A BILL FOR AN ACT

To further amend title 24 of the Code of the Federated States of Micronesia, as amended, by further amending section 102, as amended by Public Laws Nos. 5-37 and 6-11, and by further amending sections 301, 302, 303, 306, 404, 405 and 406, as amended by Public Law No. 6-11, to provide for the creation of the Division of Fisheries and Marine Resources within the Department of Resources and Development, to require the approval of Congress for all foreign and domestic-based fishing agreements, to set limits on the duration of foreign fishing agreements and permits, to allow domestic-based fishing agreements for periods of up to two years in some circumstances, by repealing section 305, and for other purposes.

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

Section 1. Section 102 of title 24 of the Code of the Federated States of Micronesia, as amended by Public Laws Nos. 5-37 and 6-11, is hereby further amended to read as follows:

"Section 102. Definitions. As used in this title the terms:

(1) 'Administrator' means the director of a regional fisheries agency or any other organization or person authorized, pursuant to section 106 of this title, to administer a regional fisheries treaty.

(2) 'Applicable laws' means those laws affecting marine resources from time to time identified by the Authority by regulation.

(3) 'Atoll' means a naturally formed coral reef system which has one or more islands situated on the reef system, including Ngulu, Ulithi, Sorol, Eauripik, Woleai, Faraulep, Ifalik, Olaimaroa, Elato, Lamotrek, West Fayu, Puluwat, Pulap, Pulusuk, Namonuito, Kuop, Nomowin, Murilo, Losap, Namoluk, Satavan, Etal, Lukunor, Minto Reef, Oroluk, Nukuoro, Kapingamarangi, Pakin, Ant, Sapuahfik, Mwoakilloa, and Pingelap.

(4) 'Authority' means the Division of Fisheries and Marine Resources of the Department of Resources and Development.

(5) 'Authorized observer' means any person authorized in writing by the Authority to act as an observer on
foreign fishing vessels, including any observer authorized
pursuant to a regional fisheries treaty to be an authorized
observer for purposes of this title.

(§6) 'Authorized officer' means any officer of the
Division of Security and Investigation of the Government of
the Federated States of Micronesia or any other person
authorized in writing by the Attorney General to be an
authorized officer for the purposes of this title.

(§7) '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, selling all fish for processing within the
Federated States of Micronesia, transshipping all fish
harvested within the exclusive economic zone, and basing
operations in the Federated States of Micronesia while
operating in the exclusive economic zone.

(§8) '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.

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

(§10) 'Domestic-based fishing' means any fishing by
foreign fishing vessels based in the Federated States of Micronesia, but not including commercial pilot fishing.

(I§11) "Domestic-based fishing agreements" means an agreement between the Government of the Federated States of Micronesia and one or more persons to permit domestic-based fishing within the exclusive economic zone.

(I§12) "Domestic-based party" means a party to a domestic-based fishing agreement other than the Government of the Federated States of Micronesia or a State.

(I§13) "Domestic fishing" means any fishing by local fishing vessels longer than twenty-seven feet in overall length, but not including commercial pilot fishing.

(I§14) "Exclusive economic zone" means the exclusive economic zone defined in title 18 of the Code of the Federated States of Micronesia.

(I§15) "Executive director" means the Secretary of Resources and Development.

(I§16) "Fish" means any living marine resource.

(I§17) "Fish aggregating device" means any manmade or partly manmade floating device, whether anchored or not, intended for the purpose of aggregating fish, and includes any floating object on a device which has been placed to facilitate its location.

(I§18) "Fishery" means any fishing for stocks of fish.
(§19) '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 within the jurisdiction of the Federated States of Micronesia.

(§20) 'Fishing' means:

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

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

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

(d) aircraft use relating to the activities described in this subsection, except for flights in emergencies involving the health or safety of crew members or the safety of a vessel;

(e) transshipping fish to or from any vessel;

(f) storing, processing or transporting fish harvested within the fishery waters;

(g) refueling or supplying fishing vessels; or

(h) any operations at sea in support of or in preparation for any activity described in this subsection.

(§21) '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 carried on board a fishing vessel, aircraft or

helicopter.

(7322) '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:

(a) fishing;

(b) aiding or assisting one or more vessels at

sea in the performance of any activity related to fishing,

including, but not limited to preparation, supply, storage,

refrigeration, transportation, or processing.

(7323) 'Foreign fishing' means any fishing not defined

as domestic fishing or domestic-based fishing, but not

including commercial pilot fishing or fishing from a local

fishing vessel less than or equal to twenty-seven feet in

overall length.

(7324) 'Foreign fishing agreement' means an agreement

between the Authority on behalf of the Government of the

Federated States of Micronesia and one or more foreign

fishing interests to permit foreign vessels to harvest fish

within the exclusive economic zone.

(7325) 'Foreign fishing vessel' means any fishing

vessel not defined as a local fishing vessel.

(7326) 'Foreign party' means a party to a foreign
fishing agreement other than the Authority, the Government
of the Federated States of Micronesia or a State government.

