

A BILL FOR AN ACT

To further amend title 24 of the Code of the Federated States of Micronesia, as amended, by amending section 102 of chapter 1, by amending section 801 of chapter 8, by amending sections 901 and 902 of chapter 9, to make a technical correction and to specify the disposition of revenues from fines, penalties, and forfeitures, and for other purposes.

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

1 Section 4. 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. Definitions. 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
11 includes bilateral and multilateral instruments
12 applicable at the national, subregional, regional or
13 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
17 subtitle, to administer a fisheries access agreement or
18 fisheries management agreement to which the Federated

1 States of Micronesia is party.

2 (3) 'Agent' includes a person appointed or
3 designated by a foreign fishing company to act as the
4 legal representative of that company within the
5 Federated States of Micronesia, including acceptance of
6 and response to legal process, pursuant to section
7 404(4) (a) of chapter 4 of this subtitle.

8 (4) 'Aircraft' means any craft capable of self-
9 sustained movement through the atmosphere and includes
10 helicopters.

11 (5) 'Atoll' means a naturally formed coral reef
12 system which has one or more islands situated on the
13 reef system, including, but not limited to, Ngulu,
14 Ulithi, Sorol, Eauripi, Woleai, Faraulep, Ifalik,
15 Olaimarao, Elato, Lamotrek, West Fayu, Puluwat, Pulap,
16 Pulusuk, Namonuito, Kuop, Nomowin, Murilo, Losap,
17 Namoluk, Satawan, Etal, Lukunor, Minto Reef, Oroluk,
18 Nukuoro, Kapingamarangi, Pakin, Ant, Sapwuahfik,
19 Mwoakilloa and Pingelap.

20 (6) 'Authority' means the National Oceanic Resource
21 Management Authority established by section 201 of
22 chapter 2 of this subtitle.

23 (7) 'Authorized observer' means any person
24 authorized in writing by the Authority to act as an
25 observer on fishing vessels for the purposes of this
26 subtitle, including any observer authorized pursuant to

1 the provisions of an access agreement or a fisheries
2 management agreement.

3 (8) 'Authorized officer' means any person or
4 category of persons designated pursuant to section 602
5 of chapter 6 of this subtitle as an authorized officer.

6 (9) 'Automatic location communicator' or
7 'transponder' means a device placed on a fishing vessel
8 that transmits, either in conjunction with another
9 device or devices or independently, information
10 concerning the position, fishing and other activities of
11 the vessel.

12 (10) 'Based in the Federated States of Micronesia'
13 means using land-based facilities in the Federated
14 States of Micronesia to support fishing, including
15 location of the home port of a vessel in the Federated
16 States of Micronesia, landing or transshipping all fish
17 harvested within the exclusive economic zone and/or
18 operating under a joint venture arrangement in the
19 Federated States of Micronesia, or under arrangements
20 where the operator of a vessel is participating in
21 shore-based developments or is otherwise making a
22 substantial contribution to the development of the
23 domestic tuna industry.

24 (11) 'Buy' includes:

25 (a) barter or attempt to barter;

26 (b) purchase or attempt to purchase;

1 (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;

26 (b) developing new stocks of fish; or

1 (c) fishing in previously unexploited areas.

2 (17) 'Court' means the Supreme Court of the Federated
3 States of Micronesia.

4 (18) 'Domestic fishing' means any fishing by a local
5 fishing vessel longer than twenty-seven (27) feet in
6 overall length, but not including commercial pilot
7 fishing.

8 (19) (Reserved)

9 (20) (Reserved)

10 (21) 'Drift net' means a gillnet or other net or
11 arrangement of nets which is more than 2.5 kilometers
12 (1.56 miles) in length, the purpose of which is to
13 enmesh, entrap or entangle fish.

14 (22) 'Drift net fishing activities' includes fishing
15 with the use of a drift net and any related activities
16 including transporting, transshipping and processing any
17 drift net catch, and provisioning of food, fuel and
18 other supplies for vessels used or outfitted for drift
19 net fishing.

