

STANDING COMMITTEE REPORT NO. 14-141

RE: C.R. NO. 14-108, C.D.1/R&D

SUBJECT: Amendment to the Federated States of
Micronesia Arrangement for Regional
Fisheries Access

JANUARY 24, 2007

The Honorable Peter M. Christian
Speaker, Fourteenth Congress
Federated States of Micronesia
Sixth Regular Session, 2007

Dear Mr. Speaker:

Your Committee on Resources and Development ("R&D"), to which was referred C.R. No. 14-108, C.D.1 entitled:

"A RESOLUTION RATIFYING THE AMENDMENTS TO THE FEDERATED STATES OF MICRONESIA ARRANGEMENT FOR REGIONAL FISHERIES ACCESS."

begs leave to report as follows:

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

The subject resolution would approve the amendments to the Federated States of Micronesia Arrangement for Regional Fisheries Access ("**Arrangement**") above. The Arrangement entered into force on 23 September 1995. The parties to the Arrangement (and the date they ratified) are as follows:

| | |
|--------------------------------|------------|
| Federated States of Micronesia | 30.11.1994 |
| Kiribati | 30.11.1994 |
| Marshall Islands | 04.06.2000 |
| Nauru | 05.01.1995 |
| Palau | 30.11.1994 |
| Papua New Guinea | 24.08.1995 |
| Solomon Islands | 06.10.1995 |

1. The proposed amendments

There are five proposed amendments:

1. Article 24(2)
2. Annex I
3. Annex III (this proposed amendment to Annex III was omitted in the proposed resolution)
4. Schedule to Annex III

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5. Paragraph 7 of Schedule I of Annex IV

Article 24 (2)

This proposed amendment is in conflict with the Constitution of the Federated States of Micronesia and Title 24 Section 405 of the Code.

The amendment is designed to simplify the process for amendment of the FSM Arrangement. Currently, any amendment to the Arrangement requires ratification by all parties. This takes a long time.

The proposed amendment would make amendments to the Arrangement effective immediately after the Annual Meeting or Special Meeting. Amendments must have unanimous consent to be passed. If a Party is not present at the Meeting, amendment would come into force 30 days after any absent Party notifies the depositary of their acceptance of the proposed amendment.

Article IX Section 2 (b) of the Constitution of the Federated States of Micronesia states:

2 "The following powers are expressly delegated to Congress:

(b) To ratify treaties;

Further, Title 24 Section 405 of the Code states.

Section 405. Access agreements - effective date.

"To take effect within the exclusive economic zone, an access agreement involving ten or more vessels shall be submitted to the Congress of the Federated States of Micronesia for approval by resolution. If the Congress does not approve or reject an access agreement before a pre-existing access agreement, if any, expires, then the pre-existing access agreement shall be deemed to be revived and in force from the date on which the access agreement is submitted to Congress and shall be deemed to remain in force until Congress approves or rejects the access agreement submitted for consideration."

Approval of this amendment would take the power from Congress to approve amendments to the Arrangement (and approving access agreements includes approving amendments to those agreements). Therefore, based

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on the constitutional issue as described herein, the amendment cannot be approved by Congress.

Annex I

Annex I is the Application for Registration. This amendment is to replace this entire Annex with a new Application form. It will require more precise information on the vessels, the operators and the owners. Part B of the form is also changed, to include points on revenue to Government or on-shore investments.

Schedule to Annex III

The proposed amendment to Annex III includes different evaluation criteria. Currently, the criteria are:

1. Amount of equity
2. Number and proportion of nationals employed
3. Total payroll to national employees
4. Level of technology and skills transfer (including training)
5. Value of local purchases
6. Level of onshore investment
7. Flag of the vessel
8. Reference to the objectives of the Arrangement (found in Article 2).

The proposed amendment would evaluate against:

1. Amount of equity (being the percentage of total capital invested by the Government or nationals of a Party in the enterprise and (except where the vessels is owned by the enterprise) in the vessel
2. Flag of the vessel
3. Level of nationals of the Parties employed in the Enterprise
4. Level of local offloading of catch
5. Value of the local purchases of fuel
6. Either level of Government revenue (including bilateral license fees, corporate tax and export tax paid by the enterprise) or the level of on-shore investment.
7. Reference to the objectives of the Arrangement (found in Article 2).

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Schedule to Annex III

The 'points system' (where a vessel requires 25 points to qualify as a vessel to be licensed under the Arrangement) is updated to reflect the requirement of information on Government revenue.

Annex IV

Paragraph 7 of Schedule 1 of Annex IV

The change in observer fee is increased from \$2,400 to \$3,200.

2. Conclusions

Your Committee does not approve the proposed amendment to Article 24(2). It does approve the proposed amendments to Annex I, Annex III, the schedule to Annex III and paragraph 7 of Schedule 1 of Annex IV.

3. Recommendation

Your Committee recommends an amendment to the C.R. No 14-108 as follows:

1. Page 1, line 6, delete "Article 24 (2)."
2. Page 1, line 6, after 'Annex I' and before 'Schedule to Annex III' insert "Annex III"

With the foregoing amendments, your Committee on Resources and Development is in accord with the intent and purpose of C.R. No. 14-108, C.D.1 and recommends its adoption in the form attached hereto as C.R. 14-108, C.D.1.

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Respectfully submitted,

/s/ Manny Mori
Manny Mori, chairman

/s/ Ramon Peyal
Ramon Peyal, vice chairman

Alik L. Alik, member

Peter M. Christian, member

/s/ Dion G. Neth
Dion G. Neth, member

/s/ Simiram Sipenuk
Simiram Sipenuk, member

/s/ Peter Sitan
Peter Sitan, member