A BILL FOR AN ACT

To amend section 203 of title 2 of the Code of the Federated States of Micronesia, as amended by Public Laws Nos. 10-55, 15-09 and 15-74, and to amend sections 102, 105, 106, 110, 201, 205 and 211 of title 24 of the Code of the Federated States of Micronesia, as amended by Public Laws Nos. 11-57, 12-34 and 15-38, repealing sections 206, 402, 403 and 504 in their entirety, for the purposes of creating the Fishing Authority Division of the Department of Resources and Development, to eliminate NORMA, and transfer all activities of NORMA to the Fishing Authority Division, and for other purposes.

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

Section 1. Section 203 of title 2 of the Code of the Federated States of Micronesia, as amended by Public Laws Nos. 10-55, 15-09 and 15-74, is hereby further amended to read as follows:

"Section 203. Departments. •

(1) There shall be the following departments which shall be responsible for major programs or administrative support areas in the Government of the Federated States of Micronesia:

(a) Department of Resources and Development, which shall contain among other units, a Fishing Authority Division;

(b) Department of Finance and Administration;

(c) Department of Foreign Affairs; •

(d) Department of Health and Social Affairs;

(e) Department of Justice;
(f) Department of Transportation, Communication and Infrastructure, which shall contain among other units, a Project Management Unit for the Compact Infrastructure Grants; and

(g) Department of Education.

(2) The administrative head of each department shall be designated as a "Secretary".

(3) The administrative head of each office shall be designated as a "Director".

(4) Succession.

(a) Any reference to a previously existing department, office or division thereof shall apply to the appropriate successor entity.

(b) Any reference to any office or employee of an entity referred to in subsection (4)(a) of this section shall be construed as applying to the person holding the same or most similar position in the appropriate successor entity."

Section 2. Section 102 of title 24 of the Code of the Federated States of Micronesia, as enacted by Public Law 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] Nation 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,

(6) 'Authority' means [the National Oceanic Resource Management Authority] the Fishing Authority Division of the Department of Resources and Development as 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 subtitle.

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

(50) '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.

(51) '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.

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

(53) '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.

(54) '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.

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

(56) '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.

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

(58) '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.

(59) '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.

(60) '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.

(61) '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.

(62) '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.

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

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

Section 3. Section 105 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 105. Access agreements required.

(1) No foreign fishing vessel shall be issued a permit to fish in the exclusive economic zone unless an applicable access agreement is in force.

[(2) The Authority is authorized to negotiate and enter into access agreements on behalf of the Government of the Federated States of Micronesia pursuant to chapter 2 and in accordance with chapter 4 of this subtitle.]

Section 4. Section 106 of title 24 of the Code of the Federated States of Micronesia, as enacted by Public Law No. 12-34, is hereby repealed in its entirety.

Section 5. Section 110 of title 24 of the Code of the Federated States of Micronesia, as enacted by 12-34, is hereby amended to read as follows:
"Section 110. Permits – scope.

(1) A permit issued or renewed under this subtitle shall only be valid for the species of fish, the type of fishing gear or method of fishing, or such other activity in accordance with this subtitle, as may be specified in the permit.

(2) No permit shall authorize:

(a) fishing by foreign fishing vessels on, over or within one nautical mile of the edge of a coral reef that is wholly submerged at mean high tide within the exclusive economic zone;

(b) fishing by foreign fishing vessels within a two nautical 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;

(c) fishing using a drift net or other substantially similar method of catching fish;

(d) drift net fishing activities, including the transporting, transshipping and processing of any driftnet catch, and the provisioning of food, fuel and other supplies for vessels used or outfitted for drift net fishing.

(3) A permit issued to a vessel may authorize fishing on, over or within one nautical mile of the edge of a coral reef that is wholly submerged at mean high
tide within the exclusive economic zone, only if:

(a) the applicant's permit application provides adequate support for marine scientific research or commercial pilot fishing in such area; and

(i) with respect to commercial pilot fishing, the Authority has determined that commercial pilot fishing at the levels proposed in the permit application will not damage the sustainability of the fishery resources; or

(ii) with respect to marine scientific research, the Authority has determined that the research methodology proposed in the permit application will not damage the sustainability of the fishery resources; or

(b) the Authority has determined that such fishing is commercially viable and sustainable; and

(c) [the Executive Director] head of the Fishing Authority has submitted a copy of the application to the Governor of the FSM State whose customary inhabitants have been traditionally ascribed the authority to control the fishing over such reef; and

(d) within seventy-five (75) days of the Governor of the concerned FSM State having received such submission, the Governor of the concerned FSM State, on behalf of either the State government or the State's customary or traditional leadership, has communicated in
writing to the Executive Director its consent to the
issuance of the permit with respect to the reef or reefs
traditionally ascribed to its customary inhabitants."

Section 6. Section 201 of title 24 of the Code of the
Federated States of Micronesia, as amended by Public Law No.
15-38, is hereby further amended to read as follows:

"Section 201. [National Oceanic Resource Management
Authority] Fishing Authority Division- established.

