

A BILL FOR AN ACT

To further amend section 102 title 24 of the Code of the Federated States of Micronesia, as amended by Public Laws Nos. 11-57 and 12-34, by changing the definition of "fishing" to expressly include transshipment activities, and for other purposes.

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

1 Section 1. Section 102 of title 54 of the Code of
2 the Federated States of Micronesia, as amended by Public
3 Laws Nos. 11-57 and 12-34, is hereby further amended to
4 read, as follows:

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

8 (1) 'Access agreement' means a treaty,
9 agreement or arrangement entered into by the
10 Authority pursuant to this act in relation to
11 access to the Exclusive Economic Zone for
12 fishing by foreign fishing vessels, and includes
13 bilateral and multilateral instruments
14 applicable at the national, subregional,
15 regional or international level.

16 (2) 'Administrator' means the director of a
17 regional fisheries agency or any other
18 organization or person authorized, pursuant to
19 section 106 of chapter 1 of this subtitle, to

1 administer a fisheries access agreement or
2 fisheries management agreement to which the
3 Federated States of Micronesia is party.

4 (3) 'Agent' includes a person appointed or
5 designated by a foreign fishing company to act
6 as the legal representative of that company
7 within the Federated States of Micronesia,
8 including acceptance of and response to legal
9 process, pursuant to section 404(4)(a) of chapter
10 4 of this subtitle.

11 (4) 'Aircraft' means any craft capable of self
12 sustained movement through the atmosphere and
13 includes helicopters.

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

24 (6) 'Authority' means the National Oceanic
25 Resource Management Authority established by

1 section 201 of chapter 2 of this subtitle.

2 (7) 'Authorized observer' means any person
3 authorized in writing by the Authority to act as
4 an observer on fishing vessels for the purposes
5 of this subtitle, including any observer
6 authorized pursuant to the provisions of an
7 access agreement or a fisheries management
8 agreement.

9 (8) 'Authorized officer' means any person or
10 category of persons designated pursuant to
11 section 602 of chapter 6 of this subtitle as an
12 authorized officer.

13 (9) 'Automatic location communicator' or
14 'transponder' means a device placed on a fishing
15 vessel that transmits, either in conjunction
16 with another device or devices or independently,
17 information concerning the position, fishing and
18 other activities of the vessel.

19 (10) 'Based in the Federated States of
20 Micronesia' means using land-based facilities in
21 the Federated States of Micronesia to support
22 fishing, including location of the home port of
23 a vessel in the Federated States of Micronesia,
24 landing or transshipping all fish harvested
25 within the Exclusive Economic Zone and/or

1 operating under a joint venture arrangement in
2 the Federated States of Micronesia, or under
3 arrangements where the operator of a vessel is
4 participating in shore-based developments or is
5 otherwise making a substantial contribution to
6 the development of the domestic tuna industry.

7 (11) 'Buy' includes:

8 (a) barter or attempt to barter;

9 (b) purchase or attempt to purchase;

10 (c) receive on account or consignment;

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

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

16 (12) 'Citizen' means a person who is a citizen
17 of the Federated States of Micronesia.

18 (13) 'Closed area' means an area in which
19 fishing is prohibited.

20 (14) 'Closed season' means a period of time
21 during which fishing is prohibited.

22 (15) 'Commercial fishing' means any fishing
23 resulting or intending or appearing to result in
24 the sale or trade of any fish which may be taken
25 during the fishing operation, and does not

1 include subsistence fishing. For the purposes of
2 this act, the following shall be presumed to be
3 commercial fishing:

4 (a) use of a vessel for fishing which
5 measures
6 20 twenty-seven (27) feet or more in overall
7 length;

8 (b) use of more than one vessel for
9 fishing which is owned by a single person for
10 the primary purpose of selling or trading any
11 fish.

12 (16) 'Commercial pilot fishing' means any
13 fishing for the purpose of testing the
14 commercial viability of:

15 (a) new fishing methods;

16 (b) developing new stocks of fish; or

17 (c) fishing in previously unexploited
18 areas.

19 (17) 'Court' means the Supreme Court of the
20 Federated States of Micronesia.

