

DRAFT CSC, Title 25. Maritime & Marine Resources

CHAPTER 1 State Fishery Zone

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§ 1001. Short title.

This act Chapter shall be known as and may be cited as the "State Fishery Zone Act of 1983."

Source: TSL 5-92, § 1, modified.

Editor's note: TSL 5-92 that created this Chapter was signed into law by the Governor on April 5, 1984.

§ 1002. Purpose.

The purpose of this Act Chapter is to promote economic development and to manage and conserve living sea resources within the jurisdiction of the State of Chuuk Truk pursuant to the Constitution of the Federated States of Government.

Source: TSL 5-92, § 2, modified.

§ 1003. Definitions.

As used in this Act Chapter, unless the context otherwise requires, the term:

- (1) "Atoll" , means a circular or oval coral reef forming a geographic and ecologic unity crowned by at least one island;
- (2) "Authority" , means the Truk Maritime Authority established by Truk State Law No. 3-44;
- (3) "Chairman" , means the Chairman of the Board of the Truk Maritime Authority;
- (4) "Fish" , means any living resource;
- (5) "Fishery" , means:
 - (a) one or more stocks of fish which can be treated as a unit for purpose of conservation and management and which are identified on the basis of geographical, scientific, technical, recreational, and economic characteristics; and

(b) any fish for such stocks.

(6) "Fishing" , means:

(a) the actual or attempted catching, taking or harvesting of fish;

(b) any other activity which can reasonably be expected to result in the catching, taking or harvesting of fish; or

(c) any operations at sea in support of or in preparation for, any activity described in paragraphs (a) and (b) above.

(7) "Fishing Vessel" means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type that is normally used for:

(a) Fishing, and

(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 of processing.

(8) "Foreign Fishing Agreement" means an agreement between the Authority on behalf of the Government of the State of Chuuk Truk one or more foreign commercial fishing interests to permit foreign vessels to harvest fish within the State Fishery Zone of the State of Chuuk Truk. A "foreign party" is party to such an agreement other than the Authority;

(9) "Foreign Fishing" means fishing by vessels:

(a) Not registered in Chuuk Truk; or

(b) Not wholly owned by citizens of Micronesia; or

(c) Not wholly controlled by citizens of Micronesia; or

(d) Of foreign registry chartered by citizens of Micronesia.

(10) "Island" means a naturally formed area of land, surrounded by water, which is above water at high tide;

(11) "Living resources" means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine birds;

(12) "Manager" , means the Manager of the Truk Maritime Authority;

(13) "Micronesia" means the Federated State of Micronesia;

(14) "Person" means any individual, corporation, partnership, association, or other entity, the Government of the Federated States of Micronesia or the Government of Chuuk Truk State or any of their subdivisions or any entity thereof, and any foreign government, subdivision of such government or entity thereof;

(15) "Reef fish" means any species of living resources which predominately inhabits reef areas or internal waters;

(16) "State" , means the State of Truk;

(17) "Stock of fish" means a species, subspecies, geographical grouping, or other category of fish capable of management as a unit;

(18) "Submerged reef" means a coral reef forming a geographical and ecologic unit which is wholly submerged at high tide.

Source: TSL 5-92, § 3, modified by putting terms into alphabetical order and renumbering accordingly.

§ 1004. Application of this Aet Chapter.

The provisions of this Aet Chapter apply to the State of Chuuk Truk.

Source: TSL 5-92, § 4, modified.

§ 1005. Baseline system defined.

A baseline is a continuous line which encircles an island or atoll. The baseline from which the zones designated in this Aet Chapter are to be measured is as follows:

(1) 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 islands as marked on large scale charts of officially recognized by the Government of the Federated States of Micronesia and Government of the State of Chuuk Truk.

(2) The baseline of an atoll or island or portion of an island having a barrier reef, fringing reef, or other system is a line following the contour of the seaward edge of the reef system, which line connects those outermost elevations of the reef which 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 and Government of the State of Chuuk Truk.

(3) Notwithstanding the above measurement, this whole law is only applicable immediately beyond the continental shelves for these islands having a barrier reef.

Source: TSL 5-92, § 5, modified.

§ 1006. State Fishery Zone.