(§27) 'Foreign recreational fishing' means fishing by
a foreign fishing vessel for recreational or sport purposes.

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

(§29) 'Living marine resource' means all forms of
marine animal and plant life other than marine birds and
includes: finfish, mollusks, and crustaceans.

(§30) 'Local fishing vessel' means any fishing vessel
wholly owned and operated by one or more:

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

(b) Citizen of the Federated States of
Micronesia;

(c) Corporation or cooperative established under
the laws of the Federated States of Micronesia or of any
State which is wholly owned and controlled by one or more
of the persons described in paragraphs (a) and (b) of this
subsection;

(d) Any combination of persons described in
paragraphs (a) through (c) of this subsection.

(§31) 'Operator' means any person who is in charge of,
directs, or controls a vessel, including the owner,
charterer, or the master.
(¶32) 'Pacific Island States' means the parties to
the South Pacific Forum Fisheries Agency Convention, 1979.

(¶33) 'Permit' means the document authorizing fishing
within all or part of the exclusive economic zone issued
pursuant to section 111 of this title or pursuant to a
treaty, or any agreement or arrangement entered into
pursuant to section 106 of this title.

(¶34) 'Person' means any individual, corporation,
partnership, association, or other entity, the Government
of the Federated States of Micronesia or any of the States,
or any political subdivision thereof, and any foreign
government, subdivision of such government, or entity
thereof.

(¶35) 'Regional fisheries treaty' means a treaty
between the governments of certain Pacific Island States
and governments, bodies or organizations of foreign States
other than Pacific Island States that relates to fishing in
the waters of the Pacific Island States and has entered
into force according to its terms, and has been ratified by
the Congress of the Federated States of Micronesia.

(¶36) 'Regional fishing license' means a regional
fishing license issued to a foreign fishing vessel pursuant
to a regional fisheries treaty.

(¶37) 'State' means any of the States of the Federated
States of Micronesia.
"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."

Section 2. Section 301 of title 24 of the Code of the Federated States of Micronesia, as amended by Public Law No. 6-11, is hereby further amended to read as follows:

"Section 301. MICRONESIAN MARITIME AUTHORITY Division of Fisheries and Marine Resources - Established.

(1) There is established a MICRONESIAN MARITIME AUTHORITY DIVISION OF FISHERIES AND MARINE RESOURCES as follows:

..."
Secessions shall be made at the call of the chairperson and shall be made in writing of each.

Chairperson shall be elected when the assembly of the Federated States of Micronesia in writing of each.

Chairperson shall be elected in the same manner as the original assembly for the election of the chairperson of the Assembly.

[Revised the Division of Fisheries and Marine Resources of the Department of Resources and Development.]

Section 3. Section 302 of title 24 of the Code of the Federated States of Micronesia, as amended by Public Law No. 6-11, is hereby further amended to read as follows:

"Section 302. Authority; Regulations.

(1) The Secretary of the Department of Resources and Development shall have the following authority:

(a) to adopt regulations for the conservation, management, and exploitation of fish in the exclusive
economic zone;

(b) to conclude foreign and domestic-based fishing agreements in accordance with sections 401 and 406 of this title;

(c) to issue domestic, domestic-based, and foreign fishing permits in accordance with established procedures prescribed by the authority or regulations promulgated pursuant to subsections (l)(a) and (l) of this section; and

(d) to participate in the planning and execution of programs relating to fisheries, or fishing in the exclusive economic zone in which a 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.

Section 4. Section 303 of title 24 of the Code of the Federated States of Micronesia, as amended by Public Law No. 6-11, is hereby further amended to read as follows:

"Section 303. Duties and functions. In addition to the authority granted in the preceding section, the authority Division of Fisheries and Marine Resources 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;

(2) to negotiate domestic-based and foreign fishing
agreements in accordance with sections 404 and 406 of this
title;

(3) To issue permits for fishing in the Territorial
Sea or internal waters of a State as authorized pursuant to
section 117;

(4) to perform such other duties and functions as may
be necessary to carry out the purposes of this title."

Section 5. Section 305 of title 24 of the Code of the Federated
States of Micronesia is hereby repealed in its entirety.

Section 6. Section 306 of title 24 of the Code of the
Federated States of Micronesia, as amended by Public Law No. 6-11, is
hereby further amended to read as follows:

"Section 305. Annual report. The Secretary of the
Secretary of the Department of Resources and
Development shall report 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
State Governor by December 1 of each year, which report

11 of 17
shall contain a detailed accounting of the expenditures of
such of the Executive its activities to include, 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 title in the preceding
fiscal year as the Executive Secretary may determine."

