

STANDING COMMITTEE REPORT NO. 19-220

RE: C.B. NO. 19-173/R&D

SUBJECT: AMENDMENTS TO TITLE 24 OF THE FSM CODE TO  
ENHANCE THE ABILITY OF THE NATIONAL  
GOVERNMENT TO ENFORCE FISHERIES  
ACTIVITIES IN AND BEYOND THE FISHERY  
WATERS

MARCH 31, 2017

The Honorable Wesley W. Simina  
Speaker, Nineteenth Congress  
Federated States of Micronesia  
Eighth Special Session, 2017

Dear Mr. Speaker:

Your Committee on Resources and Development, to which was referred  
C.B. No. 19-173, entitled:

"A BILL 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, ORDER TO ENHANCE THE ABILITY  
OF THE GOVERNMENT OF THE FEDERATED STATES OF MICRONESIA TO  
ENFORCE, IN ITS TERRITORY AND 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.",

begs leave to report as follows:

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The intent and purpose of the bill are expressed in its title.

**BACKGROUND**

The subject bill was transmitted to Congress on June 6, 2016, through Presidential Communication No. 19-360. This bill supersedes a bill (C.B. No. 19-148) on the same subject matter that was previously transmitted to Congress through Presidential Communication No. 19-260.

C.B. No. 19-173 is designed to enhance the ability of the National Government to enforce national fishery laws and regulations not only on the Exclusive Economic Zone but also on the high seas where applicable consistent with the obligation of the Federated States of Micronesia in accordance with conservation and management measures under international and regional conventions. The bill also reflects additional amendments brought about as a result of the recent FSM court ruling concerning the legal obligations that FSM assumed under the Third Implementing Arrangement under the Nauru Agreement.

**Public Hearings:**

A series of public hearings on C.B. No. 19-79 were held in each of the states. On February 6, 2017, your Committee held a public hearing in Kosrae State. Chairman David W. Panuelo chaired the hearing. Other members present were Vice Chairman Alik L. Alik, Senators Paliknoa K. Welly and Esmond B. Moses. Also in attendance were Assistant Attorney General Johnson Asher, Deputy Director of NORMA Mathew Chigiyal, the Program Manager for the Division of Quarantine John Wichep and the Program Manager for the Division of Trade and Investment Florian Yatilman.

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At the Kosrae hearing, witnesses expressed their strong support on the bill. The only sarcastic comment from the leadership is the sharing of the fees from the fishing access agreements.

On March 9, 2017, your Committee held a public hearing on the bill in Yap State. Vice Chairman Alik L. Alik chaired the hearing. Also in attendance were the Assistant Attorney General Johnson Asher, the Deputy Director of NORMA Mathew Chigiyal and the Program Manager for the Division of Trade and Investment Florian Yatilman.

During the discussion of the bill, the leadership questioned the definition or the characterization of a "local company". Then, the leadership suggested that it is better to define the characteristic of a fishing company in the title 24 of the FSM Code or in the regulation.

On March 16, 2017, your Committee held a public hearing on the bill in Chuuk State. Vice Chairman Alik L. Alik chaired the hearing. Other members include Chairman Isaac V. Figir, Senator Robson U. Romolow and you, Speaker Wesley W. Simina. Also in attendance were the Assistant Attorney General Johnson Asher, the Deputy Director of NORMA Mathew Chigiyal and the Program Manager for the Division of Trade and Investment Florian Yatilman.

During the discussion of the bill, the leadership expressed its strong support of the bill. Apparently, the Committee shed some light on the key elements of the bill to the leadership, i.e. enforcement beyond the FSM fisheries water, the responsibility of FSM of its flagged vessels, issues in regional and international obligation by the Tuna Commission, net-sharing, observers' full insurance coverage and Third Implementation Arrangement of catch retention. The Committee informed the leadership that passing the

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bill will enhance the enforcement and surveillance over our fisheries water.

On March 27, 2017, your Committee held a public hearing on the bill in Pohpei State. Chairman David W. Panuelo chaired the hearing. Other members of Congress were Senators Ferny Perman, Esmond Moses and Joseph J. Urusemal. Also in attendance were the Executive Director of NORMA Eugene Pangelinan, the Deputy Director of NORMA Mathew Chigiyal, the Program Manager for the Division of Trade and Investment Florian Yatilman and the Program Manager for the Division of Quarantine John Wichep.

