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April 18, 1995

VIA FAX & MAIL
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Governor Carlos S. Camacho
Chair, Subcommittee on Legal Matters
Preconvention Committee, Third Northern
Marianas Constitutional Convention
Caller Box 10007
Saipan, MP 96950

Dear Governor Camacho:

We received a letter of April 7, 1995 from Herman T. Guerrero, Chair of the Preconvention Committee, informing us that your Subcommittee will review the proposals to provide legal services to the Convention. We were pleased to learn of your election to the Convention and the Subcommittee Chair. Both Mr. MacMeekin and I recall fondly living on Saipan during your tenure as the Commonwealth's first elected Governor. My father-in-law, Jose Terlaje, has always spoken very highly of you. Your experience will provide a valuable perspective for the Convention's deliberations.

As you know, our firm has submitted a proposal to provide legal services to the Convention or to the Saipan delegation. Because we are situated in Washington, D.C., we have not sought the role of primary legal counsel. Because of our long association and experience with the Commonwealth, however, we are very interested in contributing to this historic process. Our firm has maintained extensive files on most constitutional issues in the Northern Mariana Islands since before termination of the Trusteeship Agreement, and we have ready access to research materials here that are simply unavailable in the Commonwealth. With our electronic communications capabilities, we could provide a valuable research link to assist the Convention.

I'm convinced we can provide prompt legal work of the highest quality at excellent rates. In the event presence is needed in the Commonwealth during the Convention, we would be willing to negotiate a daily rate for our legal services.

On some issues, particularly the law of the sea and natural resource rights, we can make immediate contributions based on work done in the Covenant Section 902 Consultations. I am sending by mail a copy of my article "The Exclusive Economic Zone and the United States Insular Areas: A Case for Shared Sovereignty," 25 Ocean Development and International Law 365 (1994) for your consideration. I hope you will favorably consider our proposal.

I plan to be in the Commonwealth on other business early in May and would appreciate the chance to meet with you during that time. Meanwhile, please let me know if you have any questions about our proposal.

Sincerely,

Don C. Woodworth

Donald C. Woodworth

Encl. (by mail)

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The Exclusive Economic Zone and the United States Insular Areas: A Case for Shared Sovereignty

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The article analyzes the legal and practical effects of the 1983 Proclamation of the United States Exclusive Economic Zone (EEZ) and the Magnuson Fishery Conservation and Management Act on the large EEZs surrounding five insular areas of the United States: Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands. Application of the Magnuson Act has impeded development and conservation of insular fisheries. Insular governments oppose imposition of federal resource authority in the insular EEZ. Federal authority in the EEZ is limited by the proclamation and by federal and international law. While the federal government has sovereign interests in the insular areas, insular citizens who are not vested with full political rights and equal representation in the national government properly retain the proprietary and beneficial interests in the resources of the insular EEZ. A model for sharing sovereignty in the insular EEZ is proposed.

Keywords exclusive economic zone, Magnuson Fishery Conservation and Management Act, equal footing, insular areas of the United States, commonwealths, territories, possessions, Puerto Rico, Virgin Islands, American Samoa, Guam, Commonwealth of the Northern Mariana Islands

In 1982, after more than a decade of negotiations, the United Nations Convention on the Law of the Sea (LOSC)[1] was signed in Montego Bay, Jamaica, by 119 nations (and other entities) and opened for signature by others. This convention codified the international concept of an exclusive economic zone (EEZ) extending 200 nautical miles seaward of the shoreline within which coastal states have sovereign rights over resources and various other jurisdictions. The United States chose not to sign the convention, but has formally recognized the legality of the exclusive economic zone. A year later, in 1983, President Reagan proclaimed the EEZ of the United States.[2]

This article is based on a paper presented to a national conference, "A Time of Change: Relations Between the United States and American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the United States Virgin Islands," at the George Washington University on February 9, 1993. It has been revised and updated to reflect developments since that conference.

The author is a partner in the law firm of MacMeekin & Woodworth in Washington, D.C. The firm was counsel to the Commonwealth of the Northern Mariana Islands on oceans and fisheries policy during the Covenant Section 902 Consultations and other discussions with the federal government described in this article. The opinions expressed in this article are those of the author and do not necessarily represent the official position of the government of the Commonwealth of the Northern Mariana Islands. The author appreciates the assistance provided to him in the preparation of this article by his law partner, Daniel H. MacMeekin.

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The zone proclaimed by the United States is the largest of any nation in the world by a wide margin.[3] It encompasses some 3,362,600 square nautical miles, more than 3 billion acres.[4] This area is more than one-fifth larger than the land area of the United States. President Reagan's proclamation can be characterized as the largest territorial acquisition in the history of the United States.

Most of this "wet territory" is not adjacent to the 48 contiguous states. In fact, the exclusive economic zone adjacent to the continental United States, including the Atlantic and Pacific coasts and the coast of the Gulf of Mexico, comprises only about 20 percent of the total area. The states of Alaska and Hawaii both have gigantic exclusive economic zones, each of them larger than the entire exclusive economic zone area adjacent to the contiguous 48 states. Even larger than either of these, however, is the area surrounding the insular areas of the United States, including the commonwealths of Puerto Rico and the Northern Mariana Islands; the territories of Guam, the Virgin Islands, and American Samoa; and the other island possessions of the United States. When combined, these insular areas have exclusive economic zone areas of more than 1 million square nautical miles, about 31 percent of the total.[5]

Within these areas are fertile fishing grounds and potentially valuable mineral deposits. Currently, the insular governments derive almost no revenues from the natural resources of these waters. The economic future of the insular areas would be brighter if ocean-based industries could be developed. Federal laws that apply, notably the Magnuson Fishery Conservation and Management Act,[6] are not well suited to fostering local development of the resources. The unsettled state of jurisdiction in the insular EEZ could inhibit future development of marine mineral resources.[7] The United States should recognize the ownership interests, proprietary and beneficial, of the people of the five insular areas in these resources and the authority of the insular governments to manage and conserve the living and non-living resources of the exclusive economic zones surrounding their islands for the benefit of the U.S. citizens and nationals residing there.

The United States does have clear interests and responsibilities in the exclusive economic zone of the insular areas. These include interests in navigation, commerce, national defense, and international affairs.[8] Economic development of this EEZ, particularly of its marine mineral resources, will almost certainly require the scientific and administrative expertise of the federal government. For the long-term stability of U.S. relations with the insular areas, an ocean resource policy that recognizes the islands' proprietary and administrative resource rights, while clearly acknowledging paramount federal authority in the areas of commerce, defense, and foreign affairs, is needed.[9]

An examination of the presidential proclamation shows that, without enabling federal legislation, the proclamation is not domestically self-executing. Under both federal and international law, citizens who are deprived of the right to vote and are not represented in the national government (such as those residing in the U.S. insular areas) should retain the ownership and beneficial interest in the marine resources of the EEZ.

Several practical problems have resulted from current federal EEZ policy. The Magnuson Act, although much improved by the amendment to include tuna under United States jurisdiction,[10] does not recognize the interests of the insular areas as tuna resource owners and does not allow the island governments to generate revenues from the harvest of their fisheries resources. The American Pacific islands are excluded from most regional conservation and management organizations because of their lack of EEZ jurisdiction. For example, provisions of the South Pacific Tuna Treaty[11] favor non-American islands of the South Pacific over the U.S. insular areas in developing canneries and other

fisheries-support industries. Federal policy should recognize the ownership interest of the insular peoples in their marine resources, while ensuring that vital federal governmental interests are protected.

