

CHAPTER 6

Enforcement

Editor's note: Section 54 of PL 12-34 created a new chapter 6 entitled Enforcement of subtitle I of this title.

Section 1 of PL 12-34 repealed chapters 1 through 5 in their entirety.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

SECTIONS

- § 601. **Enforcement responsibility.**
- § 602. **Appointment of authorized officers.**
- § 603. **Powers of authorized officers.**
- § 604. **Requirements for seized vessels.**
- § 605. **Removal of parts from seized vessels by authorized officers.**
- § 606. **Appointment of authorized observers; port samplers.**
- § 607. **Access granted to authorized observers; conditions; expenses.**
- § 608. **Duties owed to authorized officers and authorized observers.**
- § 609. **Identification of authorized officers and authorized observers.**
- § 610. **Protection against liability.**
- § 611. **Transponders required.**

§ 601. Enforcement responsibility.

The Department of Justice shall have primary responsibility for fisheries enforcement, including:

- (1) collaboration with the Authority in the monitoring and control of all fishing operations within the fishery waters; and
- (2) the enforcement of this subtitle.

Source: PL 12-34 § 55.

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

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

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

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

§ 602. Appointment of authorized officers.

(1) The Secretary of the Department of Justice may, in writing, appoint any person as an authorized officer or class of persons as authorized officers for the purposes of this subtitle and such person or persons shall exercise all powers and privileges accorded to authorized officers by this subtitle.

(2) In addition, any person or class of persons may be appointed by the Secretary as an authorized officer, in accordance with subsection (1) of this section, pursuant to a fisheries management agreement or similar cooperative arrangement for purposes which include:

(a) for an authorized officer of the Federated States of Micronesia, the performance of fisheries monitoring, control and surveillance functions on behalf of the Federated States of Micronesia while on board a vessel or aircraft of another party; and

(b) for an authorized officer of another party to such agreement, the performance of fisheries monitoring, control and surveillance functions on behalf of the Federated States of Micronesia while on board the vessel or aircraft of that other party.

(3) Any officer of the Maritime Surveillance Wing of the National Police of the Government of the Federated States of Micronesia shall be deemed to be an authorized officer for the purposes of this subtitle.

(4) Any authorized officer is deemed to be an authorized inspector for purposes of the United Nations Agreement or any other access agreement which also has authority over high seas fishing.

Source: PL 12-34 § 56.

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

§ 603. Powers of authorized officers.

(1) For the purposes of enforcing this subtitle, any authorized officer may:

(a) stop, board, remain on board and search any vessel in the fishery waters that he reasonably believes is a fishing vessel;

(b) stop, board, remain on board and search any flag fishing vessel outside the fishery waters;

(c) stop and search any vessel, vehicle or aircraft that he reasonably believes may be transporting fish or engaging in other activities relating to fishing;

(d) require the master or any crew member or other person aboard to inform him of the name, call sign and country of registration of the vessel and the name of the master, owner, charterer and crew members;

(e) examine the master or any crew member or other person aboard about the cargo, contents of holds and storage spaces, voyage and activities of the vessel;

(f) make such examination and inquiry as may appear necessary concerning any vessel, vehicle or aircraft in relation to which any of the powers conferred by this subsection have been or may be exercised and take samples of any fish or fish product found therein;

(g) require to be produced, examine and take copies of any permit, logbook, record or other documents required under this subtitle or concerning the operation of any vessel or aircraft;

(h) make an entry dated and signed by him in the logbook of such vessel or aircraft;

(i) require to be produced and examine any fish, fishing gear or appliance, explosive, poison or other noxious substance;

(j) give directions to the master and any crew member of any vessel, vehicle or aircraft stopped, boarded or searched as may be necessary or reasonably expedient for any purpose specified in this subtitle or to provide for the compliance of the vessel, vehicle or aircraft, or master or any crew member with the conditions of any permit;

(k) endorse any permit; and

(l) arrest any person who assaults him or any other authorized officer in the exercise of his duties under this subtitle.

