which is twelve nautical miles seaward of the nearest point of the baseline.

Source: S.L. No. 3L-114-95 §4, 12/28/95; S.L. No. 5L-14-00 §3-16, 10/1/00

§1-104. State powers within state waters. — Within state waters, the Pohnpei Government shall have:

(1) Sovereign rights for the purpose of exploring, exploiting, conserving, and managing fish;

(2) Jurisdiction with regard to the establishment and use of artificial islands, installations, and structures; marine scientific research; and the protection and preservation of the marine environment; and

(3) Other rights and duties provided for in state, national, and international law.

Source: S.L. No. 3L-114-95 §5, 12/28/95

§1-105. Submerged reefs. — Traditionally recognized subsistence fishing rights in submerged reef areas wherever located within state waters shall be preserved and respected.

Source: S.L. No. 3L-114-95 §6, 12/28/95

§1-106. Commercial fishing and drift net fishing in state waters prohibited. — Except as otherwise provided by law or this chapter, no person may engage in commercial fishing within state waters. Notwithstanding any other provision of this chapter, under no circumstances shall drift net fishing be allowed in state waters.

Source: S.L. No. 3L-114-95 §7, 12/28/95

Note: Title of section expanded to include drift net fishing.

§1-107. Special permits. — Notwithstanding §1-106, the Director may, with the concurrence of the Governor, issue a special permit to persons and vessels to engage in scientific or experimental research on marine life in state waters. The Director, in his discretion and with the concurrence of the Governor, shall prescribe in the permit the terms and conditions thereof. The permit shall, in addition to the terms and conditions stated therein, grant the right for the Department to place, at no expense to the government, an observer or observers on board any vessel fishing in state waters under a special permit, and the right for authorized state officials to board the vessel at any time to inspect the vessel, its catch and its logs, books and records, and to question its officers and crew. The harvest of any marine life from state waters not required for further research purposes shall be donated to the Pohnpei Government for distribution to governmental institutions or charitable organizations or otherwise disposed of pursuant to the terms of the special permit. The Director and the Attorney General shall have the right to request and receive a copy of all records and reports of research activities of the vessel in state waters, and the findings and conclusions gained from such research.

Source: S.L. No. 3L-114-95 §8, 12/28/95

§1-108. Recreational and sport fishing. —

(1) Fishing by recreational and sport fishing vessels operating under a valid foreign investment permit issued by the state, by resident noncitizens and vessels owned or controlled thereby, and by bona fide tourists shall be permitted under this chapter; PROVIDED that the total catch, inclusive of the catch of species of bill fish prohibited to foreign fishing vessels under §1-105, attributable to any one such person in any one day shall not exceed 150 pounds or three fish, whichever is greater. Any person engaged in recreational or sport fishing covered by this subsection who controls, manages, leases, or operates a sport fishing vessel for commercial use by tourists and resident noncitizens shall file quarterly reports for the previous three months with the Director on such forms and at such times prescribed by him as to the number of persons serviced, general areas fished, numbers of fish caught

enumerated by stock, the gross weight of each stock caught, and the numbers of such fish returned to their natural habitats for the previous three months.

(2) Persons participating in a duly-held sport fishing contest of a duration of seven days or less, which has been registered with and approved by the Director and which restricts the methods of fishing that can be used in the contest to handlines and rods and reels, shall be exempt from the weight and numerical restrictions specified in Subsection (1) of this section; PROVIDED that, within five working days following the conclusion of the contest, the principal organizer of the contest shall file with the Director a full accounting of all information required of a sport fishing vessel operator as prescribed in Subsection (1) of this section for the period which the vessels participated in the contest.

(3) The Director shall seek the cooperation of the operators of sport fishing vessels and the members of sport fishing clubs to preserve populations of marine life and promote their use in recreational fishing. To this end, the Director shall endeavor to obtain cooperative understandings and agreements with such operators and clubs to:

(a) Prohibit or limit the catch of undersize fish.

(b) Return landed fish to their natural habitats by means which will maximize their chances of survival.

