

TITLE 18

CONSERVATION & RESOURCES

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TITLE 18

CONSERVATION AND RESOURCES

DIVISION 1: MARINE RESOURCES

Chapter 1: Yap Fishing Authority

Subchapter I: General Provisions

§101. Short title.

§102. Purpose.

§101. Short title.

This chapter shall be known and may be cited as the "Fishing Authority Act of 1979".

Source: YDL 6-13 §1, modified.

Cross-reference: The statutory provisions on the State Fishery Zone are found in chapter 2 of this title.

§102. Purpose.

The purpose of this chapter is to create a legal entity to promote, develop, and support commercial utilization of living marine resources within the State of Yap pursuant to the provisions of Public Law No. 7-111.

Source: YDL 6-13 §2, modified.

Cross-reference: The constitutional provisions on conservation and development of marine resources are found in Yap Const., Art. XIII, Sections 1, 5, and 6. Those sections state:

"Section 1. The State Government shall promote the conservation and development of agricultural, marine, mineral, forest, water, land and other natural resources.

Section 5. 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.

Section 6. 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."

Subchapter II: The Authority

- §111. Yap Fishing Authority.
- §112. Powers.
- §113. Authority exempt from taxation.
- §114. Insurance policies and sovereign immunity.
- §115. No financial interest by members.
- §116. Authority has powers to borrow.
- §117. Bonds of Authority are declared authorized investments.
- §118. State may assist Authority in carrying out its functions.

§111. Yap Fishing Authority.

There is created an authority of the State to be designated and known as the Yap Fishing Authority, hereinafter referred to as the Authority. The Authority's functions shall be governmental and public and it shall have the right to sue and be sued in its own name.

Source: YDL 6-13 §3, modified.

Cross-reference: The statutory provisions on Civil Proceedings are found in Title 31 of this Code.

§112. Powers.

The Authority, in addition to the powers and duties elsewhere conferred and imposed, shall have the following duties and powers:

(a) The Authority shall provide guidance to the State Government in establishing marine resources development policy.

(b) The Authority shall have the power to adopt and enforce rules and regulations concerning its operations and the exploitation of living marine resources as permitted by law.

(c) The Authority shall serve as a conduit for public funds to establish and operate facilities required for commercial fisheries development, to conduct pilot fishing operations and to participate in large scale commercial fishing, including joint ventures, and related activities which are not suitable for investment by the private sector.

(d) The Authority shall establish and support programs to promote, support and guide fishing cooperative associations.

(e) The Authority shall help finance and support the development of locally owned private enterprises and may make loans to accomplish the same.

(f) The Authority shall be empowered to act as an agent for the sale of supplies and provisions, including fuel, oil, water and food to foreign fishing vessels lawfully permitted to enter a port within the State.

(g) The Authority may generally carry on the business of establishing, developing, maintaining, operating and managing facilities for the commercial utilization of marine resources with all powers incident thereto.

(h) The Authority shall be authorized to purchase, lease, and sell real or personal property, supplies, goods, materials, and commodities and to furnish and supply services as incident to its operations. It may procure insurance against liability or loss in connection with its operations hereunder in such amounts and from such insurers as it deems advisable.

(i) The Authority, in operating facilities and properties owned, leased or controlled by it, may enter into contracts, leases, and other arrangements with any persons for terms not exceeding fifteen years, granting the privilege of using or improving such facilities and properties or a portion thereof or space therein for any utilization of marine resources-connected purposes; may confer the privilege of supplying goods, commodities, things, or facilities at such facilities or properties or of making available services to be furnished by the Authority or its agents at such facilities or properties. It shall determine the charges or rentals for the use of any facility or property under its management and control, and the terms and conditions under which the facility or property may be used. Charges shall be reasonable and uniform for the same class of service, and established with due regard to the value of the facility or property and improvements used and the expenses of the operation of the Authority. The Authority shall have and may enforce liens to enforce the payment of any such charges through appropriate judicial proceedings. The right to levy charges or rental for the use of the facility or property under its management shall be exclusively that of the Authority and all such charges and rentals as well as other revenues of the Authority to be applied as herein set forth.

