A BILL FOR AN ACT

To further amend title 24 of the Code of the Federated States of Micronesia, as amended, by amending: section 102 for the purposes of enacting new subsections 102(10) and 102(11) defining "driftnet fishing", and renumbering subsections 102(10) through 102(38); amending section 501 for the purposes of enacting a new subsection 501(1)(p) prohibiting FSM flagged vessels from unauthorized fishing in foreign waters, enacting a new subsection 501(1)(q) prohibiting any vessel from driftnet fishing in FSM waters, enacting a new subsection 501(1)(r) prohibiting FSM flagged vessels from driftnet fishing in any waters; amending subsection 501(2) to clarify ambiguities, 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 hereby further amended by enacting new subsections (10) and (11) and by renumbering subsections (10) through (38) to (12) through (40) respectively, to read as follows:

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

(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, Olaimarao, Elato, Lamotrek, West Fayu, Puluwat, Pulap, Pulusuk, Nmanonuito, Kuop, Nomowin, Murilo, Losap, Namoluk, Satawan, Etal, Lukunor, Minto Reef, Orolik, Nukuoro, Kapingamarangi, Pakin, Ant, Sapwuaahfik, Mwoakiloa and Pinglelap.

(4) 'Authority' means the Micronesian Maritime Authority established by section 301 of this title.

(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, transhipping
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) 'Driftnet' means a gillnet or other net or a combination of nets which is more than 2.5 kilometers in length the purpose of which is to enmesh, entrap or entangle fish by drifting on the surface of or in the water;

(11) 'Driftnet fishing activities' means:

(a) catching, taking or harvesting fish with the use of a driftnet;

(b) attempting to catch, take or harvest fish with the use of a driftnet;

(c) 'engaging in any other activity which can reasonably be expected to result in the catching, taking or harvesting of fish with the use of a driftnet, including searching for and locating fish to be taken by that method;

(d) any operations at sea in support of, or in preparation for any activity described in this paragraph, including operations of placing, searching for or recovering fish aggregating devices or associated electronic equipment such as radio beacons;

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

(f) transporting, transshipping and processing
any driftnet catch, and cooperation in the provision of
food, fuel and other supplies for vessels equipped for
or engaged in driftnet fishing:

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

(13) 'Domestic-based fishing agreements' means an
agreement between the Government of the Federated States
of Micronesia, but not including commercial pilot
fishing.

(14) '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.

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

(16) 'Exclusive economic zone' means the exclusive
economic zone defined in the title 18 of the Code of the
Federated States of Micronesia.

(17) 'Executive director' means the executive
director of the Micronesian Maritime Authority.

(18) 'Fish' means any living marine resource.
(19) 'Fish aggregation device' means any man-made or partly man-made 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.

(20) 'Fishery' means any fishing for stocks of fish.

(21) '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.

(22) '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 of the safety of a vessel;
(e) transhipping fish to or from any vessel;
(f) storing, processing or transporting fish
harvested within the fishery waters;
(g) refuelling or supplying fishing vessels;
or
(h) any operations at sea in support of or in
preparation for any activity described in this
subsection.

(23) 'Fishing gear' means any equipment, implement
or other thing that can be used in act of fishing,
including any fishing net, rope, line, float, trap,
hook, winch, boat carried on board a fishing vessel,
aircraft or helicopter.

(24) '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.

(25) '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.

(26) '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.

(27) 'Foreign fishing vessel' means any fishing vessel not defined as a local fishing vessel.

(28) '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.

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

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

(31) 'Living marine resource' means all forms of marine animal and plant life other than marine birds and includes, finfish, molluscs, and crustaceans.

(32) '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;

(33) 'Operator' means any person who is in charge of, directs, or controls a vessel, including the owner, charterer, or the master.

(34) 'Pacific Island States' means the parties to the South Pacific Forum Fisheries Agency Convention, 1979.

(35) '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.

(36) '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.

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

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

(39) 'State' means any of the States of the Federated States of Micronesia.