Section 7. Section 404 of title 24 of the Code of the Federated
States of Micronesia, as amended by Public Law No. 6-11, is hereby
further amended to read as follows:

"Section 404. Foreign fishing agreements – Terms. All
foreign fishing agreements shall be for a definite
duration not to exceed one year, and shall specify the
number of vessels that may be issued permits pursuant to
the agreement, and the size, tonnage capacity, and manner
of fishing of such vessels. Permits authorized by any
foreign fishing agreement shall not be for a period of time
extending beyond the term of the agreement. In addition,
all foreign fishing agreements shall have the following
minimum terms:

(1) The foreign party and the owner or operator of
any fishing vessel shall acknowledge the exclusive fishery
management authority of the Federated States of Micronesia
within the exclusive economic zone;
(2) The foreign party or the owner or operator of any fishing vessel fishing, as appropriate, pursuant to such agreement shall:

(a) comply with the requirements of this title, all regulations issued pursuant to this title and all other applicable laws and regulations;

(b) permit any officer authorized to enforce the provisions of this title to board and search or inspect any vessel at any time and make arrests and seizures provided for in section 508 of this title whenever such officer has reasonable cause to believe, as a result of such a search or inspection, that any such vessel or any person has committed an act prohibited by this title;

(c) permit such officer to examine and make notations on any permit issued pursuant to sections 109 through 111 of this title, or other documentation required under any applicable foreign fishing agreement;

(d) allow and assist any authorized officer to enforce the provisions of this title, regulations made thereunder and any other applicable laws or regulations;

(e) immediately comply with every instruction given by an authorized officer, facilitate safe boarding, and facilitate the inspection of the vessel, gear, equipment, records, fish and fish products;
(f) allow and assist authorized observers to board the vessel for scientific, monitoring, compliance and other functions, and have full access to, and the use of, facilities and equipment on board the vessel which the authorized observer may determine *are* necessary to carry out his or her duties; have full access to the bridge, fish on board and areas which may be used to hold, process, weigh and store fish; remove samples; have full access to the vessel’s records, including its logs and documentation for the purpose of inspection and copying; and gather any other information relating to fisheries in the exclusive economic zone;

(g) not assault, obstruct, resist, delay, refuse boarding to, intimidate, or interfere with an authorized officer or authorized observer in the performance of his or her duties;

(h) display any permit or permit number issued for any such vessel pursuant to sections 109 through 111 of this title or any documentation required to be displayed under foreign fishing agreements in the wheelhouse of such vessel;

(i) ensure that appropriate position-fixing and identification equipment shall be installed and maintained in working order on each such vessel;

(j) ensure that the vessel is marked in
accordance with regulations issued by the Secretary of the Department of Resources and Development while within the exclusive economic zone;

(k) require that the National Government of the Federated States of Micronesia shall be reimbursed for the cost of authorized observers;

(l) appoint and maintain an agent within the Federated States of Micronesia who is authorized to receive and respond to any legal process issued in the Federated States of Micronesia with respect to such owner or operator of such vessel; and

(m) not, in any year, exceed such party's allocation of the total allowable level of foreign fishing, in the event allocations are established in accordance with this title.

(3) Foreign parties will:

(a) apply, pursuant to section 109 of this title, for any required permits;

(b) deliver promptly to the owner or operator of the appropriate fishing vessel any permit which is issued under that section for such vessel; and

(c) abide by the requirement that no foreign fishing will be permitted in the exclusive economic zone without a valid and applicable permit, except as provided by foreign fishing agreements concluded pursuant to this
chapter and that all conditions and restrictions of the
permit, or any applicable foreign fishing agreement, are
complied with."

Section 8. Section 405 of title 24 of the Code of the Federated
States of Micronesia, as amended by Public Law No. 6-11, is hereby
further amended to read as follows:

"Section 405. Approval of foreign and domestic-based
fishing agreements.

(1) To take effect within the exclusive economic
zone, a foreign fishing agreement or domestic-based fishing
agreement shall require the approval of the Congress of the
Federated States of Micronesia by resolution.

(2) The Congress of the Federated States of Micronesia shall
approve such an agreement if the Congress is not in session.

(3) An agreement involving more than one vessel
case not require the approval of the Congress if the
Federated States of Micronesia.

(2) When submitting a domestic-based fishing
agreement to the Congress the Authority shall also submit:

(a) verifiable evidence of any investment in
land-based facilities made by the domestic-based party; and

(b) verifiable evidence that the domestic-based
party has obtained all foreign investment permits, licenses
and other permits and authorization necessary for such party
to conduct business in the Federated States of Micronesia
or any of the States thereof."

Section 9. Section 406 of title 24 of the Code of the Federated
States of Micronesia, as established by Public Law No. 6-11, is
hereby amended to read as follows:

"Section 406. Domestic-based fishing agreements. No
domestic-based fishing vessels shall be issued a permit to
fish in the exclusive economic zone without having entered
into a domestic-based fishing agreement. Such fishing
agreement shall have the same minimum terms required of
foreign fishing agreements by section 404 of this title
except that such agreements and the permits authorized by
such agreements may be for a period of time not to exceed
two years where the domestic-based party has invested more
than $1,000,000 in the preceding two years in land-based
facilities in the Federated States of Micronesia."

Section 10. 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: 10/28/92

Introduced by: Moses MBAI\'ELIiNG