(4) The inner boundary of the State Fishery Zone of each island or atoll is the baseline as defined in Section 1005 of this Aet Chapter, and the outer boundary is a line, every point of which is 12 ~~twelve~~ nautical miles seaward of the nearest point of the baseline as defined in Section 1005 of this Aet Chapter. Waters, landward of the baseline, including the lagoons of atoll or islands are internal waters.

Source: TSL 5-92, § 6, modified.

§ 1007. Submerged Reefs.

Traditionally recognized fishing rights over submerged reef wherever located within the State Fishery Zone and internal waters shall be preserved and respected.

Source: TSL 5-92, § 7.

§ 1008. Truk Maritime Authority.

In addition to duties and powers prescribed by Truk State Law No. 3-44, the Authority shall have the following duties, functions and authority:

(1) To adopt regulations for the conservation, management and exploitation of all living resources in the State Fishery Zone and internal waters;

(2) To negotiate and conclude foreign fishing agreements in accordance with Section 1010 of this Aet Chapter, with the advice and consent of the Micronesian Maritime Authority when a party to an agreement is a foreign government, subdivision of such government or entity thereof;

(3) To issue foreign fishing permits in accordance with procedures established by the Authority or regulations promulgated pursuant to this Aet Chapter;

(4) To require all foreign vessels to possess a permit before fishing in the State Fishery Zone; and

(5) To rebate according to regulation approved by the Authority all or a portion of a fee collected pursuant to Section 1010 44 (7) of this Aet Chapter from a joint fishing venture duly organized by law, if the rebate will promote fishery development within the State.

Source: TSL 5-92, § 8.

§ 1009. Foreign Fishing Permitted.

No foreign fishing regulated pursuant to the provisions of this Aet Chapter is permitted in the State Fishery Zone except by valid and applicable permit issued under authority conferred by this Aet Chapter. Foreign fishing in internal waters is prohibited.

Source: TSL 5-92, § 9, modified.

§ 1010. Foreign Fishing Agreements.

(1) Each foreign fishing agreement shall acknowledge the exclusive fishery management authority of the Government of Chuuk Truk as set forth in this Aet Chapter.

(2) In negotiating foreign fishing agreements, the authority shall seek substantial agreement by the foreign parties to the following terms and conditions:

(a) The foreign party and the owner or operator of any fishing vessel fishing pursuant to such foreign fishing agreement will abide by the agreement that:

(i) Any officer authorized to enforce the provisions of this Aet Chapter shall be permitted to board and search or inspect any vessel at any time and make arrests and seizures provided for in Section 1016 47 of this Aet Chapter whenever such official has reasonable cause to believe, a result of such search or inspections, that any such vessel or any person has committed an act prohibited by this Aet Chapter or regulations adopted by the Authority pursuant to this Aet Chapter;

(ii) Such officer shall also be permitted to examine and make notations on the permit issued pursuant to Section 1010 44 of this Aet Chapter;

(iii) The permit issued for any such vessel pursuant to Section 1010 44 of this Aet Chapter shall be prominently displayed in the wheelhouse of such vessel;

(iv) Appropriate position-fixing and identification equipment shall be installed and maintained in working order on each such vessel;

(v) Duly authorized state observers shall be permitted on board any such vessel and that the Government of Chuuk Truk State shall be reimbursed for the cost of such observers; and

(vi) Agents shall be appointed and maintained within Chuuk Truk who are authorized to receive and respond to any legal process issued in Chuuk Truk with respect to such owner or operator.

(b) The foreign party and the owners or operators of all of the fishing vessels of such party shall not, in any year, exceed such party's allocation of the total allowable level of foreign fishing

established by the Authority.

(c) Foreign parties will:

(i) apply, pursuant to Section 1010 44, for any required permits;

(ii) deliver promptly to the owner or operator of the appropriate fishing vessels any permit which is issued under that Section for such vessel;

(iii) abide by the requirement that no foreign fishing will be permitted in the State Fishery Zone without a valid and applicable permit, and that all conditions and restrictions of the permit are complied with; and

(iv) abide by the prohibition that no foreign fishing shall be permitted in internal waters.

(3) Each foreign party entitled to permits in accordance with its foreign fishing agreement shall application on forms prescribed by the Authority specifying inter alia:

(a) The name and official number or other identification of each fishing vessel for which a permit is sought, together with the name and address of the owner thereof;

(b) The tonnage, capacity, speed processing equipment, type and quantity of fishing gear, and such other pertinent information with respect to characteristics of each such vessel as the Authority may require;

(c) The amount of fish or tonnage of catch contemplated for each such vessel during the time such permit is in force and as required by the foreign fishing agreement; and

(d) The ocean area which, and the season or period during which, such fishing will be conducted as required by the foreign fishing agreement.