(2) Where an authorized officer has reasonable grounds to believe an offense against this subtitle is being or has been committed, he may without a warrant:

(a) enter, inspect and search any premises, other than premises used exclusively as a dwelling house, in which he has reasonable grounds to believe an offense has been or is being committed or fish have been taken illegally and are being stored;

(b) stop, enter, search and stay in or on any vehicle or aircraft which he reasonably suspects of transporting fish or fish products;

(c) take samples of any fish found in any vessel or vehicle inspected or within any premises searched under this subtitle;

(d) after hot pursuit of a foreign fishing vessel undertaken in accordance with international law and commenced within the fishery waters, stop, board and search outside the fishery waters any fishing vessel that he has reasonable grounds to believe has been used in the commission of an offense, exercise any powers conferred by this subtitle in accordance with international law, and bring such vessel and all persons and things on board within the fishery waters;

(e) seize:

(i) any vessel (including its fishing gear, equipment, stores and cargo), vehicle, fishing gear,

nets or other fishing appliances or aircraft that he has reasonable grounds to believe has been or is being used in the commission of an offense or in respect of which the offense has been committed;

(ii) any fish or fish products that he has reasonable grounds to believe have been caught in the commission of an offense or are possessed in contravention of this subtitle;

(iii) any logs, charts or other documents required to be maintained by this subtitle or under the terms of any license or other authorization or which he has reasonable grounds to believe show or tend to show, with or without other evidence, the commission of an offense against this subtitle; and

(iv) any thing which he has reasonable grounds to believe might be used as evidence in any proceeding under this subtitle;

(f) arrest any person who he has reasonable grounds to believe has committed an offense against this subtitle; and

(g) issue citations as authorized by regulations promulgated under section 703 of chapter 7 of this subtitle.

(3) An authorized officer may, while arresting any person or fishing vessel that he has reasonable grounds to believe has done any act in contravention of this subtitle, use such force as is reasonably necessary in the circumstances to effect the arrest.

(4) Any person arrested without a warrant under this section shall be detained and dealt with in accordance with law.

(5) An authorized officer may:

(a) execute any warrant or other process issued by any court of competent jurisdiction; and

(b) exercise any other lawful authority.

(6) A written receipt shall be given for any article or thing seized under this section and the grounds for such seizure shall be stated in such receipt.

Source: PL 12-34 § 57.

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

§ 604. Requirements for seized vessels.

(1) Where any vessel is seized under this subtitle:

(a) the master and crew shall take the vessel to such port as the authorized officer shall designate as being the nearest or most convenient port;

(b) the master shall be responsible for the safety of the vessel and each person on board the vessel, including the crew, himself and any authorized officer until the vessel arrives at the designated port.

(2) If the master fails or refuses to take the seized vessel to the designated port, then an authorized officer or

person called upon to assist him may do so.

(3) If a vessel is taken to port in the circumstances described in subsection (2) of this section, no claim whatever may be made against any authorized officer or the Government of the Federated States of Micronesia in respect of any damage, injury, loss or death occurring while the vessel is being so taken, subject to the provisions of this subtitle.

(4) The provisions relating to vessels and masters described in subsections (1) to (3) of this section apply equally to vehicles and aircraft seized in accordance with this subtitle, and their drivers and pilots respectively.

(5) Any person who commits an act, or omits to act, in violation of this section shall be subject to a civil penalty of not less than \$40,000 and not more than \$100,000.

Source: PL 12-34 § 58.

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

Editor's note: PL 12-34 § 58 omitted the "\$" before "100,000"; the dollar sign has been inserted where it was omitted.

§ 605. Removal of parts from seized vessels by authorized officers.

(1) An authorized officer may remove any part or parts from any seized vessel, vehicle or aircraft held in the custody of the Government of the Federated States of Micronesia for the purpose of immobilizing that vessel, vehicle or aircraft.

(2) Any part or parts removed under subsection (1) of this section shall be kept safely and returned to the vessel, vehicle or aircraft upon its lawful release from custody.

(3) No person other than an authorized officer shall knowingly possess, or arrange to obtain, any part or parts removed under section 605(1) of this subtitle or knowingly possess, or arrange to obtain, or make any replacement or substitute part or parts for those removed under section 605(1) of this subtitle or fit or attempt to fit any part or parts or any replacement or substitute part or parts to a vessel, vehicle or aircraft held in the custody of the Government of the Federated States of Micronesia.

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

Source: PL 12-34 § 59.

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

§ 606. Appointment of authorized observers; port samplers.

(1) The Executive Director may appoint, in writing, any person to be an authorized observer or class of persons to be authorized observers for the purposes of this subtitle, any access agreement or any fisheries management agreement.