(c) Establish and support programs that monitor the marine resources of this state, that promote public awareness of the need to conserve the marine resources of this state, and that enhance the health, numbers and size of marine animals within their natural habitats within this state.

(4) Recreational fishing for marine mammals is strictly prohibited. If a marine mammal is caught as an unintended and incidental by-catch of a recreational fishing effort permitted under this chapter, the mammal shall be immediately released by such means as will maximize the chances of survival of that mammal.

(5) Any vessel engaged in noncommercial or recreational fishing under the authority of this section with noncitizens aboard, whether such vessel be owned by citizens or noncitizens, shall be subject to boarding and search at any time by authorized state officers to ensure compliance with this chapter.

(6) This section shall not exempt any person from the operation of any other applicable state law.

Source: S.L. No. 3L-114-95 §9, 12/28/95

§1-109. Foreign fishing. — Except as otherwise provided by this chapter, foreign fishing for shellfish, reef fish, bill fish, marine mammals or any other type of marine life is prohibited. In any event that a foreign fishing vessel shall catch any species of bill fish or marine mammal as an unintended and incidental by-catch of a fishing effort permitted under this chapter, such vessel shall:

(1) If it be a vessel engaged in longline fishing, cut the line immediately next to the bill fish or marine mammal while the fish or mammal is still immersed in the water and release that fish or mammal to its natural habitat, using all due diligence to ensure the survival of that fish or mammal; or

(2) If it be a vessel engaged in any other form of permitted fishing, ensure the immediate release of the bill fish or marine mammal to its natural habitat by such means as will maximize the chances of survival of that fish or mammal.

Source: S.L. No. 3L-114-95 §10, 12/28/95

§1-110. Stowage of fishing gear. — All fishing gear aboard a commercial fishing vessel located in state waters shall be stowed in such a manner that it is not readily available for use in fishing, except where permitted by this chapter.

Source: S.L. No. 3L-114-95 §11, 12/28/95

§1-111. Allowable levels of non-commercial fishing. —

(1) The Office of Economic Affairs, in consultation with the Director of the Department of Land and Natural Resources, may determine the total allowable harvest or catch level of subsistence and recreational fishing with respect to any stock of fish subject to this chapter, and shall set such level in accordance with requirements of optimum sustainable yield and development as determined by:

- (a) The best scientific evidence available, including statistical and other information concerning such stocks of fish; and
- (b) Conservation, management, and sustainable development measures contained in management plans relating to such stocks of fish.

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

Source: S.L. No. 3L-114-95 §12, 12/28/95; S.L. No. 5L-14-00 §3-16, 10/1/00; S.L. No. 7L-80-11 §21, 1/14/11

§1-112. Application for permit: contents. —

(1) Each party entitled under §§1-107 and 1-108 to apply for a permit shall make application on prescribed forms specifying:

- (a) The name, official number, radio call sign and other identification of each vessel for which a permit is sought, together with the name and address of the owner and operator thereof;
- (b) The country of registration of the vessel; and
- (c) Such other pertinent information with respect to characteristics of each such vessel as the Department may require.

(2) The Department may require, by regulation, such additional information for permit application as is necessary to implement and enforce this chapter.

Source: S.L. No. 3L-114-95 §13, 12/28/95

§1-113. Application for permit: review. — The Department, or such person as it may designate by regulation, shall review each application submitted pursuant to §§1-107 and 1-108 and may, in its discretion, solicit views from appropriate persons and hold public hearings on such application where necessary.

Source: S.L. No. 3L-114-95 §14, 12/28/95

§1-114. Application for permit: issuance and denial. —

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

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

(3) A permit may be denied:

- (a) Where the application is not in accordance with the requirements of this chapter;
- (b) Where the owner or applicant is the subject of proceedings under the bankruptcy laws of any jurisdiction and reasonable financial assurances have not been provided;
- (c) Where there has been a failure to satisfy a judgment or other determination for breach of this chapter or an agreement entered into pursuant to this chapter by the operator of the vessel in respect to which application for a permit has been made, until such time as the judgment or other determination is satisfied;
- (d) Where an operator has committed an offense against the laws of Pohnpei or of the Federated States of Micronesia; or
- (e) Where the Department determines that the issuance of a permit would not be in the best interests of Pohnpei.

