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&
COMMONWEALTH OF THE
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CNMI POSITION PAPERS

1. Position Paper by the Special Representatives of the Governor of the Commonwealth of the Northern Mariana Islands for the Section 902 Consultations, on The Tuna Fishery. November 23, 1986.
2. Position Paper by the Special Representatives of the Governor of the Commonwealth of the Northern Mariana Islands for the Section 902 Consultations, on Ocean Rights and Resources. March 27, 1987.
3. Supplemental Position Paper by the Special Representatives of the Governor of the Commonwealth of the Northern Mariana Islands for the Section 902 Consultations, on The Tuna Fishery. April 9, 1990.
4. Supplemental Position Paper by the Special Representatives of the Governor of the Commonwealth of the Northern Mariana Islands for the Section 902 Consultations, on Ocean Rights and Resources. April 9, 1990.
5. Briefing Paper for the Special Representatives of the Governor of the Commonwealth of the Northern Mariana Islands for the Section 902 Consultations, on Pending Federal Ocean Legislation. May 25, 1990.

UNITED STATES RESPONSE TO CNMI POSITION PAPERS

6. Letter to Kittie Baier, OTIA, from Edward Wolfe, Deputy Assistant Secretary for Oceans and Fisheries Affairs dated October 2, 1987. Response to the CNMI's position Paper on Ocean Rights and Resources.
7. Letter to Timothy Glidden, Special Interim Representative of the President for the Covenant 902 Consultations, from Edward E. Wolfe, Deputy Assistant Secretary of State, Bureau of Ocean and Fisheries Affairs, dated June 21, 1990. Response to request for the U.S. position on Exclusive Economic Zone.
8. Department of State Comments on CNMI Position Paper on the Tuna Fishery.
9. Memorandum of Agreement regarding Ocean Rights and Resources, entered into on April 12, 1990.
10. Memorandum of Agreement regarding The Tuna Fishery, entered

into on April 12, 1990.

COMMONWEALTH LAWS RELATING TO EEZ

11. Marine Sovereignty Act of 1980 -- Public Law 2-7, 2 CMC §§ 1101 et. seq.

Procedure of the CNMI to obtain a commercial license within the EEZ.

12. Submerged Lands Act -- Public Law 1-23, 2 CMC §§ 1201 et. seq.
13. Nuclear and Chemical Free Zone Act -- Public Law 3-42, 2 CMC §§ 1301 et. seq.
14. Coastal Resources Management Act of 1983 -- Public Law 3-47, 2 CMC §§ 1501 et. seq.

RELATED MATERIALS

15. The Second Interim Report of the Northern Mariana Islands Commission on Federal Laws to the Congress of the United States.

This Commission made a strong case that ownership of the submerged lands, waters, and natural resources within it NMI boundaries remain with the CNMI after termination of the Trusteeship Agreement by virtue of the real property transfer of section 801 of the Covenant.

16. Testimony of William W. Paty Jr. Chairman, Western Pacific Fishery Management Council before the U.S. House of Representatives Committee on Merchant Marine and Fisheries. January 8, 1989.

Discussion of the problems facing the Council.

17. Presidential Proclamation # 5030. March 10, 1983.

The United States' EEZ was made applicable in a limited way to the waters of the Northern Mariana Islands by virtue of the parenthetical language.

18. Oral statement of the Special Representatives of the Governor on the Tuna Fisheries made at the Second Round of 902 Consultations, November 21, 1986.

The United Nations Convention on the Law of the Sea recognizes the right of coastal states to regulate tuna which are found within their exclusive economic zones.

19. Magnuson Fishery Conservation and Management Act.

As originally enacted the Magnuson Act did not name the Northern Mariana Islands in the definition of "United States," and the legislative history demonstrates an intention to exclude the Northern Mariana Islands as a part of the Trust Territory of the Pacific Islands.

20. Presidential Proclamation # 4726.

Suspended certain vessel documentation laws of the U.S. for citizens of the NMI. The effect of this proclamation was to allow citizens of the NMI to fish in CNMI waters.

21. Compact of Free Association of 1986.

The U.S. recognizes the Federated States of Micronesia and the Marshall Islands have authority over affairs related to the law of the sea and marine resources.

22. Presidential Proclamation # 5928, December 27, 1988.

Territorial Seas extension to 12 nautical miles from the baselines of the US, Guam, and the Commonwealth of the Northern Mariana Islands.

23. Cooperative Agreement between the Department of the Interior and the State of Hawaii for Marine Minerals Joint Planning and Review. December 29, 1988.

Joint management between Hawaii and DOI in the development and implementation of future manganese crust exploration, leasing, and mining programs.

24. 50 CFR 611.

Basic requirement of all foreign fishing vessels.

25. Proceedings of the Pacific Basin Management of the 200-Nautical mile EEZ, July 8-10, 1987.

A conference to establish a cooperative dialogue between interested parties of government, representatives of the fishing and marine mining industry, academia, and environmental movement on the management of the EEZ.

26. Final report to Board of Directors Pacific Basin Development Council -- Pacific Basin Management of the 200-Nautical Mile Exclusive Economic Zone. March 1, 1989.

Explores areas of common interest between the Governors of the American Flag Pacific Islands and their interests in the 200-mile Exclusive Economic Zones.

PENDING FEDERAL LEGISLATION

27. The Territorial Sea Extension Act, H.R. 1405.

- a. Letter to Walter B. Jones from Lt. Governor Manglona. June 12, 1990.

..... - Proposed amendment of H.R. 1405, the Territorial Sea Extension Act.

- b. Letter to Lt. Governor Manglona from Walter B. Jones, Chairman, Committee on Merchant Marine and Fisheries. June 22, 1990.

There are no plans to report H.R. 1405.

- c. Letter to Lt. Governor Manglona from Robert W. Davis, Vice Chairman, Committee on Merchant Marine and Fisheries. June 29, 1990.

Regarding H.R. 1405, it is unlikely that action will be taken on this legislation by the 101 Congress.

- d. Letter to Lt. Governor Manglona from Ron De Lugo, Chairman, Subcommittee on Insular and International Affairs. July 20, 1990.

No further action is planned on H.R. 1405. Suggest continue to pursue goals through the 902 negotiations.

28. The National Seabed Hard Minerals Act, H.R. 2440.

- a. Letter to Walter B. Jones, Chairman, Committee on Merchant Marine and Fisheries, from Lt. Governor Manglona. June 22, 1990.

Proposed amendment of H.R. 2440, the National Seabed Hard Minerals Act.

- b. Letter to Lt. Governor Manglona from Walter B. Jones. July 23, 1990.

The Subcommittee has no plans to markup or report this bill.

29. The Fishery Conservation Amendments of 1990, H.R. 2061.

Position Paper
By
The Special Representatives of the Governor of the
Commonwealth of the Northern Mariana Islands
For the Section 902 Consultations

on

THE TUNA FISHERY

The Northern Mariana Islands seeks to control and develop its ocean resources. This is to be expected given the traditional reliance of the people of the Northern Mariana Islands upon the food and other resources of the surrounding ocean, and the finite extent of land resources in the

Commonwealth. There is every reason to believe that the Northern Mariana Islands could currently derive substantial revenue from the proper management of its fisheries resources.

RECOMMENDATION ON THE TUNA FISHERY

The following language is proposed by the Special Representatives of the Governor of the Commonwealth of the Northern Mariana Islands for resolution of the Tuna Fishery issue.

The Special Representatives of the President of the United States of America and the Governor of the Commonwealth of the Northern Mariana Islands agree and recommend that the Congress enact the Northern Mariana Islands Tuna Conservation and Management Act in order to: 1) provide authority for the Commonwealth of the Northern Mariana Islands to negotiate and conclude international tuna fisheries agreements; 2) provide for the membership and participation of the Commonwealth of the Northern Mariana Islands in the South Pacific Forum Fisheries Agency, and other

international organizations; 3) exclude the Commonwealth of the Northern Mariana Islands from the Magnuson Fishery Conservation and Management Act; 4) provide for appropriate federal oversight of the activities of the Commonwealth of the Northern Mariana Islands in the conservation and management of tuna.

DISCUSSION

It is a curious blind spot in the Covenant that the jurisdiction of the Commonwealth over its oceans, submerged lands and the natural resources of the surrounding sea was not specified. Given the obligation of the United States under Article 6 of the Trusteeship Agreement to "protect the inhabitants against the loss of their ...resources" the Covenant should have contained express provisions to retain these resources for the use and benefit of the people of the Northern Mariana Islands.

The Northern Mariana Islands seeks to correct this shortcoming of the Covenant through consultations with the United States Government under section 902 of the Covenant. The tuna

resource is a special case of concern to the Northern Mariana Islands because it is the single most important fishing resource in the waters surrounding the Northern Mariana Islands, and because it is a resource that is not managed by the federal government. In consultations with the Presidents Representative under Covenant section 902, the Northern Mariana Islands seeks accommodations under federal law and policy that will permit it to conserve and manage this important resource, and to encourage the development of local industry based upon tuna fishing.

This Position Paper makes a proposal for the conservation and management of the Northern Mariana Islands tuna resource and provides background information use during the section 902 consultations. The paper will: 1) describe the Northern Mariana Islands tuna resource, 2) summarize United States law and foreign Policy regarding tuna, 3) review the impact of the Magnuson Fisheries Conservation and Management Act on the Northern Mariana Islands tuna fishery using the experience of the M/V Olwot as an example, 4) summarize Northern Mariana Islands law and policy regarding tuna, 5) describe recent efforts to manage tuna by international agreement, and 6) propose a means for the Northern

Mariana Islands to become involved in the management of its tuna resource for the benefit of its people, including a proposed "Northern Mariana Islands Tuna Conservation and Management Act."

THE NORTHERN MARIANA ISLANDS TUNA RESOURCE

The tuna resource in the Northern Mariana Islands is considered to be the most valuable fishery resource available in the Commonwealth, with the greatest potential for economic development. The Trust Territory of the Pacific Islands has reported that "[t]he waters of the CNMI are generally judged to abound with yellow-fin, skipjack, tuna, marlin, mahi-, wahoo, jacks, and snappers, as well as lobsters and deep-water shrimp." U.S. Dep't of State, Trust Territory of the Pacific Islands: 1984, 37th Annual Report to the United Nations (1985), at 67.

This judgement is supported by federal studies conducted pursuant to the Central, Western, and South Pacific Fisheries Development Act, 16 U.S.C. sec. 758e et seq., which have reported substantial albacore and other tuna resources in the Western Pacific. The albacore fishery alone is projected to yield a potential annual harvest of up to 20 million pounds. House Report

97-549, at 19-20 (1982). This discovery has led to a major redeployment of the United States tuna fleet, with many vessels diverting their efforts from the more traditional eastern Pacific tuna grounds to new areas in the western Pacific. Id. at 20.

In addition, two recent research voyages in the Northern Mariana Islands have favorably estimated the local fisheries resource potential. In particular, a tuna assessment study conducted by the Pacific Tuna Development Foundation demonstrated that a good stock of yellowfin are found in grounds in the Northern Mariana Islands. CNMI Office of Planning and Budgeting, Overall Economic Development Strategy, (1985) at 24.

Hard statistics concerning the size and value of the Northern Mariana Islands tuna stocks are difficult to find, however. The best statistics available on the Northern Mariana Islands' tuna resource are still taken from historical records provided by the Japanese tuna industry regarding effort and harvest by Japanese longliner and baitboat fishermen. These statistics have been reported and analyzed by the National Marine Fisheries Service.

The data included catch statistics for Japanese longliners during the period from 1965-1979, and for Japanese baitboaters for the period from 1970-1979. The longline statistics revealed modest annual catches ranging from only 1 tons to 576 tons. The baitboat catch was more substantial, ranging from 2,554 tons to 12,564 tons during the period. See: Polvina, J.J., and N.T. Shippen Estimates of the catch and effort by Japanese longliners and baitboats in the fishery conservation zone around the Mariana Archipelago. Honolulu Lab., Southwest Fish. Cent., Nat. Mar. Fish. Ser., NOAA, Admin. Rep. H-83-1 (1983).

It seems likely that these figures underestimate the Northern Mariana Islands tuna fishery. First, the catch statistics reflect only the harvest reported by the Japanese tuna fleet. Some of the Japanese harvest could have gone unreported, and the harvest by other fishermen from other distant water fishing nations is not included. Second, the baitboat data seems to have been reported only for tuna harvested from the waters within 50 nautical miles of the Northern Mariana Islands. Fish harvested from areas outside that limit, from the western fishing grounds, including the pathfinder reef grounds for example, may not have been reported.

Third, these statistics do not take into account any harvest from the new high-technology, purse-seine tuna vessels. Such boats have dramatically increased the productivity of many fishing grounds, especially in the western Pacific since 1979. Finally, these figures take no account of the recent development of a major tuna transshipment operation conducted out of San Jose harbor on Tinian. In 1983 over 59,500 tons of fish were transshipped in the first year of full scale operations. By 1984 the volume had dramatically increased to 137,500 tons. CNMI Office of Planning and Budgeting, Overall Economic Development Strategy, at 24. It is not known how many, if any, of these fish were harvested in the waters of the Northern Mariana Islands.

For these reasons, the Japanese statistics, while they are the best available, do not accurately reflect the tuna potential of the Northern Mariana Islands. They demonstrate that the fishery can yield at least the harvest that they record, but they are no indication that a greater yield is not possible. More likely, they indicate a minimum yield for the fishery.

The lack of current assessment statistics has not discouraged the National Marine Fisheries Service from making an optimistic assessment of tuna as the number one fisheries resource in Northern Mariana Islands waters, "[t]he tuna resource has the greatest economic potential, but an assessment of the tunas in the Marianas would require an assessment of the tuna stocks in the western Pacific which was beyond the scope of this program. Polvina, Moffitt, Ralston, Shiota, and Williams, Fisheries Resource Assessment of the Mariana Archipelago, 1982-85, 47 Marine Fisheries Review 19, NMFS (4th Quarter, 1985).

At present, this resource is largely unregulated, and the people of the Northern Mariana Islands derive little benefit save for some subsistence fishing from this important natural resource. If the Northern Mariana Islands is to successfully develop its economy in the manner anticipated in the Covenant, then a well regulated tuna industry must be a part of that economy. The United States fisheries laws and tuna policies have discouraged the development of a local tuna industry in the Northern Mariana Islands, and prevented the regulation of foreign tuna fishing in Northern Mariana Islands waters.

UNITED STATES LAW AND FOREIGN POLICY REGARDING TUNA

The United States has taken the minority position as regards tuna jurisdiction in the international community and in federal law. The United States takes the position that tuna is a "highly migratory species" of fish, and that because the tuna travels widely it is not subject to the jurisdiction of the coastal state in the waters of which it is found.

The Magnuson Fisheries Conservation and Management Act.

According to the Magnuson Fisheries Conservation and Management Act ("Magnuson Act"), tuna, along with other fish are "valuable and renewable natural resources". 16 U.S.C. sec. 1801(a)(1). As opposed to all other such resources, however, it is not a purpose of the Act to "take immediate action to conserve and manage" the tuna resource by establishing exclusive fishery management authority. 16 U.S.C. sec. 1801(b)(1). Instead the purpose of the Act for tuna is to "encourage the negotiation and implementation" of international agreements for conservation and management. 16 U.S.C. sec. 1801(b)(2). As a result the

exclusive fishery management authority of the United States
"shall not include...highly migratory species of fish." 16
U.S.C. s.c. 1813.

The United Nations Convention on the Law of the Sea. A considerable majority of nations disagree. For example, the United Nations Convention on the Law of the Sea clearly recognizes the right of coastal states to regulate tuna which are found within their exclusive economic zones. See Article 57 of the Convention, reprinted at 21 International Legal Materials 1345 (1982). The Convention was adopted on April 30, 1982 by a recorded vote of 130 votes to 4 against, with 17 abstentions. United Nations, The Law of the Sea, (1983) at 192.

The "Open Season" Policy. Regardless, the United States does not assert or recognize unilateral jurisdiction over the tuna fishery. The authority of the federal government agencies that extend to all other kinds of fisheries generally do not extend to tuna. This is notably true of the Western Pacific Regional Fisheries Management Council which is charged with planning federal fisheries management for all other species in the Pacific waters under United States jurisdiction.

The practical result of this policy has been until recently that the United States recognized no effective regulatory authority for tuna anywhere and treated the fishery as in permanent "open season" on a global scale. Under federal law a United States fisherman is not generally subject to the tuna laws of any foreign nation, and in fact, if any U.S. fisherman is arrested for unlawful tuna fishing in foreign waters, he will receive the full support of the United States Government in avoiding punishment.

The Fisherman's Protective Act. The United States is required by the Fisherman's Protective Act, 22 U.S.C. sec. 1971, et seq. to "take such steps as are necessary" to protect and secure the release of any U.S. vessel which is arrested for tuna violations by a foreign government, along with its crew. The Secretary of State will compensate the vessel owner for any fines, license fees or other charges required to secure the release of the vessel and crew, and to bring to bear powerful economic and political sanctions to bear against that foreign government. The Secretary will reimburse the owner for the value of any fish confiscated or lost because of spoilage during any

such arrest, and will compensate owner and crew for income lost as a result of the arrest. In addition the United States will deduct such payments from any federal foreign assistance granted to the arresting government, and may apply trade sanctions against the products of the offending nation. See the Fisherman's Protection Act, 22 U.S.C. sec. 1971 et seq.

The converse is also true. Because of the Magnuson Act exclusion, foreign tuna fisherman enjoy an "open season" to fish for tuna in the United States otherwise "exclusive" economic zone. In the waters offshore of the continental United States this has not been a serious problem because there are few substantial tuna grounds exploited by foreign fishermen. In the Northern Mariana Islands and Hawaii where substantial tuna resources are to be found, this policy has caused controversy. There is some reason to hope that the United States commitment to this policy of excluding tuna from coastal state jurisdiction is changing.

The Exclusive Economic Zone Proclamation. On March 10, 1983, President Reagan claimed for the United States an exclusive economic zone contiguous to the territorial sea of the United

States in Presidential Proclamation 5030. 48 Fed. Reg 10605. Accompanying this proclamation, were two White House statements which elaborated upon current United States oceans policies.

Although the Proclamation reaffirmed the United States policy of not claiming jurisdiction over tuna in the U.S. exclusive economic zone, a United States Oceans Policy Fact Sheet released by the White House indicated that "[t]he United States is willing to respect the maritime claims of others, including economic zones, that are consistent with international law as reflected in the Convention, if U.S. rights and freedoms in such areas under international law are respected by the coastal state." Since jurisdiction over tuna and highly migratory species is a function of the coastal state's rights in the exclusive economic zone under the Convention, the United States appears prepared to recognize the validity of tuna jurisdiction for other nations.

In addition, a special committee of the National Oceanic and Atmospheric Administration, has recommended that the Magnuson Fisheries Conservation and Management Act be amended to repeal the Section 103 exemption of tuna. An amendment of this kind

would have the result of bringing the tuna fishery within the jurisdiction of the United States. The stated rationale is that "[t]he U.S. policy on the management of highly migratory species--as reflected in the management exclusion of tuna-- has had unintended and severe resource and political repercussions". NOAA Fishery Management Study (June 30, 1986).

THE OLWOL INCIDENT

The full implications of the Magnuson Fisheries Conservation and Management Act became apparent to the Government of the Northern Mariana Islands because of an unfortunate incident involving the M/V Olwol. In 1979, the United States, acting through the National Marine Fisheries Service and the U.S. Coast Guard acted to enforce the provisions of the Magnuson Act and federal vessel documentation laws to prevent a group of local fishermen known as the Marianas Fisheries, Inc. from fishing for tuna in the waters of the Northern Mariana Islands.

According to the United States, the vessel was illegally fishing because the Olwol was manufactured in Japan and donated to the Northern Mariana Islands as part of Japan's in-kind

contribution to the Trust Territory of the Pacific Islands for compensation of Micronesian war claims. This made the vessel a "foreign-hulled vessel" in the eyes of the federal government, and so ineligible for use fishing in the waters surrounding the Northern Mariana Islands.

The incident became the subject of litigation, and resulted in the issuance of Presidential Proclamation 4726, which suspended the application of the vessel documentation laws of the United States in the Northern Mariana Islands. Although this proclamation permitted the Olowol to fish within the waters of the Northern Mariana Islands, it did not resolve the legality or wisdom of applying the Magnuson Act to the Northern Mariana Islands.

NORTHERN MARIANA ISLANDS LAW AND POLICY REGARDING TUNA

The Commonwealth of the Northern Mariana Islands has adopted the majority position within the international community where the tuna fishery is concerned. The Second Northern Mariana Commonwealth Legislature enacted the "Marine Sovereignty Act of 1980", Commonwealth Public Law 2-7, 2 CMC sec. 1101 et seq. This law incorporated the basic tenets and principles of the then-current negotiating text of the United Nations Conference on the Law of the Sea, including the right of a coastal nation or state to exercise management jurisdiction over the tuna and other highly migratory species found within their exclusive economic zone.

Because of the Olwol incident, the tuna exclusion, and because of other provisions of the Magnuson Act that were interpreted to prevent citizens of the Northern Mariana Islands from fishing in their traditional fishing grounds, the Northern Mariana Islands has not acknowledged that the Magnuson Fisheries Conservation and Management Act applies to the Northern Mariana Islands. Instead the Governor of the Northern Mariana Islands

has declined to designate persons to serve on the Western Pacific Regional Fisheries Management Council, and the Northern Mariana Islands Commission on Federal Laws has recommended to the Congress that the Northern Mariana Islands be exempted from the Magnuson Act. See: Welcoming America's Newest Commonwealth, The Second Interim Report of the Northern Mariana Islands Commission on Federal Laws (1985), at 114.

Some would argue that in entering into a close political relationship with the United States under the Covenant the Northern Mariana Islands surrendered control of its ocean resources in exchange for U.S. citizenship and the other benefits of Commonwealth status. The Covenant is silent on the subject of the ocean jurisdiction of the Northern Mariana Islands in general, and certainly made no provision for the tuna fishery.

The negotiation and approval of the Covenant was accomplished prior to enactment of the Magnuson Act. Since the Magnuson Act was enacted during the Trusteeship period, with its duty imposed upon the United States to "protect the inhabitants [of the Northern Mariana Islands] against the loss of their... resources", this issue should be resolved by the mutual agreement

of the two governments rather than by application of the Magnuson Fisheries Conservation and Management Act to a Commonwealth and fishery for which it was not designed. The Northern Mariana Islands hopes that this can be accomplished during the 902 consultations.

TUNA MANAGEMENT BY INTERNATIONAL AGREEMENT.

The Eastern Pacific Ocean Tuna Fishing Agreement. In recent years the United States has made a very substantial effort to provide for the conservation and management of tuna by international agreement. The United States has successfully negotiated the Eastern Pacific Ocean Tuna Fishing Agreement which was signed on April 22, 1983. This agreement provides for the regulation of tuna fishing in the eastern Pacific by means of a reciprocal licensing agreement which provides for the payment of license fees based upon the tonnage of the registered vessel. These fees are allocated among the contracting parties in proportion to the amount of tuna harvested within each nation's exclusive economic zone during the year.

The Western Pacific Ocean Tuna Fishing Agreement. In the western Pacific the United States has engaged in two years of difficult negotiations with the member nations of the South Pacific Forum Fisheries Agency. On October 23, 1986 the United States announced that agreement had finally been reached on a regional fisheries agreement that will give the American tuna fleet access to approximately 10 million square miles of the Southwest Pacific Ocean.

While the final terms of this agreement are not available at the time of this writing, a review of the draft composite text, dated October 9, 1986, indicates that the agreement, which is to be styled something like "Agreement on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America" will not provide any immediate means for the Northern Mariana Islands to participate in the regional tuna management mechanism established by the agreement.

Section 1.1(e) of the agreement indicates that the term "Licensing area" does not include "waters subject to the jurisdiction of the United States in accordance with international law." This phrase will likely be interpreted, at

least by the United States, to include the waters of the Northern Mariana Islands, and so place the Northern Mariana Islands exclusive economic zone outside the licensing area.

The technical point should be noted that although the Presidential Proclamation of November 3, 1986 "Placing Into Full Force and Effect the Covenant with the Commonwealth of the Northern Mariana Islands, and the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands" may terminate the Trusteeship Agreement under the law of the United States, it may not be seen by some as effectively terminating the Trusteeship Agreement under international law; because the U.N. Security Council not yet formally approved the termination. This may leave room for debate as to whether or not the Northern Mariana Islands exclusive economic zone is subject to the jurisdiction of the United States "under international law" as required by the section.

Regardless, Section 1.1(i) defines the term "Pacific Island State" in such a way that the Northern Mariana Islands would not be included by requiring that a such a state be a party to the

South Pacific Forum Fisheries Agency Convention. The Northern Mariana Islands has applied for membership in the South Pacific Forum Fisheries Agency. Whether membership in the agency would satisfy Section 1.1(i) is not entirely clear.

The United States has proposed an accession provision as Section 12.2 of the Draft Composite Text which would allow for eventual accession to the agreement by the Northern Mariana Islands as well as other governmental entities in the Pacific. This proposal is the best current hope for involvement by the Northern Mariana Islands in the regional management of tuna. The United States proposal reads as follows:

12.2 This Agreement shall be open to accession by any Pacific Island State and subject to the approval of a consensus of the parties, any other entity of Micronesia, Polynesia, or Melanesia. This Agreement shall enter into force for any acceding state on the date that an instrument signifying accession by that State is received by the depositary.

There is no immediate need for the Northern Mariana Islands to seek accession to the Agreement since the Northern Mariana Islands has no claim to a portion of the fees or economic assistance payments made by the United States under the Agreement.

Preliminary reports indicate that the proposal for accession by entities which are not Pacific Island States may have been refused by the South Pacific nations during the final round of negotiations, however this has not been confirmed. If the accession provision offered by the United States was not made part of the final Agreement, then membership in the South Pacific Forum Fisheries Agency would appear to be a prerequisite for Northern Mariana Islands participation.

This Agreement will be a major accomplishment for the United States and for the member nations of the South Pacific Forum Fisheries Agency. It is in the best interests of the United States that the Agreement be successfully implemented in order to restore the United States' traditionally good relations in the

region which have suffered in recent years from the United States unpopular tuna policy. The Northern Mariana Islands supports the Agreement.

TUNA CONSERVATION AND MANAGEMENT BY THE NORTHERN MARIANA ISLANDS

More than supporting the Western Pacific Ocean Tuna Fishing Agreement the Northern Mariana Islands wishes to become actively involved in the efforts of the United States and the member nations of the South Pacific Forum Fisheries Agency to establish an international system for the conservation and management of tuna in the south and west Pacific Region.

The successful conclusion of these negotiations provides a clear indication that the United States has accepted the South Pacific Forum Fisheries Agency as the international organization capable of carrying forward the difficult task of regional management of the tuna fishery. The South Pacific Forum Fisheries Agency is identified as the authority to administer and distribute the economic assistance fund that will receive the \$10 million dollar annual assistance payments from the United States under the tuna agreement.

As the political partner of the United States the Commonwealth of the Northern Mariana Islands also looks to the South Pacific Forum Fisheries Agency as the focus of its efforts to engage in regional tuna management. The Northern Mariana Islands has applied for membership in the South Pacific Forum Fisheries Agency. We hope to work through that agency in cooperation with the United States to conclude tuna agreements with other distant water fishing nations.

In the designation of issues for these Covenant Section 902 identified several accommodations from the United States that will be necessary to accomplish its goals.

1. Membership in the South Pacific Forum Fisheries Agency.

Section 104 of the Covenant gives the United States complete responsibility for matters of foreign affairs in matters relating to the Commonwealth of the Northern Mariana Islands, therefore Northern Mariana Islands participation in the South Pacific Forum Fisheries Agency will require the cooperation of the Government of the United States. There are several reasons why the United States should sponsor Northern Mariana Islands membership.

Section 904 of the Covenant requires that the United States give sympathetic consideration to the views of the Northern Mariana Islands Government on matters that directly affect the interests of the Northern Mariana Islands. Further, Section 904(c) allows the Northern Mariana Islands to participate in regional and international organizations where it is appropriate. The Northern Mariana Islands is certainly affected by the activities of the South Pacific Forum Fisheries Agency in tuna management.

Article II of the South Pacific Forum Fisheries Agency Convention permits the membership of Pacific states and territories "with the approval of the Forum." This provision apparently permits membership of less than fully sovereign governments.

Section 501 of the Covenant provides that Article 1, Section 10, Clause 3 of the Constitution of the United States "will be applicable within the United States as if the Northern Mariana Islands were one of the several states." Clause 3 prohibits any state from entering into any agreement or compact with a foreign

power without the consent of Congress. This Clause also means that any state, and hence the Northern Mariana Islands, may enter into an agreement or compact with a foreign power with the consent of Congress. This Clause provides the Constitutional authority for the Northern Mariana Islands to both join the South Pacific Forum Fisheries Agency, and to effectively participate in the work of the Agency by approving the necessary international fisheries agreements.