Resources of the Insular EEZ

Fish

The insular areas of the United States are involved in the fishing industry. All have significant local commercial industries, as well as recreational and subsistence fisheries. In the Caribbean, Puerto Rico and the Virgin Islands have active shallow-water reef fish industries that harvest numerous species of finfish.[12] Both have substantial spiny lobster fisheries as well.[13] In the Pacific, American Samoa, Guam, and the Northern Mariana Islands all have significant local commercial industries.[14]

Puerto Rico and American Samoa also have major tuna canning industries. In 1989, Puerto Rico canned more than half of the 535,000 tons of tuna processed in the United States, although much of it came from Pacific fisheries.[15] In 1990 two of the island's five canneries closed and a third cut back its operations. The closings resulted in a loss of about 2,000 jobs.[16] In spite of these developments, Puerto Rico and American Samoa together continue to dominate U.S. tuna landings and canning production, accounting for 93 percent of the total.[17]

In addition, both Guam and the Northern Mariana Islands have substantial transshipment operations. The Northern Mariana Islands have hosted a substantial transshipment operation based on Tinian Island. During the seven-year period from 1983 through 1989, an average of 76,000 short tons of tuna were landed and transshipped through Tinian Harbor.[18] In 1991, nearly 68,000 tons were transshipped from Tinian.[19]

Minerals

The exclusive economic zones of the insular areas include some remarkable geological features, including profound ocean depths. The greatest known depths in the Atlantic and Pacific oceans occur in the Puerto Rico trough and the Marianas trench, respectively.[20] Extreme depths also occur near American Samoa in the Tonga trench. All the Pacific areas have experienced volcanic activity.

Mineral resources exist in the insular areas of the United States. In the Caribbean, sand and gravel deposits have been identified offshore of both Puerto Rico and the Virgin Islands.[21] Ferromanganese crustal deposits have been discovered on the Aves Ridge, near St. Croix in the Virgin Islands.[22] Gold and other heavy metal placer deposits are considered likely in areas off the north coast of Puerto Rico.[23] In the Pacific, American Samoa, Guam, and the Northern Mariana Islands all have known deposits of ferromanganese crusts and polymetallic sulfides.[24]

Mining any of the known marine mineral deposits is not considered to be economically feasible now. Some of these deposits are attractive enough, however, that further exploration has been recommended.[25]

Presidential Proclamation 5030: The Exclusive Economic Zone

President Reagan's 1983 EEZ proclamation defined the exclusive economic zone of the United States as "a zone contiguous to the territorial sea, including zones contiguous

to the territorial sea of the United States, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands (to the extent consistent with the Covenant and the United Nations Trusteeship Agreement), and United States overseas territories and possessions."[26] The proclamation declares that the United States has

> 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, such as the production of energy from the water, currents and winds. . . .[27]

The U.S. Department of State and other federal agencies have claimed that the EEZ proclamation by itself provides the federal government with authority to explore, exploit, conserve, and manage the living and non-living resources of the exclusive economic zone to the exclusion of the insular governments.[28]

Most of the insular governments, of course, do not share this opinion. Four of the five insular areas maintain that the economic rights in the EEZ should belong to the insular governments. Guam and the Northern Mariana Islands enacted laws asserting jurisdiction in the exclusive economic zone well before President Reagan's proclamation. In November 1992, voters in American Samoa approved an amendment to their constitution asserting local jurisdiction over the EEZ. All three political parties in Puerto Rico have advocated local control of the EEZ in congressional deliberations on the future political status of the commonwealth.[29] Even the state of Hawaii has asserted, and reserved, its jurisdiction of the EEZ in its state constitution.[30]

Local jurisdiction over resources of the exclusive economic zone in the insular areas is lawful and does not conflict with the assertion of federal sovereignty in the EEZ proclamation. Recognizing the jurisdiction of the insular governments in the exclusive economic zone is not only lawful, it is a good idea.

Notice to the World

Proclamation 5030, the EEZ proclamation, was issued pursuant to the constitutional foreign affairs authority of the president. As such, the proclamation has external effect only.[31] It notifies foreign nations that the resources of the EEZ are not available for their exploitation. The proclamation is not domestically self-executing; it does not itself establish domestic law for the conservation and management of EEZ resources. Consequently, it does not itself delegate resource management authority to the agencies of the federal government. Similarly, the proclamation does not allocate this authority among the federal government and state or insular governments.

"In accordance with the rules of international law"

The proclamation expressly recognizes limits to the sovereign rights asserted by the United States in the EEZ. Federal authority is asserted only "to the extent permitted by international law" and is to be exercised "in accordance with the rules of international law."[32] International law limits the sovereignty of a coastal nation in the exclusive economic zone, especially vis-à-vis its dependent territories.

International Law

The United Nations Convention on the Law of the Sea

The authority for the U.S. declaration of an exclusive economic zone comes from international law and, especially, the United Nations Convention on the Law of the Sea. The United States has not signed the convention, but its objections pertain to certain of the deep seabed mining provisions, not to the EEZ regime.[33] The United States has accepted most provisions of the LOSC as codified international law and has pledged to adhere to the provisions of the convention except those establishing the deep seabed mining regime.[34]

The LOSC includes two provisions regarding dependent territories. The first, Article 305(1), provides, in part, that the convention is open for signature by

> all territories which enjoy full internal self-government, recognized as such by the United Nations, . . . and which have competence over the matters governed by this Convention, including the competence to enter into treaties in respect of those matters.[35]

The second, Resolution III, declares that

> [i]n the case of a territory whose people have not attained full independence or other self-governing status recognized by the United Nations, or a territory under colonial domination, 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.[36]

The insular areas of the United States do not, at present, meet the qualifications for signing the convention according to Article 305(1). Each insular area is subject to the foreign affairs authority of the United States. None, as yet, has been granted competence to sign the convention or enter into treaties under the convention. This fact is not surprising since the United States itself has chosen not to sign the convention. Should the United States change its policy on the convention and decide to sign, it could constitutionally authorize the insular areas to become parties to the convention. Unless and until the United States undertakes such an authorization, the insular areas of the United States fall under Resolution III.

International law on the achievement of self-government by a non-self-governing territory is embodied in principles contained in the Annex to General Assembly Resolution 1541 (XV) of December 15, 1960.[37] Principle VI in that annex states:

> A Non-Self-Governing Territory can be said to have reached a full measure of self-government by:
> (a) Emergence as a sovereign independent State;
> (b) Free association with an independent State; or
> (c) Integration with an independent State.

None of the United States' commonwealths or territories has attained the "full measure of self-government" as defined in Resolution 1541. They certainly have not become

sovereign independent states. They have not become freely associated with the United States because they do not have the power to unilaterally disassociate themselves from the sovereignty of the United States.[38] Integration with an independent state, the United States, also has not occurred, because integration requires complete equality between the peoples of the insular areas and the United States, including "equal rights and opportunities for representation and participation at all levels in the executive, legislative and judicial organs of government."[39]

Consequently, provisions of the LOSC concerning rights in the exclusive economic zone are to be "implemented for the benefit of the people of the territory with a view to promoting their well-being and development." This creates an express responsibility on the part of the United States to administer the exclusive economic zone adjacent to the insular areas for the benefit of the people of those insular areas.

Customary International Law

Customary international law likewise requires the United States to administer the exclusive economic zone for the benefit of its dependent insular citizens. All foreign metropolitan nations that withhold full political rights in the national government from the people of an insular area recognize the right of the island government to retain jurisdiction over the resources of the EEZ on behalf of its inhabitants.[40]

The issue has been faced by almost every metropolitan government, whether its relations are with a commonwealth, territory, or freely associated state, or even when the island government is considered to be a department of the national government. In 1978, Professor Thomas Franck made a comprehensive survey of the relationships between metropolitan governments—including the United States, New Zealand, Great Britain, France, Denmark, and the Netherlands—and their dependent island states and territories. This survey focused on control of the natural resources of the EEZ. Professor Franck identified the 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 and fisheries of the exclusive economic zone.[41]

The survey also pointed out that

> [t]he 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.[42]

Illustrative examples from the Pacific are the New Zealand dependencies: the Cook Islands, Niue, and Tokelau. The Cook Islands and Niue have political relationships with New Zealand that are analogous to the United States' relations with the commonwealths of Puerto Rico and the Northern Mariana Islands: the island governments are "self-governing," while the national government is responsible for foreign affairs and de-

fense.[43] Tokelau, on the other hand, has no constitution and is governed by the law of New Zealand,[44] similar to the organic acts by which the United States governs the territories of Guam and the Virgin Islands. Regardless of these distinctions, the New Zealand EEZ law does not apply to its dependent islands.[45] New Zealand recognizes the jurisdiction of all three of its affiliated island governments over the resources of their EEZs.