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

Source: S.L. No. 3L-114-95 §15, 12/28/95

§1-115. Suspension, revocation or imposition of restrictions on a permit. — If any vessel for which a permit has been issued pursuant to §§1-107 and 1-108 has been used in the commission of any act prohibited by this chapter or other applicable law, or any permit issued in accordance with this chapter, or if any civil penalty or criminal fine imposed under this chapter has not been paid within 30 days, the Department shall:

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

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

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

Source: S.L. No. 3L-114-95 §16, 12/28/95

§1-116. Fees for permits. — Fees for permits issued pursuant to §§1-107 and 1-108 shall be established pursuant to regulations issued by the Department.

Source: S.L. No. 3L-114-95 §17, 12/28/95

§1-117. Application of other laws. — No permit issued under this chapter shall relieve any vessel or its operator or crew of any obligation or requirements imposed by other laws, including those concerning navigation, customs, immigration, health or environmental protection, unless so indicated in those laws.

Source: S.L. No. 3L-114-95 §18, 12/28/95

§1-118. Authority to adopt regulations. —

(1) The Office of Economic Affairs shall have the authority to adopt rules and regulations for the conservation and management of fish within state waters.

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

Source: S.L. No. 3L-114-95 §19, 12/28/95; S.L. No. 5L-14-00 §3-16, 10/1/00

§1-119. Departmental annual report. — The Director of the Department shall report on its activities to the Governor and the Legislature by December 1 each year, which reports shall contain the number of permits issued, the fees collected, estimates of the effect of the current level of fishing on the stock of fish within state waters, and such other information regarding this chapter in the preceding fiscal year as the Department may determine.

Source: S.L. No. 3L-114-95 §20, 12/28/95

§1-120. Prohibited acts by non-recreational, commercial fishing vessels. —

(1) It is unlawful for any person:

(a) To violate any provisions of this chapter or any regulation or permit issued pursuant to this chapter;

(b) To engage in non-recreational, commercial fishing within state waters;

(c) To refuse to permit any authorized officer to board a fishing vessel for purposes of conducting any search or inspection in connection with the enforcement of this chapter or any regulation promulgated or permit issued pursuant to this chapter;

(d) To assault, obstruct, resist, delay, refuse boarding to, intimidate or interfere with any authorized officer in the performance of his duties, as set forth in this chapter or regulations promulgated hereunder; and for the purpose of this paragraph, any person who refuses to

allow any authorized officer, or any person acting under his order or in his aid, to exercise any of the powers conferred on an authorized officer by this chapter or any regulations promulgated hereunder shall be deemed to be obstructing that officer or person;

(e) To fail to comply with the lawful requirements of any authorized officer;

(f) To furnish to any authorized officer any particulars that, to his knowledge, are false or misleading in any respect;

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

(h) To resist a lawful arrest for any act prohibited by this section;

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

(j) To knowingly ship, transport, offer for sale, sell, purchase, import, export or have custody, control or possession of any fish taken or retained in violation of this chapter;

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

(l) To use any unauthorized commercial, non-recreational fishing vessel for fishing within a two-mile radius of any fish aggregating device of the state or national government, or of a citizen, or of any other body established under the laws of the state.

(2) It is unlawful for any commercial, non-recreational fishing vessel, and for the crew, owner or operator of any commercial, non-recreational fishing vessel, to engage in any form of fishing in state waters.

(3) It is unlawful for any fishing vessel, and for the crew, owner, or operator of any fishing vessel, foreign or domestic, to engage in the transport or sale of illegal contraband, drugs or commodities, as defined by law, in Pohnpei or in the state waters of Pohnpei.

Source: S.L. No. 3L-114-95 §21, 12/28/95

§1-121. Civil penalties for non-recreational, commercial fishing vessels. —

(1) Any person who is found in a civil proceeding by the Pohnpei Supreme Court to have committed an act prohibited by §1-120 shall be liable to the state of Pohnpei for a civil penalty.

