A BILL FOR AN ACT

To further amend title 41 of the Code of the Federated States of Micronesia (Annotated), as amended, by amending sections 1003, 1007, 1009, 1011, 1013, 1014, 1020, 1022, 1024, 1025, 1026, 1027, 1028, and 1030 thereof, to provide for the establishment of the Competent Authority, and for other purposes.

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

Section 1. Section 1003 of chapter 10 of title 41 of the Code of the Federated States of Micronesia (Annotated), as amended, is hereby further amended to read as follows:

"Section 1003. Definitions.
As used in this chapter, the following terms shall have the meanings set forth below:

(1) "Advertisement" means words, whether written or spoken, symbolic or pictorial representation or design, or any other representation which has the effect of promoting a product for sale.

(2) "Article" means
   (a) Any food, or anything used to label or advertise food; or
   (b) Any thing or machine used for the preparation, preservation, packing or storing of any food.

(3) "Export" means to send, mail, ship or carry out of
the Federated States of Micronesia in any way food or
any food product for sale, trade, exchange, or for any
consideration or in pursuance of any sale, trade,
exchange, or consideration.

(4) "Facility" means a food processing facility.

(5) "Food" means any article manufactured, sold or
represented to be for human consumption, and includes:

(a) All beverages except sakau and tuba;

(b) All chewing substances except betel nut and
the articles used to prepare betel nut for consumption;

(c) Any ingredient, food additive or other
substance that enters into or is capable of entering
into or is used in the composition or preparation of
food.

(6) "Import" means to bring or carry into the
Federated States of Micronesia any food or food product
for sale, trade, exchange or consideration, or in
pursuance of any sale, trade, exchange or consideration,
by any means of transportation[\textsuperscript{[\textsuperscript{7}]}, and includes
transshipment as defined in Title 24 of the Code of the
Federated States of Micronesia.

(7) "Label" means any tag, ticket, stamp, brand, or
mark containing any writing, picture, symbol or design,
attached to, included in, or accompanying any food or
food package.
(8) "Operator" in relation to a facility means any person who is in charge of, responsible for the operations of, directs or controls such facility, including the owner, director and manager and includes the beneficiary of the economic or financial benefit of the facility's operations.

(7) "Package" includes anything in which any food is wholly or partly placed or packed and includes any basket, pail, tray, or any receptacle whether open or closed.

(8) "Person" includes individuals, partnerships, corporations, associations, and all other entities doing business in the Federated States of Micronesia.

(9) "Premises" means:

(a) Any building or tent or facility or other structure, permanent or temporary, the land on which it is situated, and any adjoining land used in connection with it;

(b) Any vehicle or vessel; and

(c) Any place, including a street, open space, or place of public resort, used in the preparation, preservation, packaging or storage of any article.

(10) "Preparation" and "prepare" include manufacture, processing, and any form of treatment.

(11) "Processing" includes storing, packaging,
filleting, slicing, skinning, mincing, dismembering, cleaning, chilling, treating, freezing, drying, smoking, cooking, canning, packing of live seafood or other preservation and further processing techniques; and “process” and “processed” and “processor” shall have a corresponding meaning.

(14) “Seafood” means any aquatic species whether wild or farmed and including all edible forms, and products of such species.

(15) “Seafood product” means any product made from seafood or any part thereof.

(16) “Seafood Verification Unit” or “Unit” means the body established in Section 1011 of this chapter.

([15]17) “Secretary” means the Secretary of the Department of Health [Services] and Social Affairs.

