

**"Regionalism" Association of Pacific
Island Legislators (APIL) Summit:
Briefing Book for the Governor**

**Prepared by: Bureau of Planning
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**"REGIONALISM"
APIL SUMMIT**

**BRIEFING BOOK
FOR THE GOVERNOR**

November 1995

Bureau of Planning

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The Federated States of Micronesia

Issue: Economic Reform Review in the Freely Associated States

General Background

- The Compact of Free Association Act between the United States and the Federated States of Micronesia and the Republic of the Marshall Islands was designed to give these island nations the opportunity to develop self-sufficient economies. However, Compact funds have resulted in creating artificial economies dependent on continuing aid payments and imported consumer goods.
- Because of the failure to implement any type or form of economic development, an agreement was developed between the United States, the Asian Development Bank, the Federated States of Micronesia and the Republic of the Marshall Islands to conduct an economic reform review to assist the states to effectively use U.S. funding under the Compact of Free Association and to prepare the island countries for the post-Compact era.
- The Asian Development Bank, headquartered in Manila, is a multilateral lending institution involved in financing development projects in its developing member countries in Asia and the Pacific. The Bank has currently 49 members, 34 of which are within the Asian/Pacific region and 31 of which are considered developing countries. South Pacific developing countries of the Bank include the Cook Islands, Fiji, Kiribati, Federated States of Micronesia, Marshall Islands, Papua New Guinea, Solomon Islands, Tonga, Vanuatu, and Western Samoa. The ADB's financial resources consist of capital paid in member countries, borrowings on international capital markets, and contributions from developed member countries.
- The goal of the economic reform review is to encourage more self-reliance and to achieve economic growth through greater private sector development. The review concluded the following recommendations: downsizing of the government work force, cut backs in subsidies to public agencies and services, privatization of government-run services, creation of private sector jobs, and the implementation of new auditing procedures for the government.
- Major aid donors in the ADB have indicated that they (U.S., Japan and ADB) would unanimously support the reform recommendations through its advisory teams. The donors expect the islands to adopt and implement the ADB's recommendations as a contingent to any post-Compact aid in the future.
- The Asian Development Bank is to convene a major meeting of international donor countries and organizations at its Manila headquarters in December at which time the island nations are expected to present detailed policy reform and public investment programs modeled on the ADB's recommendations.

Federated States of Micronesia (FSM) Government Policies Affecting the Sustainability and Growth of Guam's Longline Tuna and Purse Seine Transshipment Industry

Guam's Longline Tuna and Purse Seine Transshipment Industry

Trailing at a considerable rate behind the tourist industry as a major contributor to our Island's economy is the longline tuna and purse seine transshipment industry. An updated economic profile presented by the Department of Commerce on direct expenditures of large scale commercial fishing vessels reports that the estimated total spending from 1,515 longline vessel port of calls (POCs) in 1994 amounted to just over \$32.5 million, up 39% on POCs from 1,089 and an increase of 27% in estimated total spending from \$25.5 million in 1993, respectively. The 1994 estimated total spending from 257 purse seine port of calls was over \$122 million, a slight 3% increase from 249 POCs and \$118 million estimated total spending in 1993. In addition, 250 jobs were created via port of call operations. More importantly, the overall transshipment industry generated approximately \$3.5 million in estimated tax revenues to the Government of Guam for 1994, up 40 % from \$2.5 million in 1993.

Background

On April 11, 1993 a significant number of members and representatives of the Guam Commercial Fishing Industry, including diplomatic representatives from Taiwan, Korea and the Federated States of Micronesia, met with Federal officials, including members of the National Marine Fisheries Service, the U.S. Coast Guard and the U.S. Attorney's Office to discuss how federal, local and foreign interests can work together so that this vital industry can continue to grow and prosper in Guam. Although this conference forum was to address issues underlying U.S. fisheries law enforcement, a significant portion of the time was spent discussing the effects of recent Federated States of Micronesia fisheries policies on Guam and the United States.

FSM's Policies (Micronesian Maritime Authority)

- 1986-1987: Tuna fish caught within the Federated States of Micronesia waters were transhipped via Guam air cargo serving the sashimi market in Japan.
- 1988-1989: Micronesian Maritime Authority (MMA) negotiated access agreements with the Taiwanese government for Taiwan registered longline vessels

Fishing access agreements for foreign vessels operating within the FSM waters are negotiated directly between foreign governments and MMA, a FSM government agency
- 1990-1992 MMA instituted a FSM constitutional provision which requires that 5% of the gross value of the fish caught by foreign vessels be remitted to the MMA in the form of license fees and an additional \$1000 per off-loading per vessel are imposed on Taiwanese vessels which off-load their catch in Guam while no restrictions are imposed on the Japanese vessels

1993-1994 The National Fisheries Corporation, a FSM government agency , is in the process of using Compact funds to build two new off-loading facilities in Chuuk and Yap State for tuna transshipment and access agreements for Taiwanese vessels were negotiated only if they relocate a portion of their fleet to FSM to support the new facilities upon completion

MMA issued only 200 licenses to non-Japanese vessels and refused to issue any licenses to Guam agents for off-loading fish in Guam.

Present policy of MMA is that any fish caught within the Federated States of Micronesia waters must be off-loaded in a Federated States of Micronesia port.

As expressed by the private sector representatives via Guam's Ad Hoc Committee on fisheries, the following are other concerns :

- a. Potential displacement of Guam's current transshipment agents
- b. Potential displacement of current employees
- c. Impacts on the levels of operations on support services (e.g. fuel companies, ice plants, retail operations)
- d. Potential infringements on trade issues associated with the Compact of Free Association and business dealings with U.S. firms
- e. Potential violations of U.S. ant-trust regulations
- f. Lack of recompense for use of Guam's infrastructure and services in forwarding fish to markets in Japan
- g. Necessity for top Government of Guam officials to establish dialogue with FSM, Republic of Belau and the Republic of the Marshall Islands government officials for development of policies affecting regional tuna transshipment.
- h. Improve Guam's membership standing at the Forum Fisheries Agency to entitle the island's representatives full participation in the negotiation process.

Law

In entering into the Compact of Free Association (PL 99-239) between the governments of the United States and the Federated States of Micronesia, both parties affirmed their common "in creating a close and mutually beneficial relationship" Preamble.