Indeed, the United States has recognized the sovereignty of the Cook Islands and Tokelau in their exclusive economic zones by entering into treaties establishing the maritime boundaries between each of them and the United States.[46] These treaties have been cited as proper implementation of the United Nations Convention on the Law of the Sea provisions on dependent island states.[47] The United States treaty with the Cook Islands is viewed as an implementation of Article 305 of the convention, whereby a dependent but self-governing coastal state exercises international competence and treaty-making authority in the exclusive economic zone.[48] The treaty with New Zealand regarding Tokelau, meanwhile, is seen as recognition of the principle embodied in Resolution III, whereby rights in the EEZ are implemented for the benefit of the people of an island territory.[49]

Although New Zealand's political relations with these islands may be distinguished in various details from the relationship between the United States and its insular areas, in general the analogy holds. Technical differences in the status relationship do not account for differences in international practice regarding the control of ocean resources by coastal island states. International law and public policy both favor allowing island peoples to retain jurisdiction over the resources of the EEZ surrounding their islands.

An example of the continuing adherence to this international norm is found in the announcement by the British government of the creation of an EEZ around the Falkland Islands. On October 29, 1986, the government of the United Kingdom declared the establishment of a Falkland Islands Interim Fisheries Conservation Zone in the marginal sea surrounding the Falkland Islands.[50] The declaration was intended to provide notice to the international community of the establishment of the zone, but the legislation to implement the declaration and to provide the necessary administrative regime was 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 are the property of that government.[51] Income from this source has proven substantial. Since 1986, the Falklands Islands have realized an average of about 25 million pounds (about U.S.$37 million) annually from the sale of squid fishing licenses alone.[52]

Thus, an international norm or standard of practice is recognized and supported by both the United Nations Convention on the Law of the Sea and by the customary practice of nations. Metropolitan nations that extend full 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 EEZ of the dependencies. Metropolitan nations that 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 EEZ of such a state. The standard reflects a balance of interests with equitable force—political rights are balanced against rights in the ocean resources. No state or people should be deprived of both.

Marine Resource Laws of the United States

The single significant exception to the international standard noted in the Franck study was the Commonwealth of Puerto Rico.[53] As noted above,[54] federal policy with respect

to Puerto Rico has been criticized because, although the people of Puerto Rico lack representation in Congress, the United States has not delegated resource jurisdiction to the commonwealth government. The principal example of the United States taking federal jurisdiction of the resources of the exclusive economic zone was then, and is now, the Magnuson Fishery Conservation and Management Act.

The Magnuson Fishery Conservation and Management Act: Nationalizing U.S. Fisheries

In 1976, nearly seven years before the proclamation of the exclusive economic zone, the United States asserted exclusive fisheries conservation and management jurisdiction to a distance of 200 miles off U.S. coasts in the Magnuson Fishery Conservation and Management Act.[55] The act applies to areas offshore of all U.S. coastal states and insular areas.[56]

Although the states and insular areas are represented on the regional fishery management councils created under the act, appointments of most members of these councils are made by the secretary of commerce.[57] The councils are responsible for preparing fisheries management plans for all fisheries within their area. Their functions are entirely advisory, however, because proposed plans must be approved by the secretary of commerce.[58] Similarly, a council may comment on any application for foreign fishing in its area, but cannot approve or disapprove these applications.[59]

The Magnuson Act now claims for the United States "sovereign rights and exclusive fishery management authority over all fish . . . within the exclusive economic zone."[60] The intention of the act is to prevent overfishing, "while achieving, on a continuing basis, the optimum yield."[61] The optimum yield is to "provide the greatest overall benefits to the Nation, with particular reference to food production and recreational opportunities," with its primary objective to harvest the "maximum sustainable yield from each fishery."[62] Fees for domestic fishing are set by the secretary of commerce, who may, by agreement, share them with the states.[63] Such fees are limited, however, to the administrative cost of issuing the permits.[64] Foreign fishing vessels are specifically permitted to harvest that portion of the optimum yield not harvested by U.S. vessels.[65] "Reasonable" fees may now be charged of foreign fishing vessels, but all fees collected are paid into the federal treasury.[66]

State and insular governments retain their jurisdiction over fisheries within their boundaries (that is, within their three-mile territorial seas), but even this authority may be preempted by the secretary of commerce.[67]

Tuna and other highly migratory species are treated differently from other fish under the act. Until January 1, 1992, highly migratory species were excluded from the exclusive management authority of the United States. They are now included but are subject to a special requirement that the United States cooperate internationally in the conservation and management of these species.[68]

Federal policy under the Magnuson Act is to maximize the harvest of all fish. Conservation is not an end in itself. As long as an "optimum" yield is maintained, all fish not harvested by U.S. fishing vessels may be harvested by foreign vessels.[69] Because of the way the term *optimum* is defined, however, the permitted yield need not be sustainable.[70] In many cases, "optimum" harvests have resulted in dramatically declining yields and depressed industries.[71]

Domestic fees may be shared with insular governments but are limited to the cost of issuing the fishing permits. Foreign fees must be "reasonable," and all revenues are paid

the federal treasury. Altogether, the Magnuson Act nationalizes the U.S. fisheries, making these resources subject to exclusive federal control and directing all revenues to the federal treasury.

The Outer Continental Shelf Lands Act and the U.S. Insular Areas

The United States has not implemented the EEZ proclamation with respect to marine minerals in the insular areas. In 1945, President Truman proclaimed the exclusive jurisdiction of the United States over the natural resources of the continental shelf.[72] In 1953, the United States implemented this proclamation and established jurisdiction over its continental shelf by enacting the Outer Continental Shelf Lands Act (OCSLA).[73] The law provides authority for the Department of the Interior to lease oil and gas, as well as sulfur and other hard minerals, in the outer continental shelf. This law defines the "outer continental shelf" (OCS) as those submerged lands seaward of the lands granted to the coastal U.S. states pursuant to the Submerged Lands Act[74] that appertain to and are subject to the jurisdiction and control of the United States.[75]

Based on this definition, the Department of the Interior has asserted that the OCS jurisdiction is "ambulatory": that it may become more extensive as federal minerals jurisdiction is extended.[76] Originally, the OCS jurisdiction was not nearly as extensive as the EEZ. The area of the OCS was estimated as recently as 1987 at 1.6 million square nautical miles.[77] This is less than half the estimated EEZ area of 3.36 million square nautical miles.[78] Nevertheless, the Department of the Interior now claims that its authority extends to the outer limit of the EEZ, regardless of the geological attributes of the continental shelf.[79]

The current seaward extent of the OCS is the subject of lively debate, but it is generally agreed that the OCSLA does not apply to the continental shelf offshore the insular areas of the United States. The *Gorda Ridge* opinion, issued by the solicitor for the Interior Department, makes clear that, although the OCS offshore the states of the Union may expand to fill the EEZ, the OCSLA does not apply offshore the insular areas of the United States:

> Since the portion of the EEZ contiguous to U.S. commonwealths, territories and possessions is not off the coast of a state, this portion of the EEZ is not within the definition of the OCS under 43 U.S.C. sec. 1331(a). . . . Thus, such submerged lands do not presently fall within the leasing authority of the Department of the Interior under the OCSLA.[80]

Accordingly, the United States has not implemented the presidential proclamation of an exclusive economic zone or otherwise established federal minerals jurisdiction on the continental shelf or in the exclusive economic zone seaward of the U.S. insular areas.

