

YSC, Title 18. Conservation & Resources

Chapter 2: State Fishery Zone

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§201. Short title.

This chapter shall be known and may be cited as the "State Fishery Zone Act of 1980".

Source: YSL 1-55 §1, modified.

Cross-reference: The statutory provisions on the Yap Fishing Authority are found chapter 1 of this title.

§202. Purpose.

The purpose of this chapter is to promote economic development and to manage and conserve living sea resources within the jurisdiction of the State of Yap pursuant to the Constitution of the Federated States of Micronesia and Section 1 of Article XIII of the Constitution of the State of Yap.

Source: YSL 1-55 §2, modified.

Cross-reference: Section 1 of Article XIII of the Constitution of the State of Yap reads: "The State Government shall promote the conservation and development of agricultural, marine, mineral, forest, water, land and other natural resources."

Commission Comment: "Section 1 of Article IX of the Charter for the Yap State Government" is changed to "Section 1 of Article XIII of the Constitution of the State of Yap".

§203. Definitions.

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

- (a) "Atoll" means a circular or oval coral reef forming a geographic and ecologic unity crowned by at least one island;
- (b) "Authority" means the Yap Fishing Authority established by chapter 1 of this title.

(c) "Chairman" means the Chairman of the Board of the Yap Fishing Authority.

(d) "Fish" means any living resource.

(e) "Fishery" means:

(1) 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

(2) Any fishing for such stocks.

(f) "Fishing" means:

(1) The actual or attempted catching, taking or harvesting of fish;

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

(3) Any operations at sea in support of or in preparation for, any activity described in paragraphs (1) and (2) above.

(g) "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:

(1) Fishing;

(2) 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 or processing.

(h) "Foreign fishing" means fishing by vessels:

(1) Not registered in Yap; or

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

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

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

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

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

(k) "Living resource" means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine birds.

(l) "Manager" means the Manager of the Yap Fishing Authority.

(m) "Micronesia" means the Federated States of Micronesia.

(n) "Person" means any individual, corporation, partnership, association, or other entity, the Government of Micronesia or Yap or any of their subdivisions or any entity thereof, and any foreign government, subdivision of such government or entity thereof.

(o) "Reef fish" means any species of living resource which predominately inhabits reef areas or internal waters.

(p) "State" means the State of Yap.

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

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

(s) "Yap" means the State of Yap.

Source: YSL 1-55 §3, definitions put into alphabetical order and section modified.

§204. Application of this chapter.

The provisions of this chapter apply to the State of Yap.

Source: YSL 1-55 §4, modified.

§205. Baseline system defined.

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

(a) 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 officially recognized by the Government of Micronesia and Government of Yap.

(b) 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 recognized by the Government of Micronesia and Government of Yap.

Source: YSL 1-55 §5, modified.

Cross-reference: Section 5 of Article XIII of the Yap Constitution states: "The State recognizes traditional rights and ownership of natural resources and areas within the marine space of the State, within and beyond 12 miles from island baselines. No action may be taken to impair these traditional rights and ownership, except the State Government may provide for the conservation and protection of natural resources within the marine space of the State within 12 miles from island baselines."

§206. State Fishery Zone.

The inner boundary of the State Fishery Zone of each island or atoll is the baseline as defined in section 205 of this chapter, and the outer boundary is a line, every point of which is twelve nautical miles seaward of the nearest point on the baseline as defined in section 205 of this chapter. Waters landward of the baseline, including the lagoons of atolls or islands, are internal waters.

Source: YSL 1-55 §6, modified.

Cross-reference: Section 205 of this chapter is on the baseline system defined.

§207. Submerged reefs.

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

Source: YSL 1-55 §7.

Cross-reference: Section 5 of Article XIII of the Yap Constitution states: "The State recognizes traditional rights and ownership of natural resources and areas within the marine space of the State, within and beyond 12 miles from island baselines. No action may be taken to impair these traditional rights and ownership, except the State Government may provide for the conservation and protection of natural resources within the marine space of the State within 12 miles from island baselines." The constitutional provisions on Traditional Leaders and Traditions are found in Yap Const., Art. III. The statutory provisions on Traditional Leaders and Traditions are found in Title 5 of this Code.

§208. Yap Fishing Authority.

