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:

Section 1. Section 102 of title 54 of the Code of the Federated States of Micronesia, as amended by Public Laws Nos. 11-57 and 12-34, is hereby further 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 20 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, including transhipment, 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] (a) refueling or supplying fishing vessels, selling or supplying fishing equipment, or performing either activity in support of
fishing; and

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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.


(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 2. 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: 8/20/13

Introduced by: /s/ Florencio S. Harper

Florencio S. Harper
(by request)