(4) Upon receipt of an application, including an application for rebate of a fee, the manager shall transmit copies to each member of the Authority.

(5) The Authority shall review the application, solicit views from appropriate persons in the State, hold public hearings where necessary, and may approve the application on such terms and conditions and with such restrictions as the Authority deems appropriate.

(6) If the Authority does not approve the applications submitted by the foreign party, the chairman shall notify such foreign party of the disapproval and the reasons therefor. After taking into consideration, the reasons for disapproval, the foreign party may submit a revised application.

(7) Fees and other forms of compensation for the right to exploit living resources within the State Fishery Zone shall be established in the agreement.

(8) Upon notification by the foreign party of acceptance of the terms, conditions, and restrictions on the applications and permit, the chairman shall issue the permit.

(9) If any foreign fishing vessel for which a permit has been issued pursuant to this Section has been used in the commission of any act prohibited by this Act Chapter has not been paid and is overdue, the Authority shall:

(a) revoke such permit with or without prejudice to the right of the foreign party involved to obtain a permit for such vessel in any subsequent year; or

(b) suspend such permit for the period of the time deemed appropriate; or

(c) impose additional conditions and restrictions on the approved application of the foreign party involved and on any permit issued under such application.

(10) Notwithstanding any other provisions of this ~~Aet Chapter~~, the Authority may provide for the issuance of permits, on reasonable conditions, to foreign vessels or parties for research, survey, recreational, or noncommercial fishing within the State Fishery Zone and internal waters.

Source: TSL 5-92, § 10, modified.

§ 1011. Prohibited Acts.

(1) It is unlawful for any person:

(a) to violate any provisions of this ~~Aet Chapter~~, or of any regulation or permit issued pursuant to this ~~Aet Chapter~~;

(b) to use any fishing vessel to engage in fishing after revocation, or during the period of suspension, of an applicable permit issued pursuant to this ~~Aet Chapter~~;

(c) to violate any provision of, or regulation under, an applicable foreign fishing agreement entered into pursuant to this ~~Aet Chapter~~;

(d) to refuse to permit any officer authorized to enforce the provisions of this ~~Aet Chapter~~ to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of this ~~Aet Chapter~~ or any regulation, permit, or agreement referred to in this ~~Aet Chapter~~;

(e) to forcibly assaultly, resist, oppose, impede, intimidate, or interfere with any such authorized officer in the conduct of any search or inspection described in paragraph (d) of this subsection;

(f) to resist a lawful arrest for any act prohibited by this Section;

(g) to knowingly ship, transport, offer for sale, sell, purchase, import, to have custody, control or possession of any fish taken or retained in violation of this ~~Aet Chapter~~ or any regulation, permit, or agreement referred to in this ~~Aet Chapter~~; or

(h) 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.

(2) It is unlawful for any foreign fishing vessel, and for the crew, owner or operation of any foreign fishing vessel, to engage in fishing in the Fishery Zone or internal waters unless such fishing is authorized by and conducted in accordance with a valid and applicable fishing permit issued pursuant to Section 1010 44 of this ~~Aet Chapter~~.

Source: TSL 5-92, § 12, modified.

§ 1012. Civil Penalties.

(1) Any person who is found in a civil proceeding to have committed an act prohibited by Section 1011 42 of this ~~Aet Chapter~~ shall be liable to the Government of ~~Chuuk Truk~~ for a civil penalty. The amount of the civil penalty shall not exceed \$75,000 for each violation. Each day of a continuing violation shall institute a separate offense. In determining the amount of such penalty, the court shall

take into account the nature, circumstance, extent, and gravity of prohibited acts committed and, with respect to the violator, the degree of culpability, and history of prior offenses, and such matters as justice may require.

(2) The State Attorney General is authorized to initiate all proceedings under this Section and to recover the amount assessed as a civil penalty. The proceeds of civil penalties shall be deposited in the General Fund of the Legislature.

Source: TSL 5-92, § 13, modified.

§ 1013. Criminal Penalties.

(1) A person is guilty of an offense if he commits any act prohibited by Section 1011 42 of this Aet Chapter.