(40) '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 501 of title 24 of the Code of the Federated States of Micronesia, is hereby further amended by enacting new subsections 501(1)(p) 501(1)(q), and 501(1)(r) and by amending subsection (501(2) to read as follows:

"Section 501. Prohibited acts.

(1) It is unlawful for any person:

(a) to violate any provision of this title or
of any regulation or permit issued pursuant to this title;

(b) to engage in fishing after revocation, or during the period of suspension, of an applicable permit issued pursuant to this title;

(c) to violate any provision of, or regulation under, an applicable domestic-based or foreign fishing agreement entered into pursuant to sections 401 and 404 through 406 of this title or any term or condition of any permit issued in accordance with this title and any regulations made under this title;

(d) to violate any provision of any applicable foreign fishing treaty, agreement or arrangement or the terms of any regional fishing license recognized in accordance with this title;

(e) to refuse to permit any authorized officer to board a fishing vessel for purposes of conducting any search or inspection in connection with the enforcement of this title or any regulation, permit, or foreign or domestic-based fishing agreement or any applicable fishing treaty, agreement or arrangement;

(f) to assault, obstruct, resist, delay, refuse boarding to, intimidate, or interfere with any authorized officer or authorized observer in performance of his duties, including in the conduct of any search or
inspection described in paragraph (e) of this
subsection; and for the purposes of this subparagraph,
any person who refuses to allow any authorized officer
or observer, or any person acting under his order or in
his aid, to exercise any of the powers conferred on an
authorized officer or observer by this title or any
regulations made under this title shall be deemed to be
obstructing that officer, observer, or person;

(g) to fail to comply with the lawful
requirements of any authorized officer or observer;

(h) to furnish to any authorized officer any
particulars which, to his knowledge, are false or
misleading in any respect;

(i) being on board any vessel being pursued or
about to be boarded by any authorized officer, to throw
overboard or destroy any fish, fishing gear, explosive,
poison, or other noxious substance to avoid seizure of
such fish, fishing gear, explosive, poison, or other
noxious substance or thing or to avoid the detection of
any offense under this title or the regulations made
under this title;

(j) to resist a lawful arrest for any act
prohibited by this section;

(k) to provide information required to be
recorded, notified or communicated pursuant to any
requirement of the provisions of this title or the
regulations, knowing or having reasonable cause to
believe that it is false, incomplete or misleading;

(1) to knowingly ship, transport, offer for
sale, sell, purchase, import, export, or have custody,
control, or possession of any fish taken or retained in
violation of this title or any regional fishing treaty,
regulation, permit, foreign or domestic-based fishing
agreement or any applicable law;

(m) to interfere with, delay, or prevent, by
any means, the apprehension or arrest of another person,
knowing that such person has committed any act
prohibited by this section;

(n) to violate any provision of, or regulation
under, any applicable agreement to implement a regional
fisheries treaty, or any other treaty, agreement or
arrangement having effect in the Federated States of
Micronesia, entered into pursuant to section 106 of this
title; or

(o) to use any foreign fishing vessel for
fishing within a two-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.

(p) being a fishing vessel entitled to fly the
national flag of the Federated States of Micronesia, to fish in waters under the national jurisdiction of a foreign nation unless duly authorized by the competent authorities of the foreign nation or nations concerned; (g) to engage in driftnet fishing activities in the fishery waters; or (r) being a fishing vessel entitled to fly the national flag of the Federated States of Micronesia, to engage in driftnet fishing activities in waters under the national jurisdiction of a foreign nation, in the high seas, or in enclosed or semi-enclosed seas as defined in the United Nations Convention on the Law of the Sea of December 10, 1982.

(2) It is unlawful for any fishing vessel, and for the crew, owner, or operator of any fishing vessel, to engage in fishing in the exclusive economic zone authorized by and conducted in accordance with or without a valid and applicable fishing permit issued pursuant to this title, where such permit is required by sections 103 and 104 of this title, and unless such fishing is permitted pursuant to section 106."
Section 3. 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: 11/27/95

Introduced by: Joseph J. Urusemal (by request)