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

(3) In determining the amount of such penalty, the Pohnpei Supreme Court shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, and such other matters as justice may require.

Source: S.L. No. 3L-114-95 §22, 12/28/95

§1-122. Criminal penalties for non-recreational, commercial fishing vessels. —

(1) A person is guilty of an offense if he commits any act prohibited by §1-120.

(2) Any offense described as a prohibited act by Subsections (1)(a), (b), (f), (i), (j) or (l) of §1-120 is punishable by a fine of not less than \$500,000.

(3) Any offense described as a prohibited act by Subsections (1)(c), (d), (e), (g), (h), or (k) of §1-120 is punishable by a fine of not less than \$800,000, or imprisonment for not more than two years, or

both such fine and imprisonment; PROVIDED that, if in the commission of any such offense, the person uses a dangerous weapon, engages in conduct that causes bodily injury to any officer authorized to enforce this chapter, or threatens any such officer with bodily injury, the offense is punishable by a fine of not less than \$1,000,000, or imprisonment for not more than ten years, or both such fine and imprisonment; PROVIDED FURTHER that where a regional fisheries treaty negotiated by the government of the Federated States of Micronesia so requires, persons arrested for violating this chapter, or regulations promulgated hereunder, shall not be subject to imprisonment where subject to such treaty.

(4) Any offense described as a prohibited act by §1-120(2) and (3) is punishable by a fine of not less than \$800,000. Each day of continuing violation of §1-120(2) shall be considered a separate offense.

Source: S.L. No. 3L-114-95 §23, 12/28/95

§1-123. Forfeiture: liability. —

(1) Any fishing vessel involved in the commission of any act prohibited by §1-120 shall, along with its fishing gear, furniture, appurtenances, stores, or cargo used, be forfeited to the state of Pohnpei.

(2) Any fish taken or retained, in any manner, in connection with or as a result of the commission of any act prohibited by §1-120 shall be forfeited to the state of Pohnpei upon the commission of the act giving rise to forfeiture under this section.

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

Source: S.L. No. 3L-114-95 §24, 12/28/95

§1-124. Forfeiture: jurisdiction. — The Pohnpei Supreme Court shall have jurisdiction, upon application by the Attorney General on behalf of the state of Pohnpei, to order any forfeiture under §1-123.

Source: S.L. No. 3L-114-95 §25, 12/28/95

§1-125. Forfeiture: seizures. — If a judgment is entered for the state of Pohnpei in a civil forfeiture proceeding under §§1-123 through 1-128, the Attorney General shall seize any property or other interest declared forfeited to the state of Pohnpei, which has not previously been seized pursuant to this chapter.

Source: S.L. No. 3L-114-95 §26, 12/28/95

§1-126. Forfeiture: disposition of property. — The forfeited vessel, gear, furniture, appurtenances, stores, cargo, and fish may be sold and the proceeds deposited into the fisheries enforcement and development fund and distributed in accordance with §1-138.

Source: S.L. No. 3L-114-95 §27, 12/28/95

§1-127. Forfeiture: temporary disposition of property; security. —

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

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

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

Source: S.L. No. 3L-114-95 §28, 12/28/95

§1-128. Forfeiture: disposition of perishable articles. —

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

(2) For purposes of this chapter, it shall be a rebuttable presumption that all fish found on board a fishing vessel that is seized or taken in connection with an act prohibited by §1-120 were taken or retained from state waters in violation of this chapter.

Source: S.L. No. 3L-114-95 §29, 12/28/95

§1-129. Civil penalties for recreational, commercial fishing vessels. — Any person who is found in a civil proceeding by the Pohnpei Supreme Court to have committed an act prohibited by §§1-107 and 1-108 shall be liable to the state of Pohnpei for a civil penalty of up to \$50,000. The Supreme Court shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offense, and such other matters as justice may require.