In addition to duties and powers prescribed by chapter 1 of this title, the Authority shall have the following duties, functions and authority.

- (a) To adopt regulations for the conservation, management, and exploitation of all living resources in the State Fishery Zone and internal waters;
- (b) To negotiate and conclude foreign fishing agreements in accordance with section 210 of this 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;
- (c) To issue foreign fishing permits in accordance with procedure established by the Authority or regulations promulgated pursuant to this chapter;
- (d) To require all foreign vessels to possess a permit before fishing in the State Fishery Zone; and
- (e) To rebate according to regulation approved by the Authority all or a portion of a fee collected pursuant to section 211(g) of this chapter from a joint fishing venture duly organized by law, if the rebate will promote fishery development within the State.

Source: YSL 1-55 §8, modified.

Cross-reference: The statutory provisions establishing the Yap Fishing Authority are found in chapter 1 of this title. Section 210 of this chapter is on foreign fishing agreements. Section 211 of this chapter is on fishing permits.

§209. Foreign fishing permitted.

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

Source: YSL 1-55 §9, modified.

Cross-reference: Section 6 of Article XIII of the Yap Constitution states: "A foreign fishing, research or exploration vessel shall not take natural resources from any area within the marine space of the State, except as may be permitted by the appropriate persons who exercise traditional rights and ownership and by statute."

§210. Foreign fishing agreements.

- (a) Each foreign fishing agreement shall acknowledge the exclusive fishery management authority of the Government of Yap as set forth in this chapter.
- (b) In negotiating foreign fishing agreements, the Authority shall seek substantial agreement by the foreign parties to the following terms and conditions:

(1) 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:

(A) Any officer authorized to enforce the provisions of this chapter shall be permitted to board and search or inspect any vessel at any time and make arrests and seizures provided for in section 217 of this chapter whenever such officer has reasonable cause to believe, as a result of such search or inspections, that any such vessel or any person has committed an act prohibited by this chapter or regulations adopted by the Authority pursuant to this chapter;

(B) Such officer shall also be permitted to examine and make notations on the permit issued pursuant to section 211 of this chapter;

(C) The permit issued for any such vessel pursuant to section 211 of this chapter shall be prominently displayed in the wheelhouse of such vessel;

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

(E) Duly authorized State observers shall be permitted on board any such vessel and that the Government of Yap shall be reimbursed for the cost of such observers; and

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

(3) 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.

(4) Foreign parties will:

(A) Apply, pursuant to section 211, for any required permits;

(B) Deliver promptly to the owner or operator of the appropriate fishing vessels any permit which is issued under that section for such vessel;

(C) 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

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

(5) The foreign party and the owner or operator of any fishing vessel fishing pursuant to such agreement will abide by all other terms and conditions of the agreement.

(c) The total allowable level of foreign fishing, with respect to any fishery subject to the provisions of this chapter, shall be that portion of the maximum sustainable yield of such fishery which will not be harvested by vessels of Yap.

(d) The Authority may determine the allocation among foreign parties of the total allowable level of foreign fishing which is permitted with respect to any fishery subject to the provisions of this chapter. In determining the allocation among parties, the Authority shall take into consideration:

(1) The extent to which vessels of such parties have traditionally fished the particular regulated species;

(2) Whether such parties or their national governments have cooperated with the Government of Micronesia and Government of Yap in, and made substantial contributions to, fishery research and the identification of fishery resources;

(3) Whether such parties of their national government have cooperated with the Government of Micronesia and Government of Yap in enforcement of the provisions of Title 24 of the Code of the Federated States of Micronesia (Marine Resources) and of this chapter and the regulations issued under their authority; and

(4) Such other matters as it may deem appropriate.

Source: YSL 1-55 §10, modified.

Cross-reference: Section 6 of Article XIII of the Yap Constitution states: "A foreign fishing, research or exploration vessel shall not take natural resources from any area within the marine space of the State, except as may be permitted by the appropriate persons who exercise traditional rights and ownership and by statute." Section 211 of this chapter is on fishing permits. Section 217 of this chapter is on enforcement.

§211. Fishing permits.

(a) No foreign fishing vessel shall engage in fishing regulated pursuant to the provisions of this chapter in the State Fishery Zone unless such vessel has on board a valid permit issued under this section for such vessel.