([16]18) “Sell” means to offer, advertise, keeps, deliver, or prepare for sale or exchange, to dispose of for consideration, or to deliver in pursuance of a sale or exchange]. Includes:

(a) any method of disposition for consideration, including cash, anything which has value or which can be exchanged for cash, and barter;

(b) disposition to an agent for sale on consignment;

(c) offering or attempting to sell, or receiving
or having in possession for sale, or displaying for
sale, or sending or delivering for sale, or causing or
permitting to be sold, offered, or displayed for sale;
(d) disposition by way of raffle, lottery, or
other game of chance; and
and "sale" and "sold" have a corresponding meaning.
([13]19) "Unsanitary condition" means such condition as
could cause contamination of a food with dirt or filth,
or could render the food injurious or dangerous to
health, whether such contamination or injury or danger
actually occurs or not.
([14]20) "Vehicle" mean any device, whether operational
or not, that is usually a means of conveyance by land,
water or air."

Section 2. Section 1007 of title 41 of the Code of the
Federated States of Micronesia (Annotated), as amended, is hereby
further amended to read as follows:

"Section 1007. Food standards.
Where a standard has been prescribed by regulation for
any food that has been imported or is being prepared for
export, no person may label, package, prepare, sell, or
advertise that food when it does not comply with that
standard[, in such a way that the food could be mistaken
for food which meets the standard]."

Section 3. Section 1009 of title 41 of the Code of the
Federated States of Micronesia (Annotated), as amended, is hereby further amended to read as follows:

“Section 1009. Compliance

(1) Except as provided in section 1010 of this chapter, no person may import any article which does not comply with the provision of this chapter.

(2) No person may import any article into the Federated States of Micronesia which is restricted in its sales in the country of origin.

(3) No person may import, export, transport, sell, receive, acquire or purchase any article taken, possessed, transported or sold in violation of any law or regulation of a foreign state upon implementation, on a reciprocal basis, of an agreement between the Government of the Federated States of Micronesia and such other foreign state or states, in which such activities are agreed to be unlawful.

(4) No person may import any food or package containing food which is marked with an expiration date which has passed”.

Section 4. Section 1011 of title 41 of the Code of the Federated States of Micronesia (Annotated), as amended, is hereby repealed in its entirety.

Section 5. Title 41 of the Code of the Federated States of Micronesia (Annotated), as amended, is hereby further amended by
inserting a new section 1011 to read as follows:

“Section 1011. Seafood Verification Unit.

(1) The Seafood Verification Unit is hereby established.

(2) The Seafood Verification Unit shall act as the competent authority for the purpose of implementing the international food safety requirements and related obligations of the Federated States of Micronesia.

(3) The objectives of the Seafood Verification Unit are:

(a) to verify and certify the export of seafood;

and

(b) to ensure the application of appropriate quality control measures and seafood production industry standards.

(4) The Unit has the following functions:

(a) to verify the operation of licensed seafood processing facilities where required by law;

(b) to monitor, regulate and control all exports of seafood, and seafood products to ensure compliance with prescribed requirements and standards;

(c) to make recommendation to the Secretary with regard to licensing of seafood processing facilities in accordance with this chapter;

(d) to certify exports of seafood and seafood products;
products originating from the Federated States of Micronesia;

(e) to liaise with the National Oceanic Resources Management Authority established under Title 24 of the Code of the Federated States of Micronesia with regard to the certification of seafood and seafood products discharge from vessels entitled to fly the flag of the Federated States of Micronesia;

(f) to liaise with seafood facility operators, other agencies and importing country authorities with regard to seafood safety and market access requirements;

(g) provide official assurances to importing country authorities of the safety of seafood and seafood products for exports;

(h) to provide verification and inspection information and services to individuals, agencies and other organizations within the Federated States of Micronesia and overseas in respect of seafood and seafood product exports;

(i) to do such matters incidental to or consequential upon the exercise of its power or the discharge of its functions under this chapter.

(5) The exercise of the objectives and functions of the Unit shall be administered by a Manager appointed in accordance with the laws of the Federated States of
Micronesia and such qualified person deemed necessary. The Manager shall hold all necessary powers for the purpose of implementing the international food safety requirements and related obligations of the Federated States of Micronesia.”

Section 6. Section 1013 of title 41 of the Code of the Federated States of Micronesia (Annotated), as amended, is hereby further amended to read as follows:

"Section 1013. Powers of food inspectors.

