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:

Section 4. Section 102 of title 24 of the Code of the Federated States of Micronesia, as enacted by Public Law No. 12-34, is hereby amended to read as follows:

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

(1) 'Access agreement' means a treaty, agreement or arrangement entered into by the Authority pursuant to this act in relation to access to the exclusive economic zone for fishing by foreign fishing vessels, and includes bilateral and multilateral instruments applicable at the national, subregional, regional or international level.

(2) 'Administrator' means the director of a regional fisheries agency or any other organization or person authorized, pursuant to section 106 of chapter 1 of this subtitle, to administer a fisheries access agreement or fisheries management agreement to which the Federated
States of Micronesia is party.

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

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

(5) 'Atoll' means a naturally formed coral reef system which has one or more islands situated on the reef system, including, but not limited to, Ngulu, Ulithi, Sorol, Eauripi, 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, Mwoakilloa and Pingelap.

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

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

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

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

(10) '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, landing or transshipping all fish harvested within the exclusive economic zone and/or operating under a joint venture arrangement in the Federated States of Micronesia, or under arrangements where the operator of a vessel is participating in shore-based developments or is otherwise making a substantial contribution to the development of the domestic tuna industry.

(11) 'Buy' includes:

(a) barter or attempt to barter;

(b) purchase or attempt to purchase;
(c) receive on account or consignment;
(d) purchase or barter for future goods or for
any consideration of value; and
(e) purchase or barter as an agent for another
person, and 'buyer' shall have a corresponding meaning.

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

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

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

(15) 'Commercial fishing' means any fishing resulting
or intending or appearing to result in the sale or trade
of any fish which may be taken during the fishing
operation, and does not include subsistence fishing.
For the purposes of this act, the following shall be
presumed to be commercial fishing:

(a) use of a vessel for fishing which measures
twenty-seven (27) feet or more in overall length;
(b) use of more than one vessel for fishing which
is owned by a single person for the primary purpose of
selling or trading any fish.

(16) '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.

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

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

(19) (Reserved)

(20) (Reserved)

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

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

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

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

(a) send or take out of the country;
(b) attempt to send or take out of the country;
(c) receive on account or consignment for purposes of paragraph (a) or (b) above;
(d) act as an agent for another person for purposes of (a) through (c) above; and
(e) carry or transport anything for purposes of paragraphs (a) through (d) of this subsection, and

'exporter' shall have a corresponding meaning.

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

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

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

(29) 'Fisheries management agreement' means any agreement, arrangement or treaty in force to which the Federated States of Micronesia is a party, not including
any access agreement, which has as its primary purpose cooperation in or coordination of fisheries management measures in all or part of the region, or implementation of a multilateral access agreement, including, but not limited to, fisheries monitoring, control and surveillance and establishing criteria or requirements for fishing and fisheries access.

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

(31) '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 over which the Federated States of Micronesia claims sovereignty or sovereign Rights.

(32) 'Fishing' means:

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

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

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

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

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

(33) '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, beacon or locating device, aircraft
or helicopter.

(34) '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 fishing as the
term fishing is defined in subsection (32) of this
section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

([44] 47) 'Officer' means any authorized officer or national police officer, and includes any officer of a
vessel or aircraft used for the enforcement of this act, whether or not such officers are officials of the Government of the Federated States of Micronesia or of one of the four State governments.

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

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

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

([50] 51) 'Person' means any natural person or business enterprise and includes, but is not limited to, a corporation, partnership, cooperative, association, the government of any of the four States, or any political subdivision thereof, and any foreign government, subdivision of such government or other entity.
'Port sampler' means a category of authorized observer who performs duties at a point of transshipment or port located either inside or outside the Federated States of Micronesia.

'Recreational fishing' means fishing for sport or leisure.

'Region' means that area of land and ocean which falls within the sovereignty and sovereign rights of the member countries of the South Pacific Forum Fisheries Agency, whose headquarters are located in Honiara, Solomon Islands, and includes high seas within such area, and for the purposes of data collection, includes that area of the Western and Central Pacific Ocean which falls within the jurisdiction and sovereign rights of the member countries of the Secretariat of the Pacific Community located in Noumea, New Caledonia, and 'regional' shall have a corresponding meaning.