(b) Fishing permits will only be issued in accordance with a foreign fishing agreement; provided, that permits issued for fishing in accordance with subsection (j) of this section need not be pursuant to a foreign fishing agreement.

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

(1) 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;

(2) 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;

(3) 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

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

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

(e) 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.

(f) 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.

(g) Fees and other forms of compensation for the right to exploit living resources within the State

Fishery Zone shall be established in the agreement.

(h) 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.

(i) 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 chapter or if any civil penalty or criminal fine imposed by this chapter has not been paid and is overdue, the Authority shall:

(1) 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

(2) Suspend such permit for the period of time deemed appropriate; or

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

(j) Notwithstanding any other provision of this 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: YSL 1-55 §11, modified.

Cross-reference: Section 6 of Article XIII of the Yap Constitution states: "A foreign fishing, research or exploration vessel shall not take natural resources from any area within the marine space of the State, except as may be permitted by the appropriate persons who exercise traditional rights and ownership and by statute." The statutory provisions on the Yap Fishing Authority are found chapter 1 of this title.

§212. Prohibited acts.

(a) It is unlawful for any person:

(1) To violate any provision of this chapter or of any regulation or permit issued pursuant to this chapter;

(2) 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 chapter;

(3) To violate any provision of, or regulation under, an applicable foreign fishing agreement entered into pursuant to this chapter;

(4) To refuse to permit any officer authorized to enforce the provisions of this 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 chapter or any regulation, permit, or agreement referred to in this chapter;

(5) To forcibly assault, resist, oppose, impede, intimidate, or interfere with any such authorized officer in the conduct or any search or inspection described in paragraph (a)(4) of this subsection;

(6) To resist a lawful arrest for any act prohibited by this section;

(7) 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 chapter or any regulation, permit, or agreement referred to in this chapter;

(8) To interfere with, delay, or pre-vent, by any means, the apprehension or arrest of another person, knowing that such person has committed any act prohibited by this section; or

(9) To conceal or destroy a vessel's registration, certification, and/or catch logbook and navigational documents.

(b) It is unlawful for any foreign fishing vessel, and for the crew, owner or operator of any foreign fishing vessel, to engage in fishing in the State 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 211 of this chapter.

(c) It shall be unlawful for any vessel with living quarters which are also used while the vessel is in port to enter the State Fishery Zone or internal waters with-out a waste holding tank of at least two weeks capacity. The Attorney General, or his designee, and the Environmental Protection Agency and environmental health representatives shall inspect all entering vessels to insure strict compliance with this subsection.

Source: YSL 1-55 §12, as amended by YSL 1-210 §1 and YSL 3-76 §1, modified.

Cross-reference: Section 211 of this chapter is on fishing permits.

§213. Civil penalties.

(a) Any person who is found in a civil proceeding to have committed an act prohibited by section 212 of this chapter shall be liable to the Government of Yap for a civil penalty. The amount of the civil penalty shall not exceed \$75,000.00 for each violation. Each day of a continuing violation shall constitute a separate offense. In determining the amount of such penalty, the court 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, and history of prior offenses, and such other matters as justice may require.

(b) The State Attorney General is authorized to initiate all proceedings under this section and to recover the amount assessed as a civil penalty.

(c) Fifty percent (50%) of the proceeds of civil penalties for violations of section 212 of this chapter shall be deposited in the General Fund of the State of Yap; fifty percent (50%) of the proceeds of civil penalties for violations of section 212 of this chapter shall be held in a separate trust account for the benefit of the municipality in whose boundary the violation occurred. The trustee of such separate trust account shall be appointed by the Governor and shall release trust funds to the residents of the municipality where the offense occurred pursuant to a plan, the purpose of which is to maintain, develop, and protect such municipality's marine resources or otherwise protect the well-being of the people of the municipality.

Source: YSL 1-55 §13, as amended by YSL 2-103 §1, modified.

Cross-reference: Section 212 of this chapter is on prohibited acts.

Commission Comment: The "General Fund of the Legislature" is changed to the "General Fund of the State of Yap" pursuant to section 1211 of Title 13 (Taxation and Finance) of this Code. Section 1211 of Title 13 establishes the General Fund of the State of Yap as the successor fund to, and replacement for, the General Fund of the Legislature.

§214. Criminal penalties.

(a) A person is guilty of an offense if he commits any act prohibited by section 212 of this chapter.