48 USC 1681, supplement Sec.104 (e) Impact of Compact on U.S. Areas:

(1) In approving the Compact, it is not the intent of the Congress to cause any adverse consequences for the United States territories (including specifically Guam).

(2) [To further ensure and account for no such adverse impact] every year the President of the United States (through the Department of Interior or equivalent) is required to report to the Congress with respect to the impact on the Compact on U.S. territories.

This report shall identify any adverse consequences and shall make recommendations for corrective action to eliminate those consequences. This report must include information concerning the impact on the overall economy, specifically, American Samoa's economy resulting from the FSM and Marshall Islands's canned tuna industry. (Note: this would apply to Guam also because at the time of the Compact, American Samoa was the only U.S. territory with available tuna fisheries industry.

(4) Congress is committed to redress adverse consequences and will act sympathetically and expeditiously to redress those adverse consequences

Section 104(f) 5: It is the policy of the United States to negotiate and conclude with the governments of the Central, Western and South Pacific Ocean, including the FSM and Marshall Islands, "a regional licensing agreement of access for U.S. vessels fishing in the region which should overcome jurisdictional differences and provide a mutually beneficial relationship between the U.S. and the Pacific Island States to promote development of tuna resources in and the economic development of the whole region.

Issues/Concerns

The current policy of the Federated States of Micronesia (1) refusing to allow its licensees to tranship in Guam and (2) refusing to license Guam-based operators to operate transshipment facilities in the FSM, constitutes a trade restraint that is directly adverse not only to the Compact policies but also to Guam's fisheries industry and other U.S. territories (not to mention Taiwan).

An examination of all appropriated alternatives which the GovGuam can implement to promote the continuance of the local tuna transshipment industry is critical. With regards to the BRACC 95 base closure of Naval Activities, use of Apra Harbor facilities for commercial transshipment activities can prove beneficial to Guam's overall economy.

In addition to the concerns voiced by commercial operators, other issues which need to be addressed under a comprehensive fisheries agenda include:

- a. Resource management and enforcement
- b. Search and rescue
- c. Vessel seizure and catch confiscation
- d. Impacts of commercial fisheries on billfish populations (e.g. blue marlin and swordfish)
- e. Infrastructure capabilities

In a recent inquiry to Michael Hamnett who is from the Center for Development Studies, Social Science Research Institute, University of Hawaii, regarding Guam's fisheries industry, he expressed their concern that perhaps a small amount illegal fishing is being conducted by boats that provision and off-load in Guam. He further conjectured that the down turn of port of calls may be a function of bad fishing rather than the effects of FSM policies because port of calls in Guam

are at a rebound. Their greatest concern he expresses is that if Guam makes a big deal of the FSM policy, FSM might take a closer look at port calls in Guam and may ask NMFS enforcement to increase the examinations of logbooks and take enforcement action under the Lacey Act. This scenario is happening in Samoa and its driving away longliners. BHP, a fuel supplier in Samoa, has reported estimated loss of several million dollars in fuel sales. Although they understand that illegal fishing may not be the most up front way to deal with the uncertainty of FSM's land-locally policy, they advice GovGuam not to make a too much of a fuss about the policy until it clearly becomes a problem. In Dr. Hamnett's recent draft report "The Contribution of Tuna Fishing, Transshipment and Processing to the Economies of American Samoa, Commonwealth of the Northern Marianas and Guam", he pointed out that although the FSM's licensing policy is having a substantial impact on tuna related support activities in Guam, the two new transshipment operations in Guam since September 1994 would make-up for the decline of tuna off-load for transshipment in Guam. The Guam based net repair and boat service provider has develop a joint venture with American President Line (APL) to off-load frozen tuna from seiners directly into freezer containers for transshipment to North American, East Asia and Europe. Transshipment charges are approximately 30% cheaper than transferring fish to reefer vessels in Apra Harbor or Tinian. The second new transshipment operation which started in March 1995, is removing heads and guts from longline caught fish that do not meet Japanese sashimi market requirements, usually 10% of fish off-loaded, and air freighting them to Europe via Korea. In addition, he stated that in an argument with NMFS lawyers, Guam stands to lose because U.S. is obligated by law to enforce FSM fishing laws and also, that given the inflexibility of the State Department on FSM sovereignty question, U.S. would hardly be much help in trying to convince the FSM to change their policy.

Recent developments in the Federated States of Micronesia's fishing industry and impacts associated with this development activity prove a potential threat to the sustainability and growth of Guam's longline and purse seine transshipment industry. Total metric tons of fish off-loaded from longline vessels and transhipped from Guam decreased to 5,391 in 1992 representing a 58% reduction from 12,729 in 1990. For 1994, a total of 8,962 metric tons of tuna were off-loaded from Guam's port for transshipment, a 26% increased from 7,104 in 1993 but rather a 30% decrease from 1990's total. This gradual reduction can be associated with the decline of port of calls from 1,450 in 1990 to 846 in 1992.

FSM's licensing policy to require fish caught in their waters to be landed and transhipped in their ports has significantly reduced air cargo space for Guam air transshipment operators. In addition, the steady increases of cargo allocations for tuna off-loaded in the FSM has continually decreased cargo space for tuna off-load at Guam's Commercial Port.

Actions Taken by Guam

April 15, 1994 - Correspondence from Gov Ada to FSM Vice President Jacob Nena called for the establishment of a working committee to address mutual concerns in the area of fisheries.

April 22, 1994 - A joint meeting was held on Guam to identify EEZ issues related to fisheries which can be addressed through amendments to the Magnuson Fishery Conservation and Management Act. Among those in attendance were Nancy Foster, Deputy Assistant Administrator for Fisheries, NOAA and Allen Stayman, Deputy assistant Secretary, OTIA.

April 25-26 1994 - Guam's regional fisheries concerns were additionally presented during the 83rd meeting of the Western Pacific Regional Fishery Management Council, held on Guam. Recommended strategies for dealing with the issues were further discussed by the working group in a July 1994 meeting

May 23 1994 - a response from Vice President Nena to Governor Ada expressing support for an interactive meeting for the benefit of both island governments.