During the discussion of the bill, the same sentiment received from the other states was expressed. The leadership urged the FSM National Government to increase the state's share of the fees from the fishing access agreements.

**Summarization of relevant sections in C.B. No. 19-173.**

Section 101 of title 24 of the Code of the Federated States of Micronesia is amended to explicitly allow for the regulation of FSM flagged vessels beyond the fishery waters.

Section 102 is amended to revise existing definition of certain terms and to include new definitions to reflect contemporary practices. The new terms are as follow: '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; '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; 'Full insurance coverage' is defined basically an insurance coverage for

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the authorized observers onboard fishing vessels for personal injury, loss of life, loss of equipment and personal effects, repatriation costs, medical evacuation; 'international conservation and management measures' means measures to conserve and 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; 'licensing member' or FFA member' means a party to the South Pacific Forum Fisheries Agency Convention, 1919; '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; 'Regulation' or 'Regulations' means any regulations which may be promulgated by the Authority pursuant to this act; 'United Nations Convention' means the United Nations Convention on the Law of the Sea, 1982;; '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 fisheries management; 'zone' means the exclusive economic zone or fisheries zone of a FFA member of the Pacific Islands Forum Fisheries Agency; .

Section 103 of bill explicitly make reference to the regulations to be among the sources of legal authority for the issuance of fishing license to domestic fishing, commercial pilot fishing, foreign fishing, and other fishing and related activity as prescribed by title 24.

Section 106 is amended to provide for the implementation of legal obligations arising from international conservation and management measures that bind the Federated States of Micronesia. The proposal in subsection 3 of section 106 states that the Authority may prescribe regulations or attach such conditions to a permit or authorization to fish or conduct related activities to give effect to

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international conservation and management measures and decisions of an organization established under a fisheries management agreement. The proposal in subsection 4 of section 106 is a jurisdiction issue. 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 FSM Code, without the express consent of each of the states of the Federated States of Micronesia.

The amendment to section 204, subsection (1)(g) explicitly empowers the National Oceanic Resource Management Authority (NORMA) to promulgate regulations on fishing even on the high seas. The amendment to subsection (1)(j) gives NORMA the mandate to consult with the state authorities and national agencies in promulgating regulations that will prohibit the entry into and use of ports and facilities by vessels that engage in activities that undermine international conservation and management measures.

The amendment to section 206 added additional duty of NORMA to act as the Authority responsible for implementing the international fisheries and related obligations of the Federated States of Micronesia including the verification of catch and issuance of catch certificates.

The amendment to section 303 prohibits fishing activity in the Western high seas pocket and the Eastern high seas pocket. Generally, flag fishing vessels and citizens shall not fish at these areas; however, on a case-by-case basis, the Authority may exercise discretionary exemption from this prohibition to flag fishing vessels and citizens. In addition, a purse seine vessel shall retain on board all bigeye, skipjack and yellow fin tuna and then landed or transshipped in accordance with this title; however, a purse seine vessel can discard fish caught in these areas if unfit for human consumption or insufficient space to accommodate all fish caught in

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that set. Essentially, it is the duty of the Master of fishing vessel to report fish that are discarded.

The amendment to section 402 provides explicit reference to the power of NORMA to grant rights including fishing days, the allocation of fishing days by the Federated States of Micronesia as required under the Palau Arrangement.

The amendment to section 404 explicitly provides additional terms and conditions that are mandatory in every access agreement. In subsection 404(B)(1), the Authority must ensure that all bigeye, skipjack and yellowfin tuna taken by a purse seine shall be retained on board and then landed or transshipped in accordance with this title, except that fish clearly unfit for human consumption shall be discarded. Also an exemption to the catch retention requirement in subsection 404(B)(1) is if the final set of a trip where the Authority has authorized net-sharing. It is the duty of the Master of fishing vessel to report fish discard under subsection 404(B)(1)(a) and (b) of this section.