The Commonwealth of the Northern Mariana Islands has applied for membership in the South Pacific Forum Fisheries Agency, and has notified the United States Department of State of its desire to become involved in the activities of that group. We request also the support of the President Special Representative of the President of the United States of America our membership application. Copies of letters to the Andon Amaraich, Chairman of the Forum Fisheries Committee; and to Secretary of State George P. Shultz are appended to this paper as appendixes B, and A, respectively.

2. Modification of the Magnuson Fisheries Conservation and Management Act. In the Designation of Issues for these consultations the Special Representatives recommended that the Magnuson Fisheries Conservation and Management Act be amended to exclude the Northern Mariana Islands from its coverage. This suggestion is drawn from the recommendation of the Northern Mariana Islands Commission on Federal Laws.

The proposal to apply for membership in the South Pacific Forum Fisheries Agency may provide another reason for exclusion of the Northern Mariana Islands from the Magnuson Act. The South Pacific Forum Fisheries Agency Convention in its Article III provides that parties to the Convention recognize that the coastal state has sovereign rights over highly migratory species within its exclusive economic zone. The Northern Mariana Islands law recognizes such rights. To the extent that the Magnuson Fisheries Conservation and Management Act prevents the Northern Mariana Islands from membership in the South Pacific Forum Fisheries Agency, an exclusion may be required in order for the Northern Mariana Islands to participate in the international management of tuna.

3. Delegation of the Authority to Negotiate International Tuna Fisheries Agreements. In light of the federal policy under the Magnuson Fisheries Conservation and Management Act that the tuna resource is to be managed and controlled by international fisheries agreement it seems apparent that the Northern Mariana Islands tuna fishery must be made the subject of such an agreement if it is to be responsibly regulated. The United States efforts in negotiating the Western Pacific Ocean Tuna Fishing Agreement have been only half successful in that the agreement accomplishes a major breakthrough in providing recognized access to foreign tuna stocks for the United States tuna fleet, but contains no provisions for regulating the access of foreign fishing vessels to domestic tuna stocks, the Northern Mariana Islands fishery in particular.

A more balanced approach could be taken by delegating the authority to negotiate and conclude tuna agreements to the Northern Mariana Islands with appropriate federal oversight. Such a delegation is constitutionally permissible under Article 1, Section 10, Clause 3, and is the kind of involvement in regional affairs that is envisioned by the Covenant. This approach would have the advantage to the United States of

permitting the United States to participate indirectly in the South Pacific Forum Fisheries Agency through membership of the Northern Mariana Islands.

4. The Northern Mariana Islands Tuna Conservation and Management Act. Not all of the above proposals require legislation to accomplish. The following is a draft "Northern Mariana Islands Tuna Conservation and Management Act". Although it contains some revisions and new provisions, this draft is based in part upon the statutory language set out in the Northern Mariana Islands Commission on Federal Laws recommendations on the Magnuson Fisheries Conservation and Management Act, and on the Tuna fisheries, as well as upon statutory language proposed by Special Representative Pedro A. Tenorio in testimony before the House Committee on Interior and Insular Affairs' Hearing on the foreign affairs role of the U.S. Insular areas, July 17, 1986.

An Act to provide for the conservation and management of tuna and other highly migratory species in the Northern Mariana Islands.

Be it enacted by the Senate and House of Representative
of the United States of America in Congress assembled, that
the Congress finds and declares as follows:

(a) In the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (approved by Public Law 94-241, 90 Stat. 263 (1976)), the United States agreed to assist in developing the economic resources of the Northern Mariana Islands for the benefit of the inhabitants of those islands.

(b) Tuna in waters adjacent to the Northern Mariana Islands are a valuable and renewable resource, which can contribute to the food supply, economy, and health of the Northern Mariana Islands and of the Nation as a whole.

(c) Foreign fishing vessels catch substantial quantities of tuna in the waters adjacent to the Northern Mariana Islands, but neither the Northern Mariana Islands nor the United States derive revenues from tuna caught by those vessels.

(d) Negotiation of an international agreement or agreements to conserve and manage tuna in the Western Pacific Ocean, including those waters adjacent to the Northern Mariana Islands, is in the best interests of the United States and the Northern Mariana Islands.

Sec. 2. (a) The Governor of the Northern Mariana Islands may, with the approval of and in cooperation with the Secretary of State, initiate and conduct negotiations for the purpose of entering into one or more international fisheries agreements for the conservation and management of tuna or other highly migratory species of fish within the

fishery conservation zone of the Northern Mariana Islands or any appropriate region that includes that fishery conservation zone.

(b) The Northern Mariana Islands may participate in regional and other international organizations, including the South Pacific Forum Fisheries Agency, which are concerned with the conservation and management of tuna and other fisheries on a regional or international basis unless the Secretary of State determines that such participation would be inconsistent with the national security interests of the United States. Where appropriate or necessary, the United States will sponsor and/or otherwise support the Northern Mariana Islands in applying for membership in such organizations.

(c) All payments or other consideration received pursuant to any agreement concluded under the authority granted by subsection (a) of this section and attributable to the taking of fish, or to the right to take fish by the

vessels of foreign nations within the fisheries conservation zone of the Northern Mariana Islands shall be paid to the Government of the Northern Mariana Islands.

(d) For purposes of this section, the term "highly migratory species" means species of tuna which, in the course of their life cycle, spawn, and migrate over great distances in waters of the ocean.

Sec. 3. Subsection 21 of section 3 of the Magnuson Fisheries Conservation and Management Act, as amended (16 U.S.C. sec. 1802(21)), is further amended to read as follows:

The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and any other territory or possession of the United States, except the Northern Mariana Islands.

Sec. 4. Paragraph (8) of subsection (a) of section 302 of the Magnuson Fisheries Conservation and Management Act, as amended (16 U.S.C. sec. 1852(a)(8)), is further amended to read as follows:

(8) Western Pacific Council.--The Western Pacific Management Council shall consist of the State of Hawaii, American Samoa, and Guam and shall have authority over the fisheries in the Pacific Ocean seaward of such States. The Western Pacific Council shall have 11 voting members, including 7 appointed by the Secretary pursuant to subsection (b)(2) of this section (at least one of whom shall be appointed from each of the following States: Hawaii, American Samoa, and Guam). The Western Pacific Council shall also have a nonvoting observer who shall be appointed by and serve at the pleasure of the Governor of the Northern Mariana Islands.

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Position Paper
by
The Special Representatives of the Governor of the
Commonwealth of the Northern Mariana Islands
For the Section 902 Consultations

on

OCEAN RIGHTS AND RESOURCES

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March 27, 1987

CNMI POSITION PAPER ON OCEAN RIGHTS AND RESOURCES

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The Special Representatives of the Governor of the
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For the Section 902 Consultations

on

O C E A N R I G H T S A N D R E S O U R C E S

INTRODUCTION

The Commonwealth of the Northern Mariana Islands seeks to control, manage and develop its ocean resources. This is to be expected given the traditional reliance of the people of the

Northern Mariana Islands upon the food and other resources of the surrounding ocean and the finite extent of land resources in the Commonwealth. There is every reason to believe that the Northern Mariana Islands could now derive substantial revenue from the proper management of its fisheries its submerged mineral, thermal energy conversion, and other marine resources. Lack of clarity regarding the division of jurisdiction over these resources of the marginal sea is an issue seriously affecting the relationship between the Federal Government and the Commonwealth of the Northern Mariana Islands.

RECOMMENDATION ON OCEAN RIGHTS AND RESOURCES

The Special Representatives of the Governor of the Commonwealth of the Northern Mariana Islands propose the following language for resolution of the ocean rights and resources issue:

The Special Representatives of the President of the United States of America and the Governor of the Commonwealth of the Northern Mariana Islands agree and

recommend that the United States and the Commonwealth of the Northern Mariana Islands mutually approve an amendment to Article I of the Covenant and that the Congress enact the Northern Mariana Islands Federal Relations Act with provisions that, together with the Covenant amendment, will: 1) confirm by amendment of the Covenant the authority of the Commonwealth of the Northern Mariana Islands to conserve, manage, and control the marine resources in the waters and seabed surrounding the Commonwealth of the Northern Mariana Islands to the full extent permitted a coastal state under international law; 2) provide for the membership and participation of the Commonwealth of the Northern Mariana Islands in international organizations whose purpose is to manage and control such resources; 3) exclude the Commonwealth of the Northern Mariana Islands from the Magnuson Fishery Conservation and Management Act; 4) provide for appropriate federal oversight of the activities of the Commonwealth of the Northern Mariana Islands in the conservation and management of ocean resources and the exercise of its

ocean rights; and 5) provide increased surveillance in the exclusive economic zone surrounding the Northern Mariana Islands.

It is intended that these recommendations be accomplished by federal legislation and by a mutual consent amendment of the Covenant. Two legislative measures are proposed for this purpose.

SUMMARY

The jurisdiction of the Commonwealth over its oceans, submerged lands and the natural resources of the surrounding sea was not specified in the Covenant. Given the obligation of the United States under Article 6 of the Trusteeship Agreement to "protect the inhabitants against the loss of their lands and resources" the Covenant should have contained express provisions to retain these resources for the use and benefit of the people of the Northern Mariana Islands.

It is clear, however, that the Covenant includes no specific grant of proprietary or other rights over these assets and resources to the Federal Government. It is also apparent that title to such submerged lands as were vested with the Trust Territory of the Pacific Islands were transferred to the Northern Mariana Islands under the real property provisions of section 801 of the Covenant .

The Northern Mariana Islands seeks to correct this shortcoming of the Covenant through consultations with the United States Government under Section 902 of the Covenant. The tuna resource is a case of special concern to the Commonwealth and has been addressed in a position paper on the Tuna Fishery. In consultations with the President's Representative under section 902 of the Covenant, the Commonwealth of the Northern Mariana Islands seeks to establish by mutual consent an oceans policy that will allow it to conserve and manage the ocean resources in and under the surrounding sea and to encourage the development of local industries based upon these resources.

The Commonwealth of the Northern Mariana Islands should retain the same rights in the ocean and exclusive economic zone (EEZ) as are recognized for coastal states in the United Nations Convention on the Law of the Sea (UNCLOS), subject only to appropriate oversight by the Government of the United States in the areas of foreign affairs and defense. This paper will: 1) describe some of the ocean resource potential of the Commonwealth of the Northern Mariana Islands; 2) summarize federal restrictions on the Commonwealth's authority in the oceans and exclusive economic zone surrounding of the Commonwealth of the Northern Mariana Islands; 3) summarize the laws of the Commonwealth of the Northern Mariana Islands regarding its oceans and exclusive economic zone; 4) analyze United States policy regarding the oceans and the exclusive economic zone of the Commonwealth of the Northern Mariana Islands in the context of current international law and practice; 5) propose a policy that will allow the Commonwealth of the Northern Mariana Islands to manage and conserve its ocean resources with oversight by the Federal Government in the areas of foreign affairs and defense; and 6) present draft legislation which will include a proposed amendment to Article I of the Covenant and a proposed "Northern Mariana Islands

Submerged Lands and Oceans Jurisdiction Act."

THE COMMONWEALTH'S OCEAN RESOURCE POTENTIAL

The exclusive economic zone surrounding the Northern Mariana Islands covers a unique body of water and a most unusual seabed. It contains the Marianas Trench, the deepest ocean on the face of the earth, and a vigorous submerged volcanic system. These factors contribute to a rich resource potential including fisheries, marine minerals, ocean thermal energy conversion, and geothermal energy. Little of this resource potential is currently used to the economic advantage of the people of the Northern Mariana Islands.

Fisheries

The single most valuable marine resource in the Commonwealth of the Northern Mariana Islands exclusive economic zone in terms of current value is the tuna fishery. We will not repeat the discussion of that resource set out in the Position Paper on the Tuna Fishery submitted in these consultations by the Special

Representatives of the Governor of the Northern Mariana Islands at the second meeting in Honolulu during November of last year. Tuna is by no means the only fishery resource with commercial value, however, and some excellent research by the National Marine Fisheries Service has identified at least three other species groups of export value. These are deepwater snappers and groupers, deepwater shrimp and akule, or "atulai" as they are called in the Northern Mariana Islands. Polovina, Moffit, Ralston, Shiota, & Williams, Fisheries Resource Assessment of the Mariana Archipelago, 1982-85, 47 Marine Fisheries Review 20 (1985).

Marine Minerals

There has been considerable recent interest in the submerged mineral resource potential of the Commonwealth of the Northern Mariana Islands exclusive economic zone, as well as in the exclusive economic zone of many other island groups in the Pacific. Scientific research has confirmed the existence of significant deposits of a number of commercially valuable minerals, including some considered of strategic importance to

the United States. It is difficult to estimate the economic feasibility of commercial recovery of these deposits, but there are reliable indications that deposits in the Commonwealth of the Northern Mariana Islands are of sufficient interest to warrant further study.

An early effort to quantify the Pacific hard mineral resources was prepared by the East-West Center Resource Systems Institute, and published by the U.S. Department of the Interior Minerals Management Service, Office of Strategic and International Minerals. The report is: A. Clark, P. Humphry, C. Johnson, & D. Pak, Cobalt-Rich Manganese Crust Potential, Exclusive Economic Zones: U.S. Trust and Affiliated Territories in the Pacific (Dep't of Interior, 1985).

Further research has been conducted in the Northern Mariana Islands, but the published results of that research are not yet available. During the late part of 1985, the research vessel Tommy Thompson with scientists from the USGS took 65 dredge samples from younger seamounts in the Northern Mariana Islands. This research effort will increase the available data regarding

the Northern Mariana Islands crusts by some ten-fold. According to preliminary information provided by James R. Hein, a participating marine geologist, about one-third of the samples were found to contain ferro-manganese crust material.

Recent months have seen the circulation of a preliminary proposal for a five-year program to evaluate the marine mineral resources of the exclusive economic zone of Guam and part of the Northern Mariana Islands. This proposal has been developed by Mr. Tracy Vallier, of the U.S. Geological Survey, and is based on experiences he has had on similar projects in the south Pacific. Although the proposal is not officially sponsored by the Survey at this point, Mr. Vallier is convinced that the existing data on the Northern Mariana Islands exclusive economic zone warrant increased research, including exploration for potential petroleum formations.

Ocean Thermal Energy Conversion

The Commonwealth of the Northern Mariana Islands has for some years considered the possibility of constructing one or more ocean thermal energy conversion (OTEC) power plants. Ocean thermal energy conversion is a technique for generating electrical power by using the vertical temperature gradient of the water column as a source of energy.

A few years ago when oil prices were inflated dramatically the Northern Mariana Islands Government worked closely with a Japanese firm, Mitsui Consultants Co., Ltd., and with the Office of Territorial and International Affairs on studying the feasibility of OTEC power generation in the Northern Mariana Islands. The study resulted in a proposal for the construction of a modest-sized OTEC generator for Tinian and a more substantial facility near Wing Beach for Saipan.

Although those proposals have not been further developed, any substantial increase in petroleum prices should revive interest in proposals of this kind. The potential for development of this renewable energy is of great future value.

FEDERAL RESTRICTION OF NORTHERN MARIANA ISLANDS OCEAN JURISDICTION

The United States has enacted a large body of statutory law to govern resources and activities in the ocean offshore the United States. Federal laws regulate each of the resources discussed above, and many other subjects as well. For the most part these laws were not designed for, and do not apply, to the exclusive economic zone of the Commonwealth of the Northern Mariana Islands. The only major restriction on the Commonwealth's authority in this area is the federal assertion of exclusive fisheries management jurisdiction under the Magnuson Fishery Conservation and Management Act.

The Magnuson Fishery Conservation and Management Act. This law, 16 U.S.C. sec. 1801 et seq., was discussed in some detail in the Position Paper on the Tuna Fishery. Enacted for the purpose of conserving and managing the fishery resources of the United States, the Magnuson Act established a 200-mile fishery conservation zone (FCZ) seaward of the territorial sea of the United States. This zone does not include waters within the boundaries of the coastal States (generally 3 nautical miles, except in the cases of Texas, Florida, and Puerto Rico, which have 9 nautical miles). The Act established nine regional fisheries management councils, which make recommendations to the Secretary of Commerce for regulation of all fishing except for tuna in the FCZ.

The Magnuson Act defines the term "State" to include not only the several States of the Union but also "the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and any other commonwealth, territory, or possession of the United States." 16 U.S.C. sec. 1802(21). The Magnuson Act provides no mechanism for direct State management of fisheries conducted in the fisheries conservation zone offshore its coast.

The initial involvement of the State government is to participate in the appropriate regional fishery management council established by section 1852 of the Act. Puerto Rico and the Virgin Islands are members of the Caribbean Fisheries Management Council. Although they are the only two State members of that council, they control only one appointment each on a council of seven members. The five other members are appointed by the Secretary of Commerce. 16 U.S.C. sec. 1852(a)(4).

Similarly, the Western Pacific Management Council, which includes the State of Hawaii, American Samoa, Guam, and the Northern Mariana Islands, is dominated by federal appointees. Of thirteen members, the island governments appoint only four. Nine members are federal appointments or positions. 16 U.S.C. sec. 1852(a)(8).

These councils do not directly regulate or the fisheries resources. Instead, they act in an advisory capacity to the Secretary of Commerce. The councils submit fishery management plans to the Secretary of Commerce, which the Secretary may

disapprove in whole or in part 16 U.S.C. sec. 1854. These provisions, coupled with the tuna exclusion as a highly migratory species in section 1813 of the Magnuson Act, effectively remove the management and conservation of the fisheries within the fisheries conservation zone from the jurisdiction of the coastal State government and place it with the Federal Government.

The Act apparently applies by its terms to the Northern Mariana Islands, but the Government of the Northern Mariana Islands has disputed the application of this Act and the Governor has declined to submit names for appointment or otherwise participate as a voting member of the Western Pacific Fisheries Management Council.

By contrast, such federal laws as the Submerged Lands Act and the Outer Continental Shelf Lands Act do not apply to the Commonwealth of the Northern Mariana Islands and so do not restrict the Commonwealth's authority in those areas.

COMMONWEALTH OCEANS AND MARINE RESOURCES LAW

The people of the Northern Mariana Islands have a legitimate claim to the ownership, control, use, and benefit of the surrounding sea and its resources based upon the traditional ownership, use, and control of these waters by generations of Chamorro and Carolinian inhabitants of the Northern Mariana Islands. The people of the Northern Mariana Islands throughout their history have claimed, defended, and harvested the marine resources of the ocean surrounding the islands to distances approaching 200 miles. The original Chamorro population was a seafaring culture, and the Carolinian traditions of ocean ownership were generally adopted more than one hundred years ago. This tradition is well documented:

Carolinians of the Marianas . . . share a common cultural heritage. . . . Not surprisingly this common cultural heritage has resulted in common concepts of ownership of the sea

The range of navigation of the Central Carolinians is impressive. At least as far as Johnston Island to the east; the Philippines to the west; beyond the Northern Mariana Islands to the north; and to New Guinea, Kapingamarangi, and possibly Samoa to the south

Among the Central Carolinians, ownership of property extends out from land to include the lagoons and all known submerged reefs regardless of their distance from land . . .

Ownership of each of these reefs is very carefully defined and rights in them scrupulously respected. The most distant submerged reefs considered owned by the Micronesians are found in the Mariana Islands. Parallel to the chain of mounts forming the Marianas is another chain located about 200 miles to the west. None of these mountains break the surface of the ocean. Among them are many submerged reefs considered to be

owned by the people of the Marianas. For example, about 175 miles west of Pagan are two reefs together called "Fanupweilatai" traditionally owned by the inhabitants of Anatahan. About 150 miles west of Anatahan is Pathfinder Reef which, together with the reef to the north and the one to the east, is called "Ochensoutanachik" and owned by the Soufanachik clan. There are many reefs closer to land in the Marianas such as "Ochopengek" east of Saipan and "Maenmetin" north of Saipan. These are considered owned by a clan or island as well.

Property ownership of the Central Carolinians includes all of the sea between islands as well as the lagoon and submerged reef areas. As was found elsewhere, non-exclusive but paramount rights in deep sea areas are held by a single island or atoll and shared with other islanders. Foreigners are considered to have no rights in the sea except the rights to transit.

M. Nakayama & Ramp, Micronesian Navigation, Islands Empires and Traditional Concepts of Ownership of the Sea at 89,90 (1974).

These established continuous uses created legally defensible rights to maritime resources in the people of the NMI. Article 6(2) of the Trusteeship Agreement reaffirms these rights and charges the United States, as administering authority, to protect them. The Commonwealth's Marine Sovereignty Act and related laws are a timely expression by the people of the Northern Mariana Islands of their rights as a Commonwealth in the surrounding sea. Among the other pertinent Commonwealth laws are the Marine Sovereignty Act, the Submerged Lands Act, The Nuclear and Chemical Free Zone Act and the Coastal Resources Management Act.

The Northern Mariana Islands Commission on Federal Laws made a strong case, which we do not repeat in detail, that ownership of the submerged lands, waters and natural resources within its boundaries remains with the Commonwealth of the Northern Mariana Islands after termination of the Trusteeship Agreement by virtue of the real property transfer of section 801 of the Covenant. Under Trust Territory law, submerged lands are real property.

Ngiraibiochel v. Trust Territory of the Pacific Islands, 1 Trust Territory Reports 485, 490 (High Court Trial Division, 1958). Consequently, Section 801 transferred all federal interest in such submerged lands to the Government of the Northern Mariana Islands.

In light of the apparent termination of the Trusteeship Agreement pursuant to the Presidential Proclamation issued on November 3, 1986, the ownership, and extent of the submerged lands in the Commonwealth of the Northern Mariana Islands should be made clear.

The Commission recommended that the matter be clarified by the enactment of federal submerged lands legislation for the Commonwealth of the Northern Mariana Islands. The Commission's legislation recommended that the United States quitclaim any and all federal interests in the marginal sea to a distance of three miles, without prejudice to Commonwealth of the Northern Mariana Islands claims seaward of the three-mile limit. The Special

Representatives for the Commonwealth of the Northern Mariana Islands suggest that the quitclaim grant be extended to 12 miles to recognize the Northern Mariana Islands law on the subject.

UNITED STATES POLICY AND INTERNATIONAL LAW

The division of jurisdiction between the federal and Commonwealth governments over the submerged lands and natural resources of the sea surrounding the Commonwealth of the Northern Mariana Islands should conform to international law and practice on the subject. This is so because the political status relationship between the Northern Mariana Islands and the United States was established under the authority of the United Nations Trusteeship Agreement for the former Japanese Mandated Islands (the Trusteeship Agreement). As administering authority under that agreement the United States was obliged to "protect the inhabitants against the loss of their lands and resources" as provided in Article 6 2. of the Agreement.

The Reagan Proclamation of an Exclusive Economic Zone. On March 10, 1983, President Reagan Proclaimed on behalf of the United States an Exclusive Economic Zone of the kind contemplated in the Law of the Sea Convention. Proclamation No. 5030, 48 Fed. Reg. 10,605 (1983). In announcing the exclusive economic zone, the President relied upon customary international law as the source of the right of the United States to an exclusive economic zone. Oceans Policy Statement, 19 Weekly Comp. Pres. Doc. 383 (March 14, 1983). The President also stated that the United Nations Convention on the Law of the Sea embodies current customary international law on this subject.

This kind of zone, the exclusive economic zone, is a new creature to international law. The exclusive economic zone is neither a part of the territorial sea nor of the high seas. It is an area not of entire sovereignty, but of limited management jurisdiction. In its exclusive economic zone the United States claims jurisdiction over the exploration, exploitation, and management of natural resources of the waters, seabed, and

subsoil of the exclusive economic zone. Traditional high seas freedoms, such as the right of navigation and overflight, are not disturbed.

Although the United States exclusive economic zone was made applicable in a limited way to the waters of the Northern Mariana Islands by virtue of the parenthetical language in Proclamation 5030, that proclamation does not provide authority for the actual resource conservation and management by any agency of the federal government. It establishes that these resources may not be unilaterally exploited by foreign nations, but it does not allocate the governmental authority for administration of the exclusive economic zone within the Federal government or between the United States and Commonwealth of the Northern Mariana Islands governments. Precedents of international common law and the principles of the Covenant require that the Government of the Commonwealth of the Northern Mariana Islands, as a semi-autonomous state, should retain ownership, authority, and beneficial interest in the exclusive economic zone declared by Proclamation 5030.

The International Standard. How best to allocate ownership and jurisdiction over the natural resources of the exclusive economic zone (and other new zones of extended ocean jurisdiction) between a national government and the government of an associated island dependency is not a question unique to the United States. The issue has been faced by virtually every metropolitan government, whether its relations are with a commonwealth, territory, freely associated state, or even when the island government is considered to be a department of the national government. Illustrative examples from the Pacific are the New Zealand dependencies, of which there are three, the Cook Islands, Niue, and Tokelau.

The constitutions of the Cook Islands and Niue establish political relationships between those island governments and New Zealand that resemble in some important respects the relationship between the Commonwealth of the Northern Mariana Islands and the United States. Similar to the Northern Mariana Islands Covenant with the United States, the constitutions of the Cook Islands and Niue provide that the islands shall be "self-governing." The New Zealand national government is given responsibility for "external

affairs and defense," powers which correspond to the United states authority for "matters relating to foreign affairs and defense" under Section 104 of the Covenant.

New Zealand has enacted legislation establishing an exclusive economic zone. That legislation by its terms does not apply to the Cook Islands, Niue, or Tokelau. Territorial Sea and Economic Zone Act, No. 28 (26 September, 1977), reprinted 7 M. Nordquist, S. Lay, & K. Simmonds, K., (eds.), New Direction in the Law of the Sea, Vol. 440 (Oceana, 1980). Shortly after the New Zealand law was enacted the Cook Islands Legislative Assembly enacted its own Territorial Sea and Exclusive Economic Zone Act, modeled after the New Zealand law. Territorial Sea and Exclusive Economic Zone Act of 1977, No. 16 (14 November, 1977), reprinted in id. at 374. These enactments make clear that the Cook Islands and Niue, although delegating defense and foreign affairs powers to New Zealand, retains full jurisdiction and authority over their marginal seas.

The United States has formally recognized the sovereignty of the Cook Islands Government under its exclusive economic zone law by signing, on July 11, 1980, a treaty with the Cook Islands establishing a maritime boundary with that government. Treaty Between the United States of America and the Cook Islands on Friendship and Delimitation of the Maritime Boundary Between the United States of America and the Cook Islands, reprinted at Limits in the Seas, No. 100 (U.S. Dept. of State, Dec. 1983) at 1.

The Tokelau Islands enjoy relatively less political autonomy in their political relations with New Zealand than do the Cook Islands or Niue. This relationship is more colonial in nature than that of the Cook Islands or Niue, as Tokelau is regarded as a non-self governing territory. The Tokelau Islands are without a constitution and are still governed by the authority of a law of New Zealand. This law is in some ways analogous to the organic acts by which the United States governs some island territories of the United States. Tokelau Islands Act of 1948, 2 Statutes of New Zealand (1966). Notwithstanding the dependent nature of the Tokelau Islands, New Zealand has enacted legis-

lation recognizing the sovereignty of the people of Tokelau in the marginal sea. Tokelau Territorial Sea and Exclusive Economic Zone Act of 1977, No. 125 (Dec. 23, 1977), reprinted, 7 New Direction in the Law of the Sea, supra., at 468.

The United States has recognized the shared sovereignty between the people of Tokelau and the Government of New Zealand by signing a treaty delimiting the maritime boundaries between the Tokelau Islands and the United States. Treaty Between the United States of America and New Zealand on the Delimitation of the Maritime Boundary Between Tokelau and the United States, reprinted in, Limits in the Seas, No. 100, supra, at 4.

The two treaties have been cited as examples of the effective application of two principles emanating from the United Nations Convention on the Law of the Sea regarding the rights of dependent coastal governments. See generally S. Jagota, Maritime Boundary 93 et seq. (Nijhoff, 1985). The Treaty with the Cook Islands is described as "a case of the practical application of the principle embodied in Article 305 of the United Nations Con-

vention on the Law of the Sea . . . namely, the competence of self-governing associated States in matters concerning the law of the sea and their treaty-making capacity." Id.

The treaty with New Zealand regarding the Tokelau Islands, meanwhile, is seen as the first application of the principle embodied in Resolution III which became part of the "Final Act of the Conference which was signed by more than 150 delegations in Montego Bay, Jamaica, on December 10, 1982." As the commentator describes the resolution, it:

declares that the UN Convention on the Law of the Sea shall be implemented for the benefit of the people of the territory concerned with a view to promoting their well-being and development.

Id.

Although the precise status of these island states vis-a-vis New Zealand may be distinguished from the relationship between the Commonwealth of the Northern Mariana Islands and the United

States under the Covenant, technical differences in the details of a status relationship do not account for differences in international practice regarding the control of ocean resources by such coastal island states.

In 1978 a comprehensive survey was made by Professor Thomas Franck of the relationships between metropolitan governments and their overseas territories and associated states regarding jurisdiction of the resources of the exclusive economic zone. Professor Franck analyzed the laws and practices of six nations, including the United States, New Zealand, Great Britain, France, Denmark, and the Netherlands, with respect to control of the natural resources of the exclusive economic zone of their dependent island states and territories. The survey identified a general rule of international legal practice on the subject:

With only one major, and two trivial exceptions, the general rule is that metropolitan powers with integrated overseas territories or associated states either have given the population of the overseas territory full and equal representation in the national

parliament and government or have given the local government of the overseas territory jurisdiction over the mineral resources of the exclusive economic zone.