20 (23) 'Exclusive economic zone' means the exclusive
21 economic zone as defined in title 18 of the Code of the
22 Federated States of Micronesia.

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

1 subtitle.

2 (25) 'Export' means to:

3 (a) send or take out of the country;

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

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

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

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

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

13 (27) 'Fish aggregating device' means any man-made or
14 partly man-made floating or semi-submerged device,
15 whether anchored or not, intended for the purpose of
16 aggregating fish, and includes any natural floating
17 object on which a device has been placed to facilitate
18 its location.

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

24 (29) 'Fisheries management agreement' means any
25 agreement, arrangement or treaty in force to which the
26 Federated States of Micronesia is a party, not including

1 any access agreement, which has as its primary purpose
2 cooperation in or coordination of fisheries management
3 measures in all or part of the region, or implementation
4 of a multilateral access agreement, including, but not
5 limited to, fisheries monitoring, control and
6 surveillance and establishing criteria or requirements
7 for fishing and fisheries access.

8 (30) 'Fishery' or 'Fisheries' means one or more stock
9 of fish or any fishing operation based on such stocks
10 which can be treated as a unit for purposes of
11 conservation and management, taking into account
12 geographical, scientific, technical, recreational,
13 economic and other relevant characteristics.

14 (31) 'Fishery waters' means the exclusive economic
15 zone, the territorial sea and internal waters as
16 described in title 18 of the Code of the Federated
17 States of Micronesia, and any other waters over which
18 the Federated States of Micronesia claims sovereignty or
19 sovereign Rights.

20 (32) 'Fishing' means:

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

23 (b) any activity which can reasonably be expected
24 to result in the locating, catching, taking or
25 harvesting of fish;

26 (c) the placing, searching for or recovering of

1 any fish aggregating device or associated electronic
2 equipment such as radio beacons;

3 (d) any operation at sea directly in support of
4 or in preparation for any activity described in this
5 subsection except for operations defined as related
6 activities in subsection (51) of this section; and

7 (e) the use of an aircraft in relation to any
8 activity described in this subsection except for flights
9 in emergencies involving the health or safety of crew
10 members or the safety of a vessel.

11 (33) 'Fishing gear' means any equipment, implement, or
12 other thing that can be used in the act of fishing,
13 including any fishing net, rope, line, float, trap,
14 hook, winch, boat, beacon or locating device, aircraft
15 or helicopter.

16 (34) 'Fishing vessel' means any vessel, boat, ship or
17 other craft which is used for, equipped to be used for
18 or of a type that is normally used for fishing as the
19 term fishing is defined in subsection (32) of this
20 section.

21 (35) 'Flag fishing vessel' means any foreign fishing
22 vessel that is registered in the Federated States of
23 Micronesia pursuant to title 18 of the Code of the FSM
24 and any domestic fishing vessel.

25 (36) 'Foreign fishing' means any fishing not defined
26 as domestic fishing, and not including commercial pilot

1 fishing or fishing from a local fishing vessel less than
2 or equal to twenty-seven (27) feet in overall length.

3 (37) 'Foreign fishing vessel' means any fishing vessel
4 other than a local fishing vessel.

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

8 (39) 'Foreign recreational fishing' means fishing
9 using a foreign fishing vessel for recreational or sport
10 purposes.

11 (40) 'High seas' means all parts of the sea that are
12 not included in the exclusive economic zone, in the
13 territorial sea, or in the internal water of any nation,
14 or in the archipelagic waters of an archipelagic nation.

15 (41) 'Internal waters' means waters on the landward
16 side of the baseline of the territorial sea of any
17 island within the Federated States of Micronesia.

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

20 (43) 'Local fishing vessel' means any fishing vessel
21 wholly owned and controlled by:

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

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

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

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

10 (44) 'Master' in relation to any fishing vessel means
11 the person in charge or apparently in charge of that
12 vessel.