Source: S.L. No. 3L-114-95 §30, 12/28/95

§1-130. Jurisdiction of courts. — The Pohnpei Supreme Court shall have exclusive jurisdiction over any case or controversy arising under this chapter. The Court may, at any time, enter restraining orders or prohibitions; issue warrants, process in rem or other processes; prescribe and accept satisfactory bonds or other security; and take such other actions as are in the interests of justice.

Source: S.L. No. 3L-114-95 §31, 12/28/95

§1-131. Enforcement: responsibility. —

(1) The Office of the Attorney General has primary responsibility for the enforcement of this chapter, and may authorize other entities, officials or persons to perform enforcement functions.

(2) The Attorney General is authorized to initiate all criminal and civil proceedings, including forfeiture proceedings under this chapter, and to recover the forfeited item(s) or the monetary value thereof when sold.

Source: S.L. No. 3L-114-95 §32, 12/28/95

§1-132. Enforcement: authority. —

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

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

(b) Stop, board and search:

(i) Any foreign or domestic-based fishing vessel within state waters or the exclusive economic zone of the Federated States of Micronesia; or

(ii) Any domestic fishing vessel within state waters or inside or outside the exclusive economic zone of the Federated States of Micronesia;

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

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

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

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

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

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

(b) Within state waters or the exclusive economic zone of the Federated States of Micronesia:

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

(ii) Seize any fishing vessel used or employed in, or when it reasonably appears to have been used or employed in, the violation of this chapter or any regulations issued hereunder;

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

(iv) Seize any fish that he reasonably believes to have been taken or fish products produced in violation of this chapter or any regulations issued hereunder.

(3) Any authorized officer may execute any warrant or other process issued by any court of competent jurisdiction.

(4) Where, following the commission of an offense under this chapter by a domestic or foreign commercial fishing vessel, that vessel is pursued beyond the limits of the exclusive economic zone of the Federated States of Micronesia, the powers conferred on authorized officers under this section shall be exercisable beyond the limits of the exclusive economic zone of the Federated States of Micronesia in accordance with international law.

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

Source: S.L. No. 3L-114-95 §33, 12/28/95

§1-133. Enforcement of regulations and permits. — For purposes of this chapter the terms “provisions of this chapter” and “violation of any provisions of this chapter” include any regulation of permits issued pursuant to this chapter.

Source: S.L. No. 3L-114-95 §34, 12/28/95

§1-134. Presumption of location of fishing. — Where, in any legal proceedings instituted under this chapter or any regulations issued hereunder, the place in which an event is alleged to have taken place is in issue, the place stated in a copy of the relevant entry in the logbook or other official record of an enforcement vessel or aircraft as being the place in which the event took place shall be presumed to be the place in which the event took place, unless the contrary is proved.

Source: S.L. No. 3L-114-95 §35, 12/28/95

§1-135. Immunities. — No action shall be permitted against the Department, the Attorney General, any authorized officer or any other person appointed pursuant to this chapter in respect of anything done or omitted to be done by him in good faith in the execution or purported execution of his powers and duties under this chapter or regulations issued hereunder.

Source: S.L. No. 3L-114-95 §36, 12/28/95

§1-136. Attorney General; authority, rules and regulations. —

(1) The Attorney General shall have the primary authority under this chapter for the criminal and civil enforcement of fishing violations and shall adopt rules and regulations for such enforcement within state waters.

(2) The Attorney General shall promulgate rules and regulations within 90 days of the passage of this chapter, which rules and regulations shall include, but shall not be limited to:

- (a) General enforcement rules and procedures;
- (b) Deputization of appropriate officials and chief magistrates of outer islands;
- (c) Training of officers and officials; and
- (d) Cross-designation of national officers for enforcement purposes.

(3) Regulations adopted by the Attorney General shall have the full force and effect of law.

Source: S.L. No. 3L-114-95 §37, 12/28/95

§1-137. Attorney General's annual report. — The Attorney General shall report on its activities to the Governor and the Legislature by December 1 each year, which reports shall contain: a review of civil and criminal actions taken pursuant to this chapter; the status of the fisheries enforcement and development fund; and such other information regarding the implementation of this chapter in the preceding fiscal year, as the Department may determine.

