

A BILL FOR AN ACT

To amend title 24 of the Code of the Federated States of Micronesia so as to abolish the Micronesian Maritime Authority and to vest its present maritime management authority in the Department of Resources and Development of the executive branch of the Federated States of Micronesia National Government, and for other purposes.

BE IT ENACTED BY THE CONGRESS OF THE FEDERATED STATES OF MICRONESIA:

Section 1. Section 102 of title 24 of the Code of the Federated States of Micronesia is hereby amended to read as follows:

"Section 102: Definitions. As used in this title, unless the context otherwise requires, the term:

(1) "Atoll" means a circular or oval coral reef forming a geographic and ecologic unity crowned by at least one island.

(2) "Authority" means the Micronesian Maritime Authority established by section 301 of this title.

(3) (2) "Congress" means the Congress of the Federated States of Micronesia.

(4) "Executive Director" means the executive director of the Micronesian Maritime Authority.

(5) (3) "Fish" means any living resource.

(6) (4) "Fishery" means:

(a) one or more stocks of fish which can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, recreation, and economic characteristics; and

(b) any fishing for such stocks.

(7) (5) "Fishing means:

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

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

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1 of fish; or

2 (c) any operations at sea in support of or in
3 preparation for any activity described in paragraphs (a) and
4 (b) of this subsection.

5 (8) (6) "Fishing vessel" means any vessel, boat, ship, or
6 other craft which is used for, equipped to be used for, or
7 of a type that is normally used for:

8 (a) fishing;

9 (b) aiding or assisting one or more vessels at sea
10 in the performance of any activity related to fishing, including,
11 but not limited to preparation, supply, storage, refrigeration,
12 transportation, or processing.

13 (9) (7) "Foreign fishing" means fishing by vessels:

14 (a) not registered in Micronesia; or

15 (b) not wholly owned by citizens of Micronesia; or

16 (c) not wholly controlled by citizens of Micronesia; or

17 (d) of foreign registry chartered by citizens of
18 Micronesia.

19 (10) (8) "Foreign fishing agreement" means an agreement
20 between the ~~Authority on behalf of the~~ Government of the
21 Federated States of Micronesia and one or more foreign com-
22 mercial fishing interests to permit foreign vessels to harvest
23 fish within the extended fishery zone of the Federated States
24 of Micronesia. A "foreign party" is a party to such an agree-
25 ment other than the ~~Authority~~ Government of the Federated States

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1 of Micronesia.

2 (11) (9) "Island" means a naturally formed area of
3 land, surrounded by water, which is above water at high tide.

4 (12) (10) "Living resource" means ~~a~~ finfish, mollusks,
5 crustaceans, and all other forms of marine animal and plant
6 life other than marine birds.

7 (13) (11) "Micronesia" or "Government of Micronesia" refers
8 to the appropriate State government or the Government of the
9 Federated States of Micronesia.

10 (14) (12) "Person" means any individual, corporation,
11 partnership, association, or other entity, the Government of
12 Micronesia or any of its subdivisions or any entity thereof,
13 and any foreign government, subdivision of such government,
14 or entity thereof.

15 (15) (13) "Reef fish" means any species of living resource
16 which predominately inhabits reef areas or internal waters.

17 (16) (14) "State" means any of the States of the Federated
18 States of Micronesia.

19 (17) (15) "Stock of fish" means a species, subspecies,
20 geographical grouping, or other category of fish capable of
21 management as a unit.

22 (18) (16) "Submerged reef" means a coral reef forming a
23 geographic and ecologic unity which is wholly submerged at
24 high tide."

25 Section 2. Section 301 of title 24 of the Code of the Federated

1 States of Micronesia is hereby deleted in its entirety and replaced by
2 a new section 301.

3 "Section 301/ Micronesian Maritime Authority / Established/

4 (1) There is hereby established a Micronesian Maritime
5 Authority composed of four members appointed by the High
6 Commissioner, four members from the Congress of the Feder-
7 ated States of Micronesia appointed by the Speaker of the Con-
8 gress of the Federated States of Micronesia, and one member
9 appointed jointly by the Speaker and the High Commissioner,
10 provided, however, that present members of the Authority who
11 were appointed jointly by the Presiding Officers of the former
12 Congress of Micronesia, and who are also members of the
13 Congress of the Federated States of Micronesia, as well as the
14 appointees of the High Commissioner and the joint appointee
15 of the High Commissioner and the Presiding Officers of the
16 former Congress of Micronesia, shall serve until their terms
17 of appointment expire.

