A BILL FOR AN ACT

To further amend title 24 of the Code of the Federated States of Micronesia, as amended, by amending sections 102, 402, 404, 407 and 504 to specify the proper parties to all access agreements, and for other purposes.

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

- 1 Section 1. Section 102 of title 24 of the Code of the
- 2 Federated States of Micronesia, as enacted by Public Law No. 12-
- 3 34, is hereby amended to read as follows:
- 4 "Section 102. <u>Definitions</u>. In this subtitle, except
- 5 where otherwise specified, the following terms shall
- 6 have the meanings stated below:
- 7 (1) 'Access agreement' means a treaty, agreement or
- 8 arrangement entered into by the Authority pursuant to
- 9 this act in relation to access to the exclusive economic
- 10 zone for fishing by foreign fishing vessels, and
- includes bilateral and multilateral instruments
- 12 applicable at the national, subregional, regional or
- international level.
- 14 (2) 'Administrator' means the director of a regional
- 15 fisheries agency or any other organization or person
- 16 authorized, pursuant to section 106 of chapter 1 of this
- subtitle, to administer a fisheries access agreement or
- 18 fisheries management agreement to which the Federated
- 19 States of Micronesia is party.

1 (3) 'Agent' includes a person appointed or designated
2 by a foreign fishing company to act as the legal
3 representative of that company within the Federated
4 States of Micronesia, including acceptance of and
5 response to legal process, pursuant to section
6 404(4)([a] b) of chapter 4 of this subtitle.

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- (4) 'Aircraft' means any craft capable of self-sustained movement through the atmosphere and includes helicopters.
- (5) 'Atoll' means a naturally formed coral reef system which has one or more islands situated on the reef system, including, but not limited to, Ngulu, Ulithi, Sorol, Eauripi, Woleai, Faraulep, Ifalik, Olaimarao, Elato, Lamotrek, West Fayu, Puluwat, Pulap, Pulusuk, Namonuito, Kuop, Nomowin, Murilo, Losap, Namoluk, Satawan, Etal, Lukunor, Minto Reef, Oroluk, Nukuoro, Kapingamarangi, Pakin, Ant, Sapwuahfik, Mwoakilloa and Pingelap.
- (6) 'Authority' means the National Oceanic Resource Management Authority established by section 201 of chapter 2 of this subtitle.
- (7) 'Authorized observer' means any person authorized in writing by the Authority to act as an observer on fishing vessels for the purposes of this subtitle, including any observer authorized pursuant to the

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provisions of an access agreement or a fisheries
management agreement.

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- (8) 'Authorized officer' means any person or category of persons designated pursuant to section 602 of chapter 6 of this subtitle as an authorized officer.
- (9) 'Automatic location communicator' or 'transponder' means a device placed on a fishing vessel that transmits, either in conjunction with another device or devices or independently, information concerning the position, fishing and other activities of the vessel.
- (10) 'Based in the Federated States of Micronesia' means using land-based facilities in the Federated States of Micronesia to support fishing, including location of the home port of a vessel in the Federated States of Micronesia, landing or transshipping all fish harvested within the exclusive economic zone and/or operating under a joint venture arrangement in the Federated States of Micronesia, or under arrangements where the operator of a vessel is participating in shore-based developments or is otherwise making a substantial contribution to the development of the domestic tuna industry.
 - (11) 'Buy' includes:
 - (a) barter or attempt to barter;
- (b) purchase or attempt to purchase;