Franck, T., Control of Sea Resources by Semi-Autonomous States 5 (Carnegie Endowment for International Peace, 1978) (emphasis in original). The survey went on to point out that:

The sole significant exception to this rule would appear to be the United States, which, in the case of Puerto Rico, has neither accorded that commonwealth full popular participation in the national (congressional) lawmaking process nor delegated to it the jurisdiction over fisheries and mineral resources in the 200-mile zone around the island.

Id.

The policy of France vis-a-vis overseas territories in the Pacific also demonstrates the general rule identified by Professor Franck. France has a more complicated system of relations

with its territories than do most metropolitan states in that the constitution of the French Republic contemplates two different kinds of political relationships with dependent areas. They are permitted to assimilate into the national government as a department; or they may chose the status of overseas territory, in which case they retain relatively greater powers of local self-government. Id. at 19.

Most of the Pacific islands affiliated with France, including French Polynesia, New Caledonia, and Wallis and Futuna Islands, have elected the status of overseas territories. As such, each elects a territorial assembly and enjoys substantial autonomy in its local affairs. See for example, Law No. 61-814, July 29, 1961 (Wallis and Futuna Islands); and Law No. 63-1246, December 21, 1963 (New Caledonia), reprinted in A. Blaustein & Blaustein (eds.), *Constitutions of Dependencies and Special Sovereignties*, Vol. V (1977).

Despite their relative autonomy within the French constitutional system, these Pacific island territories do not retain local sovereignty over their exclusive economic zone. A variety

of French laws make clear that the jurisdiction over the exclusive economic zone, the continental shelf, and the territorial sea are within the competence of the national government in Paris. T. Franck, supra at 22, 23.

Rather than disproving the general rule, however, the French practice proves the rule in its converse. Although the national government of France controls the exclusive economic zone of its Pacific overseas territories, it also allows these territories full participation in its national political process. Overseas voters participate in the election of the President and are represented in the National Assembly at least equally with the voters in the metropolitan departments of France. Id. at 20.

Even with the full political rights exercised by these overseas territories, there are indications that the French Government may permit more local jurisdiction by the island governments over the exclusive economic zone. Article 62 of the Law of the Republic of France Regarding the Organization of French Polynesia, of July 12, 1977, provides:

The State [France] shall preserve its sovereign and property rights, both public and private, over all territory, as well as sea and air space; but the right of exploitation of natural maritime resources shall remain within the competence of the Territory [French Polynesia], subject only to international obligations and to the legislative agreements proceeding from them.

See A. Blaustein & E. Blaustein, *Constitutions of Dependencies and Special Sovereignties* (looseleaf 1979).

Events since the publication of the Franck survey by the Carnegie Endowment in 1978 reaffirm the general rule of international practice established by the survey. A very recent example of the continuing observation of this international norm is found in the announcement by the British Government of the creation of an exclusive economic zone around the Falkland Islands. On October 29, 1986, the Government of Great Britain declared the establishment of a Falkland Islands Interim Fisheries Conservation Zone in the marginal sea surrounding the Falkland Islands. Statement on South Atlantic Fisheries made by

the British Secretary of State for Foreign and Commonwealth Affairs, Sir Geoffrey Howe, in the House of Commons, October 29, 1986 (London Press Service, Verbatim Service VS/056/86, copy provided by C. Woodley, British Embassy, Washington, D.C.).

The Declaration was intended to provide notice of the establishment of the zone to the international community, but the legislation to implement the Declaration and to provide the necessary administrative regime were enacted by the Falkland Islands Government. The Falkland Islands Government retains full administrative control of the zone, and proceeds of the licensing of fishing vessels operating in the zone will accrue to the local government. Conversation with Mr. Woodley, British Embassy, Washington, D.C., February 4, 1987).

These practices establish a customary standard compatible with the two provisions of the United Nations Convention on the Law of the Sea referred to above. Article 305 makes the Convention open for signature by less than fully sovereign dependencies, including self-governing states and territories "which

have competence over the matters governed by this Convention, including the competence to enter treaties in respect of those matters."

At the same time, Resolution III accompanying the Convention concerns the implementation of the Convention with regard to territories which have not attained "self-governing status recognized by the United Nations." The Northern Mariana Islands was, at the time of the signature of the Convention, and still may be, classified in this category. Under the Resolution "provisions concerning rights and interests under the Convention shall be implemented for the benefit of the people of the territory with a view to promoting their well-being and development."

Thus an international norm or standard of practice has been identified which is supported by both the United Nations Convention on the Law of the Sea and by the customary practice of nations. Metropolitan nations which afford a full measure of political rights in the national government and parliament to the citizens of their affiliated, semi-autonomous states may, and frequently do, assume jurisdiction over the exclusive economic

zone of the dependency. Metropolitan nations which withhold representation in the national government from the citizens of an affiliated, semi-autonomous state should not, and almost never do assume jurisdiction over the resources of the exclusive economic zone of such a state. The standard reflects an appealing balance of interests that has much equitable force--political rights are balanced against rights in the ocean resources, and no state or people should be deprived of both.

The United States Practice. The people of the Commonwealth of the Northern Mariana Islands do not vote in national elections. They do not vote for President of the United States, and they elect no Senators or Representative to the Congress of the United States. They do not even elect a Resident Commissioner or other non-voting delegate to the House of Representatives as do the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and American Samoa.

The people of the Northern Mariana Islands are unusually vulnerable to the caprice of national policy because they are a small, land-poor, minority population living in an area geograph-

ically remote from the United States mainland. According to the international standard the Commonwealth of the Northern Mariana Islands should retain all internationally recognized rights in the oceans and marine resources of the surrounding sea.

Prior to January 12, 1983, when the Magnuson Fishery Conservation and Management Act was amended to specifically refer to the Northern Mariana Islands, the United States Congress had enacted no legislation that clearly and substantially deprived the people of the Northern Mariana Islands of their rights in the sea and its resources. The major federal laws regarding these resources were not made applicable to the Northern Mariana Islands in such a manner as to restrict the authority of the Northern Mariana Islands Government. The Commonwealth of the Northern Mariana Islands was excluded from and remains outside the jurisdiction of the Outer Continental Shelf Lands Act and the Submerged Lands Acts.

-- The Magnuson Fishery Conservation and Management Act.

Although it was the source of considerable controversy, Congress apparently intended to exclude the Northern Mariana Islands from

the national fisheries jurisdiction established by the Magnuson Fishery Conservation and Management Act. As it was originally enacted the Magnuson Act did not name the Northern Mariana Islands in the definition of "United States," and the legislative history demonstrates an intention to exclude the Northern Mariana Islands as a part of the Trust Territory of the Pacific Islands:

[S]ince the Trust Territory of the Pacific Islands is operated by the United States pursuant to the terms of a trusteeship agreement with the United States and is not considered to be a possession of the United States, it is not included within the coverage of this Act.

H.Rep. 94-445, 94th Cong., 2d Sess. (1976), reprinted in 1976 U.S. Code Cong. & Ad. News 593, 617.

Regardless of these provisions of the Magnuson Act, the executive branch interpreted the law to apply to the Northern Mariana Islands and enforced its provisions to prevent fishing by a group of Northern Mariana Islands citizens in their own traditional fishing grounds. This action generated a predictable

amount of controversy in the Northern Mariana Islands, and led to litigation and other efforts by the Northern Mariana Islands Government to resist application of the Magnuson Act to the islands by the Federal Government. Eventually the fishermen obtained relief in the form of Presidential Proclamation 4726 which suspended certain of the vessel documentation laws of the United States for citizens of the Northern Mariana Islands, and permitted the Olwol to receive a federal license.

Perhaps in response to this controversy, on January 12, 1983 the Congress amended the Magnuson Act in Public Law 97-453, granting the Northern Mariana Islands voting membership on the Western Pacific Regional Fishery Management Council and otherwise making the Act clearly applicable to the Northern Mariana Islands. The Commonwealth of the Northern Mariana Islands has not accepted the wisdom of this action, and has protested against application of the law in a variety of ways. The Northern Mariana Islands Commission on Federal Laws recommended that Congress enact legislation to exempt the Commonwealth of the Northern Mariana Islands from the application of the Magnuson Act.

The Magnuson Fishery Conservation and Management Act places fisheries jurisdiction in the 200-mile fisheries Conservation zone in the waters surrounding the Northern Mariana Islands with the Federal Government. It deprives the Commonwealth of the right to conserve and manage its fisheries resources as a coastal state in the manner contemplated in the United Nations Convention on the Law of the Sea. In addition, it diverts the revenues generated by the fishing industry to the federal government, depriving the Commonwealth of the beneficial interest in these fishery resources.

-- Marine Hard Minerals, H.R. 5464. There is reason for concern that the United States will further restrict the authority of the Commonwealth of the Northern Mariana Islands over its ocean resources. Last year, for example, H.R. 5464 was introduced in the 99th Congress. It was a bill to "establish a program for the exploration for and commercial recovery of hard mineral resources on those portions of the seabed subject to the jurisdiction and control of the United States." This bill was designed to implement the Exclusive Economic Zone Proclamation

5030 for submerged minerals other than petroleum. The bill defined the term "coastal state" to include specifically the Commonwealth of the Northern Mariana Islands, while the freely associated states of Micronesia were excluded from the coverage of the bill.

The bill would have authorized the Secretary of Interior to issue licenses in cooperation with the Administrator of the National Oceanic and Atmospheric Administration after consultation with the Governor. The bill provided that 50 percent of the revenues generated by administration of the program would go directly to the Federal Treasury. Although the bill contained revenue sharing provisions that would earmark the other 50 percent of revenues for distribution among the States, the formula by which the distribution would be made would make the Northern Mariana Islands share of revenues generated from mining operations in her exclusive economic zone extremely small. These provisions of the bill would deprive the Commonwealth of the Northern Mariana Islands of both jurisdiction over, and the beneficial interest in the submerged mineral resources within her exclusive economic zone.

--The Freely Associated States of Micronesia. In its dealings with the freely associated states of Micronesia, the United States has conformed to the international practice. Section 121 of the Compact of Free Association for the Federated States of Micronesia and the Marshall Islands recognizes the authority of the peoples of these new States over affairs related to the law of the sea and marine resources. The language of the section is similar to the language of Article 56 of the UNCLOS, and includes "the harvesting, conservation, exploration or exploitation of living and non-living resources from the sea, seabed, or subsoil to the full extent recognized under international law." Compact of Free Association: The Federated States of Micronesia, Republic of the Marshall Islands, and Republic of Palau, approved by Compact Of Free Association Act of 1986, Public Law 99-239, 99 Stat. 1770 (Jan. 14, 1986). The United States should do the same on behalf of the people of the Commonwealth of the Northern Mariana Islands.

-- Termination of the Trusteeship Agreement. The policy and laws of the United States regarding the fishing rights of the Commonwealth of the Northern Mariana Islands under the Magnuson Act do not conform to international law generally; and federal restrictions on the coastal rights of the Commonwealth are contrary to the special obligations of the United States, as administering authority of the Trusteeship Agreement, to the people of the Northern Mariana Islands.

Representatives of the Northern Mariana Islands regularly petitioned the United Nations Trusteeship Council for assistance in resolving these issues. Both the Trusteeship Council and the United States delegation to the United Nations indicated that the issues should be resolved prior to termination. The Trusteeship Council reported in 1984, for example, that:

The Council recognizes the concern expressed by the representatives of the Northern Mariana Islands concerning fishing grounds. It believes that the

administering Authority must ensure that the interests of the Northern Mariana Islands in this area must be recognized and safeguarded.

Conclusions and Recommendations of the Trusteeship Council, 1984 Session, reprinted in, 1984 Trust Territory of the Pacific Islands: 37th Annual Report to the United Nations on the Administration of the Trust Territory of the Pacific Islands 207 (U.S. Dep't of State, 1985), at 207.

Obviously, this has not been done. At least it has not been done in the context of the Trusteeship Council's deliberations. To the contrary, the United States has undertaken to end the Trusteeship Agreement unilaterally. Although the Trusteeship Council endorsed the idea of termination of the Trusteeship Agreement, and indicated that it felt that the United States, as administering authority of the Trust Territory of the Pacific Islands, had "satisfactorily discharged" its obligations under the Trusteeship Agreement, it still referred the matter to the Security Council for final consideration under Article 83, paragraph 1 of the Charter of the United Nations. U.N. Res.

T/L 1252, May 28, 1986.

Although the Security Council has yet to act on the subject of termination, President Reagan proclaimed that the Trusteeship Agreement was "no longer in effect" with respect to the Northern Mariana Islands effective November 3, 1986. Presidential Proclamation 5564, Federal Register 40399 (November 7, 1986).

Thus, the United States fisheries law and policy toward the Commonwealth of the Northern Mariana Islands is contrary to the standards of international law, and disregards express concerns voiced by the Trusteeship Council. In addition, a serious threat exists that the United States law and policy regarding hard mineral resources in the Commonwealth exclusive economic zone will further contradict established law and practice in the international community.

CONCLUSION

The oceans surrounding the Commonwealth of the Northern Mariana Islands are a unique portion of the earth's surface. They cover profound depths and a volatile geology. They contain a variety of natural resources that are of great potential value to the people of the Northern Mariana Islands. The people of the Northern Mariana Islands have a long history of ownership and use of these submerged lands and marine resources. At present very few of these ocean resources are developed to the economic advantage of the people of Northern Mariana Islands.

The Trusteeship Agreement obligated the United States to protect natural resources of the sea, along with all other Northern Mariana Islands resources, for the use and benefit of the people of the Northern Mariana Islands. Unlike the protections included for land, the Covenant makes no specific provision for ownership, conservation or control of the oceans and marine resources. At the time the Covenant was negotiated and approved,

the United States made no claim to national jurisdiction or control over the oceans and marine resources in the waters surrounding the Northern Mariana Islands.

Since then, however, the United States has claimed jurisdiction under the Magnuson Act over a 200-mile fisheries conservation zone around the Northern Mariana Islands, and legislation has been introduced to assert federal authority over an exclusive economic zone covering the same area. These federal claims conflict with laws enacted by the Government of the Northern Mariana Islands during the trusteeship period, and do not conform to international law.

International law and the almost universal practice among nations establish a strong norm of national behavior where the ocean rights of less than fully sovereign states are concerned. All metropolitan nations which withhold full political rights in the national government from the people of an island dependency such as the Commonwealth of the Northern Mariana Islands recog-

nize the right of the island government to retain jurisdiction over the resources of the surrounding sea on behalf of its inhabitants.

The Commonwealth of the Northern Mariana Islands should be exempted from the Magnuson Fishery Conservation and Management Act. In order to establish the Commonwealth's ocean rights on a permanent basis, the Covenant should be amended to make these rights an element of self-government under Article I.

* * *

PROPOSED FEDERAL LEGISLATION TO APPROVE A COVENANT
AMENDMENT AND TO AMEND THE MAGNUSON ACT

In order to clarify and preserve traditional rights of the people of the Northern Mariana Islands in the ocean that surrounds the islands and to formally establish the rights of the Commonwealth as a coastal state within the international community, the Special Representatives of the Governor of the Commonwealth of the Northern Mariana Islands should propose the following federal legislation. The proposal contains two measures. Both should be included as part of the Recommendation in the Position Paper on Ocean Rights and Resources, which begins on page 88 of these materials.

Joint Resolution to Approve a Mutual Consent Covenant Amendment

The first is a draft Joint Resolution of Congress which would approve an amendment by mutual consent to Article I of the Covenant to place jurisdiction over a 12-mile territorial sea and a 200-mile exclusive economic zone within the self-government jurisdiction of the Commonwealth of the Northern Mariana Islands:

SENATE AND HOUSE OF REPRESENTATIVES
OF THE UNITED STATES OF AMERICA

JOINT RESOLUTION

To approve certain amendments to the "Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America", and for other purposes.

Whereas the United States has been the administering authority of the Trust Territory of the Pacific Islands under the terms of the trusteeship agreement for the former Japanese-mandated islands entered into by the United States with the Security Council of the United Nations on April 2, 1947, and approved by the United States on July 18, 1947; and

Whereas the United States, in accordance with the trusteeship agreement and the Charter of the United Nations, assumed the obligation to protect the inhabitants of the Northern Mariana Islands against the loss of their lands and resources; and

Whereas, on February 15, 1975, a "Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America" was signed by the Marianas Political Status Commission for the people of the Northern Mariana Islands and by the President's Personal Representative, Ambassador F. Hayden Williams for the United States of America,

following which the covenant was approved by the unanimous vote of the Marianas Islands District Legislature on February 20, 1975 and by 78.8 per centum of the people of the Northern Mariana Islands voting in a plebiscite held on June 17, 1975, and was approved by the Joint Resolution of the Congress on July 10, 1975; and

Whereas the Covenant contains specific, and extraordinary provisions protecting the people of the Northern Mariana Islands against loss of their lands and real property; and

Whereas the Covenant contains no express provisions protecting the people of the Northern Mariana Islands against loss of their submerged lands and the natural resources of the surrounding sea; and

Whereas the rights of the inhabitants of coastal states
recognized under the law of the United States and the
international law of the sea have greatly expanded
since the Covenant was approved in 1975; and

Whereas the Government of the Northern Mariana Islands
timely asserted these ocean rights on behalf of its
people by enacting a series of Commonwealth laws prior
to termination of the Trusteeship, and

Whereas the President's Special Representative, Mr. Richard
T. Montoya, for the United States of America, and the
Special Representatives of the Governor of the Northern
Mariana Islands have agreed that the Covenant should be
amended by mutual consent to clarify the rights of the
people of the Commonwealth of the Northern Mariana
Islands in the sea and its resources; and

Whereas the people of the Commonwealth of the Northern Mariana Islands have approved and consented to certain amendments to the Article I of the Covenant according to the constitutional processes of the Northern Mariana Islands: Now be it

Resolved by the Senate and House of Representatives in Congress assembled, that amendments to the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, the text of which amendments are as follows, are hereby approved:

Article I of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, as approved by Public Law 94-241, 90 Stat. 263, is amended by adding a new section 106, as follows:

Section 106. (a) The authority and jurisdiction of the Northern Mariana Islands under this article shall include the sovereign right to

ownership and jurisdiction of the waters surrounding the Northern Mariana Islands to the full extent recognized under international law. The Northern Mariana Islands shall have the rights of a coastal State in the territorial sea, the contiguous zone, the exclusive economic zone, and the continental shelf as provided in the United Nations Convention on the Law of the Sea; provided that the exercise of these rights shall be done in cooperation with the United States and subject to the responsibility and authority of the United States with respect to foreign affairs and defense under Section 104 of this Covenant.

(b) The Northern Mariana Islands may, with the approval of and in cooperation with the United States, participate in regional and international organizations which are concerned with international regulation of the rights set out in subsection (a), and may enter into treaties and other international agreements regarding those

rights, including such treaties and agreements related to the harvesting, conservation, management, exploration or exploitation of the living and non-living resources from the sea, seabed, or subsoil in the marginal sea.

(c) The Government of the United States may assist or act on behalf of the Northern Mariana Islands in the area of foreign affairs as may be requested by the Northern Mariana Islands, and mutually agreed from time to time, as is required for the exercise of the rights of the Northern Mariana Islands set out in subsection (a).

Northern Mariana Islands Submerged Lands and Ocean Jurisdiction
Act

The second legislative proposal is a draft "Northern Mariana Islands Submerged Lands and Oceans Jurisdiction Act of 1987." The proposal is a revision of those provisions of the Northern Mariana Islands Commission on Federal Laws recommended "Northern Mariana Islands Federal Relations Act" which concern ocean rights. The revised provisions would amend the Magnuson Fishery Conservation and Management Act and recognize the submerged lands jurisdiction of the Commonwealth of the Northern Mariana Islands:

Northern Mariana Islands Submerged Lands and Oceans

Jurisdiction Act

An Act to recognize, clarify and establish the Submerged
Lands and Oceans Jurisdiction of the Commonwealth of
the Northern Mariana Islands, and for other purposes.

Be it enacted by the Senate and House of Representatives
of the United States of America in Congress Assembled, that

Sec. 1. Surveillance of ocean areas. (a) The
Congress finds and declares that:

(1) The Northern Mariana Islands, on November 3,
1986 became a self governing commonwealth in political
union with and under the sovereignty of the United
States, pursuant to The Presidential Proclamation of
November 3, 1986.

(2) The United States is obligated to protect the resources of the Northern Mariana Islands, including those resources found within two hundred miles of the coastlines of the Northern Mariana Islands, against unlawful exploitation by nationals or residents of other nations.

(3) The United States, to fulfill its obligation to the people of the Northern Mariana Islands, should increase its surveillance of all ocean areas within two hundred miles of the coastlines of the Northern Mariana Islands. In particular, the United States should ensure that all applicable laws, including those governing the exploitation of marine resources, are enforced within those areas.

(b) The Secretary of the Department in which the Coast Guard is operating may, by agreement, on a reimbursable basis or otherwise, utilize the personnel, services, equipment (including aircraft and vessels)

and facilities of any other Federal agency, including all elements of the Department of Defense, and of the Government of the Northern Mariana Islands in patrolling the waters within two hundred miles of the coastlines of the Northern Mariana Islands.

Sec. 2. Fishery conservation and management. (a)
Subsection 21 of section 3 of the Magnuson Fisheries Conservation and Management Act, as amended (16 U.S.C. sec. 1802(21)), is further amended to read as follows:

The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and any other territory or possession of the United States, except the Northern Mariana Islands.

(b) Paragraph (8) of subsection (a) of section 302 of the Magnuson Fisheries Conservation and Management Act, as amended (16 U.S.C. sec. 1852(a)(8)), is further amended to read as follows:

(8) Western Pacific Council.--The Western Pacific Management Council shall consist of the State of Hawaii, American Samoa, and Guam and shall have authority over the fisheries in the Pacific Ocean seaward of such States. The Western Pacific Council shall have 11 voting members, including 7 appointed by the Secretary pursuant to subsection (b)(2) of this section (at least one of whom shall be appointed from each of the following States: Hawaii, American Samoa, and Guam). The Western Pacific Council shall also have a nonvoting observer who shall be appointed by and serve at the pleasure of the Governor of the Northern Mariana Islands.

Sec. 3. Submerged lands. (a) Subject to valid existing rights, the United States releases, relinquishes, and conveys to the Commonwealth of the Northern Mariana Islands any and all right, title, and interest it may have in submerged lands within the boundaries of the Commonwealth of the Northern Mariana Islands, to be administered in trust for the benefit of the people thereof.

(b) For purposes of this section,

(1) "submerged lands" shall include:

(A) all lands permanently or periodically covered by tidal waters up to but not above the ordinary high water as heretofore or hereafter modified by accretion, erosion, and reliction, and seaward to a line twelve nautical miles distant from the coastlines of the Northern Mariana Islands.

(B) all filled in, made, or reclaimed lands which were formerly lands described in subparagraph (A) of this paragraph; and

(C) all improvements on and all natural resources on or within lands described in subparagraphs (A) and (B) of this paragraph.

(2) "Covenant" shall mean the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, as approved by Public Law 94-241, 90 Stat. 263 (1976).

(c) There are excepted from the transfer made by subsection (a) of this section and any and all submerged lands leased to the Government of the United States pursuant to sections 802 and 803 of the Covenant for so long as such lands are leased.

(d) Nothing contained in this section shall affect such rights, if any, the Commonwealth of the Northern Mariana Islands may have in the seabed and its subsoil, and their natural resources, more than twelve nautical miles distant from the coastlines of the Commonwealth of the Northern Mariana Islands.

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Supplemental Position Paper

By

The Special Representatives of the Governor of the
Commonwealth of the Northern Mariana Islands
For the Section 902 Consultations

on

THE TUNA FISHERY

On November 23, 1986, at the Second Round of the Section 902 Consultations, the Special Representatives of the Governor submitted their Position Paper on the Tuna Fishery.¹ This position paper set out the Commonwealth's authority to manage and conserve the tuna resources found within the territorial sea and exclusive economic zone of the Northern Mariana Islands. The paper recommended enactment of a federal Northern Mariana Islands Tuna Conservation and Management Act

¹Compilation of Documents from the First and Second Rounds of the Covenant Section 902 Consultations at 235 (1986).

to implement this authority. The proposed legislation would:

1) provide authority for the Commonwealth to negotiate international tuna fishing agreements with foreign fishing nations;

2) provide for the membership and participation of the Commonwealth in the South Pacific Forum Fisheries Agency and other international tuna management organizations;

3) exclude the Northern Mariana Islands from the Magnuson Fishery Conservation and Management Act; and

4) provide for appropriate federal oversight of the activities of the Commonwealth in the conservation and management of tuna.

Since the Northern Mariana Islands proposal on the tuna fishery was presented, nearly three and one-half years have passed and five Rounds of Consultations have occurred without a response from the previous Special Representatives of the

President.

Since the Commonwealth offered its position paper on tuna, the United States has dramatically altered its tuna policy in the Pacific region by entering into two treaties for tuna conservation and management on a regional basis. These agreements establish for the first time an institutional structure for management of tuna throughout a huge area of the Pacific Ocean in a manner very beneficial to most Pacific island tuna producing states. The agreements, however, exclude the Northern Mariana Islands from the treaty area. They provide no benefit and may well do substantial harm to the Commonwealth's tuna industry.

The South Pacific Tuna Treaty. Federal policy under the Magnuson Fishery Conservation and Management Act encourages the conservation and management of tuna by international agreement. Pursuant to that policy, the United States has entered into a \$60 million tuna fishing treaty with the 16 member states of the South Pacific Forum Fisheries Agency. The South Pacific Tuna Treaty was signed on April 2, 1987, and became effective on June 17, 1988.

The South Pacific Tuna Treaty provides the American tuna fleet access to rich tuna grounds in a 10 million square mile area of the Pacific Ocean for a period of five years. The treaty does not apply to the waters or tuna resources of the Northern Mariana Islands. As a result, the tuna resources of the Commonwealth and the other American Pacific islands are currently isolated as the only unregulated tuna stocks in the Pacific region.

The South Pacific Driftnet Convention. Even when foreign fishing fleets are engaged in extremely destructive fishing techniques, the Commonwealth has been excluded from federal efforts to conserve and protect tuna resources. Drift gill net fishing is a relatively new technology that employs the use of huge gill nets, sometimes extending 30 or 40 miles in length. The use of this fishing method has rapidly expanded in the Pacific during the past few years.

Driftnets have been strongly criticized by local fishermen and government fishing experts for depleting the local fishing stocks and for destroying other, non-commercial marine life. Dubbed the "wall of death," driftnets reportedly snare a wide variety of marine life including whales, dolphins

and seabirds, and kill young tuna before they reach biological or commercial maturity.

On July 10 and 11, 1989, the members of the South Pacific Forum met in Tarawa, the capital of Kiribati, and discussed concerns over drift gill net fishing in the Pacific. The delegates from 15 member nations of the Forum unanimously condemned the use of the driftnets and called for an international ban on such fishing in the South Pacific region. The U.S. Department of State participated in a related meeting with the members of the Forum as a dialogue partner, along with representatives of Canada, France, Japan, and the United Kingdom.

Former Commonwealth Governor Pedro P. Tenorio wrote to Secretary of State James A. Baker, III, on August 2, 1989, registering the Commonwealth's support for the Tarawa Declaration and the proposed ban on driftnet fishing. He urged the United States to support the Convention. He also asked that the Commonwealth be given an opportunity to participate in negotiation of the Convention, and that the Commonwealth's waters be included in the Convention. Despite the mandate of §904(a) of the Covenant, the Governor received

neither a response to his inquiry nor permission to attend.

The "Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific" was signed November 23, 1989, in Wellington, New Zealand. The Convention bars driftnet vessels from entering the ports of the member states, prohibits the landing of fish caught in driftnets, and prevents the importation of such fish into the signatory nations.

Despite the Commonwealth's request to participate in the Convention, the Commonwealth was not included in the negotiation of the Convention and its waters were excluded from the Convention area.² The waters of the Republic of the Marshalls, the Federated States of Micronesia, the Republic of Palau and American Samoa, on the other hand, were included in the Convention area. American Samoa, to its credit, did

²The United Nations has recently approved a resolution on "Large-scale pelagic driftnet fishing and its impacts on the living marine resources of the world's oceans and seas," calling on all members of the international community agree to a moratorium on high seas driftnet fishing by June 30, 1992 and to cease driftnet fishing in the South Pacific Region by June 1, 1991. It is not clear that the call for cessation of driftnet fishing in the South Pacific Region will apply to the waters of the Northern Mariana Islands.

participate in the Wellington talks, where it was represented by Governor Coleman and prominent members of the Legislature. Under these circumstances, exclusion of the Commonwealth from participation in the Convention seems a clear violation of Section 904 of the Covenant requiring that "[o]n its request the Northern Mariana Islands may participate in regional and international organizations . . . when similar participation is authorized for any other territory or possession of the United States under comparable circumstances."