June 22, 1994 - a meeting was held between Governor Ada and FSM President Olter Bailey on the fishing policy issue. President Bailey reiterated support for coordinated efforts.

June 1994 - directed by the Governor for a technical meeting to update assessment of the current state of Guam's Tuna transshipment industry. Participants are Guam Chamber of Commerce, legal council for private firms involved in the industry, representatives from major carriers servicing Guam and GovGuam agencies to include Guam Port Authority, Guam Airport, Authority, Attorney General Office, Division of Aquatic and Wildlife Resources, Bureau of Planning, the commission on Self-Determination and the Department of Commerce.

July 28-29 1994 - Second meeting of the EEZ Fishery Policy Working Group was held in Hawaii to discuss proposals for a possible amendment to the Magnuson Fisheries Conservation and Management Act and several issues of concern to the insular areas. It is at this meeting that Guam rejected to work through the State Department in its communications with FSM Government and to utilize the Interagency Group on Freely Associates State Affairs to address the transshipment. Guam opted to deal directly with FSM.

November 23, 1994 - First and only GovGuam/FSM technical staff meeting was held on Guam In attendance were: Bernard Thoulag, Executive Director, Micronesia Maritime Authority; John Mangefel, Deputy Secretary of the Department of External Affairs; Moses Nelsen, staff of the Department of Resources Development; Michael Driver. legal counsel from the FSM Attorney General's Office; Peter Barcinas, Rufo Lujan, GovGuam.

Issues: Republic of the Marshall Islands

The Republic of the Marshall Islands

Issue: Asian Development Bank (ADB) Loan Program

General Background

- In October of 1994, the Asian Development Bank and the Republic of the Marshall Islands entered into a loan program that will provide between \$40 to \$60 million from 1995 to 1998, adding to the \$30 million previously loaned.
- Activities carried by Asian Development Bank in the South Pacific primarily focus on operational strategy assistance to its smaller South Pacific developing countries. This strategy concentrates on diversification and increase in agricultural production, development of necessary infrastructure systems for productive purposes, encouragement in the growth of the private sector, and support in manpower development and institution building through better recruitment and training programs.
- The loan package to the Marshall Islands will be directed to two specific areas, building infrastructure (water systems, fisheries, and transportation) for development opportunities and the development of human resources through educational and health programs.
- Between 1995 to 1998, proceeds of the loan will go to the following priorities. In 1995, approximately \$7 million will be dedicated to the improvement of Majuro's water system and the upgrading of transportation systems. In 1996 and 1997, focus will be directed on power development, fisheries and education. The final year, efforts will be concentrated to the water systems of the outer-islands and additional education assistance.

Issue: Cooperative Agreement With China

General Background

- Diplomatic relations between the Republic of the Marshall Islands and China were first established four years ago. Trade and political relations have further expanded in the wake of a state visit by the Marshall Islands President to China in the earlier part of the year.
- This visit resulted in four agreements of cooperation. The pacts are said to fall in the areas of economic and technical cooperation, education, fisheries and health.
- China is currently funding the construction of a garment factory and a high school in the Marshalls. Further, China also has a base in Majuro for its fishing vessels and transshipment operations. Development in the fisheries industry will likely affect the sustainability and growth of Guam's tuna transshipment industry.

Issues: Republic of Palau

The Republic of Palau

Issue: Air Service Agreement With Taiwan

General Background

- The Republic of Palau and Taiwan have entered into an agreement to establish direct air service between the two countries. Currently, Continental Airlines provides two direct flights weekly between Palau and Taiwan. The agreement with Taiwan allows the Far Eastern Air Transport Corporation to offer direct charter flights to Palau.
- Under the Compact of Free Association initiated last October, Palau conducts its own foreign affairs, except in those instances when it conflicts with the national security of the United States. Palau has close economic ties with Taiwan, which sends the second most visitors to the archipelago behind Japan. The United States which handles security for Palau and is giving the islands about \$500 million in aid has had strained relations with the Peoples Republic of China lately due to the granting of the Taiwanese president a U.S. visa and other human rights issues.
- With the forging of a new partnership in direct air service with Taiwan, economic opportunities in Palau are likely to develop in the near future. A number of prominent Taiwanese firms have indicated their interests in making substantial investments in Palau.

Issue: Agreement With Japan Air Lines (JAL) to Establish a State-Run Air Line

General Agreement

- Under an informal agreement, JAL and the Republic of Palau have agreed to establish an airline industry in Palau to help develop its tourism industry. The agreement includes advising on the establishment of international aviation relations with other countries and developing civil aviation infrastructure, including airport construction. The agreement could also include management consulting and other forms of cooperation, both technical and commercial.
- According to JAL officials, there is a strong possibility that JAL will eventually operate direct scheduled flights between Japan and Palau in the near future. Should this consideration come to fruition, direct competition between JAL and Continental Air Micronesia could negatively affect the Territory's tourism industry.

Issue: Tourism Development in Palau

General Agreement

- In their efforts towards developing a major tourism industry, negotiations with outside investors have resulted in the construction of two new first class hotels in the Republic of Palau. The hotels are scheduled for completion in 1997 and will be managed and partly owned by the Hilton International and the Outrigger Hotels of Hawaii. Development in Palau by these investors reflect a positive outlook of the islands growing tourism industry.

- In 1994, over 40,000 people visited Palau and that number is expected to increase significantly as development continues. The Hotel development will not only make an important contribution to Palau's developing visitor industry but will provide additional employment and other investment opportunities for the Republic.
- Most of Palau's Asian visitors come from Japan, Taiwan and the Philippines. The main attraction, besides the country's natural beauty, is scuba diving, considered to be some of the finest in the world.

