A BILL FOR AN ACT

To amend sections 101, 102, 103, 106, 204, 205, 303, 402, 404, 407, 603, 606, 611, 701, 907, 910 and 911 of title 24 of the Code of the Federated States of Micronesia (Annotated), as amended by Public Law No. 18-109, in order to enhance the ability of the Government of the Federated States of Micronesia to enforce, in its territory or exclusive economic zone and other zones where FSM-flagged or FSM-licensed vessels undertake fishing activities, the national fishery laws, regulations, and the international obligations including those in the Third Implementing Arrangement of the Parties to the Nauru Agreement, and the obligations assumed by the FSM Government on conservation, sustainable exploitation and management of fishery resources taking into consideration the national development needs and aspirations of the FSM, and for other purposes.

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

1. Section 1. Section 101 of title 24 of the Code of the Federated States of Micronesia (Annotated), is hereby amended to read as follows:

   "Section 101. Purpose of this subtitle.

   (1) The purpose of this subtitle is to ensure the sustainable development, conservation and use of the marine resources in the exclusive economic zone by promoting development of, and investment in, fishing and related activities in the context of effective stewardship and to regulate fishing and related activities of vessels entitled to fly the flag of the Federated States of Micronesia beyond the fishery waters."
(2) This act may be referred to as the 'Marine Resources Act of 2002'.”

Section 2. Section 102 of title 24 of the Code of the Federated States of Micronesia (Annotated), is hereby amended to read as follows:

"Section 102. Definitions. In this subtitle, except where otherwise specified, the following terms shall have the meanings stated below:

(1) 'Access agreement' means a treaty, agreement or arrangement entered into by the Authority pursuant to this act in relation to access to the exclusive economic zone for fishing by foreign fishing vessels, and includes bilateral and multilateral instruments applicable at the national, subregional, regional or international level.

(2) 'Administrator' means the director of a regional fisheries agency or any other organization or person authorized, pursuant to section 106 of chapter 1 of this subtitle, to administer a fisheries access agreement or fisheries management agreement to which the Federated States of Micronesia is party.

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

(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, Eauripik, 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) 'Authority 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 provisions of an access agreement or a fisheries management agreement.

(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 'mobile transceiver unit' or 'transponder' means a Forum Fisheries Agency (FFA) approved device placed on a fishing vessel that transmits either in conjunction with another device or devices or independently, information concerning the position, fishing and such 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;

(c) receive on account or consignment;

(d) purchase or barter for future goods or for
any consideration of value; and

(e) purchase or barter as an agent for another
person, and 'buyer' shall have a corresponding meaning.

(12) 'by-catch' means all living and non-living
organisms incidentally caught while fishing for target
species, including any by-products and discard forming
part of the catch not retained on board the vessel
during such fishing operation.

(13) ['Citizen' means a person who is a citizen
of the Federated States of Micronesia.

(14) ['Closed area' means an area in which
fishing is prohibited.

(15) ['Closed season' means a period of time
during which fishing is prohibited.

(16) ['Commercial fishing' means any fishing
resulting or intending or appearing to result in the
sale or trade of any fish which may be taken during the
fishing operation, and does not include subsistence
fishing. For the purposes of this act, the following
shall be presumed to be commercial fishing:

(a) use of a vessel for fishing which measures
twenty-seven (27) feet or more in overall length;

(b) use of more than one vessel for fishing
which is owned by a single person for the primary
purpose of selling or trading any fish.
'Commercial pilot fishing' means any fishing for the purpose of testing the commercial viability of:

(a) new fishing methods;

(b) developing new stocks of fish; or

(c) fishing in previously unexploited areas.

'Court' means the Supreme Court of the Federated States of Micronesia.

'Domestic fishing' means any fishing by a local fishing vessel longer than twenty-seven (27) feet in overall length, but not including commercial pilot fishing, and 'domestic fishing vessel' shall have a corresponding meaning.

'Drift net' means a gillnet or other net or arrangement of nets which is more than 2.5 kilometers (1.56 miles) in length, the purpose of which is to enmesh, entrap or entangle fish.

'Drift net fishing activities' includes fishing with the use of a drift net and any related activities including transporting, transshipping and processing any drift net catch, and provisioning of food, fuel and other supplies for vessels used or outfitted for drift net fishing.
(23) 'Exclusive economic zone' means the exclusive economic zone as defined in title 18 of the Code of the Federated States of Micronesia.

(24) 'Executive Director' means the individual appointed by the Authority to be in charge of the daily activities and operation of the authority and to perform such other functions as required by this subtitle.

(25) 'Export' means to:

(a) send or take out of the country;

(b) attempt to send or take out of the country;

(c) receive on account or consignment for purposes of paragraph (a) or (b) above;

(d) act as an agent for another person for purposes of (a) through (c) above; and

(e) carry or transport anything for purposes of paragraphs (a) through (d) of this subsection, and 'exporter' shall have a corresponding meaning.

(26) 'Fish' means any living marine resource.