Source: S.L. No. 3L-114-95 §38, 12/28/95

§1-138. Fisheries Enforcement and Development Fund. —

(1) There is hereby established a “Fisheries Enforcement and Development Fund” to be maintained by the Department of Treasury and Administration, separate and apart from other funds of the state. Independent records and accounts shall be maintained in connection therewith. The Fisheries Enforcement and Development Fund shall be administered in accordance with the Financial Organization and Management Act, Title 11, as amended.

(2) There shall be deposited into the Fisheries Enforcement and Development Fund all civil and criminal fines, all proceeds of forfeitures collected pursuant to this chapter, all criminal and civil fines and proceeds of forfeitures collected by the Government of the Federated States of Micronesia for national fishing violations which are distributed to the State of Pohnpei, transshipment privilege fees as may be so designated, and any private or public grants earmarked for fisheries enforcement, fisheries development or marine environmental emergencies.

(3) Revenues collected pursuant to this chapter and deposited into the Fisheries Enforcement and Development Fund shall be expended and disbursed as follows:

- (a) Thirty percent (30%) of all civil and criminal fines and proceeds of forfeitures as set forth in Subsection (2) of this section that are collected within a local jurisdiction, or within the local jurisdiction's designated portion of state waters, shall be distributed to the local jurisdiction;
- (b) Where an individual provides the necessary information leading to a civil or criminal fine or forfeiture against a commercial fishing vessel pursuant to this chapter, such individual or individuals shall receive, or where more than one individual is involved, share, one percent (1%) of the amount of the fine or \$5,000, whichever is greater;
- (c) Unless otherwise specifically designated by private or public grant, after disbursement to the relevant local jurisdiction the balance shall remain within the Fisheries Enforcement and Development Fund, which revenues shall only be disbursed for fisheries enforcement, fisheries development projects, and marine environmental emergencies as appropriated by the Legislature in the annual Pohnpei Comprehensive Budget Act.

(4) The Office of the Attorney General shall promulgate rules and regulations governing the implementation of Subsection (3) of this section, to include a local jurisdiction's designated portion of state waters, if any; the granting of any reward; and, when not specified by the authorization or

appropriation statute, the parameters governing the designation of a project as a fisheries enforcement, fisheries development project or marine environmental emergency.

Source: S.L. No. 3L-114-95 §39, 12/28/95; S.L. No. 6L-53-05 §2, 10/7/05; S.L. No. 6L-93-07 §1, 3/12/07; S.L. No. 6L-100-07 §4, 10/1/06

Note: S.L. No. 6L-93-07 §2 reads “Any balances in the enforcement account and the development account as of the effective date of this chapter, shall be thereafter shown only as a consolidated amount in the Fisheries Enforcement and Development Fund. Upon such consolidation, the Director of the Department of Treasury and Administration shall submit to the Governor and to the Speaker of the Legislature a statement of the consolidated amount, and an accounting of the two accounts for the 60 days prior to and including the date of consolidation.”

§1-139. Transshipment privilege fee. — There is hereby established a transshipment privilege fee of no less than 10 cents per kilogram of fish transshipped out of Pohnpei ports. The Office of Fisheries and Aquaculture may, by regulation promulgated in accordance with the Administrative Procedures Act, Title 8 Chapter 1, charge a transshipment privilege fee of more than 10 cents per kilogram of fish transshipped; PROVIDED that the fee charged shall not be greater than needed to fund reasonably necessary fisheries development activities. The transshipment privilege fee shall be charged equally to all transshippers. The transshipment privilege fee collected pursuant to this section shall be deposited into the Fisheries Development Account of the Fisheries Enforcement and Development Fund established by §1-138.