Marine Resource Laws of the Insular Areas

The Commonwealth of Puerto Rico, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands have all enacted their own marine resource laws. All three Pacific insular areas have voted to approve local EEZ jurisdiction. The Commonwealth of Puerto Rico has sought to obtain EEZ jurisdiction in political status legislation during the last Congress. The governors of all five insular areas have proclaimed, on behalf of the insular governments, the "jurisdiction and the exclusive inalienable

right to explore, exploit, conserve, manage and control the living and non-living resources within their respective exclusive economic zones for the benefit of their inhabitants."[81]

Puerto Rico

The Commonwealth of Puerto Rico has enacted its own laws on marine resources, both living and non-living. Puerto Rico's Fisheries Act[82] established jurisdiction of the commonwealth over all marine flora and fauna, including tuna. This jurisdiction extends seaward 12 miles from shore, somewhat beyond the territorial sea of Puerto Rico.[83]

The Commonwealth of Puerto Rico has also established ownership of commercial marine minerals in the submerged lands surrounding the islands by enacting the Puerto Rico Mining Act.[84] This ownership extends seaward as far as "where the depth of the waters allows their exploitation and utilization, an extension of not less than three marine leagues."[85]

Although Puerto Rico has not enacted exclusive economic zone legislation as such, its authority extends into the area of the U.S. exclusive economic zone. In addition, during consideration of Puerto Rico's political status legislation in the 101st Congress, the issue of exclusive economic zone jurisdiction was raised. Early versions of this legislation would have permitted Puerto Rico to control the marine resources of its exclusive economic zone and continental shelf under all three political options: statehood, enhanced commonwealth, and independence.[86] This indicates that all of Puerto Rico's political parties have supported exclusive economic zone jurisdiction for Puerto Rico.

The Virgin Islands

Title to the submerged lands and tidelands surrounding the Virgin Islands to the distance of three miles has been conveyed to the government of the Virgin Islands by virtue of the Territorial Submerged Lands Act of 1974.[87] The Virgin Islands has not enacted marine resource legislation extending its jurisdiction beyond the three-mile territorial sea.

American Samoa

The government of American Samoa also received ownership of submerged lands to a distance of three miles in the Territorial Submerged Lands Act of 1974.[88] Until recently, American Samoa did not assert jurisdiction beyond the territorial sea, except perhaps by applying its water quality environmental law to protect the quality of coastal water to a depth of 100 fathoms.[89] In the November 1992 election, however, the people of American Samoa approved a constitutional amendment to establish an American Samoan EEZ.[90] The amendment was passed by a vote of 59.9 percent in favor.

Guam

In 1980, the government of Guam enacted exclusive economic zone legislation. Guam claims jurisdiction to a distance offshore 200 miles from the mean low water mark. Within that zone, Guam asserts exclusive jurisdiction over "exploration and exploitation of all ocean resources and all sources of energy and prevention of pollution."[91]

In 1987 the people of Guam voted to become a commonwealth of the United States

and approved a Draft Commonwealth Act that has been submitted to the U.S. Congress.[92] Section 1001(b) of that act provides:

> The Commonwealth shall exercise rights to determine the condition, including pollution control, and terms of all scientific research, management, exploration and exploitation of all ocean resources and all sources of energy and prevention of pollution within the 200-mile Exclusive Economic Zone, including pollution originating outside the zone that poses a threat within the zone.[93]

Commonwealth of the Northern Mariana Islands

The Commonwealth of the Northern Mariana Islands has enacted comprehensive ocean resources legislation. The commonwealth's Marine Sovereignty Act of 1980[94] establishes a 12-mile territorial sea and a 200-mile exclusive economic zone.[95] The EEZ provisions declare sovereign rights

> 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.[96]

The commonwealth's jurisdiction also extends to artificial islands and structures, marine scientific research, and the prevention of pollution.

The right of other nations to innocent passage and their freedoms of navigation, overflight, and the laying of submarine cables and pipelines are protected.[97] The right of the United States to exercise its powers in defense of the commonwealth and the United States in the exclusive economic zone is also recognized.[98]

Federal Sovereignty in the Insular Areas

The legal basis for the federal government's assertion of exclusive resource jurisdiction vis-à-vis its insular areas in the EEZ is the national sovereign rights and jurisdiction of the United States as expressed in Proclamation 5030. In consultations with the Commonwealth of the Northern Mariana Islands, the United States has asserted that:

> The 1983 U.S. proclamation of a 200-mile Exclusive Economic Zone extending from the nation's coasts and surrounding its insular states, territories, commonwealths, and possessions provides the Federal Government with sovereign rights to the management, protection and development of whatever natural resources may exist in the seabed, subsoil, and water column of the zones.[99]

This assertion ignores the limitations on federal sovereignty contained in the language of the proclamation itself. The United States proclaims sovereign rights and jurisdiction only "to the extent permitted by international law. . . ." As noted above,[100] international law permits the United States to exclude foreign nations from exploitation of the resources of the U.S. EEZ but does not justify appropriation of the proprietary and benefi-

cial rights of the citizens of the insular areas in the zone by the federal government. The Magnuson Act does establish exclusive federal fisheries jurisdiction in the exclusive economic zone, by act of Congress, but the EEZ proclamation does not otherwise establish federal resource jurisdiction in the insular areas.

Political sovereignty must be distinguished from proprietary ownership.[101] The proclamation creates certain sovereign rights in the EEZ for the purpose of exploring, exploiting, conserving and managing natural resources," [102] but does not establish federal ownership of the resources of the insular EEZ.

The Equal Footing Doctrine

Before President Reagan proclaimed sovereign rights in the EEZ, national sovereignty in the near-shore marginal sea was judicially recognized. Federal ownership of the submerged lands beneath the territorial sea adjacent to the states of the Union was established just after World War II in a series of cases known as the *tidelands cases*.

The first tidelands case was *United States v. California*.[103] At issue was whether the state of California owned the gas and oil beneath the three-mile territorial sea. The Supreme Court held that California did not own those resources and that "national interests" such as commerce, defense, and foreign affairs predominated in the marginal sea. As a result, the federal government had "paramount rights in and power over" the submerged lands seaward of the low water mark. The Court emphasized that its ruling was based on the need to maintain an "equal footing" between California and the other states of the Union. The Court examined the historical record and concluded that "from all the wealth of material supplied, however, we cannot say that the thirteen original colonies separately acquired ownership to the three-mile belt or the soil under it."[104]

> At the time this country won its independence from England there was no settled international custom or understanding among nations that each nation owned a three-mile water belt along its borders. . . . Neither the English charters granted to this nation's settlers, nor the treaty of peace with England, nor any other document to which we have been referred, showed a purpose to set apart a three-mile ocean belt for colonial or state ownership.[105]

Because of the equal footing doctrine, California's lack of title to the offshore submerged lands was determined by reference not to the history of California, but to the history of the 13 original colonies.