(j) The Authority may contract with any person, firm or corporation for the planning, supervision, financing, construction, operation and maintenance of, or may itself construct or otherwise acquire, operate, and maintain all structures or improvements which, in its judgment are useful, desirable or convenient in efficiently operating and maintaining facilities and properties. The Authority may also enter into agreements with the government of the Trust Territory, the Federated States of Micronesia and the State Government, their departments and agencies, for the rendering of services performed by such departments and agencies to the Authority.

(k) The Authority shall have the free use of the State Government pouch mails.

(l) The Authority, including but not limited to its franchise, capital, obligations, including interest thereon, reserves, surplus, loans, income, assets, and property of any kind shall be exempt from all licensing and taxation now or hereafter required or imposed by the State, or any political subdivision or taxing authority of the State. However, such exemption shall not apply to persons entering into independent contracts with the Authority.

(m) The Authority is authorized to apply for, accept, expend and repay the Government of the United States, Trust Territory, Federated States of Micronesia or State for all monies made available by grant, loan, or both, to plan or accomplish in whole or in part, any of the purposes of this chapter. Unless otherwise prescribed by the agency from which such monies are received, the chief financial officer of the Authority shall deposit all monies received pursuant to this subsection in a separate denominated account.

(n) The Authority shall maintain such records, libraries, research materials, administrative or office materials and other property, real or personal, deemed to be necessary to enable the Authority to carry out the purposes of this chapter. Upon the request of the Manager, employees of the State Government may be assigned by the Governor to assist the Authority to carry out activities of the Authority as set forth herein. Expenses thereof, if any, shall be reimbursed by the Authority as may be required by the Governor in the assignment.

(o) The fiscal year of the Authority shall correspond to that of the State.

(p) The Authority may employ agents and employees, and contract for the services of qualified managers, specialists or experts, as individuals or as organizations, to advise and assist the Authority and its employees. The Authority may set its own compensation, wage and salary scales.

(q) The Authority may issue general or special revenue bonds pursuant to this chapter for purposes it deems necessary.

(r) The enumeration of specific powers and duties under this section shall not be deemed to be exclusive.

Source: YDL 6-13 §4, modified.

Cross-reference: Further duties, functions, and authority of the Yap Fishing Authority are set forth in section 208 of chapter 2 of this title.

§113. Authority exempt from taxation.

As an instrumentality of the State Government, the Authority and all property acquired by or for it or used by it, and all revenues and income therefrom, are exempt from taxation and business regulation by the State or by any political subdivision or public corporation thereof.

Source: YDL 6-13 §11.

Cross-reference: Section 3 of Article IX of the Yap Constitution states: "The property of the State Government or its political subdivisions shall be exempt from taxation."

§114. Insurance policies and sovereign immunity.

To the extent that any liability of the State or of the Authority is covered by policy or policies of insurance, the Government waives its limitation of liability.

(a) All claims made against any policy of insurance purchased by the Authority shall be made in accordance with the procedures and time limitations set forth in the policy or policies of insurance, except that all claims shall be presented to the Manager of the Authority, who shall promptly present the same to the insurance carrier, carriers, or to their designated agents for processing, and except that no policy shall

place a time limit on filing claims of less than six months.

(b) In the event of any dispute, the attorney for the Authority shall represent the interest of the Authority.

(c) Each policy of insurance written covering the Authority or its interest shall contain a clause waiving any defense of sovereign immunity which may be raised against the payment of the claim by carrier up to the limits of the policy.

Source: YDL 6-13 §15.

§115. No financial interest by members.