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

17 (46) 'Net proceeds' means the proceeds from a civil
18 penalty, criminal fine, or forfeiture imposed for
19 violation of an act prohibited by this title, less the
20 costs incurred by the National Government to secure such
21 proceeds, including, but not limited to, court costs,
22 fuel, wages and salaries, advertising, and appraisals,
23 as determined by the Secretary of Justice, or his
24 designee.

25 ([46] 47) 'Officer' means any authorized officer or
26 national police officer, and includes any officer of a

1 vessel or aircraft used for the enforcement of this act,
2 whether or not such officers are officials of the
3 Government of the Federated States of Micronesia or of
4 one of the four State governments.

5 (~~[47]~~ 48) 'Operator' means any person who is in charge
6 of or directs or controls a fishing vessel, or for whose
7 direct economic or financial benefit a vessel is being
8 used, including the master, owner, and charterer.

9 (~~[48]~~ 49) 'Owner' in relation to a fishing vessel means
10 any person exercising or discharging or claiming the
11 right or accepting the obligation to exercise or
12 discharge any of the powers or duties of an owner,
13 whether on his own behalf or on behalf of another, and
14 includes a person who owns the vessel jointly with any
15 other person or persons and any manager, director or
16 secretary of any corporate body or company that holds an
17 ownership interest in the vessel.

18 (~~[49]~~ 50) 'Permit' means any permit issued under this
19 subtitle or under an access agreement entered into
20 pursuant to this subtitle.

21 (~~[50]~~ 51) 'Person' means any natural person or business
22 enterprise and includes, but is not limited to, a
23 corporation, partnership, cooperative, association, the
24 government of any of the four States, or any political
25 subdivision thereof, and any foreign government,
26 subdivision of such government or other entity.

1 (~~[51]~~ 52) '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.

5 (~~[51]~~ 53) 'Recreational fishing' means fishing for sport
6 or leisure.

7 (~~[53]~~ 54) 'Region' means that area of land and ocean
8 which falls within the sovereignty and sovereign rights
9 of the member countries of the South Pacific Forum
10 Fisheries Agency, whose headquarters are located in
11 Honiara, Solomon Islands, and includes high seas within
12 such area, and for the purposes of data collection,
13 includes that area of the Western and Central Pacific
14 Ocean which falls within the jurisdiction and sovereign
15 rights of the member countries of the Secretariat of the
16 Pacific Community located in Noumea, New Caledonia, and
17 'regional' shall have a corresponding meaning.

18 (~~[54]~~ 55) 'Regional access license' means a regional
19 access license issued to any fishing vessel of a party
20 to a multilateral access agreement or fisheries
21 management agreement, in accordance with such agreement.

22 (~~[55]~~ 56) 'Regulation' or 'Regulations' means any
23 regulation which may be promulgated by the Authority
24 pursuant to this act.

25 (~~[56]~~ 57) 'Related activities' in relation to fishing
26 means:

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

7 (~~57~~ 58) 'Secretary' means the Secretary of the

8 Department of Justice.

9 (~~58~~ 59) 'Sell' includes the exchange of any fish or

10 fish product or other thing for cash or for anything

11 which has value or which can be exchanged for cash, and

12 includes any exchange by barter.

13 (~~59~~ 60) '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.

18 (~~60~~ 61) 'Subsistence fishing' means fishing by a

19 citizen or a resident substantially for personal

20 consumption, and does not include any fishing resulting

21 or intending or appearing to result, directly or

22 indirectly, in the sale or trading of any fish which may

23 be taken during the fishing operations.

24 (~~61~~ 62) 'Transponder' or 'automatic location

25 communicator' means a device placed on a fishing vessel

26 that transmits, either in conjunction with another

1 device or devices or independently, information
2 concerning the position, fishing and other activities of
3 the vessel.

4 (~~62~~ 63) 'Transshipment' means the transfer of any or
5 all fish or fish products to or from any vessel or
6 aircraft for the purposes of transporting such fish or
7 fish products elsewhere.