Issues: Nuclear Testing in the South Pacific

Issue: Nuclear Testing in the South Pacific

General Background

- In early June 1995, France reversed a 1992 decision to halt nuclear testing in the French Polynesian islands of Moruroa and Fangataufa, near Tahiti. Between September 1995 and May 1996, France will detonate eight underground nuclear bombs. France joins China in being the only nuclear states still testing weapons.
- Since the announcement, Islands throughout the Pacific region, nations in Asia and other international countries, and environmental organizations have outspokenly condemned France on its decision, especially in light of the fact that France has agreed to extend the Treaty on the Nonproliferation of Nuclear Weapons. The renewal of tests at the Moruroa test site will place the Pacific environment at further risk of radioactive contamination.
- The South Pacific Forum, a fifteen member organization of independent or self governing countries, has rallied against French Nuclear Testing since its inception in 1971. It declared the South Pacific a nuclear-free zone 10 years ago. Recently, the South Pacific Forum suspended all relations with France. Included in this membership is the Federated States of Micronesia and the Republic of the Marshall Islands. Both governments have spoken critically of the nuclear testing due in part to their own experiences of dozens of atomic and hydrogen bomb detonations both underwater and in the atmosphere by the United States in the 1950's.

IMMIGRATION ISSUES

Immigration Authorization

Federal Immigration Regulation

FSM Population

Demographics of the FAS Population in Guam

- **Population**
- **Education**
- **Births**

Employment

Health and Public Assistance

Immigration Authorization

IMMIGRATION AUTHORIZATION

Immigration into the United States is authorized by Section 141 of the Compact:

Section 141

(a) Any person in the following categories may enter into, lawfully engage in occupations, and establish residence as a nonimmigrant in the United States and its territories and possessions without regard to paragraphs (14), (20), and (26) of section 212(a) of the Immigration and Nationality Act, 8 U.S.C 1182(a) (14), (20), and (26):

(1) a person who, on the day preceding the effective date of this Compact, is a citizen of the Trust Territory of the Pacific Islands, as defined in Title 53 of the Trust Territory Code in force on January 1, 1979, and has become a citizen of the Marshall Islands or the Federated States of Micronesia;

(2) a person who acquires the citizenship of the Marshall Islands or the Federated States of Micronesia at birth, on or after the effective date of the respective Constitution;

(3) a naturalized citizen of the Marshall Islands or the Federated States of Micronesia who has been an actual resident there for not less than five years after attaining such naturalization and who holds a certificate of actual residence; or

(4) a person entitle to citizenship in the Marshall Islands by lineal descent whose name is included in a list to be furnished by the Government of the Marshall Islands to the United States Immigration and Naturalization Service and any descendants of such persons, provided that such person holds a certificate of lineal descent issued by the Government of the Marshall Islands.

Such persons shall be considered to have the permission of the Attorney General of the United States to accept employment in the United States

(b) The right of such persons to establish habitual residence in a territory or possession of the United States may, however, be subjected to nondiscriminatory limitations provided for:

(1) in statutes or regulations of the United Sates; or

(2) in those statutes or regulations of the territory or possession concerned which are authorized by the laws of the United States.

(c) Section 141(a) does not confer on a citizen of the Marshall Islands or the Federal States of Micronesia the right to establish the residence necessary for naturalization under the Immigration and Nationality Act, or to petition for benefits for alien relatives under that Act. Section 141(a), however, shall not prevent a citizen of the Marshall Islands or the Federated States of Micronesia from otherwise acquiring such rights or lawful permanent resident alien status in the United States.

Federal Immigration Regulation

FEDERAL IMMIGRATION REGULATION

Guam is governed by Title 8, Chapter 12 (8 U.S. C. 1101-1525) Immigration and Nationality. Its purpose is to control the entry of aliens into the United States, including Guam, and to provide for the exclusion and expulsion of aliens not authorized to enter or remain in the United States; and to provide for the naturalization of aliens and noncitizen nationals as citizens of the United States, for acquisition of U.S. citizenship or nationality at birth, and for the loss of nationality. The Immigration and Nationality Act applies to Guam and accords to it for the most part the same treatment as it accords to the States¹.

The Immigration and Naturalization Service has created different legal statuses designating the terms of entry for non-U.S. citizens. The terms designate the length of residence permitted (temporary or permanent), and whether the applicant may work, apply for citizenship, or receive public benefits. Permanent statuses fall into three general types: 1) legal immigration, 2) humanitarian immigration (refugee, asylee, and parolee), and 3) unauthorized, or illegal, immigration. Foreigners can also enter the country temporarily as a nonimmigrant under a broad array of legal categories such as tourist, student, and visitor, or as an illegal alien. The State Department is responsible for issuing visas for permanent, or immigrant, residence, and temporary, or nonimmigrant, residence².

The Federated States of Micronesia and the Marshall Islands are outside the "United States" for the purposes of the Immigration and Nationality Act. Their citizens are aliens as to the United States and are subject to the Federal laws that restrict alien entry.³ The Compact of Free Association Act makes special provision for the admission of citizens of the Federated States and the Marshalls to the "the United States and its territories and possessions" in section 141 of the Compact. Such citizens may enter, "lawfully engage in occupations, and establish residence" without regard to the passport, visa, and work permit requirements of the Immigration and Nationality Act⁴. Article IV, Section 141 (a) of P.L. 99-239 provides that FSM and RMI citizens:

"... may enter into, lawfully engage in occupations, and establish residence as a nonimmigrant in the United States and its territories and possessions without regard to paragraphs (14), (20), and (26) of section 212(a) of the Immigration and Nationality Act, 8 U.S.C. 1182(a) (14), (20), and (26)."

¹ Van Cleve, Ruth. The Application of Federal Laws in ... American Samoa, Guam, the Northern Mariana Islands, the U.S. Virgin Islands: Volume 1 - U.S. Code Titles 1-16. Department of the Interior, Office of the Solicitor, October 1993, p. 125.

² Dunlap, Jonathan C. America's Newcomers: A State and Local Policymakers' Guide to Immigration and Immigrant Policy. National Conference of State Legislatures. 1993.

³ Van Cleve, p.125.

⁴ Dunlap, p.19.

The visa requirement is waived for persons entering Guam from the FAS states. This is a similar agreement that the United States has with Canadian citizens. INS checks FSM/RMI passports if one is presented, however INS will accept any form of identification from persons who claim to be to FAS citizens. Palau does not yet issue passports, so Palau citizens still use the old Trust Territory passport.

INS deports about 100 FAS nonimmigrants yearly from Guam. Because INS has no cooperation from the FAS governments to determine true identity, INS has no reliable mechanism to prevent a deported individual from returning to Guam. In addition, local INS officials have pointed out that once an alien is on U.S. soil, that individual is protected by the U.S. Constitution making the exclusion of undesirable aliens a complicated issue.