(2) The Executive Director may appoint, in writing, any authorized observer to serve as a port sampler. Port samplers shall perform the duties of authorized observers at a point of transshipment or port located either inside or outside the Federated States of Micronesia.

(3) Authorized observers and port samplers shall not be appointed as authorized officers and shall not be authorized to take enforcement action under this subtitle.

(4) The requirements of sections 607(1), 607(2), 607(6), 607(7), 608, 609 and 610 shall apply equally to authorized observers and port samplers.

Source: PL 12-34 § 60.

§607. Access granted to authorized observers; conditions; expenses.

(1) Any person on board any vessel with a valid and applicable permit shall allow any authorized observer to board and remain on such vessel for the purposes of carrying out his duties and functions.

(2) The operator and each member of the crew of such vessel shall allow and assist any authorized observer to:

(a) board such vessel for scientific, compliance monitoring and other functions, at such time and place as the Executive Director may require;

(b) have full access to and the use of facilities and equipment on board the vessel which the authorized observer may determine is necessary to carry out his duties, including:

(i) full access to the bridge, navigation charts, fish on board and areas which may be used to hold, process, weigh and store fish;

(ii) full access to the vessel's records, including its logbooks and documentation for the purposes of records inspection and copying;

(iii) full access to fishing gear on board; and

(iv) reasonable access to navigation equipment and radios;

(c) take and remove from the vessel reasonable samples for the purposes of scientific investigation, and other relevant information;

(d) take photographs of the fishing operations, including fish, fishing gear, equipment, charts and records, and remove from the vessel such photographs or film as he or she may have taken or used on board the vessel;

(e) send or receive messages by means of the vessel's communications equipment;

(f) carry out all duties safely; and

(g) disembark at such time and place as the Executive Director may reasonably request or as required in accordance with an applicable access arrangement.

(3) The operator shall provide the authorized observer, and any authorized officer forced by circumstances to stay on board the vessel for a prolonged period of time, while on board the vessel with food, accommodation and medical facilities at no expense, equivalent to that accorded to officers.

(4) In addition to the requirements of subsection (3) of this section, the Authority shall, either by regulation or agreement, require the operator to pay in full the following costs of authorized observers, other than port samplers:

- (a) travel costs to and from the vessel;
- (b) such salary as may be notified by the Executive Director; and
- (c) full insurance coverage.

(5) The Authority may, by regulation or agreement, require the operator to pay a portion of the costs of maintaining a port sampling program.

(6) Any operator of any vessel with a valid permit issued under this subtitle, shall allow and assist any authorized observer to have full access to any place where fish taken in the fishery waters is unloaded or transshipped; to remove reasonable samples for scientific purposes and to gather any information relating to fisheries in the fishery waters.

(7) Any person who commits an act, or omits to act, in violation of this section shall be subject to a civil penalty of not less than \$40,000 and not more than \$100,000.

Source: PL 12-34 § 61.

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

§ 608. Duties owed to authorized officers and authorized observers.

(1) The master and each crew member of any fishing vessel, the driver of any vehicle and the pilot and crew of any aircraft shall immediately comply with every instruction or direction given by an authorized officer or authorized observer as appropriate and facilitate safe boarding, entry and inspection of the vessel, vehicle or aircraft and any fishing gear, equipment, records, fish and fish products.

(2) The master and each crew member of a vessel, driver of a vehicle and pilot and crew of an aircraft shall take all reasonable measures to ensure the safety of an authorized officer or authorized observer as appropriate in the performance of his duties.

(3) No person shall:

(a) assault, obstruct, resist, delay, refuse boarding to, intimidate or fail to take all reasonable measures to ensure the safety of, or otherwise interfere with an authorized officer or authorized observer in the performance of his duties;

(b) incite or encourage any other person to assault, resist or obstruct any authorized officer or

authorized observer who is carrying out his powers or duties, or any person lawfully acting under the authorized officer's orders or in his aid;

(c) use threatening language or behave in a threatening or insulting manner or use abusive language or insulting gestures towards any authorized officer or authorized observer while in the execution of his powers or duties, or any person lawfully acting under an authorized officer's orders or in his aid;

(d) fail to comply with the lawful requirements of any authorized officer or authorized observer;

(e) furnish to any authorized officer or authorized observer any particulars which, to his knowledge, are false or misleading in any respect;

(f) impersonate or falsely represent himself to be an authorized officer or authorized observer or falsely represent himself or herself to be a person lawfully acting under an authorized officer's orders or in his aid;

(g) resist lawful arrest for any act prohibited by this subtitle; or

(h) breach of any other duty to an authorized officer or authorized observer required under this subtitle.