18 (2) All appointments shall be for a term of two years.
19 The term of office of each original member shall commence
20 effective the date of the first meeting of the Authority.
21 Vacancies shall be filled in the same manner as the original
22 appointment for the remainder of the term of office of the
23 vacancy.

24 (3) The Chairman shall be chosen by majority vote of the
25 members of the Authority. The Authority shall meet at such

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1 times and places as may be designated by the chairman or by
2 the Authority. The Authority shall adopt its own rules of
3 procedure and regulations by majority vote.

4 "Section 301. "Department of Resources and Development, Federated
5 States of Micronesia National Government - Duties; Functions;
6 and Authority.

7 (1) The Department of Resources and Development shall
8 have the following duties, functions, and authority:

9 (a) To adopt regulations for the conservation,
10 management, and exploitation of all living resources in the
11 extended fishery zone of the Federated States of Micronesia
12 pursuant to sections 102, 103, and 104 of title 18 of the Code
13 of the Federated States of Micronesia;

14 (b) To provide technical assistance in the deli-
15 mitation of the extended fishery zone in accordance with section
16 107 of title 18 of the Code of the Federated States of
17 Micronesia;

18 (c) To negotiate and conclude foreign fishing
19 agreements in accordance with sections 10, 402, 403, and 404
20 of title 24 of the Code of the Federated States of Micronesia;

21 (d) To issue foreign fishing permits in accordance
22 with regulations promulgated pursuant to subsection 1(a) of
23 this section;

24 (e) To rebate according to regulation approved by
25 the Department of Resources and Development all or a portion of

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1 a fee collected pursuant to section 405 of title 24 of the
2 Code of the Federated States of Micronesia from a joint fishing
3 venture duly organized by law, if the rebate will promote
4 fishery development;

5 (f) To perform such other duties and functions as
6 may be necessary to carry out the purposes of this title.

7 (2) The Department of Resources and Development shall
8 report on its activities in this regard on an annual basis
9 to the Presiding Officer of the Congress of the Federated
10 States of Micronesia, and to each State Governor."

11 Section 3. Section 302 of title 24 of the Code of the Federated
12 States of Micronesia is hereby deleted in its entirety:

13 ~~"Section 302. Regulations"~~

14 (1) Regulations adopted by the Authority shall have the
15 full force and effect of law

16 (2) The process for the adoption of regulations by the
17 Authority is expressly exempt from the requirements of the
18 Administrative Procedure Act set forth in title 17 of this code,
19 but the Authority nevertheless shall publish its proposed
20 regulations and afford the public a reasonable opportunity
21 to present its views prior to the adoption of any regulation

22 (3) The chairman may promulgate interim regulations on
23 his own authority which shall be effective for a period no
24 longer than six months unless the Authority by majority vote
25 revokes the interim regulations."

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1 Section 4. Section 303 of title 24 of the Code of the Federated
2 States of Micronesia is hereby deleted in its entirety:

3 Section 303. Duties, functions, and authority. - The
4 Authority shall have the following duties, functions and
5 authority:

6 (1) to adopt regulations for the conservation, manage-
7 ment, and exploitation of all living resources in the extended
8 fishery zone of the Federated States of Micronesia pursuant
9 to sections 102, 103 and 104 of title 18;

10 (2) to provide technical assistance in the delimitation
11 of the extended fishery zone in accordance with section 107 of
12 title 18;

13 (3) to negotiate and conclude foreign fishing agreements
14 in accordance with sections 402 through 404 of this title;

15 (4) to issue foreign fishing permits in accordance with
16 procedures established by the Authority of regulations
17 promulgated pursuant to section 302 and subsection (1) of this
18 section;

19 (5) to require all foreign fishing vessels to possess a
20 permit issued by a State before fishing in the Territorial
21 Sea or exclusive fishery zone of a State;

22 (6) to rebate according to regulation approved by the
23 Authority all or a portion of a fee collected pursuant to
24 section 403 of this title from a joint fishing venture duly
25 organized by law, if the rebate will promote fishery development;

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(7) The Authority shall submit its budget and a report regarding the expenditure of its funds to the Congress each regular session for approval, and

(8) to perform such other duties and functions as may be necessary to carry out the purposes of this title."