P.L. 99-239 refers to Compact citizens living in the U.S. as establishing 'habitual residence' after one-year, possibly in deference to the legal requirement that a nonimmigrant alien must have no intention of abandoning his or her residency in the foreign country from which he or she comes. However, the term "habitual resident" has no legal basis.

Upon entry into the United States, FSM and RMI citizens fall into the category of PRUCOL (permanently residing under color of law). PRUCOL status is a legal term that applies to aliens in the United States under statutory authority and those effectively allowed to remain under administrative discretion. PRUCOL status means that an alien is considered to be legally residing in the country for an indefinite period and is used for the purposes of determining benefit eligibility for public assistance. PRUCOL is not a method of entering the United States and applies only to public benefit eligibility. It is not a legal, or immigration, status like lawful permanent resident or refugee.

One who enters under the special authority as a nonimmigrant under P.L.99-239 cannot achieve the residence necessary for naturalization⁵. Section 141(c) reads:

"Section 141(a) does not confer on a citizen of the Marshall Islands or the Federated States of Micronesia the right to establish the residency necessary for naturalization under the Immigration and Nationality Act, or to petition for benefits for alien relatives under that Act. Section 141(a), however, shall not prevent a citizen of the Marshall Islands or the Federated States of Micronesia from otherwise acquiring such rights or lawful permanent resident alien status in the United States."

The adjustment of status from temporary nonimmigrant to permanent resident alien status is available upon application to the Attorney General under several different provisions of the immigration law. According to the INS, a total of 59 persons acquired permanent resident alien status in the United States between 1989 and 1994 (some of these may have occurred on Guam). No FSM and RMI citizens applied for legalization under Section 245A of the Immigration Reform and Control Act of 1986, which provided admission to former illegal aliens who resided in the

⁵ Van Cleve, p.125.

U.S. since 1982.

The Congress included a provision in the Compact that the right of FAS citizens to establish habitual residence in Guam may be subjected to "nondiscriminatory limitations" if those limitations are provided for in U.S. law or regulation, or if Guam's law or regulation is authorized by the United States. Habitual residence is not established until after one-year of residence on Guam. However, habitual residency is not a legal term or INS immigration status. Use of the term exists solely within the Compact. The Congressional Research Service of the Library of Congress researched the issue in March 1992 and concluded that assuming legislation to limit immigration of FAS citizens would not be considered discriminatory, a territorial curb on immigration may not be within the scope of the authority delegated to Guam under the Organic Act to enact laws of "local application" because of federal pre-emption in the field of immigration and naturalization. A final determination regarding the interpretation of these laws must eventually be left to the courts to decide.

FSM Population

FSM POPULATION

Federated States of Micronesia

Federated States of Micronesia	Total	Chuuk	Kosrae	Pohnpei	Yap
Land Area in square miles	270	49	43	132	46
State Census year	...	1989	1986	1985	1987
State Census population	...	47,871	6,607	28,671	10,139
1990 estimated population	100,520	48,853	7,435	33,346	10,886
1994 estimated population	104,460	50,294	7,834	34,976	11,356
1995 estimated population	105,445	50,654	7,934	35,383	11,474

.. Not applicable

Source: Information Handbook, Federated States of Micronesia, Office of Planning and Statistics, National Government, June 1992.

- ▶ The FSM National Office of Planning and Statistics projects the growth rate in the FSM to be less than 1 percent per year, or about 1,000 persons, despite a high fertility rate. Emigration to Guam, Saipan, Hawaii, and the U.S. mainland since the implementation of the Compact is the major reason cited for the low growth rate.
- ▶ The National Planning Office projects a negative net migration of nearly 2,000 persons per year from the FSM between 1986 and the year 2000; about 2 percent of the population of the FSM is leaving each year. Although data are not available to show the intended destination of emigrants, the FSM Planning Office estimates that Guam receives a large percentage of FSM emigrants because of its proximity to the FSM and relatively inexpensive airfare².
- ▶ These observations of large amounts of emigration after Compact implementation are in sharp contrast to immigration data for prior years. The U.S. Immigration and Naturalization Service reported fewer than 4,000 TTPI immigrants admitted to the United States between 1943 and 1980, or barely 100 persons per year including immigrants from Saipan and Palau. A collaborative study conducted by the U.S. Census Bureau also concluded that as of 1980 "there has been little population exchange involving the TTPI and the other outlying areas."³

² Federated States of Micronesia, National Office of Planning and Statistics, "Second National Development Plan: 1992-1996". pp.39-44.

³ Levin, Michael J. "Demographic Situation in the Pacific Islands, draft". Population Division, U.S. Bureau of the Census, 1980, p. 49.

Demographic of the FAS Population in Guam

DEMOGRAPHICS

- Population: The 1990 U.S. Census of Population and Housing counted an increase of 2,661 Micronesians between 1980 and 1990, for a total of 3,298 persons, or 10 percent of Guam's population growth during the 1980's. Growth of this population continued to accelerate after 1990. The University of Guam conducted a special study in 1992 to count only those of FSM and RMI ethnic background; a total of 5,615 persons, or 4 percent of Guam's total population, were enumerated¹. Estimated 1995 population is about 9,000 persons.

Total Population of Guam by Mother's Place of Birth: 1980, 1990 and 1992

Mother's Place of Birth	Number			Percent		
	1980	1990	1992	1980	1990	1992
Total population	105,979	133,152	139,538	100.0	100.0	100.0
Freely Associated States	637	3,298	5,615	0.6	2.5	4.0
Federated States of Micronesia ..	574	3,220	5,453	0.5	2.4	3.9
Chuuk	140	2,012	4,030	0.1	1.5	2.9
Kosrae	84	176	220	0.1	0.1	0.2
Pohnpei	134	655	872	0.1	0.5	0.6
Yap	216	343	331	0.2	0.3	0.2
Republic of the Marshall Islands ..	63	78	162	0.1	0.1	0.1

Source: U.S. Bureau of the Census, 1980, Guam, PC-80-1-C/D54, Table 25; U.S. Bureau of the Census, 1990, CPH-6-Guam, Table 20; University of Guam, 1993, "1992 Census of Micronesians on Guam", Table 9; "Atan I Islan Guam", September 1993, Bureau of Planning.

