

## CHAPTER 8

### Forfeiture and Disposition of Seized or Confiscated Property

**Editor's note:** Section 74 of PL 12-34 created a new chapter 8 entitled Forfeiture and Disposition of Seized or Confiscated Property 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Section 1 of PL 12-34 repealed chapters 1 through 5 in their entirety.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

- § 801.       **Forfeiture of property.**
- § 802.       **Disposition of seized or confiscated fish or fish products.**
- § 803.       **Disposition of forfeited or seized goods.**
- § 804.       **Unlawful removal of item in custody.**
- § 805.       **Liability of the Government for property in custody.**
- § 806.       **Release of seized goods.**
- § 807.       **Holding of seized goods.**
- § 808.       **Application of bond.**

#### **§ 801. Forfeiture of property.**

(1) Any fishing vessel, including its fishing gear, furniture, appurtenances, stores and cargo used in or connected with the commission of any act prohibited by this subtitle, within the territorial sea or internal waters of the Federated States of Micronesia, shall be subject to forfeiture to the Government of the Federated States of Micronesia pursuant to a civil proceeding under this section.

(2) Any fishing vessel, including its fishing gear, furniture, appurtenances or stores used in or connected with the commission of any act prohibited by this subtitle, within the exclusive economic zone outside the territorial seas of the Federated States of Micronesia, shall be released upon the posting of a bond or other surety.

(3) Any vehicle or aircraft, all or any part of any fish or fish product and the proceeds of the sale of any fish seized in connection with a violation of this subtitle, shall be subject to forfeiture to the Government of the Federated States of Micronesia pursuant to a civil proceeding under this section.

(4) The Supreme Court of the Federated States of Micronesia shall have jurisdiction, upon application by the

Secretary of the Department of Justice on behalf of the Federated States of Micronesia, to order any forfeiture authorized under subsection (1) of this section.

(5) If a judgment is entered for the Government of the Federated States of Micronesia in a civil forfeiture proceeding under this section, the Secretary of the Department of Justice shall seize any property or other interest declared forfeited to the Government of the Federated States of Micronesia, which has not previously been seized pursuant to this subtitle.

(6) The forfeited item or items shall be sold and the proceeds deposited into the General Fund of the Federated States of Micronesia and distributed in accordance with subsection (7) of this section.

(7) Fifty percent of the revenues from fines and forfeitures shall be distributed to an FSM State(s) which may be affected by the situation which has given rise to the fine and/or forfeiture.

(8) Pending completion of the civil forfeiture proceeding, the item or items subject to forfeiture, or any part thereof, may be released at the discretion of the Court upon deposit with the Court of a satisfactory bond, surety or other security at least equal to the fair market value of the seized property. Exoneration of such bond, surety or other security shall be conditional upon return of the released property to the appropriate court upon order, without any impairment of its value, or by paying the monetary value of the released property to the General Fund of the Federated States of Micronesia upon order of the Court. Such bond, surety or other security shall be forfeited in the event that any condition is breached as shall be determined by the Court, and judgment shall be recoverable by the Court against the principal of any surety for any such breach.

(9) In the event there is an appeal from an order for forfeiture, the Court may continue any such bond, surety or other security deposited in accordance with subsection (8) of this section during the pendency of the appeal and any retrial or rehearing on remand or may require additional security to be deposited with the Court.

**Source:** PL 12-34 § 75.

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

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**Editor's note:** In subsection (6) of this section, the reference to "subsection (6)" has been changed to "subsection (7)" to correct a typographical error. In subsection (9) of this section, the reference to "subsection (6)" has been changed to "subsection (8)" to correct a typographical error.

**Case annotations:** 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).

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).

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 a fishing boat seizure case. *FSM v. Kana Maru No. 1*, 14 FSM R. 365, 367 (Chk. 2006).

### **§ 802. Disposition of seized or confiscated fish or fish products.**

(1) The Executive Director or his designee may sell any perishable fish or fish products which have been seized or confiscated pursuant to this subtitle. If he made reasonable efforts to sell them but was unable to do so, or where they are unfit to be sold, he may dispose of them as he may deem fit. The proceeds of any sale shall be deposited in trust with the Court pending the final disposition of any civil forfeiture proceeding.

(2) The Executive Director shall notify the owner or apparent owner of the perishable goods seized of the sale, and such owner or his nominee may be present at the sale.

**Source:** PL 12-34 § 76.

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

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### **§ 803. Disposition of forfeited or seized goods.**

(1) Notwithstanding any other provision of this subtitle, any vessel, vehicle, aircraft or other item ordered to be forfeited pursuant to this subtitle may be disposed of in such manner as prescribed by law after the expiration of the time provided for the filing of a notice of appeal.

(2) Any vessel, vehicle, aircraft or other item seized under this subtitle, but not forfeited in any legal proceedings, may be held by the Government of the Federated States of Micronesia until all fines, orders for costs and penalties imposed under this subtitle have been paid and, failing payment within the time allowed, be sold and the balance of the proceeds returned to the owner or apparent owner in accordance with this subtitle after deduction of all fines, orders for costs, penalties imposed under this subtitle and costs of sale.

(3) The proceeds of sale of all forfeited items shall be deposited into the General Fund of the Federated States of Micronesia.