(2) Any offense described as a prohibited act by Section 1011 42(1)(a), (b), (c), or (g), is punished by a fine of not more than \$50,000.

(3) Any offense described as a prohibited act by Section 1011 42(1)(d), (e), (f) or (h), is punished by a fine of not more than \$100,000, or imprisonment for not more than two years, or both; except 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 enforce the provisions of this Aet Chapter, or threatens any such officer with bodily injury, the offense is punishable by a fine of not more than \$25,000, or imprisonment for not more than ten years, or both.

(4) Any offense described as a prohibited act by Section 1011 42 (2), is punished by a fine of not more than \$100,000. Each day of continuing violation shall be considered a separate offense.

Source: TSL 5-92, § 14, modified.

§ 1014. Forfeitures.

(1) Any fishing vessel including its fishing gear, furniture, appurtenance, stores, and cargo used, and any fish taken or retained, in any manner, in connection with or as a result of the commission of any act prohibited by Section 1011 42 of this Aet Chapter shall be subject to forfeiture to the Government of Chuuk Ʀruk State. All or part of such vessel may, and all such fish may, be forfeited to the Governor of Chuuk Ʀruk pursuant to a civil proceeding under this Section.

(2) A court of competent jurisdiction in the State shall have jurisdiction, upon application by the State Attorney General on behalf of the Government of Chuuk Ʀruk to order any forfeiture authorized under this Subsection (1) of this Section.

(3) If a judgment is entered for the Government of Chuuk Ʀruk in a civil forfeiture proceeding under this Section, the State Attorney General shall seize any property or other interest declared forfeited to the Government of Chuuk Ʀruk, which has not previously been seized pursuant to this Aet Chapter.

(4) The forfeited vessel, gear, furniture, appurtenances, stores, cargo, and fish may be sold and proceeds deposited in the General Fund of the State, or may be retained for use by, or at the direction of, the Government of Chuuk Ʀruk, or may be distributed by the Authority to persons whose traditional fishing rights have been violated by such vessel.

(5) 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 property. 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. 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.

(6) Any fish seized pursuant to this Aet 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.

(7) For purpose of this Aet Chapter, it shall be a rebuttable presumption that all fish found on board a fishing vessel which is seized in connection with an act prohibited by Section 1011 42 of this Aet Chapter were taken or retained in violation of this Aet Chapter.

Source: TSL 5-92, § 15, modified.

§ 1015. Fees.

Fees collected by the Authority pursuant to Section 1010 44 (7) shall be deposited in the General Fund of the State; provide, however, that in the case of fees collected from a joint fishing venture, and if its application for a fishing permit includes a request for rebate of fees which the Authority accepts pending its decision to rebate the fee, such fees shall be deposited in a separate trust account maintained by the Authority until rebated on the joint fishing venture or paid into the General Fund of the State, if the rebate request is denied.

Source: TSL 5-92, § 16.

§ 1016. Enforcement.

(1) Primary responsibility for the enforcement of this Aet Chapter shall be assumed by the State Attorney General.

(2) Any officer who is authorized and appointed by the State Attorney General to enforce the provisions of this Aet Chapter; may:

(a) with or without warrant or other process:

(i) arrest any person, if he has reasonable cause to believe that such person has committed an act prohibited by Section 1011 42 of this Aet Chapter;

(ii) board, and search or inspect any fishing vessel which is subject to the provisions of this Aet Chapter;

(iii) seize any fishing vessel used or employed in, or when it reasonably appears that such vessel was used or employed in, the violation of any provisions of this Aet Chapter;

(iv) seize any fishing gear, furniture, appurtenances, stores, cargo, and fish in the possession of a fishing vessel seized pursuant to authority granted by Sub-paragraph (iii) of this paragraph; and

(v) seize any other evidence related to any violations of any provision of this Aet Chapter.

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

(c) exercise any other lawful authority.

Source: TSL 5-92, § 17, modified.

§ 1017. Severability.

If any provision of this Act Chapter or amendment or additions thereto, or the application thereof to any person, thing or circumstances is held invalid, the invalidity does not effect the provisions or application of this Act Chapter or the amendments or additions that can be given effect without the invalid provisions or application, and to this and the provisions of this Act Chapter and the amendments or additions thereto are severable.

Source: TSL 5-92, § 18, modified.