- Education: Enrollment within the primary and secondary public schools increased from 87 TTPI children in 1980 to 1,729 enrolled in SY 1994-95. Current enrollment is over 5 percent of total school enrollment district wide.

Table 6. Guam Public School Enrollment, Primary and Secondary: 1980 to 1994

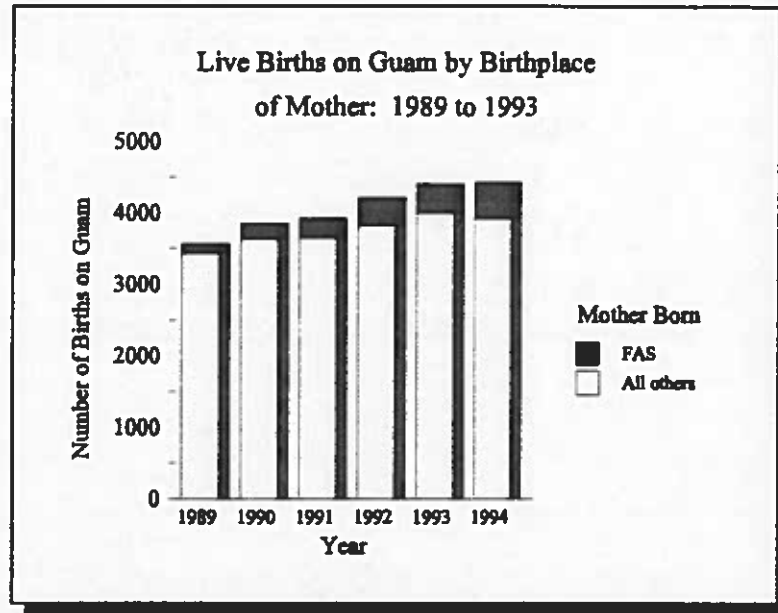
Year	Total Enrollment	FAS Enrollment	Percent FAS
April 1980 Census	27,035	87	0.3
SY 1986-87	25,244	18/a	0.1
SY 1987-88	25,277	74/a	0.3
SY 1988-89	25,551	220/a	0.9
SY 1989-90	25,871	434	1.7
SY 1990-91	25,942	639	2.5
SY 1991-92	29,400	870	3.0
SY 1992-93	28,182	1,242	4.4
SY 1993-94	30,417	1,457	4.8
SY 1994-95	32,157	1,729	5.4

a Children enrolled in SY 1989-90 who were also enrolled in prior years.

Source: U.S. Bureau of the Census, 1980, P-1-C/D54, Table 27; Guam Department of Education; Shafer, J., "The Compact of Free Association (P.L.99-239): Immigration to Guam and the Impact on Public Education," Micronesian Educator, 1991; Guam Department of Education, Planning and Evaluation Division.

¹ University of Guam, "1992 Census of Micronesians on Guam", 1993, p.9.

► Birth



In 1989, Guam's vital statistics records were expanded to include additional categories on mother's race and mother's place of birth. The number of births occurring on Guam among women born in the FSM and RMI increased from 137 in 1989 to 515 in 1994, or from 3.8 percent of births in 1989 to 11.6 percent of all births during 1994. There is no evidence that there were many births to Trust Territory citizens prior to Compact implementation.

Table 7. Live Births on Guam by Birthplace of Mother. 1989 to 1994

Year	Total	Freely Associated States			All Other
		Total	FSM	RMI	
1989	3,565	137	136	1	3,428
1990	3,851	223	216	7	3,628
1991	3,921	273	267	6	3,648
1992	4,214	395	392	3	3,819
1993	4,409	411	402	9	3,998
1994	4,427	515	498	17	3,912
** Percent **					
1989	100.0	3.8	3.8	0.0	96.2
1990	100.0	5.8	5.6	0.2	94.2
1991	100.0	7.0	6.8	0.2	93.0
1992	100.0	9.4	9.3	0.1	90.6
1993	100.0	9.3	9.1	0.2	90.7
1994	100.0	11.6	11.2	0.4	88.4

Source: Department of Public Health, Office of Vital Statistics Annual Vital Statistics Reports, 1989, 1990, 1991, 1992, 1993, 1994.

