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A BILL FOR AN ACT

To further amend title 24 of the Code of the Federated States of Micronesia, as amended, by repealing chapters 1 through 5 in their entirety, and enacting new chapters 1 through 5; by renumbering chapters 6 and 7 as chapters 9 and 10 respectively; by enacting new chapters 6 through 8; to establish the Marine Resources Act of 1999; and for other purposes.

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

1 Section 1. Chapters 1 through 5 of title 24 of the Code of the
2 Federated States of Micronesia, as amended, are hereby repealed in
3 their entirety.

4 Section 2. Title 24 of the Code of the Federated States of
5 Micronesia, as amended, is hereby further amended by adding a new
6 chapter 1 entitled "General Provisions".

7 Section 3. Title 24 of the Code of the Federated States of
8 Micronesia, as amended, is hereby further amended by adding a new
9 section 101 of chapter 1 to read as follows:

10 "Section 101. Purpose of this chapter. The purpose of
11 this chapter is to ensure the sustainable development and
12 use of the marine resources in the exclusive economic
13 zone by encouraging development of, and investment in,
14 fishing and related activities in the context of
15 effective stewardship."

16 Section 4. Title 24 of the Code of the Federated States of
17 Micronesia, as amended, is hereby further amended by adding a new
18 section 102 of chapter 1 to read as follows:

19 "Section 102. Definitions. In this chapter, except
20 where otherwise specified, the following terms shall have
21 the meanings stated below:

22 (1) 'Access agreement' means a treaty, agreement or

1 arrangement entered into by the Authority pursuant to
2 this act in relation to access to the exclusive economic
3 zone for fishing by foreign or domestic-based fishing
4 vessels, and includes bilateral and multilateral
5 instruments applicable at the national, sub-regional,
6 regional or international level.

7 (2) 'Administrator' means the director of a regional
8 fisheries agency or any other organization or person
9 authorized, pursuant to section 108 of chapter 1 of this
10 title, to administer a fisheries access agreement or
11 fisheries management agreement to which the Federated
12 States of Micronesia is party.

13 (3) 'Agent' includes a person appointed or designated
14 by a foreign fishing company to act as the legal
15 representative of that company within the Federated
16 States of Micronesia, including acceptance of and
17 response to legal process, pursuant to section 404(4)(a)
18 of chapter 4 of this title.

19 (4) 'Aircraft' means any craft capable of self-
20 sustained movement through the atmosphere and includes
21 helicopters.

22 (5) 'Atoll' means a naturally formed coral reef system
23 which has one or more islands situated on the reef
24 system, including Ngulu, Ulithi, Sorol, Eauripik, Woleai,
25 Faraulep, Ifalik, Olaimarao, Elato, Lamotrek, West Fayu,

1 Puluwat, Pulap, Pulusuk, Namonuito, Kuop, Nomowin,
2 Murilo, Losap, Namoluk, Satawan, Etal, Lukunor, Minto
3 Reef, Oroluk, Nukuoro, Kapingamarangi, Pakin, Ant,
4 Sapwuahfik, Mwoakilloa and Pingelap.

5 (6) 'Authority' means the Micronesian Maritime
6 Authority established by section 201 of chapter 2 of this
7 title.

8 (7) 'Authorized observer' means any person authorized
9 in writing by the Authority to act as an observer on
10 fishing vessels for the purposes of this title, including
11 any observer authorized pursuant to the provisions of an
12 access agreement or a fisheries management agreement.

13 (8) 'Authorized officer' means any person or category
14 of persons designated pursuant to section 502 of chapter
15 5 of this title as an authorized officer.

16 (9) 'Based in the Federated States of Micronesia' means
17 using land-based facilities in the Federated States of
18 Micronesia to support fishing, including location of the
19 home port of a vessel in the Federated States of
20 Micronesia, landing or transshipping all fish harvested
21 within the exclusive economic zone and/or operating under
22 a joint venture arrangement in the Federated States of
23 Micronesia, or under arrangements where the operator of a
24 vessel is participating in shore-based developments or is
25 otherwise making a substantial contribution to the

1 development of the domestic tuna industry.

2 (10) 'Buy' includes:

3 (a) barter or attempt to barter;

4 (b) purchase or attempt to purchase;

5 (c) receive on account or consignment;

6 (d) purchase or barter for future goods or for any consideration of value; and

8 (e) purchase or barter as an agent for another person, and 'buyer' shall have a corresponding meaning.

10 (11) 'Citizen' means a person who is a citizen of the Federated States of Micronesia, and 'non-citizen' means a person who is not a citizen of the Federated States of Micronesia.

14 (12) 'Closed season' means a period of time during which fishing is prohibited.

16 (13) 'Commercial fishing' means any fishing resulting or intending or appearing to result in selling or trading any fish which may be taken during the fishing operation, and does not include subsistence fishing. For the purposes of this act, use of the following shall be presumed to be commercial fishing:

22 (a) a vessel for fishing which measures twenty-seven feet or more in overall length;

24 (b) more than one vessel for fishing which is owned by a single person for the primary purpose of

1 selling or trading any fish; or

2 (c) any vessel selling its services for sport
3 fishing.

4 (14) 'Commercial pilot fishing' means any fishing for
5 the purpose of testing the commercial viability of:

6 (a) new fishing methods;

7 (b) developing new stocks of fish; or

8 (c) fishing in previously unexploited areas.

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

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

14 (17) 'Domestic based access agreement' means an
15 agreement between the Government of the Federated States
16 of Micronesia and one or more persons to permit domestic-
17 based fishing within the exclusive economic zone.

18 (18) 'Domestic fishing' means any fishing by a local
19 fishing vessel longer than twenty-seven feet in overall
20 length, but not including commercial pilot fishing.

21 (19) 'Drift net' means a gillnet or other net or
22 arrangement of nets which is more than 2.5 kilometers
23 (1.56 miles) in length, the purpose of which is to
24 enmesh, entrap or entangle fish.

25 (20) 'Drift net fishing activities' includes fishing

1 with the use of a drift net and any related activities
2 including transporting, transshipping and processing any
3 drift net catch, and provisioning of food, fuel and other
4 supplies for vessels used or outfitted for drift net
5 fishing.

6 (21) 'Exclusive economic zone' means the exclusive
7 economic zone as defined in title 18 of the Code of the
8 Federated States of Micronesia.

9 (22) 'Export' means to:

10 (a) send or take out of the country;

11 (b) attempt to send or take out of the country;

12 (c) receive on account or consignment for purposes
13 of subsection (a) or (b);

14 (d) act as an agent for another person for
15 purposes of (a) through (c); and

16 (e) carry or transport anything for purposes of
17 subsection (a) through (d), and 'exporter' shall have a
18 corresponding meaning.

19 (23) 'Fish' means any living marine resource.

20 (24) 'Fish aggregating device' means any man-made or
21 partly man-made floating or semi-submerged device,
22 whether anchored or not, intended for the purpose of
23 aggregating fish, and includes any natural floating
24 object on which a device has been placed to facilitate
25 its location.

1 (25) 'Fish processing' means the producing of any
2 substance or article from fish by any method and includes
3 the cutting up, dismembering, cleaning, sorting, loining,
4 freezing, canning, salting, preserving and reduction of
5 fish.

6 (26) 'Fisheries management agreement' means any
7 agreement, arrangement or treaty in force to which the
8 Federated States of Micronesia is party which has as its
9 purpose cooperation in or coordination of fisheries
10 management measures in all or part of the region, or
11 implementation of a multilateral access agreement,
12 including, but not limited to, fisheries monitoring,
13 control and surveillance and establishing criteria or
14 requirements for fishing and fisheries access, but which
15 does not include any access agreement.

16 (27) 'Fishery' or 'Fisheries' means one or more stock of
17 fish or any fishing operation based on such stocks which
18 can be treated as a unit for purposes of conservation and
19 management, taking into account geographical, scientific,
20 technical, recreational, economic and other relevant
21 characteristics.

22 (28) 'Fishery waters' means the exclusive economic zone,
23 the territorial sea and internal waters as described in
24 title 18 of the Code of the Federated States of
25 Micronesia, and any other waters within the jurisdiction

1 of the Federated States of Micronesia.

2 (29) 'Fishing' means:

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

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

8 (c) the placing, searching for or recovering of
9 any fish aggregating device or associated electronic
10 equipment such as radio beacons;

11 (d) any operation at sea directly in support of or
12 in preparation for any activity described in this
13 paragraph except for operations defined as related
14 activities in subsection (50) of this section; and

15 (e) the use of an aircraft in relation to any
16 activity described in this paragraph except for flights
17 in emergencies involving the health or safety of crew
18 members or the safety of a vessel.

19 (30) 'Fishing gear' means any equipment, implement, or
20 other thing that can be used in the act of fishing,
21 including any fishing net, rope, line, float, trap, hook,
22 winch, boat, beacon or locating device, aircraft or
23 helicopter.

24 (31) 'Fishing vessel' means any vessel, boat, ship or
25 other craft which is used for, equipped to be used for or

1 of a type that is normally used for fishing.

2 (32) 'Foreign fishing' means any fishing not defined as
3 domestic fishing or domestic-based fishing, and not
4 including commercial pilot fishing or fishing from a
5 local fishing vessel less than or equal to twenty-seven
6 feet in overall length.

7 (33) 'Foreign fishing vessel' means any fishing vessel
8 other than a local fishing vessel.

9 (34) 'Foreign party' means a non-citizen party to an
10 access agreement or a party to an access agreement that
11 is at least twenty percent foreign-owned.

12 (35) 'Foreign recreational fishing' means fishing using
13 a foreign fishing vessel for recreational or sport
14 purposes.

15 (36) 'Internal waters' means waters on the landward side
16 of the baseline of the territorial sea of any island
17 within the Federated States of Micronesia.

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

20 (38) 'Local fishing vessel' means any fishing vessel
21 wholly owned and controlled by:

22 (a) the Government of the Federated States of
23 Micronesia, any State Government or any subdivision
24 thereof;

25 (b) one or more natural persons who are citizens

1 of the Federated States of Micronesia;

2 (c) any corporation, company, society, or other
3 association of persons incorporated or established under
4 the laws of the Federated States of Micronesia or of any
5 State and which is wholly owned and controlled by one or
6 more of the entities or persons described in paragraphs
7 (a) or (b) of this subsection; and

8 (d) any combination of persons or entities
9 described in paragraphs (a) through (c) of this
10 subsection.

11 (39) 'Master' in relation to any fishing vessel means
12 the person in charge or apparently in charge of that
13 vessel.

14 (40) 'Multilateral access agreement' means an access
15 agreement between a foreign party and one or more
16 regional parties, to which the Federated States of
17 Micronesia is party.

18 (41) 'Officer' means any authorized officer or national
19 police officer, and includes any officer of a vessel or
20 aircraft used for the enforcement of this act, whether or
21 not such officers are officials of the Government of the
22 Federated States of Micronesia or of one of the four
23 State Governments or whether or not such vessel or
24 aircraft is registered in one of the four States.

25 (42) 'Operator' means any person who is in charge of or

1 directs or controls a fishing vessel, or for whose direct
2 economic or financial benefit a vessel is being used,
3 including the master, owner, and charterer.

4 (43) 'Owner' in relation to a fishing vessel means any
5 person exercising or discharging or claiming the right or
6 accepting the obligation to exercise or discharge any of
7 the powers or duties of an owner whether on his own
8 behalf or on behalf of another and includes a person who
9 is the owner jointly with any other person or persons and
10 any manager, director or secretary of any corporate body
11 or company.

12 (44) 'Permit' means any permit issued under this title
13 or an access agreement entered into pursuant to this
14 title.

15 (45) 'Person' means any natural person or business
16 enterprise and includes, but is not limited to, a
17 corporation, partnership, cooperative, association, the
18 Government of the Federated States of Micronesia, the
19 Government of any of the four States, or any political
20 subdivision thereof, and any foreign government,
21 subdivision of such government or other entity.

22 (46) 'Recreational fishing' means non-commercial fishing
23 for leisure or relaxation and may include sport fishing.

24 (47) 'Region' means that area of land and ocean which
25 falls within the jurisdiction and sovereign rights of the

1 member countries of the South Pacific Forum Fisheries
2 Agency, whose headquarters are located in Honiara,
3 Solomon Islands, and includes high seas areas within such
4 area, and for the purposes of data collection also means
5 that area of the Western and Central Pacific Ocean which
6 falls within the jurisdiction and sovereign rights of the
7 member countries of the South Pacific Commission located
8 in Noumea, New Caledonia, and 'regional' shall have a
9 corresponding meaning.

10 (48) 'Regional access license' means a regional access
11 license issued to any fishing vessel of a party to a
12 multilateral access agreement or fisheries management
13 agreement, in accordance with such agreement.

14 (49) 'Regulation' or 'Regulations' means any regulation
15 which may be promulgated by the Authority pursuant to
16 this act.

17 (50) 'Related activities' in relation to fishing means:

18 (a) transshipment;

19 (b) refueling or supplying fishing boats selling
20 or supplying fishing equipment or performing either
21 activity in support of fishing; and

22 (c) on-shore storing, buying or processing fish or
23 fish products from the time they are first landed.

24 (51) 'Secretary' means the Secretary of the Department
25 of Justice.

1 (52) 'Sell' includes exchanging any fish or fish product
2 or other thing for cash or for anything which has value
3 or which can be exchanged for cash, and bartering.

4 (53) 'Stock of fish' means a species, subspecies or
5 other category of fish identified on the basis of
6 geographical, scientific, technical, recreational and
7 economic characteristics which can be treated as a unit
8 for purposes of conservation and management.

9 (54) 'Subsistence fishing' means fishing by a citizen or
10 a resident substantially for personal consumption, and
11 does not include any fishing resulting or intending or
12 appearing to result, directly or indirectly, in selling
13 or trading any fish which may be taken during the fishing
14 operations.

15 (55) 'Transshipment' means the transfer of any or all
16 fish or fish products to or from any vessel or aircraft
17 for the purposes of transporting such fish or fish
18 products elsewhere.

19 (56) 'United Nations Agreement' means the agreement for
20 the implementation of the provisions of the United
21 Nations Convention on the Law of the Sea of 10 December
22 1992 relating to the conservation and management of
23 straddling fish stocks and highly migratory fish stocks.

24 (57) 'United Nations Convention' means the United
25 Nations Convention on the Law of the Sea, 1982.

1 (58) 'Vehicle' means any car, truck, van, bus, trailer
2 or other powered land conveyance.

3 (59) 'Vessel' means any boat, ship, canoe or other water
4 going craft."

5 Section 5. Title 24 of the Code of the Federated States of
6 Micronesia, as amended, is hereby further amended by adding a new
7 section 103 of chapter 1 to read as follows:

8 "Section 103. Fishing permits required - commercial. No
9 domestic fishing, domestic based fishing, commercial
10 pilot fishing, foreign fishing or such other fishing or
11 related activity as may be prescribed is permitted in the
12 exclusive economic zone unless it is in accordance with:

13 (1) a valid and applicable permit issued under
14 authority conferred by this title; or

15 (2) a valid and applicable license issued by an
16 administrator pursuant to a multilateral access agreement
17 entered into pursuant to section 107 of chapter 1 of this
18 title."