Research efforts. Since the Seventh Round of Consultations we have attempted to acquire basic statistical information on the tuna issue. Under the Freedom of Information Act, we have requested from the U.S. Department of State statistics on the tuna catch by foreign fishing vessels in the exclusive economic zone of the Northern Mariana Islands. We have also requested information on the expense of the United States maintaining the tuna exclusion. Our request, filed on June 20, 1989, has yet to be filled. In order to inform the Commonwealth of the extent of foreign tuna fishing in the Northern Mariana Islands exclusive economic zone, the Special Representatives of the Governor request the assistance of the Special Representative of the President in

securing the information sought in our request.

Recent Events in Commonwealth waters. The Special Representatives of the Governor have noted press accounts of the abandonment of the Taiwanese fishing vessel Goangijyi Long at the location some 130 miles west of Pagan. This location would place the vessel some 70 miles inside the Northern Marianas exclusive economic zone. The articles also note that the "area falls under the joint responsibility of the Coast Guard and the Japanese Maritime Safety Agency - the Japanese counterpoint to the Coast Guard." The Commonwealth questions the authority of any Japanese agency in the Northern Mariana Islands waters.

REQUESTED FEDERAL ACTION

The Special Representatives of the Governor of the Commonwealth of the Northern Mariana Islands ask that the Special Representative of the President:

1. Agree to respond to the Commonwealth's position Paper on The Tuna Fishery at this meeting or the earliest possible date before the Ninth Round

of the Consultations.

2. Assist the Special Representatives of the Governor in securing an expedited response to its Freedom of Information Act request for information related to the tuna fishery.

3. Identify the source of any authority of the Government of Japan in the exclusive economic zone of the Northern Mariana Islands.

Supplemental Position Paper

By

The Special Representatives of the Governor of the
Commonwealth of the Northern Mariana Islands
For the Section 902 Consultations

on

OCEAN RIGHTS AND RESOURCES

On March 30, 1987, during the Third Round of the Consultations pursuant to Section 902 of the Covenant, the Special Representatives of the Governor submitted their Position Paper on Ocean Rights and Resources.¹ This position paper affirms the right of the people of the Commonwealth to control, manage and develop the marine resources of their exclusive economic zone. The Position Paper documented that the people of the Northern Mariana Islands have and should

¹Compilation of Documents from the Third Round, at 249 (1987).

retain the full complement of ocean rights in the exclusive economic zone recognized for coastal states under the United Nations Convention on the Law of the Sea. The paper proposed that these rights should be recognized by the United States through a mutual consent amendment to the Covenant and that authority to participate in international affairs as appropriate to a coastal state be formally recognized by federal legislation. A draft Joint Resolution to Approve a Mutual Consent Amendment of the Covenant and a draft Northern Mariana Islands Submerged Lands and Ocean Jurisdiction Act may be found in the conclusion to the Commonwealth's Position Paper on Ocean Rights and Resources.²

Since the Northern Mariana Islands proposal on ocean rights and resources was presented, three years have passed and four Rounds of Consultations have occurred without a response from the previous Special Representatives of the President. During that time the United States has dramatically altered its oceans policy without consulting with the Commonwealth. Legislation is pending in the Congress that would further change federal oceans policy to the great

²Id., at 288.

detriment of the Commonwealth.

Presidential Proclamation 5928, the Twelve-Mile Territorial Sea. On December 27, 1988, President Reagan issued Presidential Proclamation 5928. He proclaimed "the extension of the territorial sea of the United States . . . [and] the Commonwealth of the Northern Mariana Islands" from three to twelve nautical miles. The Commonwealth had already established its territorial sea of twelve nautical miles in 1980 pursuant to its Marine Sovereignty Act; accordingly, the Commonwealth's territorial sea did not require extension, but was confirmed by the Proclamation.

H.R. 1405, The Territorial Sea Extension Act. The proposed Territorial Sea Extension Act, H.R. 1405, has the stated purpose of ensuring "the orderly implementation in domestic law of the extension of the territorial sea of the United States." Section 4 of the bill states that "except as provided in any law enacted after the date of enactment of this act, the authority of any Federal agency pursuant to this statute and the legal rights, interests, jurisdiction or authority of . . . the Commonwealth of the Northern Mariana Islands . . . shall not be extended beyond its previous

geographical limits by extension of the territorial sea of the United States." Because the Northern Mariana Islands territorial sea limit was originally established at twelve miles, its legal rights, interests, jurisdiction and authority do not require extension. Section 4 is therefore not appropriate to the Northern Mariana Islands.

H.R. 2440, the National Seabed Hard Minerals Act. H.R. 2440 would establish a national policy for exploration and commercial recovery of mineral resources in the exclusive economic zone. For the coastal States of the Union, the bill would increase and clarify the role of the State Governments in the leasing process and provide for State participation in revenues generated by the leasing of mining sites in the exclusive economic zone.

The Commonwealth's perspective on this bill differs from that of the coastal States of the Union. The bill is designed to remedy certain shortcomings in the hard minerals management program under Section 8(k) of the Outer Continental Shelf Lands Act. The Northern Mariana Islands, however, is not subject to the Outer Continental Shelf Lands Act. For the Commonwealth, this measure does not remedy flaws in existing

federal jurisdiction. Rather, it would conflict with existing Commonwealth authority over the hard mineral resources in the exclusive economic zone and extend entirely new federal jurisdiction far across the Pacific Ocean.

Section 316 of the bill is especially prejudicial to the interests of the Northern Mariana Islands. This section provides for the distribution of royalties and other revenues from mining activities conducted in the exclusive economic zone. Fifty percent of royalties and all competitive bid proceeds would be paid directly into the Treasury of the United States. The remaining fifty percent of royalties are distributed among affected States according to a formula giving equal weight to four factors, 1) the shoreline mileage of the State, 2) the coastal county population of the State, 3) the quantity of hard minerals first landed in the State, and 4) the quantity of hard minerals processed in the State. None of these factors is likely to result in a sizeable Commonwealth share in the distribution.

REQUESTED FEDERAL ACTION

The Special Representatives of the Governor of the Commonwealth of the Northern Mariana Islands ask that the Special Representative of the President of the United States:

1. Agree to respond to the Commonwealth's Position Paper on Ocean Rights and Resources at this meeting or the earliest possible date before the Ninth Round of Consultations.

2. Agree that Presidential Proclamation 5928 confirms the Commonwealth's twelve-mile territorial sea as set out in Commonwealth Public Law 2-7.

3. Agree to recommend that the President of the United States oppose enactment and application of H.R. 1405, the Territorial Sea Extension Act, and H.R. 2440, the National Seabed Hard Minerals Act, to the Northern Mariana Islands at least until such time as our Consultations on Ocean Rights and

Resources pursuant to Section 902 of the Covenant have
been completed.

Briefing Paper
For
The Special Representatives of the Governor of the
Commonwealth of the Northern Mariana Islands
For the Covenant Section 902 Consultations
on
Pending Federal Ocean Legislation

INTRODUCTION

On April 12, 1990, at the conclusion of the Eighth Round of the Covenant Section 902 Consultations, the Special Representative of the President and the Special Representatives of the Governor Islands reached agreements on the important issues of: 1) the Tuna fishery, and 2) Ocean Rights and Resources.

Regarding the Tuna Fishery, the Special Representatives entered into a joint recommendation to the President of the United States that the Commonwealth of the Northern Mariana Islands "be included and participate in all future negotiations related to the conservation and management of tuna in the Pacific Region"; and that the United States "undertake to assist the Commonwealth to conserve and manage its tuna resources for the

benefit of the people of the Northern Mariana Islands." The specific proposals to accomplish these goals offered by the Commonwealth in its Position Paper on the Tuna Fishery on November 23, 1986, remain the subject of consultation.

Regarding Ocean Rights and Resources, the Special Representative of the President and the Special Representatives of the Governor entered into a Memorandum of Agreement. This Memorandum of Agreement documented their agreement in principle that the Commonwealth's proposals offered in its Position Paper on Ocean Rights and Resources on March 30, 1987, contained a basis for resolution of the issue. The Commonwealth had recommended that "the authority and jurisdiction of the Commonwealth of the Northern Mariana Islands be recognized and confirmed by the United States to include the sovereign right to ownership and jurisdiction of the waters and seabed surrounding the Northern Mariana Islands to the full extent permitted under international law." The recommendation is thus accepted as the basis for resolution of the issue. More specifically, the Special Representatives of the Governor had recommended that "the Commonwealth shall have the rights of a coastal state in the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf as provided in the United Nations Convention on the Law of the Sea; provided that the exercise of

those rights shall be done in cooperation with the United States and subject to the responsibility and authority of the United States with respect to foreign affairs and defense under Section 104 of the Covenant."

These agreements represent dramatic advances in the consultations between the Commonwealth and the United States on these important subjects. Before the agreements with Mr. Glidden, the United States had simply refused to discuss these issues with the Commonwealth. As important as the agreements with the President's Special Representative are, however, they are only preliminary steps. The joint recommendation to the President on the Tuna Fishery requires the approval of the President and implementation by the Federal Government and the Commonwealth before any real progress in tuna conservation and management will be made. Further consultation on the specific proposals made in the Commonwealth's Position Paper is required before a means of implementing the Commonwealth's rights in its tuna resources is agreed upon.

Similarly, the Memorandum of Agreement on Ocean Rights and Resources is an agreement in principle only. It is not a formal recommendation to the President, but rather an agreement on the

"basis," or outline, for such a recommendation. Further consultation is required before a specific means of implementing this important policy is agreed upon.

Despite these agreements with the President's Special Representative, federal policy on the tuna fishery and on the Commonwealth's rights in its territorial sea and exclusive economic zone has not improved. Indeed, the Congress of the United States is currently considering several bills that would make major changes in federal oceans and fisheries policy, often to the detriment of the Commonwealth of the Northern Mariana Islands. The main bills of concern in these areas are: 1) the Fishery Conservation Amendments Act, H.R. 2061; 2) a similar Senate bill, the Fishery Conservation Amendments Act, S. 1025; 3) the National Seabed Hard Minerals Act, H.R. 2440; and 4) the Territorial Sea Extension Act, H.R. 1405. None of these bills take into account the Commonwealth's laws on these subjects, notably the Marine Sovereignty Act, Commonwealth Public Law 2-7; and the Submerged Lands Act, Commonwealth Public Law 1-23. Neither do they take into account the agreements reached with Mr. Glidden during the Eighth Round of the Covenant Section 902 Consultations.

This Briefing Paper describes the current terms of the four bills listed above and recommends action that the Commonwealth should take to preserve its interests on these subjects.

PENDING FEDERAL LEGISLATION
ON FISHERIES AND OCEAN RIGHTS

THE TERRITORIAL SEA.

The Territorial Sea Extension Act, H.R. 1405. On December 27, 1988, President Reagan issued Proclamation 5928, extending the territorial sea of the United States and of the Commonwealth of the Northern Mariana Islands to twelve nautical miles. The President also proclaimed that nothing in the Proclamation "extends or otherwise alters existing Federal or State Law or any jurisdiction, rights, legal interests, or obligations derived therefrom." The President thus attempted to create a twelve-mile territorial sea that will be recognized under international law, but that will have no immediate domestic effect.

This proclamation has stirred a lively debate regarding its domestic effect. Many commentators indicate that, because of the language of particular federal laws (most notably the Coastal

Zone Management Act¹), the authority and jurisdiction of the States and the Federal Government are extended to the twelve-mile limit. Others insist that the language of the Proclamation controls and that neither State or Federal jurisdiction is increased by the Proclamation. H.R. 1405 is designed to insure that no governmental (Federal, State, Commonwealth, or Territory) authority is extended to twelve miles by the Proclamation without legislative approval by the Congress.

The Commonwealth of the Northern Mariana Islands should generally favor the extension of the United States' territorial sea to twelve miles, since the Commonwealth established, well prior to the Presidential Proclamation, its own territorial sea of twelve miles. That action was based on the international law in effect during the administration of the United Nations trusteeship of the Northern Mariana Islands (as set forth in the United Nations Convention on the Law of the Sea) and on the historic dominion over waters even beyond the twelve-mile demarcation by the people of the Northern Mariana Islands.

¹ H.R. 4030, the "Coastal Zone Act Reauthorization Amendments" bill, would generally limit application of the Coastal Zone Management Act to three miles. Section 304(5) defines the term "coastal zone" to mean coastal waters and adjacent lands "seaward to the outer limit of State title and ownership under . . . the Covenant" We have not reviewed this bill or made recommendations regarding it for this Briefing Paper.

Formalizing the territorial sea was one of the first acts taken by the Commonwealth on the establishment of self-government in the Northern Mariana Islands under the Covenant. Northern Mariana Islands Public Law 2-7, Sec. 8 (1980), codified at 2 Commonwealth Code Sec. 1123.

Under the Covenant, the people of the Northern Mariana Islands did not grant to the Federal Government proprietary rights in or jurisdiction over the territorial sea of the Northern Marianas, other than as might be reasonably necessary to carry out federal responsibilities for foreign affairs and defense affecting the Northern Mariana Islands. Proprietary rights in and jurisdiction over the submerged lands underlying the territorial sea of the Northern Mariana Islands previously vested in the Trust Territory of the Pacific Islands passed to the Commonwealth on termination of the United Nations trusteeship pursuant to Section 801 of the Covenant.²

² Although there is some authority to the contrary, the Commonwealth should maintain that Section 801 of the Covenant's grant of real property to the Commonwealth is not limited to real property above the high-tide. The United States has recognized the Commonwealth's proprietary interest in the territorial sea when it leased waters immediately adjacent to the military retention areas on Tinian and Farallon de Mendinilla.

H.R. 1405 does not purport to assert proprietary or jurisdictional authority of the Federal Government over the Commonwealth's territorial sea. At the same time, the Commonwealth should be concerned by the naming of the Commonwealth in section 4 of the bill, because it implies that a future federal statute could grant to a Federal agency authority over the Commonwealth's territorial sea that is not granted by the Covenant. Since H.R. 1405, by extending the territorial sea of the United States to twelve miles, does not extend the territorial sea of the Northern Mariana Islands beyond its pre-existing twelve miles and, consequently, does not extend the "legal rights, interests, jurisdiction or authority" of the Commonwealth, the phrase "the Commonwealth of the Northern Mariana Islands," should be deleted from section 4 of H.R. 1405. Alternatively, the bill should be amended to make clear that the United States recognizes and confirms the right of the Northern Mariana Islands to a territorial sea broader than three miles and that the bill is not intended to grant or reserve to the Federal Government authority over the Commonwealth's territorial sea not granted by the Covenant. Draft legislation to accomplish this purpose is set out below.

THE EXCLUSIVE ECONOMIC ZONE.

The National Seabed Hard Minerals Act, H.R. 2440.

H.R. 2440 is the most recent bill designed to implement Presidential Proclamation 5030, which proclaimed the sovereign rights and jurisdiction of the United States within the exclusive economic zone. To understand the intention of, and legal authority for the bill, it is necessary to first take a close look at Presidential Proclamation 5030.

Presidential Proclamation 5030, the Exclusive Economic Zone of the United States. Presidential Proclamation 5030 established the authority of the United States in the 200-mile exclusive economic zone. The Proclamation states that the United States "has, to the extent permitted by international law, . . . sovereign rights for the purpose of exploring, exploiting, conserving and managing natural resources, both living and non-living, of the seabed and subsoil and the superjacent waters and with regard to other activities for the economic exploitation and exploration of the zone." The Proclamation expressly states that "the United States will exercise these sovereign rights and jurisdiction in accordance with the rules of international law."

The Proclamation states that the zone is contiguous to the territorial sea of the Commonwealth of the Northern Mariana Islands, but limits federal authority relative to the zone surrounding the Commonwealth in a parenthetical phrase, "(to the extent consistent with the Covenant and the United Nations Trusteeship Agreement)."³

It is the Commonwealth's position that the federal jurisdiction proclaimed in Proclamation 5030 is limited by the Covenant and the Trusteeship Agreement. The United States was obligated, under Article 6 of the Trusteeship Agreement to "protect the inhabitants against the loss of their lands and natural resources." Title to the submerged lands offshore the Northern Mariana Islands, previously held by the Trust Territory of the Pacific Islands, was conveyed to the Commonwealth under the real property provisions of section 801 of the Covenant. Pursuant to the guarantee of self-government in Article I of the Covenant, the Commonwealth early in its existence formalized its rights in the exclusive economic zone by enactment of Commonwealth Public Law 2-7, the Marine Sovereignty Act. The Commonwealth's fundamental position, expressed in the Covenant

³ A copy of Presidential Proclamation 5030 is attached as Appendix 3.

Section 902 Consultations and in testimony and correspondence to the Congress, is that Presidential Proclamation 5030 should not be implemented in a way that will derogate from the proprietary and beneficial interest of the people of the Northern Mariana Islands in the natural resources of the exclusive economic zone.

Current terms of H.R. 2440. The current version of H.R. 2440 does not recognize the Commonwealth's jurisdiction over its exclusive economic zone. The bill would divest the Commonwealth of its authority to manage and conserve the hard mineral resources of its exclusive economic zone. Section 103(3) of H.R. 2440 includes the Commonwealth of the Northern Mariana Islands as a "coastal State" of the United States, and section 103(19) defines the Commonwealth to be a "State."

Section 103(18) of H.R. 2440 defines the term "seabed" to mean "the seabed, and subsoil thereof, lying seaward from the baseline from which the United States territorial sea is measured . . . to distance of 200 nautical miles, or beyond to the outer edge of the continental margin in accordance with international law." This definition is especially unfair to the Commonwealth because it could be interpreted to apply not only to the Commonwealth's exclusive economic zone, but also to its

territorial sea. The territorial seas of American Samoa, Guam, the Virgin Islands and the Commonwealth of Puerto Rico are excluded from this definition, leaving them three miles (or, in the case of Puerto Rico, three marine leagues, 9 nautical miles) of local jurisdiction.

This anomaly apparently results because the Commonwealth, unlike the coastal States of the Union and the other insular areas of the United States, is not subject to a federal submerged lands act. All of the other United States coastal jurisdictions have received a quitclaim of federal jurisdiction over the submerged lands beneath the territorial sea offshore their coasts by virtue of the Submerged Lands Act (43 U.S.C. Sec. 1301 et seq.) in the case of the States of the Union; and by virtue of the Territorial Submerged Lands Act (48 U.S.C.A. Sec. 1705, et seq.) in the case of the insular areas. The Commonwealth has not received such a quitclaim because title to the submerged lands offshore the Northern Mariana Islands were conveyed to the Government of the Northern Mariana Islands pursuant to Section 801 of the Covenant. At a minimum the bill should be amended to indicate that federal jurisdiction does not extend to the territorial sea of the Commonwealth.

Section 301(a) gives the Under Secretary of Commerce for Oceans and Atmosphere general authority to issue "licenses for exploration and permits for commercial recovery of hard mineral resources." Section 301(c) makes the rights granted under the licenses and permits "exclusive" in the permit area. Section 301(d) restricts those eligible for such licenses and permits to "a person who is a United States citizen, or a corporation, partnership, joint venture, association or other entity organized . . . under the laws of the United States." Similarly, section 313 provides that only vessels of the United States, documented under U.S. law, and built in the United States may be used for commercial recovery of seabed minerals under the Act.

Section 307 does provide for consultations between the Under Secretary and the Governor of each affected state, requiring that the Governor be given 60 days in which to comment on pending license applications. Such comments are advisory only, however, with ultimate authority remaining in the Under Secretary. Section 308(a)(2) requires that each permittee pay royalties on the minerals recovered, but the royalties are limited to no more than 12.5% of gross proceeds and are paid to the United States, not to the Commonwealth. Section 316 does provide for revenue sharing with affected States. It is unlikely, however, the Commonwealth would realize any significant revenues under the

distribution formula set out in the section. Fifty percent of royalties and other revenues are paid directly into the Treasury of the United States. The remaining 50% are distributed under a formula giving equal weight to four factors, as follows:

1. the shoreline mileage of the State;
2. the coastal county population of the State;
3. the quantity of hard minerals recovered that are first landed in each State;
4. the quantity of hard minerals recovered that are processed in each State.

In general, the bill takes no direct account of the location of the mining activities from which hard minerals are recovered in distributing the revenues derived from the mining. Unless the Commonwealth is involved in processing, refining, transshipment of the recovered minerals, or in base support of the mining operation, it would not benefit substantially from these revenues.

The Commonwealth should propose that the Northern Mariana Islands be excluded from the general provisions of the Act, by being excluded from the definition of the term "State." Further, the Commonwealth should propose an amendment to the bill that

would recognize the Commonwealth's jurisdiction over the hard mineral resources of the exclusive economic zone and provide for cooperative management of those resources by mutual agreement of the Commonwealth and the United States. Draft legislation to accomplish these purposes is set out below.

FISHERIES.

The Congress is currently considering two bills regarding national fisheries policies. Both are amendments to the Magnuson Fishery Conservation and Management Act, 16 U.S.C. Sec. 1801 et seq. The bills carry the same title, "The Fishery Conservation Amendments Act of 1990." The House bill is H.R. 2061 and the Senate bill is S. 1025. The Commonwealth's main interest in these bills is in their provisions regarding the tuna fishery.

H.R. 2061. This bill passed the House of Representatives on February 6, 1990, by a vote of 396-21. It contains an amendment regarding tuna sponsored by Representatives Patricia Saiki and Frank Pallone. The Saiki-Pallone amendment is short, but not simple. Its main operative provision is the repeal of section 102 of the Magnuson Act. Section 102 currently reads:

The sovereign rights and exclusive fisheries management authority asserted by the United States under section 101 over fish do not include, and may not be construed to extend to highly migratory species of fish.

The amendment could permit the United States to assert sovereignty over the tuna within its exclusive economic zone in its dealings with foreign nations, without preempting the Commonwealth's assertion of jurisdiction over tuna in the Marine Sovereignty Act. This intention may be inferred from the fact that the amendment apparently intends that tuna will continue to be managed by international agreement rather than by unilateral federal regulation, as is done for most species under the Magnuson Act. Subsection (b) of the amendment provides that:

(b) Secretary of State to Seek Negotiations. --

The Secretary of State shall promptly seek negotiations with foreign nations for the purpose of revising existing international agreements entered into by the United States that are inconsistent with the assertion by the United States of fishery management authority over highly migratory species.

Another indication of this intention is that the Saiki-Pallone amendment, while repealing section 102 of the Magnuson Act excluding tuna, does not amend Section 101 of the Act (which establishes the claim of the United States to sovereignty and exclusive fisheries management authority over all fish within the exclusive economic zone) to include tuna. We are of the opinion that the Saiki-Pallone amendment to the Magnuson Act will continue the federal policy of treating tuna differently from other fish by requiring that regulation be implemented on a bilateral rather than a unilateral basis. Under the Saiki-Pallone amendment, the Western Pacific fisheries Management Council (WESPAC) would not directly regulate or manage tuna.

The Commonwealth offered testimony on H.R. 2061 before the House Merchant Marine and Fisheries Committee on January 9, 1990, setting out this interpretation of the Saiki-Pallone amendment and indicating support for the measure so long as the amendment was not used to assert exclusive tuna management authority by the Federal Government. As the House has already passed the measure and the Senate is considering its own bill, S. 1025, rather than the House bill, we do not recommend further action by the Commonwealth on H.R. 2061 at this time.

S. 1025. This Senate bill, S. 1025 is very similar to the House bill except in the area of tuna management. A staff working draft of this bill, circulated March 28, 1990, does not repeal the tuna exclusion of Section 102 of the Magnuson Fishery Conservation and Management Act as would the Saiki-Pallone amendment of H.R. 2061. Instead, the bill contains several provisions intended to improve the tuna management policy of the United States by restructuring current international fisheries agreements and by providing some limited federal authority to manage the U.S. tuna fleet.

The most notable of these, as reflected in the Staff Working Draft, are Sections 105 and 120. Section 105 provides for evaluation of existing international fishery agreements pertaining to fishing for tuna, and for negotiation of changes in such agreements as "are necessary to correct inadequacies." While the section may prove helpful in some cases, it does not establish a clear policy that the United States tuna fishery be managed and conserved. Neither does it establish means to implement such a policy. To the contrary, because of the definition of "fishing" contained in Section 102 of the draft, the evaluation of existing international agreements will extend only to tuna fishing by vessels of the United States, and not to foreign fishing in the exclusive economic zone. Further, the

section does not require negotiation of new agreements for the conservation of American tuna resources, such as those in the Northern Mariana Islands, that are currently unregulated.

Section 120 of the S. 1025 establishes an Inter-Council Working Group on Highly Migratory Species with limited authority over fishing for highly migratory species. The Working Group's tuna authority is limited to tuna fishing by vessels of the United States and confined to the Atlantic, Caribbean and Gulf of Mexico fisheries. It provides no mechanism for regulating the American Pacific tuna fisheries. The geographical restriction of the Working Group's authority is appropriate as some tuna stocks may be common to the exclusive economic zones of the five Regional Councils that are included in the Working Group. By contrast, the tuna stocks of American jurisdictions in the central and western Pacific are widely separated from each other.

The Senate Commerce Committee intends to mark-up this bill before the end of May 1990. Because of this impending action, we recommended that the Commonwealth make known its views regarding this bill to the Senate. On May 8, 1990, Lieutenant Governor Manglona wrote to Ernest F. Hollings, Chairman of the Committee on Commerce; John C. Danforth, the Ranking Minority Member; and Senator Daniel K. Inouye regarding this bill. The Commonwealth

has proposed amendments to the bill consistent with the proposals of the Special Representatives of the Governor in the Covenant Section 902 Consultations for the consideration of the Committee. Copies of the Commonwealth's correspondence with the Senate and the proposed amendments to S. 1025 are set out below.

Driftnet Provisions. Both bills, H.R. 2061 and S. 1025, contain provisions restricting the use of large-scale driftnets for tuna and other fishing. The provisions are similar, but not identical. The House bill would require the United States to seek an international ban on the use of large-scale driftnets on the high seas (Sec. 108), whereas the Senate bill calls only for a moratorium (Sec. 107). Section 113 of both bills would prohibit the use of large-scale driftnets in the exclusive economic zone.

RECOMMENDATIONS

Proposed Amendment of H.R. 1405, the Territorial Sea Extension Act.

To assure that the Commonwealth's jurisdiction over a twelve-mile territorial sea is recognized, confirmed and respected by the United States, the Commonwealth should propose

amendments to H.R. 1405 that would: 1) delete the Commonwealth of the Northern Mariana Islands from Section 4 of the bill; and 2) add a new Section 5 to the bill to recognize Commonwealth sovereignty in its territorial sea as established by Commonwealth Public Law 2-7 and to provide for the extension of federal authority only with the consent of the Commonwealth Government. The following is a draft letter to Congress opposing H.R. 1405 as introduced and proposing amendments to conform the bill to the agreements reached with the Special Representative of the President during the Eighth Round of the Covenant Section 902 consultations.



(3)

United States Department of State

Washington, D.C. 20520

October 2, 1987

Ms. Rita Baier
Acting Assistant Secretary
Territorial and International Affairs
U.S. Department of the Interior
Washington, D.C. 20240

Dear Ms. Baier: *Rita*

The Department of State has reviewed the March 30, 1987 Commonwealth of the Northern Mariana Islands (CNMI) Position Paper on Ocean Rights and Resources and makes the following comments.

Our analysis begins with the fundamental premise that the CNMI is a commonwealth in political union with and under the sovereignty of the United States. The people and Government of the CNMI chose commonwealth status in a UN-observed plebiscite, and are enjoying the rights of U.S. citizens. As a commonwealth, it is neither a "semi-autonomous state," an associated state nor a coastal state for purposes of international law. Thus, in speaking of the territorial sea and EEZ off the CNMI, it is the territorial sea and EEZ of the United States not that of the CNMI.

We do not agree with the CNMI contention that there exists any principle of international law requiring that the CNMI be accorded special rights in the EEZ nor do we agree with the assertion that U.S. laws and policy with respect to the U.S. EEZ off the CNMI and management of the living and non-living resource therein is in any way contrary to international law. Simply put, the CNMI is part of the United States, and nothing in international law requires that it be treated differently with respect to offshore ocean resources than any other part of the United States.

That stated, however, subject to maintenance of otherwise applicable U.S. oceans law and policy positions (including our position of not asserting exclusive jurisdiction over tuna) and our international obligations and foreign affairs and defense responsibilities, the United States could, choose to grant special rights to the CNMI off its coast within the U.S. EEZ.

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- 2 -

We would want to consult with the Departments of Interior and Justice on the wisdom and domestic implications of such a course of action.

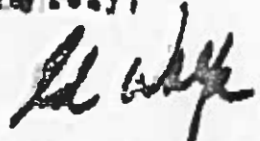
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Finally, the proposal that the CNMI be given the authority to enter into international agreements relating to ocean resources conflicts with the exclusive treaty -- making power of the Federal Government under the Constitution, and long-standing U.S. practice with respect to Puerto Rico and the U.S. territories. In this regard, in light of its status as part of the United States, Article 303 of the 1982 U.N. Convention on the Law of the Sea is not relevant to the CNMI.