Τ	(c) receive on account or consignment;
2	(d) purchase or barter for future goods or for
3	any consideration of value; and
4	(e) purchase or barter as an agent for another
5	person, and 'buyer' shall have a corresponding meaning.
6	(12) 'Citizen' means a person who is a citizen of the
7	Federated States of Micronesia.
8	(13) 'Closed area' means an area in which fishing is
9	prohibited.
10	(14) 'Closed season' means a period of time during
11	which fishing is prohibited.
12	(15) 'Commercial fishing' means any fishing resulting
13	or intending or appearing to result in the sale or trade
14	of any fish which may be taken during the fishing
15	operation, and does not include subsistence fishing.
16	For the purposes of this act, the following shall be
17	presumed to be commercial fishing:
18	(a) use of a vessel for fishing which measures
19	twenty-seven (27) feet or more in overall length;
20	(b) use of more than one vessel for fishing which
21	is owned by a single person for the primary purpose of
22	selling or trading any fish.
23	(16) 'Commercial pilot fishing' means any fishing for
24	the purpose of testing the commercial viability of:
25	(a) new fishing methods;

Τ	(b) developing new stocks of fish; or
2	(c) fishing in previously unexploited areas.
3	(17) 'Court' means the Supreme Court of the Federated
4	States of Micronesia.
5	(18) 'Domestic fishing' means any fishing by a local
6	fishing vessel longer than twenty-seven (27) feet in
7	overall length, but not including commercial pilot
8	fishing.
9	(19) (Reserved)
10	(20) (Reserved)
11	(21) 'Drift net' means a gillnet or other net or
12	arrangement of nets which is more than 2.5 kilometers
13	(1.56 miles) in length, the purpose of which is to
14	enmesh, entrap or entangle fish.
15	(22) 'Drift net fishing activities' includes fishing
16	with the use of a drift net and any related activities
17	including transporting, transshipping and processing any
18	drift net catch, and provisioning of food, fuel and
19	other supplies for vessels used or outfitted for drift
20	net fishing.
21	(23) 'Exclusive economic zone' means the exclusive
22	economic zone as defined in title 18 of the Code of the
23	Federated States of Micronesia.
24	(24) 'Executive Director' means the individual
25	appointed by the Authority to be in charge of the

1 daily activities and operation of the authority and to 2 perform such other functions as required by this 3 subtitle. 4 (25) 'Export' means to: 5 (a) send or take out of the country; (b) attempt to send or take out of the country; 6 7 (c) receive on account or consignment for 8 purposes of paragraph (a) or (b) above; 9 (d) act as an agent for another person for purposes of (a) through (c) above; and 10 (e) carry or transport anything for purposes of 11 12 paragraphs (a) through (d) of this subsection, and 13 'exporter' shall have a corresponding meaning. 14 (26) 'Fish' means any living marine resource. 15 (27) 'Fish aggregating device' means any man-made or 16 partly man-made floating or semi-submerged device, whether anchored or not, intended for the purpose of 17 18 aggregating fish, and includes any natural floating 19 object on which a device has been placed to facilitate its location. 20 21 (28) 'Fish processing' means the producing of any 22 substance or article from fish by any method and 2.3 includes the cutting up, dismembering, cleaning, 24 sorting, loining, freezing, canning, salting, preserving 2.5 and reduction of fish.

agreement, arrangement or treaty in force to which the Federated States of Micronesia is a party, not including any access agreement, which has as its primary purpose cooperation in or coordination of fisheries management measures in all or part of the region, or implementation of a multilateral access agreement, including, but not limited to, fisheries monitoring, control and surveillance and establishing criteria or requirements for fishing and fisheries access.

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- (30) 'Fishery' or 'Fisheries' means one or more stock of fish or any fishing operation based on such stocks which can be treated as a unit for purposes of conservation and management, taking into account geographical, scientific, technical, recreational, economic and other relevant characteristics.
- (31) 'Fishery waters' means the exclusive economic zone, the territorial sea and internal waters as described in title 18 of the Code of the Federated States of Micronesia, and any other waters over which the Federated States of Micronesia claims sovereignty or sovereign Rights.

