

STANDING COMMITTEE REPORT NO. 19-222

RE: C.B. NO. 19-194/R&D

SUBJECT: ADDING A NEW SECTION 505 TO TITLE 24
OF THE FSM CODE DECLARING AS A
CLOSED AREA, THE TWELVE MILE AREA
SEAWARD OF THE TERRITORIAL SEA, NOT
TO EXTEND BEYOND TWENTY-FOUR
NAUTICAL MILES

APRIL 01, 2017

The Honorable Wesley W. Simina
Speaker, Nineteenth Congress
Federated States of Micronesia
Eight Special Session, 2017

Dear Mr. Speaker:

Your Committee on Resources and Development, to which was referred
C.B. No. 19-194, entitled:

"TO AMEND TITLE 24 OF THE CODE OF THE FEDERATED STATES OF
MICRONESIA (ANNOTATED), BY INSERTING A NEW SECTION 505, THAT
DECLARES AS A CLOSED AREA, THE TWELVE MILE AREA SEAWARD OF THE
TERRITORIAL SEA, NOT TO EXTEND BEYOND TWENTY-FOUR NAUTICAL MILES
FROM THE BASELINE FROM WHICH THE BREADTH OF THE TERRITORIAL SEA
IS MEASURED, PROHIBITING FISHING AND EXPLOITATION OF NATURAL
RESOURCES THEREON, AND FOR OTHER PURPOSES.",

begs leave to report as follows:

The intent and purpose of the bill are expressed in its title.

BACKGROUND

The subject bill was transmitted to Congress on September 6, 2016,
through Presidential Communication No. 19-415. The bill is to ban

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fishing and exploitation of natural resources in the twelve mile zone contiguous to the territorial sea.

The intent of C.B. No. 19-194 is primarily conservation of natural resources especially the highly migratory species. Presidential Communication No. 19-415 indicated that the WCPFC has not reached a decisive measure to combat the threatening high level of juvenile tuna mortality. Consequently, the FSM as a coastal state should put in place immediate measure that can provide a sort of "buffer" while the WCPFC members come up with the appropriate conservation and management measure for our declining fish stocks.

Public Hearings:

A series of public hearings on C.B. No. 19-194 were held in each of the states. On February 6, 2017, your Committee held a public hearing in Kosrae State. Chairman David W. Panuelo chaired the hearing. Other members present were Vice Chairman Alik L. Alik, Senators Paliknoa K. Welly and Esmond B. Moses. Also in attendance were the Assistant Attorney General Johnson Asher, the Deputy Director of NORMA Mathew Chigiyal, the Program Manager for the Division of Quarantine John Wichep and the Program Manager for the Division of Trade and Investment Florian Yatilman.

At the Kosrae hearing, your Committee informed the leadership that the bill proposes to close an additional twelve miles beyond the twelve miles territorial sea, which belongs to the state. During the deliberation of the bill, your Committee informed the leadership that because geographical make up of the island of Kosrae, the proposed closure of the twelve miles beyond the state's territorial sea can be easily measured, as compared to the other FSM states. The leadership expressed its full support of the proposed bill.

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On March 9, 2017, your Committee held a public hearing on the bill in Yap State. Vice Chairman Alik L. Alik chaired the hearing. Also in attendance were the Assistant Attorney General Johnson Asher, the Deputy Director of NORMA Mathew Chigiyal and the Program Manager for the Division of Trade and Investment Florian Yatilman.

During the discussion of the bill, the leadership questioned whether the prohibition applies to locally owned fishing company. Your Committee informed the leadership that the intent of the ban is for conservation measures; therefore, it applies to both commercial fishing of both domestic-foreign fishing companies and local company. Another concern was the enforcement of the ban if the bill passes. Your Committee with the assistance of the technical staff from the Department of Justice informed the leadership that the FSM Government has only three patrol boats, and these are the boats that will be monitoring the ban. As always, the Department of Justice needs to strengthen its enforcement responsibilities. Another question raised was the impact assessment on the impact of the fish stock if the ban is enforced. Your Committee informed the leadership that there were available data with the Tuna Commission. For NORMA, the Authority has not taken a complete impact assessment regarding this measure; nevertheless, the staff of NORMA commented that the protection of the fish stock is better than nothing.

The conservation group from Yap State fully supports the proposed bill. The sensitive issue that was discussed is the exemption of the ban to local company. Your Committee had considered this, and is proposing some language to the bill to give NORMA the discretion to exempt local company of this prohibition.

