

## A BILL FOR AN ACT

To provide funding for various National Fisheries Corporation purchases, projects and joint venture participation by appropriating the sum of \$5,554,160 and such other amount as is required from the General Fund of the Federated States of Micronesia for the fiscal year ending September 30, 1990, for the purpose of providing an operating subsidy to the National Fisheries Corporation and providing for the initial capitalization of the National Fisheries Corporation; by authorizing the National Government of the Federated States of Micronesia to participate in a borrowing under the Compact Funds Financing Act for the purpose of promoting fisheries development in the Federated States of Micronesia by making a loan to a particular joint venture under certain conditions; by further amending title 55 of the Code of the Federated States of Micronesia, as amended, by adding a new section 310A for the purpose of authorizing the payment of expenses associated with Compact Financial Assistance Fund accounts and borrowing under the Compact Funds Financing Act; by appropriating the sum of \$40,000 from the General Fund of the Federated States of Micronesia for the fiscal year ending September 30, 1990, for the purpose of obtaining a reliable appraisal or appraisals of fishing boats to be acquired by a joint venture in which the National Fisheries Corporation is a partner; and for other purposes.

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

1 Section 1. This act may be cited as the "NFC Act of 1990."

2 Section 2. As used in this act:

3 (1) Terms shall have the same definitions as are contained in  
4 section 512 of title 58 of the Code of the Federated States of Micronesia;

5 (2) "National Government" means the National Government of  
6 the Federated States of Micronesia; and

7 (3) "Medium-Term Note Program" means the program by such  
8 title that has been or will be negotiated by the National Government  
9 pursuant to the Compact Funds Financing Act.

10 Section 3. The sum of \$5,554,160 and such other amount as is required  
11 is hereby appropriated from the General Fund of the Federated States of  
12 Micronesia for the fiscal year ending September 30, 1990, for the purpose  
13 of providing an operating subsidy to the National Fisheries Corporation and  
14 providing for the initial capitalization of the National Fisheries Corporation.

15 Section 4. The sum appropriated under section 3 of this act shall be  
16 apportioned as follows:

17 (1) The sum of \$54,160 is appropriated for the purpose of  
18 providing an operating subsidy to the National Fisheries Corporation  
19 during the fiscal year ending September 30, 1990.

20 (2) The sum of \$5,500,000 is appropriated for the purpose  
21 of providing initial capitalization for, or an operating subsidy to,  
22 the National Fisheries Corporation, PROVIDED that no such funds shall  
23 be made available to the National Fisheries Corporation except to  
24 support its purchases, projects or joint venture participation,  
25 pursuant to a valid agreement or contract, or to provide an operating

1 subsidy of \$250,000 or less in any fiscal year beginning with the  
2 fiscal year ending September 30, 1991.

3           (3) Such amount as is equal to the amount of funds for  
4 which the authority of the National Fisheries Corporation to obligate  
5 lapses pursuant to section 5 of this act is appropriated for the  
6 purpose of providing an additional operating subsidy to the National  
7 Fisheries Corporation during the fiscal year ending September 30,  
8 1990, PROVIDED that such operating subsidy shall not be made  
9 available to the National Fisheries Corporation prior to March 1,  
10 1990.

11       Section 5. The authority of the National Fisheries Corporation  
12 to obligate funds appropriated by Public Law No. 6-10 shall lapse as  
13 of February 28, 1990.

14       Section 6. The National Government is hereby authorized to  
15 participate in a borrowing under the Medium-Term Note Program  
16 pursuant to the Compact Funds Financing Act, PROVIDED that such  
17 borrowing is done pursuant to the conditions in this act.