(1) A food inspector may, upon reasonable belief and at any reasonable hour:

(a) Enter any port of entry or facility where articles subject to this chapter are being received, shipped or prepared for export, and examine and take samples of articles, and examine anything which appears capable of being used for such preparation, packaging, storage, sale, or conveyance;

(b) Detain and search any vehicle at any port of entry which is conveying any article subject to this chapter, and examine and take samples of any such article;

(c) Open and inspect any package which contains any article subject to this chapter;

(d) Examine any books, accounts, documents, or other records that could contain any relevant
information about articles subject to this chapter and make copies of such;

(e) Destroy or dispose of food for export or food which has been imported which is decayed or petrified or otherwise a danger to the public health, with prior notice to owner;

(f) Cut, remove, detain, seize, or recall any food not fit for human consumption or not suitable for export;

(g) Indelibly or otherwise mark, brand, dye or label any food of package containing any food;

(h) Make or impose any relevant order, instruction, condition or penalty;

(i) Interrupt, suspend or prohibit actions or operations wherever food is being cut-up, stored, sold or in any way processed.

([f]j) Call a member of the [local or national] police force for necessary assistance. Any member of the national police shall aid the food inspector as required;

([j]k) Question any person to determine compliance with this chapter.

(2) After any inspection, the food inspector shall give to the owner or person in charge a written report noting any violation of this chapter or the regulations.
A copy of this report shall be given to the Secretary.

(3) Any person aggrieved by any of these actions has a right to a hearing before the Hearing Committee, which shall be conducted according to regulations promulgated by the Secretary under this chapter."

Section 7. Section 1014 of title 41 of the Code of the Federated States of Micronesia (Annotated), as amended, is hereby further amended to read as follows:

"Section 1014. Assistance.

(1) All owners, operators, occupiers, persons in charge, or their employees or agents found on premises or in vehicle containing articles subject to this chapter shall give the food inspector all reasonable assistance in carrying out his duties.

(2) All owners, operators, occupiers, persons in charge, or their employee or agents shall immediately comply with every instruction or direction given by a food inspector as appropriate, and facilitate safe inspection of the premises or vehicle containing articles subject to this chapter. Such owners, operators, occupiers, persons in charge or their employees or agents shall ensure the safety of a food inspector in the performance of his duties.

(3) Any person who:
(a) assaults, obstructs, resists, delays, intimidates, or fails to ensure the safety of or otherwise interfere with a food inspector in the performance of his duties;

(b) incites or encourages any other person to assault, resist, or obstruct, any food inspector while in the execution of his power or duties, or any person lawfully acting under the food inspector’s order or in his aid;

(c) uses threatening language or behaves in a threatening or insulting manner or uses abusive language or insulting gestures towards any food inspector which in the execution of his powers or duties or any person lawfully acting under an inspector’s order or in his aid;

(d) fails to comply with the lawful requirements or instructions of any food inspector;

(e) furnishes to any food inspector any information of particulars which are false or misleading in any material respect;

(f) personates or falsely represents himself to be a food inspector, or who falsely represents himself to be a person lawfully acting under a food inspector’s order or in his aid;

(8) obstructs the administration of this law;
[(2) Any person who obstructs the administration of this law] shall be prosecuted by the [Office of the Attorney General] FSM Department of Justice under chapter 5 of title 11 of [this Code] the Code of the Federated of States of Micronesia.”

[(3) Any person who makes any false statement to a National Government food inspector who is executing his duties shall be prosecuted by the Office of the Attorney general pursuant to section 542 or 543 of title 11 of this code”]

Section 9. Section 1020 of title 41 of the Code of the Federated States of Micronesia (Annotated), as amended, is hereby further amended to read as follows:

“Section 1020. Dangerous foods.

(1) If the Secretary determines that a food that has been imported or is to be exported is or could be dangerous or injurious to health, the Secretary may so declare, and no such food may be sold in the [FSM] Federated States of Micronesia or exported until the Secretary determines that it is no longer dangerous or injurious to health.