Employment

EMPLOYMENT

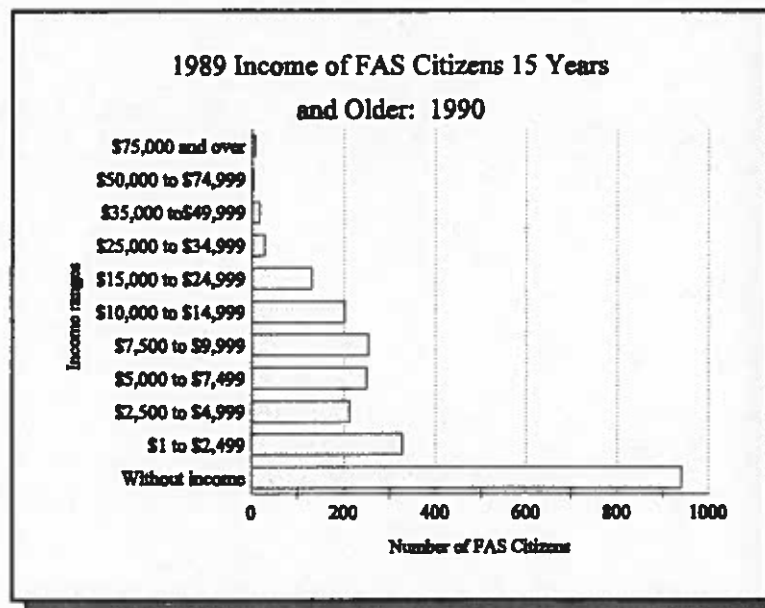
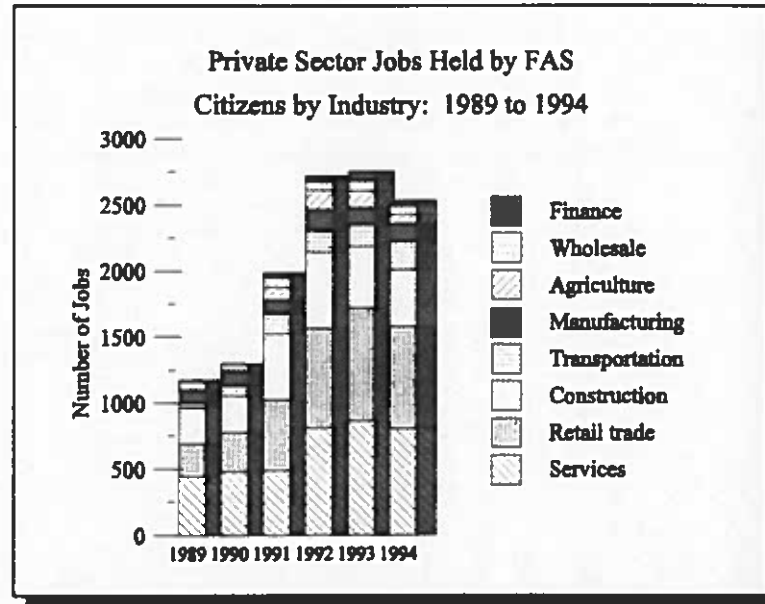
- ▶ In 1980, 184 FSM- and RMI-born persons were employed on Guam, mostly through participation in college work-study programs. More persons were enrolled in college in 1980 than in primary and secondary schools: 180 versus 106 persons. The number of jobs on the island underwent rapid expansion during the 1980's, peaking at over 69,000 jobs by March 1992. During this period of growth, over 2,700 jobs came to be filled by Micronesians, particularly in the services and retail trade industries.
- ▶ Jobs held by FAS citizens tend to be in lower paying occupations, particularly dishwashers, waiters, maids, and security guards. A 1992 study by Rubinstein and Levin have noted that this social class will be the most vulnerable to economic downturns¹. An economic downturn did occur in the early 1990's, and the rapid rate of employment increase leveled off. Immigration from the FSM continued, including increasing numbers of dependent school-aged children.
- ▶ The ability of these immigrants to be self-supporting would be affected by declining employment opportunities. In March 1994, the number of jobs held by FAS citizens dropped to below the level of jobs held in 1992, an event expected to cause further economic distress to an already impoverished population (the 1990 U.S. Census of Population and Housing showed one-half of all FAS citizens below the poverty level; 30 percent were below 50 percent of poverty).
- ▶ The Rubinstein/Levin study² makes the observation that "Government officials on Guam have already raised concerns over the impact and cost of Micronesian migrants, although so far the Micronesians are probably more of a boon than burden for the Guam economy, because of their contribution to the labor force and their tax payments to the Guam treasury. As a community, Micronesians who pay taxes pay a higher proportional tax because of their low ratio of non-working dependents to workers."
- ▶ Immigrants do in fact make a substantial contribution to the labor force. Unfortunately, many of these workers are among the "working poor": half of FAS immigrants with income in 1989 earned less than \$7,000, and barely 3 percent earned more than \$25,000³. In addition to the large number of working poor, fully 40 percent of all FAS immigrants 15 years old and older had no income whatever in 1989.

¹ Rubinstein, Donald H. and Michael J. Levin. "Micronesian Migration to Guam: Social and Economic Characteristics." July 1992, p. 32.

² Ibid.

³ U.S. Bureau of the Census. 1990 Census of Population and Housing, Social, Economic and Housing Characteristics, Guam, 1990, CPH-6-G. February 1992 .

- The total tax liability of any population where one-half of all persons had poverty level income, and 90 percent of the remaining half earned less than \$25,000, would be expected to be minimal. Declining employment opportunities in recent years and growing numbers of infants and young children needing support are not surprisingly contributing to the rising number of FAS citizens seeking subsidized housing, welfare, Food Stamps, and medical care.



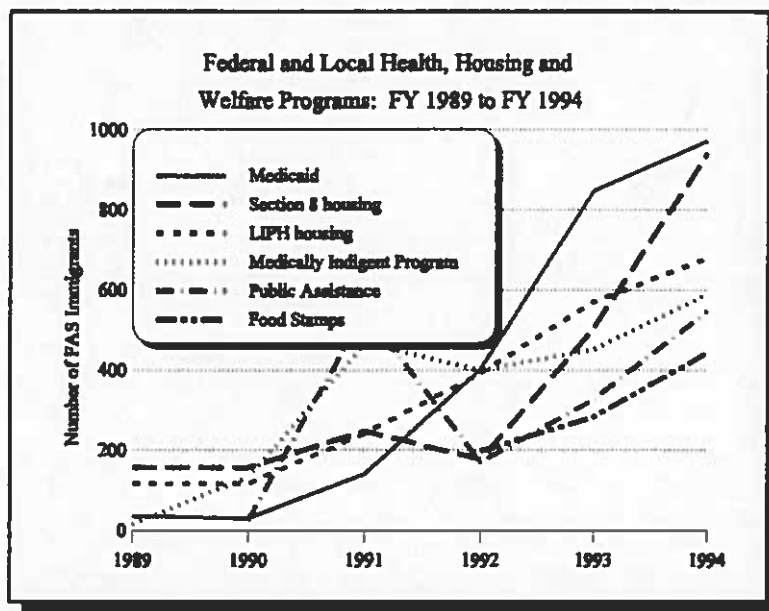
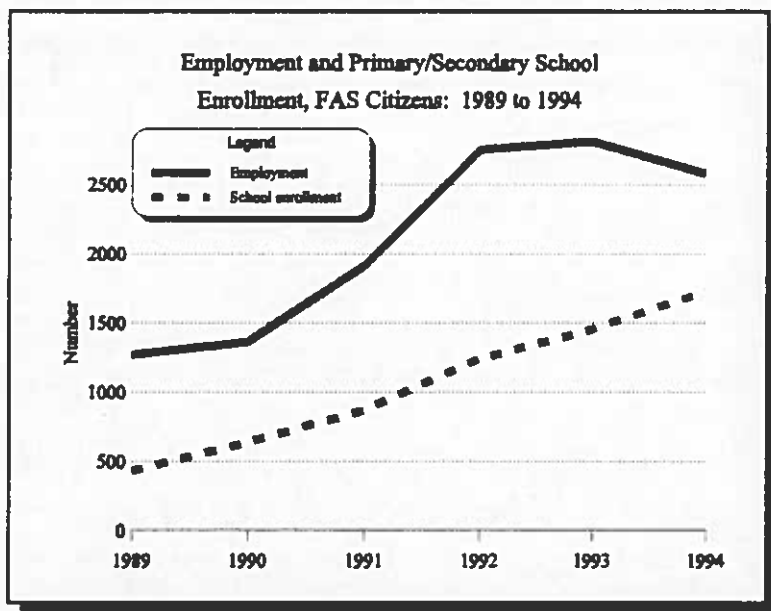