8 (~~63~~ 64) 'United Nations Agreement' means the agreement
9 for the implementation of the provisions of the United
10 Nations Convention on the Law of the Sea of 10 December
11 1992 relating to the conservation and management of
12 straddling fish stocks and highly migratory fish stocks.

13 (~~64~~ 65) 'United Nations Convention' means the United
14 Nations Convention on the Law of the Sea, 1982.

15 (~~65~~ 66) 'Vehicle' means any car, truck, van, bus,
16 trailer or other powered land conveyance.

17 (~~66~~ 67) 'Vessel' means any boat, ship, canoe or other
18 water-going craft."

19 Section 2. Section 801 of title 24 of the Code of the
20 Federated States of Micronesia, as enacted by Public Law No. 12-
21 34, is hereby amended to read as follows:

22 "Section 801. Forfeiture of property.

23 (1) Any fishing vessel, including its fishing gear,
24 furniture, appurtenances, stores and cargo used in or
25 connected with the commission of any act prohibited by
26 this subtitle, within the territorial sea or internal

1 waters of the Federated States of Micronesia, shall be
2 subject to forfeiture to the Government of the Federated
3 States of Micronesia pursuant to a civil proceeding
4 under this section.

5 (2) Any fishing vessel, including its fishing gear,
6 furniture, appurtenances or stores used in or connected
7 with the commission of any act prohibited by this
8 subtitle, within the exclusive economic zone outside the
9 territorial seas of the Federated States of Micronesia,
10 shall be released upon the posting of a bond or other
11 surety.

12 (3) Any vehicle or aircraft, all or any part of any
13 fish or fish product and the proceeds of the sale of any
14 fish seized in connection with a violation of this
15 subtitle, shall be subject to forfeiture to the
16 Government of the Federated States of Micronesia
17 pursuant to a civil proceeding under this section.

18 (4) The Supreme Court of the Federated States of
19 Micronesia shall have jurisdiction, upon application by
20 the Secretary of the Department of Justice on behalf of
21 the Federated States of Micronesia, to order any
22 forfeiture authorized under subsection (1) of this
23 section.

24 (5) If a judgment is entered for the Government of the
25 Federated States of Micronesia in a civil forfeiture
26 proceeding under this section, the Secretary of the

1 Department of Justice shall seize any property or other
2 interest declared forfeited to the Government of the
3 Federated States of Micronesia, which has not previously
4 been seized pursuant to this subtitle.

5 (6) The forfeited item or items shall be sold and the
6 proceeds deposited into the General Fund of the
7 Federated States of Micronesia and distributed in
8 accordance with subsection [~~(6)~~] (7) of this section.

9 (7) [~~Fifty percent of the revenues~~] The net proceeds
10 from fines and forfeitures shall be distributed to an
11 FSM State[s ~~which may be affected by the situation which~~
12 ~~has given rise to the fine and/or forfeiture~~] if the
13 offense was committed within the territorial
14 jurisdiction of that State.

15 (8) Pending completion of the civil forfeiture
16 proceeding, the item or items subject to forfeiture, or
17 any part thereof, may be released at the discretion of
18 the Court upon deposit with the Court of a satisfactory
19 bond, surety or other security at least equal to the
20 fair market value of the seized property. Exoneration
21 of such bond, surety or other security shall be
22 conditional upon return of the released property to the
23 appropriate court upon order, without any impairment of
24 its value, or by paying the monetary value of the
25 released property to the General Fund of the Federated
26 States of Micronesia upon order of the Court. Such

1 bond, surety or other security shall be forfeited in the
2 event that any condition is breached as shall be
3 determined by the Court, and judgment shall be
4 recoverable by the Court against the principal of any
5 surety for any such breach.

6 (9) In the event there is an appeal from an order for
7 forfeiture, the Court may continue any such bond, surety
8 or other security deposited in accordance with
9 subsection (6) of this section during the pendency of
10 the appeal and any retrial or rehearing on remand or may
11 require additional security to be deposited with the
12 Court."

13 Section 3. Section 901 of title 24 of the Code of the
14 Federated States of Micronesia, as enacted by Public Law No. 12-
15 34, is hereby amended to read as follows:

16 "Section 901. Civil Penalties.