'Regional access license' means a regional access license issued to any fishing vessel of a party to a multilateral access agreement or fisheries management agreement, in accordance with such agreement.

'Regulation' or 'Regulations' means any regulation which may be promulgated by the Authority pursuant to this act.

'Related activities' in relation to fishing means:
(a) transshipment;
(b) refueling or supplying fishing vessels,
selling or supplying fishing equipment, or performing
either activity in support of fishing; and
(c) on-shore storing, buying or processing fish
or fish products from the time they are first landed.

'Secretary' means the Secretary of the
Department of Justice.

'Sell' includes the exchange of any fish or
fish product or other thing for cash or for anything
which has value or which can be exchanged for cash, and
includes any exchange by barter.

'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.

'Subsistence fishing' means fishing by a
citizen or a resident substantially for personal
consumption, and does not include any fishing resulting
or intending or appearing to result, directly or
indirectly, in the sale or trading of any fish which may
be taken during the fishing operations.

'Transponder' or 'automatic location
communicator' means a device placed on a fishing vessel
that transmits, either in conjunction with another
device or devices or independently, information
concerning the position, fishing and other activities of
the vessel.

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

(64) 'United Nations Agreement' means the agreement
for the implementation of the provisions of the United
1992 relating to the conservation and management of
straddling fish stocks and highly migratory fish stocks.

(65) 'United Nations Convention' means the United

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

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

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

"Section 801. Forfeiture of property.

(1) Any fishing vessel, including its fishing gear,
furniture, appurtenances, stores and cargo used in or
connected with the commission of any act prohibited by
this subtitle, within the territorial sea or internal
waters of the Federated States of Micronesia, shall be subject to forfeiture to the Government of the Federated States of Micronesia pursuant to a civil proceeding under this section.

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

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

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

(5) If a judgment is entered for the Government of the Federated States of Micronesia in a civil forfeiture proceeding under this section, the Secretary of the
Department of Justice shall seize any property or other interest declared forfeited to the Government of the Federated States of Micronesia, which has not previously been seized pursuant to this subtitle.

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

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

(8) Pending completion of the civil forfeiture proceeding, the item or items subject to forfeiture, or any part thereof, may be released at the discretion of the Court upon deposit with the Court of a satisfactory bond, surety or other security at least equal to the fair market value of the seized property. Exoneration of such bond, surety or other security shall be conditional upon return of the released property to the appropriate court upon order, without any impairment of its value, or by paying the monetary value of the released property to the General Fund of the Federated States of Micronesia upon order of the Court. Such
bond, surety or other security shall be forfeited in the event that any condition is breached as shall be determined by the Court, and judgment shall be recoverable by the Court against the principal of any surety for any such breach.

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

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

"Section 901. 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 this subtitle shall be liable to the Federated States of Micronesia for a civil penalty.

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

(3) In determining the amount of the 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, whether there are multiple violations which together constitute a serious disregard of conservation and management measures and such other matters as justice may require.

(4) The Secretary 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 the proceeds from civil penalties shall then be distributed to any FSM State which may be affected by the situation which has given rise to this action.] The net proceeds from civil penalties shall then be distributed to an FSM State if the offense for which the civil penalty was assessed was committed within the territorial jurisdiction of that State."

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

"Section 902. Criminal penalties.

(1) Any person who commits an act prohibited by this subtitle is subject to criminal prosecution.
(2) The Captain and any crew member of a fishing vessel, who is subject to criminal charges solely for violations of this subtitle occurring outside the territorial waters but within the exclusive economic zone of the Federated States of Micronesia shall be released upon posting of reasonable bond or other surety.

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

   (a) uses a dangerous weapon;

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

   (c) threatens any such person with bodily injury.

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

(5) Fines shall be deposited into the General Fund of the Federated States of Micronesia. [Fifty percent of the proceeds from criminal fines shall be distributed to
any FSM State(s) which may be affected by the situation
which has given rise to the action.) The net proceeds
from criminal fines shall then be distributed to an FSM
State if the offense for which the criminal fine was
imposed was committed within the territorial
jurisdiction of that State.

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

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

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.

Date: 11/06/02          Introduced by: /s/ Dohsis Halbert
                        Dohsis Halbert