(32) 'Fishing' means:

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

1 (b) any activity which can reasonably be expected 2 to result in the locating, catching, taking or harvesting of fish; 3 4 (c) the placing, searching for or recovering of 5 any fish aggregating device or associated electronic equipment such as radio beacons; 6 7 (d) any operation at sea directly in support of or in preparation for any activity described in this 8 9 subsection except for operations defined as related activities in subsection (51) of this section; and 10 (e) the use of an aircraft in relation to any 11 12 activity described in this subsection except for flights 13 in emergencies involving the health or safety of crew 14 members or the safety of a vessel. 15 (33) 'Fishing gear' means any equipment, implement, or 16 other thing that can be used in the act of fishing, including any fishing net, rope, line, float, trap, 17 hook, winch, boat, beacon or locating device, aircraft 18 19 or helicopter. 20 (34) 'Fishing vessel' means any vessel, boat, ship or other craft which is used for, equipped to be used for 21 22 or of a type that is normally used for fishing as the

(35) 'Flag fishing vessel' means any foreign fishing

term fishing is defined in subsection (32) of this

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section.

1 vessel that is registered in the Federated States of 2 Micronesia pursuant to title 18 of the Code of the FSM and any domestic fishing vessel. 3 4 (36) 'Foreign fishing' means any fishing not defined as 5 domestic fishing, and not including commercial pilot fishing or fishing from a local fishing vessel less than 6 7 or equal to twenty-seven (27) feet in overall length. (37) 'Foreign fishing vessel' means any fishing vessel 8 9 other than a local fishing vessel. (38) 'Foreign party' means a noncitizen party to an 10 11 access agreement or a party to an access agreement that 12 is at least twenty percent foreign-owned. 13 (39) 'Foreign recreational fishing' means fishing using 14 a foreign fishing vessel for recreational or sport 15 purposes. 16 (40) 'High seas' means all parts of the sea that are 17 not included in the exclusive economic zone, in the territorial sea, or in the internal water of any nation, 18 19 or in the archipelagic waters of an archipelagic nation. (41) 'Internal waters' means waters on the landward 20 side of the baseline of the territorial sea of any 21 22 island within the Federated States of Micronesia. 2.3 (42) 'Island' means a naturally formed area of land 24 surrounded by water, which is above water at high tide.

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(43) 'Local fishing vessel' means any fishing vessel

1 wholly owned and controlled by: 2. (a) the Government of the Federated States of Micronesia, any State government or any subdivision 3 4 thereof: 5 (b) one or more natural persons who are citizens of the Federated States of Micronesia; 6 7 (c) any corporation, company, society, or other 8 association of persons incorporated or established under 9 the laws of the Federated States of Micronesia or of any State and which is wholly owned and controlled by one or 10 more of the entities or persons described in paragraphs 11 12 (a) or (b) of this subsection; and 13 (d) any combination of persons or entities 14 described in paragraphs (a) through (c) of this 15 subsection. 16 (44) 'Master' in relation to any fishing vessel means 17 the person in charge or apparently in charge of that 18 vessel. 19 (45) 'Multilateral access agreement' means an access 20 agreement between a foreign party and one or more regional parties, to which the Federated States of 21 22 Micronesia is a party. 2.3 (46) 'Officer' means any authorized officer or national 24 police officer, and includes any officer of a vessel or 2.5 aircraft used for the enforcement of this act, whether

or not such officers are officials of the Government of
the Federated States of Micronesia or of one of the four
State governments.

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- (47) 'Operator' means any person who is in charge of or directs or controls a fishing vessel, or for whose direct economic or financial benefit a vessel is being used, including the master, owner, and charterer.
- (48) 'Owner' in relation to a fishing vessel means any person exercising or discharging or claiming the right or accepting the obligation to exercise or discharge any of the powers or duties of an owner, whether on his own behalf or on behalf of another, and includes a person who owns the vessel jointly with any other person or persons and any manager, director or secretary of any corporate body or company that holds an ownership interest in the vessel.
- (49) 'Permit' means any permit issued under this subtitle or under an access agreement entered into pursuant to this subtitle.
- (50) 'Person' means any natural person or business enterprise and includes, but is not limited to, a corporation, partnership, cooperative, association, the government of any of the four States, or any political subdivision thereof, and any foreign government, subdivision of such government or other entity.