We trust that these comments will be useful in your Section 502 consultations.

Sincerely,



Edward B. Wolfe
Deputy Assistant Secretary for
Oceans and Fisheries Affairs



Washington, D.C. 20520

June 21, 1990

Dear Mr. Glidden:

This is in reply to your request for the United States position on the principal features of the Position and Supplementary Position Papers of the Special Representatives of the Governor of the Commonwealth of the Northern Mariana Islands for the Section 902 Consultations, dated March 20, 1987, and April 9, 1990 respectively.

Under the position espoused by the Special Representatives of the Governor, the Commonwealth of the Northern Mariana Islands would implicitly be granted sovereign rights and jurisdiction to the exclusive economic zone surrounding the Northern Mariana Islands, which are under U.S. sovereignty pursuant to the Covenant that establishes the Northern Mariana Islands as a Commonwealth. No state, commonwealth or territory of the United States owns the exclusive economic zone off its shores.

On February 15, 1975 the representatives of the people of the Northern Mariana Islands entered into a covenant with the United States to establish a self-governing commonwealth within the American political system, which was approved unanimously by the Mariana Islands District Legislature on February 20, 1975, and by 78.8% of the people of the Northern Mariana Islands in a plebiscite held on June 17, 1975. Thereafter, the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America was approved by the U.S. Congress (Public Law 94-241, approved on March 24, 1976, 90 Stat. 263, 48 U.S.C.A. sec. 1681 note) and the President (Presidential Proclamation No. 5564, November 3, 1986, 51 Federal Register 40399).

Article VIII of the Covenant represents in all aspects an affirmative grant of rights to the Commonwealth in regard to real property only, and does not accord to the Commonwealth control over the exclusive economic zone. In 1976 the Magnuson Fishery Conservation and Management Act established the fishery conservation zone of the United States, the inner boundary of which was the seaward boundary of each of the coastal States. 16 U.S. Code sec. 1811. Section 1802(21) of that Act defined "States" as including "any other Commonwealth, territory or possession of the United States." Consequently the U.S. Congress has claimed the fishery conservation zone around the Northern Mariana Islands belongs to the United States.

Presidential Proclamation 5030 of March 10, 1983, establishing the 200 nautical mile exclusive economic zone of the United States, defined the zone as including the Commonwealth of the Northern Mariana Islands "to the extent consistent with the Covenant and the United Nations Trusteeship Agreement."

The Commonwealth of the Northern Mariana Islands is no longer a trust territory, and, of its own volition, freely became incorporated into another independent State. Thus, rights and obligations of the trusteeship are superseded by the rights and duties of the "parent" State and the Commonwealth as set out in the Covenant. Had it preferred to become a sovereign nation in free association with the United States, as did the Marshall Islands and the Federated States of Micronesia, it would commensurately have enjoyed greater rights, such as the resource rights at issue explicitly granted to the Freely Associated States under Article II, section 121(b)(1), of the Compact of Free Association, Public Law 99-239, January 14, 1986, 16 U.S.C.A. sec. 1681 note, as interpreted by the Congress in Section 104(f) of Public Law 99-239.

Unlike the people of the Freely Associated States, the people of the Commonwealth of the Northern Mariana Islands chose U.S. citizenship and other benefits of commonwealth status when they entered into close political relationship with the United States. In so doing they agreed that the ocean resources in the exclusive economic zone surrounding the islands would be owned by the United States. The United States should not grant one commonwealth greater rights than those enjoyed by all the other coastal states, commonwealths and territories of the United States.

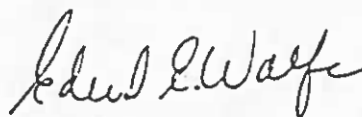
The Special Representatives would also have the Governor of the Commonwealth of the Northern Mariana Islands authorized to negotiate international tuna fishery agreements. Generally speaking, no state, commonwealth or territory of the United States has the authority to enter into international negotiations unless granted by Congress. Their proposal would also give the Governor the right to veto any tuna agreement negotiated by the United States and approved by the Secretary of State. These proposals are inconsistent with Section 104 of the Covenant which provides that the United States will have "complete responsibility for and authority with respect to matters relating to foreign affairs and defense affecting the Northern Mariana Islands." They would also be inconsistent with Section 904(a) of the Covenant, which requires only that the United States "give sympathetic consideration" to the views of the CNMI on international matters directly affecting the CNMI.

The Supplemental Position Paper asserts that the Commonwealth of the Northern Mariana Islands has a twelve nautical mile territorial sea by virtue of its 1980 Marine Sovereignty Act, and that Section 4 of H.R. 1403 is not appropriate to the CNMI. The extension of the territorial sea by Presidential Proclamation 5925 of December 27, 1988, made it

explicit that nothing in the Proclamation "extends or otherwise alters existing Federal or State Law or any jurisdiction, rights, legal interests or obligations derived therefrom." Rather, the purpose was merely to extend for the purpose of international law the territorial sea of the United States. As the Commonwealth came into the Union when the United States claimed a three mile territorial sea, it has been and should continue to be treated on a par with the other coastal States of the United States. Section 4 of H.R. 1405 is therefore appropriate to the Northern Mariana Islands.

Finally, I would draw your attention to the statement in the supplemental position paper that the territorial sea of the Northern Mariana Islands was originally established at 12 nautical miles and that the Islands therefore enjoy resource rights to submerged lands to that limit, as the statement is inaccurate. As a former possession of Japan, the Islands enjoyed a territorial sea limit internationally recognized and claimed by Japan of three nautical miles, a limit which the United States claimed during the Trusteeship Agreement and until 1988. In 1947, the U.S. Supreme Court, in United States vs. California, 322 U.S. 19(1947) found that title to the resources of the submerged lands belonged to the Federal Government and not the several coastal States. Congress, under the terms of the Submerged Lands Act, 43 U.S.C. 130 et seq., conveyed all proprietary interests to the resources located within three miles from shore to the several coastal States. In 1974 Congress similarly conveyed, with specific exceptions, all interests of the Federal Government in the submerged lands of Guam, the Virgin Islands and American Samoa to the government of those territories (P.L. 93-435, 88 stat. 1210, 48 U.S.C. 1705). Congress enacted similar legislation in 1980 to confirm Puerto Rico's title to its submerged lands. Until such time as Congress may be disposed to enact similar legislation on behalf of the Commonwealth of the Northern Mariana Islands, it is clear beyond doubt that title thereto rests in the Federal Government.

Sincerely,



Edward E. Wolfe
Deputy Assistant Secretary
Bureau of Oceans and Fisheries Affairs

The Honorable
Timothy W. Glidden, Esq.
Special Interim Representative of the President,
for the Covenant 902 Consultations,
U.S. Department of the Interior,
18th and C Street, NW
Washington, DC.

Department of State Comments on CNMI Position Paper
On the Tuna Fishery

As an overall observation, the Department of State finds the CNMI proposal on the Tuna Fishery inadvisable due to the legal, policy, and equitable considerations set forth below.

The principal objection to the proposal is the status of the CNMI as a Commonwealth of the United States as defined in the Covenant, a status the people of the Northern Marianas chose of their free will. In abbreviated form follow (Section A) the principal arguments against granting the position the CNMI espouses in the considerations broader than the tuna issue which substantiate the preceding eleven arguments.

A. Arguments Against the Proposed Tuna Position of the CNMI

(1) Although Article 1, Section 10, Clause 3 of the U.S. Constitution provides that "no State shall, without the consent of the Congress, enter into any Agreement or contract with a foreign Power," thereby providing for the possibility that Congress can permit a U.S. state to enter into an Agreement with other States (countries), the latest expressed intent of Congress, as stated in Article 1, Section 104 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America ("Covenant") is that "the United States will have complete responsibility for and authority with respect to matters relating to foreign affairs and defense affecting the Northern Mariana Islands [emphasis added]." This objection to the CNMI proposal is independent of the problem raised by Article 1(10) (3) of the Constitution referring to "State" and not lesser entities such as a commonwealth. CNMI participation in the South Pacific Forum Fisheries Agency, an association of sovereign States, as well as its proposal to become a Party to the Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America ("South Pacific Regional Fisheries Treaty"), are clear exercises of the foreign affairs powers of the United States.

(2) Subject to Article V of the Covenant, the Constitution and Federal laws of the United States apply without distinction to the CNMI and its people, who are citizens of the United States. Under Article III, Sections 301-03 individuals of the Northern Marianas are declared to be U.S. citizens. Under Article III, Section 304 "citizens of the Northern Mariana Islands will be entitled to all privileges and immunities of citizens in the several states of the United States."

- (3) Article 303(1) (e) of the 1982 United Nations Convention on the Law of the Sea ("LOS Convention") does not give the CNMI any right whatever to enter into treaties in respect of matters governed by the LOS Convention. Only the United States can act for foreign affairs on behalf of the CNMI. The CNMI cannot have it both ways on this issue i.e. enjoy the rights ensuing to them as U.S. citizens and as a U.S. territory and at the same time enjoy the rights and authority of a sovereign nation. As the Trusteeship has ended the CNMI is part of the United States.
- (4) Among other things, the CNMI asserts that since the UN Security Council has not acted affirmatively on the termination of the Trusteeship Agreement, it might be viewed as continuing to apply to the NMI. The USG's firm position is that the November 3 Presidential Proclamation ended our Trusteeship relationship with the CNMI government and after the UN Trusteeship Council confirmed (with the full support of the CNMI representative) that they had freely approved the commonwealth relationship their representatives had negotiated with U.S. representatives.
- (5) The U.S. juridical position on highly migratory species is not, as indicated in the CNMI position paper, contrary to international law but is fully consistent with Article 64 of the LOS Convention, determination which in any case the CNMI is not empowered to make. The March 10, 1983 U.S. EEZ Proclamation clearly states that "this Proclamation does not change executive U.S. policies..., including highly migratory species of tuna which are not subject to U.S. jurisdiction and require international agreement for effective management."
- (6) Recognition of CNMI resource management and ownership rights to tuna in the U.S. EEZ off the coasts of the CNMI would contravene congressional intent as expressed in the Magnuson Fisheries Conservation and Management Act, (MFCMA) would be inequitable vis-a-vis the several coastal states and territories of the United States, would as a consequence stand little chance of Congressional approval, and would result in considerable loss to the U.S. Treasury. Section 3(21) of the MFCMA in defining "state" includes, i.e., "any other commonwealth, territory, or possession of the United States." Section 2(a) (b) of the MFCMA envisages a national program for the conservation and management of the fishery resources of the United States. Section 304(a) of the MFCMA provides that the Secretary may provide that all or part of the fees collected under the System shall accrue to the States.

- (7) Recognition of CNMI management and ownership rights in the U.S. EEZ off the coasts of the CNMI would be inconsistent with the U.S. juridical position on highly migratory species, would be inconsistent with the U.S. EEZ Proclamation of March 10, 1983 and Accompanying Ocean Policy Statement, would render the U.S. juridical position untenable internationally, and would require consequential changes in the MFCMA, and the 1983 Proclamation and Statement. The Department does not comment on the merit or demerits of this issue, but confines itself strictly to the international and national legal consequences of such recognition.
- (8) Full members of the South Pacific Regional Fisheries Forum Agency (FPA) consist solely of sovereign entity to become party to the FPA, as well as illegal under current domestic law. Under the relationship negotiated between the United States and the CNMI, and approved by the people of the CNMI, the CNMI does not have the authority to conduct its own foreign affairs. The Cook Islands and Niue do not entail exceptions to this position or constitute precedents for the CNMI, as New Zealand recognizes the right of those freely associated states to conduct their own foreign affairs. Nor do the Cook Islands and Niue constitute sovereign territory of New Zealand and CNMI does for the United States. In any case, decisions on such sovereign issues are again within the prerogative of the United States as sovereign.
- (9) As only members of the FPA can be parties to the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America. The CNMI would be unable, notwithstanding the federal issue, to become a party thereto.
- (10) Article IX, Section 904(a) of the Covenant provides that the U.S. will "give sympathetic consideration to the views of the Government of the Northern Mariana Islands on international matters... and will provide opportunities for the effective presentation of such views to no less extent than such opportunities are provided to any other territory or possession under comparable circumstances." The position advocated by the CNMI has not been accepted for the Commonwealth of Puerto Rico, or any other U.S. territory, and the CNMI has not established that any provision of the covenant changed U.S. policy on this issue.
- (11) Article IX, Section 904(a) of the Covenant provides that:

participate in regional and other international organizations concerned with economic matters when similar participation is authorized for any other territory or possession of the United States.

As such the CNMI may not participate in regional or other international organizations such as the PFA.

B. Additional Considerations

(1) The 1951 Submerged Lands Act in its definitions section refers to "States" and not U.S. territories, trust territories, or the Commonwealth of Puerto Rico. This would imply that at the time of enactment the latter did not receive title to their submerged lands out to three nautical miles as did the States, which received title therein. By extension, this would mean U.S. non-State entities could in no way be said to enjoy title to EEZ and shelf resources - if they certainly could not, as a logical matter, enjoy them beyond. This interpretation is strengthened by Congressional passage of the Territorial Submerged Lands Act subsequent to the 1951 legislation which ex gratia extended the 1951 compromise to U.S. territories and possessions, as well as additional subsequent legislation which did the same for Puerto Rico.

(2) The treatment accorded the Commonwealth of Puerto Rico beyond the territorial sea is instructive. The FCMA applies beyond the territorial sea of Puerto Rico and the Interior Department has the duty to perform the same OCSLA functions on the "Puerto Rican" shelf as it does for the States. It is jejune to propose that the TTPI representatives during the status negotiations did not know of the treatment accorded Puerto Rico in its Commonwealth status. Although granted that Puerto Rico was not a trust territory at the time of its being presented to examine.

(3) It must be assumed that EEZ and shelf right were not transferred to TTPI with aforethought. This assumption is not gained by the silence of the Covenant on this issue; it is rather affirmed. For Article VIII represents in all aspects an affirmative grant of rights to the Northern Marianas - everything not specifically granted to the Marianas the United States reserved to itself. This is also true under the Submerged Lands Act - all not specifically granted to the several States remained vested in the United States. In other words both were merely confirmations of the status quo ante. Further, in that

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- 3 -

the Northern Marianas was the recipient of the real and personal rights at their request and as it was the prime mover in drafting many provisions of the draft covenant, - contra preferentiam should be applied to them.

(4) Merits and demerits of the Covenant for the moment aside, as is the case with many LOS issues, this cannot be seen in vacuo. If decided inimically to the Federal interest this case could serve as an unwelcome precedent in dealing with future U.S. territorial issues. It of course would be completely antithetical to our long-held juridical position on tuna and would constitute an inconsistency which we could not explain away. As there is no reason for the Executive Branch not to treat this issue conservatively, I believe such the preferred course. The Federal judiciary is of course open to the Government of the Northern Marianas if it wishes to challenge the Executive Branch on this issue.

(5) There is a fundamental difference between the rights under the U.N. Charter of a trusteeship territory which becomes an independent State at the termination of the Trusteeship and such territory which of its own volition freely becomes incorporated into another independent State. Its rights and the duties of the "parent" State in such a case are governed by contract, which dissolves and supersedes the rights and obligations of the trusteeship and the trustee respectively. For this reason many of the arguments the CNMI makes based on U.S. obligations assumed on behalf of the CNMI as the Trusteeship Power and the rights of the CNMI as the trusteeship territory are not in point. This is also true for obligations the US took on behalf of the Northern Marianas in US legislation during the Trusteeship. Those obligations are not and were not to be read as applicable to a U.S. commonwealth, a status not envisaged for the CNMI at the time.

THE SPECIAL REPRESENTATIVE OF
THE PRESIDENT OF THE UNITED STATES
and
THE SPECIAL REPRESENTATIVES OF
THE GOVERNOR OF
THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

MEMORANDUM OF AGREEMENT
ON
OCEAN RIGHTS AND RESOURCES

April 12, 1990

The Special Representative of the President of the United States and the Special Representatives of the Governor of the Commonwealth of the Northern Mariana Islands, appointed pursuant to Section 902 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, met and conferred at the Eighth Round of Consultations pursuant to 902 in Saipan, on April 9 through 12, 1990.

The Special Representatives of the President and the Governor agreed in principle to a basis for resolution of the issue of "Ocean Rights and Resources." This issue was raised by the Special Representatives of the Commonwealth in a position paper submitted in our consultations on March 30, 1987. The issue concerns the authority of the Commonwealth of the Northern Mariana Islands to conserve, manage and control the marine resources in the waters and seabed of the territorial sea and exclusive economic zone of the Commonwealth for the benefit of the people of the Northern Mariana Islands.

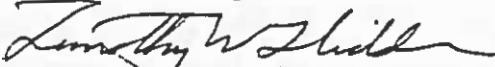
The Special Representative of the President agrees to support the Commonwealth's proposal that the authority and jurisdiction of the Commonwealth of the Northern Mariana Islands be recognized and confirmed by the United States to include the sovereign right to ownership and jurisdiction of the waters and seabed surrounding the Northern Mariana Islands to the full extent permitted under international law. Under this proposal, the Commonwealth shall have the rights of a coastal state in the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf as provided in the United Nations Convention on the Law of the Sea; provided that the exercise of those rights shall be done in cooperation with the United States and subject to the responsibility and authority of the United States with respect to foreign affairs and defense under Section 104 of the Covenant.

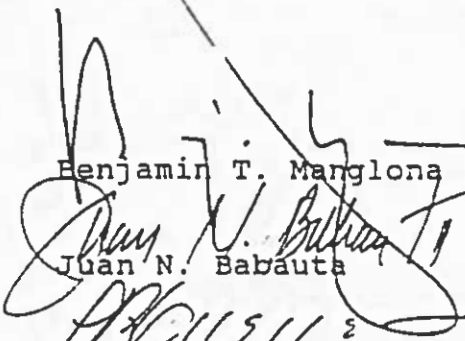
In addition, the proposal provides that the Northern Mariana Islands shall, with the approval of and in cooperation with the United States, participate in regional and international organizations which are concerned with international regulation of the rights set out above, and may enter into treaties and other international agreements regarding the exercise of those rights, including such treaties and agreements relating to the harvesting, conservation, management, exploration or exploitation of the living and non-living resources from the marginal sea.

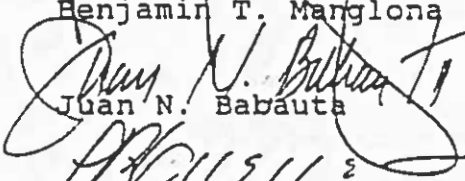
The United States assist or act on behalf of the Northern Mariana Islands in the area of foreign affairs as may be requested by the Northern Mariana Islands, and mutually agreed from time to time, to such extent as is required for the exercise of the rights of the Northern Mariana Islands in the exclusive economic zone.

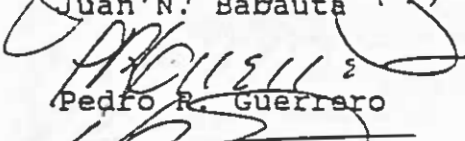
The Special Representative of the President agrees to support this proposal for resolution of the issue within the Government of the United States, to seek agreement to the proposal within other agencies of the Government of the United States. The Special Representative of the United States will consider technical advice on appropriate means of recognizing, confirming and implementing the described rights of the Northern Mariana Islands in its territorial sea and exclusive economic zone and will respond to the Commonwealth's other proposals for resolving this issue at the earliest possible date.

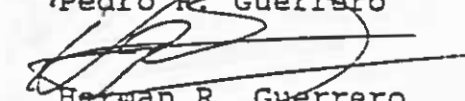
Respectfully Submitted,

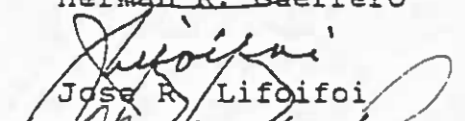

Timothy W. Glidden
Special Representative of
the President of the
United States

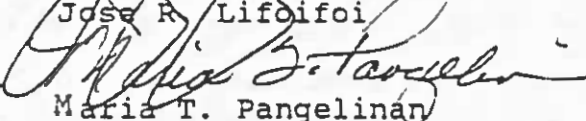

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Juan N. Babauta


Pedro R. Guerrero


Herman R. Guerrero


Jose R. Lifoifoi


Maria T. Pangelinan

Special Representatives
of the Governor of the
Commonwealth of the
Northern Mariana Islands

THE SPECIAL REPRESENTATIVE OF
THE PRESIDENT OF THE UNITED STATES
and
THE SPECIAL REPRESENTATIVES OF
THE GOVERNOR OF
THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

AGREEMENTS AFTER THE EIGHTH ROUND OF CONSULTATIONS

April 12, 1990

The Special Representative of the President of the United States and the Special Representatives of the Governor of the Commonwealth of the Northern Mariana Islands, appointed pursuant to Section 902 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, having met and conferred at the Eighth Round of Consultations pursuant to Section 902 in Saipan, on April 9 through 12, 1990, have agreed to the following:

OCEAN RIGHTS & RESOURCES

15. The Special Representatives of the President and the Governor will send to the President a joint recommendation that the Commonwealth of the Northern Mariana Islands has the authority to conserve, manage and control the marine resources in the waters and seabed of the territorial sea and exclusive economic zone of the Commonwealth.

16. Pending technical review, the Special Representative of the President agrees to support the legislation proposed by the Commonwealth of the Northern Mariana Islands to approve a mutual consent amendment of the Covenant recognizing the Commonwealth's jurisdiction over its territorial sea and exclusive economic zone.

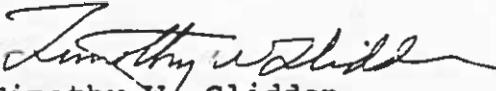
TUNA FISHERY

17. The Special Representative of the President will respond to the Commonwealth's position paper on Tuna Fishery at the earliest possible date, once sufficient information has been passed to the Commonwealth that is not of a classified nature.

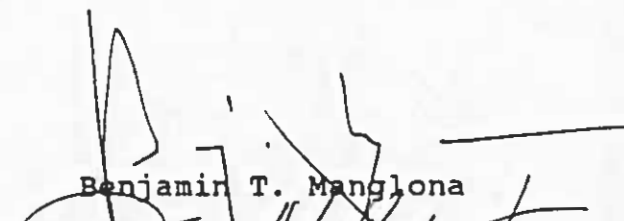
18. The Special Representatives of the President and the Governor jointly agree to request that the President direct the Secretary of State to include the Commonwealth of the Northern Mariana Islands in discussions on Tuna Fishery in the Pacific region.

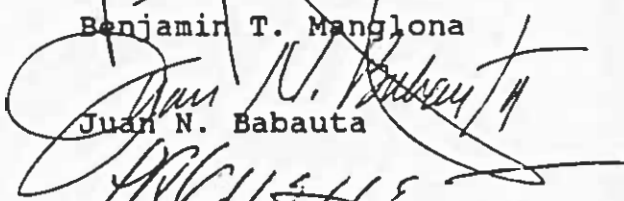
19. The Special Representative of the President will assist in securing a response from the Department of State to a request made by the Special Representatives of the Governor under the Freedom of Information Act.

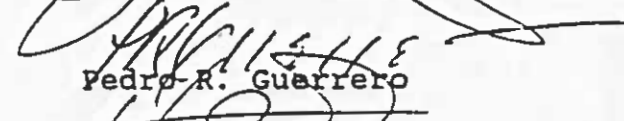
20. The Special Representative of the President will endeavor to obtain any information available on the source of authority, if any, of the Government of Japan to operate or have a presence in the exclusive economic zone of the Commonwealth.

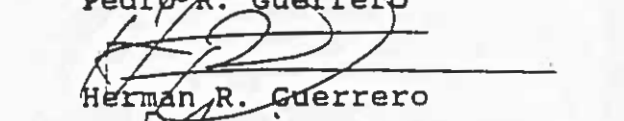

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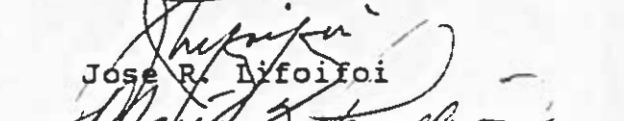
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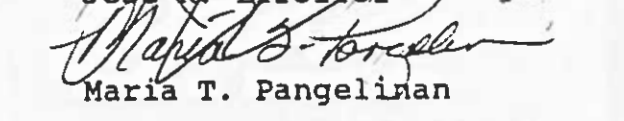

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Special Representatives
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Commonwealth of the
Northern Mariana Islands

TITLE 2
NATURAL RESOURCES
DIVISION 1
MARITIME AND COASTAL RESOURCES
CHAPTER 1
Marine Sovereignty Act of 1980.

§1101. Short Title.

This Chapter may be cited as the "Marine Sovereignty Act of 1980".

Source: PL 2-7, §1.

Article 1. General.

- §1111. Legislative Findings.
- §1112. Purposes of Chapter.
- §1113. Definitions.
- §1114. Declarations.

§1111. Legislative Findings.

The Legislature finds that:

(a) The people of the Northern Mariana Islands have traditionally been a seafaring people, sailing hundreds of miles from their home islands in order to provide for their needs by utilizing the resources of the sea.

(b) The people of the Northern Mariana Islands are dependent on the resources of the sea for their economic, social, and political survival and growth.

(c) Foreign interests have been exploiting these resources at an increasing rate without benefit to the people of the Northern Mariana Islands and without regard to the conservation, environmental protection, and scientific management necessary to ensure continued availability of such resources.

(d) In order to effectively utilize and conserve such resources, it is necessary to establish a regime to control the exploitation thereof.

(e) The Revised Informal Composite Negotiating Text of the United Nations Conference on the Law of the Sea

(hereafter referred to in this Act as the "ICNT", which term shall include any amendment, further revised, or successor thereto) embodies and represents generally accepted principles and practices of customary international law regarding the rights of coastal states in their surrounding waters.

(f) The ICNT provides that the rights recognized or established therein to the resources of a territory such as the Commonwealth shall be vested in the inhabitants of that territory, to be exercised by them for their own benefit and in accordance with their own needs and requirements.

(g) The Northern Mariana Islands is constituted wholly by a single archipelago, being a group of islands, interconnecting waters, and other natural features which are so closely interrelated that they form an intrinsic geographical, economic, and political entity, and have been historically recognized as such, thus qualifying as an archipelagic state under the ICNT.

(h) The Northern Mariana Islands has a water to land ratio not greater than nine to one and, pursuant to the ICNT, may draw straight archipelagic baselines joining the outermost points of the outermost islands and drying reefs of the archipelago and enclosing its archipelagic waters.

(i) Pursuant to the ICNT, the Commonwealth, as an archipelagic state, may establish a territorial sea, exclusive economic zone, and contiguous zone, each of which may be measured from its archipelagic baselines.

Source: PL 2-7, §2.

§1112. Purposes of Chapter.

The purposes of this Chapter are:

(a) To preserve and protect the traditional rights and interests of the people of the Northern Mariana Islands in the surrounding sea and the resources thereof;

(b) To ensure the continued availability of such resources for future generations by establishing jurisdiction over such resources;

(c) To exercise for the benefit of the people of the Northern Mariana Islands, in accordance with their needs and requirements, all rights to the marine resources which accrue to the people pursuant to customary international law, including the ICNT;

(d) To provide for a system of archipelagic baselines surrounding the islands and reefs of the Commonwealth;

2 CMC, Div. 1

(e) To establish a regime of archipelagic waters within such baselines and delimit the internal waters of the Commonwealth within such archipelagic waters;

(f) To establish a territorial sea seaward of such baselines;

(g) To establish an exclusive economic zone seaward of the territorial sea;

(h) To establish a contiguous zone within the exclusive economic zone; and

(i) To provide for interim regulation of activities within the archipelagic waters, the territorial sea, and the exclusive economic zone.

Source: PL 2-7, §3.

§1113. Definitions.

As used in this Chapter, the term:

(a) "Archipelagic waters" means the waters enclosed by the baselines.

(b) "Baseline" means one of a series of line segments established pursuant to Section 1121 which encloses the archipelagic waters and from which the territorial sea, exclusive economic zone, and contiguous zone are measured.

(c) "Contiguous zone" means an area contiguous to the territorial sea, within the exclusive economic zone, as established in Section 1125.

(d) "Exclusive economic zone" means an area beyond and adjacent to the territorial sea, as established in Section 1124.

(e) "Internal waters" means the waters delimited pursuant to Section 1122.

(f) "Mile" means a nautical mile of 6,076,115 feet or 1,852 meters.

(g) "State" means any general purpose unit of government, whether or not sovereign, which registers or documents vessels under its own flag or exercises jurisdiction over any portion of the land or sea, and includes the Commonwealth, but does not include any agency of local government established under Article VI of the Commonwealth Constitution.

2 CMC, Div. 1

(h) "Territorial Sea" means a belt of sea beyond and adjacent to the archipelagic waters, as established in Section 1123.

Source: PL 2-7, §4.

§1114. Declarations.

