

AN ACT

To further amend title 24 of the Code of the Federated States of Micronesia, as amended, by further amending section 102, as amended by Public Laws Nos. 5-37 and 6-11, for the purpose of defining 'driftnet fishing', by further amending sections 501 and 503, as amended by Public Laws Nos. 5-37 and 6-11, and by further amending section 502, as amended by Public Law No. 6-37, all for the purpose of changing certain prohibited acts and penalties for violations of the fisheries laws, and for other purposes.

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

Section 1. Section 102 of title 24 of the Code of the Federated States of Micronesia, as amended by Public Laws Nos. 5-37 and 6-11, is hereby further amended to read as follows:

"Section 102. Definitions. As used in this title the term:

(1) 'Administrator' means the director of a regional fisheries agency or any other organization or person authorized, pursuant to section 106 of this title, to administer a regional fisheries treaty.

(2) 'Applicable laws' means those laws affecting marine resources from time to time identified by the Authority by regulation.

(3) 'Atoll' means a naturally formed coral reef system which has one or more islands situated on the reef system, including 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, Mwoakiloa and Pinglelap.

(4) 'Authority' means the Micronesian Maritime Authority established by section 301 of this title.

(5) 'Authorized observer' means any person authorized in writing by the Authority to act as an observer on foreign fishing vessels, including any observer authorized pursuant to a regional fisheries treaty to be an authorized observer for purposes of this title.

(6) 'Authorized officer' means any officer of the Division of Security and Investigation of the Government of the Federated States of Micronesia or any other person authorized in writing by the Attorney General to be an authorized officer for the purposes of this title.

(7) '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, selling all fish for processing within the Federated States of Micronesia, transhipping all fish harvested within the Exclusive

Economic Zone, and basing operations in the Federated States of Micronesia while operating in the Exclusive Economic Zone.

(8) '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.

(9) 'Court' means the Supreme Court of the Federated States of Micronesia.

(10) 'Driftnet' means a gillnet or other net or a combination of nets which is more than 2.5 kilometers in length the purpose of which is to enmesh, entrap or entangle fish by drifting on the surface of or in the water.

(11) 'Driftnet fishing activities' means:

- (a) catching, taking or harvesting fish with the use of a driftnet;
- (b) attempting to catch, take or harvest fish with the use of a driftnet;
- (c) engaging in any other activity which can reasonably be expected to result in the catching, taking or harvesting of fish with the use of a driftnet, including searching for and locating fish to be taken by that method;
- (d) any operations at sea in support of, or in preparation for any activity described in this paragraph, including operations of placing, searching for or recovering fish aggregating devices or associated electronic equipment such as radio beacons;
- (e) aircraft use, relating to the activities described in this paragraph, except for flights in emergencies involving the health or safety of crew members or the safety of a vessel; or
- (f) transporting, transshipping and processing any driftnet catch, and cooperation in the provision of food, fuel and other supplies for vessels equipped for or engaged in driftnet fishing.

(12) 'Domestic-based fishing' means any fishing by foreign fishing vessels based in the Federated States of Micronesia, but not including commercial pilot fishing.

(13) 'Domestic-based fishing agreements' means an agreement between the Government of the Federated States of Micronesia and one or more persons to permit domestic-based fishing within the Exclusive Economic Zone.

(14) 'Domestic-based party' means a party to a domestic-based fishing agreement other than the Government of the Federated States of Micronesia or a State.

(15) 'Domestic fishing' means any fishing by local fishing vessels longer than twenty-seven feet in overall length, but not including commercial pilot fishing.

(16) 'Exclusive Economic Zone' means the exclusive economic zone defined in the title 18 of the Code of the Federated States of Micronesia.

(17) 'Executive director' means the executive director of the Micronesian Maritime Authority.

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

(19) 'Fish aggregating device' means any manmade or partly manmade floating device, whether anchored or not, intended for the purpose of aggregating fish, and includes any floating object on a device which has been placed to facilitate its location.

(20) 'Fishery' means any fishing for stocks of fish.

(21) '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 within the jurisdiction of the Federated States of Micronesia.

(22) 'Fishing' means:

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

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

(c) the placing, searching for, or recovery of fish aggregating devices or associated electronic equipment such as radio beacons;

(d) aircraft use relating to the activities described in this subsection, except for flights in emergencies involving the health or safety of crew members or the safety of a vessel;

(e) transshipping fish to or from any vessel;

(f) storing, processing or transporting fish harvested within the fishery waters;

(g) refueling or supplying fishing vessels; or

(h) any operations at sea in support of or in preparation for any activity described in this subsection.

(23) '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 carried on board a fishing vessel, aircraft or helicopter.

(24) '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:

(a) fishing;

(b) aiding or assisting one or more vessels at sea in the performance of any activity related to fishing, including, but not limited to preparation, supply, storage, refrigeration, transportation, or processing.