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1 (51) 'Port sampler' means a category of authorized
2 observer who performs duties at a point of transshipment
3 or port located either inside or outside the Federated
4 States of Micronesia.

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- (52) 'Recreational fishing' means fishing for sport or leisure.
- (53) 'Region' means that area of land and ocean which falls within the sovereignty and sovereign rights of the member countries of the South Pacific Forum Fisheries Agency, whose headquarters are located in Honiara, Solomon Islands, and includes high seas within such area, and for the purposes of data collection, includes that area of the Western and Central Pacific Ocean which falls within the jurisdiction and sovereign rights of the member countries of the Secretariat of the Pacific Community located in Noumea, New Caledonia, and 'regional' shall have a corresponding meaning.
- (54) 'Regional access license' means a regional access license issued to any fishing vessel of a party to a multilateral access agreement or fisheries management agreement, in accordance with such agreement.
- (55) 'Regulation' or 'Regulations' means any regulation which may be promulgated by the Authority pursuant to this act.
 - (56) 'Related activities' in relation to fishing means:

1 (a) transshipment; 2 (b) refueling or supplying fishing vessels, selling or supplying fishing equipment, or performing 3 4 either activity in support of fishing; and 5 (c) on-shore storing, buying or processing fish or fish products from the time they are first landed. 6 7 (57) 'Secretary' means the Secretary of the Department of Justice. 8 9 (58) 'Sell' includes the exchange of any fish or fish product or other thing for cash or for anything which 10 has value or which can be exchanged for cash, and 11 12 includes any exchange by barter. 13 (59) 'Stock of fish' means a species, subspecies or 14 other category of fish identified on the basis of 15 geographical, scientific, technical, recreational and 16 economic characteristics which can be treated as a unit 17 for purposes of conservation and management. (60) 'Subsistence fishing' means fishing by a citizen 18 19 or a resident substantially for personal consumption, 20 and does not include any fishing resulting or intending or appearing to result, directly or indirectly, in the 21 22 sale or trading of any fish which may be taken during 2.3 the fishing operations. 24 (61) 'Transponder' or 'automatic location communicator'

means a device placed on a fishing vessel that

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1 transmits, either in conjunction with another device or 2 devices or independently, information concerning the position, fishing and other activities of the vessel. 3 4 (62) 'Transshipment' means the transfer of any or all 5 fish or fish products to or from any vessel or aircraft for the purposes of transporting such fish or fish 6 7 products elsewhere. (63) 'United Nations Agreement' means the agreement for 8 9 the implementation of the provisions of the United Nations Convention on the Law of the Sea of 10 December 10 1992 relating to the conservation and management of 11 12 straddling fish stocks and highly migratory fish stocks. (64) 'United Nations Convention' means the United 13 14 Nations Convention on the Law of the Sea, 1982. 15 (65) 'Vehicle' means any car, truck, van, bus, trailer 16 or other powered land conveyance. (66) 'Vessel' means any boat, ship, canoe or other 17 water-going craft." 18 19 Section 2. Section 401 of title 24 of the Code of the Federated States of Micronesia, as enacted by Public Law No. 12-20 34, is hereby amended to read as follows: 21 22 "Section 401. [(Reserved)] <u>Proper parties to access</u> 2.3 agreements. The Authority may enter into an access 24 agreement with: 2.5 (1) the National Fisheries Corporation;

