

TITLE 19

ADMIRALTY AND MARITIME

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Editor's note: The former provisions of chapters 1 to 12 of this title were repealed in their entirety by PL 10-76 § 1 and replaced by the provisions of PL 10-76, the "National Maritime Act, 1997" codified at chapters 1 to 13 of this title. PL 10-76 took effect April 1, 1998.

CHAPTER 1

General Provisions

SECTIONS

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§ 101. Short title.

This Act is known and may be cited as the "National Maritime Act, 1997."

Source: PL 10-76 § 3.

Cross-reference: FSM Const., art. IX, § 2(h). The provisions of the Constitution are found in Part I of this code.

The statutory provisions on Territory, Economic Zones and Ports of Entry are found in title 18 of this code.

Editor's note: PL 10-76 took effect April 1, 1998.

The former provisions of chapters 1 to 12 of this title were repealed in their entirety by PL 10-76 § 1 and replaced by the provisions of PL 10-76, the "National Maritime Act, 1997" codified at chapters 1 to 13 of this title.

Case annotations found throughout this title may refer to the earlier provisions of the National Maritime Act of 1993 that was repealed by PL 10-76, the National Maritime Act, 1997. These annotations are retained for reference purposes as some of the language of the National Maritime Act, 1997 is similar to the language of the former National Maritime Act of 1993.

Case annotations: The concept of admiralty is related uniquely to the law of nations. It consists of rules in large part intended to govern the conduct of various nations in their shipping and commercial activities. *Lonno v. Trust Territory (I)*, 1 FSM R. 53, 71 (Kos. 1982).

The Seaman's Protection Act (a predecessor statute to the Nat'l Maritime Act of 1993), originally enacted for entire Trust Territory by the Congress of Micronesia, relates to matters that now fall within the legislative powers of the national government under art. IX, § 2 of the Constitution, and has therefore become a national law of the FSM under art. XV. That being so, a claim asserting rights under the Act falls within the jurisdiction of the FSM Supreme Court under art. XI, § 6(b) of the Constitution as a case arising under national law. 19 F.S.M.C. 401-437. *Lonno v. Trust Territory (I)*, 1 FSM R. 53, 72 (Kos. 1982).

Maritime jurisdiction conferred on FSM Supreme Court by the Constitution is not to be decided with reference to details of U.S. cases and statutes concerning admiralty jurisdiction but instead with reference to general maritime law of seafaring nations of the world, and to the law of nations. *Federal Bus. Dev. Bank v. S.S. Thorfinn*, 4 FSM R. 367, 374 (App. 1990).

Grant of admiralty and maritime jurisdiction to nat'l courts was intended to assist in development of a uniform body of maritime law. *Pohnpei v. MV Hai Hsiang #36 (I)*, 6 FSM R. 594, 600 (Pon. 1994).

At the time when the FSM Constitution was adopted there was uncertainty as to whether, to establish U.S. federal court admiralty jurisdiction over a tort case, it was necessary to establish not only that the wrong occurred in navigable waters, but also that there was a relationship between the wrong and a traditional maritime activity. *Weilbacher v. Kosrae*, 3 FSM R. 320, 323 (Kos. S. Ct. Tr. 1988).

A dispute arising out of injury sustained by a passenger on a vessel transporting passengers from Kosrae to Pohnpei, at a time when the vessel is 30 miles from Kosrae, falls within the exclusive admiralty jurisdiction of the FSM Supreme Court. *Weilbacher v. Kosrae*, 3 FSM R. 320, 323 (Kos. S. Ct. Tr. 1988).

FSM Supreme Court's grant of original and exclusive jurisdiction in admiralty and maritime cases implies the adoption of admiralty or maritime cases as of the drafting and adoption of FSM Constitution. *Federal Bus. Dev. Bank v. S.S. Thorfinn*, 4 FSM R. 57, 59 (Truk 1989).

A maritime contract cannot be converted into a non_maritime one by stipulation of the parties so as to divest the court of its admiralty jurisdiction. *Maruwa Shokai (Guam), Inc. v. Pyung Hwa 31*, 6 FSM R. 1, 4 (Pon. 1993).

A civil seizure and forfeiture action involving a commercial fishing vessel within FSM waters falls under the admiralty and maritime jurisdiction of the national courts. *Pohnpei v. MV Hai Hsiang #36 (I)*, 6 FSM R. 594, 599 (Pon. 1994).

§ 102. Application.