(25) 'Foreign fishing' means any fishing not defined as domestic fishing or domestic-based fishing, but not including commercial pilot fishing or fishing from a local fishing vessel less than or equal to twenty-seven feet in overall length.

(26) 'Foreign fishing agreement' means an agreement between the Authority on behalf of the Government of the Federated States of Micronesia and one or more foreign fishing interests to permit foreign vessels to harvest fish within the exclusive economic zone.

(27) 'Foreign fishing vessel' means any fishing vessel not defined as a local fishing vessel.

(28) 'Foreign party' means a party to a foreign fishing agreement other than the Authority, the Government of the Federated States of Micronesia or a State government.

(29) 'Foreign recreational fishing' means fishing by a foreign fishing vessel for recreational or sport purposes.

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

(31) 'Living marine resource' means all forms of marine animal and plant life other than marine birds and includes finfish, mollusks, and crustaceans.

(32) 'Local fishing vessel' means any fishing vessel wholly owned and operated by one or more of the following:

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

(b) Citizen of the Federated States of Micronesia;

(c) Corporation or cooperative established under the laws of the Federated States of Micronesia or of any State which is wholly owned and controlled by one or more of the persons described in paragraphs (a) and (b) of this subsection;

(d) Any combination of persons described in paragraphs (a) through (c) of this subsection.

(33) 'Operator' means any person who is in charge of, directs, or controls a vessel, including the owner, charterer, or the master.

(34) 'Pacific Island States' means the parties to the South Pacific Forum Fisheries Agency Convention, 1979.

(35) 'Permit' means the document authorizing fishing within all or part of the Exclusive Economic Zone issued pursuant to section 111 of this title or pursuant to a treaty, or any agreement or arrangement entered into pursuant to section 106 of this title.

(36) 'Person' means any individual, corporation, partnership, association, or other entity, the Government of the Federated States of Micronesia or any of the States, or any political subdivision thereof, and any foreign government, subdivision of such government, or entity thereof.

(37) 'Regional fisheries treaty' means a treaty between the governments of certain Pacific Island States and governments, bodies or organizations of foreign States other than Pacific Island States that relates to fishing in the waters of the Pacific Island States and has entered into force according to its terms, and has been ratified by the Congress of the Federated States of Micronesia.

(38) 'Regional fishing license' means a regional fishing license issued to a foreign fishing vessel pursuant to a regional fisheries treaty.

(39) 'State' means any of the States of the Federated States of Micronesia.

(40) '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."

Section 2. Section 501 of title 24 of the Code of the Federated States of Micronesia, as amended by Public Laws Nos. 5-37 and 6-11, is hereby further amended to read as follows:

"Section 501. Prohibited acts.

(1) It is unlawful for any person:

(a) to violate any provision of a fishing permit, license, agreement, arrangement, treaty, or regulation issued pursuant to this title;

(b) to refuse to permit any authorized officer to board a fishing vessel for purposes of conducting any search or inspection in connection with the enforcement of this title or any regulation, permit, or foreign or domestic-based fishing agreement or any applicable fishing treaty, agreement or arrangement;

(c) to assault, obstruct, resist, delay, refuse boarding to, intimidate, or interfere with any authorized officer or authorized observer in performance of his duties, including in the conduct of any search or inspection described in paragraph (e) of this subsection; and for the purposes of this subparagraph, any person who refuses to allow any authorized officer or observer, or any person acting under his order or in his aid, to exercise any of the powers conferred on an authorized officer or observer by this title or any regulations made under this title shall be deemed to be obstructing that officer, observer, or person;

(d) to fail to comply with the lawful requirements of any authorized officer or observer;

(e) to furnish to any authorized officer any particulars which, to his knowledge, are false or misleading in any respect;

(f) being on board any vessel being pursued or about to be boarded by any authorized officer, to throw overboard or destroy any fish, fishing gear, explosive, poison, or other noxious substance to avoid seizure of such fish, fishing gear, explosive, poison, or other noxious substance or thing or to avoid the detection of any offense under this title or the regulations made under this title;

(g) to resist a lawful arrest for any act prohibited by this section;

(h) to provide information required to be recorded, notified or communicated pursuant to any requirement of the provisions of this title or the regulations, knowing or having reasonable cause to believe that it is false, incomplete or misleading;

(i) to knowingly ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of any fish taken or

retained in violation of this title or any regional fishing treaty, regulation, permit, foreign or domestic-based fishing agreement or any applicable law;

(j) to interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that such person has committed any act prohibited by this section;

(k) to violate any provision of, or regulation under, any applicable agreement to implement a regional fisheries treaty, or any other treaty, agreement or arrangement having effect in the Federated States of Micronesia, entered into pursuant to section 106 of this title;