18       Section 7. The President, the Secretary of Finance, the  
19 Attorney General and any other officials designated by the President  
20 are authorized to perform the functions and duties described in the  
21 Compact Funds Financing Act and such other duties and functions as  
22 may be necessary to lawfully accomplish the purposes of such Act and  
23 of this act, including in the case of the Attorney General providing  
24 the legal opinion described in such Act and in the case of the  
25 President authorizing the pledge of security necessary to secure the

1 borrowing, to satisfy any financial obligations attributable to the  
2 National Government related to or resulting from such borrowing,  
3 and also to pledge or provide such additional security as may be  
4 necessary to protect any non-participating State against any loss  
5 arising in connection with the National Government's participation  
6 and to secure payment of all financial obligations related to or  
7 resulting from the borrowing including costs and expenses, and the  
8 President is further authorized to cause all necessary payments to be  
9 made to satisfy all financial obligations attributable to the  
10 National Government's participation in the borrowing, PROVIDED that  
11 such National Government officials may take such actions only with  
12 respect to specific amounts authorized by this act and such  
13 additional security as is so required.

14       Section 8. In order to secure such borrowing, the President is  
15 authorized to make an irrevocable pledge of up to \$3,600,000 in  
16 future Compact Funds and any investment earnings thereon that would  
17 otherwise be payable to the National Government, PROVIDED that he  
18 must follow the procedures contained in the Compact Funds Financing  
19 Act, and PROVIDED FURTHER that the amount of such pledge shall not  
20 exceed the following amounts and the investment earnings thereon from  
21 the National Government's share of funds under the Compact of Free  
22 Association:

<u>Fiscal Year</u>	<u>Source</u>	<u>Amount</u>
1991	Section 211(a)	\$ 1,200,00
	Capital Account	

1	1992	Section 211(a)	\$ 1,200,000
2		Capital Account	
3	1993	Section 211(a)	\$ 1,200,000
4		Capital Account	

5 and PROVIDED FURTHER that the President may not pledge any such funds  
6 until and unless he makes the certification to the Congress of the  
7 Federated States of Micronesia described in section 9 of this act.

8 Section 9. The President may not make a pledge of funds  
9 pursuant to section 8 until and unless he certifies in writing to the  
10 Congress of the Federated States of Micronesia that, with respect to  
11 the joint venture described in section 10:

12 (1) A reliable appraisal or appraisals demonstrate a  
13 fair market value of any vessels to be purchased of at least the  
14 amount of the purchase price;

15 (2) The private joint venturer has demonstrated  
16 creditworthiness or has otherwise provided loan guarantees or other  
17 security for its share of the liability on any loan made to the joint  
18 venture from said \$3,000,000, having reference to generally acceptable  
19 commercial banking standards;

20 (3) The joint venture has entered into a loan agreement  
21 with the National Government, PROVIDED, however, that no loan of any  
22 portion of said \$3,000,000 will be made to the joint venture on other  
23 than generally acceptable commercial banking terms, unless necessary  
24 and only to the extent necessary to induce the private joint venturer  
25 to enter into the joint venture, or to create a commercially viable

1 joint venture;

2 (4) The terms of the joint venture agreement and all  
3 related agreements are fair and evenly balanced, having reference to  
4 generally accepted commercial joint venture standards; and

5 (5) The joint venture agreement contains reasonable  
6 provisions designed to ensure that the joint venture undertake  
7 commercially viable shorebased value-adding activities in at least  
8 one State of the Federated States of Micronesia as soon as  
9 commercially feasible.

10 Section 10. Proceeds from the borrowing authorized in section 6  
11 may be used only for the purpose of promoting fisheries development  
12 in the Federated States of Micronesia by making a loan of up to  
13 \$3,000,000 to a joint venture in which the partners include the  
14 National Fisheries Corporation, one or more States of the Federated  
15 States of Micronesia and a private entity incorporated in Australia.  
16 Such loan shall not be subject to the provisions of the Financial  
17 Management Act of 1979.

18 Section 11. Notwithstanding any other provision of law, the  
19 President or his designee is authorized to enter into an agreement  
20 with the Federated States of Micronesia Development Bank for it to  
21 administer and service such loan on behalf of the National Government.

22 Section 12. The President or his designee is authorized to  
23 disburse the proceeds of the borrowing as necessary to accomplish the  
24 purposes of this act.

25 Section 13. Upon actual or constructive receipt of proceeds

1 from the borrowing, the National Government consents to and  
2 authorizes a reduction in the amount of Compact Funds received or to  
3 be received through the Compact Financial Assistance Fund on behalf  
4 of the National Government, with such reduction being commensurate  
5 with the amount of Pledged Compact Funds pledged by the National  
6 Government, and the National Government irrevocably waives all rights  
7 to the receipt of such Pledged Compact Funds, PROVIDED, however, that  
8 the amounts to be pledged and waived may not exceed the amount  
9 provided in section 8 of this act.

