

## CHAPTER 9

### Violations and Penalties for Prohibited Acts

**Editor's note:** Section 83 of PL 12-34 created a new chapter 8 entitled Violations and Penalties for Prohibited Acts 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Section 1 of PL 12-34 repealed chapters 1 through 5 in their entirety.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

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**§ 920. Penalties for other violations of this subtitle.****§ 901. Civil penalties.**

(1) Any person who is found by the Supreme Court of the Federated States of Micronesia in a civil proceeding to have committed an act prohibited by this subtitle shall be liable to the Federated States of Micronesia for a civil penalty.

(2) Each day of a continuing violation shall constitute a separate offense, for which a separate penalty shall be assessed.

(3) In determining the amount of the penalty, the Supreme Court of the Federated States of Micronesia 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, whether there are multiple violations which together constitute a serious disregard of conservation and management measures and such other matters as justice may require.

(4) The Secretary is authorized to initiate all proceedings under this section and to recover the amount assessed as a civil penalty.

(5) The proceeds of civil penalties shall be deposited into the General Fund of the Federated States of Micronesia. Fifty percent of the proceeds from civil penalties shall then be distributed to any FSM State which may be affected by the situation which has given rise to this action.

**Source:** PL 12-34 § 84.

**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.

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.fsmsupremecourt.org/>.

**§ 902. Criminal penalties.**

(1) Any person who commits an act prohibited by this subtitle is subject to criminal prosecution.

(2) The Captain and any crew member of a fishing vessel, who is subject to criminal charges solely for violations of this subtitle occurring outside the territorial waters but within the exclusive economic zone of the Federated States of Micronesia shall be released upon posting of reasonable bond or other surety.

(3) Unless otherwise provided, all maximum penalties described in this subtitle shall be applicable in both civil and criminal proceedings in respect to the same prohibited acts. In addition to any fine, any criminal violation shall also be punishable by imprisonment for not more than ten years, if in the commission of any such offense the person:

(a) uses a dangerous weapon;

(b) engages in conduct that causes bodily injury to any authorized officer or authorized observer or other officer authorized to enforce the provisions of this subtitle; or

(c) threatens any such person with bodily injury.

(4) Each day of a continuing violation shall be considered a separate offense, for which a separate penalty shall be assessed.

(5) Fines shall be deposited into the General Fund of the Federated States of Micronesia. Fifty percent of the proceeds from criminal fines shall be distributed to any FSM State(s) which may be affected by the situation which has given rise to the action.

(6) Criminal penalties shall be imposed without regard to whether the person committing the prohibited act is also subject to civil proceedings for the same violation, and without regard to the amount of any civil penalty imposed or which may be imposed in such civil proceedings.

(7) Nothing in this subtitle shall be interpreted to allow the abatement of a criminal prosecution upon the late satisfaction of a civil judgment or payment of a fine or other determination pursuant to administrative proceedings under this subtitle.

**Source:** PL 12-34 § 85.

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

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

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

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

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

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

### **§ 903. Liability for loss or damage.**

A person found to have committed a violation of this subtitle may be additionally found liable for any loss or damage caused by the violation. The amount of compensation for such loss or damage may be awarded by the Court as restitution in addition to, and recovered in the same manner as, a fine.

**Source:** PL 12-34 § 86.

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

### **§ 904. Liability of operators.**

In any proceeding under this subtitle, the act or omission of any crew member of a fishing vessel or in association with a fishing vessel, shall be deemed to be that of the operator of that fishing vessel.

**Source:** PL 12-34 § 87.

### **§ 905. Civil liability of officers of companies.**

(1) Except as further provided in this section, each member of a partnership, officer of a corporation, firm, company or any other business enterprise engaged in activities governed by this subtitle shall be personally liable for any violation of, or offense committed under this subtitle, by any member or employee.

(2) It shall be an affirmative defense to liability under this section for the officer to prove by a preponderance of the evidence, that he used due diligence to secure compliance with the subtitle or that the violation or offense was committed without that officer's knowledge, consent, collusion or collaboration.