(b) Any offense described as a prohibited act by section 212(a)(1), (2), (3), or (7), is punishable by fine of not more than \$50,000.00.

(c) Any offense described as a prohibited act by section 212(a)(4), (5), (6), (8), or (9), is punishable by a fine of not more than \$100,000.00, 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 to enforce the provisions of this chapter, or threatens any such officer with bodily injury, the offense is punishable by a fine of not more than \$250,000.00, or imprisonment for not more than ten years, or both.

(d) Any offense described as a prohibited act by section 212(b), is punishable by a fine of not more than \$100,000.00. Each day of a continuing violation shall be considered a separate offense.

(e) Any offense described as a prohibited act by Section 212(c) is punishable by a fine of \$25,000.00. Each day of a continuing violation shall be considered a separate offense.

Source: YSL 1-55 §14, as amended by YSL 1-210 §2 and YSL 3-76 §2, modified.

Cross-reference: Section 212 of this chapter is on prohibited acts.

§215. Forfeitures.

(a) Any fishing vessel including its fishing gear, furniture, appurtenances, 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 212 of this chapter shall be subject to forfeiture to the Government of Yap. All or part of such vessel may, and all such fish may, be forfeited to the Government of Yap pursuant to a civil proceeding under this section.

(b) A court of competent jurisdiction in the State shall have jurisdiction, upon application by the State Attorney General on behalf of the Government of Yap, to order any forfeiture authorized under subsection (a) of this section.

(c) If a judgment is entered for the Government of Yap 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 Yap, which has not previously been seized pursuant to this chapter.

(d) The forfeited vessel, gear, furniture, appurtenances, stores, cargo, and fish may be sold and the proceeds deposited in the General Fund of the State of Yap, or may be retained for use by, or at the direction of, the Government of Yap, or may be distributed by the Authority to persons whose traditional fishing rights have been violated by such vessel, provided however, that fifty percent (50%) of the net proceeds received from the sale of the forfeited vessel shall be distributed by the Authority to persons whose traditional fishing rights have been violated by such vessel.

(e) 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 at least equal to the fair market value of the seized 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.

(f) Any fish seized pursuant to this 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.

(g) For purpose of this 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 212 of this chapter were taken or retained in violation of this chapter.

Source: YSL 1-55 §15, as amended by YSL 3-82 §1, modified.

Cross-reference: Section 212 of this chapter is on prohibited acts. The statutory provisions on the Judiciary are found in Title 4 of this Code.

§216. Fees.

Fees collected by the Authority pursuant to section 211(g) shall be deposited in the General Fund of the State of Yap; provided, 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 of Yap, if the rebate request is denied.

Source: YSL 1-55 §16, modified.

Cross-reference: Section 211 of this chapter is on fishing permits.

Commission Comment: The "General Fund of the Legislature" is changed to the "General Fund of the State of Yap" pursuant to section 1211 of Title 13 (Taxation and Finance) of this Code. Section 1211 of Title 13 establishes the General Fund of the State of Yap as the successor fund to, and replacement for, the General Fund of the Legislature.

§217. Enforcement.

(a) Primary responsibility for the enforcement of this chapter shall be assumed by the State Attorney General.

(b) Any officer who is authorized and appointed by the State Attorney General to enforce the provisions of this chapter, may:

(1) With or without a warrant or other process:

(A) Arrest any person, if he has reasonable cause to believe that such person has committed an act prohibited by section 212 of this chapter;

(B) Board, and search or inspect any fishing vessel which is subject to the provisions of this chapter;

(C) 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 chapter;

(D) Seize any fishing gear, furniture, documents, appurtenances, stores, cargo, and fish in the possession of a fishing vessel seized pursuant to authority granted by subparagraph (C) of this paragraph; and

(E) Seize any other evidence related to any violations of any provision of this chapter.

(2) Execute any warrant or other process issued by any court of competent jurisdiction; and

(3) Exercise any other lawful authority.

Source: YSL 1-55 §17, as amended by YSL 1-210 §3, modified.

Cross-reference: The statutory provision on the Office of the Attorney General is found in section 128 of Title 3

(Executive) of this Code. Section 212 of this chapter is on prohibited acts.

§218. Severability.

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

Source: YSL 1-55 §18, modified.