(27) 'Fish aggregating device' means any man-made or party man-made floating or not, intended for the purpose of aggregating fish, and includes any natural floating object on which a device has been placed to facilitate its location] an object or group of objects, of any size, that has or has not been deployed, that is living or non-living, including but not limited to buoys,
floats, netting, webbing, plastics, bamboo, logs and
whale sharks floating on or near the surface of the
water that fish may associate with.

(28) 'Fish processing' means the producing of any
substance or article from fish by any method and
includes the cutting up, dismembering, cleaning,
sorting, loining, freezing, canning, salting, preserving
and reduction of fish.

(29) 'Fisheries management agreement' means any
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.

(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 [R]ights.

(32) 'Fishing' means:

(a) [actual or attempted] searching for, catching, taking or harvesting fish;

(b) attempting to search for, catch, take or harvest fish;

(c) [\(b\)] engaging in any other activity which can reasonably be expected to result in the locating, catching, taking or harvesting of fish for any purpose;

(d) [\(c\)] the placing, searching for or recovering fish aggregating devices or associated electronic equipment such as radio beacons;

(e) [\(d\)] any operations at sea directly in support of, or in preparation for, any activity described in sub-paragraphs (a) to (d), except for operations defined as related activities in subsection (60) of this section;

(f) [\(e\)] the use of any other vessel, vehicle, aircraft or hovercraft, [in relation to] for any activity described in [this subsection] sub-paragraphs (a) to (e) except for [flights in] emergencies involving
the health and safety of crew or the safety of a vessel.

(33) ‘Fishing day’ means any calendar day, or part of a calendar day, during which a fishing vessel is in the fishery waters outside of a port, but does not include any calendar day, or part of a calendar day on which the fishing vessel is not engaged in fishing or related activities.

(34)[(33)] ‘Fishing gear’ means any equipment, implement, or other thing that can be used in the act of fishing, including any fishing net, rope, line, float, trap, hook, winch, boat, beacon or locating device, aircraft or helicopter.

(35)[(34)] ‘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 fishing as the term fishing is defined in subsection [(33)] (32) of this section.

(36)[(35)] ‘Flag fishing vessel’ means any foreign fishing vessel that is [registered in] entitled to fly the flag of the Federated States of Micronesia pursuant to title 18 of the Code of the FSM and any domestic fishing vessel.

(37)[(36)] ‘Foreign fishing’ means any fishing not defined as domestic fishing, and not including commercial pilot fishing or fishing from a local fishing
vessel less than or equal to twenty-seven (27) feet in overall length.

(38) 'Foreign fishing vessel' means any fishing vessel other than a local fishing vessel.

(39) 'Foreign party' means a noncitizen party to an access agreement or a party to an access agreement that is at least twenty percent foreign-owned.

(40) 'Foreign recreational fishing' means fishing using a foreign fishing vessel for recreational or sport purposes.

(41) "Full insurance coverage" means insurance cover for:

(a) personal injury;
(b) loss of life;
(c) loss of equipment and personal effects;
(d) medical coverage, including medical evacuation if required;
(e) repatriation costs if required; and
(f) losses arising from the action, inaction or activity of the authorized observer whilst on board or in the service of the vessel."

(42) 'High seas' means all parts of the sea that are not included in the exclusive economic zone, in the territorial sea, or in the internal water of any nation, or in the archipelagic waters of an archipelagic nation.
(42) 'Internal waters' means waters on the landward side of the baseline of the territorial sea of any island within the Federated States of Micronesia.

(43) 'international conservation and management measures' means measures to conserve or manage fish that are adopted and applied by an organization or arrangement to which the Federated States of Micronesia is a member and is required to apply.

(44) 'Island' means a naturally formed area of land surrounded by water, which is above water at high tide.

(45) 'licensing member' or 'FFA member' means a party to the South Pacific Forum Fisheries Agency Convention, 1979.

(46) 'Local fishing vessel' means any fishing vessel wholly owned and controlled by:

(a) the Government of the Federated States of Micronesia, any State government or any subdivision thereof;

(b) one or more natural persons who are citizens of the Federated States of Micronesia;

(c) any corporation, company, society, or other association of persons incorporated or established under the laws of the Federated States of Micronesia or of any State and which is wholly owned and controlled by one or
more of the entities or persons described in paragraphs (a) or (b) of this subsection; and

(d) any combination of persons or entities described in paragraphs (a) through (c) of this subsection.

(47)[(44)] 'Master' in relation to any fishing vessel means the person in charge or apparently in charge of that vessel.

(48)[(45)] 'Multilateral access agreement' means an access agreement between a foreign party and one or more regional parties, to which the Federated States of Micronesia is a party.

(49) 'net sharing' means the transfer of any fish or fish products from one vessel to another vessel belonging to the same owner, or to any other vessel, provided that such transfer is in the last set, authorized by the Authority, and carried out in accordance with any conditions required in writing by the Authority or prescribed by regulations.

