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DEPARTMENT OF STATE

AIRGRAM

H. Warriner

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TO : Department of State

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E.O. 11652: N/A

FROM : Status LNO, Saipan

DATE: 12 September 1977

TAGS : PLOS, TQ

SUBJECT : Micronesian 200-Mile Fishery Zone Legislation

REF : Status LNO 324

PASS INTERIOR FOR OMSN/DOTA

Ms Seaman with me 7/27/77

There is enclosed (encl. 1) a copy of House Bill No. 7-287, passed August 29 by the Congress of Micronesia, establishing a 200-mile fishery zone to come into force July 1, 1979. The bill will become law unless vetoed by the High Commissioner within 30 days of receipt; at the date of writing he has not yet officially received the bill. Reftel summarizes the main provisions of the bill.

The bill as originally introduced was identical to one passed by the COM in February and vetoed by the High Commissioner and the Secretary of the Interior. It was then extensively revised by the House Judiciary Committee, acting on the advice of the Micronesian Law of the Sea Delegation. The revision sought to eliminate the provisions most objectionable to the USG, notably those purporting to regulate migratory species and claiming authority to negotiate fishery agreements with foreign governments. The house committee report is attached as Enclosure 2.

As passed by the House, however, the bill still contained a number of potentially objectionable provisions. Some of these involved terminology: the use of words such as "marine space jurisdiction" or "sea of Micronesia" having connotations broader than the regulation of fisheries. More importantly, the bill contained a provision (section 153) claiming a right for the COM to veto international fishery agreements entered into by the United States. It also failed to provide any right of review for the High Commissioner over regulations of the proposed Micronesian

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FORM 4-82 DS-323

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Contents and Classification Approved by:

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FACRS/DA/VC

Maritime Authority (MMA), although veto power over such regulations was reserved for the COM. By a letter to the House and Senate committees, (enclosure 3), I pointed out these unsatisfactory aspects of the bill.

Discussions with the LOS Delegation and the COM staff followed, in which the Delegation (particularly its chairman, Charles Domnick, and vice-chairman, Sen. Nick Bossy, and its counsel, Fred Ramp) played a constructive and helpful part. As a result of these discussions, substantially all the revisions I had suggested were incorporated into the Senate version of the bill (see Senate committee report, enclosure 4), which the House then accepted.

We failed to reach agreement on only one point, that of the High Commissioner's right of review. This was conceded with respect to the allocation among foreign nations of the total allowable level of foreign fishing (section 152(4)), but not with respect to MMA regulations and other actions. Instead, the bill was revised so that the MMA is to consist of four members appointed by the High Commissioner, four appointed by the COM presiding officers, and one, holding a casting vote, appointed jointly by the High Commissioner and the presiding officers. While it is clear that the High Commissioner must seek in good faith to reach agreement on the identity of a ninth member, if he is unable to do so the MMA will be left with only eight members, and the agreement of at least one of the High Commissioner's appointees will be necessary for it to act.

Even if the ninth member opposes a USG position, a regulation or action by the MMA which contravenes applicable U.S. legislation or treaties, or international law, could be invalidated by a declaratory judgment of the TTPI High Court, applied for by the Attorney General. In addition, exclusive jurisdiction over cases arising under the bill is vested by its terms (section 207) in the High Court. Justices of the High Court are appointed by the Secretary of the Interior, and at present all of them are U.S. citizens.

The authority to promulgate regulations has previously been vested in numerous TTPI management and regulatory bodies, without any right of veto being reserved to the High Commissioner. While the responsibilities of most of these bodies are domestic in nature, some such as district foreign investment boards, have authority over decisions of importance to foreign nationals. There has been no suggestion that such authority, or that over the existing 12-mile exclusive fishing zone, has been exercised in an illegal manner. USG insistence on retaining a U.S. veto over MMA regulations would thus seem inconsistent with the U.S. responsibility under the Trusteeship Agreement to "promote the development of the inhabitants . . . toward self-government or inde-

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pendence . . . give to the inhabitants. . . a progressively increasing share in the administrative services in the territory . . . develop their participation in government". It will also be recalled that neither my instructions concerning the bill which was passed in February (State 29946 NOTAL) nor the veto messages of the High Commissioner and Secretary intimated that the U.S. required a right of review of regulations.

Accordingly, I believe that the bill as passed adequately safeguards the U.S. legal position and U.S. foreign affairs responsibilities, and I strongly recommend that the USG not direct a veto.

The High Commissioner concurs in the foregoing analysis.

BENNETT

Enclosures:

- 1) House Bill # 7-287
29 August 1977
- 2) House Committee Report
- 3) Ltr to House and Senate
committees
- 4) Senate report

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