(2) If the Secretary determines that food obtained from a certain area is or could be dangerous or injurious to health, the Secretary may so declare, and no food cultivated, taken, harvested, or otherwise
obtained from that area may be sold in [FSM] Federated States of Micronesia or exported until the Secretary determines that the danger has passed.

(3) An owner of foods banned under this section may appeal such decision in accordance with this chapter [to the Food Working Group, which shall conduct a hearing according to regulations promulgated by the Secretary].”

Section 10. Section 1022 of title 41 of the Code of the Federated States of Micronesia (Annotated), as amended, is hereby further amended to read as follows:

“Section 1022. Trade Secrets.

(1) Information furnished to the Secretary under section 1021 of this chapter shall remain confidential. The Secretary, the Unit and any committee established under this chapter [the Food Working Group], their employees and agents shall not reveal to any person any information furnished under section 1021 of this chapter, except as is necessary to perform his or her duties under this chapter.

(2) Any person who willfully violates this section shall be guilty of a national crime.

(3) A person convicted under subsection (2) of this section shall be punished by a fine not more than $100,000, or imprisonment for not more than five years, or both.
(4) In addition to the above, any person aggrieved by a violation of this section may recover damages, including punitive damages, in a civil suit filed against the offending individual or individuals."

Section 10. Section 1024 of title 41 of the Code of the Federated States of Micronesia (Annotated), as amended, is hereby further amended to read as follows:

"Section 1024. Licenses.

(1) The Secretary may license persons to import, export, prepare, pack, store food that has been imported or is being prepared for export, or transport food that has been imported or being transported for export, according to regulations promulgated by him under this chapter. [All license fees shall be paid into the General Fund].

(2) The Secretary may license a facility, on the application by the owner or operator, authorizing such facility to be used for processing of food, or for other purposes in accordance with this chapter as may be specific in the license.

(3) The Secretary may establish a Licensing Committee for the purpose of providing licensing recommendations or advice to the Secretary.

(4) No license shall be issued pursuant to this chapter unless:
(a) an application is made to the Secretary in the approved form; and
(b) the required license fees have been paid into the General Fund.

(5) The Secretary, on the advice of the Licensing Committee, may deny an application for a license on any of the following grounds:

(a) the owner or operator is the subject of proceedings under the bankruptcy laws of any jurisdiction and reasonable financial assistance have not been provided;
(b) there has been failure to satisfy a judgment or other determination for a contravention of this chapter by the owner or operator of the premise in respect of which application for a license has been made until such time as the judgment or other determination has been made;
(c) an owner or operator of the facility has contravened any other law of the Federated States of Micronesia;
(d) the previous offending history, if any, of the license applicant; or
(e) in accordance with such other grounds as may be prescribed.

(6) The Secretary, as appropriate, shall attach such
condition as may be prescribed and may attach such
additional conditions as her or she thinks fit and are
consistent with those which may be prescribed, to any
license granted under subsection (1) and (2).

(7) Each person, and the owner or operator of a
facility licensed in accordance with this section shall
comply with all applicable laws of the Federated States
of Micronesia and any conditions of such license.

(28) A person commits a national crime if he knowingly
imports, exports, prepares, packs, or stores food that
has been imported or is being prepared for export
without a valid license.

(9) A person commits a national crime if he operates
a seafood processing facility in the FSM without a valid
license.

(310) A person convicted under subsection [(2)](8)
of this section shall be punished by a fine not more
than $1,000 or imprisonment for not more than six
months, or both.

(11) A person convicted under subsection (9) of this
section shall be punished by a fine of not more than
$2,000 or imprisonment for not more than 12 months, or
both.

Section 11. Section 1025 of title 41 of the Code of the
Federated States of Micronesia (Annotated), as amended, is hereby
further amended to read as follows:

"Section 1025. Regulations.