Section 5. Section 304 of title 24 of the Code of the Federated States of Micronesia is hereby deleted in its entirety:

"Section 304. Executive Director. The Authority shall employ a full-time executive director possessing such qualifications as may be established by the Authority. The Authority may employ such other staff as it may deem necessary."

Section 6. Section 305 of title 24 of the Code of the Federated States of Micronesia is hereby deleted in its entirety:

"Section 305. Compensation.

(1) Members of the Authority, other than the member appointed jointly by the Presiding Officers of the former Congress of Micronesia, and the High Commissioner, or appointed jointly by the Speaker of the Congress of the Federated States of Micronesia and the High Commissioner, shall be compensated at the rate of thirty-five dollars per day when actually on the business of the Authority.

(2) The joint appointee shall be compensated at a rate established by the Authority, but shall not participate in the decision of the Authority determining his compensation.

(3) Members of the Authority who are employees of

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1 state governments of the Government of the Federated States
2 of Micronesia or the Trust Territory of the Pacific Islands
3 shall not be entitled to receive any compensation.

4 (4) All members of the Authority shall receive per diem
5 and travel expenses at established Trust Territory Government
6 rates while on the business of the Authority."

7 Section 7. Section 306 of title 24 of the Code of the Federated
8 States of Micronesia is hereby deleted in its entirety:

9 "Section 306. Annual report - The Chairman of the Authority
10 shall report on its activities to the High Commissioner and
11 to the Presiding Officer of the Congress of the Federated
12 States of Micronesia and to each State Governor on an annual
13 basis, which report shall contain a detailed accounting of the
14 expenditure of funds of the Authority."

15 Section 8. Section 403 of title 24 of the Code of the Federated
16 States of Micronesia is hereby amended to read as follows:

17 "Section 403. Foreign fishing agreements - Terms. - In
18 negotiating foreign fishing agreements, the Authority Depart-
19 ment of Resources and Development shall seek substantial agree-
20 ment by the foreign parties to the following terms and conditions:

21 (1) The foreign party and the owner or operator of any
22 fishing vessel fishing pursuant to such agreement will abide
23 by all regulations issued under authority of chapter 3 of
24 this title.

25 (2) The foreign party and the owner or operator of any

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1 fishing vessel fishing pursuant to such foreign fishing agree-
2 ments will abide by the agreement that:

3 (a) any officer authorized to enforce the provisions
4 of this title shall be permitted to board and search or inspect
5 any vessel at any time and make arrests and seizures provided
6 for in section 508 of this title whenever such officer has
7 reasonable cause to believe, as a result of such a search
8 or inspection, that any such vessel or any person has committed
9 an act prohibited by this title;

10 (b) such officer shall also be permitted to examine
11 and make notations on the permit issued pursuant to sections
12 410 through 412 of this chapter;

13 (c) the permit issued for any such vessel pursuant
14 to sections 410 through 412 of this chapter shall be prominently
15 displayed in the wheelhouse of such vessel;

16 (d) appropriate position-fixing and identification
17 equipment shall be installed and maintained in working order
18 on each such vessel;

19 (e) duly authorized Micronesian observers shall be
20 permitted on board any such vessel and that the Government
21 of Micronesia shall be reimbursed for the cost of such observers;

22 (f) agents shall be appointed and maintained within
23 Micronesia who are authorized to receive and respond to any
24 legal process issued in Micronesia with respect to such owner
25 or operator.

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(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, in the event allocations are established by the ~~Authority~~ Department of Resources and Development.

(4) Foreign parties will:

(a) apply, pursuant to sections 410 through 412 of this chapter, for any required permits;

(b) deliver promptly to the owner or operator of the appropriate fishing vessel any permit which is issued under that section for such vessel; and

(c) abide by the requirement that no foreign fishing will be permitted in the extended fishery zone of Micronesia after June 30, 1979, without a valid and applicable permit, and that all conditions and restrictions of the permit are complied with.