19 Section 6. Title 24 of the Code of the Federated States of
20 Micronesia, as amended, is hereby further amended by adding a new
21 section 104 of chapter 1 to read as follows:

22 "Section 104. Fishing permits required - non-commercial.
23 No scientific research, training or foreign recreational
24 fishing is permitted in the exclusive economic zone
25 unless it is in accordance with a valid and applicable

1 permit issued by the Authority on such terms and
2 conditions as it shall require."

3 Section 7. Title 24 of the Code of the Federated States of
4 Micronesia, as amended, is hereby further amended by adding a new
5 section 105 of chapter 1 to read as follows:

6 "Section 105. Related activities. No related activities
7 are permitted in the exclusive economic zone unless any
8 such activity is in accordance with this title, and such
9 conditions as may be required in writing by the Authority
10 or prescribed by regulation."

11 Section 8. Title 24 of the Code of the Federated States of
12 Micronesia, as amended, is hereby further amended by adding a new
13 section 106 of chapter 1 to read as follows:

14 "Section 106. Authority may enter into access
15 agreements. The Authority is authorized to negotiate and
16 enter into access agreements on behalf of the Government
17 of the Federated States of Micronesia in accordance with
18 this title. Such agreements may, at the Authority's
19 discretion, include provisions, inter alia, to:

20 (1) rebate such access fees, in accordance with section
21 402(2) of this title, as the Authority deems appropriate
22 at the end of the licensing period where the operator of
23 any applicable vessel participated in shore-based
24 developments or otherwise made a substantial contribution
25 to the development of the fishing industry of the

1 Federated States of Micronesia; and

2 (2) issue permits valid for up to one year in
3 accordance with this title and an applicable access
4 agreement."

5 Section 9. Title 24 of the Code of the Federated States of
6 Micronesia, as amended, is hereby further amended by adding a new
7 section 107 of chapter 1 to read as follows:

8 "Section 107. Authority may enter into fisheries
9 management agreements.

10 (1) Notwithstanding any other provision of this title,
11 the Authority is authorized to enter into fisheries
12 management agreements. Such agreements may, at the
13 Authority's discretion, include the following provisions,
14 inter alia:

15 (a) authorization of a person, body or
16 organization to perform functions required by a
17 multilateral access agreement, including, but not limited
18 to, the allocation, issuance and denial of fishing
19 licenses valid in the region or part thereof, including
20 the exclusive economic zone;

21 (b) an observer program;

22 (c) fisheries monitoring and control; and

23 (d) any other matter relating to fisheries
24 management.

25 (2) For the purpose of giving effect to a multilateral

1 access agreement or fisheries management agreement, the
2 Authority may, in writing:

3 (a) exempt any foreign fishing vessel, holding a
4 valid fishing license issued pursuant to a multilateral
5 access agreement, from any requirement of this title
6 which is inconsistent with the terms of such agreement;

7 (b) implement the establishment of closed areas,
8 closed seasons and such other management measures as may
9 be agreed upon pursuant to a fisheries management
10 agreement;

11 (c) authorize observers designated under an
12 observer program entered into pursuant to subsection
13 (1)(b) of this section to:

14 (i) enforce the provisions of this title and
15 any fisheries access agreement or fisheries management
16 agreement on behalf of the Federated States of
17 Micronesia; and

18 (ii) perform such duties and responsibilities
19 as may be required by such agreement;

20 (d) prescribe or otherwise require the conditions
21 to be observed by operators of foreign fishing vessels
22 exempted under paragraph (a) of this subsection;

23 (e) prescribe or otherwise require the conditions
24 to be observed by citizens and operators of fishing
25 vessels registered in the Federated States of Micronesia

1 for fishing outside the exclusive economic zone, in
2 accordance with any access agreement or fisheries
3 management agreement to which the Federated States of
4 Micronesia may be party.

5 (3) Standing in the Supreme Court of Micronesia shall
6 be afforded to any authorized officer or authorized
7 observer designated under a fisheries management
8 agreement entered into pursuant to subsection (1)(b) or
9 (c) of this section to bring action against any person or
10 fishing vessel for any act or offense that is actionable
11 under the laws of the Federated States of Micronesia or
12 is a violation of an access agreement or fisheries
13 management agreement pursuant to which the observer was
14 authorized which has occurred in the exclusive economic
15 zone or the high seas, notwithstanding the nationality of
16 the observer."

17 Section 10. Title 24 of the Code of the Federated States of
18 Micronesia, as amended, is hereby further amended by adding a new
19 section 108 of chapter 1 to read as follows:

20 "Section 108. Conservation, management and sustainable
21 use of the fishery resources.

22 (1) The Authority shall ensure the long-term
23 conservation and sustainable use of the fishery
24 resources, and to this end shall adopt management
25 measures which promote the objective of optimum

1 utilization.

2 (2) The Authority shall ensure that such management
3 measures are based on the best scientific evidence
4 available and designed to maintain or restore stocks at
5 levels capable of producing maximum sustainable yield, as
6 qualified by relevant environmental and economic factors,
7 and taking into account fishing patterns, the
8 interdependence of stocks and generally recommended
9 international minimum standards.

10 (3) The Authority shall apply the precautionary
11 approach at no less standard than set by criteria in the
12 United Nations Agreement or any other fisheries
13 management agreement.

14 (4) The Authority shall, as appropriate, adopt and
15 apply the following general principles in relation to
16 fisheries management:

17 (a) assess the impacts of fishing, other human
18 activities and environmental factors on target stocks and
19 species belonging to the same ecosystem or associated
20 with or dependent upon the target stocks;

21 (b) adopt, where necessary, conservation and
22 management measures for species belonging to the same
23 ecosystem or associated with or dependent upon the target
24 stocks, with a view to maintaining or restoring
25 populations of such species above levels at which their

1 reproduction may become seriously threatened;

2 (c) minimize pollution, waste, discards, by-catch,
3 lost or abandoned gear, catch of non-target species and
4 impacts on associated or dependent species, in particular
5 endangered species, through measures including, to the
6 extent practical, the development and use of selective,
7 environmentally safe and cost-effective fishing gear and
8 techniques;

9 (d) protect biodiversity in the marine
10 environment;

11 (e) take measures to prevent or eliminate over
12 fishing and excess fishing capacity and to ensure that
13 levels of fishing effort do not exceed those commensurate
14 with the sustainable use of fishery resources;

15 (f) take into account the interests of artisanal
16 and subsistence fishermen;

17 (g) collect and share, in a timely manner and in
18 accordance with fisheries management agreements and
19 international law, complete and accurate data concerning
20 fishing activities on, inter alia, vessel position, catch
21 of target and non-target species and fishing effort, as
22 well as information from national and international
23 research programs;

24 (h) promote and conduct scientific research and
25 develop appropriate technologies in support of fishery

1 conservation and management;

2 (i) implement and enforce conservation and
3 management measures through effective monitoring and
4 control and through support for and collaboration with
5 the FSM maritime surveillance program.

6 (5) The Authority may determine the total allowable
7 level of fishing with respect to any stock of fish
8 subject to the provisions of this title or as provided in
9 a fisheries management agreement entered into in
10 accordance with this title, and in so doing shall take
11 into account the requirements in subsections (1) through
12 (4) of this section.

13 (6) The Authority may determine participatory rights in
14 the fishery, such as allocations of allowable catch or
15 levels of fishing effort. Allocations of such
16 participatory rights:

17 (a) shall be made first to domestic fishing
18 vessels, then to domestic based fishing vessels or
19 vessels fishing pursuant to a fisheries management
20 agreement, with any remaining allocations to foreign
21 fishing vessels;

22 (b) may include restrictions as to vessel type,
23 gear type, seasons of operations, areas in which the
24 fishing can take place, or any other restriction relevant
25 to fisheries conservation and management.

1 (7) The Authority shall, in respect of highly migratory
2 fish stocks which occur both in the exclusive economic
3 zone and in the high seas, and without prejudice to the
4 sovereign rights of the Federated States of Micronesia
5 within its exclusive economic zone, have authority to
6 cooperate with foreign States fishing on the high seas in
7 respect of such stocks for the purpose of achieving
8 compatible conservation and management measures in
9 accordance with the United Nations Agreement, and in so
10 doing shall take into account:

11 (a) the conservation and management measures
12 adopted and applied in the exclusive economic zone, and
13 ensure that measures established in respect of such
14 stocks for the high seas do not undermine the
15 effectiveness of such measures;

16 (b) previously agreed measures established and
17 applied for the high seas in accordance with the United
18 Nations Convention with respect to the same stocks by
19 Federated States of Micronesia and foreign States fishing
20 on the high seas;

21 (c) previously agreed measures established and
22 applied in accordance with the United Nations Convention
23 with respect to the same stocks by a sub regional or
24 regional fisheries management organization or
25 arrangement;

1 (d) the biological unity and other biological
2 characteristics of the stocks and the relationships
3 between the distribution of the stocks, the fisheries and
4 the geographic particularities of the region concerned,
5 including the extent to which the stocks occur and are
6 fished in areas under national jurisdiction;

7 (e) the respective dependence of the Federated
8 States of Micronesia's and the foreign states' fishing on
9 the high seas on the stocks concerned;

10 (f) that such measures do not result in harmful
11 impact on the living marine resources as a whole."

12 Section 11. Title 24 of the Code of the Federated States of
13 Micronesia, as amended, is hereby further amended by adding a new
14 section 109 of chapter 1 to read as follows:

15 "Section 109. Application for permit - Contents.

16 (1) Each person entitled to apply for a permit under
17 this title shall make application on such forms as may be
18 required by the Authority specifying, inter alia:

19 (a) the name, call sign, country of registration,
20 country of registration number, regional register number,
21 name and address of the operator, name of the vessel
22 master, bank reference number;

23 (b) the tonnage, capacity, gear type, processing
24 equipment and such other pertinent information with
25 respect to the characteristics of each vessel as the

1 Authority may require; and
2 (c) if applicable, the access agreement under
3 which such permit is sought.

4 (2) The Authority may require such additional
5 information for permit applications as may be necessary
6 to implement and enforce the provisions of this title."

7 Section 12. Title 24 of the Code of the Federated States of
8 Micronesia, as amended, is hereby further amended by adding a new
9 section 110 of chapter 1 to read as follows:

10 "Section 110. Application for permit - Review. The
11 Executive Director, or his designee, shall review each
12 application submitted pursuant to section 109 of this
13 title, and may, in his discretion, solicit views from
14 appropriate persons in the States and hold public
15 hearings where necessary."

16 Section 13. Title 24 of the Code of the Federated States of
17 Micronesia, as amended, is hereby further amended by adding a new
18 section 111 of chapter 1 to read as follows:

19 "Section 111. Permit issuance and denial.

20 (1) The Executive Director shall notify the applicant
21 of the decision to issue or deny a permit within a
22 reasonable time of the date of receipt of the
23 application.

24 (2) The Executive Director may approve the application
25 on such terms and conditions and with such restrictions

1 as he or she deems appropriate.

2 (3) A permit, or its renewal, may be denied where:

3 (a) the application is not in accordance with the
4 requirements of this title;

5 (b) the Executive Director is satisfied that
6 information required to be given or reported under this
7 title is false, incomplete or misleading;

8 (c) the owner or charterer is the subject of
9 proceedings under the bankruptcy laws of any jurisdiction
10 or on reasonable grounds appears unable to meet any
11 financial obligations which could arise from fishing
12 activities and reasonable financial assurances determined
13 by the Authority have not been provided;

14 (d) the fishing vessel does not meet required
15 safety standards;

16 (e) the fishing vessel does not bear the required
17 markings;

18 (f) an operator of the vessel has contravened or
19 has committed an offense against the laws of the
20 Federated States of Micronesia, or the vessel has been
21 used for contravention of an access agreement; or

22 (g) the Executive Director determines that the
23 issuance of a permit would not be in the best interests
24 of the Federated States of Micronesia.

25 (4) A permit shall be denied:

1 (a) where the application is made in respect of a
2 foreign fishing vessel, and such vessel does not have
3 good standing on the Regional Register of Foreign Fishing
4 Vessels maintained by the South Pacific Forum Fisheries
5 Agency;

6 (b) where there has been a failure to satisfy a
7 judgment or other final determination for breach of this
8 title or an access or fisheries management agreement
9 entered into pursuant to this title by the operator of
10 the vessel with respect to which application for a permit
11 has been made, until such time as the judgment or other
12 determination is satisfied, and provided that a
13 subsequent change in ownership of a vessel shall not
14 affect the application of this provision;

15 (c) where the Executive Director determines it
16 would be inconsistent with management measures
17 implemented in accordance with this title;

18 (d) where the required fees, royalties or other
19 forms of compensation have not been paid in accordance
20 with this title and an applicable access agreement;

21 (e) where the Executive Director determines that
22 insurance requirements of this title and the applicable
23 access agreement are not fulfilled;

24 (f) authorizing fishing by fishing vessels on,
25 over or within one nautical mile of the edge of a coral

1 reef that is wholly submerged at mean high tide within
2 the exclusive economic zone, where:

3 (i) the Executive Director has submitted a
4 copy of the application to the FSM State whose customary
5 inhabitants have been traditionally ascribed the
6 authority to control the fishing over such reef; and

7 (ii) within thirty (30) days of such
8 submission, the Governor of the concerned FSM State, on
9 behalf of either the State Government or the State's
10 customary or traditional leadership, has communicated in
11 writing to the Executive Director its objection to the
12 issuance of the permit with respect to the reef or reefs
13 traditionally ascribed to its customary inhabitants.

14 (5) No permit shall be issued:

15 (a) authorizing fishing by foreign or domestic-
16 based vessels on, over or within one nautical mile of the
17 edge of a coral reef that is wholly submerged at mean
18 high tide within the exclusive economic zone;

19 (b) authorizing fishing using a drift net or other
20 substantially similar method of catching fish;

21 (c) authorizing drift net fishing activities.

22 (6) If the Executive Director denies an application
23 submitted by an applicant, the Authority shall notify
24 such applicant of the denial and the reasons therefor.
25 The applicant may then submit a revised application

1 taking into consideration the reasons for disapproval.
2 The decision of the Executive Director will then be final
3 and binding."

4 Section 14. Title 24 of the Code of the Federated States of
5 Micronesia, as amended, is hereby further amended by adding a new
6 section 112 of chapter 1 to read as follows:

7 "Section 112. Suspension, revocation or imposition of
8 conditions or restrictions on a permit. If any fishing
9 vessel for which a permit has been issued, pursuant to
10 section 111 of this title has been used in the commission
11 of any act prohibited by this title or other applicable
12 law, an applicable access agreement, or any permit issued
13 in accordance with this title, or if any fee or civil
14 penalty, criminal fine or other determination imposed
15 under this title has not been paid within thirty (30)
16 days of the due date, the Executive Director shall:

17 (1) revoke such permit with or without prejudice to the
18 right of any party involved to be issued a permit for
19 such vessel in any subsequent licensing period;

20 (2) suspend such permit for a period of time it may
21 deem appropriate; or

22 (3) impose additional conditions or restrictions on any
23 such permit."