Source: S.L. No. 3L-114-95 §40, 12/28/95; S.L. No. 6L-53-05 §3, 10/7/05; S.L. No. 7L-20-08 §3, 11/26/08

FISHERIES

CHAPTER 2 BAIT FISHING

Section

2-101 Definitions

2-102 Penalties

§2-101. Definitions. — For the purpose of this chapter, unless it is otherwise provided or the context requires a different construction, the following definitions shall apply:

(1) “Bait fish” means any type of marine animal that may be used as bait in commercial fishing operations.

(2) “Business entity” means any sole proprietorship, firm, company, partnership, cooperative association, association or corporation.

(3) “Noncitizen-controlled business entity” means any business entity in which less than one hundred percent (100%) of the total capital investment, including capital originally provided as a loan to the business entity or any of its owners, was provided by citizens of the Trust Territory, Trust Territory Economic Development Loan Fund or funds provided by grants or programs sponsored by the government of the Trust Territory or the United States of America Government. For purposes of determining a noncitizen-controlled business entity, capital provided in a form other than cash shall be valued as of the date it was acquired by the business entity.

(4) “Noncitizen-owned business entity” means any business entity in which a person who is not a Trust Territory citizen, or any company, corporation or association in which a person not a Trust Territory citizen owns any interest.

Source: D.L. No. 2L-239-71 §1, 11/27/71; D.L. No. 3L-101-74 §1, 11/27/74

Notes: 1. Law relating to bait fishing should have been repealed, but was not. See also §1-109 relating to foreign fishing. 2. D.L. No. 4L-190-79, relating to noncitizen bait fishing, has been repealed in its entirety by D.L. No. 3L-114-95 §3, 12/28/95.

§2-102. Penalties. —

(1) Every owner, partner, officer or manager of any noncitizen-owned business entity or noncitizen-controlled business entity that uses any bait fish for commercial fishing operations harvested or taken from the waters within Pohnpei State without the prior written consent of the Office of Fisheries and Aquaculture shall be guilty of a felony and upon conviction thereof shall be imprisoned for not more than five years or fined not more than \$10,000, or both such fine and imprisonment.

(2) Every person, or owner, partner, officer or manager of any business entity which supplies or provides any noncitizen-owned business entity or noncitizen-controlled business entity with any bait fish for commercial fishing operations, harvested or taken from waters within Pohnpei State without the prior written consent of the Office of Fisheries and Aquaculture, shall be guilty of a felony and upon conviction thereof shall be imprisoned for not more than five years or fined not more than \$10,000, or both such fine and imprisonment.

(3) No shareholder or stockholder of any corporation or cooperative association conducting activities prohibited by this chapter, shall be guilty of a violation of this chapter unless such shareholder or stockholder is also an officer or manager of such corporation or cooperative association conducting activities prohibited by this chapter.

(4) Any business entity in existence and operation upon the effective date of this chapter [November 27, 1971] shall not be covered by the terms and provisions of this chapter, except that any such business entity engaged in commercial fishing operations must comply with this chapter when

and if it increases in size to the extent of operating more than two times the gross tonnage of fishing vessels which such business entity operated upon the effective date of this chapter.

Source: D.L. No. 2L-239-71 §§2 – 5, 11/27/71; D.L. No. 3L-101-74 §§2 & 3, 11/27/74; S.L. No. 7L-20-08 §14, 11/26/08

Note: The Pohnpei Economic Development Authority was the successor to the Ponape District Fishing Authority. The fisheries functions of the Economic Development Authority were thereafter transferred to the Office of Fisheries and Aquaculture pursuant to S.L. No. 7L-20-08, 11/26/08.

CHAPTER 3 OFFICE OF FISHERIES AND AQUACULTURE

Section

3-101. Advisory Board on Fisheries and Aquaculture
3-102. Purposes of Advisory Board
3-103. Meetings of Advisory Board

3-104. Duties of Advisory Board
3-105. Administrative assistance
**3-106. Expenses; compensation; authorization
for appropriation; administration**

§3-101. Advisory Board on Fisheries and Aquaculture. — There shall be within the Office of Fisheries and Aquaculture a board to be known as the Advisory Board on Fisheries and Aquaculture, which shall sit in an advisory capacity to the Governor, and to the Legislature on matters within the jurisdiction of the Office of Fisheries and Aquaculture. The Advisory Board shall consist of five members nominated by the Governor with the advice and consent of the Legislature. Each member shall serve for a term of four years each; provided that each such member shall hold office until the member's successor is appointed and qualified. If a vacancy is created in the Board by death, resignation or for any other reason, such vacancy shall be filled in like manner as the original appointment for the remainder of the term. In addition, the Administrator of the Office of Fisheries and Aquaculture and the Director of Land and Natural Resources shall sit as ex-officio members.

