

## CHAPTER 7

### Jurisdiction and Evidence; Administrative Proceedings

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**Editor's note:** Section 66 of PL 12-34 created a new chapter 7 entitled Jurisdiction and Evidence; Administrative Proceedings 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Section 1 of PL 12-34 repealed chapters 1 through 5 in their entirety.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

- § 701. Jurisdiction of the court.**
- § 702. Standing of authorized officers or observers.**
- § 703. Citations and administrative penalties.**
- § 704. Prohibitions pending payment of administrative penalties.**
- § 705. Liability for non-payment of penalties.**
- § 706. Presumptions.**
- § 707. Burden of proof.**

#### **§ 701. Jurisdiction of the court.**

(1) Any case or controversy arising under this subtitle or out of any act or omission committed in contravention of any provision of this subtitle by any person:

- (a) within the fishery waters; or
- (b) outside the fishery waters by any flag vessel, citizen or person ordinarily resident in the Federated States of Micronesia; or
- (c) by any person on board any fishing vessel registered in the Federated States of Micronesia shall be subject to the jurisdiction of the Supreme Court of the Federated States of Micronesia and judicial proceedings shall be taken as if such act or omission had taken place in the Federated States of Micronesia within the jurisdiction of the Supreme Court of the Federated States of Micronesia.

(2) Where an authorized officer is exercising any powers conferred on him outside the fishery waters in accordance with this subtitle, any act or omission of any person in contravention of any of the provisions of this subtitle shall be deemed to have been committed within the fishery waters.

(3) Notwithstanding any provision of any other law of the Federated States of Micronesia, any information or complaint with respect to any violation of this subtitle must be filed within two years of the discovery of the violation.

(4) The Court may at any time enter restraining orders or prohibitions, issue warrants, issue 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:** PL 12-34 § 67.

**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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### **§ 702. Standing of authorized officers or observers.**

Standing in the Supreme Court of the Federated States of Micronesia shall be afforded to any authorized officer or authorized observer designated under a fisheries management agreement entered into pursuant to subsection (1)(b) or (1)(c) of section 106 of chapter 1 of this subtitle to bring action against any person or fishing vessel for any act or offense that is actionable under the laws of the Federated States of Micronesia or is a violation of an access agreement or fisheries management agreement pursuant to which the observer was authorized which has occurred in the exclusive economic zone or the high seas, notwithstanding the nationality of the observer.

**Source:** PL 12-34 § 68.

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

### **§ 703. Citations and administrative penalties.**

(1) For any violation of this subtitle or its regulations which would fall within the penalty provisions of section 920 of this subtitle, the Authority may, by regulation promulgated in consultation with the Secretary, provide for an administrative penalty.

(2) Citations for violations shall be issued by the Executive Director or his designee or by an authorized officer to the person or persons found to have committed a violation, in such manner as shall be prescribed by regulation. Each citation shall plainly set forth the act or acts constituting the violation, the provisions of the law and/or regulations violated and the administrative penalty assessed for such violation.

(3) Administrative penalties shall be satisfied upon the payment of the penalty assessed to the Authority and notification made in writing, under the signature of all parties, to the Secretary.

(4) Any person issued a citation may contest that citation within ten days of receipt. All citation challenges

shall be in writing, shall be filed with the Executive Director or his designee, and shall provide facts and arguments supporting the party's contention that the citation was wrongly issued. The Executive Director shall issue a final decision on behalf of the Authority in writing within 15 days of receipt of a citation challenge. Any citation that is not challenged within ten days after issuance shall be deemed final.

(5) If any citation remains unpaid 30 days after it becomes final, the Executive Director shall refer the violation to the Secretary for further action. Such action may, at the Secretary's discretion, include either enforcement of the original citation as issued or the initiation of legal proceedings for the recovery of penalties under section 920 of this subtitle, which may exceed those assessed by citation.