24 Section 15. Title 24 of the Code of the Federated States of
25 Micronesia, as amended, is hereby further amended by adding a new

1 section 113 of chapter 1 to read as follows:

2 "Section 113. Permits - Period of validity.

3 (1) Subject to subsection (2) of this section, every
4 permit issued or renewed under this title shall, unless
5 earlier canceled or suspended in accordance with this
6 title, be valid for a period of one year, or such lesser
7 period as may be specified, and shall not extend beyond
8 the period of validity of an applicable charter agreement
9 or access agreement.

10 (2) A permit issued or renewed under this title shall
11 only be valid for the species of fish, the type of
12 fishing gear or method of fishing, or such other activity
13 in accordance with this title, as may be specified in the
14 permit.

15 (3) Where a fishing vessel which is issued a permit as
16 a local fishing vessel or a domestic-based fishing vessel
17 becomes a foreign fishing vessel, the permit shall
18 automatically terminate.

19 (4) A permit issued under this title may provide that
20 it is transferable in accordance with such conditions as
21 may be prescribed by regulation."

22 Section 16. Title 24 of the Code of the Federated States of
23 Micronesia, as amended, is hereby further amended by adding a new
24 section 114 of chapter 1 to read as follows:

25 "Section 114. Fees and charges.

1 (1) There shall be payable with respect to every permit
2 issued under this title fees, royalties or other forms of
3 compensation.

4 (2) The Authority shall determine the fees, royalties
5 or other forms of compensation for permits, and other
6 charges it may require in relation to fishing or related
7 activities including, inter alia, for observers.

8 (3) In determining the fees for marine scientific
9 research, the Authority shall take into account a
10 research plan submitted by the applicant, and the long
11 term value of such research to the management and
12 development of any fishery in the exclusive economic
13 zone.

14 (4) No permit shall be issued pursuant to this title
15 unless the requisite fees, royalties, charges and other
16 forms of compensation have been paid in accordance with
17 this title and an applicable access agreement."

18 Section 17. Title 24 of the Code of the Federated States of
19 Micronesia, as amended, is hereby further amended by adding a new
20 section 115 of chapter 1 to read as follows:

21 "Section 115. Division of fees received as goods and
22 services. In the case of fees paid as goods and
23 services, the Authority shall submit a proposed division
24 of such goods and services to the Congress of the
25 Federated States of Micronesia for its approval by

1 resolution while in session, and by the Committee on Ways
2 and Means of the Congress of the Federated States of
3 Micronesia between sessions. If the Congress does not
4 approve or disapprove a division of such goods and
5 services within sixty (60) days of the submission of a
6 proposed division of such fees by the Authority, the
7 proposed division shall be deemed approved."

8 Section 18. Title 24 of the Code of the Federated States
9 of Micronesia, as amended, is hereby further amended by adding a new
10 section 116 of chapter 1 to read as follows:

11 "Section 116. Reporting requirements.

12 (1) The operator of each foreign and domestic-based
13 fishing vessel issued a permit or which is permitted to
14 fish pursuant to an access agreement referred to in
15 section 107 of this title shall:

16 (a) at all times while the vessel is in the
17 exclusive economic zone, cause to be maintained in the
18 English language, in ink, a fishing log in a form
19 supplied or approved by the Authority, and shall enter
20 the following information relating to the activities of
21 the vessel on a daily basis:

22 (i) the gear type used;

23 (ii) the noon position of the vessel and,
24 where applicable, the set position and time or the number
25 of hooks and sea surface temperature;

1 (iii) the species of fish taken and the size
2 and quantity of each species by weight or number as may
3 be specified in the form;

4 (iv) the species of fish returned from the
5 vessel to the sea, the reason for discard, the quantity
6 of each species by weight or number as may be specified
7 in the form; and

8 (v) such other information as the Authority
9 may require or prescribe by regulation, or as may be
10 required by an applicable access agreement or fisheries
11 management agreement;

12 (b) report information in a format approved or
13 supplied by the Authority, by telex or facsimile relating
14 to the position of, and catch on board, the vessel at the
15 following times:

16 (i) at least twenty-four (24) hours prior to
17 the estimated time of entry into and departure from the
18 exclusive economic zone;

19 (ii) each Wednesday while in the exclusive
20 economic zone;

21 (iii) at least twenty-four (24) hours prior to
22 the estimated time of entry into or departure from port;
23 and

24 (iv) upon entry and departure from a closed
25 area;

1 (c) provide such daily information relating to
2 high seas fishing during the course of a fishing trip
3 involving fishing in the exclusive economic zone as, and
4 in the form, the Authority may require pursuant to any
5 fisheries management agreement and to give effect to the
6 duty in international law to cooperate in the
7 conservation and management of highly migratory fish
8 stocks; and

9 (d) certify that information provided pursuant to
10 subparagraphs (a) through (c) of subsection (1) of this
11 section is true, complete and accurate.

12 (2) The operator referred to in subsection (1) of this
13 section shall provide reports required under
14 subparagraphs (a) and (c) of subsection (1) of this
15 section and post the requisite forms to the Authority by
16 registered airmail within fourteen days following the
17 date of completion of the off-loading operation, or
18 within seven (7) days of the end of each calendar month's
19 activities, and within seven (7) days of entry of the
20 vessel into port at the completion of a trip lasting
21 longer than fourteen (14) days.

22 (3) The Authority may require, by written notice or
23 regulation, such other reports as may be necessary for
24 the conservation and management of marine resources,
25 including for related activities, and to implement or

1 enforce the provisions of this title and any access
2 agreement or fisheries management agreement."

3 Section 19. Title 24 of the Code of the Federated States of
4 Micronesia, as amended, is hereby further amended by adding a new
5 section 117 of chapter 1 to read as follows:

6 "Section 117. Related activities. The Authority may by
7 regulation require permits for, or otherwise regulate,
8 related activities which take place in the exclusive
9 economic zone and, with respect to related activities by
10 foreign fishing vessels which occur in the territorial
11 sea or internal waters, may authorize in writing, FSM
12 States to issue the relevant permits."

13 Section 20. Title 24 of the Code of the Federated States of
14 Micronesia, as amended, is hereby further amended by adding a new
15 section 118 of chapter 1 to read as follows:

16 "Section 118. Authority may issue State permits. Upon
17 delegation by an FSM State of its authority to issue any
18 permit or permits for fishing in the territorial sea or
19 internal waters, the Authority may issue such permit or
20 permits and collect fees for fishing in such waters, and
21 shall transfer any such fees collected to that State."

22 Section 21. Title 24 of the Code of the Federated States of
23 Micronesia, as amended, is hereby further amended by adding a new
24 section 119 of chapter 1 to read as follows:

25 "Section 119. Authority may appoint authorized

observers. The Executive Director may appoint, in writing, any person or class of persons to be an authorized observer for the purposes of this title, any access agreement or any fisheries management agreement."

Section 22. Title 24 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by adding a new section 120 of chapter 1 to read as follows:

"Section 120. Information and documentation to be true, complete and accurate.

(1) Every person shall promptly give any information required under this title, including records of any kind and information requested by an authorized officer or other officer or official carrying out duties under this title.

(2) Any information required under this title shall be true, complete and accurate, and the Executive Director shall be notified immediately of any change in circumstances which has the effect of rendering any such information or documentation false, incomplete or misleading.

(3) Any permit, registration or other document required to be obtained under this title shall be obtained and held in its original, complete and accurate form as required under this title, and no such document shall be altered after its issuance or used by any person other

1 than its legal holder."

2 Section 23. Title 24 of the Code of the Federated States of
3 Micronesia, as amended, is hereby further amended by adding a new
4 section 121 of chapter 1 to read as follows.

5 "Section 121. Violation of marine space. No person
6 shall use a vessel for entering or remaining within the
7 exclusive economic zone in violation of any provision of
8 this title or any other law of the Federated States of
9 Micronesia, unless the vessel is entering for innocent
10 passage or force majeure in accordance with international
11 law."

12 Section 24. Title 24 of the Code of the Federated States of
13 Micronesia, as amended, is hereby further amended by adding a new
14 section 122 of chapter 1 to read as follows:

15 "Section 122. Damage to fishing vessel or gear. No
16 person shall recklessly, knowingly or intentionally take,
17 damage or destroy any fish, fishing vessel or fishing
18 gear belonging to another person."

19 Section 25. Title 24 of the Code of the Federated States of
20 Micronesia, as amended, is hereby further amended by adding a new
21 section 123 of chapter 1 to read as follows:

22 "Section 123. Fish samples. Any person in possession or
23 apparent possession of any fish or fish products shall,
24 when requested by any authorized officer or authorized
25 observer to take fish samples, immediately give such

1 reasonable samples as may be required for the purposes of
2 this title without payment of any kind for such samples."

3 Section 26. Title 24 of the Code of the Federated States of
4 Micronesia, as amended, is hereby further amended by adding a new
5 section 124 of chapter 1 to read as follows:

6 "Section 124. Contamination of the exclusive economic
7 zone."

8 (1) No person shall, directly or indirectly,
9 contaminate the exclusive economic zone in any way,
10 including by the discharge of any substance or by any act
11 or omission that is likely to cause damage to, or
12 deterioration in, the quality of the marine resources.

13 (2) For the purposes of this section, the following is
14 presumed to be damaging:

15 (a) non-biodegradable trash or debris;

16 (b) the discharge of a poison, chemical or noxious
17 substance, including, but not limited to, oil, petroleum,
18 solvents, metals or sewage."

19 Section 27. Title 24 of the Code of the Federated States of
20 Micronesia, as amended, is hereby further amended by adding a new
21 section 125 of chapter 1 to read as follows:

22 "Section 125. Liability of operator. In any proceedings
23 under this title, the act or omission of any crew member
24 of a fishing vessel or in association with a fishing
25 vessel, shall be deemed to be that of the operator of

1 that fishing vessel."

2 Section 28. Title 24 of the Code of the Federated States of
3 Micronesia, as amended, is hereby further amended by adding a new
4 section 126 of chapter 1 to read as follows:

5 "Section 126. Civil liability of officers of companies.

6 (1) Except as further provided in this section, each
7 officer of a partnership, corporation, firm, company or
8 any other business enterprise engaged in activities
9 governed by this title shall be personally liable for any
10 violation of, or offense committed under this title, by
11 any member or employee.

12 (2) It shall be an affirmative defense to liability
13 under this section for the officer to prove by a
14 preponderance of the evidence, that he or she used due
15 diligence to secure compliance with the title or that the
16 violation or offense was committed without that officer's
17 knowledge, consent, collusion or collaboration."

18 Section 29. Title 24 of the Code of the Federated States of
19 Micronesia, as amended, is hereby further amended by adding a new
20 section 127 of chapter 1 to read as follows:

21 "Section 127. Application of other laws. No permit
22 issued under this title shall relieve any fishing vessel
23 or its operator or crew of any obligation or requirement
24 imposed by other laws, including those concerning
25 navigation, customs, immigration or health, unless so

1 indicated in those laws."

2 Section 30. Title 24 of the Code of the Federated States of
3 Micronesia, as amended, is hereby further amended by adding a new
4 section 128 of chapter 1 to read as follows:

5 "Section 128. Application of laws of foreign States.

6 (1) It shall be unlawful for any person to import,
7 export, transport, sell, receive, acquire or purchase any
8 fish or fish product taken, possessed, transported or
9 sold in violation of any law or regulation of a foreign
10 State upon implementation, on a reciprocal basis, of a
11 fisheries management agreement between the Government of
12 the Federated States of Micronesia and such other foreign
13 State or States, in which such activities are agreed to
14 be unlawful.

15 (2) The Authority shall implement the fisheries
16 management agreement described in subsection (1) of this
17 section by regulation, and may require, inter alia,
18 record keeping and reporting for each day of fishing
19 activity, whether the fishing took place in the
20 jurisdiction of the fishery waters or not."

21 Section 31. Title 24 of the Code of the Federated States of
22 Micronesia, as amended, is hereby further amended, by adding a new
23 section 129 of chapter 1 to read as follows:

24 "Section 129. Severability. If any provision of this
25 title or amendments or additions thereto, or the

1 application thereof to any person, thing or circumstance
2 is held invalid, the invalidity does not affect the
3 provisions, application, amendments or additions that can
4 be given effect without the invalid provisions or
5 application, and to this end the provisions of this title
6 and the amendments or additions thereto are severable."

7 Section 32. Title 24 of the Code of the Federated States of
8 Micronesia, as amended, is hereby further amended by adding a new
9 chapter 2 entitled "Management Authority".

10 Section 33. Title 24 of the Code of the Federated States of
11 Micronesia, as amended, is hereby further amended by adding a new
12 section 201 of chapter 2 to read as follows:

13 "Section 201. Micronesian Maritime Authority -
14 Established.

15 (1) There is established a Micronesian Maritime
16 Authority composed of six members appointed as follows:

17 (a) one representative of each FSM State appointed
18 by the President of the Federated States of Micronesia,
19 in consultation with the Governor and Congressional
20 Delegation of the affected State; PROVIDED, however, that
21 no such representative shall also serve as a member of
22 the Board of Directors of the National Fisheries
23 Corporation of the Federated States of Micronesia, or any
24 subsidiary or affiliate thereof, during the term of his
25 membership on the Authority;

1 (b) one representative of fisheries interests from
2 the private sector appointed by the President of the
3 Federated States of Micronesia; PROVIDED, however, that
4 no such representative shall also serve as a member of
5 the Board of Directors of the National Fisheries
6 Corporation of the Federated States of Micronesia, or any
7 subsidiary or affiliate thereof, during the term of his
8 membership on the Authority; and

9 (c) one at-large member appointed by the President
10 of the Federated States of Micronesia.

11 (2) All appointments shall be for a term of two years.
12 The term of office of each original member shall commence
13 effective from the date of the first meeting of the
14 Authority after the effective date of this title. Upon
15 the expiration of the term of an appointed member, his or
16 her rights and powers of membership shall lapse and the
17 executive director shall declare the vacancy and notify
18 the President of the Federated States of Micronesia in
19 writing of such vacancy. Vacancies occurring before the
20 expiration of a member's term shall be filled in the same
21 manner as the original appointment for the remainder of
22 the term of office of the vacancy.

23 (3) The chairman shall be chosen by a majority vote of
24 the members of the Authority. The Authority shall meet
25 at such time and place as may be designated by the

1 Chairman or by the Authority. The Authority shall adopt
2 its own rules of procedure and regulations by majority
3 vote."

4 Section 34. Title 24 of the Code of the Federated States of
5 Micronesia, as amended, is hereby further amended by adding a new
6 section 202 of chapter 2 to read as follows:

7 "Section 202. Authority - Regulations.