21 (18) 'Domestic fishing' means any fishing by a
22 local fishing vessel longer than twenty-seven
23 (27) feet in overall length, but not including
24 commercial pilot fishing.

25 (19) (Reserved)

1 (20) (Reserved)

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

6 (22) 'Drift net fishing activities' includes
7 fishing with the use of a drift net and any
8 related activities including transporting,
9 transshipping and processing any drift net
10 catch, and provisioning of food, fuel and other
11 supplies for vessels used or outfitted for drift
12 net fishing.

13 (23) 'Exclusive Economic Zone' means the
14 Exclusive Economic Zone as defined in title 18
15 of the Code of the Federated States of
16 Micronesia.

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

22 (25) 'Export' means to:

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

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

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

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

5 (e) carry or transport anything for
6 purposes of paragraphs (a) through (d) of this
7 subsection, and

8 'exporter' shall have a corresponding
9 meaning.

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

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

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

23 (29) 'Fisheries management agreement' means any
24 agreement, arrangement or treaty in force to
25 which the Federated States of Micronesia is a

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

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

16 (31) 'Fishery waters' means the Exclusive
17 Economic Zone, the territorial sea and internal
18 waters as described in title 18 of the Code of
19 the Federated States of Micronesia, and any
20 other waters over which the Federated States of
21 Micronesia claims sovereignty or sovereign
22 Rights.

23 (32) 'Fishing' means:

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

1 (b) any activity which can reasonably be
2 expected to result in the locating, catching,
3 taking or harvesting of fish;

4 (c) the placing, searching for or
5 recovering of any fish aggregating device or
6 associated electronic equipment such as radio
7 beacons;

8 (d) any operation at sea directly in
9 support of or in preparation for any activity
10 described in this subsection, including
11 transshipment, except for operations defined as
12 related activities in subsection (51) of this
13 section; and

14 (e) the use of an aircraft in relation to
15 any activity described in this subsection except
16 for flights in emergencies involving the health
17 or safety of crew members or the safety of a
18 vessel.

19 (33) 'Fishing gear' means any equipment,
20 implement, or other thing that can be used in
21 the act of fishing, including any fishing net,
22 rope, line, float, trap, hook, winch, boat,
23 beacon or locating device, aircraft or
24 helicopter.

25 (34) 'Fishing vessel' means any vessel, boat,

1 ship or other craft which is used for, equipped
2 to be used for or of a type that is normally
3 used for fishing as the term fishing is defined
4 in subsection (32) of this section.

5 (35) 'Flag fishing vessel' means any foreign
6 fishing vessel that is registered in the
7 Federated States of Micronesia pursuant to title
8 18 of the Code of the FSM and any domestic
9 fishing vessel.

10 (36) 'Foreign fishing' means any fishing not
11 defined as domestic fishing, and not including
12 commercial pilot fishing or fishing from a local
13 fishing vessel less than or equal to twenty-
14 seven (27) feet in overall length.

15 (37) 'Foreign fishing vessel' means any fishing
16 vessel other than a local fishing vessel.

17 (38) 'Foreign party' means a noncitizen party
18 to an access agreement or a party to an access
19 agreement that is at least twenty percent
20 foreign-owned.

21 (39) 'Foreign recreational fishing' means
22 fishing using a foreign fishing vessel for
23 recreational or sport purposes.

24 (40) 'High seas' means all parts of the sea
25 that are not included in the Exclusive Economic

1 Zone, in the territorial sea, or in the internal
2 water of any nation, or in the archipelagic
3 waters of an archipelagic nation.

4 (41) 'Internal waters' means waters on the
5 landward side of the baseline of the territorial
6 sea of any island within the Federated States of
7 Micronesia.

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

11 (43) 'Local fishing vessel' means any fishing
12 vessel wholly owned and controlled by:

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

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

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

25 (d) any combination of persons or

1 entities described in paragraphs (a) through (c)
2 of this subsection.

3 (44) 'Master' in relation to any fishing vessel
4 means the person in charge or apparently in
5 charge of that vessel.

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

10 (46) 'Officer' means any authorized officer or
11 national police officer, and includes any
12 officer of a vessel or aircraft used for the
13 enforcement of this act, whether or not such
14 officers are officials of the Government of the
15 Federated States of Micronesia or of one of the
16 four State governments.