1	(2) any company that is:
2	(a) wholly owned by a citizen or citizens; and
3	(b) registered in accordance with the laws of the
4	Federated States of Micronesia;
5	(3) any company that undertakes to exclusively use
6	vessels based in the Federated States of Micronesia for
7	fishing pursuant to the access agreement; or
8	(4) one or more foreign countries by means of a
9	treaty. The Authority shall not enter into an access
10	agreement except in accordance with this section."
11	Section 3. Section 404 of title 24 of the Code of the
12	Federated States of Micronesia, as enacted by Public Law No. 12-
13	34, is hereby amended to read as follows:
14	"Section 404. Access agreements - minimum terms. All
15	access agreements shall include the following minimum
16	terms:
17	(1) [the foreign] each party recognizes the sovereign
18	rights and exclusive fishery management authority of the
19	Federated States of Micronesia within the exclusive
20	economic zone;
21	(2) the operator and each member of the crew shall
22	comply with the applicable access agreement, applicable
23	permit conditions, this subtitle, all regulations issued
24	pursuant to this subtitle and all other applicable laws
25	and regulations;

1	(3) the operator shall:
2	(a) accept the Authority's authorized observers;
3	(b) provide any authorized observer, while on
4	board the vessel, at no expense, with officer level
5	accommodations, food and medical facilities;
6	(c) meet the following costs of the authorized
7	observer:
8	(i) full travel costs to and from the
9	vessel;
10	(ii) salary; and
11	(iii) full insurance coverage;
12	(d) display any permit or permit number issued
13	for any such vessel, pursuant to this subtitle, or any
14	other documentation as required by the Authority to be
15	displayed, under any access agreement, in the wheelhouse
16	of such vessel;
17	(e) ensure that appropriate position-fixing and
18	identification equipment is installed and maintained in
19	working order on each vessel;
20	(f) ensure that the vessel is marked and
21	identified in accordance with the Food and Agricultural
22	Organization (FAO) approved Standard Specifications for
23	the Marking and Identification of Fishing Vessels;
24	(g) ensure the continuous monitoring of the
25	international distress and call frequency 2182 kHz (HF)

1 or the international safety and call frequency 156.8 MHz 2. (channel 16, VHF-FM) to facilitate communication with the fisheries management, surveillance and enforcement 3 4 authorities; 5 (h) ensure that a recent and up-to-date copy of the International Code of Signals (INTERCO) is on board 6 7 and accessible at all times; (i) ensure that the vessel is seaworthy and 8 9 contains adequate life safety equipment and survival gear_for each passenger and member of the crew; 10 11 (j) ensure that, promptly upon direction by the 12 Authority, each vessel will have installed, maintained 13 and fully operational at all times on board a 14 transponder, in accordance with section 611 of chapter 6 15 of this subtitle, and shall be responsible for all 16 operational and maintenance costs of the transponder and 17 cooperate fully with the Authority in their utilization. (4) the party to the access agreement shall, for the 18 19 duration of the access agreement: 20 (a) maintain its status as a proper party to an access agreement in accordance with section 401 of this 21 22 title; 2.3 (b) if the party is a foreign party, appoint and 24 maintain a resident agent in the Federated States of 2.5 Micronesia that is approved by the Authority, or

establish and maintain a company registered in accordance with the laws of the Federated States of Micronesia authorized to receive and respond to any legal process issued in the Federated States of Micronesia with respect to the owner or operator of [the] any vessel licensed pursuant to the access agreement, and shall notify the [Federated States of Micronesia] Authority of the name and address of such agent or company, and any communication, information, document, direction, request or response to or from that agent or company, shall be deemed to have been sent to, or received from such owner or operator;

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Corporation or a corporation wholly owned by a citizen or citizens, be authorized to receive and respond to any legal process issued in the Federated States of

Micronesia with respect to the owner or operator of any vessel licensed pursuant to the access agreement, and shall notify the Authority of a contact address. Any communication, information, document, direction, request or response sent to or from the contact address, shall be deemed to have been sent to, or received from such owner or operator;

 $([b] \underline{d})$ not exceed any allocation which may be established in any given licensing period in accordance