8 (1) The Authority shall have the authority to:

9 (a) adopt regulations for the management,
10 development and sustainable use of fish in the exclusive
11 economic zone;

12 (b) conclude and implement access agreements and
13 fisheries management agreements in accordance with
14 sections 107 and 108 of this title;

15 (c) issue fishing permits in accordance with this
16 title and any regulations it may prescribe;

17 (d) adopt regulations in relation to, and
18 otherwise manage, related activities in accordance with
19 this title;

20 (e) participate in the planning and execution of
21 programs relating to fisheries, or fishing in the
22 exclusive economic zone in which an FSM State Government
23 or the Government of the Federated States of Micronesia,
24 or any agency or subdivision thereof, has proprietary
25 interest, direct or indirect, by way of stock ownership,

1 partnership, joint venture or otherwise;

2 (f) cooperate as appropriate with other coastal
3 States in the region and foreign States fishing in the
4 region and adjacent high seas for the conservation and
5 management of highly migratory fish stocks;

6 (g) adopt regulations in relation to fisheries
7 monitoring and control;

8 (h) adopt regulations to implement access
9 agreements and fisheries management agreements;

10 (i) adopt regulations relating to compliance by
11 citizens and fishing vessels of the Federated States of
12 Micronesia which engage in fishing outside the internal
13 waters, territorial sea or exclusive economic zone of the
14 Federated States of Micronesia with applicable laws of
15 foreign States or regional fisheries management
16 organizations and applicable access agreements or
17 fisheries management agreements.

18 (2) Regulations adopted by the Authority shall have the
19 full force and effect of law, and shall be considered an
20 integral part of this title."

21 Section 35. Title 24 of the Code of the Federated States of
22 Micronesia, as amended, is hereby further amended by adding a new
23 section 203 of chapter 2 to read as follows:

24 "Section 203. Duties and functions. In addition to the
25 authority granted in the preceding section, the Authority

1 shall have duties and functions to:

2 (1) provide technical assistance in the delimitation of

3 the exclusive economic zone in accordance with section

4 107 of title 18;

5 (2) negotiate access agreements and fisheries

6 management agreements in accordance with sections 107 and

7 108 of chapter 1 of this title;

8 (3) implement by regulation or otherwise as appropriate

9 access agreements or fisheries management agreements to

10 which the Federated States of Micronesia is a party;

11 (4) issue permits for fishing in the territorial sea or

12 internal waters of an FSM State as authorized pursuant to

13 section 119 of chapter 1 of this title;

14 (5) coordinate and manage fisheries monitoring and

15 control as required under this title and under

16 international treaties to which the Federated States of

17 Micronesia is a party;

18 (6) cooperate in and coordinate as appropriate with

19 each FSM State on fisheries management measures in the

20 exclusive economic zone and territorial sea;

21 (7) submit its budget and report regarding the

22 expenditure of its funds to the Congress each regular

23 session for review; and

24 (8) perform such other duties and functions as may be

25 necessary to carry out the purpose of this title."

1 Section 36. Title 24 of the Code of the Federated States of
2 Micronesia, as amended, is hereby further amended by adding a new
3 section 204 of chapter 2 to read as follows:

4 "Section 204. Executive director. The Authority shall
5 employ a full-time executive director possessing such
6 qualifications as may be established by the Authority.
7 The Authority may employ such other staff as it may deem
8 necessary."

9 Section 37. Title 24 of the Code of the Federated States of
10 Micronesia, as amended, is hereby further amended by adding a new
11 section 205 of chapter 2 to read as follows:

12 "Section 205. Compensation.

13 (1) Members of the Authority who are neither employees
14 nor officials of the Government of the Federated States
15 of Micronesia or any FSM State Government shall be
16 compensated at such rate as may be set in the Rules of
17 the Authority when actually on the business of the
18 Authority.

19 (2) All members of the Authority, including members who
20 are employees or officials of the Government of the
21 Federated States of Micronesia or of any FSM State
22 Government, shall receive per diem and travel expenses at
23 established Federated States of Micronesia rates while on
24 the business of the Authority.

25 (3) The executive director shall receive a remuneration

1 for his or her services, the amount of which shall be
2 fixed by the Authority in consonance with the pertinent
3 provisions of the current annual budget of the Government
4 of the Federated States of Micronesia. The executive
5 director shall serve at the pleasure of the Authority and
6 shall be exempt from the provisions of the National
7 Public Service System Act, section 111 et seq. of title
8 52 of the Code of the Federated States of Micronesia."

9 Section 38. Title 24 of the Code of the Federated States of
10 Micronesia, as amended, is hereby further amended by adding a new
11 section 206 of chapter 2 to read as follows:

12 "Section 206. Annual report. The Chairman of the
13 Authority shall report on its activities to the President
14 of the Federated States of Micronesia, the Speaker of the
15 Congress of the Federated States of Micronesia, and each
16 FSM State Governor by December 1 of each year, which
17 report shall contain a detailed accounting of the
18 expenditure of funds of the Authority, the number of
19 permits and licenses issued, the fees, forfeitures and
20 finer collected, estimates of the effect of the current
21 level of fishing on the stock of fish in the exclusive
22 economic zone, and such other information regarding the
23 implementation of this title in the preceding fiscal year
24 as the Authority may determine. All departments and
25 offices of the FSM National Government shall be provided

1 copies of the annual report."

2 Section 39. Title 24 of the Code of the Federated States of
3 Micronesia, as amended, is hereby further amended by adding a new
4 chapter 3 entitled "Domestic Fishing".

5 Section 40. Title 24 of the Code of the Federated States of
6 Micronesia, as amended, is hereby further amended by adding a new
7 section 301 of chapter 3 to read as follows:

8 "Section 301. Permits for domestic fishing vessels. The
9 Authority may require each domestic fishing vessel to
10 hold a valid and applicable permit for the following
11 activities, in addition to the requirements in section
12 104 of chapter 1 of this title, under such terms and
13 conditions as may be prescribed by regulation or
14 otherwise required by the Authority:

15 (1) fishing on the high seas or in an area designated
16 by a fisheries management agreement; and

17 (2) fishing within areas under the national
18 jurisdiction of foreign States."

19 Section 41. Title 24 of the Code of the Federated States of
20 Micronesia, as amended, is hereby further amended by adding a new
21 section 302 of chapter 3 to read as follows:

22 "Section 302. Registration fee for domestic fishing
23 vessels. The executive director may issue a permit to
24 each domestic fishing vessel in accordance with this
25 title, after:

- 1 (1) an application has been made in such form as may be
- 2 required by the Authority; and
- 3 (2) such registration fee as the Authority shall
- 4 require is paid."

5 Section 42. Title 24 of the Code of the Federated States of
6 Micronesia, as amended, is hereby further amended by adding a new
7 section 303 of chapter 3 to read as follows:

8 "Section 303. Allocation of allowable fishing between
9 domestic fishing vessels. The Authority shall allocate
10 that portion of the optimum sustainable yield allocated
11 to domestic fishing vessels among domestic fishing
12 vessels, if it determines that unrestricted fishing by
13 domestic fishing vessels would result in a catch level
14 exceeding the optimum sustainable yield. In determining
15 the allocation, the Authority shall take into
16 consideration the extent to which each vessel or operator
17 of such vessel:

- 18 (1) has historically fished in a particular area;
- 19 (2) is advancing the development of a fishing industry
20 in the Federated States of Micronesia;
- 21 (3) has historically fished for a particular regulated
22 species;
- 23 (4) submits information for the conservation,
24 management and development of stocks of fish; and
- 25 (5) has traditional rights to fishing in an area; and

1 such other factors as the Authority deems appropriate."

2 Section 43. Title 24 of the Code of the Federated States of
3 Micronesia, as amended, is hereby further amended by adding a new
4 section 304 of chapter 3 to read as follows:

5 "Section 304. Fishing by domestic fishing vessels on the
6 high seas or in an area designated by a fisheries
7 management agreement - Compliance.

8 (1) Domestic fishing vessels and citizens fishing on
9 the high seas or in an area designated by a fisheries
10 management agreement shall:

11 (a) comply at all times with any applicable law or
12 agreement and the terms of any applicable permit, and
13 shall carry such permit on board at all times and produce
14 it on demand for inspection by an authorized officer or
15 investigating authority appointed pursuant to a fisheries
16 management agreement; and

17 (b) give information to an authorized officer or
18 investigating authority appointed pursuant to a fisheries
19 management agreement which may be required, including
20 vessel position, catches, fishing gear, fishing
21 operations and related activities in the area of an
22 alleged violation of such agreement.

23 (2) The Authority shall establish a national record of
24 fishing vessels authorized to fish on the high seas and
25 provide access to the information contained in that

1 record on request by directly interested foreign States,
2 taking into account any applicable laws of the Federated
3 States of Micronesia regarding the release of such
4 information.

5 (3) Domestic fishing vessels and citizens are not
6 permitted to engage in driftnet fishing activities.

7 (4) The Authority may take such further measures to
8 implement any fisheries management agreement in respect
9 to domestic fishing vessels as may be necessary."

10 Section 44. Title 24 of the Code of the Federated States of
11 Micronesia, as amended, is hereby further amended by adding a new
12 chapter 4 entitled "Foreign and Domestic-Based Fishing and Related
13 Activities".

14 Section 45. Title 24 of the Code of the Federated States of
15 Micronesia, as amended, is hereby further amended by adding a new
16 section 401 of chapter 4 to read as follows:

17 "Section 401. Access agreement required. No foreign or
18 domestic based fishing vessel shall be issued a permit to
19 fish in the exclusive economic zone unless an applicable
20 access agreement is in force."

21 Section 46. Title 24 of the Code of the Federated States of
22 Micronesia, as amended, is hereby further amended by adding a new
23 section 402 of chapter 4 to read as follows:

24 "Section 402. Fees for permits for foreign fishing
25 vessels and domestic based fishing vessels.

1 (1) Fees and other forms of compensation for the right
2 to engage in fishing within the exclusive economic zone
3 by foreign and domestic-based fishing vessels shall be
4 established in access agreements entered into pursuant to
5 section 107 of this title.

6 (2) The Authority may accept all or a portion of the
7 fee paid under an access agreement pending rebate under
8 such conditions as the Authority may determine in writing
9 or as may be prescribed by regulation, and when the
10 executive director is satisfied that all conditions have
11 been met. That portion of a fee that is subject to
12 rebate shall be held in a separate trust account
13 maintained by the Secretary of Finance until rebated to
14 the foreign or domestic-based fishing vessel or paid into
15 the General Fund, or its successor, pursuant to the terms
16 of the agreement."

17 Section 47. Title 24 of the Code of the Federated States of
18 Micronesia, as amended, is hereby further amended by adding a new
19 section 403 of chapter 4 to read as follows:

20 "Section 403. Allocation of allowable fishing among
21 foreign fishing vessels.

22 (1) The Authority may determine the allocation among
23 foreign parties of the total allowable level of foreign
24 fishing which is permitted with respect to any stock of
25 fish subject to the provisions of this title.

1 (2) In determining the allocation among parties, the
2 Authority shall take into consideration:

3 (a) the extent to which vessels of such parties
4 have complied with the laws of the Federated States of
5 Micronesia and any relevant access agreements;

6 (b) whether such parties or their national
7 governments have cooperated with the Federated States of
8 Micronesia in, and made substantial contributions to, the
9 conservation, management and development of fisheries,
10 fishery research and the identification of marine
11 resources;

12 (c) whether such parties or their national
13 governments undertake to invest in the fisheries sector
14 in such a manner as to bring significant benefit to the
15 Federated States of Micronesia;

16 (d) whether such parties or their national
17 governments have cooperated with the Federated States of
18 Micronesia in the enforcement of the provisions of this
19 title and the regulations issued under its authority,
20 including flag State enforcement and provision of
21 information required for the conservation and management
22 of fish;

23 (e) whether such parties or their national
24 governments, while in the waters under national
25 jurisdiction of any foreign State in the region, have

1 complied with the terms of any fisheries management
2 agreement to which the Federated States of Micronesia is
3 a party and which is implemented in such other foreign
4 State; and
5 (f) such other matters as it may deem
6 appropriate."

7 Section 48. Title 24 of the Code of the Federated States of
8 Micronesia, as amended, is hereby further amended by adding a new
9 section 404 of chapter 4 to read as follows:

10 "Section 404. Access agreement - Minimum terms. All
11 access agreements shall have the following minimum terms:

12 (1) the sovereign rights and exclusive fishery
13 management authority of the Federated States of
14 Micronesia within the exclusive economic zone shall be
15 recognized;

16 (2) the operator and each member of the crew shall
17 comply with the applicable access agreement, this title,
18 all regulations issued pursuant to this title and all
19 other applicable laws and regulations.

20 (3) the operator shall:

21 (a) provide the authorized observer while on board
22 the vessel, at no expense, with officer level
23 accommodation, food and medical facilities;

24 (b) meet the following costs of the authorized
25 observer:

- 1 (i) full travel costs to and from the vessel;
2 (ii) salary; and
3 (iii) full insurance coverage;
4 (c) display any permit or permit number issued for
5 any such vessel, pursuant to this title, or any other
6 documentation as required by the Authority to be
7 displayed, under any access agreement, in the wheelhouse
8 of such vessel;
9 (d) ensure that appropriate position-fixing and
10 identification equipment shall be installed and
11 maintained in working order on each vessel;
12 (e) ensure that the vessel is marked and
13 identified in accordance with the FAO approved Standard
14 Specifications for the Marking and Identification of
15 Fishing Vessels;
16 (f) ensure the continuous monitoring of the
17 international distress and calling frequency 2182 KHz
18 (HF), or the international safety and calling frequency
19 156.8 Mhz (channel 16, VHF-FM) to facilitate
20 communication with the fisheries management, surveillance
21 and enforcement authorities;
22 (g) ensure that a recent and up-to-date copy of
23 the International Code of Signals (INTERCO) is on board
24 and accessible at all times;
25 (h) ensure that the vessel is seaworthy and

1 contains adequate life safety equipment and survival gear
2 for each passenger and member of the crew;

3 (i) ensure that, promptly upon direction by the
4 Authority, each vessel will have installed, maintained
5 and fully operational at all times on board a
6 transponder, in accordance with section 510 of chapter 5
7 of this title, and shall be responsible for all
8 operational and maintenance costs of the transponder and
9 cooperate fully with the Authority in their utilization.

10 (4) The party to the access agreement shall:

11 (a) for the duration of the access agreement,
12 appoint and maintain an agent resident in the Federated
13 States of Micronesia, or establish and maintain a company
14 registered in accordance with the laws of the Federated
15 States of Micronesia authorized to receive and respond to
16 any legal process issued in the Federated States of
17 Micronesia with respect to the owner or operator of the
18 vessel, and shall notify the Federated States of
19 Micronesia of the name and address of such agent or
20 company, and any communication, information, document,
21 direction, request or response to, or from that agent or
22 company, shall be deemed to have been sent to, or
23 received from such owner or operator;

24 (b) not exceed any allocation which may be
25 established in any given licensing period in accordance

1 with this title;

2 (c) ensure compliance by each fishing vessel, its
3 operator and crew members, with the access agreement, all
4 laws of the Federated States of Micronesia and the terms
5 of the permit; and

6 (d) ensure compliance by each fishing vessel, its
7 operator and crew members, with subregional and regional
8 conservation and management measures for highly migratory
9 fish stocks."

10 Section 49. Title 24 of the Code of the Federated States of
11 Micronesia, as amended, is hereby further amended by adding a new
12 section 405 of chapter 4 to read as follows:

13 "Section 405. Access agreement - Term of validity.

14 (1) The term of validity of an access agreement shall
15 not exceed ten (10) years, and may be renewable with the
16 approval of the Authority according to the following
17 criteria, taking into account performance of the other
18 party during the previous term:

19 (a) likely compliance with the access agreement
20 and this title; and

21 (b) potential economic benefits for the Federated
22 States of Micronesia.