(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."

Section 9. Section 404 of title 24 of the Code of the Federated States of Micronesia is hereby amended to read as follows:

"Section 404. Allowable levels of foreign fishing.

(1) The total allowable level of foreign fishing, if any, with respect to any fishery subject to the provisions

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1 of this title, shall be that portion of the maximum sustain-
2 able yield of such fishery which will not be harvested by
3 vessels of Micronesia.

4 (2) The ~~Micronesian Maritime Authority~~ Department of
5 Resources and Development may determine the allocation among
6 foreign parties of the total allowable level of foreign
7 fishing which is permitted with respect to any fishery subject
8 to the provisions of this title.

9 (3) In determining the allocation among parties, the
10 ~~Authority~~ Department of Resources and Development shall take
11 into consideration:

12 (a) the extent to which vessels of such parties have
13 traditionally fished the particular regulated species;

14 (b) whether such parties or their national govern-
15 ments have cooperated with the Government of Micronesia in,
16 and made substantial contributions to, fishery research and the
17 identification of fishery resources;

18 (c) whether such parties or their national govern-
19 ments have cooperated with the Government of the Federated States
20 of Micronesia in enforcement of the provisions of this title
21 and the regulations issued under its authority; and

22 (d) such other matters as it may deem appropriate."

23 Section 10. Section 410 of title 24 of the Code of the Federated
24 States of Micronesia is hereby amended to read as follows:

25 "Section 410. Application for permit - Contents. - Each foreign

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party entitled to permits in accordance with its foreign fishing agreement shall make application on forms prescribed by the ~~Micronesian Maritime Authority~~ Department of Resources and Development 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~~ Department of Resources and Development 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 in which, and the season or period during which, such fishing will be conducted as required by the foreign fishing agreement."

Section 11. Section 411 of title 24 of the Code of the Federated States of Micronesia is hereby amended to read as follows:

"Section 411.. Review of application.

(1) Upon receipt of an application, including an application fee, the Executive Director may transmit copies to each member of the Authority and to the Chairman of the Committee on Resources and Development of the Congress

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of the Federated States of Micronesia, or if required to do so by the chairman, the executive director shall transmit such copies of applications to the Committee on Resources and Development.

(2) (1) The ~~Authority~~ Department of Resources and Development upon receipt of an application, including an application for rebate of a fee, shall review the application, and in its discretion may solicit views from appropriate persons in the States, hold public hearings where necessary, and may approve the application on such terms and conditions and with such restrictions as the ~~Authority~~ Department of Resources and Development deems appropriate.

(3) (2) If the ~~Authority~~ Department of Resources and Development does not approve the application submitted by the foreign party, ~~the chairman~~ it 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."

Section 12. Section 412 of title 24 of the Code of the Federated States of Micronesia is hereby amended to read as follows:

"Section 412. Issuance of permit. - Upon notification by the foreign party of accordance of the terms, conditions, and restrictions on the application and permit, the ~~chairman~~ Department of Resources and Development shall issue the permit."

Section 13. Section 413 of title 24 of the Code of the Federated

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1 States of Micronesia is hereby amended to read as follows:

2 "Section 413. Suspension, revocation, or imposition of
3 restrictions on permit. - If any foreign fishing vessel for
4 which a permit has been issued pursuant to this section has
5 been used in the commission of any act prohibited by this
6 title or if any civil penalty or criminal fine imposed by
7 this title has not been paid and is overdue, the ~~Authority~~
8 Department of Resources and Development shall:

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

12 (2) suspend such permit for the period of time deemed
13 appropriate; or

14 (3) impose additional conditions and restrictions on
15 the approved application of the foreign party involved and
16 on any permit issued under such application."

17 Section 14. Section 414 of title 24 of the Code of the Federated
18 States of Micronesia is hereby amended to read as follows:

19 "Section 414. Permits for noncommercial fishing. - Not-
20 withstanding any other provision of this title, the ~~Authority~~
21 Department of Resources and Development may provide for the
22 issuance of permits, on reasonable conditions, to foreign
23 vessels or parties for research, survey, recreational, or
24 noncommercial fishing within the extended fishery zone of
25 Micronesia."