**Source:** PL 12-34 § 77.

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

#### **§ 804. Unlawful removal of item in custody.**

(1) When any vessel, vehicle, aircraft or other item held or forfeited under this subtitle has been unlawfully removed from the custody of the Federated States of Micronesia, it shall be liable to seizure at any time within the jurisdiction of the Federated States of Micronesia.

(2) No person shall remove any vessel, vehicle, aircraft or other item held in custody under this subtitle whether or not he knew that the vessel, vehicle, aircraft or other item was held in custody.

(3) Any person who violates subsection (2) of this section shall be subject to a civil penalty of not less than \$75,000 and not more than \$250,000.

**Source:** PL 12-34 § 78.

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

#### **§ 805. Liability of the Government for property in custody.**

The Government of the Federated States of Micronesia shall not be liable to any person for any loss, damage or deterioration in the condition of any vessel, vehicle, aircraft, fishing gear or other property which is in its custody pursuant to this subtitle, and all costs of maintaining such property while in custody shall, unless otherwise provided, be borne by the operator upon a finding by the FSM Supreme Court that such property was used in or connected with a violation of this subtitle.

**Source:** PL 12-34 § 79.

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

#### **§ 806. Release of seized goods.**

(1) The Court may, on application, order the release of any fishing vessel, vehicle, aircraft or other items seized pursuant to this subtitle on receipt of such bond or other form of security as it may determine.

(2) In determining the value of the bond or other form of security, the Court shall have regard to the aggregate amount of the value of the property to be released, an estimated total fine or other penalty provided for the

offenses charged or likely to be charged and the costs the prosecution would be likely to recover if a conviction were entered, and may set the value at such aggregate amount. In no case should the bond exceed the value of the property to be released.

(3) Notwithstanding the provisions of subsection (2) of this section, the amount determined by the Court under this section shall not be less than the fair market value of the property to be released or the aggregate minimum fine or penalty for each offense charged, whichever is greater.

(4) Where any vessel, vehicle, aircraft or other item seized is released upon the lodging of a bond or other form of security under subsection (1) of this section, the court shall in the order state separately the sums which are attributable to the property to be released, the total fine or fines and the likely costs.

(5) The release of any bond or other form of security under this section shall be conditional upon:

(a) a finding by the Court that the vessel, vehicle, aircraft or other item has not been used in or connected with the commission of an offense against this subtitle; or

(b) where the Court finds that the vessel, vehicle, aircraft or other item has been used in or connected with the commission of an offense under this subtitle:

(i) payment in full within 30 days of the judgment of the Court of any fine imposed by the Court and any costs ordered to be paid by the Court; and

(ii) where the Court so orders, delivery to the Court of the vessel, including its fishing gear, furniture, appurtenances, stores and cargo, and of any fish ordered to be forfeited without any impairment of their value, or payment of the monetary value thereof as determined by the Court.

(6) Nothing in subsection (1) of this section shall require a Court to release any vessel, vehicle, aircraft or other item if it might be required as an exhibit in court proceedings or is reasonably required for any further investigations of offenses against this subtitle.

**Source:** PL 12-34 § 80.

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

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### **§ 807. Holding of seized goods.**

(1) Any vessel, vehicle, aircraft or other item seized pursuant to this subtitle or any bond or other security or net proceeds of any sale in respect thereof shall be held by the Government pending the outcome of any legal proceedings under this subtitle or until it is decided not to file an information or a complaint, and any penalties imposed under this subtitle have been fully paid.

(2) Where any vessel, vehicle, aircraft or other items seized under this subtitle, or any bond, security or net proceeds of sale in respect thereof is not forfeited or applied in the discharge of any fine, order for costs or penalty imposed pursuant to this subtitle, it shall be made available for collection by the registered owner or his nominee or, in

the absence of such persons, the person who appears entitled to it.

(3) Where any vessel, vehicle, aircraft or other item has been released upon the lodging of a bond or security, an order for forfeiture shall operate as an order for forfeiture of the bond or security.

(4) Where any vessel, vehicle, aircraft or other item has been released upon the lodging of a bond or security, the Court may order any convicted defendant and the owner of the vessel, vehicle, aircraft or other item concerned, whether or not he is a defendant, to pay the difference between the bond or amount lodged in respect of the forfeited property and the aggregate value of the forfeited property.

**Source:** PL 12-34 § 81.

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

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### **§ 808. Application of bond.**

(1) Any bond, security or net proceeds of sale held in respect of any vessel, vehicle or aircraft or other item shall be applied as follows and in this order:

(a) the discharge of any forfeiture ordered pursuant to this subtitle;

(b) the payment of all fines or penalties for offenses against this subtitle or penalties imposed pursuant to this subtitle arising out of the use of or in connection with the vessel, vehicle, aircraft or other item;

(c) the full satisfaction of all costs involved in maintaining and keeping secure the vessel and its equipment during legal proceedings;

(d) the discharge of all orders for costs in proceedings pursuant to this subtitle arising out of the use of or in connection with the vessel, vehicle, aircraft or other item; and

(e) return as provided in this subtitle.

**Source:** PL 12-34 § 82.

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

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**Editor's note:** PL 12-34 § 82 contained only one numbered subsection.