23 (2) Any access agreement whose validity exceeds one
24 year shall include a provision for annual review by the
25 Authority.

1 (3) Any access agreement may be terminated by the
2 Authority, according to its terms or upon substantial
3 non-compliance by the other party with any requirement of
4 the access agreement or this title.

5 (4) Fishing under any access agreement may be suspended
6 by the Authority upon a determination by the Authority,
7 based on the best scientific information in the region,
8 that continued fishing at current levels would seriously
9 threaten the fish stocks.

10 (5) If fishing is suspended pursuant to subsection (4)
11 of this section, the Authority shall make every effort to
12 accommodate the long-term interests of the party to the
13 access agreement and shall rebate proportionately any
14 fees paid for fishing during such suspension."

15 Section 50. Title 24 of the Code of the Federated States of
16 Micronesia, as amended, is hereby further amended by adding a new
17 section 406 of chapter 4 to read as follows:

18 "Section 406. Related activities - Transshipment.

19 (1) The operator of a foreign or domestic-based fishing
20 vessel shall:

21 (a) not transship at sea under any circumstances;

22 and

23 (b) provide seventy-two (72) hours notice to the

24 Authority of a request to transship any or all of the

25 fish on board and shall provide the name of the vessel,

1 its international radio call sign, its position, the
2 catch on board by species, the time and port where such
3 transshipment is requested to occur and an undertaking to
4 pay all fees required under the laws of the Federated
5 States of Micronesia;

6 (c) only transship at the time and port authorized
7 for transshipment; and

8 (d) submit full reports on transshipping on such
9 forms as may be required by the Authority or prescribed
10 by regulation.

11 (2) During transshipment in the Federated States of
12 Micronesia the foreign party and operator of each vessel
13 shall comply with all applicable National and State laws
14 and regulations in the Federated States of Micronesia
15 relating to protection of the environment, including
16 without limitation, sewage holding tank requirements."

17 Section 51. Title 24 of the Code of the Federated States of
18 Micronesia, as amended, is hereby further amended by adding a new
19 chapter 5 entitled "Enforcement".

20 Section 52. Title 24 of the Code of the Federated States of
21 Micronesia, as amended, is hereby further amended by adding a new
22 section 501 of chapter 5 to read as follows:

23 "Section 501. Enforcement responsibility. The
24 Department of Justice shall have primary responsibility
25 for fisheries enforcement, including:

1 (1) collaborating with the Authority in the monitoring
2 and control of all fishing operations within the fishery
3 waters; and

4 (2) the enforcement of this title."

5 Section 53. Title 24 of the Code of the Federated States of
6 Micronesia, as amended, is hereby further amended by adding a new
7 section 502 of chapter 5 to read as follows:

8 "Section 502. Appointment of authorized officers.

9 (1) The Secretary of the Department of Justice may, in
10 writing, appoint any person or class of persons as
11 authorized officer for the purposes of this title and
12 such persons shall exercise all powers and privileges
13 accorded by this title.

14 (2) Any person or class of persons may be appointed as
15 authorized officer in accordance with subsection (1) of
16 this section, pursuant to a fisheries management
17 agreement or similar cooperative arrangement for purposes
18 which include:

19 (a) for an authorized officer of the Federated
20 States of Micronesia, to perform fisheries monitoring,
21 control and surveillance functions on behalf of the
22 Federated States of Micronesia while on board a vessel or
23 aircraft of another party; and

24 (b) for an authorized officer of another party to
25 such agreement, to perform fisheries monitoring, control

1 and surveillance functions on behalf of the Federated
2 States of Micronesia while on board the vessel or
3 aircraft of that other party.

4 (3) Any authorized officer is deemed to be an
5 authorized inspector for purposes of the United Nations
6 Agreement.

7 (4) Any officer of the Maritime Surveillance Wing of
8 the National Police of the Government of the Federated
9 States of Micronesia shall be deemed to be an authorized
10 officer for the purposes of this title."

11 Section 54. Title 24 of the Code of the Federated States of
12 Micronesia, as amended, is hereby further amended by adding a new
13 section 503 of chapter 5 to read as follows:

14 "Section 503. Powers of authorized officers.

15 (1) For the purposes of enforcing this title, any
16 authorized officer may:

17 (a) stop, board, remain on board and search any
18 vessel in the exclusive economic zone that he or she
19 reasonably believes is a fishing vessel, and any fishing
20 vessel registered under the laws of the Federated States
21 of Micronesia outside the fishery waters, and stop and
22 search any vessel, vehicle or aircraft that he or she
23 reasonably believes may be transporting fish or engaging
24 in other activities relating to fishing;

25 (b) require the master or any crew member or other

1 person aboard to inform him of the name, call sign and
2 country of registration of the vessel and the name of the
3 master, owner, charterer and crew members;

4 (c) examine the master or any crew member or other
5 person aboard about the cargo, contents of holds and
6 storage spaces, voyage and activities of the vessel;

7 (d) make such examination and inquiry as may
8 appear necessary concerning any vessel, vehicle or
9 aircraft in relation to which any of the powers conferred
10 by this subsection have been or may be exercised and take
11 samples of any fish or fish product found therein;

12 (e) require to be produced, examine and take
13 copies of any permit, logbook, record or other documents
14 required under this title or concerning the operation of
15 any vessel or aircraft;

16 (f) make an entry dated and signed by him or her
17 in the logbook of such vessel or aircraft;

18 (g) require to be produced and examine any fish,
19 fishing gear or appliance, explosive, poison or other
20 noxious substance;

21 (h) give directions to the master and any crew
22 member of any vessel, vehicle or aircraft stopped,
23 boarded or searched as may be necessary or reasonably
24 expedient for any purpose specified in this title or to
25 provide for the compliance of the vessel, vehicle or

1 aircraft, or master or any crew member with the
2 conditions of any permit;

3 (i) endorse any permit; and

4 (j) arrest any person who assaults him or her or
5 any other authorized officer in the exercise of his or
6 her duties under this title.

7 (2) Where an authorized officer has reasonable grounds
8 to believe an offense against this title is being or has
9 been committed, he or she may without a warrant:

10 (a) enter, inspect and search any premises, other
11 than premises used exclusively as a dwelling house, in
12 which he or she has reasonable grounds to believe an
13 offense has been or is being committed or fish have been
14 taken illegally and are being stored;

15 (b) stop, enter, search and stay in or on any
16 vehicle or aircraft which he or she reasonably suspects
17 of transporting fish or fish products;

18 (c) take samples of any fish found in any vessel
19 or vehicle inspected or within any premises searched
20 under this title;

21 (d) following hot pursuit in accordance with
22 international law and commenced within the fishery
23 waters, stop, board and search outside the fishery waters
24 any fishing vessel which he or she has reasonable grounds
25 to believe has been used in the commission of an offense,

1 exercise any powers conferred by this title in accordance
2 with international law, and bring such vessel and all
3 persons and things on board within the fishery waters;

4 (e) seize:

5 (i) any vessel (including its fishing gear,
6 equipment, stores and cargo), vehicle, fishing gear, nets
7 or other fishing appliances or aircraft which he or she
8 has reasonable grounds to believe has been or is being
9 used in the commission of an offense or in respect of
10 which the offense has been committed;

11 (ii) any fish or fish products which he has
12 reasonable grounds to believe have been caught in the
13 commission of an offense or are possessed in
14 contravention of this title;

15 (iii) any logs, charts or other documents
16 required to be maintained by this title or under the
17 terms of any license or other authorization or which he
18 or she has reasonable grounds to believe show or tend to
19 show, with or without other evidence, the commission of
20 an offense against this title; and

21 (vi) any thing which he or she has reasonable
22 grounds to believe might be used as evidence in any
23 proceedings under this title;

24 (f) arrest any person whom he or she has
25 reasonable grounds to believe has committed an offense

1 against this title.

2 (3) An authorized officer may, in arresting any person
3 or fishing vessel which he or she has reasonable grounds
4 to believe has done any act in contravention of this
5 title, use such force as is reasonably necessary in the
6 circumstances to effect the arrest.

7 (4) A written receipt shall be given for any article or
8 thing seized under this section and the grounds for such
9 seizure shall be stated in such receipt.

10 (5) Any person arrested without a warrant under this
11 section shall be detained and dealt with in accordance
12 with law.

13 (6) An authorized officer may, with or without a
14 warrant or other process:

15 (a) execute any warrant or other process issued by
16 any court of competent jurisdiction; and

17 (b) exercise any other lawful authority."

18 Section 55. Title 24 of the Code of the Federated States of
19 Micronesia, as amended, is hereby further amended by adding a new
20 section 504 of chapter 5 to read as follows:

21 "Section 504. Requirements for seized vessels, etc.

22 (1) Where any vessel is seized under this title:

23 (a) the master and crew shall take it to such port
24 as the authorized officer shall designate being the
25 nearest or most convenient port;

1 (b) the master shall be responsible for the safety
2 of the vessel and each person on board the vessel,
3 including the crew, himself and any authorized officer
4 until the vessel arrives at the designated port.

5 (2) If the master fails or refuses to take the seized
6 vessel to the designated port then an authorized officer
7 or person called upon to assist him or her may do so.

8 (3) If a vessel is taken to port in the circumstances
9 described in subsection (2) of this section, no claim
10 whatever may be made against any authorized officer or
11 the Government of the Federated States of Micronesia in
12 respect of any damage, injury, loss or death occurring
13 while the vessel is being so taken, subject to the
14 provisions of this title.

15 (4) The provisions relating to vessels and masters
16 described in subsections (1) to (3) of this section apply
17 mutatis mutandis to vehicles and aircraft seized in
18 accordance with this title, and their drivers and pilots
19 respectively."

20 Section 56. Title 24 of the Code of the Federated States of
21 Micronesia, as amended, is hereby further amended by adding a new
22 section 505 of chapter 5 to read as follows:

23 "Section 505. Removal of parts from seized vessels, etc.

24 (1) An authorized officer may remove any part or parts
25 from any seized vessel, vehicle or aircraft held in the

1 custody of the Government of the Federated States of
2 Micronesia for the purpose of immobilizing that vessel,
3 vehicle or aircraft.

4 (2) Any part or parts removed under subsection (1) of
5 this section shall be kept safely and returned to the
6 vessel, vehicle or aircraft upon its lawful release from
7 custody.

8 (3) No person shall knowingly possess, or arrange to
9 obtain, any part or parts removed under subsection (1),
10 of this section or knowingly possess, or arrange to
11 obtain, or make any replacement or substitute part or
12 parts for those removed under subsection (1), of this
13 section or shall fit or attempt to fit any part or parts
14 or any replacement or substitute part or parts to a
15 vessel, vehicle or aircraft held in the custody of the
16 Government of the Federated States of Micronesia."

17 Section 57. Title 24 of the Code of the Federated States of
18 Micronesia, as amended, is hereby further amended by adding a new
19 section 506 of chapter 5 to read as follows:

20 "Section 506. Duties to authorized observers.

21 (1) Any person on board any vessel with a valid and
22 applicable permit, shall permit any authorized observer
23 to board and remain on such vessel for the purposes of
24 carrying out his or her duties and functions.

25 (2) The operator and each member of the crew of such

1 vessel shall allow and assist any authorized observer to:

2 (a) board such vessel for scientific, compliance
3 monitoring and other functions, at such time and place as
4 the executive director may require;

5 (b) have full access to and the use of facilities
6 and equipment on board the vessel which the authorized
7 observer may determine is necessary to carry out his or
8 her duties, including:

9 (i) full access to the bridge, navigation
10 charts, fish on board and areas which may be used to
11 hold, process, weigh and store fish;

12 (ii) full access to the vessel's records,
13 including its logbooks and documentation for the purposes
14 of records inspection and copying;

15 (iii) full access to fishing gear on board; and

16 (iv) reasonable access to navigation equipment
17 and radios;

18 (c) take and remove from the vessel reasonable
19 samples for the purposes of scientific investigation, and
20 other relevant information;

21 (d) take photographs of the fishing operations,
22 including fish, fishing gear, equipment, charts and
23 records, and remove from the vessel such photographs or
24 film as he or she may have taken or used on board the
25 vessel;

1 taken, in the fishery waters, is unloaded or
2 transshipped; to remove reasonable samples for scientific
3 purposes and to gather any information relating to
4 fisheries in the fishery waters."

5 Section 58. Title 24 of the Code of the Federated States of
6 Micronesia, as amended, is hereby further amended by adding a new
7 section 507 of chapter 5 to read as follows:

8 "Section 507. Duties to authorized officers and
9 authorized observers.

10 (1) The master and each crew member of any fishing
11 vessel, the driver of any vehicle and the pilot and crew
12 of any aircraft shall immediately comply with every
13 instruction or direction given by an authorized officer
14 or authorized observer as appropriate, and facilitate
15 safe boarding, entry and inspection of the vessel,
16 vehicle or aircraft and any fishing gear, equipment,
17 records, fish and fish products.

18 (2) The master and each crew member of a vessel, driver
19 of a vehicle and pilot and crew of an aircraft shall take
20 all reasonable measures to ensure the safety of an
21 authorized officer or authorized observer as appropriate
22 in the performance of his or her duties.

23 (3) Every person commits an offense who:

24 (a) assaults, obstructs, resists, delays, refuses
25 boarding to, intimidates or fails to take all reasonable

1 measures to ensure the safety of, or otherwise interferes
2 with an authorized officer or authorized observer in the
3 performance of his or her duties;

4 (b) incites or encourages any other person to
5 assault, resist or obstruct any authorized officer or
6 authorized observer while carrying out his or her powers
7 or duties, or any person lawfully acting under the
8 authorized officer's orders or in his or her aid;

9 (c) uses threatening language or behaves in a
10 threatening or insulting manner or uses abusive language
11 or insulting gestures towards any authorized officer or
12 authorized observer while in the execution of his or her
13 powers or duties, or any person lawfully acting under an
14 authorized officer's orders or in his or her aid;

15 (d) fails to comply with the lawful requirements
16 of any authorized officer or observer;

17 (e) furnishes to any authorized officer or
18 authorized observer any particulars which, to his
19 knowledge, are false or misleading in any respect;

20 (f) impersonates or falsely represents himself or
21 herself to be an authorized officer or authorized
22 observer or who falsely represents himself or herself to
23 be a person lawfully acting under an authorized officer's
24 orders or in his or her aid;

25 (g) resists lawful arrest for any act prohibited

1 by this title; or

2 (h) is in breach of any other duty to an
3 authorized officer or authorized observer required under
4 this title.

5 (4) For the purposes of subsection (3) of this section,
6 any person who does not allow any authorized officer, or
7 any person acting under his or her orders or in his or
8 her aid, or an authorized observer to exercise any of the
9 powers conferred on such person by this title shall be
10 deemed to be obstructing that officer, person or
11 observer.