(50)[(46)] 'Officer' means any authorized officer or national police officer, and includes any officer of a vessel or 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.
'Operator' means any person who is in charge of, directs or controls a fishing vessel, or for whose direct economic or financial benefit a vessel is being used, including the owner, charterer and master.

'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.

'Permit' means any permit issued under this subtitle or under an access agreement entered into pursuant to this subtitle.

'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.

'Port sampler' means a category of authorized observer who performs duties at a point of transshipment or port located either inside or outside the Federated States of Micronesia.
States of Micronesia.

(56) 'Recreational fishing' means fishing for sport or leisure.

(57) 'Region' means that area of land and ocean which falls within the sovereignty and sovereign rights of the member countries of the South Pacific Islands 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.

(58) '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.

(59) 'Regulation' or 'Regulations' means any regulation which may be promulgated by the Authority pursuant to this act.

(60) 'Related activities' in relation to fishing means:

(a) transshipment;
(b) refueling or supplying fishing vessels, selling or supplying fishing equipment, or performing either activity in support of fishing; and
(c) on-shore storing, buying or processing fish or fish products from the time they are first landed.

(61)[(57)] 'Secretary' means the Secretary of the Department of Justice.

(62)[(58)] 'Sell' includes the exchange of any fish or fish product or other thing for cash or for anything which has value or which can be exchanged for cash, and includes any exchange by barter.

(63)[(59)] 'Shark' means any fish of the taxon Elasmobranchii.

(64)[(60)] 'Shark Fin' means any fin of a shark including caudal fins.

(65)[(61)] 'Stock of fish' means a species, subspecies or other category of fish identified on the basis of geographical, scientific, technical, recreational and economic characteristics which can be treated as a unit for purposes of conservation and management.

(66)[(62)] 'Subsistence fishing' means fishing by a citizen or a resident substantially for personal consumption, and does not include any fishing resulting or intending or appearing to result, directly or indirectly, in the sale or trading of any fish which may
be taken during the fishing operations.

(67)[(63)] 'Transponder' [or] has the same meaning as "automatic location communicator" [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].

(68)[(64)] 'Transhipment' means the transfer of any or all fish [or fish products] on board a fishing vessel to [or from any] another vessel [or aircraft for the purpose of transporting such fish or fish products elsewhere]; provided, that net sharing is not considered as transhipment.


(71)[(67)] 'Vehicle' means any car, truck, van, bus, trailer or other powered land conveyance.

(72)[(68)] 'Vessel' means any boat, ship, canoe or other water-going craft."
1 (73) ‘Vessel Monitoring System’ or “VMS” means the systems employed by FFA members and coordinated by the FFA to monitor the position and activities of fishing vessels for the purpose of effective management.

2 (74) ‘zone’ means the exclusive economic zone or fisheries zone of an FFA member of the Pacific Islands Forum Fisheries Agency.”

Section 3. Section 103 of title 24 of the Code of the Federated States of Micronesia (Annotated), is hereby amended to read as follows:

"Section 103. Fishing permits and related activities permits required - commercial.

No domestic fishing, commercial pilot fishing, foreign fishing or such other fishing or related activity as may be prescribed shall be allowed in the exclusive economic zone unless it is in accordance with:

(1) a valid and applicable permit issued under authority conferred by this subtitle or its regulations; or

(2) a valid and applicable license issued by an administrator pursuant to a multilateral access agreement entered into pursuant to section 106 of chapter 1 of this subtitle."

Section 4. Section 106 of title 24 of the Code of the
Federated States of Micronesia (Annotated), is hereby amended to read as follows:

"Section 106. Fisheries management agreements; multilateral access agreements.

(1) Notwithstanding any other provision of this subtitle, the Authority is authorized to enter into fisheries management agreements for cooperation in or coordination of fisheries management measures in all or part of the region or for the implementation of a multilateral access agreement. Such agreements may, among other things, at the Authority's discretion, include provisions for the following:

(a) authorization of a person, body or organization to perform functions required by a multilateral access agreement, including, but not limited to, the allocation, issuance and denial of fishing licenses valid in the region or part thereof, including the exclusive economic zone;

(b) an observer program;

(c) a port sampling program;

(d) fisheries monitoring and control; and

(e) any other matter relating to fisheries management.

(2) For the purpose of giving effect to a multilateral access agreement or fisheries management
agreement, the Authority may, in writing:

(a) exempt any foreign fishing vessel, holding a valid fishing license issued pursuant to a multilateral access agreement, from any requirement of this subtitle which is inconsistent with the terms of such agreement;

(b) implement the establishment of closed areas, closed seasons and such other management measures as may be agreed upon pursuant to a fisheries management agreement;

(c) authorize observers designated under an observer program entered into pursuant to subsection (1)(b) of this section to perform such duties and responsibilities as may be required by such agreement;

(d) prescribe or otherwise require the conditions to be observed by operators of foreign fishing vessels exempted under paragraph (a) of this subsection;

(e) prescribe or otherwise require the conditions to be observed by flag vessels and citizens for fishing outside the exclusive economic zone, in accordance with any access agreement or fisheries management agreement to which the Federated States of Micronesia may be party.