10       Section 14. The National Government waives its sovereign  
11 immunity to the extent necessary to permit any State of the Federated  
12 States of Micronesia to bring an action and execute a judgment as to  
13 assets of the National Government based on any loss arising in  
14 connection with the National Government's participation in the  
15 Medium-Term Note Program.

16       Section 15. After the issuance of any Bonds, the National  
17 Government will not limit or alter, or seek to limit or alter the  
18 rights thereby vested and vested pursuant to the Indenture including,  
19 without limitation, the irrevocable pledge by the President of  
20 Pledged Compact Funds, until the Bonds, together with interest and  
21 premium thereon, if any, are fully paid and discharged, PROVIDED that  
22 nothing herein contained shall preclude such limitation or alteration  
23 if and when adequate provision shall be made in accordance with the  
24 terms of the Indenture for protection of the holders of the Bonds.

25       Section 16. The sum of \$40,000, or so much thereof as is

1 necessary, is hereby appropriated from the General Fund of the  
2 Federated States of Micronesia for the fiscal year ending September  
3 30, 1990, for the purpose of obtaining a reliable appraisal or  
4 appraisals of any vessels to be purchased by the joint venture  
5 described in section 10 of this act.

6       Section 17. All funds appropriated by this act shall be  
7 allotted, managed, administered, and accounted for in accordance with  
8 applicable law, including, but not limited to, the Financial  
9 Management Act of 1979. The President or his designee shall be the  
10 allottee and shall be responsible for ensuring that these funds, or  
11 so much thereof as may be necessary, are used solely for the purposes  
12 specified in this act, and that no obligations are incurred in excess  
13 of the sum appropriated. The authority of the allottee to obligate  
14 or disburse funds appropriated by this act shall lapse as of  
15 September 30, 1990, except that the authority to obligate or disburse  
16 funds pursuant to subsection (2) of section 4 of this act  
17 shall not lapse. Notwithstanding any other provision of this act or  
18 any other law of the Federated States of Micronesia, with respect to  
19 the funds appropriated by this act, the National Fisheries  
20 Corporation shall be deemed to be a subsidy recipient and neither an  
21 allottee nor suballottee of such funds nor a National Government  
22 agency for any purposes, including for purposes of the Public  
23 Contracts Act, chapter 4 of title 55 of the Code of the Federated  
24 States of Micronesia. With respect to funds obligated prior to  
25 February 28, 1990, the National Fisheries Corporation shall continue

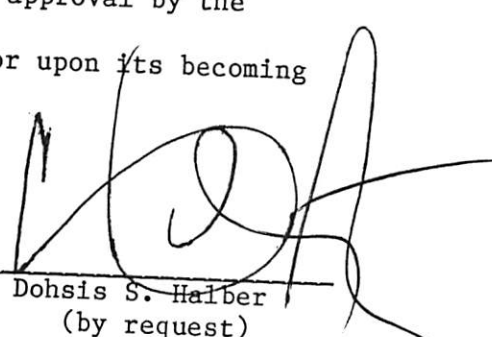
1 to be deemed to be a National Government agency.

2 Section 18. Title 55 of Code of the Federated States of  
3 Micronesia is hereby further amended by adding a new section 310A to  
4 read as follows:

5 "Section 310A. Authorization to debit certain expenses.  
6 Without further authorization or appropriation, any  
7 appropriate Compact Financial Assistance Fund account of  
8 the FSM National Government or a State government may be  
9 debited for expenses, including trustee fees, associated  
10 with such government's Compact Financial Assistance Fund  
11 accounts or with such government's borrowing under the  
12 Compact Funds Financial Act."

13 Section 19. This act shall become law upon approval by the  
14 President of the Federated States of Micronesia or upon its becoming  
15 law without such approval.

16  
17 Date: 1-31-90

18 Introduced by: 

Dohsis S. Halber  
(by request)

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