(1) Unless otherwise stated in specific sections, this title shall apply to:

(a) all vessels required to be registered in the Federated States of Micronesia, wherever located, and their owners;

(b) all other vessels and small craft which operate outside of lagoons in the waters of the Federated States of Micronesia or engage in interstate or foreign commerce, and their owners;

(c) all foreign vessels which enter, operate in, or are located in waters of the Federated States of Micronesia; and

(d) all seamen employed on vessels which are registered in the Federated States of Micronesia and any citizens or nationals of the Federated States of Micronesia employed on any foreign vessel.

(2) Nothing in this title shall permit any lien or authorize proceedings *in rem* against any Government Vessel

engaged in non-commercial services.

Source: PL 10-76 § 4.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the Legislature (the Congress of the Federated States of Micronesia) are found in title 3 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

The website of the FSM National Government contains announcements, press releases, news, forms, and other information on the National Government at <http://fsmgov.org>.

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.fmsupremecourt.org/>.

The official website of the Congress of the Federated States of Micronesia contains the public laws enacted by the Congress, sessions, committee hearings, rules, and other Congressional information at <http://www.fsmcongress.fm/>.

§ 103. Regulations.

The Secretary may promulgate regulations, including fees, to implement this title, which regulations shall have the force and effect of law.

Source: PL 10-76 § 5.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on Administrative Procedure are found in title 17 of this code.

§ 104. Delegation of authority.

The Secretary, Registrar, Principal Surveyor, Principal Shipping Officer, Aids to Navigation Officer, and Receiver of Wreck may delegate in writing all or any of their powers under this title, except this power of delegation.

Source: PL 10-76 § 6.

Cross-reference: The statutory provisions on Territory, Economic Zones and Ports of Entry are found in title 18 of this code.

§ 105. Admiralty jurisdiction.

The Supreme Court of the Federated States of Micronesia shall have exclusive, original jurisdiction in maritime and admiralty matters and in all matters pertaining to this title and regulations.

Source: PL 10-76 § 7.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code. The statutory provisions on Judicial Procedure are found in title 6 of this code.

The statutory provisions on Territory, Economic Zones and Ports of Entry are found in title 18 of this code.

§ 106. Definitions.

As used in this title:

(1) "Authorized officer" means any officer of the Division of Security and Investigation of the Government of the Federated States of Micronesia or any other person authorized in writing by the Attorney General to be an authorized officer.

(2) "Authorized Pilot" means a person who has a current, valid Pilotage Certificate issued by the Principal Shipping Officer certifying that the person is competent to provide pilotage services for a specified pilotage area.

(3) "Collisions Convention" means the Convention on the International Regulations for Preventing Collisions at Sea, 1972, as modified by its protocols, and as amended from time to time.

(4) "Crew" means those persons employed on board a vessel, but does not include a master, pilot, supercargo, or a person temporarily employed on board the vessel while it is in port.

(5) "Dangerous goods" means any goods classified as dangerous goods in the International Maritime Dangerous Goods Code, 1965, (IMDG Code) published by the International Maritime Organization, London, as amended from time to time.

(6) "Department" means the Department of Transportation and Communications of the Federated States of Micronesia.

(7) "Fishing vessel", for the purposes of this title only, means any vessel used commercially for catching fish or other living resources of the sea, except vessels exclusively used:

- (a) for sport or recreation; or
- (b) for research and training.

(8) "Government" means the National Government of the Federated States of Micronesia, or a state government, or any agency or instrumentality of either.

(9) "Government Vessel" means a vessel or a class of vessel that:

- (a) belongs to or is chartered and controlled by the Government; or

(b) is held by any person on behalf of, or for the benefit of, the Government.

(10) "The Hague-Visby Rules" means the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, signed at Brussels on August 25, 1924, as modified by its protocols and as amended from time to time.

(11) "Limitation of Liability Convention" means the Convention on Limitation of Liability for Maritime Claims done at London on November 19, 1976 as modified by its protocols and as amended from time to time.

(12) "Load Line Convention" means the International Convention on Load Lines, 1966, as modified by its protocols and as amended from time to time.

(13) "The MLM Convention" means the International Convention on Maritime Liens and Mortgages, 1993, as modified by its protocols and as amended from time to time.

(14) "Marine aid to navigation" means any structure, device, or apparatus the principal purpose of which is to assist in the navigation of vessels and small craft, and includes lights, radio beacons, electronic position fixing devices, buoys, fixed structures, illuminating and reflective devices and any other such apparatus.