(3) For the purpose of giving effect to international conservation and management measures and decisions of an
organization established under a fisheries management agreement, the Authority may prescribe regulations or attach such conditions to a permit, or authorization to fish or conduct related activities as the Authority may consider necessary or expedient for this purpose.

(4) The provisions of this subtitle concerning the application of international conservation and management measures do not apply to the internal waters and territorial sea of the Federated States of Micronesia as defined under title 18 of the Code of the Federated States of Micronesia, without the express consent of each of the states of the Federated States of Micronesia.”

Section 5. Section 204 of Title 24 of the Code of the Federated States of Micronesia (Annotated), is hereby amended to read as follows:

"Section 204. Authority – adoption of regulations.

(1) The Authority shall have the authority to:

(a) adopt regulations for the management, development and sustainable use of fisheries resources in the exclusive economic zone;

(b) adopt regulations applicable to related activities as defined in section 102 of this subtitle;

(c) adopt regulations in relation to
fisheries monitoring and control;

(d) adopt regulations to implement access agreements and fisheries management agreements;

(e) adopt regulations relating to the confidentiality of information consistent with section 208 of this subtitle;

(f) adopt regulations for the issuance of citations and assessment of administrative penalties consistent with chapter 7 of this subtitle;

(g) adopt regulations relating to compliance by citizens and fishing vessels of the Federated States of Micronesia which engage in fishing or related activities on the high seas or outside the internal waters, the territorial sea or exclusive economic zone of the Federated States of Micronesia] fishery waters with applicable laws of foreign states and with applicable access agreements or fisheries management agreements;

(h) adopt regulations relating to marine scientific research and training;

(i) adopt regulations relating to observer programs and port sampling programs; and

(j) adopt, in consultation with relevant State or national agencies, regulations consistent with the international obligations of the Federated
States of Micronesia to prohibit the entry and use of ports and facilities by vessels that have been engaged in fishing or related activities that undermine international conservation and management measures;

(k) adopt any other regulations deemed necessary for the implementation of this subtitle."

(2) Regulations adopted by the Authority shall have the full force and effect of law, and shall be considered an integral part of this subtitle."

Section 6. Section 205 of Title 24 of the Code of the Federated States of Micronesia (Annotated), is hereby amended to read as follows:

"Section 205. Authority - duties and functions. In addition to the regulatory authority granted in the preceding section, the Authority shall have the following duties and functions:

(1) to provide technical assistance in the delimitation of the exclusive economic zone in accordance with section 107 of title 18 of the Code of the Federated States of Micronesia;

(2) to negotiate, conclude and implement access agreements and fisheries management agreements in accordance with sections 105 and 106 of chapter 1 of this subtitle and chapters 4 and 5 of this subtitle;
(3) to issue fishing permits in accordance with this subtitle;

(4) to issue permits for fishing in the territorial sea or internal waters of an FSM State as authorized pursuant to section 118 of chapter 1 of this subtitle;

(5) to regulate related activities in accordance with this subtitle;

(6) to coordinate and implement fisheries monitoring and control as required under this subtitle and under international treaties to which the Federated States of Micronesia is a party;

(7) to cooperate as appropriate with other nations or territories in the region and with foreign states fishing in the region and adjacent high seas area for the conservation and management of highly migratory fish stocks;

(8) to cooperate in and coordinate as appropriate with each FSM State on fisheries management measures in the exclusive economic zone and territorial sea;

(9) to convene and chair a Fisheries Management and Surveillance Working Group as set forth in section 207 of this chapter;

(10) to employ a full-time Executive Director and such other staff as it may deem necessary;

(11) to submit the Authority's budget and
Section 7. Section 303 of title 24 of the Code of the Federated States of Micronesia (Annotated), is hereby amended to read as follows:

"Section 303. Fishing by flag fishing vessels on the high seas or in an area designated by a fisheries management agreement—compliance.

(1) Whenever fishing is permitted under subsection (5) of this section, Flag fishing vessels and citizens..."
fishing on the high seas or in an area designated by a
fisheries management agreement shall:

   (a) comply at all times with any applicable law
or agreement and the terms of any applicable permit, and
shall carry such permit on board at all times and
produce it on demand for inspection by an authorized
officer or investigating authority appointed pursuant to
a fisheries management agreement; and

   (b) give information to an authorized officer or
investigating authority appointed pursuant to a
fisheries management agreement which may be required,
including vessel position, catches, fishing gear,
fishing operations and related activities in the area of
an alleged violation of such agreement.

(2) The Authority shall establish a national record
of fishing vessels authorized to fish on the high seas
and provide access to the information contained in that
record on request by directly interested foreign states,
taking into account any applicable laws of the Federated
States of Micronesia regarding the release of such
information.

(3) Flag fishing vessels and citizens are not
permitted to engage in drift net fishing activities.

(4) The Authority may take such further measures to
implement any fisheries management agreement in respect
to flag fishing vessels as may be necessary.