**Source:** PL 12-34 § 88.

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

### **§ 906. Prohibited acts—general.**

(1) It is a violation of this subtitle for any person to:

(a) violate any provision, condition or requirement of a permit or license issued pursuant to this

subtitle;

(b) violate any provision of a regulation promulgated pursuant to this subtitle;

(c) violate any provision, condition or requirement of an access agreement, including the minimum terms required in section 404 of chapter 4 of this subtitle and any agreement or arrangement implementing a multilateral access agreement; or

(d) pursuant to section 115 of chapter 1 and section 407(1)(b) of chapter 4 of this subtitle.

(2) Any person who has committed an act in violation of subsection (1) of this section regarding:

(a) serious misreporting of catch;

(b) fishing in a closed area;

(c) fishing after attaining quota;

(d) directed fishing for a stock for which fishing is prohibited;

(e) using prohibited fishing gear; or

(f) falsifying or concealing the markings, identity or registration of a fishing vessel shall be subject to a civil penalty of not less than \$100,000 and not more than \$500,000.

**Source:** PL 12-34 § 89.

**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.

### **§ 907. Fishing without a valid permit.**

(1) No person shall use any fishing vessel for, and the crew and operator of any fishing vessel shall not engage in, commercial or non-commercial fishing or related activities in the exclusive economic zone without a valid and applicable permit as required pursuant to sections 103, 104 or 117 of chapter 1 of this subtitle.

(2) Any person who commits an act in violation 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 § 90.

**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.

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

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

**§ 908. Engaging in drift net activities.**

(1) No person shall engage in drift net fishing activities in the fishery waters.

(2) No operator of a fishing vessel entitled to fly the flag of the Federated States of Micronesia shall fail to require and ensure that such vessel does not engage in drift net fishing activities in waters under the national jurisdiction of a foreign state, in the high seas, or in enclosed or semi-enclosed seas as defined in the United Nations Convention.

(3) 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 \$100,000 and not more than \$1,000,000.

**Source:** PL 12-34 § 91.

**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.

**§ 909. Unauthorized fishing in waters under the national jurisdiction of a foreign state.**

(1) No operator of a fishing vessel entitled to fly the flag of the Federated States of Micronesia shall fail to require and ensure that such vessel does not fish in waters under the national jurisdiction of a foreign state unless duly authorized by the competent authorities of the foreign state or states concerned.

(2) Any person who commits an act in violation of this section shall be subject to a civil penalty of not less than \$50,000 or less than \$1,000,000.

**Source:** PL 12-34 § 92.

**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.

**§ 910. Improper stowage of fishing gear.**

(1) No operator of a fishing vessel in the exclusive economic zone shall refuse or otherwise fail to stow all fishing gear in such a manner that it is not readily available for use in fishing except when such fishing vessel is in an area in which it is authorized to fish in accordance with this subtitle.

(2) Any person who commits an act in violation of this section shall be subject to a civil penalty of not less

than \$50,000 and not more than \$500,000.

**Source:** PL 12-34 § 93.

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

### **§ 911. Violation of marine space.**

(1) No person shall use a vessel for entering or remaining within the exclusive economic zone in violation of any provision of this subtitle.

(2) Any person who violates this section shall be subject to a civil penalty of not less than \$50,000 and not more than \$500,000.

**Source:** PL 12-34 § 94.

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

### **§ 912. Fishing on or near submerged reefs or fish aggregating devices.**

(1) No person shall use any foreign fishing vessel for fishing within one mile of a submerged reef within the exclusive economic zone, or within a two mile radius of any fish aggregating device of the Government, a citizen or any other body established under the laws of the Federated States of Micronesia.

(2) Any person who commits an act in violation of this section shall be subject to a civil penalty of not less than \$50,000 and not more than \$250,000.