The *California* decision was followed by *United States v. Louisiana*[106] and *United States v. Texas*,[107] which elaborated the Supreme Court's reasoning on the issue. In *Louisiana*, the Court pointed out that:

> The claim to our three-mile belt was first asserted by the national government. Protection and control of the area are indeed functions of national external sovereignty. . . . The problems of commerce, national defense, relations with other powers, war and peace focus there. National rights must therefore be paramount in that area.[108]

In *United States v. Texas*, the Court addressed the situation where—unlike the 13 original colonies, California, and Louisiana—the Republic of Texas had quite clearly established its sovereignty over the submerged lands beneath its territorial sea (of

nine nautical miles) prior to admission to the Union. Even in this case, the Court held that the federal government, not the state of Texas, owned the submerged lands. Again, the equal footing doctrine was the key factor in the Court's decision:

> Texas prior to her admission was a Republic. We assume that as a Republic she not only had full sovereignty over the marginal sea but ownership of it, of the land underlying it, and of all the riches, which it held. . . . She then became a sister State on an "equal footing" with all other States. That act concededly entailed relinquishment of some of her sovereignty. The United States then took her place as respects foreign commerce, the waging of war, the making of treaties, defense of the shores, and the like. . . . We hold that as an incident to the transfer of that sovereignty any claim that Texas may have had to the marginal sea was relinquished to the United States.[109]

Unequal Footing in the Insular Areas

Reliance on these cases to establish federal sovereignty in the EEZ surrounding the insular areas is inappropriate, however, for two reasons. First, those cases determine title to submerged lands under the territorial sea (in most cases, three miles offshore), not to the resource management rights in the 200-mile exclusive economic zone. Second, the doctrine of equal footing does not apply to the insular areas.

In *United States v. California*, the United States argued that it needed full ownership and control of the submerged lands beneath the territorial sea because

> whatever any nation does in the open sea, which detracts from its common usefulness to nations, or which another nation may charge detracts from it, is a question for consideration among nations, and not their separate governmental units.[110]

With the right of a coastal nation to a territorial sea and the freedoms of navigation, innocent passage, and overflight codified in the various 1958 Law of the Sea Conventions,[111] and with resource rights among nations agreed upon in the United Nations Convention on the Law of the Sea in 1982, most of the contentious issues among nations are resolved. What remains is the allocation of the resources of the U.S. EEZ among the political subdivisions and people of the United States.

The tidelands cases are based on a common historical premise: that the original 13 colonial states of the United States did not have ownership (dominium) or political sovereignty (imperium) over the submerged lands offshore their coasts. Each opinion emphasizes that the federal government first claimed the three-mile territorial sea after ratification of the U.S. Constitution, and that the colonies had not made this claim. Because of the equal footing doctrine, the tidelands cases hold that neither California, Louisiana, Texas, nor any other U.S. state could retain ownership of the submerged lands after admission to the Union.

The equal footing doctrine is not a constitutional doctrine. Rather, it stems from the various federal statutes admitting states to the Union. California, for example, was admitted to the Union "on an equal footing with the original States in all respects whatever."[112] It was held in *Case v. Toftus* that the equal footing doctrine mandates "a union of political equals."[113]

Obviously, the insular areas have not been admitted to the Union as states and are

not the political equals of any state of the Union. Consequently, the doctrine does not apply to the insular areas, and the tidelands cases are not bases for federal claims of marine resource authority in the exclusive economic zone.[114]

The key consideration in federal law, and under international law, becomes the right to vote. Without the right to vote and full political representation in the national government of the United States, the citizens of the insular areas are not on an equal footing with the citizens of the states of the Union. Consequently, they do not relinquish their proprietary rights in the resources of the EEZ.

The history of the submerged lands issue shows why this rule should be observed. Before the *tidelands cases* were decided, the states assumed they owned the adjacent submerged lands. The coastal states responded immediately to the *tidelands* decisions. They used their political power to restore their presumed ownership of the submerged lands to the states by getting Congress to enact the Submerged Lands Act.[115] Without full representation in the Congress, the insular areas are without such a political remedy.

Article 73 of the United Nations Charter states:

> Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are *paramount*, and accept as a sacred trust the obligation to promote to the utmost, . . . the well-being of the inhabitants of these territories. . . .[116]

Two paramount interests cannot be simultaneously recognized and served in the EEZs surrounding the United States' insular areas. The precedential principle of the tidelands cases—that federal interests are paramount to those of the states in the marginal sea—cannot be applied to the EEZ resources claims of the insular areas. To do so would be inconsistent with the "sacred trust" obligation of the United States under Article 73 to keep the interests of the inhabitants paramount in the insular areas.

Efforts at Compromise—Federal Consultations with the Commonwealth of the Northern Mariana Islands

Various federal agencies and officials have acknowledged the inequity of preempting by federal legislation the marine resource rights of U.S. citizens who have no vote in the Congress. Some officials have voiced support for recognizing the resource rights of the insular areas. In 1990, Timothy Glidden,[117] Special Representative of President George Bush, agreed with representatives of the Northern Mariana Islands that the "authority and jurisdiction" of the commonwealth should "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."[118] Glidden recommended 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 [EEZ] right . . . and may enter into treaties and other agreements . . . relating to the harvesting, conservation, management, exploration or exploitation of the living and non-living resources from the marginal sea."[119]

Unfortunately, the president's special representative encountered resistance to this agreement from the State and Justice departments.[120] Glidden retreated from the agree-

ments[121] and the recommendations they contained have not been implemented. Despite this disappointment, the Commonwealth of the Northern Mariana Islands has continued to work for reform of federal policy toward the exclusive economic zone surrounding its islands. Consultations continued on specific aspects of the exclusive economic zone issue.[122] In particular, agreement was reached in December 1992 to allow the Northern Mariana Islands to participate in the Western Pacific Regional Fishery Management Council without prejudice to its claims to ownership of the resources of the exclusive economic zone.[123]

Policy discussions with the executive branch have continued. In 1993, the commonwealth requested that Secretary of the Interior Bruce Babbitt review federal fisheries policies in the insular areas and propose reform of the Magnuson Fishery Conservation and Management Act during the reauthorization process.[124] Secretary Babbitt responded by suggesting to Ron Brown, Secretary of Commerce, that "[f]isheries are a major resource for these insular areas and represent an important opportunity for economic growth. However, inappropriate and, in some instances, counter-productive federal fisheries policies have prevented the territorial governments from taking advantage of this opportunity."[125] Consequently, "[a]t present, the U.S. flag territories in the Pacific are the only islands in the region that do not derive revenues from the harvest of these resources."[126] He noted that "CNMI [Commonwealth of the Northern Mariana Islands] talks have progressed toward a compromise that would allow an enhanced role in fisheries management by the island governments within the context of the Magnuson Fishery Conservation and Management Act,"[127] and invited the Commerce Department to join in establishing a "working group to develop a legislative proposal to meet these needs."[128] The secretary's proposal would expand the review agreed to in consultations with the Northern Mariana Islands to include review of federal fisheries policies in all the insular areas.[129]

Secretary Brown accepted the invitation and appointed Rolland Schmitten, Director of the National Marine Fisheries Service, to represent the Department of Commerce.[130] Leslie Turner, Assistant Secretary of the Interior for Territorial and International Affairs, will take the lead for the Interior Department.[131] The "group will evaluate current federal fisheries policies and recommend steps that will allow a greater role in the management of these renewable resources by the insular governments."[132]

Policy Considerations: Problems with Federal EEZ Policy in the Pacific

Because the Outer Continental Shelf Lands Act does not apply to the insular areas, and because there are as yet no active mining projects in the Pacific insular EEZ, there have been no serious jurisdictional problems with respect to marine minerals. Current federal policy on the fisheries resources of the exclusive economic zone in the U.S. Pacific insular areas, however, has not been successful. Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands are the only Pacific islands that derive no significant revenues from licensing the fishing vessels operating in their EEZs. The American Pacific islands have been excluded from regional fisheries conservation and management efforts, and the United States has given competing Pacific islands priority for development of fish processing facilities and other support industries.

The United Nations Convention on the Law of the Sea requires coastal states and states desiring to exploit the resources of the EEZ to cooperate in conserving and managing those resources. Examples are provisions in Articles 61 and 64–67 requiring coop-

eration in the conservation and management of fisheries and other living resources. Coastal states and distant water fishing states are required to cooperate in the management of highly migratory species, such as tuna. Specifically, "[i]n regions for which no appropriate international organization exists, the coastal State and other States whose nationals harvest these species in the region shall co-operate to establish such an organization and participate in its work."[133] The U.S. insular areas' lack of fisheries jurisdiction under the Magnuson Act has prevented them from actively cooperating in regional tuna management efforts.