(5) Flag fishing vessels and citizens shall not fish

the areas listed below:

(a) the area of high seas bounded by the

national waters of the Federated States of Micronesia,
Indonesia, Palau, and Papua New Guinea; and

(b) the area of high seas bounded by the

national waters of the Federated States of Micronesia,
Fiji, Kiribati, the Marshall Islands, Nauru, Papua New
Guinea, the Solomon Islands, and Tuvalu. On a case-by-

case basis, the Authority may exercise discretionary

exemption from this prohibition to flag fishing vessels

and citizens.

(6) Catch retention. All bigeye, skipjack and yellow

fin tuna taken by a purse seine vessel shall be retained

on board and then landed or transshipped in accordance

with this title, except for:

(a) fish clearly and demonstrably unfit for

human consumption; and

(b) the final set of a trip when there may be

insufficient space to accommodate all fish caught in

that set. It is the duty of the Master of fishing

vessel to report fish that is discarded under (1) (a)

and (b) of this subsection.”

Section 8. Section 402 of title 24 of the Code of the
Federated States of Micronesia (Annotated), is hereby amended to read as follows:

"Section 402. Negotiation of access agreements. The Authority shall negotiate and enter into access agreements on behalf of the Government of the Federated States of Micronesia in accordance with this subtitle. Such agreements may, at the Authority's discretion:

(1) establish fees to be collected for permits issued under the access agreement;

(2) establish a minimum or maximum number of vessels to be granted access under the agreement; [and]

(3) establish a maximum number of fishing days or such other rights to be granted under an access agreement; and

(4) [permit the rebate of access fees in accordance with section 403(2) of this subtitle, as the Authority deems appropriate at the end of the licensing period if the operator of any applicable vessel participated substantially in shore-based developments or otherwise made a substantial contribution to the development of the fishing industry of the Federated States of Micronesia.”

Section 9. Section 404 of title 24 of the Code of the Federated States of Micronesia (Annotated), is hereby amended to read as follows:
“Section 404. Access agreements—minimum terms and conditions.

(A) All access agreements shall include the following minimum terms:

(1) the foreign party recognizes the sovereign rights and exclusive fishery management authority of the Federated States of Micronesia within the exclusive economic zone;

(2) the operator and each member of the crew shall comply with the applicable access agreement, applicable permit conditions, this subtitle, all regulations issued pursuant to this subtitle and all other applicable laws and regulations;

(3) the operator shall:

(a) accept the Authority's authorized observers;

(b) provide any authorized observer, while on board the vessel, at no expense, with officer level accommodations, food and medical facilities;

(c) meet the following costs of the authorized observer:

(i) full travel costs to and from the vessel;

(ii) salary; and

(iii) full insurance coverage;

(d) display any permit or permit number issued for any such vessel, pursuant to this subtitle, or any
other documentation as required by the Authority to be displayed, under any access agreement, in the wheelhouse of such vessel;

(e) ensure that appropriate position-fixing and identification equipment is installed and maintained in working order on each vessel;

(f) ensure that the vessel is marked and identified in accordance with the Food and Agricultural Organization (FAO) approved Standard Specifications for the Marking and Identification of Fishing Vessels;

(g) ensure the continuous monitoring of the international distress and call frequency 2182 kHz (HF) or the international safety and call frequency 156.8 MHz (channel 16, VHF-FM) to facilitate communication with the fisheries management, surveillance and enforcement authorities;

(h) ensure that a recent and up-to-date copy of the International Code of Signals (INTERCO) is on board and accessible at all times;

(i) ensure that the vessel is seaworthy and contains adequate life safety equipment and survival gear for each passenger and member of the crew;

(j) ensure that, promptly upon direction by the Authority, each vessel will have installed, maintained and fully operational at all times on board a
transponder, in accordance with section 611 of chapter 6 of this subtitle, and shall be responsible for all operational and maintenance costs of the transponder and cooperate fully with the Authority in their utilization.

(4) the party to the access agreement shall, for the duration of the access agreement:

(a) appoint and maintain a resident agent in the Federated States of 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 vessel, and shall notify the Federated States of Micronesia 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;

(b) not exceed any allocation which may be established in any given licensing period in accordance with this subtitle;

(c) ensure compliance by each fishing vessel, its operator and crew members, with the access agreement, all laws of the Federated States of
Micronesia and the terms of the permit; and
(d) ensure compliance by each fishing vessel, its operator and crew members, with subregional and regional conservation and management measures for highly migratory fish stocks.

(B) On such further terms and conditions as may be modified or expanded by regulation promulgated by the Authority in accordance with the Administrative Procedures Act, the following terms and conditions are mandatory to every access agreement:

(1) Catch retention. All bigeye, skipjack and yellowfin tuna taken by a purse seine vessel shall be retained on board and then landed or transshipped in accordance with this title, except for:

(a) fish clearly and demonstrably unfit for human consumption; and

(b) the final set of a trip where the Authority has authorized net-sharing.