In subsection 404(B)(2) of this section, the use of fishing aggregating device is prohibited, however, the Authority may grant exemption to fishing vessels that have suffered disproportionate burden from this fishing aggregating device prohibition. In order for the Authority to allow fishing vessel to use fishing aggregating device, the Authority may provide for appropriate arrangement set out in a FAD management plan.

In subsection 404(B)(3), a fishing vessel shall not fish the areas of the western high seas pocket and the eastern high seas pocket, unless authorize by the Authority.

Section 407 is amended to strengthen the regulation of transshipment including the requirement to pay fees and to comply with all

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conditions provided in the authorization for transshipment.

The amendment to section 603 clarifies the extension of powers of authorized officers to enforce fisheries activities in areas within and beyond the fisheries waters of the Federated States of Micronesia. As proposed, section 603 has two parts – law enforcement powers over the exclusive economic zone and beyond the fishery waters. Nevertheless, it is explicitly required in the amendment that as law enforcement on the high seas, such exercise of power must first be authorized by an access agreement or fisheries management agreement to which FSM is a party or by a conservation management measure or a regional fisheries management organization or arrangement (e.g., Tuna Convention and Palau Arrangement) to which FSM is a member. The amendment also empowers NORMA to promulgate regulations that provide additional measures and powers for fishery officers as to fishing activities on the high seas.

Section 606 is amended to empower authorized observers to enforce fisheries activities in areas beyond the fishery waters in accordance with any access agreement or fisheries management agreement. The amendment also removes the prohibition of observers and port samplers from being appointed as authorized officers authorized to take enforcement actions. 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.

In addition, the Authority may promulgate regulations that provide for observer's duties within the fishery waters, on the high seas and in waters under the jurisdiction of another nation, conduct of observers and related penalties, observer's agents including the conduct and registration or licensing of such agents, and reciprocal agreements or arrangement for the recognition of observers appointed by another nation.

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Amendment to section 611 requires the continuous reporting of transponders during the period of validity of the permit. This requirement supports the provisions of the Third Implementation Arrangement of the Nauru Agreement.

Section 14. The amendment to section 701 clarifies that the powers of authorized officers goes beyond the fishery waters as provided specifically in subsection 603(II) of chapter 6 of this subtitle.

The amendment to section 907 broadens the scope of applicability of the prohibition on the use of any vessel (whether fishing vessel or not) from fishing activity, research and training or related activity without first securing permit as required under title 24. The applicability of section 907 is on the fishery waters, (meaning, internal waters, territorial waters, EEZ, and even beyond the EEZ) to be consistent through this subtitle. If a person violates this section for not having a valid permit employs fishing aggregating device prohibited by section 404(B)(2) of chapter 4 of this subtitle, the maximum penalty applicable shall be \$2,000,000.

The amendment to section 910 allows for the compulsory reporting of unlicensed fishing vessels transiting the fishery waters. For instance, operator of an unlicensed vessel that is transiting the fishery waters shall report its name, International Radio Call Sign, flag registration, date and time, position, complement, intended activity in the fishery waters, catch on board, and such other information prescribed by the Authority.

In the event any operator of an unlicensed fishing vessel transits the fishery waters and refuses to comply with this reporting requirement in section 910, it will be a refutable presumption that all fish found on board such vessel have been caught within the fishery waters in violation of this subtitle.

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The amendment to section 911 elaborates on the existing provision on violation of marine space. The amendment provides that there shall be a refutable presumption that a vessel that has failed to report while entering or remaining within the exclusive economic zone has engaged in related activities in violation of title 24.

Your Committee would like to offer the following amendments as follows:

1. Page 18, lines 4 and 5, delete "[~~management fisheries~~]", and insert "fisheries management" in lieu thereof.
2. Page 18, line 7, delete "[~~an~~]", and insert "a" in lieu thereof.
3. Page 26, line 18, delete "[~~directly~~"]".
4. Page 32, line 19, delete "~~vaster~~", and insert "Master" in lieu thereof.

**Recommendations of your committee**

Your Committee on Resources and Development is in accord with the intent and purpose of C.B. No. 19-173 and recommends its passage on First Reading and that it be placed on the Calendar for Second and Final Reading in the form attached hereto as C.B. No. 19-173,C.D.1.