(a) The Legislature declares, on behalf of the people of the Northern Mariana Islands, that the sovereignty of the Commonwealth extends beyond its land area to its internal waters, archipelagic waters, and territorial sea, regardless of their depth or distance from the coast, as well as to their air space, seabed, and subsoil, and the resources contained therein.

(b) The Legislature declares, on behalf of the people of the Northern Mariana Islands, that the Commonwealth has sovereign rights in the exclusive economic zone for the purpose of exploring, exploiting, conserving, and managing the natural resources, whether living or non-living, of the seabed, subsoil, and superadjacent waters of such zone, and with regard to other activities for the economic exploitation of the zone, such as the production of energy from the water, currents, and winds. The jurisdiction of the Commonwealth in the exclusive economic zone also extends to:

(1) The establishment and use of artificial islands, installations, and structures, and of reasonable safety zones related thereto;

(2) Marine scientific research;

(3) Protection and preservation of the marine environment, including prevention of pollution from outside the zone which poses a threat or risk of harm to resources within the zone; and

(4) All other rights which may appertain to the Commonwealth in such zone pursuant to the ICNT and other customary international law.

(c) The Legislature declares, on behalf of the people of the Northern Mariana Islands, that the Commonwealth will exercise in the contiguous zone the control necessary to:

(1) Prevent infringement of Commonwealth customs, fiscal, immigration, or sanitary regulations within the territorial sea or the territory of the Commonwealth; and

(2) Punish infringement of such regulations committed within the territorial sea or the territory of the Commonwealth.

Source: PL 2-7, §5.

Article 2. Archipelagic Baselines
and Maritime Zones.

- §1121. Archipelagic Baselines.
- §1122. Internal Waters.
- §1123. Territorial Sea.
- §1124. Exclusive Economic Zone.
- §1125. Contiguous Zone.

§1121. Archipelagic Baselines.

(a) The Director of Natural Resources is authorized and directed to draw archipelagic baselines pursuant to this Section on charts of a scale or scales adequate for determining the baselines, and shall transmit the charts to the Attorney General not later than 60 days after the date of enactment of this Chapter. Upon such transmittal, the charts will be deemed to be officially recognized by the Commonwealth. The Attorney General shall promptly give due publicity to such charts and shall deposit a copy of such charts with the Secretary-General of the United Nations.

(b) The baselines shall be drawn in straight line segments and shall join the outermost points of the outermost islands and drying reefs of the Commonwealth; provided, that the ratio of the area of the water to the area of the land (including as land all waters lying within the fringing reefs of any island, the waters of any lagoon, and the waters surrounded by the islands of Maug) shall not exceed nine to one.

(c) The length of any baseline shall not exceed 100 miles, except that up to 3 percent of the total number of baselines may exceed that length, up to a maximum length of 125 miles.

(d) The drawing of such baselines shall not depart to any appreciable extent from the general configuration of the archipelago.

(e) The baselines shall be drawn to and from low-tide elevations, except that no low-tide elevation situated at a distance more than 12 miles from the nearest island shall be the end point of any baseline unless it is marked by a lighthouse or similar installation which is permanently above sea level.

Source: PL 2-7, §6.

§1122. Internal Waters.

Within the archipelagic waters, the Director of Natural Resources shall draw closing lines for the delimitation of internal waters. Such lines shall be drawn between appropriate low-tide elevations, and shall surround each island or group of islands, including any reef system, lagoon, or bay. The waters between Tinian and Aguiguan and between Tinian and Saipan, as well as the waters surrounded by the islands of Maug are specifically included as internal waters. The requirements of Section 1121(a) shall apply to lines drawn pursuant to this Section.

Source: PL 2-7, §7.

§1123. Territorial Sea.

The territorial sea of the Commonwealth shall have a breadth of 12 miles. The inner limit of the territorial sea shall be the archipelagic baselines established pursuant to Section 1121. The outer limit of the territorial sea is the line every point of which is at a distance of 12 miles from the nearest point of the baseline.

Source: PL 2-7, §8.

§1124. Exclusive Economic Zone.

(a) The exclusive economic zone of the Commonwealth is hereby established. The inner limit of the zone shall be the outer limit of the territorial sea, as established in Section 1123. Except as provided in subdivision (b) of this Section, the outer limit of the zone is the line every point of which is at a distance of 200 miles from the nearest point of the baselines.

(b) Where the outer limit line of the exclusive economic zone would extend into a similar zone or the territorial sea of an adjacent state, the boundary shall be delimited by the line every point of which is equidistant from the nearest point of the baselines and from the nearest point of any similar line drawn by the adjacent state, or, if the state has not drawn any line, from the nearest landfall of that state. The Governor may, by agreement with any adjacent state, either directly or through any appropriate entity, delimit a different boundary in accordance with equitable principles and taking account of all relevant circumstances. Any such agreement shall take effect only after it has been submitted to the Legislature, and only if the Legislature does not, within 20 days after the date of receipt of the agreement, adopt a joint resolution disapproving the agreement.

(c) The requirements of Section 1121(a) shall apply to the outer limit lines of the exclusive economic zone and any line of delimitation drawn in accordance with subdivision (b) of this Section, except that lists of geographical coordinates

of points, specifying the geodetic datum, may be substituted where appropriate for any chart required by Section 1121.

Source: PL 2-7, §12.

§1125. Contiguous Zone.

There is hereby established a zone within the exclusive economic zone, contiguous to the territorial sea, which shall be known as the contiguous zone. The inner limit of the contiguous zone shall be the outer limit of the territorial sea. The outer limit of the contiguous zone is the line every point of which is at a distance of 24 miles from the nearest point of the baselines.

Source: PL 2-7, §14.

Article 3. Rights of Other States
in Sovereign Waters.

- §1131. Existing Submarine Cables.
- §1132. Innocent Passage.
- §1133. Sea Lanes Passage.
- §1134. Rights of Other States in the Exclusive Economic Zone.
- §1135. Implementation.
- §1136. Relationship with the United States.

§1131. Existing Submarine Cables.

Without prejudice to the sovereignty declared in Section 1114(a), the Commonwealth will respect any existing submarine cable passing through the internal waters, archipelagic waters, or territorial sea without making a landfall and will permit the maintenance and replacement of the cables upon receiving due notice of the location of the cables and the intention to repair or replace the cables; provided, that the repair or replacement shall be subject to such regulation as may be necessary to ensure the security and environmental protection of the Commonwealth.

Source: PL 2-7, §9.

§1132. Innocent Passage.

The Commonwealth recognizes that the ships of all states enjoy the right of innocent passage through the archipelagic waters (other than internal waters) and the territorial sea, in accordance with customary international law and subject to the provisions of Section 1133. The Commonwealth reserves the right to suspend temporarily in specified areas of its archipelagic waters or territorial sea the innocent passage of foreign ships, if such suspension is essential for the protection of the security of the Commonwealth. Such suspension shall be without discrimination in form or in fact among foreign ships, and shall take effect only after having been duly published.

Source: PL 2-7, §10.

§1133. Sea Lanes Passage.

(a) The Director of Commerce and Labor, after consultation with the Attorney General and the Director of Natural Resources, and any competent international organization, may designate and publicize sea lanes and routes for the safe, continuous, and expeditious passage of foreign ships and aircraft through or over the archipelagic waters and territorial sea. The Commonwealth recognizes that all ships and aircraft enjoy the right of archipelagic sea lanes passage in such sea lanes and air routes.

(b) As used in this Section, the term "archipelagic sea lanes passage" means the exercise in accordance with applicable international conventions and customary international law, including the ICNT, of the rights of navigation and overflight in the normal mode solely for the purpose of continuous, expeditious, and unobstructed transit between one part of the exclusive economic zone of the Commonwealth and another part of such zone.

(c) In designating sea lanes and air routes, or any traffic separation schemes within such routes, or any substitute route or scheme, the Director of Commerce and Labor shall conform to customary international law, and shall make and publicize those designations and issue rules and regulations relating thereto in a manner consistent, to the maximum extent practicable, with the provisions of the ICNT.

(d) If the Director of Commerce and Labor has not designated sea lanes or air routes pursuant to this Section, the right of archipelagic sea lanes passage may be exercised through the routes normally used for international navigation.

Source: PL 2-7, §11.

§1134. Rights of Other States in the Exclusive Economic Zone.

Subject to the jurisdiction declared in Section 1114(b) and the limits and duties established by international conventions, the ICNT, or customary international law, the Commonwealth recognizes that in the exclusive economic zone all states enjoy the freedoms of navigation, overflight, and laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to such freedoms.

Source: PL 2-7, §13.

§1135. Implementation.

(a) The sovereignty and jurisdiction of the Commonwealth in the internal waters, archipelagic waters, territorial

sea, exclusive economic zone, and contiguous zone shall be exercised pursuant to the laws of the Commonwealth, and shall, to the maximum extent practicable, conform to applicable international conventions and customary international law, including the ICNT. The Governor shall promptly inform the Legislature when any change in such conventions or such law suggests a need for change in the laws of the Commonwealth.

(b) In the absence of any law for the management of any resource or activity, the protection of the environment, or the exercise of appropriate governmental functions, in the areas referred to in subdivision (a), the Governor may, except as otherwise provided in this Chapter, provide by Executive Order for interim regulation of such matters.

Source: PL 2-7, §15.

§1136. Relationship with the United States.

The Legislature recognizes the special relationship between the Commonwealth and the United States. Pursuant to that relationship, nothing in this Chapter shall be taken to impose any impediment to any lawful action taken by the Government of the United States for the defense and security of the Commonwealth or of the United States; provided, that the United States takes every practicable precaution to protect the marine environment and complies with any applicable Federal law.

Source: PL 2-7, §18.

Article 4. Enforcement.

§1141. Remedies and Penalties.

§1142. Conforming Amendments to Submerged Lands Act.

§1143. Authorization.

§1141. Remedies and Penalties.

(a) (1) The Director of Commerce and Labor or his authorized representative, with regard to archipelagic sea lanes passage, and the Governor or any person designated pursuant to any Executive Order issued pursuant to Section 1135(b), or the authorized representative of the Governor or of his designee, with regard to other matters, may take such measures, including boarding, inspection, and arrest of any person, vessel, or aircraft, as may be necessary to ensure compliance with this Chapter, or any regulation issued under this Chapter, and the right of hot pursuit shall apply.

(2) Any vessel or aircraft utilized to carry out the provisions of this subdivision (a) shall be clearly

marked and identifiable as being on government service and shall be specifically authorized to such effect.

(3) In any case of arrest or detention of a foreign vessel or aircraft pursuant to this Section, the Commonwealth official taking that action shall promptly notify, or cause to be notified, through any appropriate channel, the flag state of the vessel or aircraft regarding the action taken and any penalty subsequently imposed.

(4) Any foreign vessel or crew arrested in the enforcement of any law or regulation regarding the taking of living resources in or from the exclusive economic zone shall be promptly released upon the posting of reasonable bond or other security.

(b) At the request of any person authorized to take action pursuant to subdivision (a), the Attorney General shall institute a civil action in any court of record having jurisdiction for a temporary restraining order, injunction, or other appropriate remedy to enforce any provision of this Chapter or any regulation issued under this Chapter.

(c) Any person who violates any provision of this Chapter or any regulation issued under this Chapter, or who makes any false statement or representation to any official authorized to take action pursuant to subdivision (a), shall, upon conviction, be punished by a fine of not more than \$10,000 plus forfeit of any resources taken in violation (or the value of such resources), or by imprisonment for not more than one year, or both, except that imprisonment shall not be imposed for any violation regarding the taking of living resources in or from the exclusive economic zone by a foreign vessel in the absence of any agreement to the contrary between the Commonwealth and the flag state of such vessel. In the case of a knowing and willful violation subject to punishment by imprisonment, the court may, in addition to any other penalty, declare a vessel or aircraft forfeit to the Commonwealth. Each day that a violation continues shall constitute a separate violation.

(d) Whenever a corporation or other entity is subject to prosecution under subdivision (c), any officer or agent of such corporation or entity who knowingly and willfully authorized, ordered, or carried out the proscribed activity shall be subject to the same fines or imprisonment, or both, as provided for under that subdivision.

(e) The remedies and penalties prescribed in this Section shall be concurrent and cumulative and the exercise of one shall not preclude the exercise of the others. Further, the remedies and penalties prescribed in this

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Section shall be in addition to any other remedies and penalties afforded by any other law or regulation.

Source: PL 2-7, §16.

§1142. Conforming Amendments to Submerged Lands Act.

Except as otherwise provided in subdivisions (a) and (f) of Section 1212 and in Section 1231 of the Submerged Lands Act, nothing in this Chapter shall be construed to amend, modify, or alter in any way the provisions of that Act.

Source: PL 2-7, §17(a).

§1143. Authorization.

There are hereby authorized to be appropriated such funds as may be necessary to carry out the provisions of this Chapter.

Source: PL 2-7, §19.

CHAPTER 2.
Submerged Lands Act.

§1201. Short Title.

This Chapter may be cited as the "Submerged Lands Act".

Source: PL 1-23, §1.

Article 1. General.

§1211. Purpose.

§1212. Definitions.

§1211. Purpose.

The purpose of this Chapter is to provide for the exploration, development and extraction of petroleum deposits or mineral deposits in submerged lands of the Northern Mariana Islands and to provide that the Department of Natural Resources shall establish procedures for the granting of exploration licenses, development leases and permits for the extraction of petroleum deposits and other mineral deposits by qualified entrepreneurs, subject to approval or disapproval by both houses of the Commonwealth Legislature by a joint resolution.

Source: PL 1-23, §2.

§1212. Definitions.

In this Chapter, unless the context otherwise requires, the following definitions apply:

(a) "Submerged lands" means all lands below the ordinary high water mark extending seaward to the outer limit line of the exclusive economic zone established pursuant to the Marine Sovereignty Act of 1980 (commencing with Section 1101 of Chapter 1 of this Division) or to any line of delimitation between such zone and a similar zone of any adjacent State.

(b) "Director" means the Director of the Department of Natural Resources.

(c) "Exploration License" means a license granting exploratory rights for petroleum deposits or other mineral deposits granted by the Director of the Department of Natural Resources.

(d) "Development Lease" means a lease granting extraction rights for petroleum deposits or other mineral deposits granted by the Director of the Department of Natural Resources.

(c) "Permit" means a permit granting extraction rights for petroleum deposits or other mineral deposits granted by the Director of the Department of Natural Resources.

(c) "In submerged lands" means within, upon, under, or of the seabed or subsoil of submerged lands, or any combination of such locations.

Source: PL 1-23, §3, as amended by PL 2-7, §17(b)(c).

Article 2. Licenses, Leases and Permits.

§1221. Management of Submerged Lands.

§1222. License, Lease or Permit Required.

§1223. License, Lease or Permit; Approval by Legislature.

§1221. Management of Submerged Lands.

The Director shall be responsible for the management, use and disposition of submerged lands off the coast of the Commonwealth. He shall have the following powers and duties:

(a) To grant exploration licenses and development leases regarding petroleum deposits or mineral deposits which may be located in submerged lands;

(b) To issue permits for the purpose of extracting petroleum or mineral deposits which may be located in submerged lands; and

(c) To adopt rules and regulations not inconsistent with this Chapter establishing qualifications and conditions regarding exploration licenses, development leases and permits for the extraction of petroleum or mineral deposits. These rules and regulations shall not grant a lease or permit any use of submerged lands which would adversely affect the protection and preservation of marine resources and the rules and regulations shall insure that the Commonwealth is adequately compensated for petroleum and mineral deposits extracted from submerged lands.

Source: PL 1-23, §4.

§1222. License, Lease or Permit Required.

No person, partnership or corporation shall engage in any exploration, development or extraction of petroleum deposits or mineral deposits which may be located in submerged lands off the coast of the Commonwealth without first having obtained from the Director a license, lease or permit to engage in or conduct such activity.

Source: PL 1-23, §5.

§1223. License, Lease or Permit; Approval by Legislature.

Prior to the issuance of any exploration license or development lease or permit, the Director shall submit the terms and conditions of the license, lease or permit to the Presiding Officers of both houses of the Legislature and the Legislature shall have the exclusive right to approve, disapprove or modify the provisions of any exploration license, development lease, or permit to extract petroleum deposits or mineral deposits. Approval, disapproval or approval with modification shall be in the form of a joint resolution duly adopted by both houses of the Commonwealth Legislature, a copy of which shall be transmitted to the Director not later than 90 days following the date of receipt of a proposed license, lease or permit. In the event that the Legislature fails to act within 90 days following the date of receipt of any exploration license, development lease or permit to extract petroleum and mineral deposits, it shall be deemed to have approved it. The Director shall issue a license, lease or permit within 30 days of receipt of a certified copy of the joint resolution approving such license, lease or permit.

Source: PL 1-23, §6.

Article 3. Remedies and Penalties.

§1231. Remedies and Penalties.

§1231. Remedies and Penalties.

(a) (1) The Director or his authorized representative may take such measures, including the boarding or inspection of any vessel, artificial island, installation, or structure, or the arrest of any person or vessel, as may be necessary to ensure compliance with the provisions of this Chapter or any rule or regulation issued under this Chapter, and the right of hot pursuit shall apply.

(2) Any vessel or aircraft utilized to carry out the provisions of this subdivision shall be clearly marked and identifiable as being on government service and shall be specifically authorized to such effect.

(3) In any case of arrest or detention of a foreign vessel pursuant to this Chapter, the Director shall promptly notify or cause to be notified, through any appropriate channel, the flag State of such vessel regarding the action taken and any penalty subsequently imposed.

(b) At the request of the Director, the Attorney General shall institute a civil action in any court of record having jurisdiction for a temporary restraining order, injunction, or other appropriate remedy to enforce any

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provision of this Chapter or any rule or regulation issued under this Chapter.

(c) If any person fails to comply with any provision of this Chapter, or any rule or regulation issued under this Chapter, after notice of such failure and expiration of any reasonable period allowed for corrective action, such person shall be liable for a civil penalty of not more than \$10,000 for each day of the continuance of such failure. The Director may assess, collect, and compromise any such penalty. No penalty shall be assessed until the person charged with a violation has been given an opportunity for a hearing.

(d) Whenever the holder of any license, lease, or permit fails to comply with any of the provisions of this Chapter, or of the license, lease, or permit, or of any rule or regulation issued under this Chapter, such license, lease, or permit may be forfeited and cancelled by an appropriate proceeding in any court of record having jurisdiction.

(e) Any person who knowingly and willfully:

(1) Violates any provision of this Chapter, or any rule or regulation issued under this Chapter; or

(2) Makes any false statement, representation, or certification to the Director or his representative taking action pursuant to subdivision (a), or in any application, record, report, or other document filed or required to be maintained under this Chapter; or

(3) Falsifies, tampers with, or renders inaccurate any monitoring device or method of record required to be maintained under any rule or regulation issued pursuant to this Chapter;

shall, upon conviction, be punished by a fine of not more than \$100,000, or by imprisonment for not more than 10 years, or both.

Each day that a violation under subdivision (e)(1) continues, or each day that any monitoring device or data recorder remains inoperative or inaccurate because of any activity described in subdivision (e)(3), shall constitute a separate violation.

(f) Whenever a corporation or other entity is subject to prosecution under subdivision (e), any officer or agent of such corporation or entity who knowingly and willfully authorized, ordered, or carried out the proscribed activity shall be subject to the same fines or imprisonment, or both, as provided for under such subdivision.

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(g) The remedies and penalties prescribed in this Section shall be concurrent and cumulative and the exercise of one shall not preclude the exercise of the others. Further, the remedies and penalties prescribed in this Section shall be in addition to any other remedies and penalties afforded by any other law or regulation.

Source: PL 1-23, as amended by PL 2-7, §17(d).

CHAPTER 3.
Nuclear and Chemical Free Zone Act.

§1301. Short Title.

This Chapter may be cited as the "Commonwealth Nuclear and Chemical Free Zone Act."

Source: PL 3-42, §1.

Commission Comment: See also NMI Constitution, Article I, §9.

Article 1. General

- §1311. Statement of Purpose and Policy.
- §1312. Definitions.
- §1313. Nuclear and Chemical Free Zone, Establishment.
- §1314. Prohibited Acts.

§1311. Statement of Purpose and Policy.

(a) The people of the Commonwealth of the Northern Mariana Islands are dependent upon the resources of the sea for their economic, social, and political survival and growth.

(b) Foreign interests pose a threat to the people of the Commonwealth by their insistence in dumping nuclear and chemical wastes in the sea which will not only diminish the availability of resources for the people of the Commonwealth, but also endanger their very lives.

(c) The purpose of this Chapter is to implement the intent of Sections 1114(b)(3) and 1124 of the Marine Sovereignty Act of 1980 (P.L. No. 2-7) and to ban the dumping of nuclear and chemical wastes in the ocean and seabed surrounding the Commonwealth.

(d) This Chapter is intended to maintain a clean and healthy environment for present and future generations in the Commonwealth, to protect the health and safety of residents and visitors alike from the dangers of accidents involving the transport, storage, or siting of radioactive materials, nuclear reactors or weapons within the Commonwealth, and to protect the general health, safety, comfort, and welfare of Commonwealth residents from the misuse of nuclear energy.

(e) This Chapter is also intended to permanently ban from the Commonwealth radioactive materials used in weapons, ships, submarines, reactors, power plants, and other machines, except medical equipment, unless the possession or use of the radioactive materials is related to United States foreign affairs and defense responsibilities affecting the Northern Mariana Islands, as provided in Covenant Section 104 and in Section 1324 of this Chapter.

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(f) Foreign interests pose a threat to the people of the Commonwealth by their proliferation of nuclear weapons, and nuclear-powered ships, submarines, power plants, reactors, and other radioactive materials. The radioactive materials may be transported in the air and waters surrounding or affecting the Commonwealth. A transportation accident or other mishap could easily threaten the marine resources, and the health, safety, and lives of the people of the Commonwealth. Further, the nuclear wastes generated by the operations and replacement of nuclear weapons and nuclear-powered ships, submarines, reactors, and power plants, increasingly threaten the resources and survival of the people of the Commonwealth.

Source: PL 3-42, §2; PL 4-45, §2.

§1312. Definitions.

As used in this Chapter, unless the context otherwise requires, the term:

(a) "Chemical wastes" means the following chemicals and their compounds:

- (1) Organic halogens;
- (2) Metal organic compounds;
- (3) Chlorinated hydrocarbon;
- (4) Polychlorinated biphenyls;
- (5) Polynuclear aromatic hydrocarbon;
- (6) Nitrophenols;
- (7) Nitrosamines;
- (8) Organic and inorganic mercury;
- (9) Arsenic;
- (10) Lead;
- (11) Cadmium;
- (12) Antimony;
- (13) Chromium (trivalent and hexavalent);
- (14) Copper;
- (15) Cyanides;
- (16) Acrolein;
- (17) Acrylonitrile;
- (18) Vinyl chloride;
- (19) Zinc;
- (20) Nickel;
- (21) Boron;
- (22) Vanadium;
- (23) Silver;
- (24) Selenium;
- (25) Toluene; and
- (26) Any other chemical which is toxic to the animal or plant life of the ocean as identified by any federal law or regulation which is applicable on its face to the Commonwealth or by agreement between the Commonwealth and the United States Environmental Protection Agency.

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(b) "Deliberate" means an act or failure to act which is done willfully, intentionally or purposefully, or caused by gross negligence.

(c) "Dump" or "dumping" means any deliberate disposal, depositing, managing, unloading or other placing in the sea, the seabed or in the sub-seabed of nuclear or chemical wastes.

(d) "Nuclear wastes" means any material which is capable of emitting alpha rays, beta rays, gamma rays, electrons, neutrons or other sub-atomic particulate emissions which may pose a substantial threat of death, destruction, injury, genetic or cellular alteration, or other damage to human, animal or marine life or to the environment.

(e) "Person" means any person, partnership, corporation, government, governmental entity, government agency or its representatives.

(f) "Sea" means all marine waters other than the internal waters of the Commonwealth.

(g) "Vessel or aircraft" means any waterborne or airborne craft of any type whatsoever.

(h) "Nuclear reactor" means a device for initiating and maintaining a controlled nuclear chain reaction in a fissionable fuel for the production of energy or additional fissionable material. Nuclear reactors are used in nuclear energy power plants and nuclear-powered vessels.

(i) "Nuclear weapons" include any explosive device that generates its energy by nuclear fission or fusion, and a component of a nuclear weapon is any device whose principal purpose is for incorporation into the structure of a nuclear weapon.

(j) "Radioactive materials" means materials giving off, or capable of giving off, radiant energy in the form of particles or rays, as alpha, beta, and gamma rays, by the spontaneous disintegration of atomic nuclei, including accelerator-produced isotopes and by-product materials. Radioactive materials include:

(1) All materials which enter into or are produced as a part of the nuclear fuel cycle, including milled uranium ore, fissionable materials, and all fission by-products.

(2) Any quantity of radioactive material specified as a "large quantity" by the Nuclear Regulatory Commission which is defined in 10 CFR, Part 71, as amended, or its successor regulations.

(3) Any quantity of radioactive waste, including nonradioactive material contaminated with radioactive material, which has been produced in the nuclear fuel cycle or otherwise.

(k) "Transport" means the transportation by any mode, including highway, waterway, railway, or air.

Source: PL 3-42, §3; PL 4-45, §3.

§1313. Nuclear and Chemical Free Zone, Establishment.
There is hereby established a Nuclear and Chemical Free Zone which is the same as the Exclusive Economic Zone provided by Section 1124 of the Marine Sovereignty Act of 1980.

Source: PL 3-42, §4.

§1314. Prohibited Acts.

(a) It is unlawful for any person to dump any nuclear or chemical wastes in the Nuclear and Chemical Free Zone established pursuant to Section 1313.

(b) It is unlawful for any person to dump crude oil, fuel oil, heavy diesel oil, lubrication oil, hydraulic fluid, or any mixture or any petroleum based product containing any of these in the Nuclear and Chemical Free Zone established by Section 1313.

(c) It is unlawful for any person to dump material produced for biological and chemical warfare in the Nuclear and Chemical Free Zone established by Section 1313.

(d) It is unlawful for any person to:

(1) Transport radioactive materials or nuclear weapons within or through the Commonwealth and its Nuclear and Chemical Free Zone.

(2) Possess, store, test, use, or deploy radioactive materials or nuclear weapons within the Commonwealth and its Nuclear and Chemical Free Zone.

(3) Build or manufacture nuclear reactors or nuclear weapons or components thereof within the Commonwealth and its Nuclear and Chemical Free Zone.

(e) It is unlawful for any person to build, manufacture, possess, or operate any nuclear-powered vessel, including ships, submarines, and aircraft, or

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any nuclear reactor or power plant, within the Commonwealth and its Nuclear and Chemical Free Zone.

Source: PL 3-42, §5; PL 4-45, §4.

Article 2. Enforcement.

- §1321. Enforcement.
- §1322. Criminal Penalties.
- §1323. Civil Penalties.
- §1324. Limited Exemption for the United States Government.
- §1325. Limited Exemption for Medical Purposes.

§1321. Enforcement.

(a) Primary responsibility for enforcement of this Chapter shall be assumed by the Department of Natural Resources and the Coastal Resources Management Office.

(b) Any officer who is authorized by the Department of Natural Resources and the Coastal Resources Management Office to enforce the provisions of this Chapter may:

(1) Arrest any person, if there exists probable cause to believe that such person has committed an act prohibited by Section 1314;

(2) Board, search or inspect any vessel or aircraft which may be found within the Exclusive Economic Zone upon probable cause that such vessel or aircraft may have on board any substance proscribed for dumping by this Chapter;

(3) Seize any vessel or aircraft used or employed in, or when there exists probable cause to believe that such vessel or aircraft was used or employed in violation of any provision of this Chapter;

(4) Seize any other evidence related to any violation of any provision of this Chapter;

(5) Execute any warrant or other process issued by any court of competent jurisdiction.

Source: PL 3-42, §6.

§1322. Criminal Penalties.

In addition to the civil and criminal penalties provided in Section 1141 of the Marine Sovereignty Act of 1980, a person is guilty of a felony offense if he knowingly and willfully commits any act prohibited by this Chapter or knowingly or willfully aids, abets or assists another in such commission. Conviction of any

violation of this Chapter shall be punished by a fine of not more than \$1 million, imprisonment of not more than 10 years, or both.

Source: PL 3-42, §7.

§1323. Civil Penalties.

In addition to the civil and criminal penalties provided in Section 1141 of the Marine Sovereignty Act of 1980, any person who violates any provision of this Chapter may be fined in an amount of not more than \$1 million. Any vessel or aircraft used in any connection with a violation of this Chapter is subject to forfeiture to the government of the Commonwealth. The crew and personnel of such vessel or aircraft may be detained and summarily deported if criminal charges are not anticipated.

Source: PL 3-42, §8.

§1324. Limited Exemption for the United States Government.

Pursuant to Covenant Section 104, the United States Government, its employees, agents and subcontractors, are exempt from compliance with Section 1314(d) and (e) with respect to all matters related to United States foreign affairs and defense responsibilities affecting the Northern Mariana Islands.

Source: PL 4-45, §5.

§1325. Limited Exemption for Medical Purposes.