It is the duty of master of fishing vessel to report fish discard under (1) (a) and (b) of this subsection.

(2) Use of fish aggregating device. There shall be no deployment or servicing of fish aggregating device and associated electronic equipment, or fishing by purse seine vessels on floating objects, between 0001 hours GMT on 1 July and 2359 hours GMT on 30 September each
year, except that:

(a) by regulation, the Authority may grant exemption to fishing vessels that have suffered disproportionate burden from the prohibition on the use of fish aggregating device; and

(b) by regulation, the Authority may provide for appropriate arrangement set out in a FAD management plan to meet the requirements of domestic fishing vessels that are highly dependent on fishing on floating objects.

(3) Closure of high seas areas. A fishing vessel shall not fish the areas listed below:

(a) the area of high seas bounded by the national waters of the Federated States of Micronesia, Indonesia, Palau, and Papua New Guinea; and

(b) the area of high seas bounded by the national waters of the Federated States of Micronesia, Fiji, Kiribati, the Marshall Islands, Nauru, Papua New Guinea, the Solomon Islands, and Tuvalu."

Section 10. Section 407 of title 24 of the Code of the Federated States of Micronesia (Annotated), is hereby amended to read as follows:

"Section 407. Related activities - transshipment. (1) The operator of a foreign fishing vessel shall:

(a) not transship at sea under any
circumstances, except where specifically authorized by
the Authority;

(b) provide seventy-two (72) hours notice to the
Authority of a request to transship any or all of the
fish on board and shall provide the name of the vessel,
its international radio call sign, its position, the
catch on board by species, the time and port where such
transshipment is requested to occur and an undertaking
to pay all fees required under the laws of the Federated
States of Micronesia;

(c) only transship at the time and port
authorized for transshipment; and

(d) comply with all conditions attached to the
authorization for transhipment;

(e) pay such fees required by the Authority or
prescribed by regulation; and

(f) submit full reports on transshipping on such
forms as may be required by the Authority or prescribed
by regulation.

(g) shall allow and assist any person identified
as an authorized officer or an officer of the licensing
member full access to and use of facilities and
equipment, which the officer may determine is necessary
to carry out his duties; have full access to the bridge,
fish on board and areas which may be used to hold,
process, weigh and store fish; remove samples; have full access to the vessel’s records, including its log and documentation for the purpose of inspection and photocopying; and gather any other information required to fully monitor the activity;

(h) shall not assault, obstruct, resist, delay, refuse boarding to, intimidate or interfere with any such officer in the performance of his duties.

(2) During transshipment in the Federated States of Micronesia the foreign party and operator of each vessel shall comply with all applicable National and State laws and regulations in the Federated States of Micronesia relating to protection of the environment, including without limitation, sewage holding tank requirements.

(3) Any person who violates subsection (1)(a), (1)(c), (1)(d), (1)(e), (1)(f), (1)(g), (1)(h) or (2) of this section shall be subject to a civil penalty of not less than $75,000 and not more than $275,000."

Section 11. Section 603 of title 24 of the Code of the Federated States of Micronesia (Annotated), as amended by Public Law No. 18-109, is hereby further amended to read as follows:

"Section 603. Powers of authorized officers.

(I) within the fishery waters.

(1) For the purposes of enforcing this subtitle, any
authorized officer may:

(a) stop, board, remain on board and search any vessel in the fishery waters that he reasonably believes is a fishing vessel or a vessel which is used for, equipped to be used for or of a type that is normally used for related activities as the term related activities is defined in section 102 of chapter 1;

[(b) stop, board, remain on board and search any flag fishing vessel outside of the fishery waters;]

(b)[(c)] stop and search any vessel, vehicle or aircraft that he reasonably believes may be transporting fish or engaging in other activities relating to fishing;

(c)[(d)] require the master or any crew member or other person aboard to inform him of the name, call sign and country of registration of the vessel and the name of the master, owner, charterer and crew members;

(d)[(e)] examine the master or any crew member or other person aboard about the cargo, contents of holds and storage spaces, voyage and activities of the vessel;

(e)[(f)] make such examination and inquiry as may appear necessary concerning any vessel, vehicle or aircraft in relation to which any of the powers conferred by this subsection have been or may be exercised and take samples of any fish or fish product
found therein;
(f) require to be produced, examine and take copies of any permit, logbook, record or other documents required under this subtitle or concerning the operation of any vessel or aircraft;
(g) make an entry dated and signed by him in the logbook of such vessel or aircraft;
(h) require to be produced and examine any fish, fishing gear or appliance, explosive, poison or other noxious substance;
(i) give directions to the master and any crew member of any vessel, vehicle or aircraft stopped, boarded or searched as may be necessary or reasonably expedient for any purpose specified in this subtitle or to provide for the compliance of the vessel, vehicle or aircraft, or master or any crew member with the conditions of any permit;
(j) endorse any permit; [and]
(k) arrest any person who assaults him or any other authorized officer in the exercise of his duties under this subtitle.