**Source:** PL 12-34 § 69.

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

**Case annotations:** 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).

#### **§ 704. Prohibitions pending payment of administrative penalties.**

- (1) No person shall engage in fishing or any related or other activity in the fishery waters until:
  - (a) the full amount of any final administrative penalty assessed has been paid; or
  - (b) a bond for the full amount of the administrative penalty assessed has been deposited with the Executive Director, pending the conclusion of legal proceedings under section 703(4) of this subtitle.
- (2) Any bond posted pursuant to subsection (1)(b) of this section shall be returned only upon:
  - (a) a successful citation penalty challenge under section 703(4) of this subtitle; or
  - (b) a finding of no violation by the FSM Supreme Court, pursuant to a proceeding instituted under section 703(5) of this subtitle.
- (3) Any person who violates subsection (1) of this section shall be subject to the penalties set forth in section

907 of this subtitle for fishing without a valid permit.

**Source:** PL 12-34 § 70.

**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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### **§ 705. Liability for non-payment of penalties.**

The Secretary shall have the authority to enforce and recover all financial penalties and all forfeitures, damages, expenses and other liabilities incurred or imposed pursuant to this subtitle, and to enforce the liability to forfeiture of any article seized under the authority thereof, and all rents, charges, expenses and duties and all other sums of money payable under this subtitle may be sued for, determined, enforced and recovered in the name of the Executive Director as plaintiff, and all such proceedings shall be deemed to be civil proceedings. The fact that a bond or other security has been paid shall not be pleaded or made use of in answer to or in stay of any such proceedings.

**Source:** PL 12-34 § 71.

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

### **§ 706. Presumptions.**

(1) Where, in any legal proceedings under this subtitle, the place in which an event is alleged to have taken place is in issue:

(a) there shall be a refutable presumption that the place stated in the relevant entry in the logbook or other official record of any enforcement vessel or aircraft as being the place in which the event took place was the place in which the event took place; and

(b) *prima facie* evidence of an entry in a logbook or other official record of an enforcement vessel or aircraft may be given by the production of a written copy or extract of the entry certified by an authorized officer as a true copy or accurate extract.

(2) There shall be a refutable presumption that all fish found on board any fishing vessel which has been used in the commission of any violation of this subtitle have been caught during the commission of that violation.

(3) Where, in any legal proceedings relating to a violation of this subtitle, an authorized officer gives evidence of reasonable grounds to believe any fish to which the charge relates were taken in a specified area of the fishery waters, there shall be a refutable presumption that all the fish shall be presumed to have been so taken.

(4) Where, in any legal proceedings for a violation of this subtitle, an authorized officer gives evidence of

reasonable grounds to believe that any fish to which the charge relates were taken by the use of drift nets, there shall be a refutable presumption that all the fish have been so taken.

(5) Where any information is given regarding a fishing vessel pursuant to this subtitle or an access agreement in relation to any fishing activity of a foreign fishing vessel, including any entry in writing or other mark in or on any log, chart or other document required to be maintained under this subtitle or used to record the activities of a foreign fishing vessel it shall be presumed to have been given by the master, owner and charterer of the vessel concerned, unless it is proved it was not given or authorized to be given by any of them.

(6) Any position fixing instrument on board a vessel or aircraft used for the enforcement of this subtitle shall be presumed to be accurate. For the purposes of this section, a position fixing instrument shall mean any device which indicates the location of a vessel, including, but not limited to, any satellite navigation system or global positioning system.

(7) Where a photograph taken by an authorized officer or authorized observer, is taken of any fishing or related activity and simultaneously the date, time or position from which the photograph is taken are superimposed upon the photograph then it shall be presumed that the photograph was taken on the date, at the time or in the position so appearing, if:

(a) the camera taking the photograph is connected directly to the instruments which provide the date, time and position concerned; and

(b) the photograph was taken by an authorized officer or an authorized observer.

**Source:** PL 12-34 § 72.

**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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### **§ 707. Burden of proof.**

(1) Where, in any proceedings under this subtitle, a person is alleged to have committed an act for which a permit or other permission is required, the burden shall be on the person charged to prove that at the relevant time the requisite permit or permission was held.

(2) Where a person is alleged to have violated marine space, in contravention of section 911 of this subtitle, the burden shall be on that person to prove that the information given was true, complete and correct.

**Source:** PL 12-34 § 73.

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