Section 1314(d) and (e) shall not apply to radioactive materials used in therapeutic radiology, biomedical research, educational programs, medical devices designed for individual application, e.g., cardiac pace-makers, or commercial equipment, processes, and facilities which have obtained approvals that may be required by federal or local licensing and regulatory agencies and which pose no known public health hazards; Provided, however, that any radioactive waste or left-over material from such use shall not be dumped in the Commonwealth or its Nuclear and Chemical Free Zone and shall not be stored for more than a reasonable period of time within which to ship such waste or left-over material to a licensed disposal facility outside of the Commonwealth.

Source: PL 4-45, §6.

CHAPTER 5.
Coastal Resources Management Act.

§1501. Short Title.

This Chapter may be cited as the "Coastal Resources Management Act of 1983."

Source: PL 3-47, §1.

Commission Comment: In enacting the Coastal Resources Management Act of 1983, effective February 11, 1983, the Legislature vacated Executive Order 15, dated February 1, 1980, in its entirety. (PL 3-47, §14).

Article 1. General.

- §1511. Coastal Resources Management Policy.
- §1512. Coastal Resources Management Office: Powers, Functions and Duties.
- §1513. Coastal Resources Management Program: Territorial Jurisdiction.

§1511. Coastal Resources Management: Policy.

(a) It is the coastal resources management policy of the Commonwealth to:

(1) Encourage land-use master planning, floodplain management, and the development of zoning and building code legislation;

(2) Promote, through a program of public education and public participation, concepts of resource management, conservation and wise development of coastal resources;

(3) Promote more efficient resources management through:

(A) Coordination and development of resources management laws and regulations into a readily identifiable program;

(B) Revision of existing unclear laws and regulations;

(C) Improvement of coordination among Commonwealth agencies;

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(D) Improvement of coordination between Commonwealth and federal agencies;

(E) Establishment of educational and training programs for Commonwealth government personnel and refinement of supporting technical data;

(4) Plan for and manage any use or activity with the potential for causing a direct and significant impact on coastal resources. Significant adverse impacts shall be mitigated to the extent practicable;

(5) Give priority for water-dependent development and consider the need for water-related and water-oriented locations in its siting decisions;

(6) Provide for adequate consideration of the national interest, including that involved in planning for, and in the siting of, facilities (including energy facilities in, or which significantly affect, the Commonwealth's coastal zone) which are necessary to meet requirements which are other than local in nature;

(7) Not permit to the extent practicable, development of identified hazardous lands including floodplains, erosion-prone areas, storm wave inundation areas, air installation crash and sound zones and major fault lines, unless it can be demonstrated that such development does not pose unreasonable risks to the health, safety or welfare of the people of the Commonwealth, and complies with applicable laws;

(8) Mitigate to the extent practicable adverse environmental impacts, including those on aquifers, beaches, estuaries and other coastal resources while developing an efficient and safe transportation system;

(9) Require any development to strictly comply with erosion, sedimentation, and related land and water use districting guidelines, as well as other related land and water use policies for such areas;

(10) Maintain or improve coastal water quality through control of erosion, sedimentation, runoff, siltation, sewage and other discharges;

(11) Recognize and respect locations and properties of historical significance throughout the Commonwealth, and ensure that development which would disrupt, alter, or destroy these, is subject to Commonwealth and any applicable federal laws and regulations;

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(12) Recognize areas of cultural significance, the development of which would disrupt the cultural practices associated with such areas, which shall be subject to a consultation process with concerned ethnic groups and any applicable laws and regulations;

(13) Require compliance with all local air and water quality laws and regulations and any applicable federal air and water quality standards;

(14) Not permit, to the extent practicable, development with the potential for causing significant adverse impact in fragile areas such as designated and potential historic and archaeological sites, critical wildlife habitats, beaches, designated and potential pristine marine and terrestrial communities, limestone and volcanic forests, designated and potential mangrove stands and other wetlands;

(15) Manage ecologically significant resource areas for their contribution to marine productivity and value as wildlife habitats, and preserve the functions and integrity of reefs, marine meadows, salt ponds, mangroves and other significant natural areas;

(16) Manage the development of the local subsistence, sport and commercial fisheries, consistent with other policies;

(17) Protect all coastal resources, particularly sand, corals and fish from taking beyond sustainable levels and in the case of marine mammals and any species on the Commonwealth and Federal Endangered Species List, from any taking whatsoever;

(18) Encourage preservation and enhancement of and respect for, the Commonwealth's scenic resources through the development of, increased enforcement of, and compliance with, sign, litter, zoning, building codes, and related land-use laws;

(19) Discourage, to the maximum extent practicable, visually objectionable uses so as not to significantly degrade scenic views;

(20) Encourage the development of recreation facilities which are compatible with the surrounding environment and land-uses;

(21) Encourage the preservation of traditional rights of public access to and along the shorelines consistent with the rights of private property owners;

(22) Pursue agreements for the acquisition or use of any lands necessary to guarantee traditional public access to and along the shorelines; and

(23) Encourage agricultural development and the preservation and maintenance of critical agricultural lands for agricultural uses.

(b) All departments, agencies, offices, and instrumentalities of the Commonwealth government shall take action to incorporate the above-listed policies into their programs and to conduct their activities in a manner consistent with these policies.

Source: PL 3-47, §3.

§1512. Coastal Resources Management Office: Powers, Functions and Duties.

The Coastal Resources Management Office has the following powers, functions and duties:

(a) To coordinate the planning and implementation of the coastal resources management policies by the Commonwealth government;

(b) To review and monitor Commonwealth government activities for their consistency with the coastal resources management policies;

(c) To provide for coordination and decisions on whether federal activities affecting the coastal resources of the Commonwealth are consistent with the coastal resources policies and regulations;

(d) To administer all programs and receive all funding provided by the federal government regarding coastal resources management related programs;

(e) To review and act on the subgranting of federal funds to carry out coastal resources management objectives;

(f) To regularly publish the status of permit activities and the means by which any person may request a public hearing;

(g) To establish and operate a broad and effective public education and information program;

(h) To provide staff support for the Coastal Advisory Council and Appeals Board;

(i) To ensure the consistency of permit decisions with the coastal resources management policies and regulations set forth in Sections 1511 and 1531;

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(j) To coordinate the permit process;

(k) To promote the economic development of coastal resources consistent with coastal resources management policies;

(l) To ensure that any proposed modifications to the coastal resources management regulations provide for in Section 1531 are consistent with the coastal resources management policies set forth in Section 1511; and

(m) To initiate the intergovernmental conflict resolution procedures described in Section 1532(d) when interpretation by the Coastal Resources Management Office of the Commonwealth's obligations under this Chapter conflicts with the interpretation of any other Commonwealth department, agency, office, or instrumentality.

Source: PL 3-47, §4.

Commission Comment: For establishment of Control Resources Management Office, see 1 CMC §2081.

§1513. Coastal Resources Management Program: Territorial Jurisdiction.

The areas subject to the jurisdiction of the coastal resources management program shall extend seaward to the extent of the territorial waters of the Commonwealth and shall further extend to all land areas of the Commonwealth, except for any federally-owned lands as defined by the United States Coastal Zone Management Act of 1972, as amended. (16 U.S.C. §1451 et seq.).

Source: PL 3-47, §7.

Commission Comment: For a definition of "territorial sea", see Sections 1113(e) and 1123 of the Marine Sovereignty Act of 1980 (PL 2-7, §14(e), 2 CMC 1113(e), 123.)

Article 2. Coastal Advisory Council.

§1521. Coastal Advisory Council.

§1522. Coastal Advisory Council: Functions.

§1521. Coastal Advisory Council.

(a) There is in the Commonwealth Government a Coastal Advisory Council, composed of the Mayors of Rota, Tinian, Saipan, and the Northern Islands; the Special Assistant for Carolinian Affairs; the Chairman of the Marianas Public Land Corporation; the Executive Director of the Marianas Visitors Bureau; the Executive Director of the Ports Authority; the President of the Chamber of Commerce; and the Historic Preservation Officer. In addition, one member of the public representing fisheries, one member of the public representing the construction industry, and one member of the public representing a subsistence lifestyle shall be appointed by the Governor for a one year term. One staff member each from the Commonwealth House and Senate Committees for Resources and Development shall be appointed by the Committee Chairmen.

(b) The members of the Council shall receive no compensation, but shall be reimbursed for reasonable and necessary expenses at established Commonwealth government rates for meetings actually attended.

(c) Meetings of the Council shall be open to the public and the opportunity for public participation shall be provided.

Source: PL 3-47, §5.

§1522. Coastal Advisory Council: Functions.

The Coastal Advisory Council has the following functions:

(a) To adopt internal procedures to govern its meetings, provided that the Council shall have no regulatory authority of its own;

(b) To advise the Coastal Resources Management Office on any proposed change to the coastal resources management program or upon any regulations promulgated to implement the coastal resources management program; and

(c) To advise the Coastal Resources Management Office on the application and interpretation of the coastal resources management policies and regulations.

Source: PL 3-47, §6.

Article 3. Regulatory Procedures.

§1531. Coastal Resources Management: Regulatory Powers.

§1532. --Permit Process.

§1531. Coastal Resources Management: Regulatory Powers.

(a) The following agencies are designated as coastal resources management agencies:

- (1) The Department of Natural Resources;
- (2) The Department of Commerce and Labor;
- (3) The Department of Public Works;
- (4) The Division of Environmental Quality in the Department of Public Health and Environmental Services; and
- (5) The Historic Preservation Office in the Department of Community and Cultural Affairs.

(b) The coastal resources management regulations published on August 26, 1980 and applicable on the effective date of this Chapter shall remain in force and effect until and unless modified by the coastal resources management regulatory agencies. Any modification of regulations shall be consistent with the coastal resources management policies in Section 1511.

(c) The coastal resources management regulatory agencies are authorized to jointly establish and operate by regulation a coastal resources management program which provides for, at a minimum, a permit system, exemptions, variances, designation of future areas of particular concern, permitting of major projects outside the areas of particular concern, joint permit procedures, standards and priorities of land and water uses, and public participation.

(d) The coastal resources management regulatory agencies shall regularly review adopted regulations and adopt new regulations as necessary in accordance with the procedures contained in the Administrative Procedure Act (commencing at Section 9101 of Title 1).

(e). Proposed regulations shall be published in the Commonwealth Register. Not less than 30 days, but not more than 45 days after publication, the Coastal Resources Management Office shall, after consideration of any comments received from the public, transmit the regulations in final form to the Legislature for approval, accompanied by such comments. The Legislature shall be deemed to have approved the regulations, unless both Houses of the Legislature, within 20 calendar days after the date of receipt of

the transmittal, pass a joint resolution disapproving of part or all of the regulations.

Source: PL 3-47, §8, modified.

Commission Comment: The coastal resources management regulations referred to in Subdivision (b) were published in 2 Commonwealth Register §48, dated August 26, 1980. The effective date of this Chapter was February 11, 1983. (See PL 3-47, §16.)

§1532. Coastal Resource Management: Permit Process.

(a) Within 60 days from the receipt of any request for review, the coastal resources management regulatory agencies shall review all applications for coastal permits and prepare a joint written decision to grant, deny or condition each coastal permit application in a manner which is timely, non-arbitrary, non-capricious and in full accordance with the policies of this Chapter and any other applicable decision or regulations.

(b) Permit decisions shall comply with the land and water use plans adopted by the Legislature.

(c) Further procedures for the permit process may be provided by regulation.

(d) If any coastal resources management regulatory agencies or the Coastal Resources Management Office is unable to agree on a permit or variance decision, on questions of departmental jurisdiction, or interpretations of the Commonwealth's obligations under this Chapter, the agencies and the Coastal Resources Management Office shall summarize their recommendations in writing, along with any supporting documentation, and submit them to the Governor for a determination of the disagreement.

Source: PL 3-47, §9, modified.

Article 4. Appeal from Regulatory Agency.

§1541. Coastal Resources Management: Appeals Board.

§1542. --Private Actions.

§1543. --Penalties.

§1541. Coastal Resources Management: Appeals Board.

(a) An Appeals Board is established consisting of three persons with interest and knowledge related to coastal resources management and appointed by the Governor with the advice and consent of the Senate. The term of office is three years; provided that of the members first appointed, one member is to be appointed for one year, one member is

to be appointed for two years, and one member is to be appointed for three years.

(b) Any person aggrieved shall have 30 calendar days to appeal the joint decision of the coastal resources management regulatory agencies to the Appeals Board. The Appeals Board shall hear and rule on appeals brought by any persons aggrieved by coastal permit decisions, as prescribed by regulations. The Appeals Board shall make a decision within 30 calendar days of the date the notice of the appeal was received by the Coastal Resources Management Office. If the Board determines that the joint decision of the coastal resources management regulatory agencies is either: (1) clearly erroneous in light of the coastal resources management policies, or (2) in violation of applicable constitutional or statutory provisions, or (3) arbitrary or capricious, or (4) not adopted in accordance with required procedures, the Board shall enter a decision with a statement of the reasons in support of the determination. Within 20 days after the final decision of the Board, a person aggrieved may appeal the decision to the Commonwealth Trial Court. The standard for judicial review is whether the decision is supported by substantial evidence on the record made before the Board, taken as a whole; the facts in question are not subject to trial de novo.

(c) The members of the Board shall receive no compensation but shall be reimbursed for reasonable and necessary expenses at established Commonwealth government rates for meetings actually attended.

Source: PL 3-47, §10.

§1542. Coastal Resources Management: Private Actions.

Any interested person may initiate an action in the Commonwealth Trial Court to compel the performance of the duties specifically imposed by this Chapter upon the Coastal Resources Management Office or any coastal resources management regulatory agency. No action may be brought unless 30 days written notice has been given by the complainant to the Coastal Resources Management Office and any affected coastal resources management regulatory agencies regarding the duties which the complainant alleges have not been performed.

Source: PL 3-47, §11.

§1543. Coastal Resources Management: Penalties.

(a) Any person who materially violates any provision of this Chapter or any regulations or any order issued hereunder, is subject to a civil fine not to exceed \$10,000 dollars per day for each day the violation occurs.

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(b) In addition to the other penalties provided for in this Chapter, a person is guilty of an offense if the person knowingly and willfully commits any act prohibited by this Chapter. Any violation of this Chapter shall be punishable by a fine of not more than \$2,000 or by imprisonment of not more than five years, or by both such fine and imprisonment.

(c) In addition to the foregoing and in order to deter further violations of the provisions of this Chapter or regulations issued under Section 1531, the Attorney General may sue for exemplary damages, the amount of which is left to the discretion of the Court, against any person who intentionally and knowingly violates any provision of this Chapter or those regulations.

(d) Any person who knowingly and willfully makes a false statement, representation, or certification in any application for a coastal permit, or in any record, plan, or other document filed or required to be maintained under this Chapter or regulations issued hereunder, or in any permit or order issued pursuant to this Chapter or regulations issued hereunder; or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required to be maintained pursuant to this Chapter or regulations issued hereunder or any permit or order issued pursuant to this Chapter or regulations issued hereunder is subject to permit revocation or suspension and a civil fine of not more than \$10,000 for each violation.

(e) All fines and fees collected pursuant to this Chapter shall be deposited into the Commonwealth Treasury.

Source: PL 3-47, §12.

**Cooperative Agreement Between
The Department of the Interior and
The State Of Hawaii for
Marine Minerals Joint Planning and Review**

I. Background

The Department of the Interior (DOI) and the State of Hawaii established a task force in January 1984 to study the feasibility and environmental impacts of developing the cobalt-rich manganese crusts on submerged lands offshore Hawaii and Johnston Island.

Under the guidance of the task force, the State of Hawaii under DOI contract completed a preliminary resource assessment and a draft Environmental Impact Statement (EIS) for leasing manganese crust resources. The public comment period on the draft EIS closed in February 1988 and the final EIS is expected to be completed in January 1989.

Building on this cooperative effort, the State of Hawaii and the DOI agree to an approach to promote future State-Federal consultation, planning, and coordination on marine minerals matters to ensure that the State of Hawaii's concerns are fully addressed and national and State interests are served.

This agreement is intended to lead to an effective form of joint management between the State and the DOI in the development and implementation of future manganese crust exploration, leasing, and mining programs. It will also involve the State in technical aspects of all future activities relating to exploration and development of the offshore cobalt-rich manganese crust deposits.

II. Marine Minerals Joint Planning Arrangement

The State of Hawaii and the DOI agree to the following arrangement for joint planning, review, and management of Exclusive Economic Zone (EEZ) marine minerals matters of mutual interest. Establishment of this working arrangement shall in no way diminish any authority of either the Governor or the Secretary of the Interior, nor is it viewed by the State of Hawaii as a substitute for eventual stand-alone marine mining legislation by Congress which would provide to the States not only joint management but also revenue sharing. Thus, the intent of this working arrangement is to facilitate effective cooperation and resolve issues related to EEZ mining in the interim.

A. Title

Hawaii Marine Minerals Joint Planning Arrangement (JPA).

B. Structure and Membership**1. Two committees will comprise the JPA:**

- The Cooperative Steering Committee (CSC) will prepare joint plans, resolve issues, and work directly with DOI and State decision makers on programs and policy issues. The chairmanship of the CSC will rotate annually between State and Federal members.
- The Coordination Committee (CC) will coordinate project activities as well as provide technical support for the CSC on tasks herein described. This committee would be cochaired by a State member as designated by the Governor and a DOI Minerals Management Service (MMS) member as designated by the Director of MMS.

2. CSC Membership

- State of Hawaii (designated by the Governor)
- U.S. DOI (designated by the Secretary)
- The two cochaairs of the Coordination Committee

3. CC Membership**OFFICIAL:**

- State of Hawaii, Department of Business and Economic Development (cochair)
- MMS, Pacific OCS Region (cochair)
- MMS, Office of Strategic and International Minerals
- U.S. Geological Survey
- U.S. Fish and Wildlife Service
- U.S. Bureau of Mines
- Hawaii Office of State Planning
- Hawaii Department of Land and Natural Resources
- Hawaii Department of Health
- University of Hawaii

EX OFFICIO:

- Candidates for ex officio membership will be selected from State, Federal, and private sectors as necessary to ensure that the many interests in the region have the opportunity to participate. "Advisors" to the current task force would all be candidates for ex-officio membership.

CC STAFF SUPPORT:

- Staff to fulfill this role is to be nominated by the State and concurred in by both committees of the JPA.

III. Objectives

To resolve EEZ marine mining issues of interest to the State of Hawaii and the DOI, to develop coordinated program and policy positions,

to develop coordinated legislative and regulatory initiatives, and to oversee activities related to the leasing and development of mineral resources offshore of Hawaii and Johnston Island.

IV. Tasks

In furtherance of these objectives, but with the understanding that ultimate issues of jurisdiction remain to be resolved, and that this arrangement is subject to and in no way diminishes any authority of either the Governor or the Secretary of the Interior, the JPA will:

A. Action, Procedural Planning, and Review

1. Resolve issues regarding the size, timing, and location of any proposed lease sale.
2. Resolve issues regarding the appropriate terms, conditions, and stipulations for leasing.
3. Resolve issues regarding environmental problems and concerns.
4. Review exploration, development, and production plans and propose appropriate modifications after consultation with the concerned industrial group(s).
5. Participate in shipboard inspections and review violations, with inspections contracted to the State where feasible.

B. Research and Study Needs

Identify, assess, and recommend research and studies dedicated to mineral resource evaluation and to the formulation of lease stipulations for environmental impact assessment and mitigation. Such formal JPA assessments and recommendations will be given a high priority in the formulation of MMS and State budgets and programmatic initiatives.

C. Site-specific EIS's and Environmental Assessments

Design, supervise and review all site-specific environmental assessments. Review and, where possible, resolve issues related to onshore impacts. Supervise and review any necessary environmental impact documentation to include consideration of mitigation measures.

D. Information Transfer and Public Education

Devise a public education program to inform State residents of developments in the marine mining program. This would include forums for the presentation of exploration, development, and production plans and discussions of alternative energy source options for onshore minerals processing. It would also include periodic public meetings to review coordinated activities and workshops and symposia to review the scope and results of studies.

V. Funding and Staff Support

The MMS will provide necessary funding for staff support of the JPA. Each party will assume responsibility for salary and travel expenses of its members.

VI. Triannual Review and Dissolution Procedures

At the end of every 3-year period, the CSC will reassess the goals and objectives of the JPA and make recommendations to the Governor and the Secretary of the Interior concerning the need for its continuance.

Dissolution of the JPA may occur with 30 days' notice from the Governor or the Secretary of the Interior. The notice shall be provided to all JPA members and shall explain the reason for the decision.

/s/John Waihee
Governor, State of Hawaii
December 28, 1988

/s/Donald Paul Hodel
Secretary of the Interior
December 29, 1988



WESTERN
PACIFIC
REGIONAL
FISHERY
MANAGEMENT
COUNCIL

TESTIMONY
OF WILLIAM W. PATY JR.
CHAIRMAN, WESTERN PACIFIC FISHERY MANAGEMENT COUNCIL
BEFORE THE U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON MERCHANT MARINE AND FISHERIES

Honolulu, Hawaii
January 8, 1989

Mr. Chairman and members of the committee, I am pleased to speak to you today as Chairman of the Western Pacific Regional Fishery Management Council. The jurisdiction of the Council encompasses 1.5 million square miles, or about 49 percent of the entire US EEZ. I welcome you to the eastern edge of the Western Pacific and appreciate the opportunity to share with you some of the problems and challenges facing the Council and the American flag Pacific islands today as we strive for effective management of our greatest ocean resource - the fisheries of the Western Pacific.

Over the next two days you will hear a number of speakers testifying on diverse subjects but based on one common premise: that the ocean is the Pacific islanders heritage. The impact of the ocean environment on island life cannot be overemphasized. While ocean minerals may yield an economic return in the future, the economically most important ocean resource for the Pacific islands has been and continues to be the fishery resource. Not only do the fishery resources provide an economic return to the American-flag islands throughout the Western Pacific, but they play an important cultural and social role in the lives of Pacific islanders. There are three major problems hampering the Council's and associated federal, state and territorial agencies efforts to manage these economically, socially, and culturally important resources. These are: (1) lack of management jurisdiction over all pelagic fishery resources, (2) lack of data on which to base management decisions, and (3) insufficient funds. I would like now to discuss these problems in the context of some of the issues facing the Council.

Exclusion of Tuna From the Magnuson Act

Data Needs for Regional and International Management

We strongly support the Committee's actions in adopting the Saiki amendment to the Committee's proposed reauthorization legislation. Inclusion of tuna under the Magnuson Act is imperative for effective management of all pelagic species.

Pelagic species dominate total landings of marine fish in the western Pacific region. More than three quarters of the total landings in American-flag Pacific islands areas are pelagic species. Tuna alone accounts for about two-thirds of the commercial catch of all species in the EEZ of American-flag islands in the Pacific.

The exclusion of tuna from the Magnuson Act severely hampers the ability to obtain data needed for management of all pelagic species. Currently, billfish, ocean sharks, mahimahi and wahoo are covered under the Magnuson Act. These species make extensive migrations and are frequently caught in conjunction with tuna fisheries. The "hands off" policy concerning tuna makes collecting data on other bycatch species under the Council's jurisdiction extremely difficult. Inclusion of tuna would allow the Council to develop data collection programs covering all species of migratory fish which would be useful for both regional and international management purposes.

Management regimes, whether regional or international, are dependent on data on which to base decisions. The Council agrees that biological management of tuna throughout its range will require international cooperation. Creating an international management regime is a lengthy process which requires coordination of national and regional management and data collection programs.

And we must begin now. Phillip Muller, director of the Forum Fisheries Agency recently addressed a Pacific Islands Development Program workshop on "Marine Policy Development and Management for the Pacific Islands Region. In his address, he emphasized the need for tuna management for both economic reasons and for protection of the resource itself, citing emerging signs of overfishing for yellowfin and bigeye tuna. He further stressed the need for regional cooperation and coordination of national and regional programs.

In recent years the US-Canada Pacific Salmon Treaty was signed, creating an institutional structure to allow international management of a migratory stock. All parties, which include Indian tribes in addition to the state and federal governments of the two countries, believe that this treaty is a step forward in the effective management of salmon stocks.

However, this Treaty and other ongoing international management negotiations would not have been possible without the extensive data base which had been collected through unilateral management of the resources within the respective EEZs for many years. Prior to the Treaty, US management measures did not protect the stocks from overexploitation while in Canadian waters and visa versa. Nonetheless, there is unanimous agreement that had there been no unilateral management within the EEZs, the resource would have been in far worse shape before international management was possible.

Eventual international management will require catch data throughout the range of the stocks. Data exchange and international cooperation is facilitated by all parties having something to offer. Recently, the Council sent an inquiry to the South Pacific Commission regarding the availability of billfish bycatch data and the possibility of a reciprocal data exchange arrangement between SPC and WPRFMC. The response from the acting Secretary General, Jon Jonassen, was generally encouraging but recognized the sensitivity of such an arrangement. He legitimately requested a summary of our present data holdings so that the member nations could assess how mutually beneficial such an exchange might be. Inclusion of tuna under the Magnuson Act would allow for a much expanded data collection program which would provide greater incentive for international cooperation.

International cooperation evolves out of bilateral and regional cooperation. Inclusion of tuna as proposed by the Committee's reauthorization legislation will provide us with tools of data collection capability and management authority which can be used to build international management regimes. The alternative approach of creating a national Highly Migratory Species Council as suggested in a proposal by the Senate's National Ocean Policy Study staff would undermine our efforts to move in this direction. Instead, this proposal would create a new institution to do the job of managing pelagic species currently under the jurisdiction of regional councils and still give no real management authority over tuna. It is our belief that such a proposal undermines the concept of regional management and we urge you to encourage your colleagues in the Senate to embrace your more productive, straightforward approach of including tuna under the Magnuson Act.

Gear Conflicts and Catch Competition

Fisheries management has a number of objectives, including the conservation of the biological stocks, optimization of yields to domestic fisheries, moderation of fishery interactions and allocation of resources among user groups. While the first objective of biological conservation requires international cooperation to be effective throughout the range of western

Pacific pelagic stocks, other objectives could be addressed if all species were under Council jurisdiction.

The following example is illustrative of gear conflicts and catch competition problems that require both data for decision making and regulatory authority to resolve:

During the past year in Hawaii there have been as series of gear conflicts between local small boat fishermen and tuna longliners who have arrived from the Gulf of Mexico. Due to the rapid expansion of the Gulf of Mexico tuna longline fishery, these fishermen have "migrated" to Hawaiian fishing grounds. Tensions mounted last summer when the longliners began setting their gear in areas heavily used by small boat fishermen. While the particular crisis was diffused by oral agreements by the longliners not to set their gear near the Fish Aggregating Devices (FADs) or within 20 miles of shore, it will only be a matter of time before a similar situation occurs.

As mainland fisheries continue to become overcapitalized, vessels will be looking for other alternatives throughout the western Pacific and such gear conflict and fishery interaction problems will continue to increase throughout the EEZs of the American flag Pacific islands. The exclusion of tuna from the Magnuson Act makes both the gathering of data to analyze the problem and the use of regulatory measures to resolve such issues exceedingly difficult.

Transshipment Issue

Triggered by a tuna transshipment operation in Honolulu during December 1988 and January 1989, concerns over the US Customs interpretation of rules relating to the transshipment and transportation of tuna have arisen. The Honolulu transshipment operations involved transferring tuna caught by a Japanese longline vessel on the high seas to a US documented vessel within the US EEZ but outside the 3 mile territorial sea.

The General Counsel of the Department of Commerce has commented that the U.S. Custom Service's attempt to regulate fish transshipment operations through interpretation of vessel documentation legislation is inappropriate. The Council has concurred with the Department of Commerce's conclusion that matters of fishery policy should best be decided by the Regional Councils and the Department of Commerce through the process laid out in the Magnuson Act.

The issue is complex and the impacts, both positive and negative, vary between island areas. For example, while only one transshipment operation took place in Hawaii in 1988, about 7,000 metric tons of chilled fish were transshipped from 1,023 vessel landings in Guam. These impacts will need to be fully assessed

on an area by area basis prior to reaching any policy decision. More information is needed on the impacts on price structures and markets (local and international), the net benefits and local income impacts of both fishing industry and supply services, and on fisheries interactions/ catch competition effects.

Fishing Rights of Indigenous Island People

The Magnuson Act provides a legal basis for granting preferential fishing rights for native American Indians under existing treaty obligations. However, no such treaties regarding fishing were made with respect to native Hawaiian, American Samoan, and Chamorro fishing rights. Nonetheless, the Magnuson Act permits the establishment of preferential fishing rights for indigenous island people based on historical fishing practices in, and dependence on, a fishery in question and the cultural and social framework relevant to that fishery.

The challenge facing the Council is to establish a set of fundamental elements that would provide a legal basis for granting preferential fishing rights to indigenous island people while meshing these rights with the fisheries conservation and management objectives of the Magnuson Act. As a first step, the Council contracted four studies to investigate the evidence available to support development of a system of preferential rights for the indigenous people of American Samoa, the Commonwealth of the Northern Marianas Islands, Guam, and Hawaii.