(15) "Master" means the person having lawful command or charge of the vessel but does not include a pilot.

(16) "National Government" means the National Government of the Federated States of Micronesia.

(17) "Owner" means the owner, managing owner, demise charterer or operator of a vessel, except where the word is specifically defined differently in a chapter or section, and includes all owners, if there is more than one.

(18) "Passenger" means a person carried on board a vessel with the knowledge and consent of the owner or master, other than a person engaged in the business of the vessel.

(19) "Passenger vessel" means a vessel which is carrying or capable of carrying more than 12 passengers.

(20) "Person" means any natural person and any sole proprietorship, partnership, corporation, or any other business or commercial entity or association.

(21) "Port Authority" means that instrumentality or agency designated by the state to manage and administer the state's port facilities.

(22) "Principal Shipping Officer" means an employee of the National Government of the Federated States of Micronesia, Department of Transportation and Communications, appointed by the Secretary, to oversee the implementation and enforcement of the provisions of this title relating to qualifications, training, certification, welfare and employment of seamen and the qualifications, training and certification of pilots.

(23) "Principal Surveyor" means an employee of the National Government of the Federated States of Micronesia, Department of Transportation and Communications, appointed by the Secretary, to oversee the implementation and enforcement of the provisions of this title relating to vessel safety.

(24) "Proper return port" means the port, named in the Shipping Articles, which is agreed upon by the employer and a seaman to which the seaman should be returned.

(25) "Qualified Person" means a person, or entity meeting the qualification requirements to register a vessel in the Federated States of Micronesia.

(26) "Receiver" means the Receiver of Wreck.

(27) "Register" means the official written record of vessels which are registered or have been registered in the Federated States of Micronesia.

(28) "Registered Vessel" means a vessel registered under this title which is entitled to fly the flag of the Federated States of Micronesia.

(29) "Registrar" means an employee of the National Government of the Federated States of Micronesia, Department of Transportation and Communications, appointed by the Secretary, to maintain the Register and implement and enforce the provisions of this title relating to the registration of vessels in the Federated States of Micronesia.

(30) "Safety Convention" means the International Convention for the Safety of Life at Sea, 1974, as modified by its protocols and as amended from time to time.

(31) "Salvage Convention" means the International Convention on Salvage, 1989, as modified by its protocols and as amended from time to time.

(32) "Seaman" means a person engaged or employed in any capacity on board a vessel other than a pilot, supercargo, or a person temporarily employed on board the vessel while it is in port, and includes the master and officers.

(33) "Secretary" means the Secretary of the Department of Transportation and Communications of the Federated States of Micronesia.

(34) "Shipping Articles" means the written employment contract between the owner or master of a vessel and a seaman to be employed on board the vessel setting forth the terms and conditions of employment.

(35) "Small craft" means vessels of less than 12 meters in length of any kind or type used or capable of being used as a means of transportation on water, vessels of any length used exclusively for private, non-commercial recreation and pleasure, and traditional canoes of any length, but not including:

- (a) craft belonging to the defense forces of any nation; and
- (b) fishing vessels.

(36) "STCW Convention" means the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as modified by its protocols and as amended from time to time.

(37) "Stowaway" means a person carried to sea without the knowledge and consent of the master or other authorized person.

(38) "Supreme Court" or "Court" means the Supreme Court of the Federated States of Micronesia.

(39) "Tonnage Measurement Convention" means the International Convention on Tonnage Measurement of Ships, 1969, as modified by its protocols and as amended from time to time.

(40) "Vessel" means every type or kind of watercraft used or capable of being used as a means of transportation on water, including fishing vessels, but not including:

- (a) any craft belonging to the defense forces of any nation;
- (b) watercraft used exclusively for private, non-commercial recreation and pleasure; or
- (c) any small craft operated solely within lagoons or on lakes and rivers.

(41) "Waters of the Federated States of Micronesia" means the internal waters, Territorial Sea, and Exclusive Economic Zone as defined in title 18 of this code.

(42) "Wreck" means a vessel or any portion thereof which has sustained a casualty causing damage to the vessel to the extent that the seaworthiness of the vessel is threatened or destroyed, and also includes the vessel's cargo, and any jetsam, flotsam, lagan and derelict.

Source: PL 10-76 § 8.

Cross-reference: FSM Const., art. IX, § 2(h). The provisions of the Constitution are found in Part I of this code.

The statutory provisions on Territory, Economic Zones and Ports of Entry are found in title 18 of this code.

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