No Director, officer, or employee of the Authority, either for himself or as agent for anyone else, shall benefit directly or indirectly by reason of any sale, purchase, contract or transaction entered into by the Authority except as otherwise provided by this chapter. Any person who shall directly or indirectly become interested in any such sale, purchase, contract or transaction while serving as a Director, officer, or employee of the Authority shall be guilty of a misdemeanor. Immediately upon conviction of a violation thereof, said person shall forfeit his office or position. Upon the filing of a complaint of such misdemeanor, the Board in its judgment may suspend the services of the charged person pending final determination thereof. Upon conviction thereof, he shall be punished by a fine not to exceed \$2,000.00 or by imprisonment not to exceed one year, or both.

Source: YDL 6-13 §20, modified.

Cross-reference: The constitutional provision on the prohibition of use of government revenue, property, or service for personal benefit or gain is found in Yap Const., Art. XIV, Sect. 4. That section states: "No person may receive, use, or benefit from any government revenue, property, or service for personal benefit or gain, except as may be permitted by law."

§116. Authority has powers to borrow.

The Authority may issue bonds subject to the approval of the Governor, and may hold or sell any securities or obligations upon such terms as it may fix, and may borrow on the security of any real or personal property owned by it, or on the security of some or all revenues to be derived

therefrom, and may use the proceeds of such loans for the purposes of this chapter. All bonds issued hereunder and their transfer and the income therefrom, including deposits made on the sale thereof, shall, at all times, be free from taxation by the State or any of its political subdivisions.

Source: YDL 6-13 §23, modified.

§117. Bonds of Authority are declared authorized investments.

All bonds issued under this chapter shall be and are hereby declared to be legal and authorized investments for banks, saving banks, trust companies, building and loan associations, insurance companies, fiduciaries, trustees and guardians, and for any sinking funds of all political corporations, agencies, and other subdivisions of the State. Such bonds shall be eligible to secure the deposit of any and all public funds of the State, political corporations, agencies, and other subdivisions of the State, and such bonds shall be lawful and sufficient security for said deposits at their face value when accompanied by all unmatured coupons appurtenant thereto.

Source: YDL 6-13 §24, modified.

§118. State may assist Authority in carrying out its functions.

For the purpose of aiding in the planning, undertaking or carrying out of the provisions of this chapter and of the projects contemplated herein, and the subsequent operation of the Authority, the State or any agency of the State may, if the Governor determines that such project will benefit and further the public purposes of the State shall:

(a) Dedicate, sell, convey, or lease any of its interest in any real or personal properties, rights, or privileges that it may have, to the Authority;

(b) Incur expenses on behalf of the Authority subject to reimbursement under such terms and conditions as may be agreed upon with Authority;

(c) Do any and all things necessary to aid or cooperate in the planning or carrying out of the duties, powers and obligations of the Authority;

(d) Lend or advance, grant or contribute funds to the Authority, and provide for or waive the repayment of any such funds loaned or advanced;

(e) Contract with or furnish services to the Authority upon the terms and conditions as may be agreed upon; and

(f) Enter into any agreements which may extend over any period of time.

Source: YDL 6-13 §22, modified.

Subchapter III: **The Board**

- \$151. Composition of the Board.
- \$152. Meetings of the Board.
- \$153. Organization of the Board.
- \$154. Appointment of Manager; duties.
- \$155. Powers of Manager.
- \$156. Appointment of Treasurer and an attorney; duties of each.
- \$157. Contract letting by the Board.
- \$158. Accounting and reporting; establishment of fund.
- \$159. Authority exempt from execution and bond requirements.
- \$160. Designation of depository for Authority.
- \$161. Authority may invest surplus funds.
- \$162. Employee rights.
- \$163. Publication of rules and regulations.
- \$164. Effective date of rules and regulations.
- \$165. Right to challenge rules or regulations adopted by Authority.

\$151. Composition of the Board.

All powers vested in the Authority shall be exercised by the Board, which shall consist of five members, called Directors, who shall be appointed by the Governor subject to the advice and consent of the Legislature. The Governor shall appoint persons with a significant interest in the utilization of marine resources. Directors shall hold membership on the Board for a period of two years, subject to reappointment, and until their successors have been appointed and confirmed.