(4) For the purposes of subsection (3) of this section, any person who does not allow any authorized officer or an authorized observer, or any person acting under his orders or in his aid, to exercise any of the powers conferred on such person by this subtitle shall be deemed to be obstructing that officer, person or observer.

(5) Every person who is a master, owner, charterer, agent or company established under the laws of the Federated States of Micronesia of a fishing vessel that transports an authorized officer, inspector or observer outside the fishery waters and, without having obtained prior consent from the Authority, causes him to disembark outside the territory or jurisdiction of the Federated States of Micronesia, shall be jointly and severally liable for a fine plus all costs of repatriation including board and lodging while out of the Federated States of Micronesia and direct transportation to the Federated States of Micronesia. It is unlawful for any fishing vessel to cause an authorized officer, inspector or observer to disembark outside the territory or jurisdiction of the FSM without having obtained prior consent from the Authority.

(6) Any person who violates subsection (3)(a) or (3)(b) of this section shall be subject to a civil penalty of not less than \$100,000 and not more than \$1,000,000.

Source: PL 12-34 § 62.

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

§ 609. Identification of authorized officers and authorized observers.

An authorized officer or authorized observer, when exercising any of the powers conferred by this subtitle, shall on request, produce identification to show that he is an authorized officer or authorized observer under this subtitle.

Source: PL 12-34 § 63.

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

§ 610. Protection against liability.

The Authority or any person who does, partly does, or omits to do any act in pursuance or intended pursuance of any functions, powers or duties conferred by or under this subtitle shall not be subject to any legal action, or civil or criminal liability with respect to such act, whether on the grounds of want of jurisdiction, mistake of law or fact, or on any other grounds, unless the act, or omission to act, was done in bad faith without reasonable cause.

Source: PL 12-34 § 64.

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

§ 611. Transponders required.

(1) The Authority may require, as a condition of fishing in the exclusive economic zone, that the operator of any vessel:

- (a) install on such vessel, at its own expense, a transponder approved by the Authority;
- (b) maintain such transponder in good working order at all times while in the fishery waters or such other area as may be agreed or designated; and
- (c) ensure that any information or data required by the Authority to be transmitted by the transponder is transmitted continuously, accurately and effectively to the designated receiver.

(2) For the purposes of this subtitle, a transponder, which may also be referred to as an automatic location communicator or ALC, means any device or machine placed on a fishing vessel as a condition of its permit or access agreement, which transmits, whether in conjunction with another machine or other machines, elsewhere or not, information or data concerning the position, fishing and such other activities of the vessel as may be required.

(3) The Authority may establish by regulation a list of approved transponders. An approved transponder shall be presumed to be accurate; a transponder that is not approved shall not be presumed to be accurate. All information or data obtained or ascertained by the use of a transponder, shall be presumed to:

- (a) come from the vessel so identified; and
- (b) be given by the master, owner and charterer of the fishing vessel. This presumption shall apply whether or not the information was stored before or after any transmission or transfer.

(4) No person shall intentionally, recklessly or unintentionally destroy, damage, render inoperative or otherwise interfere with a machine aboard a vessel which automatically feeds or inputs information or data into a transponder, or intentionally feed or input information or data into a transponder which is not officially required or is meaningless.

(5) Any person who violates subsection (1) or subsection (4) of this section, by failing to install, maintain, or

ensure the transmission of information from a transponder as required, is subject to a civil penalty of not less than \$100,000 and not more than \$500,000.

Source: PL 12-34 § 65.

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

Case annotation: 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).

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).

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).

An authorized vessel, which has a valid foreign fishing permit that provides that fishing operations must be conducted in strict accordance with the foreign fishing agreement under which the permit was issued, must maintain in working order on board an appropriate position fixing and identification equipment (i.e., a transponder or VMS), and that transponder must be on at all times while the vessel is in FSM fishery waters. *FSM v. Koshin 31*, 16 FSM R. 350, 354 (Pon. 2009).

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).