(1) There is hereby established a [National Oceanic
Resource Management Authority] Fishing Authority
Division ('Authority') as a unit of the Department of
Resources and Development. [composed of five members,
each discharging a national duty and charged with
responsibility for overseeing the FSM exclusive economic
zone, and appointed as follows:

(a) one member from each FSM State appointed by
the President of the Federated States of Micronesia, in
consultation with the Governor and with the advice and
consent of the Congress; and

(b) one at-large member appointed by the
President of the Federated States of Micronesia with the
advice and consent of the Congress.

(c) No member shall be appointed for more than
two consecutive terms after the effective date of this
Act."
(2) No member shall also serve as a member of the Board of Directors of the National Fisheries Corporation of the Federated States of Micronesia or any subsidiary or affiliate thereof or serve as executive director or a member of any board or authority of any entity operating in the states dealing with fishing in the Federated States of Micronesia under an agreement or permit issued pursuant to this subtitle during the term of his membership on the Authority.

(3) The Authority shall choose a chairman by a majority vote of the members of the Authority.

(4) The Authority shall meet at such time and place as may be designated by the Chairman or by vote of the members pursuant to any method set out in the Authority bylaws.

(5) The Authority shall adopt its own bylaws governing the conduct of its business and performance of the powers and duties granted to or imposed upon it by law.

(6) A quorum of the Authority shall consist of a majority of all voting members. All official business of the Authority shall be conducted by a majority of those members present and voting at a meeting of the Authority for which a quorum exists, unless otherwise provided by law or the bylaws of the Authority."

Section 7. Section 205 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 205. Authority - duties and functions.
In addition to the regulatory authority granted in the preceding section, the Authority shall have the following duties and functions:

(1) to provide technical assistance in the delimitation of the exclusive economic zone in accordance with section 107 of title 18 of the Code of the Federated States of Micronesia;

[(2) to negotiate, conclude and implement access agreements and fisheries management agreements in accordance with sections 105 and 106 of chapter 1 of this subtitle and chapters 4 and 5 of this subtitle;]

(3) to issue fishing permits in accordance with this subtitle;

(4) to issue permits for fishing in the territorial sea or internal waters of an FSM State as authorized pursuant to section 118 of chapter 1 of this subtitle;

(5) to regulate related activities in accordance with this subtitle;

(6) to coordinate and implement fisheries monitoring and control as required under this subtitle and under international treaties to which the Federated
States of Micronesia is a party;

[(7) to cooperate as appropriate with other nations or territories in the region and with foreign states fishing in the region and adjacent high seas area for the conservation and management of highly migratory fish stocks;]

(8) to cooperate in and coordinate as appropriate with each FSM State on fisheries management measures in the exclusive economic zone and territorial sea;

(9) to convene and chair a Fisheries Management and Surveillance Working Group as set forth in section 207 of this chapter;

[(10) to employ a full-time Executive Director and such other staff as it may deem necessary;]

(11) to submit the Authority's budget and report regarding the expenditure of its funds to the Congress each regular session for review;

(12) to contribute to the planning of programs relating to fisheries, or fishing in the exclusive economic zone, in which an FSM State government or the Government of the Federated States of Micronesia, or any agency or subdivision thereof, has a proprietary interest, direct or indirect, by way of stock ownership, partnership, joint venture or otherwise; and

(13) to perform such other duties and functions as may
be necessary to carry out the purpose of this subtitle."

Section 8. Section 206 of title 24 of the Code of the Federated States of Micronesia, as enacted by Public Law No. 12-34, is hereby repealed in its entirety.

Section 9. Section 211 of title 24 of the Code of the Federated States of Micronesia, as amended by Public Law No. 15-38, is hereby further amended to read as follows:

"Section 211. Annual report. The Chairman of the Authority shall present a written report annually on its activities to the [President of the Federated States of Micronesia, the Speaker of the Congress of the Federated States of Micronesia, and each FSM State Governor] the head of R&D by December 1st of each year, which report shall contain a detailed accounting of the expenditure of funds of the Authority, the number of permits and licenses issued, the fees, forfeitures and fines collected, estimates of the effect of the current level of fishing on the stock of fish in the exclusive economic zone, and such other information regarding the implementation of this subtitle in the preceding fiscal year as the Authority may determine. [All departments and offices of the FSM National Government shall be provided copies of the Authority's annual report]."

Section 10. Section 402 of title 24 of the Code of the Federated States of Micronesia, as enacted by Public Law No. 12-34, is hereby repealed in its entirety.
Section 11. Section 403 of title 24 of the Code of the Federated States of Micronesia, as enacted by Public Law No. 12-34, is hereby repealed in its entirety.

Section 12. Section 504 of title 24 of the Code of the Federated States of Micronesia, as enacted by Public Law No. 12-34, is hereby repealed in its entirety.

Section 13. 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: 3/26/14

Introduced by: /s/ David W. Panuelo

David W. Panuelo