12 (5) Every person who, being a master, owner, charterer,
13 agent or company established under the laws of the
14 Federated States of Micronesia of a fishing vessel which
15 transports an authorized officer, inspector or observer
16 outside the fishery waters and causes him or her to
17 disembark outside the territory or jurisdiction of the
18 Federated States of Micronesia, commits an offense and
19 shall be jointly and severally liable on conviction to a
20 fine plus all costs of repatriation including board and
21 lodging while out of the Federated States of Micronesia
22 and direct transportation to the Federated States of
23 Micronesia."

24 Section 59. Title 24 of the Code of the Federated States of
25 Micronesia, as amended, is hereby further amended by adding a new

1 section 508 of chapter 5 to read as follows:

2 "Section 508. Identification of authorized officers and
3 authorized observers. An authorized officer or
4 authorized observer, when exercising any of the powers
5 conferred by this title, shall on request, produce
6 identification to show he or she is an authorized officer
7 or authorized observer under this title."

8 Section 60. Title 24 of the Code of the Federated States of
9 Micronesia, as amended, is hereby further amended by adding a new
10 section 509 of chapter 5 to read as follows:

11 "Section 509. Protection of authorized officers and
12 authorized observers. A person who does any act in
13 pursuance or intended pursuance of the functions
14 conferred on him or her by or under this title shall not
15 be subject to any civil or criminal liability with
16 respect to such act, whether on the grounds of want of
17 jurisdiction, mistake of law or fact, or on any other
18 ground unless he or she has acted, or omitted to act, in
19 bad faith without reasonable cause."

20 Section 61. Title 24 of the Code of the Federated States of
21 Micronesia, as amended, is hereby further amended by adding a new
22 section 510 of chapter 5 to read as follows:

23 "Section 510. Transponders may be required.
24 (1) The Authority may require, as a condition of
25 fishing in the exclusive economic zone, that the operator

1 of any vessel:

2 (a) installs on such vessel, at its own expense, a
3 transponder designated by the Authority;

4 (b) maintains such transponder in good working
5 order at all times while in the fishery waters or such
6 other area as may be agreed or designated; and

7 (c) ensures that any information or data required
8 by the Authority to be transmitted by the transponder is
9 transmitted continuously, accurately and effectively to
10 the designated receiver.

11 (2) For the purposes of this title, a transponder,
12 which may also be referred to as an automatic location
13 communicator, means any device or machine placed on a
14 fishing vessel as a condition of its permit or access
15 agreement, which transmits, whether in conjunction with
16 another machine or other machines, elsewhere or not,
17 information or data concerning the position, fishing and
18 such other activities of the vessel as may be required.

19 (3) The information or data concerning the vessel's
20 position and fishing activities referred to in subsection
21 (2) of this section may be fed or input manually into the
22 transponder or automatically from machines aboard the
23 vessel or ascertained by the use of the transponder
24 transmissions in conjunction with other machines.

25 (4) Any machine:

1 (a) aboard a vessel automatically feeding or
2 inputting position fixing information or data into a
3 transponder shall be judicially recognized as notoriously
4 accurate;

5 (b) used in conjunction with a transponder for the
6 purpose of ascertaining or obtaining information or data
7 need not be judicially recognized as notoriously
8 accurate.

9 (5) All information or data obtained or ascertained by
10 the use of a transponder, shall be presumed, unless the
11 contrary is proved, to:

12 (a) come from the vessel so identified;

13 (b) be accurately relayed or transferred; and

14 (c) be given by the master, owner and charterer of
15 the fishing vessel; and evidence may be given of
16 information and data so obtained or ascertained whether
17 from a printout or visual display unit.

18 (6) The presumption in subsection (5) of this section
19 shall apply whether or not the information was stored
20 before or after any transmission or transfer.

21 (7) Any person may give a certificate stating:

22 (a) his or her name, address and official
23 position;

24 (b) that he or she is competent to read the
25 printout or visual display unit of any machine capable of

1 obtaining or ascertaining information from a transponder;

2 (c) the date and time the information was obtained
3 or ascertained from the transponder and the details
4 thereof;

5 (d) the name and call sign of the vessel on which
6 the transponder is or was located as known to him or her
7 or as ascertained from any official register, record or
8 other document; and

9 (e) a declaration that there appeared to be no
10 malfunction in the transponder, its transmissions or
11 other machines used in obtaining or ascertaining the
12 information.

13 (8) Section 607 of chapter 6 of this title shall apply
14 to a certificate given under this section as if it had
15 been a certificate given under section 606 of chapter 6
16 of this title, and any reference therein to section 606
17 of this title shall be read as a reference to this
18 section.

19 (9) Any person who intentionally, recklessly or
20 unintentionally destroys, damages, renders inoperative or
21 otherwise interferes with a machine aboard a vessel which
22 automatically feeds or inputs information or data into a
23 transponder, or who intentionally feeds or inputs
24 information or data into a transponder which is not
25 officially required or is meaningless commits an

1 offense."

2 Section 62. Title 24 of the Code of the Federated States of
3 Micronesia, as amended, is hereby further amended by adding a new
4 section 511 of chapter 5 to read as follows:

5 "Section 511. Establishment of fisheries enforcement and
6 development fund.

7 (1) A special fund shall be established called the
8 Fisheries Enforcement and Development Fund into which the
9 following shall be deposited:

10 (a) all civil and criminal fines and
11 administrative penalties, except for litigation costs
12 recovered by the FSM Government;

13 (b) all criminal and civil fines and proceeds of
14 forfeitures collected by the Government of the Federated
15 States of Micronesia; and

16 (c) 0% of all access fees collected in any given
17 year.

18 (2) The Fisheries Enforcement and Development Fund
19 shall be:

20 (a) administered by the President of the Federated
21 States of Micronesia;

22 (b) subject to standard auditing procedures;

23 (c) used to contribute to fisheries monitoring and
24 control operations and as practicable such other
25 management activities of the Authority as the executive

1 director may designate, including, inter alia, training
2 and research."

3 Section 63. Title 24 of the Code of the Federated States of
4 Micronesia, as amended, is hereby further amended by renumbering
5 chapter 6 as chapter 9 and renumbering chapter 7 as chapter 10. The
6 component sections of the said chapters are hereby renumbered
7 accordingly.

8 Section 64. Title 24 of the Code of the Federated States of
9 Micronesia, as amended, is hereby further amended by enacting a new
10 chapter 6 entitled "Jurisdiction and Evidence".

11 Section 65. Title 24 of the Code of the Federated States of
12 Micronesia, as amended, is hereby further amended by adding a new
13 section 601 of chapter 6 to read as follows:

14 "Section 601. Jurisdiction of the Court.

15 (1) Any act or omission committed in contravention
16 of any of the provisions of this title by any person
17 within the fishery waters, or outside the fishery waters
18 by any citizen or person ordinarily resident in the
19 Federated States of Micronesia, or by any person on
20 board any fishing vessel registered in the Federated
21 States of Micronesia, shall be dealt with and judicial
22 proceedings taken as if such act or omission had taken
23 place in the Federated States of Micronesia within the
24 jurisdiction of the Supreme Court of the Federated
25 States of Micronesia.

1 (2) Where an authorized officer is exercising any
2 powers conferred on him outside the fishery waters in
3 accordance with this title, any act or omission of any
4 person in contravention of any of the provisions of this
5 title shall be deemed to have been committed within the
6 fishery waters.

7 (3) Notwithstanding any provision of any other law of
8 the Federated States of Micronesia, any information or
9 complaint with respect to any offense against this title
10 may be filed at any time within two years of the
11 discovery of the offense.

12 (4) The Court may at any time enter restraining orders
13 or prohibitions; issue warrants, process in rem or other
14 processes; prescribe and accept satisfactory bonds or
15 other security; and take such other actions as are in the
16 interests of justice."

17 Section 66. Title 24 of the Code of the Federated States of
18 Micronesia, as amended, is hereby further amended by adding a new
19 section 602 of chapter 6 to read as follows:

20 "Section 602. Adjudication proceedings.

21 (1) The executive director may, after consultation with
22 and the consent of the Secretary, proceed
23 administratively against any person or business
24 enterprise in violation of this title.

25 (2) The decision to proceed administratively for any

1 violation of this title, shall be made within forty-eight
2 (48) hours of the issuance of a notice of violation by
3 the executive director or his or her designee in
4 consultation with the Secretary of the Department of
5 Justice.

6 (3) If the person or business enterprise admits in
7 writing to the violation, the executive director may
8 handle this matter under the summary administrative
9 proceedings provisions in section 603 of this title.

10 (4) If the person or business enterprise denies the
11 violation, the executive director shall refer the matter
12 to the Department of Justice.

13 (5) If there is a decision to handle the matter in an
14 adjudicatory administrative procedure, the person upon
15 whom the notice of violation is served shall be given the
16 notice of the adjudicatory hearing and shall have a right
17 to appear, be heard, produce evidence and to counsel
18 retained at his or her own expense.

19 (6) The executive director shall set an adjudicatory
20 administrative hearing for the violation within forty-
21 eight (48) hours of the decision to proceed
22 administratively.

23 (7) The Authority shall promulgate regulations
24 regarding the conduct of the proceedings."

25 Section 67. Title 24 of the Code of the Federated States of

1 Micronesia, as amended, is hereby further amended by adding a new
2 section 603 of chapter 6 to read as follows:

3 "Section 603. Summary administrative proceedings.

4 (1) Subject to subsection (4) of this section the
5 executive director may, where he or she has determined
6 that any person has violated this act and such person has
7 in writing admitted to having committed such violation
8 and consented to summary administrative proceedings after
9 being fully informed about these proceedings, dispose of
10 such violation by accepting on behalf of the Government
11 of the Federated States of Micronesia from such person an
12 administrative penalty, the amount of which shall not
13 exceed the maximum fine or penalty required under this
14 title, plus the fair market value of any fish caught
15 illegally.

16 (2) Where summary administrative proceedings have been
17 initiated under this title, the person who admits to
18 having committed the offense under subsection (1) of this
19 section shall:

20 (a) not engage in fishing or carry out any other
21 activity in the fishery waters until the amount of the
22 penalty has been paid in full; and

23 (b) be deemed to have consented to any seizure
24 which took place in accordance with this title in
25 relation to the offense subject to the summary

1 administrative proceedings, and to have waived any right
2 to a probable cause hearing.

3 (3) Summary administrative proceedings shall be null
4 and void if the full amount of the penalty, as determined
5 by the executive director under subsection (1) or (2) of
6 this section is not paid within three (3) days of
7 notification of such penalty assessment to the person
8 subject to the proceedings, and the matter shall be
9 referred to the Department of Justice forthwith.

10 (4) In summary administrative proceedings for any
11 violation, the executive director shall take into account
12 any report which may be prepared by the Department of
13 Justice as to the details of the offense or offenses and
14 applicable fine or penalty levels.

15 (5) On payment of the penalty in full pursuant to this
16 section, the executive director may order the release of
17 any article seized pursuant to this title or the proceeds
18 of sale of such article on such conditions as he or she
19 may determine.

20 (6) Summary administrative proceedings for any
21 violation shall be satisfied upon the payment of such sum
22 of money determined by the executive director and
23 notified in writing, under the signature of all parties,
24 to the Secretary.

25 (7) The executive director may order that any item used

1 or involved in the offense be seized, confiscated or
2 forfeited.

3 (8) Any decision taken or order given by the executive
4 director pursuant to this section is final and binding.

5 (9) Any person who engages in fishing or other activity
6 proscribed by subsection (2) of this section while
7 prohibited from so doing commits an offense.

8 (10) Any person who violates a valid order pursuant to
9 the terms of this chapter commits an offense."

10 Section 68. Title 24 of the Code of the Federated States of
11 Micronesia, as amended, is hereby further amended by adding a new
12 section 604 of chapter 6 to read as follows:

13 "Section 604. Liability for non-payment of penalties.
14 All pecuniary penalties and all forfeitures incurred or
15 imposed pursuant to this title, and the liability to
16 forfeiture of any article seized under the authority
17 thereof, and all rents, charges, expenses and duties and
18 all other sums of money payable under this title may be
19 sued for, determined, enforced and recovered by suit or
20 other appropriate civil proceedings in the name of the
21 executive director as the nominal plaintiff; and all such
22 proceedings shall be deemed to be civil proceedings; and
23 the fact that a bond or other security has been paid
24 shall not be pleaded or made use of in answer to or in
25 stay of any such proceedings."

1 Section 69. Title 24 of the Code of the Federated States of
2 Micronesia, as amended, is hereby further amended by adding a new
3 section 605 of chapter 6 to read as follows:

4 "Section 605. Liability for loss or damage. A person
5 who commits an offense against this title may, upon
6 conviction, be liable for any loss or damage caused by
7 the offense and the amount of compensation for such loss
8 or damage may be awarded by the Court as restitution in
9 addition to, and recovered in the same manner as, a
10 fine."

11 Section 70. Title 24 of the Code of the Federated States of
12 Micronesia, as amended, is hereby further amended by adding a new
13 section 606 of chapter 6 to read as follows:

14 "Section 606. Certificate of evidence. The executive
15 director or any person designated in writing by him may
16 give a certificate stating that:

17 (1) a specified vessel was or was not on a specified
18 date or dates a local fishing vessel or a foreign fishing
19 vessel;

20 (2) a specified vessel or person was or was not on a
21 specified date or dates the holder of any specified
22 license, authorization or certificate of registration;

23 (3) an appended document is a true copy of the permit
24 or certificate of registration for a specified vessel or
25 person and that specified conditions were attached to

1 such document;

2 (4) a particular location or area of water was on a
3 specified date or dates within the fishery waters, or
4 within a closed, limited, restricted or in any other way
5 controlled area of the fishery waters, or an area of the
6 fishery waters subject to specified conditions;

7 (5) an appended chart shows the boundaries on a
8 specified date or dates of the fishery waters,
9 territorial sea, closed or limited areas or other areas
10 or zones delineated for any specified purpose;

11 (6) a particular item or piece of equipment is fishing
12 gear;

13 (7) the cause and manner of death of or injury to any
14 fish;

15 (8) an appended document is a true copy of an approved
16 charter agreement, an access agreement or fisheries
17 management agreement;

18 (9) a call sign, name or number is that of or allotted
19 under any system of naming or numbering of vessels to a
20 particular vessel; or

21 (10) a particular position or catch report, a copy of
22 which is appended, was given in respect of a specified
23 vessel."

24 Section 71. Title 24 of the Code of the Federated States of
25 Micronesia, as amended, is hereby further amended by adding a new

1 section 607 of chapter 6 to read as follows:

2 "Section 607. Validity and procedures for certificates.

3 (1) Unless the contrary is proved, a document
4 purporting to be a certificate given under section 606 of
5 this title shall be deemed to be such a certificate and
6 to have been duly given.

7 (2) Where a certificate issued under section 606 of
8 this title is served upon a defendant seven (7) or more
9 days before its production in court in any proceedings
10 under this title, the certificate shall, unless the
11 contrary is proved, be sufficient evidence of all the
12 facts averred in it.

13 (3) Where a certificate issued under section 606 of
14 this title is served upon a defendant fourteen (14) or
15 more days before its production in court and the
16 defendant does not, within seven (7) days of the date of
17 service, serve notice of objection in writing upon the
18 prosecutor, then the certificate shall, unless the court
19 finds the defendant is unduly prejudiced by any failure
20 to object, be conclusive proof of all the facts averred
21 in it.