(2) Where an authorized officer has reasonable grounds to believe an offense against this subtitle is being or has been committed, he may without a warrant:
(a) enter, inspect and search any vessel,
premises, other than premises used exclusively as a dwelling house, in which he has reasonable grounds to believe an offense has been or is being committed or fish have been taken illegally and are being stored;

(b) stop, enter, search and stay in or on any vessel, vehicle or aircraft which he reasonably suspects of transporting fish or fish products;

(c) take samples of any fish found in any vessel or vehicle inspected or within any premises searched under this subtitle;

(d) after hot pursuit of a foreign fishing vessel undertaken in accordance with international law and commenced within the fishery waters, stop, board and search outside the fishery waters any fishing vessel that he has reasonable grounds to believe has been used in the commission of an offense, exercise any powers conferred by this subtitle in accordance with international law, and bring such vessel and all persons and things on board within the fishery waters;

(e) seize:

(i) any vessel (including its fishing gear, equipment, stores and cargo), vehicle, fishing gear, nets or other fishing appliances or aircraft that he has reasonable grounds to believe has been or is being used in the commission of an offense or in respect of which
the offense has been committed;

(ii) any fish or fish products that he has reasonable grounds to believe have been caught in the commission of an offense or are possessed in contravention of this subtitle;

(iii) any logs, charts or other documents required to be maintained by this subtitle or under the terms of any license or other authorization or which he has reasonable grounds to believe show or tend to show, with or without other evidence, the commission of an offense against this subtitle; and

(iv) any thing which he has reasonable grounds to believe might be used as evidence in any proceeding under this subtitle;

(f) arrest any person who he has reasonable grounds to believe has committed an offense against this subtitle; and

(g) issue citations as authorized by regulations promulgated under section 703 of chapter 7 of this subtitle.

(3) An authorized officer may, while arresting any person or fishing vessel that he has reasonable grounds to believe has done any act in contravention of this subtitle, use such force as is reasonably necessary in the circumstances to effect the arrest.
(4) Any person arrested without a warrant under this section shall be detained and dealt with in accordance with law.

(5) An authorized officer may:

(a) execute any warrant or other process issued by any court of competent jurisdiction; and

(b) exercise any other lawful authority.

(6) A written receipt shall be given for any article or thing seized under this section and the grounds for such seizure shall be stated in such receipt.

(II) Beyond the fishery waters.

(1) An authorized officer may exercise any of the powers under this Title beyond the fishery waters of the Federated States of Micronesia in respect of any flag fishing vessel, foreign fishing vessel or any person on board any such vessel and relating to fisheries inspection, compliance or enforcement provided that the exercise of those powers is authorized by an access agreement or fisheries management agreement to which the Federated States of Micronesia is a party or authorized under a conservation and management measure of a regional fisheries management organization or arrangement to which the Federated States of Micronesia is a member.

(2) In exercising his powers beyond the fishery
waters, an authorized officer shall comply with the procedures and requirements under such access agreement or fisheries management agreement or conservation and management measures implemented by a regional fisheries management organization or arrangement.

(3) The Authority may make regulations providing for additional measures and powers for authorized officers beyond the fishery waters.”

Section 12. Section 606 of title 24 of the Code of the Federated States of Micronesia (Annotated), is hereby amended to read as follows:

"Section 606. Appointment of authorized observers; port samplers.

(1) The Executive Director may appoint, in writing, any person to be an authorized observer or class of persons to be authorized observers for the purposes of this subtitle, any access agreement or any fisheries management agreement.

(2) Authorized observers appointed under this subtitle shall exercise their duties beyond the fishery waters in accordance with any access agreement or fisheries management agreement. The Authority may enter into such reciprocal agreement or arrangement necessary to facilitate the exercise of the authorized observer’s duties beyond the fishery waters."
(3)[{(2)}] The Executive Director may appoint, in writing, any authorized observer to serve as a port sampler. Port samplers shall perform the duties of authorized observers at a point of transshipment or port located either inside or outside the Federated States of Micronesia.

[(3) Authorized observers and port samplers shall not be appointed as authorized officers and shall not be authorized to take enforcement action under this subtitle.]

(4) The Authority may promulgate regulations that provide, inter alia, for:

(a) observer duties within the fishery waters;

(b) observer duties on the high seas and in waters under the jurisdiction of another nation;

(c) conduct of observers and related penalties;

(d) observer agents including the conduct and registration or licensing of such agents; and

(e) reciprocal agreements or arrangements for the recognition of observers appointed by another nation.

(5)[{(4)}] The requirements of sections 607(1), 607(2), 607(6), 607(7), 608, 609 and 610 shall apply equally to authorized observers and port samplers."

Section 13. Section 611 of title 24 of the Code of the
Federated States of Micronesia (Annotated), is hereby amended to read as follows:

"Section 611. Transponders required.