United States Pacific Fisheries Policy under the Magnuson Act

The fisheries policies of the United States, especially its tuna policy under the Magnuson Act, have long been troublesome and confusing to the people of the Pacific islands, including the U.S. citizens and nationals of the U.S. insular areas. The Magnuson Act seems designed for a developed fishing nation, with technically sophisticated fishing fleets. It works well to ensure access to foreign fishing grounds. It does not permit the American islands to generate revenues by licensing foreign vessels, and it has not fostered development of local fishing industries in the islands.

Exclusion of Tuna. Until 1992, tuna and other highly migratory species were excluded from U.S. jurisdiction under the Magnuson Act. This exclusion led to the so-called tuna wars, involving the arrest of U.S. tuna vessels for illegally fishing within the 200-mile exclusive economic zones of various Pacific island nations, and undermined U.S. relations with the island governments.[134] At the same time, the Magnuson Act was applied to prevent local tuna fishermen in the Northern Mariana Islands from fishing in their traditional waters[135] while permitting foreign tuna fishermen to enjoy unrestricted access to the Northern Marianas' exclusive economic zone.[136]

Tuna Included, but Fees Still Restricted. Effective January 1, 1992, the Magnuson Act was amended to include tuna as "fish" within the exclusive fisheries management authority of the United States. This amendment is a step in the right direction, but it does not allow the insular areas to participate directly in or benefit from the management of this important resource. As pointed out above, the Magnuson Act does not allow domestic fishing vessels to be charged revenue-generating fees.[137] Although foreign fishing vessels may be charged "reasonable" fees, those revenues accrue to the treasury of the United States.[138]

Thus, even with the assertion of sovereignty over tuna by the United States, the American insular areas cannot benefit from the harvest the way that other islands in their region do. For example, the Federated States of Micronesia received fishing fees of about $4.9 million in 1986.[139] These revenues have increased and, during both 1991 and 1992, fee revenues were about $14 million.[140] This trend has accelerated. Federated States of Micronesia revenues for 1993 are estimated to be nearly $21 million.[141]

The Forum Fisheries Agency

In the central and western Pacific, the primary tuna management organization is the South Pacific Forum Fisheries Agency. This agency assisted in negotiating the South Pacific Tuna Treaty and administers the funds paid under that treaty.[142] The American Pacific islands are not considered eligible for membership, however, because they lack fisheries conservation and management jurisdiction under the Magnuson Act.[143]

The South Pacific Tuna Treaty

U.S. initiatives to resolve the tuna disputes in the South Pacific culminated in the signature of a regional fisheries access agreement, the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America, otherwise known as the South Pacific Tuna Treaty, on April 2, 1987.[144] The treaty, with its renewal in May 1992 for an additional period of 10 years,[145] has restored the United States' traditionally good relations with the South Pacific island states.

Left unprotected by the agreement, however, are the tuna resources of American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the state of Hawaii. The United States has explained that the U.S. insular areas were excluded from the treaty because "the treaty was primarily an instrument to guarantee access to South Pacific waters for U.S. tuna fishermen."[146] While the treaty does provide access only for U.S. vessels, it is clear that the Forum nations are trying to use its terms as a model for other distant water fishing nations. The Forum Fisheries Committee has adopted minimum terms and conditions of access applicable to all vessels on the South Pacific Forum Fisheries Agency Regional Registry of Vessels,[147] and it is working hard to make these terms standard for all foreign vessels fishing in the treaty area.[148] The highly migratory nature of tuna makes it "inevitable that any logical, meaningful management scheme . . . shall cover the entire migratory range and involve active participation of all the countries concerned."[149]

The Forum nations have become so concerned about conservation of tuna stocks in the western Pacific that they have signed a draft treaty limiting the number of foreign fishing vessels to 200.[150] Since 55 of these vessels are U.S. vessels licensed under the South Pacific Tuna Treaty, other distant water fishing nations will be severely restricted. These foreign vessels may well look to the American Pacific islands for alternative fishing grounds. If regional cooperation like that of Article 64 of the LOSC is to become reality, the American Pacific islands must eventually participate. It is difficult for the United States to participate directly because it represents disparate interests: the U.S. tuna fleet and the Pacific insular areas.[151]

Another unfortunate side effect of this treaty is that it gives the South Pacific island states that are parties to the treaty priority over the American Pacific islands in developing the support industries associated with the tuna fishery. The United States agrees in the treaty to maximize the "benefits generated for the Pacific Island parties from the operations of fishing vessels of the United States . . . including (a) the use of canning, transshipment, slipping and repair facilities . . . (b) the purchase of equipment and supplies, including fuel supplies . . . and (c) the employment of nationals of the Pacific Island parties on fishing vessels of the United States."[152]

Policy Proposals

To remedy the difficulties that have arisen under the Magnuson Act and to provide an equitable federal EEZ policy for the insular areas, the United States should acknowledge the difference between its vital national interests (navigation, freedom of commerce, foreign relations, and national defense) and the economic interests—proprietary and beneficial—in the resources of the EEZ. The insular areas should make the same distinction and should also recognize that development of the resources of the EEZ, especially the marine mineral resources, will require the technical expertise and administrative resources of the federal government. The following policy principles are recommended as

a guide for equitable sharing of sovereign and property interests in the EEZ between the United States and its insular areas.

Under international law, the first principle of U.S. oceans policy with regard to the insular areas should be that the people of the insular areas are vested with ownership of and primary jurisdiction over the resources of the territorial sea and the exclusive economic zone adjacent to their islands. It must be recognized, however, that these economic rights are not exercised in a vacuum, that the United States does have legitimate sovereign interests in the zone. The second principle of U.S. oceans policy with regard to the insular areas should be that the exercise of insular authority in the EEZ conforms to the defense, navigation, and other national interests of the United States and be subject to federal oversight in these areas.[153]

The administration of fisheries and other resource management programs in the EEZ is a complex and highly technical task. The insular governments may benefit from federal experience and assistance in the administration of their ocean resources. The value of a cooperative partnership between the insular areas and the appropriate agencies of the United States in the administration of the exclusive economic zone should be recognized. The third principle of U.S. oceans policy with regard to the insular areas should be that administration of the exclusive economic zone be administered through a cooperative partnership between the insular governments and the United States.

Most insular areas possesses relatively few land-based natural resources. Their efforts to develop economically are heavily dependent on the ocean resources of the exclusive economic zone. To provide a realistic opportunity for them to achieve the level of economic development necessary to become self-sufficient, the fourth principle of U.S. oceans policy regarding the insular areas should be that the ocean resources of the territorial sea and exclusive economic zone be administered with the consent and for the economic benefit of the people of the islands, rather than of the nation at large.

The United Nations Convention on the Law of the Sea requires regional and international cooperation between coastal states and distant water fishing nations in the conservation and management of tuna and other highly migratory species. Similarly, the Magnuson Fishery Conservation and Management Act mandates the management of these species by international agreement. The insular areas have not yet been included in any such management agreement. The fifth principle of U.S. oceans policy regarding the insular areas should be that the insular governments are allowed and encouraged to participate directly in the negotiation and administration of regional and international fisheries agreements.

Conclusion

The first aspect of federal resource policy in the insular EEZ that should be addressed is fisheries policy under the Magnuson Fishery Conservation and Management Act. It is becoming apparent that the Earth's fish resources are finite. Not only do these resources have limits, in many of the world's most important fisheries, those limits have been reached.[154] As these established fisheries decline, fishing vessels migrate to new, more remote fishing grounds in search of new stocks to harvest.[155] The exclusive economic zones of the U.S. insular areas contain such undeveloped fisheries resources and are becoming ever more attractive to outside fishing fleets. Proper management of these resources will promote development of local fishing industries, generate revenues for the island governments, and conserve the fish for future generations. If the island governments are to accomplish these difficult goals, legislation must be enacted to give them the regulatory tools.

