

OFFICE FOR MICRONESIAN STATUS NEGOTIATIONS

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To: James M. Wilson, Jr.  
From: Adrian de Graffenried  
Subject: Section 504, Draft Agreement

The MPSC seeks under Section 504 to authorize the Secretary of Commerce to issue regulations to permit nationals in Mariana Islands to be considered U.S. citizens for the purposes of complying with provisions of the maritime and shipping laws of the United States. The MPSC explanatory note on Section 504 relates that this provision speaks to: 46 USC §808, 835(b)(1) [requiring that U.S. vessels not be transferred to persons other than U.S. citizens]; 46 USCA §802 [requiring that a vessel must be 75% owned by U.S. citizens to qualify for participation in the coastwide trade of the U.S.]; 46 USC §221, 236 [requiring that American vessels qualified for coastwide and fishing trade be maned/staffed by U.S. citizens]; and 46 USCA 883 [only U.S. vessels may engage in U.S. coastwide trade in merchandising].

In discussing this matter with the Office of General Counsel, Department of Commerce, it appears the Secretary does have authority to issue regulations pertaining to these statutes, but he does not have descretionary authority to change or waive any statutory requirement under the Acts; this would preclude the secretary from changing the statutory coverage so as to include U.S. nationals in the Marianas within the definition of a U.S. citizen. Thus, as regards the statutes prohibiting the transfer of U.S. vessels to persons not U.S. citizens (ref. 46 USC §808, 835(b)(1); 46 USCA §802) a Marianas resident who is a U.S. citizen would be precluded from selling to a Marianas resident who is a U.S. national.

It should also be noted that the Secretary has delegated his authority to issue appropriate regulations under these statutes to the Maritime Administration.

As regards the statutes regarding U.S. ownership of vessels to qualify for U.S. merchant trade and fishing, and regarding the requirements for such crews to be U.S. citizens, (ref. 46 USCA §883; 46 USC §221, 236) these statutes are enforced by the Customs Bureau of the Department of Treasury and the certificates to operate the vessels are issued by the U.S. Coast Guard. Thus the proposed language under the MPSC section would not meet the objectives of the MPSC.

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It would therefore seem that to obtain the treatment requested by the MPSC to permit local residents who are U.S. nationals to meet the requirements relative to U.S. maritime and shipping laws some special provision would have to be included in the agreement or the U.S. would have to obligate itself to obtain preferred treatment by the U.S. Congress.

If we seek to address this issue in the draft agreement, the following language is suggested:

*"Section 504: Residents of the Mariana Islands who become U.S. nationals pursuant to Section 302 will be accorded treatment as U.S. citizens for the purposes of satisfying requirements for operation and/or other transfer of vessels engaged in the maritime and shipping laws of the United States."*

Otherwise, we could leave this matter to the U.S. Congress to address when it focuses on the MPSC request for exemption from the Jones Act.