Source: YDL 6-13 \$5, as amended by YSL 1-138 \$1 and YSL 3-37 \$1, modified.

\$152. Meetings of the Board.

Within fifteen days after the nomination of the initial Board, and annually thereafter, the Board shall hold a meeting for the purpose of electing its officers for the ensuing year. The Board shall meet at least every three months and shall hold public meetings as it may deem necessary for the transaction of its general business. All vacancies occurring in the office of Director shall be filled by the Governor for the unexpired term of the Director whose vacancy is being filled.

Source: YDL 6-13 \$6, modified.

§153. Organization of the Board.

The Board shall organize by electing one of its members as Chairman and another as Vice-Chairman. The Board shall designate a Secretary to keep the minutes and records of the Board, who may or may not be a member of the Board itself. Any four members of the Board shall constitute a quorum, and a concurrence of four members shall be necessary for any official action taken by the Board unless otherwise provided herein. No vacancy in the membership of the Board shall impair the right of a quorum to exercise all of the rights and perform all of the duties of the Board. The Directors of the Authority shall be entitled to reimbursement for actual expenses incurred in the performance of their official duties, upon approval of such expenses by the Board.

Source: YDL 6-13 §7.

§154. Appointment of Manager; duties.

The Board shall appoint a Manager who shall be its chief executive officer, and who shall serve at its pleasure, and the Board shall fix his compensation. The Manager shall have full charge and control of the operations of the Authority.

Source: YDL 6-13 §8.

§155. Powers of Manager.

The Manager shall have the following duties and powers:

- (a) To ensure that all rules and regulations of the Authority are enforced;
- (b) To attend all meetings of the Board and to submit a general report on the affairs of the Authority;
- (c) To keep the Board advised on the needs of the Authority;
- (d) To approve demands for payment of obligations within the purposes and amounts authorized by the Board;
- (e) To prepare or cause to be prepared all plans and specifications for the construction and repair of works and facilities operated by the Authority;
- (f) To devote his entire time to the business of the Authority; to select and appoint the employees of the Authority except as otherwise provided in this chapter; to plan, organize, coordinate and control the services of such employees

in the exercise of the powers of the Authority under the general direction of the Board; and, in lieu of hiring employees of the Authority to perform any of the tasks, works or other services required by the Authority, to contract with independent contractors, as persons, organizations, or corporations, to provide such services;

(g) To cause to be published within sixty days after the end of each fiscal year a financial status of the Authority on the last day thereof, publication shall be made in the manner provided by the Board;

(h) To perform such other and additional duties as the Board may require; and

(i) To be an ex-officio nonvoting member of the Board.

Source: YDL 6-13 §9, modified.

§156. Appointment of Treasurer and an attorney; duties of each.

The Board may also appoint a Treasurer and an attorney, both of whom shall serve at the pleasure of the Board and whose duties and compensation shall be fixed by the Board. The Board may appoint one or more assistants to any such office.

(a) The Treasurer shall have custody of all monies of the Authority, and shall pay out such money only in accordance with the direction of the Board or as otherwise provided by this chapter. The Board shall appoint any designated agent as its trustee for payment of bonds issued by it and for related purposes as the Board may provide.

(b) The attorney shall advise the Board and the Manager in all legal matters to which the Authority is legally interested.

(c) Any of the above officers may be appointed governmental officials. The Authority may use the services of the attorneys for the State to serve as attorneys for the Authority, or it may appoint such attorney or attorneys as it may deem necessary and provide for payment of legal services rendered. All officials documents, contracts, bonds and other instruments in writing shall be approved as to form and legality by the attorneys for the Authority. Such approval may

be conclusively evidenced by the signature thereon of one of said attorneys.

Source: YDL 6-13 §10, modified.

Cross-reference: The statutory provisions on the Office of the Attorney General are found in section 128 of Title 3 of this Code.

§157. Contract letting by the Board.

The purchase of all supplies and materials, and the construction of all works, when the expenditure exceeds \$2,500.00, shall be by contract let to the lowest responsible bidder. Notice requesting bids shall be published at least ten days before bids are received. The Board may reject any and all bids and readvertise at its discretion.