Notes

1. United Nations Convention on the Law of the Sea, opened for signature Dec. 10, 1982, 21 I.L.M. 1261 [hereinafter LOSC], reprinted in United Nations, *The Law of the Sea: Official Text of the United Nations Convention on the Law of the Sea with Annexes and Index* (1983).

2. Presidential Proclamation No. 5030, 48 Fed. Reg. 10,605 (1983).

3. Office of Technology Assessment, U.S. Congress, *Marine Minerals: Exploring Our New Ocean Frontier* 3 n. 2 (1987). This book is an excellent general reference on the marine mineral resources of the EEZ. It includes a description of the marine resource laws of the U.S. insular areas and the international law applicable to the insular EEZ.

4. C. Andreasen. *Plan for National Ocean Service Exclusive Economic Zone Bathymetric and Geophysical Program* 20 (1984).

5. All comparative figures are based on areas provided in id. and on unpublished area calculations provided in a facsimile letter from Charles E. Harrington, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce to author (Apr. 27, 1992) (setting out areas for exclusive economic zones surrounding the 50 several states). The insular areas of the United States, including U.S. possessions as well as the listed commonwealths and territories, have a combined area of some 1,040,800 square nautical miles, about 31 percent of the U.S. total. Of this amount, the EEZs of the five insular commonwealths and territories total about 468,000 square nautical miles, about 14 percent of the total U.S. EEZ. Compared to the EEZ of the mainland United States offshore the 48 contiguous states, the zones of the five commonwealths and territories comprise nearly 70 percent of the mainland total, an area substantially larger than the Pacific Coast and Gulf of Mexico zones combined.

This article proposes a management regime for the EEZ areas surrounding the five insular commonwealths and territories. Appropriate means to govern the substantial EEZs surrounding the unorganized and unincorporated insular areas of the United States is beyond the scope of this article. The viability of the EEZ surrounding unpopulated islands, certain of the Hawaiian Islands, and Johnston Island is discussed in J. M. Van Dyke and R. A. Brooks, "Uninhabited Islands: Their Impact on the Ownership of the Oceans' Resources," 12 *Ocean Dev. & Int'l L.* 265 (1983); J. Van Dyke, J. Morgan, and J. Gurish, "The Exclusive Economic Zone of the Northern Hawaiian Islands: When Do Uninhabited Islands Generate an EEZ?" 25 *San Diego L. Rev.* 425 (1988); J. Van Dyke, "The Legal Status of Johnston Atoll and Its Exclusive Economic Zone," 10 *U. Haw. L. Rev.* 183 (1988).

6. 16 U.S.C. §§ 1801–1882 (1988).

7. Office of Technology Assessment, U.S. Congress, supra note 3, at 299.

8. Pacific Basin Development Council, *Pacific Basin Management of the 200-Nautical Mile Exclusive Economic Zone* 13 (1989).

9. Id.

10. Fishery Conservation Amendments of 1990, Pub. L. No. 101-627, §§ 102(a)(2)–(3), 104 Stat. 4436, 4438.

11. Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America, Apr. 2, 1987, 26 I.L.M. 1048 [hereinafter South Pacific Tuna Treaty]. This treaty has been extended for an additional 10 years by an Agreed Minute, Meeting to Consider the Extension of the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America, May 13, 1992 (copy on file with author).

12. In Puerto Rico the reef fish harvest has averaged 3.15 million pounds since 1975, showing a decline in recent years to about 1.9 million pounds in 1990. The Virgin Islands have averaged 1.35 million pounds during the same period, with a more stable trend showing 1.58 million pounds landed in 1989. U.S. Department of Commerce, NOAA Technical Memorandum NMFS-SEFSC-304, *Shallow Water Reef Fish Assessment for the U.S. Caribbean* 21 (1992).

13. Annual landings for spiny lobster for Puerto Rico have averaged 317,451 pounds over the past 23 years. The Virgin Islands averaged 43,800 pounds from 1981 through 1988, with a 1988 total of 46,300 pounds. James Bohnsack et al., *Stock Assessment of Spiny Lobster,* Panulirus

argus, *in the U.S. Caribbean* 6, table 1, and figures 1–2 (Southeast Fisheries Science Center, U.S. Department of Commerce, Miami Lab., Contribution No. MIA-90/91-49, 1991).

14. American Samoa shows 1991 total commercial landings of 90,840 pounds for 1991; Guam, 326,816 pounds; and the Northern Mariana Islands, 264,819 pounds. 8 D. Hamm, M. Quach, and R. Antonio, *Fishery Statistics of the Western Pacific* at II.11, II.5, and II.15, respectively (1992).

15. "Once-Thriving Puerto Rico Tuna Industry in Deep Trouble," AP Datastream Business News Wire, Nov. 25, 1990.

16. Id.

17. In 1991, U.S. tuna landings totaled 259,932 tons, with Puerto Rico and American Samoa accounting for 242,084 tons. U.S. International Trade Commission, Pub. 2547, *Tuna: Current Issues Affecting the U.S. Industry* (1992).

18. *Ocean Issues: Hearings on Reauthorization of the Coastal Zone Management Act, Hard Minerals Resources in the Exclusive Economic Zone, Fisheries Issues, and Extension of the Territorial Sea*, 101st Cong., 2d Sess. 576 (1990). In 1989, 15,000 short tons of tuna were transshipped from Guam. "Growth of Fisheries Great in Short Time," *Pac. Daily News*, July 17, 1990, at 27.

19. Hamm, Quach, and Antonio, supra note 14, at III.1.

20. The Puerto Rico Trough is 30,246 feet deep, and the world's greatest depth, 36,198 feet, occurs in the Marianas Trench. 1992 *Information Please Almanac* 469 (Otto Johnson ed., 1992).

21. K. Scanlon et al., Offshore Sand and Gravel of the Insular Shelf of Puerto Rico 9 (n.d.) (draft, copy on file with MacMeekin & Woodworth law firm).

22. U.S. Agency for International Development, *Caribbean Marine Resources: Opportunities for Economic Development and Management* 50 (1987).

23. O. H. Pilkey and R. Lincoln, "Insular Shelf Heavy Mineral Partitioning Northern Puerto Rico," 4 *Marine Mining* 403 (1984), cited in Office of Technology Assessment, U.S. Congress, supra note 3, at 55.

24. See generally Office of Technology Assessment, U.S. Congress, supra note 3, at 69 et seq. More recent studies have also been done that seem to give a somewhat more optimistic view of the economic potential of these resources in Guam and the Northern Mariana Islands. See, for example, J. Hein et al., *Submarine Ferromanganese Deposits from the Mariana and Volcano Volcanic Arcs, West Pacific* (U.S. Geological Survey Open File Report 87-281, 1987).

25. Id. at 7.

26. Presidential Proclamation No. 5030, supra note 2.

27. Id.

28. See, for example, Memorandum from the American Law Division, Congressional Research Service, Library of Congress, to Eni F. H. Faleomavaaga on American Samoan Proposal to Claim an Exclusive Economic Zone (Oct. 31, 1992) ("With limited exception within three geographical miles of shore, authority to exploit and manage resources in the EEZ currently resides exclusively with the Federal Government."). Similarly, by agreeing to their Covenant with the United States, the people of the Northern Mariana Islands "agreed that the ocean resources in the exclusive economic zone surrounding the islands would belong to the United States." Letter from Edward E. Wolfe, Deputy Assistant Secretary of State for Ocean and Fisheries Affairs, to Timothy W. Glidden, Special Representative of the President for Covenant Section 902 Consultations 2 (June 21, 1990).