22 (4) Where any objection is notified under subsection
23 (3) of this section the certificate shall, unless the
24 contrary is proved, be sufficient evidence of all the
25 facts averred in it.

1 (5) Any certificate issued under section 606 of this
2 title shall be entitled 'Certificate Made Under Title 24,
3 section 606'.

4 (6) Any omission from or mistake made in any
5 certificate issued under section 606 of this title shall
6 not render it invalid unless the Court considers such
7 omission or mistake is material to any issue in the
8 proceedings concerned, or the defendant is unduly
9 prejudiced thereby.

10 (7) Where in any proceedings a certificate made under
11 section 606 of this title is produced to the Court, the
12 prosecution shall not be obliged to call the maker of the
13 certificate and the Court shall, where material, rely on
14 the facts therein unless the contrary is proved."

15 Section 72. Title 24 of the Code of the Federated States of
16 Micronesia, as amended, is hereby further amended by adding a new
17 section 608 of chapter 6 to read as follows:

18 "Section 608. Certificate as to the location of a
19 vessel.

20 (1) Where in any proceedings under this title the place
21 or area in which a vessel is alleged to have been at a
22 particular date and time or during a particular period of
23 time is material to an offense charged then a place or
24 area stated in a certificate given by an authorized
25 officer or authorized observer shall be evidence, unless

1 the contrary is proved, of the place or area in which the
2 vessel was at the date and time or during the period of
3 time stated.

4 (2) An authorized officer shall in any certificate made
5 pursuant to subsection (1) of this section state:

6 (a) his name, address, official position, country
7 of appointment and provision under which he is appointed;

8 (b) the name and, if known, call sign of the
9 fishing vessel concerned;

10 (c) the date and time or period of time the vessel
11 was in the place or area;

12 (d) the place or area in which it is alleged the
13 vessel was located;

14 (e) the position fixing instruments used to fix
15 the place or area stated in subsection (2)(d) of this
16 section and their accuracy within specified limits;

17 (f) a declaration that he checked the position
18 fixing instruments a reasonable time before and after
19 they were used to fix the position and they appeared to
20 be working correctly; and

21 (g) if a position fixing instrument which is not
22 judicially recognized as notoriously accurate or a
23 designated machine is used, a declaration that he checked
24 the instrument as soon as possible after the time
25 concerned against such instrument.

1 (3) Section 607 of this title shall apply to a
2 certificate given under this section as if it had been a
3 certificate given under section 606 of this title and any
4 reference therein to section 606 of this title shall be
5 read as a reference to this section.

6 (4) For the purposes of this title 'authorized officer'
7 shall include surveillance officers and those charged
8 with similar responsibilities in other countries."

9 Section 73. Title 24 of the Code of the Federated States of
10 Micronesia, as amended, is hereby further amended by adding a new
11 section 609 of chapter 6 to read as follows:

12 "Section 609. Photographic evidence.

13 (1) Where a photograph is taken of any fishing or
14 related activity and simultaneously the date, time or
15 position from which the photograph is taken are
16 superimposed upon the photograph then it shall be
17 presumed, unless the contrary is proved, that the
18 photograph was taken on the date, at the time or in the
19 position so appearing.

20 (2) The presumption set out in subsection (1) of this
21 section shall arise only if:

22 (a) the camera taking the photograph is connected
23 directly to the instruments which provide the date, time
24 and position concerned; and

25 (b) the photograph was taken by an authorized

1 officer or an authorized observer.

2 (3) Any authorized officer or authorized observer who
3 takes a photograph of the kind described in subsection
4 (1) of this section may give a certificate appending the
5 photograph stating:

6 (a) his or her name, address, official position,
7 country of appointment and authority under which he or
8 she is appointed;

9 (b) the name and call sign, if known, of any
10 fishing vessel appearing in the photograph;

11 (c) the names of the camera, watch or clock or
12 other instruments supplying the date and time and the
13 position fixing instrument and a declaration that he
14 checked those instruments a reasonable time before and
15 after the taking of the photograph and that they all
16 appeared to be working correctly;

17 (d) the matters set out in subsection (2)(a) of
18 this section;

19 (e) the accuracy of the fixing instrument used
20 within specified limits;

21 (f) the maximum possible distance and the
22 direction of the subject of the photograph away from the
23 camera at the time the photograph was taken.

24 (4) Section 607 of this title shall apply to a
25 certificate given under this section as if it had been a

1 certificate given under section 606 of this title and any
2 reference therein to section 606 of this title shall be
3 read as a reference to this section."

4 Section 74. Title 24 of the Code of the Federated States of
5 Micronesia, as amended, is hereby further amended by adding a new
6 section 610 of chapter 6 to read as follows:

7 "Section 610. Presumptions.

8 (1) All fish found on board any fishing vessel which
9 has been used in the commission of any offense under this
10 title shall be presumed to have been caught during the
11 commission of that offense, unless the contrary is
12 proved.

13 (2) Where, in any legal proceedings under this title,
14 the place in which an event is alleged to have taken
15 place is in issue:

16 (a) the place stated in the relevant entry in the
17 logbook or other official record of any enforcement
18 vessel or aircraft as being the place in which the event
19 took place shall be presumed to be the place in which the
20 event took place, unless the contrary is proved; and

21 (b) prima facie evidence of an entry in a logbook
22 or other official record of an enforcement vessel or
23 aircraft may be given by the production of a written copy
24 or extract of the entry certified by an authorized
25 officer as a true copy or accurate extract.

1 (3) Where, in any legal proceedings relating to an
2 offense under this title, an authorized officer gives
3 evidence of reasonable grounds to believe any fish to
4 which the charge relates were taken in a specified area
5 of the fishery waters; the Court considers that, in
6 regard to that evidence, the grounds are reasonable, all
7 the fish shall be presumed to have been so taken, unless
8 the contrary is proved.

9 (4) Where, in any legal proceedings for an offense
10 under this title, an authorized officer gives evidence of
11 reasonable grounds to believe that any fish to which the
12 charge relates were taken by the use of driftnets; and
13 the Court considers that, in regard to the evidence, the
14 grounds are reasonable, all the fish shall be presumed to
15 have been so taken, unless the contrary is proved.

16 (5) Where any information is given regarding a fishing
17 vessel pursuant to this title or an access agreement in
18 relation to any fishing activity of a foreign fishing
19 vessel, it shall be presumed to have been given by the
20 master, owner and charterer of the vessel concerned,
21 unless it is proved it was not given or authorized to be
22 given by any of them.

23 (6) Any entry in writing or other mark in or on any
24 log, chart or other document required to be maintained
25 under this title or used to record the activities of a

1 foreign fishing vessel shall be deemed to be that of the
2 master, owner and charterer of the vessel.

3 (7) Any position fixing instrument on board a vessel or
4 aircraft used for the enforcement of this title shall be
5 presumed to be accurate. For the purposes of this
6 section, a position fixing instrument shall mean any
7 device which indicates the location of a vessel,
8 including, but not limited to, any satellite navigation
9 system or global positioning system."

10 Section 75. Title 24 of the Code of the Federated States of
11 Micronesia, as amended, is hereby further amended by adding a new
12 section 611 of chapter 6 to read as follows:

13 "Section 611. Burden of proof.

14 (1) Where, in any proceedings under this title, a
15 person is charged with having committed an offense
16 involving an act for which a permit or other permission
17 is required, the burden shall be on that person to prove
18 that at the relevant time the requisite permit or
19 permission was held.

20 (2) Where a person is charged with the contravention of
21 section 121 of chapter 1 of this title, the burden shall
22 be on that person to prove that the information given was
23 true, complete and correct."

24 Section 76. Title 24 of the Code of the Federated States of
25 Micronesia, as amended, is hereby further amended by adding a new

1 section 612 of chapter 6 to read as follows:

2 "Section 612. Destruction of evidence. No person shall
3 destroy, dispose of, conceal, tamper with or abandon any
4 fish, fish product, fishing gear, net or other fish
5 appliance, record, document, electric shock device,
6 explosive, poison or other noxious substance, or any
7 other thing with intent to avoid seizure or the detection
8 of an offense against this title."

9 Section 77. Title 24 of the Code of the Federated States of
10 Micronesia, as amended, is hereby further amended by enacting a new
11 chapter 7 entitled "Forfeiture and Disposition of Seized or
12 Confiscated Property".

13 Section 78. Title 24 of the Code of the Federated States of
14 Micronesia, as amended, is hereby further amended by adding a new
15 section 701 of chapter 7 to read as follows:

16 "Section 701. Forfeiture of property.
17 (1) Any fishing vessel including its fishing gear,
18 furniture, appurtenances, stores, cargo and aircraft, and
19 all or part of any fish, fish products, fishing gear,
20 vehicle or aircraft used in or connected with the
21 commission of any act prohibited by this title, and where
22 any fish seized in connection with the offense have been
23 sold, the proceeds of the sale of the fish, shall be
24 subject to forfeiture to the Government of the Federated
25 States of Micronesia pursuant to a civil proceeding under

1 this section.

2 (2) The Supreme Court of the Federated States of
3 Micronesia shall have jurisdiction, upon application by
4 the Secretary of the Department of Justice on behalf of
5 the Federated States of Micronesia, to order any
6 forfeiture authorized under subsection (1) of this
7 section.

8 (3) If a judgment is entered for the Government of the
9 Federated States of Micronesia in a civil forfeiture
10 proceeding under this section, the Secretary of the
11 Department of Justice shall seize any property or other
12 interest declared forfeited to the Government of the
13 Federated States of Micronesia, which has not previously
14 been seized pursuant to this title.

15 (4) The forfeited item or items shall be sold and the
16 proceeds deposited in the Fisheries Enforcement and
17 Development Fund in accordance with this title, and any
18 remainder shall be deposited into the General Fund of the
19 Federated States of Micronesia and distributed in
20 accordance with subsection (5) of this section.

21 (5) Fifty percent of the revenues from fines and
22 forfeitures shall be distributed to an FSM State if the
23 offense was committed within the territorial jurisdiction
24 of that State.

25 (6) Pending completion of the civil forfeiture

1 proceeding, the item or items subject to forfeiture, or
2 any part thereof, may be released at the discretion of
3 the Court upon deposit with the Court of a satisfactory
4 bond, surety or other security at least equal to the fair
5 market value of the seized property. Exoneration of such
6 bond, surety or other security shall be conditional upon
7 return of the released property to the appropriate court
8 upon order, without any impairment of its value, or by
9 paying the monetary value of the released property to the
10 Fisheries Enforcement and Development Fund upon order of
11 the Court. Such bond, surety or other security shall be
12 forfeited in the event that any condition is breached as
13 shall be determined by the Court, and judgment shall be
14 recoverable by the Court against the principal of any
15 surety for any such breach.

16 (7) In the event there is an appeal from an order for
17 forfeiture, the Court may continue any such bond, surety
18 or other security deposited in accordance with subsection
19 (6) of this section during the pendency of the appeal and
20 any retrial or rehearing on remand or may require
21 additional security to be deposited with the Court."

22 Section 79. Title 24 of the Code of the Federated States of
23 Micronesia, as amended, is hereby further amended by adding a new
24 section 702 of chapter 7 to read as follows:

25 "Section 702. Disposition of seized or confiscated fish

1 or fish products.

2 (1) The executive director or his designee may sell any
3 perishable fish or fish products which have been seized
4 or confiscated pursuant to this title. If he or she made
5 all reasonable efforts to sell them but was unable to do
6 so, or where they are unfit to be sold, he or she may
7 dispose of them as he or she may think fit. The proceeds
8 of any sale shall be deposited in trust with the Court
9 pending the final disposition of any civil forfeiture
10 proceeding.

11 (2) The executive director shall notify the owner or
12 apparent owner of the perishable goods seized of the
13 sale, and such owner or his or her nominee may be present
14 at the sale."

15 Section 80. Title 24 of the Code of the Federated States of
16 Micronesia, as amended, is hereby further amended by adding a new
17 section 703 of chapter 7 to read as follows:

18 "Section 703. Disposition of forfeited or seized goods.

19 (1) Notwithstanding any other provision of this title,
20 any vessel, vehicle, aircraft or other item ordered to be
21 forfeited pursuant to this title may be disposed of in
22 such manner as prescribed by law after the expiration of
23 the time provided for the filing of a notice of appeal.

24 (2) Any vessel, vehicle, aircraft or other item seized
25 under this title, but not forfeited in any legal

1 proceedings, may be held by the Government of the
2 Federated States of Micronesia until all fines, orders
3 for costs and penalties imposed under this title have
4 been paid and, failing payment within the time allowed,
5 be sold and the balance of the proceeds returned to the
6 owner or apparent owner in accordance with this title
7 after deduction of all fines, orders for costs, penalties
8 imposed under this title and costs of sale.

9 (3) The proceeds of sale of all forfeited items shall
10 be deposited into the Fisheries Enforcement and
11 Development Fund."

12 Section 81. Title 24 of the Code of the Federated States of
13 Micronesia, as amended, is hereby further amended by adding a new
14 section 704 of chapter 7 to read as follows:

15 "Section 704. Unlawful removal of item in custody.

16 (1) When any vessel, vehicle, aircraft or other item
17 held or forfeited under this title has been unlawfully
18 removed from the custody of the Federated States of
19 Micronesia, it shall be liable to seizure at any time
20 within the jurisdiction of the Federated States of
21 Micronesia.

22 (2) No person shall remove any vessel, vehicle,
23 aircraft or other item held under this title in custody
24 whether or not he or she knew that the vessel, vehicle,
25 aircraft or other item was held in custody."

1 Section 82. Title 24 of the Code of the Federated States of
2 Micronesia, as amended, is hereby further amended by adding a new
3 section 705 of chapter 7 to read as follows:

4 "Section 705. Liability of the Government for property
5 in custody. The Government of the Federated States of
6 Micronesia shall not be liable to any person for any
7 loss, damage or deterioration in the condition of any
8 vessel, vehicle, aircraft, fishing gear or other property
9 which is in its custody pursuant to this title, and all
10 costs of maintaining such property while in custody
11 shall, unless otherwise provided, be borne by the
12 operator upon a finding by the FSM Supreme Court that
13 such property was used in or connected with a violation
14 of this title."

15 Section 83. Title 24 of the Code of the Federated States of
16 Micronesia, as amended, is hereby further amended by adding a new
17 section 706 of chapter 7 to read as follows:

18 "Section 706. Release of seized goods.

19 (1) The Court may, on application, order the release of
20 any fishing vessel, vehicle, aircraft or other items
21 seized pursuant to this title on receipt of such bond or
22 other form of security as it may determine.

23 (2) In determining the value of the bond or other form
24 of security, the Court shall have regard to the aggregate
25 amount of the value of the property to be released, an

1 estimated total fine or other penalty provided for the
2 offenses charged or likely to be charged and the costs
3 the prosecution would be likely to recover if a
4 conviction were entered, and may set the value at such
5 aggregate amount. In no case should the bond exceed the
6 value of the property to be released.

7 (3) Notwithstanding the provisions of subsection (2) of
8 this section, the amount determined by the Court under
9 this section shall not be less than the fair market value
10 of the property to be released or the aggregate minimum
11 fine or penalty for each offense charged, whichever is
12 greater.