17 (47) 'Operator' means any person who is in
18 charge of or directs or controls a fishing
19 vessel, or for whose direct economic or
20 financial benefit a vessel is being used,
21 including the master, owner, and charterer.

22 (48) 'Owner' in relation to a fishing vessel
23 means any person exercising or discharging or
24 claiming the right or accepting the obligation
25 to exercise or discharge any of the powers or

1 duties of an owner, whether on his own behalf or
2 on behalf of another, and includes a person who
3 owns the vessel jointly with any other person or
4 persons and any manager, director or secretary
5 of any corporate body or company that holds an
6 ownership interest in the vessel.

7 (49) 'Permit' means any permit issued under
8 this subtitle or under an access agreement
9 entered into pursuant to this subtitle.

10 (50) 'Person' means any natural person or
11 business enterprise and includes, but is not
12 limited to, a corporation, partnership,
13 cooperative, association, the government of any
14 of the four States, or any political subdivision
15 thereof, and any foreign government, subdivision
16 of such government or other entity.

17 (51) 'Port sampler' means a category of
18 authorized observer who performs duties at a
19 point of transshipment or port located either
20 inside or outside the Federated States of
21 Micronesia.

22 (52) 'Recreational fishing' means fishing for
23 sport or leisure.

24 (53) 'Region' means that area of land and ocean
25 which falls within the sovereignty and sovereign

1 rights of the member countries of the South
2 Pacific Forum Fisheries Agency, whose
3 headquarters are located in Honiara, Solomon
4 Islands, and includes high seas within such
5 area, and for the purposes of data collection,
6 includes that area of the Western and Central
7 Pacific Ocean which falls within the
8 jurisdiction and sovereign rights of the member
9 countries of the Secretariat of the Pacific
10 Community located in Noumea, New Caledonia, and
11 'regional' shall have a corresponding meaning.

12 (54) 'Regional access license' means a regional
13 access license issued to any fishing vessel of a
14 party to a multilateral access agreement or
15 fisheries management agreement, in accordance
16 with such agreement.

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

20 (56) 'Related activities' in relation to
21 fishing means:

22 [~~(a) transshipment,~~]

23 [b] (a) refueling or supplying fishing
24 vessels, selling or supplying fishing equipment,
25 or performing either activity in support of

1 fishing; and

2 [e] (b) on-shore storing, buying or
3 processing fish or fish products from the time
4 they are first landed.

5 (57) 'Secretary' means the Secretary of the
6 Department of Justice.

7 (58) 'Sell' includes the exchange of any fish
8 or fish product or other thing for cash or for
9 anything which has value or which can be
10 exchanged for cash, and includes any exchange by
11 barter.

12 (59) 'Stock of fish' means a species,
13 subspecies or other category of fish identified
14 on the basis of geographical, scientific,
15 technical, recreational and economic
16 characteristics which can be treated as a unit
17 for purposes of conservation and management.

18 (60) 'Subsistence fishing' means fishing by a
19 citizen or a resident substantially for personal
20 consumption, and does not include any fishing
21 resulting or intending or appearing to result,
22 directly or indirectly, in the sale or trading
23 of any fish which may be taken during the
24 fishing operations.

25 (61) 'Transponder' or 'automatic location

1 communicator' means a device placed on a fishing
2 vessel that transmits, either in conjunction
3 with another device or devices or independently,
4 information concerning the position, fishing and
5 other activities of the vessel.

6 (62) 'Transshipment' means the transfer of any
7 or all fish or fish products to or from any
8 vessel or aircraft for the purposes of
9 transporting such fish or fish products
10 elsewhere.

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

17 (64) 'United Nations Convention' means the
18 United Nations Convention on the Law of the Sea,
19 1982.

20 (65) 'Vehicle' means any car, truck, van, bus,
21 trailer or other powered land conveyance.

22 (66) 'Vessel' means any boat, ship, canoe or
23 other water-going craft."

24

25 Section 2. This act shall become law upon approval

1 by the President of the Federated States of Micronesia or
2 upon its becoming law without such approval.

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4 Date: 8/20/13

Introduced by: /s/ Florencio S. Harper
Florencio S. Harper
(by request)

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