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On March 16, 2017, your Committee held a public hearing on the bill in Chuuk State. Vice Chairman Alik L. Alik chaired the hearing. Other members include Chairman Isaac V. Figir, Senator Robson U. Romolow and you, Speaker Wesley W. Simina. Also in attendance were the Assistant Attorney General Johnson Asher, the Deputy Director of NORMA Mathew Chigiyal and the Program Manager for the Division of Trade and Investment Florian Yatilman.

During the discussion of the bill, your Committee informed the leadership that the conservation of tuna stock has triggered this proposed amendment. The leadership stated that the last two sentences in the bill conflict with each other. One sentence prohibits the *"Authority from entertaining a license application for foreign fishing made by a person who violates this section."* The other sentence states, *"The Authority shall have discretion to exclude any vessel involved in the violation of this section from a future license or fishing access negotiation."* Your Committee took note of the conflict, and therefore recommends the deletion of the first sentence, which states, "The Authority is prohibited from entertaining a license application for foreign fishing made by a person violates this section."

On March 27, 2017, your Committee held a public hearing on the bill in Pohnpei State. Chairman David W. Panuelo chaired the hearing. Other members of Congress were Senators Ferny S. Perman, Esmond B. Moses and Joseph J. Urusemal. Also in attendance were the Executive Director of NORMA Eugene Pangelinan, the Deputy Director of NORMA Mathew Chigiyal, the Program Manager for the Division of Trade and Investment Florian Yatilman and the Program Manager for the Division of Quarantine John Wichep.

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During the discussion of the bill, your Committee informed the leadership that if this bill becomes law, the Authority (NORMA) will not grant fishing license to any commercial fishing companies to fish in this closed area. The Governor of Pohnpei State, the Honorable Marcelo Peterson inquired what does the word "fishing" in the title of the bill mean. Your Committee informed the leadership that "fishing" means "commercial fishing" or "industrial fishing". The leadership also inquired whether NORMA has the authority to issue fishing license to fishing companies to fish in the territorial sea, which belongs to the state. The leadership was informed that since the territorial sea, which is the twelve miles belongs to the state, NORMA cannot issue fishing licenses to fishing companies to fish in the states' territorial sea, unless the states so authorized the Authority to issue such licenses.

Another issue raised was the assessment on the revenues derived from fishing access fees. The Executive Director of NORMA explained that there may be a decrease in revenue. But, the leadership should understand that the reduction will be the fishing space, maybe a two percent decrease. For Purse Seine fishing, the activities occurred in the South. The biggest impact will be on the long line fishing and not the Purse Seine fishing. The leadership will support the bill if it is not restricting the local individuals to go out and fish. Another concern raised with the leadership is the fees from fishing violations, who usually controls the fees. Your Committee informed the leadership that the National Government fees are deposited with the National Government Treasury. However, there is a provision in title 24, some of the fees from these fishing violations is distributed to the affected state.

The Pohnpei Women Advisory Council fully supports the bill because of the protection and conservation of our fish stock for the future

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generation. This prohibition is to those that export their catch and not to those that are consuming their catch, like the locals.

Your Committee would like to offer the following amendments as follows:

1. Title, line 5, delete "fishing", and insert "commercial fishing" in lieu thereof.
2. Page 1, lines 13, 14, 15 and 16, delete "~~The Authority is prohibited from entertaining a license application for foreign fishing made by a person who violates this section~~".
3. Page 2, line 1, after "negotiation", insert "The Authority may exercise discretionary exemption from this prohibition to locally owned fishing company."

Recommendations of your committee

Your Committee on Resources and Development is in accord with the intent and purpose of C.B. No. 19-194 and recommends its passage on First Reading and that it be placed on the Calendar for Second and Final Reading in the form attached hereto as C.B. No. 19-194,C.D.1.

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Respectfully submitted,

/s/ David W. Panuelo
David W. Panuelo, chairman

/s/ Alik L. Alik
Alik L. Alik, vice chairman

/s/ Victor V. Gouland
Victor V. Gouland, member

/s/ Florencio S. Harper
Florencio S. Harper, member

Berney Martin, member

/s/ Joseph J. Urusemal
Joseph J. Urusemal, member

/s/ Robson U. Romolow
Robson U. Romolow, member