13 (4) Where any vessel, vehicle, aircraft or other item
14 seized is released upon the lodging of a bond or other
15 form of security under subsection (1) of this section,
16 the court shall in the order state separately the sums
17 which are attributable to the property to be released,
18 the total fine or fines and the likely costs.

19 (5) The release of any bond or other form of security
20 under this section shall be conditional upon:

21 (a) a finding by the Court that the vessel,
22 vehicle, aircraft or other item has not been used in or
23 connected with the commission of an offense against this
24 title; or

25 (b) where the Court finds that the vessel,

1 vehicle, aircraft or other item has been used in or
2 connected with the commission of an offense under this
3 title:

4 (i) payment in full within 30 days of the
5 judgment of the Court of any fine imposed by the Court
6 and any costs ordered to be paid by the Court; and

7 (ii) where the Court so orders, delivery to
8 the Court of the vessel, including its fishing gear,
9 furniture, appurtenances, stores and cargo, and of any
10 fish ordered to be forfeited without any impairment of
11 their value, or payment of the monetary value thereof as
12 determined by the Court.

13 (6) Nothing in subsection (1) of this section shall
14 require a Court to release any vessel, vehicle, aircraft
15 or other item if it might be required as an exhibit in
16 court proceedings or is reasonably required for any
17 further investigations of offenses against this title."

18 Section 84. Title 24 of the Code of the Federated States of
19 Micronesia, as amended, is hereby further amended by adding a new
20 section 707 of chapter 7 to read as follows:

21 "Section 707. Holding of seized goods.

22 (1) Any vessel, vehicle, aircraft or other item seized
23 pursuant to this title or any bond or other security or
24 net proceeds of any sale in respect thereof shall be held
25 by the Government pending the outcome of any legal

1 proceedings under this title or until it is decided not
2 to file an information or a complaint, and any penalties
3 imposed under this title have been fully paid.

4 (2) Where any vessel, vehicle, aircraft or other items
5 seized under this title, or any bond, security or net
6 proceeds of sale in respect thereof is not forfeited or
7 applied in the discharge of any fine, order for costs or
8 penalty imposed pursuant to this title, it shall be made
9 available for collection by the registered owner or his
10 nominee or, in the absence of such persons, the person
11 who appears entitled to it.

12 (3) Where any vessel, vehicle, aircraft or other item
13 has been released upon the lodging of a bond or security,
14 an order for forfeiture shall operate as an order for
15 forfeiture of the bond or security.

16 (4) Where any vessel, vehicle, aircraft or other item
17 has been released upon the lodging of a bond or security,
18 the Court may order any convicted defendant and the owner
19 of the vessel, vehicle, aircraft or other item concerned,
20 whether or not he is a defendant, to pay the difference
21 between the bond or amount lodged in respect of the
22 forfeited property and the aggregate value of the
23 forfeited property."

24 Section 85. Title 24 of the Code of the Federated States of
25 Micronesia, as amended, is hereby further amended by adding a new

1 section 708 of chapter 7 to read as follows:

2 "Section 708. Application of bond, etc.

3 (1) Any bond, security or net proceeds of sale held in
4 respect of any vessel, vehicle or aircraft or other item
5 shall be applied as follows and in this order:

6 (a) the discharge of any forfeiture ordered
7 pursuant to this title;

8 (b) the payment of all fines or penalties for
9 offenses against this title or penalties imposed pursuant
10 to this title arising out of the use of or in connection
11 with the vessel, vehicle, aircraft or other item;

12 (c) the full satisfaction of all costs involved in
13 maintaining and keeping secure the vessel and its
14 equipment during legal proceedings;

15 (d) the discharge of all orders for costs in
16 proceedings pursuant to this title arising out of the use
17 of or in connection with the vessel, vehicle, aircraft or
18 other item; and

19 (e) return as provided in this title."

20 Section 86. Title 24 of the Code of the Federated States of
21 Micronesia, as amended, is hereby further amended by enacting a new
22 chapter 8 entitled "Violations and Penalties".

23 Section 87. Title 24 of the Code of the Federated States of
24 Micronesia, as amended, is hereby further amended by adding a new
25 section 801 of chapter 8 to read as follows:

1 "Section 801. Prohibited acts.

2 (1) It is unlawful for any person to:

3 (a) violate any provision, condition or
4 requirement of a permit or license issued pursuant to
5 this title;

6 (b) violate any provision of a regulation
7 promulgated pursuant to this title;

8 (c) violate any provision, condition or
9 requirement of an access agreement, including the minimum
10 terms required in section 404 of chapter 4 of this title
11 and any agreement or arrangement implementing a
12 multilateral access agreement;

13 (d) refuse or otherwise fail to comply with
14 reporting requirements pursuant to section 116 of chapter
15 1 and section 406(1)(b) of chapter 4 of this title;

16 (e) refuse or otherwise fail to give information,
17 obtain and hold a permit, registration or other document
18 as required by section 120(1) and (3) of chapter 1 of
19 this title;

20 (f) provide information required under this title
21 which is not true, complete and accurate as required by
22 section 120(2) of chapter 1 of this title, or knowing or
23 having reasonable cause to believe that it is false,
24 incomplete or misleading or refusing or otherwise failing
25 to inform the executive director of any change in

1 circumstances in contravention of section 120(2) of
2 chapter 1 of this title;

3 (g) use a vessel for entering or remaining in the
4 exclusive economic zone in violation of any provision of
5 this title or any other law of the Federated States of
6 Micronesia in contravention of section 121 of chapter 1
7 of this title;

8 (h) damage a fishing vessel or gear belonging to
9 another person in contravention of section 122 of chapter
10 1 of this title;

11 (i) refuse or otherwise fail to give fish samples
12 to an authorized officer or authorized observer in
13 contravention of section 123 of chapter 1 of this title;

14 (j) contaminate the exclusive economic zone in
15 contravention of section 124 of chapter 1 of this title;

16 (k) import, export, transport, sell, receive,
17 acquire or purchase any fish or fish product taken,
18 possessed, transported or sold in violation of any law or
19 regulation of a foreign State in contravention of section
20 128 of chapter 1 of this title;

21 (l) engage in transshipment in contravention of
22 section 406(1)(a), (c), (d) or (2) of chapter 4 of this
23 title;

24 (m) being a master or crew member of a seized
25 vessel, refuse or fail to take a seized vessel to such

1 port as an authorized officer designates or to ensure the
2 safety of the vessel and each person on board as required
3 by section 504(1) of chapter 5 of this title;

4 (n) knowingly possess or arrange to obtain any
5 part or parts from any seized vessel, vehicle or aircraft
6 in contravention of section 505(3) of chapter 5 of this
7 title;

8 (o) refuse or otherwise fail to comply with the
9 requirements of sections 506 and 507 of chapter 5 of this
10 title which relates to duties to authorized observers and
11 authorized officers;

12 (p) being an authorized officer or authorized
13 observer, refuse or otherwise fail to produce
14 identification as required by section 508 of chapter 5 of
15 this title;

16 (q) being an operator of a vessel, refuse or
17 otherwise fail to install, maintain or ensure
18 transmission of information from a transponder as
19 required by section 510(1) of chapter 5 of this title;

20 (r) refuse or otherwise fail to comply with
21 requirements of section 510(9) of chapter 5 of this title
22 regarding destruction, etc., of any machine which
23 automatically feeds or inputs information into a
24 transponder, and intentionally feeds or inputs
25 meaningless, etc. information into a transponder;

1 (s) engage in fishing or carry out any other
2 activity in the fishery waters in contravention of
3 section 603(2)(a) of chapter 6 of this title until the
4 amount of any penalty determined under section 603 of
5 chapter 6 of this title has been paid in full;

6 (t) destroy, dispose of, conceal, tamper with or
7 abandon any fish, fish product, fishing gear, net or
8 other fish appliance, record, document, electric shock
9 device, explosive, poison or other noxious substance or
10 any other thing in contravention of section 612 of
11 chapter 6 of this title;

12 (u) remove any vessel, vehicle, aircraft or other
13 item held in custody in contravention of section 704(2)
14 of chapter 7 of this title;

15 (v) knowingly ship, transport, offer for sale,
16 sell, purchase, import, export or have custody, control
17 or possession of any fish taken or retained in
18 contravention of this title or any access agreement,
19 permit or applicable law;

20 (w) resist a lawful arrest for any act prohibited
21 by this title;

22 (x) interfere with, delay, or prevent, by any
23 means the apprehension or arrest of another person,
24 knowing or having probable cause to believe that such
25 person has committed any act prohibited by this title;

1 (y) use any foreign fishing vessel for fishing
2 within one mile from submerged reefs within the exclusive
3 economic zone, or within a two mile radius of any fish
4 aggregating device of the Government, a citizen or any
5 other body established under the laws of the Federated
6 States of Micronesia;

7 (z) engage in driftnet fishing activities in the
8 fishery waters;

9 (aa) being the operator of a fishing vessel
10 entitled to fly the flag of the Federated States of
11 Micronesia, refuse or otherwise fail to require that such
12 vessel does not:

13 (i) fish in waters under the national
14 jurisdiction of a foreign State unless duly authorized by
15 the competent authorities of the foreign State or States
16 concerned;

17 (ii) engage in driftnet fishing activities in
18 waters under the national jurisdiction of a foreign
19 State, in the high seas, or in enclosed or semi-enclosed
20 seas as defined in the United Nations Convention;

21 (bb) being the operator of a fishing vessel in the
22 exclusive economic zone, refuse or otherwise fail to stow
23 all fishing gear in such a manner that it is not readily
24 available for use in fishing except when such fishing
25 vessel is in an area in which it is authorized to fish in

1 accordance with this title; and
2 (cc) otherwise violate any provision of this title.
3 (2) It is unlawful for any fishing vessel to be used
4 for, and the crew and operator of any fishing vessel to
5 engage in, commercial or non-commercial fishing or
6 related activities in the exclusive economic zone without
7 a valid and applicable permit as required pursuant to
8 sections 103, 104 or 105 of chapter 1 of this title."

9 Section 88. Title 24 of the Code of the Federated States of
10 Micronesia, as amended, is hereby further amended by adding a new
11 section 802 of chapter 8 to read as follows:

12 "Section 802. Civil Penalties.

13 (1) Any person who is found by the Supreme Court of the
14 Federated States of Micronesia in a civil proceeding to
15 have committed an act prohibited by this title shall be
16 liable to the Federated States of Micronesia for a civil
17 penalty.

18 (2) The amount of the civil penalty shall not exceed
19 \$1,000,000 for acts prohibited under section 507(3)(a)
20 and (b) of chapter 5 and section 801 subsections (1)(z),
21 (1)(aa)(i), (1)(aa)(ii) and (2), of chapter 8, of this
22 title.

23 (3) The amount of the civil penalty shall not exceed
24 \$500,000 for acts prohibited under section 801(1),
25 paragraphs (a), (b), (c) and (d) of this title, regarding

1 serious miss reporting of catch; for fishing in a closed
2 area or after attaining a quota, directed fishing for a
3 stock for which fishing is prohibited, using prohibited
4 fishing gear, and falsifying or concealing the markings,
5 identity or registration of a fishing vessel; and for
6 acts prohibited under section 801(1), paragraphs (g),
7 (j), (k), (q), (r), (s), (t), and (bb) of this title.

8 (4) The amount of the civil penalty shall not exceed
9 \$250,000 for acts prohibited under section 801(1),
10 paragraphs (l), (u), (v) and (y) of this title.

11 (5) Unless otherwise provided herein, the amount of the
12 civil penalty shall not exceed \$100,000 for acts
13 prohibited under section 801(1), paragraphs (h), (m),
14 (o), (x), and (cc) of this title.

15 (6) Unless otherwise provided herein, the amount of the
16 civil penalty shall not exceed \$50,000 for acts
17 prohibited under section 801(1), paragraphs (e), (f),
18 (i), (n) and (w) of this title.

19 (7) Unless otherwise provided herein, the amount of the
20 civil penalty shall not exceed \$10,000 for acts
21 prohibited under section 801(1)(p) of this title.

22 (8) Each day of a continuing violation shall constitute
23 a separate offense, for which a separate penalty shall be
24 assessed.

25 (9) In determining the amount of the penalty, the

1 Supreme Court of the Federated States of Micronesia shall
2 take into account the nature, circumstances, extent and
3 gravity of the prohibited acts committed and, with
4 respect to the violator, the degree of culpability, any
5 history of prior offenses, whether any other civil or
6 criminal fine or any imprisonment has been imposed as a
7 result of the situation which has given rise to this
8 action, whether there are multiple violations which
9 together constitute a serious disregard of conservation
10 and management measures and such other matters as justice
11 may require.

12 (10) The Secretary of the Department of Justice is
13 authorized to initiate all proceedings under this section
14 and to recover the amount assessed as a civil penalty.

15 (11) The proceeds of civil penalties shall be deposited
16 into the Fisheries Enforcement and Development Fund.
17 Fifty percent of the proceeds from civil penalties shall
18 then be distributed to any FSM State which may be
19 affected by the situation which has given rise to this
20 action."

21 Section 89. Title 24 of the Code of the Federated States of
22 Micronesia, as amended, is hereby further amended by adding a new
23 section 803 of chapter 8 to read as follows:

24 "Section 803. Criminal penalties.

25 (1) A person is guilty of an offense upon conviction if

1 he or she commits any act prohibited by this title.

2 Nothing in this title shall be interpreted to allow the
3 abatement of a criminal prosecution upon the late
4 satisfaction of a civil judgment or payment of a fine or
5 other determination pursuant to summary administrative
6 proceedings under this title.

7 (2) Unless otherwise provided, all maximum penalties
8 described in section 802 of this title shall also be
9 applicable in criminal proceedings in respect of the same
10 prohibited acts. In addition to any fine, the offender
11 shall also be punishable by imprisonment for not more
12 than ten years, if in the commission of any such offense
13 the person:

14 (a) uses a dangerous weapon;

15 (b) engages in conduct that causes bodily injury
16 to any authorized officer or authorized observer or other
17 officer authorized to enforce the provisions of this
18 title; or

19 (c) threatens any such person with bodily injury.

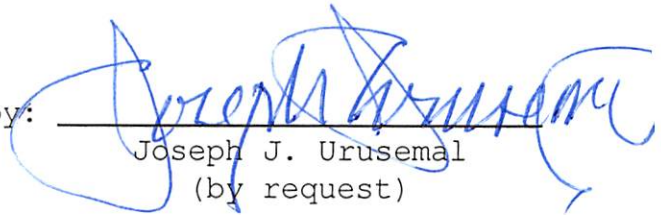
20 (3) Each day of a continuing violation shall be
21 considered a separate offense, for which a separate
22 penalty shall be assessed.

23 (4) The fines shall be deposited into the Fisheries
24 Enforcement and Development Fund. Fifty percent of the
25 proceeds from criminal fines shall be distributed to any

1 FSM State within whose territorial jurisdiction the
2 offense was committed."

3 Section 90. This act shall become law upon approval by the
4 President of the Federated States of Micronesia or upon its becoming
5 law without such approval.

6
7 Date: 10/13/99

Introduced by: 
Joseph J. Urusemal
(by request)

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