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1 Section 15. Section 415 of title 24 of the Code of the Federated
2 States of Micronesia is hereby amended to read as follows:

3 "Section 415. Revenue from fees.

4 (1) Fees collected by the ~~Authority~~ Department of
5 Resources and Development pursuant to section 405 of this
6 chapter shall be deposited in the General Fund of the Congress
7 of the Federated States of Micronesia, or its successor.

8 (2) In the case of fees collected from a joint fishing
9 venture, if its application for a fishing permit includes a
10 request for rebate of fees which the ~~Authority~~ Department of
11 Resources and Development accepts pending its decision to
12 rebate the fee, such fees shall be deposited in a separate
13 trust account maintained by the ~~Authority~~ Department of
14 Resources and Development until rebated to the joint
15 fishing venture or paid into the General Fund of the Congress
16 of the Federated States of Micronesia, or its successor, if
17 the rebate request is denied.

18 (3) In the case of fees paid in goods or services rather
19 than money, such goods and services shall be distributed, sold,
20 or otherwise disposed of by the Congress of the Federated
21 States of Micronesia by resolution while in session, and by
22 the appropriate committee of the Congress between sessions."

23 Section 16. Section 502 of title 24 of the Code of the Federated
24 States of Micronesia is hereby amended to read as follows:

25 "Section 502. Civil penalties.

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1 (1) Any person who is found by the National Court of
2 the Government of Micronesia in a civil proceeding to have
3 committed an act prohibited by section 501 of this chapter
4 shall be liable to the Government of Micronesia for a civil
5 penalty.

6 (2) The amount of the civil penalty shall not exceed
7 \$75,000 for each violation. Each day of a continuing violation
8 shall constitute a separate offense.

9 (3) In determining the amount of such penalty, the Na-
10 tional Court of the Government of Micronesia shall take into
11 account the nature, circumstances, extent, and gravity of the
12 prohibited acts committed and, with respect to the violator,
13 the degree of culpability, any history of prior offenses,
14 and such other matters as justice may require.

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

18 (5) The proceeds of civil penalties shall be deposited
19 with the ~~Authority~~ Department of Resources and Development
20 and expended in accordance with section 510 of this chapter."

21 Section 17. Section 505 of title 24 of the Code of the Federated
22 States of Micronesia is hereby amended to read as follows:

23 "Section 505. Forfeitures - Jurisdiction. - The National
24 Court of the Government of Micronesia shall have jurisdiction,
25 upon application by the Attorney General ~~of the Attorney~~ on

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1 behalf of the Government of Micronesia, to order any forfeiture
2 authorized under section 504. of this chapter."

3 Section 18. Section 507 of title 24 of the Code of the Federated
4 States of Micronesia is hereby amended to read as follows:

5 "Section 507. Forfeitures - Disposition of property. - The
6 forfeited vessel, gear, furniture, appurtenances, stores,
7 cargo, and fish may be sold and the proceeds deposited with
8 the ~~Authority~~ Department of Resources and Development for
9 use in accordance with section 510 of this chapter, or may
10 be retained for use by, or at the direction of, the Government
11 of Micronesia."

12 Section 19. Section 510 of title 24 of the Code of the Federated
13 States of Micronesia is hereby amended to read as follows:

14 "Section 510. Revenue from fines and forfeitures.

15 (1) All fines and the proceeds of sale of all forfeitures
16 collected pursuant to the provisions of this title shall be
17 divided on a fifty-fifty basis between the State affected
18 and the ~~Authority~~ Department of Resources and Development.

19 (2) The ~~Authority~~ Department of Resources and Development
20 shall apply its share of said proceeds for use and the costs
21 of enforcement of the provisions of this title."

22 Section 20. This act shall become law upon approval by the Presi-
23 dent of the Federated States of Micronesia or upon its becoming law

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C. B. No. 2-317

1 without such approval.

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3 Date: Nov 2/182

Introduced by: Jack Fritz

for the Next Congress

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