(1) The Authority may require, as a condition of fishing in the exclusive economic zone, that the operator of any vessel:

(a) install on such vessel, at its own expense, a transponder approved by the Authority;

(b) maintain such transponder in good working order at all times during the period of validity of a permit [while in the fishery waters or such other area as may be agreed or designated]; [and]

(c) consent to the monitoring of the transponder by the Authority in all waters and at all times during the period of validity of the permit; and

(d) ensure that any information or data required by the Authority to be transmitted by the transponder is transmitted continuously, accurately and effectively to the designated receiver."

Section 14. Section 701 of title 24 of the Code of the Federated States of Micronesia (Annotated), is hereby amended to read as follows:

"Section 701. Jurisdiction of the court.

(1) Any case or controversy arising under this subtitle or out of any act or omission committed in
contravention of any provision of this subtitle by any person:

(a) within the fishery waters; or

(b) outside the fishery waters by any flag vessel, citizen or person ordinarily resident in the Federated States of Micronesia; or

(c) by any person on board any fishing vessel registered in the Federated States of Micronesia shall be subject to the jurisdiction of the Supreme Court of the Federated States of Micronesia and judicial proceedings shall be taken as if such act or omission had taken place in the Federated States of Micronesia within the jurisdiction of the Supreme Court of the Federated States of Micronesia.

(2) Where an authorized officer is exercising any powers conferred on him outside the fishery waters in accordance with section 603(II) of chapter 6 of this subtitle, any act or omission of any person in contravention of any of the provisions of this subtitle shall be deemed to have been committed within the fishery waters.

(3) Notwithstanding any provision of any other law of the Federated States of Micronesia, any information or complaint with respect to any violation of this subtitle must be filed within two years of the discovery of
(4) The Court may at any time enter restraining orders or prohibitions, issue warrants, issue process in rem or other processes, prescribe and accept satisfactory bonds or other security, and take such other actions as are in the interests of justice.”

Section 15. Section 907 of title 24 of the Code of the Federated States of Micronesia (Annotated), is hereby amended to read as follows:

“Section 907. Fishing, Conducting Research or training or Related Activities without a valid permit.

(1) No person shall use any [fishing] vessel for, and the crew and operator of any [fishing] vessel shall not engage in, commercial or non-commercial fishing, research or related activities in the [exclusive economic zone] fishery waters without a valid and applicable permit as required pursuant to sections 103, 104 or 117 of chapter 1 of this subtitle.

(2) Any person who commits an act in violation of this section shall be subject to a civil penalty of not less than $100,000 and not more than $1,000,000.

(3) Where a person who violates this section for not having a valid permit employs fish aggregating
device prohibited by section 404(B)(2) of chapter 4 of this subtitle, the maximum penalty applicable under this section shall be $2,000,000."

Section 16. Section 910 of title 24 of the Code of the Federated States of Micronesia (Annotated), is hereby amended to read as follows:

"Section 910. Improper stowage of fishing gear and reporting requirement.

(1) No operator of a fishing vessel in the fishery waters shall refuse or otherwise fail to stow all fishing gear in such a manner that it is not readily available for use in fishing except when such fishing vessel is in an area in which it is authorized to fish in accordance with this subtitle.

(2) No operator of a vessel which is used for, equipped to be used for or of a type that is normally used for fishing or related activities transiting the fishery waters shall, upon entry and while within the fishery waters, refuse or otherwise fail to report its name, International Radio Call Sign, flag registration, date and time, position (to 1 minute of arc), complement, intended activity in the fishery waters, catch on board, and such other information prescribed, to the Authority in the manner prescribed."
(3) Where the operator of a vessel transiting the fishery waters refuses or otherwise fails to report the information described in subsection (2), there shall be a refutable presumption that all fish found on board such vessel have been caught within the fishery waters in violation of this subtitle.

(4) Any person who commits an act in violation of this section shall be subject to a civil penalty of not less than $50,000 and not more than $500,000."

Section 17. Section 911 of title 24 of the Code of the Federated States of Micronesia (Annotated), is hereby amended to read as follows:

Section 911. Violation of marine space.

(1) No person shall use a vessel which is used for, equipped to be used for or of a type that is normally used for related activities for entering or remaining within the exclusive economic zone in violation of any provision of this subtitle.

(2) No operator of a vessel which is used for, equipped to be used for or of a type that is normally used for related activities entering or remaining within the exclusive economic zone shall, upon entry and while within the exclusive economic zone, refuse or otherwise fail to report its name, International Radio Call Sign,
flag registration, date and time, position (to 1 minute of arc), complement, intended activity in the exclusive economic zone, catch on board, and such other information prescribed, to the Authority in the manner prescribed.

(3) Where the operator of a vessel entering or remaining within the exclusive economic zone refuses or otherwise fails to report the information described in subsection (2), there shall be a refutable presumption that the vessel has engaged in related activities within the exclusive economic zone in violation of this subtitle.

(4) Any person who violates this section shall be subject to a civil penalty of not less than $50,000 and not more than $500,000.”

Section 18. This act shall become law upon approval by the President of the Federated States of Micronesia or upon its becoming law without such approval.