(a) If, after rejecting bids for materials and supplies the Board determines that, in its opinion, the materials and supplies may be purchased at a lower price in the open market, the Board may authorize such purchases without further observance of the provisions requiring contracts, bids or notices. The Authority, as an instrumentality of the State Government, shall utilize the services of State purchasing agencies wherever practical.

(b) The provisions of this section shall not apply to the procurement of professional, advisory, or technical services.

(c) No Director shall have any financial interest, direct or indirect, in any contract awarded by the Board. This provision shall not apply to contracts awarded to a corporation in which such Director owns less than five percent (5%) of the entire capital stock. The Board shall establish procedures for the timely verification of this restriction by its attorney.

Source: YDL 6-13 §12, modified.

Cross-reference: The statutory provisions on Public Property, Purchasing and Contracts are found in Title 9 of this Code.

§158. Accounting and reporting; establishment of fund.

The Board shall adopt and maintain a system of accounting principles.

(a) The Board may employ a firm of independent certified public accountants who shall examine and report to the Board, at least annually, upon the status of the financial records and accounts maintained by the Authority. Copies of any such reports shall be furnished to the Governor and the Legislature.

(b) The Board shall report to the Governor and the Legislature of the affairs of the Authority. It shall present an annual report within sixty days after the end of each fiscal year and, if requested by the Governor or the Legislature shall present special reports within thirty days after the end of each intervening quarter.

(c) There is hereby established a fund that shall be known as the "Yap Fishing Authority Fund" which shall be maintained separate and apart from other funds of the State by the Authority, and independent records and accounts shall be maintained in connection therewith.

(d) All monies received by the Authority from whatever source derived shall be deposited in said fund, or in such funds as may be established pursuant to this chapter, in eligible banks as defined in this chapter.

(e) All expenditures, except as otherwise provided by law, shall be made from said Yap Fishing Authority Fund.

Source: YDL 6-13 §13, modified.

Cross-reference: The statutory provisions on Taxation and Finance are found in Title 13 of this Code.

§159. Authority exempt from execution and bond requirements.

No execution shall be issued or levied by virtue of any judgment that may be recovered against the Authority, but the Board may provide for the payment of judgments from future revenues of the Authority after the final recovery of any judgment or by the payment out of any funds on hand and uncommitted. Land, improvements, monies, or debts due the Authority, personal and real property, and assets of every description, belonging to the same, shall be exempted from execution and sale, and from involuntary liens. No writ of garnishment or attachment shall issue against the Authority or the Directors thereof, or its officers or employees, to subject or cause any debts due, or which may hereafter become due from the Authority, to be paid to any person or

corporation, or any claim or demand upon any funds in the hands of the Authority or any of its officers, nor shall the Authority, or the Board or any of its officers or agents be required to answer any writ of garnishment. The Authority shall not be required to give any bond as security for cost, supersedeas, or any security in any suit or action brought by or against it, or in proceedings to which it may be a party in any court in the State, and the Authority shall have the remedies of appeal and writ or error to all courts without bond, supersedeas, or security of any kind. No builder's, materialman's, contractor's, laborer's or mechanic's lien of any kind or character shall ever attach to or become a lien upon any property, real or personal, belonging to the Authority. No assignment of wages shall be binding upon or be recognized by the Board.

Source: YDL 6-13 §21, modified.

§160. Designation of depository for Authority.

The Board shall designate one or more banks within the State to serve as depository for the funds of the Authority. All funds of the Authority shall be deposited in such depository bank or banks.

Source: YDL 6-13 §25.

§161. Authority may invest surplus funds.