Drift Gillnet Fishing

Since 1987, the Western Pacific Council has banned the commercial use of both foreign and domestic drift gillnets in the U.S. EEZ of the Western Pacific Region. We applaud your efforts as a committee to extend such a ban on drift gillnets over 1.5 miles in length throughout the entire U.S. EEZ as part of your proposed Magnuson reauthorization legislation. The Council is presently investigating strengthening our regulations by prohibiting the possession of drift gillnet gear within the EEZ.

A number of events have occurred since the drafting of that bill with respect to international efforts to curb drift gillnet fishing. The most recent of these is the unanimous approval by the General Assembly of the United Nations of a resolution calling for an end to driftnet fishing in the South Pacific in 1991 and a global ban on the use of this gear a year later. These initiatives are of special interest to fishermen in the American flag Pacific islands since high seas drift gillnet fisheries capture many of the same species (e.g. marlin, billfish, and tuna) sought by American fishermen. Time is of the essence in working toward agreement on a drift gillnet ban. The best estimates of scientists predict that if the South Pacific

albacore gillnet fishery continued at 1989 levels, the fishery could collapse in 3 years.

Geographic and Functional Limits in the Territorial Sea

There currently exists some controversy over the implications of Presidential Proclamation #5928 (December 28, 1988) extending the U.S. territorial sea from 3 to 12 miles. In 1976 with the passage of the Magnuson Act, Congress assigned specific fisheries management responsibilities to the Regional Councils and the Federal Government by charging them with establishing effective management for fisheries resources harvested predominately in the 200 mile EEZ of the United States. The Magnuson Act essentially left unchanged the State's responsibilities for managing marine fisheries within their waters. The success of the Magnuson Act to date has depended upon effective state/federal interaction because much of the fisheries resources occur in both federal and state waters. The regional council process has worked very well regarding joint state/federal management of our fisheries resources. This joint process must continue to assure the long-term viability of our fisheries resources and in our opinion should not be impacted by the extension of the territorial sea.

Fisheries Law Enforcement

Effective enforcement of federal fishery regulations is impossible with the meager budget presently available to the 14th Coast Guard District. The U.S. EEZ in the Western Pacific Region encompasses approximately 1.5 million square miles (49 percent of the entire U.S. EEZ) and the components of the insular Pacific EEZ are separated by thousands of miles. At the same time, the EEZ surrounding the American flag islands share common boundaries with the Cook Islands, Japan, Kiribati, the Federated States of Micronesia, the Republic of the Marshall Islands, Niue, Tokelau, Tonga and Western Samoa. Domestic fisheries have been expanding but the assurance of productive fisheries in the future can be undermined by illegal fishing activities. There are an ever increasing number of vessels operating in the waters adjacent to our EEZs. Over 870 tuna vessels were active in the South Pacific Commission's statistical areas in 1988, two thirds of which were longline vessels which take a significant bycatch of billfish. There were 161 tuna longline vessels based in Guam in FY 1988. Increasing fishery surveillance throughout this vast region is vital if we are to protect the marine resource that are so crucial to the economies and lifestyles of the people of our Pacific islands.

The response to our request to the Secretary of Transportation for a three fold increase in funding for enforcement in the region is not encouraging. While there has been a directive by the Commandant of the Coast Guard to place a

greater emphasis on fisheries, the number of ships and planes available are not sufficient for adequate monitoring and surveillance. Due to renovation efforts the number of cutters will actually decrease until 1992. While some enhancement of aircraft sensors is currently budgeted, the response from the Department of Transportation clearly indicates that current funding levels will fall far short of providing an adequate level of enforcement.

Recognizing the lack of at-sea surveillance support, the Council has also begun networking with surrounding countries to exchange vessel permit and landing information. Hopefully, this paper trail will aid in tracking vessels activity.

Inadequacy of Funding Levels

Regional Councils Funding

Since 1980, funds appropriated for the Regional Councils have remained nearly constant but management responsibilities have been ever-increasing. Programmatic funds, which used to account for approximately 27 percent of the annual Councils' budgets, have become non-existent. In our region, these funds played an important part in the collection of management information through short-term studies in cooperation with state agencies and universities. As a result of static budgets, all Councils have had to adjust their activities. This has resulted in fewer meetings, in fewer locations, of the Councils and their advisory groups, as well as fewer public hearings. This has greatly diminished public involvement in the Councils' FMP development process.

The fisheries managed under the Council's FMPs are continually evolving and the need for better monitoring and assessment of the stocks and the fisheries on these stocks is ever increasing. The data needs related to the issues I have discussed with you today are but few of those facing the Council. The demands for information on which to base decisions keep increasing but the funds to meet these demands do not.

For 1990, the total Regional Councils' budget request was about \$9 million. We have been informed that \$5.5 million of that requested amount is to be released with some additional amount "subject to availability" to be allocated later. How much is unclear but the maximum additional will be \$2.7 million. As I have already stated, demands on Councils continue to grow and without our requested budgeted we find it difficult to do our job. We ask that you support regional fishery management by giving us the money we need to do our job.

Status of other fisheries related research funds

Two other primary sources of funds which the state and territories can tap for data collection and analysis programs essential for joint management of the fisheries resources are the Wallop-Breaux Act (Dingell/Johnson) funds and the Interjurisdictional Fisheries Act (IFA) monies. The Wallop-Breaux fund apportionments have averaged about \$1.7 million for Hawaii and about \$600,000 each for American Samoa, CNMI, and Guam. In the case of the territories, this money has contributed to an expanded creel census sampling program which provides valuable catch and effort data. However, Wallop-Breaux funds can only be used for recreational fisheries projects, including data collection. The Interjurisdictional Fisheries Act (IFA) provides funds for research related to commercial fisheries occurring in both state (territorial) and federal waters. During FY 88-89 Hawaii received just under \$30,000 and the CNMI about \$52,000, while American Samoa and Guam received nothing. The dollars obligated for FY 89-90 have increased (Hawaii, \$38,370; American Samoa, \$97,690; CNMI \$58,785 and Guam \$19,185) but still fall far short of providing the necessary assistance for effective monitoring, management and development of these interjurisdictional fisheries.

Further, the IFA abolished the Commercial Fisheries Research and Development Act and excluded the freely associated states from obtaining IFA monies. At the same time, the Compact of Free Association stated the U.S. would provide technical advice and services. While fisheries are one of the Pacific island freely associated states most important resources no additional funds were allocated to NMFS to carry out this charge. Instead, the agency was told to take it out of its current budget, thus increasing competition for funds allocated for research within the western Pacific.

WPacFin and PacFin Programs

The fishery management programs on the west coast and in the Western Pacific rely heavily on the Pacific and Western Pacific Fisheries Information Networks (FIN) for information on which to base management decisions. The FIN programs are fishery data collection, analysis and monitoring systems which build on existing state and territory programs to meet federal management obligations. Last year the total PacFIN and WPacFIN request was \$3 million. While we appreciate the \$1 million Congress did appropriate for FY 90 it falls far short of the funds needed. We are requesting \$3 million again for FY 91 and 92 and hope that you will be able to see your way clear to fund this very important program at the requested level.

Fisheries Development - The Saltonstall-Kennedy Act

Unlike many of the mainland fisheries, the domestic fisheries in the western Pacific are still developing. Optimal use of the resources by domestic fishermen requires therefore not only management and conservation efforts but also a commitment to fishery development. The S/K Act calls for 30 percent of the gross receipts from duties collected on imports of fish and fish products to be transferred from the Department of Agriculture to the Department of Commerce (NOAA). The current trends in appropriation of these funds are disturbing. Of a total transfer of \$33.6 million in 1984, \$10 million was appropriated for the S/K program of fisheries research and development grants. The remainder went to "offset" appropriations requirements of the Operations, Research and Facilities (ORF) account, NOAA's major appropriation. In 1990, only \$4.8 million has been appropriated for the S/K program out of a total \$61.9 million transferred. The remainder of this transfer has been used to pay for direct appropriations by Congress to special interest line items in NOAA's budget. This micro-management by Congress is of considerable concern as it circumvents review and prioritization processes set up by the S/K programs and within NOAA.

In 1984, 30 percent of the transferred funds, or \$10 million was appropriated for the S/K program. If the S/K program was even level funded at the 1984 level of \$10 million (one sixth of the total 1990 transfer), its budget would be twice that appropriated in 1990.

Summary

The fishery management challenges and opportunities faced by the American-flag islands in the Western Pacific differ somewhat from those of the mainland due to our location and the special role fisheries plays in the economic, social and cultural lives of Pacific islanders. We share EEZ boundaries and fish stocks with 9 freely associated states and independent nations, and therefore we must work cooperatively on a regional basis. The vast distances between fishing grounds limits the mobility of local fishermen, making issues of gear conflicts and catch competition more significant. Fisheries surveillance and enforcement needs are complicated by the proximity of other nations' EEZs and the distances between EEZs under the Council's jurisdiction. Issues such as indigenous rights and tuna transshipment call for studies requiring currently non-existent programmatic funds.

The challenges and opportunities are there. What we need is your support in obtaining the resources and jurisdiction authority necessary to meet them.



Commonwealth of the Northern Mariana Islands

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Capitol Hill, Saipan, MP 96950

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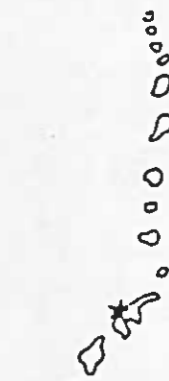
(670) 322-5092

(670) 322-5093

Telex: 783-622 Gov. NMI

Telefax: (670) 322-5096

12 JUN 1990

The Honorable Walter B. Jones
Chairman, Committee on Merchant
Marine and Fisheries
United States Congress
House of Representatives
1334 Longworth House Office Bldg.
Washington, DC 20515-6230

Dear Chairman Jones:

Re: Proposed Amendment of H.R. 1405, the Territorial Sea
Extension Act.

In 1975, the people of the Northern Mariana Islands agreed to enter into political union with the United States by approving the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, approved by U.S. Public Law 94-241, 90 Stat. 263 (1976). The first constitutional government of the Northern Mariana Islands took office pursuant to the Covenant in January 1978. In 1986, the Covenant was fully implemented, the Northern Mariana Islands officially assuming the political status of a United States Commonwealth, and the people of the Northern Mariana Islands acquiring United States citizenship.

Title to the submerged lands underlying the territorial sea of the Northern Mariana Islands, previously vested in the Trust Territory of the Pacific Islands, passed to the Commonwealth on termination of the United Nations trusteeship pursuant to Section 802 of the Covenant. One of the first acts taken by the Northern Mariana Islands under the Covenant was to formally establish its twelve-mile territorial sea. Northern Mariana Islands Public Law 2-7, Sec. 8 (1980), codified at 2 Commonwealth Code Sec. 1123.

Section 902 of the Covenant provides for regular consultations between special representatives appointed by the President and by the Governor of the Northern Mariana Islands on issues affecting the relationship between the United States and the Commonwealth. In March 1987, during the Third Round of Consultations, the Commonwealth presented a position paper on Ocean Rights and Resources, proposing a means of clarifying the Commonwealth's rights and responsibilities in the ocean waters surrounding the Northern Mariana Islands, including the territorial sea.

On April 12, 1990, during the Eighth Round of Consultations, the Special Representatives of the President and our Governor agreed in principle to a basis for resolving the issue of Ocean Rights and Resources. The Special Representatives agreed that the Commonwealth's "sovereign right to ownership and jurisdiction of the waters and seabed surrounding the Northern Mariana Islands" should be recognized and confirmed by the United States. Under this proposal, "the Commonwealth shall have the rights of a coastal state in the territorial sea, ... the exclusive economic zone, and the continental shelf as provided in the United Nations Convention on the Law of the Sea." The agreement provides that the exercise of these rights "shall be done in cooperation with the United States and subject to the responsibility and authority of the United States with respect to foreign affairs and defense under Section 104 of the Covenant."

These agreements are consistent with international law regarding the rights of insular areas and freely associated states. They conform to Resolution III annexed to the United Nations Convention on the Law of the Sea, which provides that "in the case of a territory whose people have not attained full independence or other self-governing status recognized by the United Nations . . . provisions concerning rights and interests under the Convention shall be implemented for the benefit of the people of the territory with a view to promoting their well-being and development."

We respectfully offer the enclosed proposed amendments to H.R. 1405. The amendments would tailor the bill to meet the needs of the Northern Mariana Islands consistent with the policies we have discussed in our Consultations pursuant to Covenant Section 902. We invite your consideration of the proposed amendments.

Sincerely,

BENJAMIN T. MANGLONA
Lt. Governor/Chairman, 902 Consultations

Enclosure

Amendment to H.R. 1405

Offered by _____

(page and line references are to H.R. 1405 as introduced
March 14, 1989)

1. Page 2, line 18: amend Section 4 by striking "the Commonwealth of the Northern Mariana Islands," immediately before the "and the overseas territories and possessions of the United States".

2. Page 2, line 22: add a new Section 5 to read as follows:

"Sec. 5 COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
AUTHORITY.

(a) Northern Mariana Islands Territorial Sea Recognized. The sovereignty and jurisdiction of the Commonwealth of the Northern Mariana Islands in its territorial sea is hereby recognized and confirmed. The territorial sea of the Commonwealth of the Northern Mariana Islands extends twelve nautical miles seaward from the archipelagic baselines of the Northern Mariana Islands as provided in Commonwealth Public Law 2-7.

(b) Northern Mariana Islands Authority in the Territorial Sea. (1) The Commonwealth of the Northern Mariana Islands' authority in the territorial sea under this section includes all the rights of an archipelagic coastal State recognized under the United Nations Convention on the Law of the Sea and other international law.

(2) The Northern Mariana Islands may, with the approval of and in cooperation with the United States, participate in regional and international organizations which are concerned with international regulation of the rights set out in this section, and may enter into treaties and other international agreements related to the harvest, conservation, management, exploration and exploitation of the living and non-living resources from the sea, seabed or subsoil in the territorial sea.

(c) Federal Authority. The authority of any Federal agency in the Commonwealth of the Northern Mariana Islands pursuant to statute shall not be extended beyond its previous geographical limits by the extension of the territorial sea of the United States except with the consent of the Government of the United States and the Government of the Northern Mariana Islands."

WALTER B. JONES, NORTH CAROLINA, CHAIRMAN

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PORTER J. GOSS, FLORIDA
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U.S. House of Representatives
Committee on
Merchant Marine and Fisheries

Room 1334, Longworth House Office Building
Washington, DC 20515-6230

June 22, 1990

The Honorable Benjamin T. Manglona
Lieutenant Governor
Commonwealth of the Northern Mariana Islands
Capitol Hill, Saipan, MP 96950

Dear Mr. Manglona:

Thank you for your letter suggesting an amendment to H.R. 1405, the "Territorial Sea Extension Act of 1989."

The Oceanography and Great Lakes Subcommittee held a hearing in March, 1989 on the President's Proclamation of a 12-mile territorial sea for the United States. H.R. 1405 was considered as part of that hearing. At present, we have no plans to report H.R. 1405 or a similar bill from the Merchant Marine and Fisheries Committee.

Your comments request that the Congress recognize the Commonwealth's claim to a 12-mile territorial sea. At present, most U.S. states and territories (with the exception of Puerto Rico, Texas, and the Gulf Coast of Florida) only have jurisdiction over submerged lands and resources out to 3 miles. In our opinion, the Presidential Proclamation has not changed this grant of authority. At such time as the Congress considers extending the territorial sea of other states and territories to 12 miles, we will give every consideration to the Commonwealth's request for a similar extension.

Thank you again for providing your views on H.R. 1405.

With warm personal regards, I am

Sincerely,

Walter B. Jones

Walter B. Jones
Chairman

Rec 6/28/90
Copy to Gov. Jim B.
Eric Smith &
not. person
D

WALTER B. JONES, NORTH CAROLINA, CHAIRMAN

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PORTER J. GOSS, FLORIDA
ARTHUR RAVENEL, JR., SOUTH CAROLINA

U.S. House of Representatives
Committee on
Merchant Marine and Fisheries
Room 1334, Longworth House Office Building
Washington, DC 20515-6230

June 29, 1990

The Honorable Benjamin T. Manglona
Lieutenant Governor
Commonwealth of the
Northern Mariana Islands
Office of the Governor
Capital Hill
Saipan, MP 96950

Dear Lt. Governor Manglona:

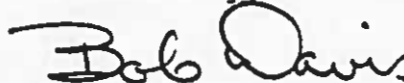
Thank you for your letter regarding H.R. 1405, the Terri-
torial Sea Extension Act.

This bill was the subject of hearings before the Subcommittee on Oceanography and Great Lakes in March of 1989. Testimony was heard at that hearing from the State Department, as well as other legal and foreign policy experts. Although several witnesses indicated their support for a measure clarifying the effect of President Reagan's Proclamation, opposition was voiced from several coastal states.

Given the short time remaining in the 101st Congress, it is unlikely that action will be taken on this legislation. The conflicts which were purported to have been raised by the Proclamation have not materialized, and the press to clear up its legal effect has apparently lessened.

I appreciate the concerns voiced by the Commonwealth and have instructed my staff to retain your letter and proposed amendment if legislation should be considered this Congress or in the future.

Sincerely,



ROBERT W. DAVIS
Republican Vice Chairman
Committee on Merchant Marine
and Fisheries

RWD:lpn

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Rec 7/11/90 Eric
Copy to Gov. Tamm
Smith, Tamm
Bancroft & Pearson
not [unclear]

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 PHILIP A. SHARP, INDIANA
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COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

July 20, 1990

STANLEY SCOVILLE
STAFF DIRECTOR
AND COUNSEL

ROY JONES
ASSOCIATE STAFF DIRECTOR
AND COUNSEL

LEE MCELVAIN
GENERAL COUNSEL

RICHARD AGNEW
CHIEF MINORITY COUNSEL

The Honorable Benjamin T. Manglona
Lieutenant Governor of the Northern
Mariana Islands
Capitol Hill
Saipan, MP 96950

Dear Governor Manglona:

I write in response to your recent letter seeking an amendment to the Territorial Sea Extension Act introduced in 1989 by Representative Norman Shumway, a Republican from California.

The bill, H.R. 1405, was drafted in order to affirm the proclamation issued by the President in 1988 extending the territorial sea from 3 to 12 miles. Additionally, it was thought that the bill could clarify any misunderstandings regarding the intent of the proclamation on U. S. domestic law.

While the sole purpose for issuing the proclamation was national security, specifically in order to keep the Soviet intelligence gathering vessels farther away from the U. S. coastline, some federal and state agencies thought it was meant to have an impact on the numerous laws which make reference to the territorial sea. Representative Shumway hoped that his bill would make it clear that this was not the case.

Although one hearing was held on the bill by the Merchant Marine and Fisheries Committee's Subcommittee on Oceanography in March of last year, my Subcommittee staff has been informed that no further action is planned; indeed, that the leadership of that subcommittee has decided that any problems regarding the intent of the proclamation, would be dealt with on an individual basis.

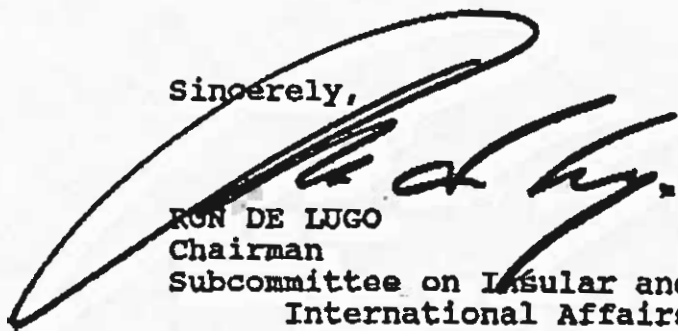
I would, therefore, suggest that you consider continuing to pursue your goals through the 902 negotiations.

Rec 8/27/90 Tim B
Copy to Gov. Res.
AG 1 Nat Res.
CWR

The Honorable Benjamin T. Manglona
July 20, 1990
Page 2

Warmest regards.

Sincerely,

A large, stylized handwritten signature in black ink, likely belonging to Ron de Lugo, is written over the typed name and title.

RON DE LUGO
Chairman
Subcommittee on Insular and
International Affairs



Commonwealth of the Northern Mariana Islands

Office of the Governor

Capitol Hill, Saipan, MP 96950

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22 JUN 1990

The Honorable Walter B. Jones
Chairman, Committee on Merchant
Marine and Fisheries
United States Congress
House of Representatives
1334 Longworth House Office Bldg.
Washington, DC 20515-6230

Dear Chairman Jones:

Re: Proposed Amendment of H.R. 2440, the National Seabed Hard Minerals Act.

In 1975, the people of the Northern Mariana Islands agreed to enter into political union with the United States by approving the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, approved by U.S. Public Law 94-241, 90 Stat. 263 (1976). The first constitutional government of the Northern Mariana Islands took office pursuant to the Covenant in January 1978. In 1986, the Covenant was fully implemented, the Northern Mariana Islands officially assuming the political status of a United States Commonwealth, and the people of the Northern Mariana Islands acquiring United States citizenship.

Section 902 of the Covenant provides for regular consultations between special representatives appointed by the President and by the Governor of the Northern Mariana Islands on issues affecting the relationship between the United States and the Commonwealth. In March 1987, during the Third Round of Consultations, the Commonwealth presented a position paper on Ocean Rights and Resources, proposing a means of clarifying the Commonwealth's rights and responsibilities in the ocean waters surrounding the Northern Mariana Islands, including the exclusive economic zone.

copy to AG & Nat RL

On April 12, 1990, during the Eighth Round of Consultations, the Special Representatives of the President and the Governor agreed in principle to a basis for resolving the issue of Ocean Rights and Resources. The Special Representatives agreed that the Commonwealth's "sovereign right to ownership and jurisdiction of the waters and seabed surrounding the Northern Mariana Islands" should be recognized and confirmed by the United States.[1] Under this proposal, "the Commonwealth shall have the rights of a coastal state in the territorial sea . . . the exclusive economic zone, and the continental shelf as provided in the United Nations Convention on the Law of the Sea." the agreement provides that the exercise of these rights "shall be done in cooperation with the United States and subject to the responsibility and authority of the United States with respect to foreign affairs and defense under Section 104 of the Covenant."

These agreements are consistent with international law regarding the rights of insular territories and freely associated states in the exclusive economic zone: "[T]he general rule is that metropolitan powers with integrated overseas territories or associated states have given the population of the overseas territory full and equal representation in the national parliament and government or have given the local government of the overseas territory jurisdiction over the mineral resources and fisheries of the exclusive economic zone." [2] (The Commonwealth of the Northern Mariana Islands, of course, does not have full and equal representation in the Congress of the United States.) They also conform to Resolution III annexed to the United Nations Convention on the Law of the Sea, which provides that "in the case of a territory whose people have not attained full independence or other self-governing status recognized by the United Nations . . . provisions concerning rights and interests under the Convention shall be implemented for the benefit of the people of the territory with a view to promoting their well-being and development." [3]

H.R. 2440, the National Seabed Hard Minerals Act, is of great importance to the Nation. H.R. 2440 would establish a national policy for exploration and commercial recovery of mineral resources in the exclusive economic zone. For the coastal states of the Union, the bill would increase and clarify the role of the

[1] Memorandum of Agreement on Ocean Rights and Resources, April 12, 1990, attached as Appendix 2 of this letter.

[2] Franck, T., Control of Sea Resources by Semi-Autonomous States: Prevailing Legal Relationships between Metropolitan Governments and their Overseas Commonwealths, Associated States, and Self-governing Dependencies 5 (Carnegie Endowment for International Peace, 1978) (emphasis in original).

[3] While the Commonwealth is guaranteed local self-government by Sections 103 and 105, it does not have a self-governing status recognized by the United Nations. The United Nations defines

state governments in the leasing process and provide for state participation in revenues generated by the leasing of mining sites in the exclusive economic zone.

Some supporters of H.R. 2440 argue that it would apply to the Commonwealth and to U.S. Territories in the Pacific, but the bill provides little in either management voice or revenue to our islands. The need for federal control of the entire exclusive economic zone is justified by an asserted need for "one-stop shopping" by those interested in exploring for, and exploiting, the mineral deposits of the United States seabed.

The Commonwealth Government favors development of the seabed mining industry. The Commonwealth may wish to encourage this industry to prospect in Commonwealth waters. It should also recognize that the United States does have a legitimate interest in how our exclusive economic zone is administered, from the standpoint of national security and foreign affairs. These interests, however, do not justify approaching the great Pacific ocean as one vast convenience store. The proprietary and beneficial rights of the United States citizens of the Pacific must be preserved for future generations of islanders.

Section 103(3) of H.R. 2440 includes the Commonwealth of the Northern Mariana Islands as a coastal state. The bill would assert, for the first time, federal jurisdiction over the seabed hard minerals beneath the exclusive economic zone surrounding the Northern Mariana Islands. Thus, instead of increasing the role of the Commonwealth in management of the hard minerals resources in the seabed surrounding its coast, as would be the result of the bill for the other coastal states, the bill purports to divest the Commonwealth of the Northern Mariana Islands and its people of existing rights in these resources. We oppose this result.

Although we recognize that section 316 of the bill contains revenue-sharing provisions, our Commonwealth--with its small population, relatively finite coastline, and lack of mineral processing facilities--is unlikely to derive significant revenues under these provisions.

self-governing status as: a) Emergence as a sovereign independent State; b) Free Association with an independent State; or c) Integration with an independent State. U.N. General Assembly Res. 1541, Annex, Principle VI (1960). The Commonwealth is not an independent State. It is not freely associated with the United because it does not retain the capacity to unilaterally modify its status. Id., Principle VII(a). It is not integrated because its citizens do not have equal rights and opportunities for representation and effective participation at all levels in the executive, legislative and judicial organs of the Federal

Consistent with our agreements in the Covenant Section 902 Consultations, we offer the enclosed amendments to H.R. 2440 that would tailor the bill to meet the needs of the people of the Northern Mariana Islands. The draft amendment would:

- * recognize and confirm the Commonwealth's ownership and jurisdiction of the natural resources of the territorial sea and the exclusive economic zone surrounding the Northern Mariana Islands.

- * provide that the Commonwealth take the primary role in administering the exclusive economic zone, subject to appropriate federal oversight in the areas of foreign affairs and defense.

- * provide for cooperation conservation and management of hard minerals in the Northern Mariana Islands' exclusive economic zone by agreement between the Government of the United States and the Government of the Northern Mariana Islands.

- * authorize the Northern Mariana Islands to participate in regional and international organizations which are concerned with hard minerals management in the Pacific region.

A primary role for the Commonwealth in seabed hard minerals management in the exclusive economic zone is appropriate to the political status relationship between the United States and the Northern Mariana Islands under the Covenant. It also conforms to the United Nations Convention on the Law of the Sea. We invite your consideration of these proposed amendments.

Sincerely,

BENJAMIN T. MANGLONA
Lt. Governor/Chairman, 902 Consultations

Enclosures

WALTER D. JONES, NORTHERN MARIANA CHAIRMAN

CHIEF CLERK
BARBARA L. CAVASMINORITY STAFF DIRECTOR
GEORGE D. FENCEMINORITY CHIEF COUNSEL
DUNCAN C. SMITH IIIU.S. House of Representatives
Committee on

Merchant Marine and Fisheries

Room 1334, Longworth House Office Building
Washington, DC 20515-6230

July 23, 1990

The Honorable Benjamin T. Manglona
Lieutenant Governor
Commonwealth of the Northern Mariana Islands
Capitol Hill, Saipan, MP 96950

Dear Mr. Manglona:

Thank you for your comments on H.R. 2440, the "National Seabed Hard Minerals Act of 1989".

The Oceanography and Great Lakes Subcommittee of the Merchant Marine and Fisheries Committee held a hearing on this bill in October 1989. At present, the Subcommittee has no plans to markup or report this bill.

With respect to your comments, the bill provides equal treatment between the Commonwealth of the Northern Mariana Islands and all other United States territories and possessions, including the Commonwealth of Puerto Rico. This treatment reflects the existing legal relationship between the United States Government and the Commonwealth of the Northern Marianas. Under this relationship and the Commonwealth agreement, the Exclusive Economic Zone and the resources within this zone belong to the United States. In exchange, the residents of the Northern Marianas have all the benefits of U.S. citizenship.

H.R. 2440 also accords the Northern Mariana Islands the same benefits that are provided the coastal states of the United States. These include the ability to participate in joint federal-state consultation task forces (section 202) and information sharing and planning agreements (section 204), full consultation on all applications affecting the Commonwealth (section 307), and revenue sharing (section 316). Any bill to be reported from this Committee on seabed mining will have to contain similar provisions providing full participation by affected coastal states and territories.

Rec'd 8/1/90
copy to Gov. AG,
Nat'l Res. & Trm
B. Jones

The Honorable Benjamin T. Manglona
Page two
July 23, 1990

At such time as the Committee begins serious consideration of H.R. 2440, I would be glad to consult with you further on issues affecting the Commonwealth.

Thank you again for providing your views on H.R. 2440.

With warm personal regards, I am

Sincerely,


WALTER B. JONES
Chairman