17 (1) Any person who is found by the Supreme Court of
18 the Federated States of Micronesia in a civil proceeding
19 to have committed an act prohibited by this subtitle
20 shall be liable to the Federated States of Micronesia
21 for a civil penalty.

22 (2) Each day of a continuing violation shall
23 constitute a separate offense, for which a separate
24 penalty shall be assessed.

25 (3) In determining the amount of the penalty, the
26 Supreme Court of the Federated States of Micronesia

1 shall take into account the nature, circumstances,
2 extent and gravity of the prohibited acts committed and,
3 with respect to the violator, the degree of culpability,
4 any history of prior offenses, whether there are
5 multiple violations which together constitute a serious
6 disregard of conservation and management measures and
7 such other matters as justice may require.

8 (4) The Secretary is authorized to initiate all
9 proceedings under this section and to recover the amount
10 assessed as a civil penalty.

11 (5) The proceeds of civil penalties shall be deposited
12 into the General Fund of the Federated States of
13 Micronesia. [~~Fifty percent of the proceeds from civil
14 penalties shall then be distributed to any FSM State
15 which may be affected by the situation which has given
16 rise to this action.] The net proceeds from civil
17 penalties shall then be distributed to an FSM State if
18 the offense for which the civil penalty was assessed was
19 committed within the territorial jurisdiction of that
20 State."~~

21 Section 4. Section 902 of title 24 of the Code of the
22 Federated States of Micronesia, as enacted by Public Law No. 12-
23 34, is hereby amended to read as follows:

24 "Section 902. Criminal penalties.

25 (1) Any person who commits an act prohibited by this
26 subtitle is subject to criminal prosecution.

1 (2) The Captain and any crew member of a fishing
2 vessel, who is subject to criminal charges solely for
3 violations of this subtitle occurring outside the
4 territorial waters but within the exclusive economic
5 zone of the Federated States of Micronesia shall be
6 released upon posting of reasonable bond or other
7 surety.

8 (3) Unless otherwise provided, all maximum penalties
9 described in this subtitle shall be applicable in both
10 civil and criminal proceedings in respect to the same
11 prohibited acts. In addition to any fine, any criminal
12 violation shall also be punishable by imprisonment for
13 not more than ten (10) years, if in the commission of
14 any such offense the person:

15 (a) uses a dangerous weapon;

16 (b) engages in conduct that causes bodily injury
17 to any authorized officer or authorized observer or
18 other officer authorized to enforce the provisions of
19 this subtitle; or

20 (c) threatens any such person with bodily injury.

21 (4) Each day of a continuing violation shall be
22 considered a separate offense, for which a separate
23 penalty shall be assessed.

24 (5) Fines shall be deposited into the General Fund of
25 the Federated States of Micronesia. [~~Fifty percent of~~
26 ~~the proceeds from criminal fines shall be distributed to~~

1 ~~any FSM State(s) which may be affected by the situation~~
2 ~~which has given rise to the action.] The net proceeds~~
3 ~~from criminal fines shall then be distributed to an FSM~~
4 ~~State if the offense for which the criminal fine was~~
5 ~~imposed was committed within the territorial~~
6 ~~jurisdiction of that State.~~

7 (6) Criminal penalties shall be imposed without regard
8 to whether the person committing the prohibited act is
9 also subject to civil proceedings for the same
10 violation, and without regard to the amount of any civil
11 penalty imposed or which may be imposed in such civil
12 proceedings.

13 (7) Nothing in this subtitle shall be interpreted to
14 allow the abatement of a criminal prosecution upon the
15 late satisfaction of a civil judgment or payment of a
16 fine or other determination pursuant to administrative
17 proceedings under this subtitle."
18

19 Section 5. This act shall become law upon approval by the
20 President of the Federated States of Micronesia or upon its
21 becoming law without such approval.
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23 Date: 11/06/02

Introduced by: /s/ Dohsis Halbert
Dohsis Halbert

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