Money in any funds of the Authority or any fund established by the Board in connection with the authorization of its bonds, including, but not limited to proceeds from the sale of bonds, which is not needed to satisfy its denominated purpose for any period of time, may be invested or reinvested from time to time in direct obligation of, or in obligations, the principal and interest of which are guaranteed by the Trust Territory, the Federated States of Micronesia, the United States of America, or invested in direct obligations of or in participation certificates guaranteed by the United States Federal Intermediate Credit Banks, Federal National Mortgage Association, Federal Home Loan Banks, banks for cooperatives, and the certificates of deposit of any bank or trust company, the deposits of which are fully secured by a pledge of any of the kind hereinabove specified. The type and maturity of investments made hereunder shall be determined by the Board which, in the case of funds established in connection with the authorization of bonds, shall provide appropriate recitals with regard thereto in the resolutions relating to the issuance of such bonds. Income and profits on such investments shall be applied as provided in any such resolution, and, at such provision,

shall be applied to the uses hereinabove specified for bond proceeds.

Source: YDL 6-13 §26, modified.

§162. Employee rights.

The Board shall establish rules and regulations governing the selection, promotion, performance evaluation, demotion, suspension, dismissal, and other disciplinary rules for employees of the Authority.

Source: YDL 6-13 §14.

Cross-reference: The statutory provisions on Public Officers and Employment are found in Title 8 of this Code.

§163. Publication of rules and regulations.

In addition to the notice of adoption of rules and regulations relative to civil penalties, a substantive statement shall be published, in condensed form, along with said notice, so as to afford an intelligent direction of the mind to the act forbidden by the rules or regulations; one notice may embrace any number of rules and regulations; said notice must advise that breach of the particular rules or regulations of the Board is punishable and must state the possible punishment. Said notice must also state that the full text of the rules and regulations are on file at the principal office of the Authority, where the same may be read by any interested person during reasonable business hours.

Source: YDL 6-13 §19, modified.

Cross-reference: The statutory provisions on Administrative Law are found in Title 10 of this Code.

Commission Comment: "Rules and Regulations" at the end of the first sentence is replaced by "Board is punishable and must state the possible punishment". This replacement is done to correct a typographical error in the text.

§164. Effective date of rules and regulations.

Fifteen days after the publication of the notice hereby required, the advertised rules and regulations shall be in full force and effect, and ignorance thereof shall not constitute a defense for the prosecution for the enforcement of a penalty, and, the rules and regulations authorized

hereby, after required publications, shall be judicially recognized by the Courts as valid civil ordinances of the State.

Source: YDL 6-13 §17, modified.

Cross-reference: The statutory provisions on Administrative Law are found in Title 10 of this Code.

§165. Right to challenge rules or regulations adopted by Authority.

Any person substantially interested or affected in his rights as to property by a rule or regulation adopted by the Authority may petition the Authority for a reconsideration of such rule or regulation, or for an amendment, modification, or waiver thereof. Such petition shall set forth a clear statement of the facts and grounds upon which reconsideration, amendment, modification, or waiver is sought. The Authority shall grant the petitioner a public hearing within thirty days after filing of said petition and the Authority's decision upon the petition shall be publicly released not more than twenty days after the final public hearing held upon the petition.

Source: YDL 6-13 §18.

Cross-reference: The statutory provisions on Administrative Law are found in Title 10 of this Code.

Subchapter IV: Miscellaneous Provisions

§181. Penalties.

§182. Severability.

§181. Penalties.

Any person who violates any provision of this chapter, or any valid rule or regulation promulgated under this chapter, concerning the operation of the Authority, is punishable by a fine not to exceed \$1,000.00, or by imprisonment not to exceed three months, or both, upon conviction by a court of competent jurisdiction of the person or persons charged.

Source: YDL 6-13 §16, modified.

§182. Severability.

If any provision of this chapter or any rule, regulation, or order promulgated hereunder, or the application of any such provision, rule, regulation, or order to any person or circumstances shall be held invalid, the remainder of this chapter, or any rules, regulations, or orders promulgated pursuant thereto, or the application of such provisions, regulations, rules, or orders to persons or circumstances other than those to which it is held invalid, shall not be effected thereby.

Source: YDL 6-13 §27, modified.

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 prevent, 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 without 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.

§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.