1	with this subtitle;
2	$([e] \ \underline{e})$ ensure compliance by each fishing vessel, its
3	operator and crew members, with the access agreement,
4	all laws of the Federated States of Micronesia and the
5	terms of the permit; and
6	$([\frac{d}{d}] \ \underline{f})$ ensure compliance by each fishing vessel, its
7	operator and crew members, with subregional and regional
8	conservation and management measures for highly
9	migratory fish stocks."
10	Section 4. Section 407 of title 24 of the Code of the
11	Federated States of Micronesia, as enacted by Public Law No. 14-
12	34, is hereby amended to read as follows:
13	"Section 407. Related activities - transshipment.
14	(1) The operator of a foreign fishing vessel shall:
15	(a) not transship at sea under any circumstances;
16	(b) provide seventy-two (72) hours notice to the
17	Authority of a request to transship any or all of the
18	fish on board and shall provide the name of the vessel,
19	its international radio call sign, its position, the
20	catch on board by species, the time and port where such
21	transshipment is requested to occur and an undertaking
22	to pay all fees required under the laws of the Federated
23	States of Micronesia;
24	(c) only transship at the time and port
25	authorized for transshipment; and

1 (d) submit full reports on transshipping on such 2 forms as may be required by the Authority or prescribed 3 by regulation. 4 (2) During transshipment in the Federated States of 5 Micronesia [the foreign] each party and the operator of each vessel shall comply with all applicable National 6 7 and State laws and regulations in the Federated States of Micronesia relating to protection of the environment, 8 9 including without limitation, sewage holding tank 10 requirements. 11 (3) Any person who violates subsection (1)(a), (1)(c), 12 (1) (d) or (2) of this section shall be subject to a 13 civil penalty of not less than \$75,000 and not more than \$275,000." 14 Section 5. Section 504 of title 24 of the Code of the 15 16 Federated States of Micronesia, as enacted by Public Law No. 14-34, is hereby amended to read as follows: 17 "Section 504. Allocation of allowable fishing among 18 19 foreign fishing vessels. 20 (1) The Authority may determine the allocation among [foreign] parties to valid access agreements of the 21 22 total allowable level of foreign fishing which is 2.3 permitted with respect to any stock of fish subject to 24 the provisions of this subtitle.

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(2) In determining the allocation among parties, the

1 Authority shall take into consideration:

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- (a) the extent to which vessels of such parties have complied with the laws of the Federated States of Micronesia and any relevant access agreements;
- (b) whether such parties, their national governments or the flag countries of those vessels

 licensed pursuant to such parties' access agreements,
 have cooperated with the Federated States of Micronesia
 in, and made substantial contributions to, the
 conservation, management and development of fisheries,
 fishery research and the identification of marine
 resources;
- (c) whether such parties, their national governments or the flag countries of those vessels

 licensed pursuant to such parties' access agreements, undertake to invest in the fisheries sector in such a manner as to bring significant benefit to the Federated States of Micronesia;
- (d) whether such parties, their national governments or the flag countries of those vessels

 licensed pursuant to such parties' access agreements, have cooperated with the Federated States of Micronesia in the enforcement of the provisions of this subtitle and the regulations issued under its authority, including flag State enforcement and the provision of

1	information required for the conservation and management
2	of fish;
3	(e) whether such parties, their national
4	governments or the flag countries of those vessels
5	licensed pursuant to such parties' access agreements,
6	while in the waters under national jurisdiction of any
7	foreign state in the region, have complied with the
8	terms of any fisheries management agreement to which the
9	Federated States of Micronesia is a party and which is
10	implemented in such other foreign state; and
11	(f) such other matters as it may deem
12	appropriate."
13	Section 6. <u>Transition</u> . <u>Upon this act becoming law, each</u>
14	existing access agreement shall remain in force until its
15	expiration in accordance with its terms, however, no new access
16	agreement shall be entered into except in accordance with this
17	act.
18	Section 7. This act shall become law upon approval by the
19	President of the Federated States of Micronesia or upon its
20	becoming law without such approval.
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22	Dated: 7/12/06 Introduced by: /s/ Peter Sitan
23	Peter Sitan
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