(l) to use any foreign fishing vessel for fishing within one mile from submerged reefs within the EEZ, or within a two-mile radius of any fish aggregating device of the Government, a citizen, or any other body established under the laws of the Federated States of Micronesia;

(m) being a fishing vessel entitled to fly the national flag of the Federated States of Micronesia, to fish in waters under the national jurisdiction of a foreign nation unless duly authorized by the competent authorities of the foreign nation or nations concerned;

(n) to engage in driftnet fishing activities in the fishery waters;

(o) being a fishing vessel entitled to fly the national flag of the Federated States of Micronesia, to engage in driftnet fishing activities in waters under the national jurisdiction of a foreign nation, in the high seas, or in enclosed or semi-enclosed seas as defined in the United Nations Convention on the Law of the Sea of December 10, 1982; or

(p) to violate any provision of this title.

(2) It is unlawful for any fishing vessel, and for the crew, owner, or operator of any fishing vessel, to engage in fishing in the Exclusive Economic Zone without a valid and applicable fishing permit issued pursuant to this title or after revocation, or during the period of suspension of a permit issued pursuant to this title, where such permit is required by sections 103 and 104 of this title, unless such fishing is permitted pursuant to section 106."

Section 3. Section 502 of title 24 of the Code of the Federated States of Micronesia, as amended by Public Law No. 6-37, is hereby further amended to read as follows:

"Section 502. Civil penalties.

(1) Any person who is found by the Supreme Court of the Federated States of Micronesia in a civil proceeding to have committed an act prohibited by section 501 of this chapter shall be liable to the Federated States of Micronesia for a civil penalty.

(2) The amount of the civil penalty shall not exceed \$5,000,000 for each violation, except as otherwise provided herein. Each day of a continuing violation shall constitute a separate offense. The Supreme Court of the Federated States of Micronesia may impose a penalty in excess of \$5,000,000 provided, in its review of the factors set forth in subsection (3), the Supreme Court finds that the defendant has committed a gross violation.

(3) In determining the amount of such penalty, the Supreme Court of the Federated States of Micronesia shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, and whether any other civil or criminal fine or any imprisonment has been imposed as a result of the specific conduct which has given rise to this action, and such other matters as justice may require.

(4) The Attorney General of the Federated States of Micronesia is authorized to initiate all proceedings under this section and to recover the amount assessed as a civil penalty.

(5) The proceeds of civil penalties shall be deposited into the General Fund of the Federated States of Micronesia. Fifty percent of these proceeds from civil penalties shall then be distributed to the State affected."

Section 4. Section 503 of title 24 of the Code of the Federated States of Micronesia, as amended by Public Laws Nos. 5-37 and 6-11, is hereby further amended to read as follows:

"Section 503. Criminal penalties.

(1) A person is guilty of an offense if he commits any act prohibited by section 501 of this chapter.

(2) Unless otherwise provided, any offense described as a prohibited act by subsections (1)(a), (1)(i), (1)(k), or (1)(l) of section 501 is punishable by a fine of not less than \$10,000 and not to exceed \$500,000.

(3) Unless otherwise provided, any offense described as a prohibited act by subsections (1)(b), (1)(c), (1)(d), (1)(e), (1)(f), (1)(g), (1)(h), or (1)(j) of section 501 is punishable by a fine of not less than \$100,000, or imprisonment for

not more than two years, or both; PROVIDED that if in the commission of any such offense the person uses a dangerous weapon, engages in conduct that causes bodily injury to any officer authorized to enforce the provisions of this title, or threatens any such officer with bodily injury, the offense is punishable by a fine of not less than \$500,000, or imprisonment for not more than ten years, or both; and PROVIDED FURTHER that where a regional fisheries treaty so requires, persons arrested for violating any provisions of, or regulations under, such treaty shall not be subject to imprisonment.

(4) Any offense described as a prohibited act by subsection (1)(m) of section 501 is punishable by a fine not to exceed \$5,000.

(5) Any offense described as a prohibited act by subsection (1)(n) or (1)(o) of section 501 is punishable by a fine of not less than \$1 million.

(6) Any offense described as a prohibited act by subsection (2) of section 501 is punishable by a fine of not less than \$500,000. Each day of continuing violation shall be considered a separate offense.

(7) A violation of any provision of this title for which no other punishment is prescribed is punishable by a fine not to exceed \$5,000.

(8) In determining the amount of any fine and the length of any imprisonment, the Court shall take into account those factors set forth in section 502(3) of this title."

Section 5. This act shall become law upon approval by the President of the Federated States of Micronesia or upon its becoming law without such approval.

February 6, 1996

/s/ Bailey Olter  
Bailey Olter  
President  
Federated States of Micronesia