Source: S.L. No. 7L-20-08 §4, 11/26/08

§3-102. Purposes of Advisory Board. — The purposes of the Advisory Board are as follows:

- (1) To review the existing policies of the Office of Fisheries and Aquaculture, and advise the Governor and Legislature of any changes recommended thereto; and
- (2) To review the annual budget of the Office of Fisheries and Aquaculture before submission to the Governor.

Source: S.L. No. 7L-20-08 §4, 11/26/08

§3-103. Meetings of Advisory Board. — The Advisory Board shall meet at the call of the Chairman, or at the call of three or more members. The Administrator of the Office of Fisheries and Aquaculture shall call the first meeting within 15 days after the initial confirmation of all the membership of the Advisory Board. Meetings shall be conducted according to such rules as the Board may establish; PROVIDED that three members shall constitute a quorum and a majority vote of the quorum shall be sufficient to carry on any business before the Advisory Board. Three unexcused absences of a member from any duly called meeting of the Board automatically creates a vacancy of that member's seat on the Board. Excuses may be granted solely by the Chairman or a duly designated representative, and shall only be granted for death or serious illness in the family of the member, for travel outside of commuting distance of the meeting or for such other reasons as the Board may, by its rules, so determine.

Source: S.L. No. 7L-20-08 §4, 11/26/08

§3-104. Duties of Advisory Board. — In order to accomplish the purposes stated in §3-102, the Advisory Board shall perform the following duties:

- (1) Consider matters brought before it with regard to fisheries and aquaculture in Pohnpei, and undertake such inquiries as are required or appropriate in order for it to formulate policy recommendations in regard thereto;
- (2) Forward all policy recommendations to appropriate governmental agencies and offices deemed by the Board to be in the best interests of the people of Pohnpei;

(3) Review all financial reports and the annual budget of the Office of Fisheries and Aquaculture as required by §3-102; and

(4) Recommend legislation required for the improvement of Pohnpei's fisheries and aquaculture.

Source: S.L. No. 7L-20-08 §4, 11/26/08

§3-105. Administrative assistance. — The Administrator of the Office of Fisheries and Aquaculture shall provide to the Advisory Board clerical and other support services that may be required by the Advisory Board.

Source: S.L. No. 7L-20-08 §4, 11/26/08

§3-106. Expenses; compensation; authorization for appropriation; administration. —

(1) Expenditures for travel and per diem of Advisory Board members and personnel shall not exceed standard Pohnpei Government rates. Compensation shall be paid to members who are not employees of the Pohnpei Government for attending a duly called meeting of the Board at rates established by the Government Officers' Salary Act, Title 9 Chapter 4 Subchapter I. Pohnpei Government employees who are members of the Board shall be granted administrative leave while attending Board meetings or performing other official business for the Board.

(2) There is hereby authorized for appropriation from the general fund of Pohnpei a sum or sums to be determined annually in the Comprehensive Budget Act for the purpose of financing the operations and related activities of the Board.

(3) The sums herein authorized for appropriation shall be administered and expended by the Governor solely for the purposes stated in Subsection (2) of this section. The Governor shall submit a complete financial report to the Legislature on or before October 15 following each fiscal year wherein sums are appropriated under the authorization of this section. All sums appropriated for a fiscal year remaining unexpended or unobligated for expenditure at the end of the fiscal year shall revert to the general fund of Pohnpei.

Source: S.L. No. 7L-20-08 §4, 11/26/08

TITLE 30 [RESERVED]

(Next page is Title 31, Division IV divider)