Table 3. Employment on Guam: 1980 to 1994

Survey Period	Total Employees	FSM and RMI Citizens Employees	Percent of Total Employees
1980 U.S. Census	32,694	184	0.56
March 1988	47,560	600	1.26
March 1989	51,459	1,271	2.47
March 1990	56,129	1,361	2.42
March 1991	61,726	1,917	3.11
March 1992	69,627	2,751	3.95
March 1993	68,464	2,815	4.11
March 1994 (preliminary)	65,873	2,580	3.92

Source: Annual Census of Establishments, Guam Department of Labor; U.S. Bureau of the Census, P-1-C/D54, 1980, Table 28.

Table 4. Jobs Held by FAS Citizens by FAS State: 1988 to 1994

Citizenship	March 1988	March 1989	March 1990	March 1991	March 1992	March 1993	March 1994/p
Federated States ..	577	1,246	1,318	1,887	2,706	2,738	2,509
Kosrae	59	163	122	90	143	159	175
Pohnpei	87	225	248	396	500	512	539
Chuuk	348	701	800	1,210	1,778	1,780	1,584
Yap	83	157	148	191	295	287	211
Marshall Islands ..	23	25	43	30	45	77	71
Total Jobs	600	1,271	1,361	1,917	2,751	2,815	2,580

p Preliminary

Source: Annual Census of Establishments, Guam Department of Labor

Table 5. Jobs Held by FAS Citizens by Industry (Private Sector): 1989 to 1994

Industry	March 1989	March 1990	March 1991	March 1992	March 1993	March 1994/p
Agriculture, Forestry, Fishing	18	10	95	143	124	69
Construction	273	279	498	576	464	424
Manufacturing	92	101	106	161	128	133
Transportation	31	79	151	163	168	217
Wholesale Trade	54	47	71	66	80	67
Retail Trade	248	295	535	757	858	778
Finance, Insurance, Real Estate	16	6	34	44	71	39
Services	442	480	491	809	864	804
Private Sector Jobs	1,174	1,297	1,881	2,719	2,757	2,531

p Preliminary

Source: Annual Census of Establishments, Guam Department of Labor

Health and Public Assistance

HEALTH AND PUBLIC ASSISTANCE

- ▶ Federal public welfare programs enable each state to provide assistance to individuals who are in need and to provide rehabilitation and other services to attain or retain the capability for self-support and self-care. For Guam there is a \$3.8 million federal funding ceiling cap on Public Assistance programs for Aid to Families with Dependent Children (AFDC), Old Age Assistance (OAA), Aid to the Blind (AB) and Aid to the Permanently and Totally Disabled (APTD).
- ▶ In FY1994, \$15.3 million in local funds was spent on Public Welfare programs. Of that amount \$2.9 million was spent for Compact citizens.
- ▶ Medicaid is a locally matched federal health care program that provides medical care for persons receiving welfare benefits. Under the Social Security Act of 1965, Guam received \$2.5 million in federal funds for Medicaid in FY 1994.
- ▶ In FY 1994, Guam matched \$5.3 million in local funds on Medicaid. Of that amount, \$1.5 million was spent for Compact citizens and represented about 14 percent of the entire average monthly caseload of the Medicaid Program.
- ▶ The Medically Indigent Program is 100 percent locally funded. MIP provides assistance to persons without health insurance who do not qualify for welfare. MIP payments totalled \$15.8 million in FY 1994, of which nearly \$850,000 was for Compact citizens.
- ▶ Under Guam Public Law 23-45 Section 12 Chapter IV, local funds for public assistance is restricted to persons who are United States citizens or permanent resident aliens. The public assistance programs include General Assistance and the Medically Indigent Programs. The law also restricts access to Medicaid and Aid to Families with Dependent Children to the federally funded portion of the programs. Programs not restricting access include nutrition programs, infectious disease and immunization programs, Women's health clinic, Child Health Clinic, and Dental Clinic.
- ▶ Executive Order No. 95-24 establishes a Medical Assistance Emergency Task Force. The task force shall characterize the nature and extent of the potential impact of the health, welfare, and safety problems created by P.L. 23-45, and shall provide strategies and recommendations for short and long-term solutions. The Task Force shall report to the Governor by February 1, 1996.
- ▶ Executive Order No. 95-26 declares a state of emergency for the provision of medical and social services by the Department of Public Health and Social Services for persons who are affected by the provisions of P.L. 23-45. The E.O. transfers \$250,000 to the Department of Public Health and Social Services to provide services to those affected by P.L. 23-45 for a period of 120 days.

- ▶ **Potential solutions being discussed by the Medical Emergency Task Force include:**

1. **Creation by the FSM government of a medical referral office.** The FSM state governments now refer their citizens for treatment outside the FSM on promise of payment by the FSM state. However, referral must be obtained in the home island. A Guam based referral office would allow referrals to be made to FSM citizens residing on Guam.

2. **Use of Naval Regional Medical Facility by Compact citizens.** The Compact (U.S.P.L. 99-239) states: "Following approval of the Compact, the Secretary of Defense shall make available the medical facilities of the Department of Defense for use by citizens of the Federated States of Micronesia and the Marshall Island who are properly referred to such facilities by government authorities responsible for provision of medical services in the Federate States of Micronesia and the Marshall Islands. The Secretary of Defense is hereby authorized to cooperate with such authorities in order to permit use of such medical facilities for persons properly referred by such authorities." As of this writing, the Secretary of Defense has not made Naval Hospital available to Compact citizens.