(1) Before any program authorized by this chapter may go into effect, the Secretary shall promulgate regulations providing for the training of food inspectors and setting forth the procedures to be followed by food inspectors in administering and enforcing this chapter, in order to insure that the food inspectors exercise their powers with due regard to the safety of the public, and in such a way as to avoid unnecessary disruptions of business operations.

(2) The Secretary may also promulgate regulations regarding food standards including standards for domestic use and export purposes; import, export, conveying, testing, advertising, bookkeeping, and licensing standards; licensing fees; methods of sampling and analysis; food handlers; certification; and the procedure to be followed in the exercise of his duties and those of the Seafood Verification Unit or such other committees established under this chapter [food group], its employees, and food analysts.

(3) When regulations proposed under this chapter will affect an industry, [the members of the Food Working Group shall supply the Secretary with a list of the names of all members of that industry of which they are
aware.

In addition to the requirements of chapter I of Title 17 of this Code, the Secretary shall give notice of the proposed regulations to those members of the affected industry, and shall conduct at least one public hearing no sooner than 10 days after the public and the industry have been notified.”

Section 12. Section 1026 of title 41 of the Code of the Federated States of Micronesia (Annotated), as amended, is hereby further amended to read as follows:

“Section 1026. Hearing.

(1) The Secretary shall establish a Hearing Committee for the purpose of conducting hearings under this chapter and providing recommendations or advice to the Secretary.

Except for cases arising under section 1013 (1) (e) and section 1017 of this chapter, where immediate seize or destruction is appropriate, when a food inspector observes a violation of this chapter, or reasonably believes that a violation of this chapter has occurred, he or she shall file a violation report with the Secretary. [The Secretary may investigate, and then may order a hearing, which shall be conducted according to established regulations.]

(3) Any person aggrieved by an action of the Unit or the decision of the Secretary may submit a petition for
a hearing. Hearings shall be conducted in accordance
with regulations promulgated pursuant to title 17 of the
Code of the Federated States of Micronesia.”

Section 13. Section 1027 of title 41 of the Code of the
Federated States of Micronesia, as amended, is hereby further
amended to read as follows:

“Section 1027. Sanctions.

(1) The Secretary may suspend or revoke a license if
there is a failure to comply with any condition of the
license, requirement of this chapter, or any regulation
promulgated under this chapter.

(2) If the Secretary [Food Working Group] finds after
a hearing initiated by an aggrieved person that a
violation of the license or a requirement of this
chapter or regulations has occurred, the Secretary [Food
Working Group] shall suspend or revoke the license
of any person who has violated, or whose employee or
agent has violated any provision of this chapter or the
regulations promulgated under it.

(3) In addition to suspension or revocation of a
license, the Secretary [Food Working Group] may order
that any article, vehicle, or premises involved in the
violation be forfeited. The Secretary [Food Working
Committee] may dispose of such article, vehicle, or
premises as it sees fit. The costs of disposal shall be
paid from the proceeds; all remaining amounts shall be paid into the General Fund."

Section 14. Section 1023 of title 41 of the Code of the Federated States of Micronesia (Annotated), as amended, is hereby further amended to read as follows:

"Section 1028. Inspection for export purposes. Upon the application of any licensed commercial [packer] processor of seafood whose business is located within the [FSM] Federated States of Micronesia, the Secretary may designate a food inspector to examine and inspect the seafood for export and its production, packing, canning and labeling. All fees paid for certification shall be paid into the General Fund."

Section 15. Section 1030 of title 41 of the Code of the Federated States of Micronesia (Annotated), as amended, is hereby further amended to read as follows:

"Section 1030. Regulations. After consultation with the Secretary of the Department of Resources and Development, the Secretary of the Department of Health [Services] and Social Affairs shall promulgate regulations, [under] pursuant to chapter 1 of title 17 of this code, governing the certification program, including sanitary and other conditions which seafood processors must meet."
Section 16. 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: 6/26/18

Introduced by: /s/ Florencio S. Harper

Florencio S. Harper
(by request)