**Source:** PL 12-34 § 95.

**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.

### **§ 913. Possession, handling and sale of fish unlawfully taken.**

(1) No person shall knowingly ship, transport, offer for sale, sell, purchase, import, export or have custody, control or possession of any fish taken or retained in contravention of this subtitle or any access agreement, permit or applicable law.

(2) Any person who commits an act in violation of this section shall be subject to a civil penalty of not less than \$50,000 and not more than \$250,000.

**Source:** PL 12-34 § 96.

#### **§ 914. Destruction of evidence.**

(1) No person shall destroy, dispose of, conceal, tamper with or abandon any fish, fish product, fishing gear, net or other fish appliance, record, document, electric shock device, explosive, poison or other noxious substance, or any other thing with intent to avoid seizure or the detection of an offense against this subtitle.

(2) Any person who commits an act in violation of this section is subject to a civil penalty of not less than \$100,000 and not more than \$500,000.

**Source:** PL 12-34 § 97.

**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.

#### **§ 915. Refusal to give fish samples.**

(1) No person in possession or apparent possession of any fish or fish products shall, when requested by any authorized officer or authorized observer to take fish samples, fail or refuse to immediately give such reasonable samples as may be required for the purposes of this subtitle without payment of any kind for such samples.

(2) 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 § 98.

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

#### **§ 916. Obstruction of justice.**

(1) No person shall interfere with, delay, or prevent, by any means the apprehension or arrest of another person, knowing or having probable cause to believe that such person has committed any act prohibited by this subtitle.

(2) Any person who commits an 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 § 99.

**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.

**§ 917. Resisting arrest.**

(1) No person shall resist a lawful arrest for any act prohibited by this subtitle.

(2) Any person who commits an act in violation of this section shall be subject to a civil penalty of not less than \$20,000 and not more than \$50,000.

**Source:** PL 12-34 § 100.

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

**§ 918. Contamination of the exclusive economic zone.**

(1) No person shall, directly or indirectly, contaminate the exclusive economic zone in any way, including by the discharge of any substance or by any act or omission that is likely to cause damage to, or deterioration in, the quality of the marine resources.

(2) For the purposes of this section, the following is presumed to be damaging:

(a) non-biodegradable trash or debris;

(b) the discharge of a poison, chemical or noxious substance, including, but not limited to, oil, petroleum, solvents, metals or sewage.

(3) Any person who violates this section shall be subject to a civil penalty of not less than \$50,000 and not more than \$500,000.

**Source:** PL 12-34 § 101.

**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.

**§ 919. Damage to fishing vessel or gear belonging to another.**

(1) No person shall recklessly, knowingly or intentionally take, damage or destroy any fish, fishing vessel or fishing gear belonging to another person or buoy used for scientific observation.

(2) Any person who commits an 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 § 102.

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

### **§ 920. Penalties for other violations of this subtitle.**

Any person who commits an act in violation of any provision of this subtitle, for which no civil penalty is otherwise specified in this chapter or the preceding chapters, shall be subject to a civil penalty of not less than \$40,000 and not more than \$100,000.

**Source:** PL 12-34 § 103.

**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.

**Editor's note:** PL 12-34 § 103 contained only one numbered subsection which has been deleted as unnecessary.

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

Any person who commits a fishery violation for which no civil penalty is otherwise specified, is subject to a civil penalty of not less than \$40,000 and not more than \$100,000. *FSM v. Koshin 31*, 16 FSM R. 15, 19 (Pon. 2008).

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

With respect to the interplay between NORMA's Administrative Penalties Regulations and the FSM Code's Title 24, administrative penalties are those resulting from a citation issued by a Marine Surveillance Officer while civil penalties are those the FSM Supreme Court imposes in a civil lawsuit after a finding of liability for a Title 24 violation. The court has neither the authority nor the discretion to

impose an administrative penalty for the violation in a civil lawsuit. *FSM v. Koshin 31*, 16 FSM R. 15, 19-20 (Pon. 2008).

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