29. See S. 712, To Provide for a Referendum on the Political Status of Puerto Rico, 101st Cong., 1st Sess. (1989).

30. Hawaii Const. art. XI.

31. In a statement that accompanied the proclamation, President Reagan stated the "Administration looks forward to working with the Congress on legislation to implement these new policies." Statement on United States Oceans Policy, 19 *Weekly Comp. Pres. Doc.* 383 (1983). In 1986, Congress amended the Magnuson Fishery Conservation and Management Act, "exercising" the sovereign rights declared in the proclamation. 16 U.S.C. § 1801(b)(1).

32. Presidential Proclamation No. 5030, supra note 2. In addition, with respect to the EEZ surrounding the Commonwealth of the Northern Mariana Islands, U.S. authority is limited by two international agreements: the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, UN TCOR, 42d Sess., Annex, UN Doc. T/1759 (1975) [hereinafter Covenant], and the United Nations Trusteeship Agreement for the Former Japanese Mandated Islands, approved by the UN Security Council Apr. 2, 1947, and by the United States July 18, 1947, 61 Stat. 3301, T.I.A.S. No. 1665, 8 U.N.T.S. 189.

33. Office of Technology Assessment, U.S. Congress, supra note 3, at 296.

34. "[T]he United States is prepared to accept and act in accordance with international law as reflected in the results of the Law of the Sea Convention that relate to traditional uses of the oceans, such as navigation and overflight. The United States is willing to respect the maritime claims of others, including the exclusive economic zones, that are consistent with international law as reflected in the Convention, if United States rights and freedoms in such areas under international law are respected by the coastal state." Office of the Press Secretary, The White House, United States Oceans Policy Fact Sheet (Mar. 10, 1983), reprinted in R. Rowland, M. Goud, and B. McGregor, *The U.S. Exclusive Economic Zone—A Summary of Its Geology, Exploration, and Resource Potential* 26 (U.S. Geological Survey, Geological Circular 912, 1983).

35. United Nations, supra note 1, at 105.

36. Id. at 183. Resolution III, along with Resolutions I, II, and IV, was adopted as an integral part of the convention on April 30, 1982, and is annexed to the Final Act of the Third United Nations Conference on the Law of the Sea. See id. at 168. Resolution III became part of the Final Act of the Conference.

37. G.A. Res. 1541/XV, UN GAOR, 15th Sess., Supp. No. 16, at 29, UN Doc. A/4684 (1960).

38. Id., Annex, Principle VII.

39. Id., Annex, Principle VIII.

40. See Office of Technology Assessment, U.S. Congress, supra note 3, at 296.

41. T. Franck, *Control of Sea Resources by Semi-Autonomous States* 5 (1978) (emphasis in original). See also Office of Technology Assessment, U.S. Congress, supra note 3, at 2; D. Woodworth and T. Bruce, "United States' Claims to Pacific Island Ocean Resources Trouble Its Political Union with the Commonwealth of the Northern Mariana Islands," 2 *Territorial Sea Journal* 297 (1992).

42. Franck, supra note 41, at 5.

43. Id. at 10.

44. Tokelau Islands Act of 1948 [reprinted with amendments incorporated], 5 N.Z. Stat. 4489 (1976).

45. Territorial Sea and Economic Zone Act 1977, No. 28, reprinted in 7 *New Directions in the Law of the Sea* 440 (M. Nordquist, S. Lay, and K. Simmonds eds., 1980).

46. 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, June 11, 1980, reprinted in Office of the Geographer, U.S. Department of State, *Limits in the Seas* No. 100, at 1 (1983); and Treaty Between the United States of America and New Zealand on the Delimitation of the Maritime Boundary Between Tokelau and the United States of America, Dec. 2, 1980, reprinted in id. at 4. For a more complete discussion of New Zealand's exclusive economic zone policy with respect to the Cook Islands, Niue, and Tokelau and the maritime boundary treaties with the United States, see Woodworth and Bruce, supra note 41, at 310–313.

47. S. P. Jagota, *Maritime Boundary* 93 (1985).

48. Woodworth and Bruce, supra note 41, at 312.

49. Id. at 311.

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

51. Information provided by C. Woodley, British Embassy, Washington, D.C., in telephone interview with the author (Feb. 4, 1987).

52. Letter from S. D. Pattison, British Embassy, Washington, D.C., to author (Apr. 6, 1993).

53. The study did not comment on U.S. policy with respect to the U.S. territories of the Virgin Islands, Guam, and American Samoa. Perhaps they were excluded as one of the "few territories retaining strictly colonial links that are at a temporary stage in their evolution toward a more permanent legal equilibrium." Franck, supra note 41, at 3. Similarly, the Commonwealth of the Northern Mariana Islands was not discussed, perhaps because its constitution had not been approved when the study was conducted.

54. See supra text accompanying note 42.

55. Pub. L. No. 64-265, 90 Stat. 331 (1976) (codified as amended at 16 U.S.C. §§ 1801–1882 (1988)).

56. All of the insular areas but the Commonwealth of the Northern Mariana Islands are named in the definition of "State." Although the Northern Mariana Islands is not named, the act also covers "any other Commonwealth, territory or possession." 16 U.S.C. § 1802(24).

57. Each insular area is represented by its principal "State" fishery official, and each insular governor nominates additional members, who are appointed by the secretary of commerce. 16 U.S.C. § 1852(b). The Caribbean Council consists of 7 members, including the regional director of the National Marine Fisheries Service (NMFS) and 4 others appointed by the secretary. The Western Pacific Regional Fishery Management Council consists of 13 members, including the regional director of NMFS and 8 others appointed by the secretary.

58. 16 U.S.C. § 1852(h)(1).

59. Id. § 1852(h)(2).

60. Id. § 1811.

61. Id. § 1851(a)(1).

62. Id. § 1802(21).

63. Id. § 1854(d).

64. Id.

65. 16 U.S.C. §§ 1801(c)(4), 1821(d).

66. Fees were formerly limited to the costs of administration, not including the cost of observers, and were paid into a fishery development loan fund. Amendments to the act in 1990 leave open the possibility of revenue-generating fees but provide that all fees accrue to the United States. Id. § 1824(b)(10).

67. Id. § 1856.

68. Id. § 1812.

69. Id. § 1821(d).

70. The term *optimum*, with respect to the yield from a fishery, means the amount of fish "(A) which will provide the greatest overall benefit to the Nation, with particular reference to food production and recreational opportunities; and (B) which is prescribed as such on the basis of the maximum sustainable yield from such fishery, as modified by any relevant economic, social, or ecological factor." Id. § 1802(21). Because economic and social factors are taken into account, harvests that are not sustainable may be permitted. See Marine Fish Conservation Network, *Proposal to Strengthen the Magnuson Fishery Conservation and Management Act of 1976: Summaries of the Major Issues, Needed Action, and Suggested Amendment Language* 1 (1993).

71. "Prized Species Gone? Lots of Fish in the Sea," *Wall St. J.*, Aug. 31, 1993, at B1; "Depleted Fish Stocks Get the Attention of the United Nations," *Pac. Daily News* (Agana, Guam), Nov. 15, 1993, at 19; "Eastern Bluefish Population Appears to Decline," *N.Y. Times*, Nov. 18, 1993, at 2B; "Newfoundland's Idle Fishermen Wait for the Cod to Come Back," *Wash. Post*, Dec. 14, 1993, at A18; "Fewer Fish, More Restraints Darken Horizon for New England Fleet," *Wash. Post*, Jan. 3, 1994, at A11; "Dwindling Stocks Have Fishermen Scrambling," *Marianas Variety* (Saipan, Northern Mariana Islands), Jan. 4, 1994, at 7; "Fishermen Beached As Harvest Dries Up," *Wash. Post*, Mar. 31, 1994, at A3; National Marine Fisheries Service, *Our Living Oceans* (1992).

72. Exec. Proclamation No. 2667, reprinted in 59 Stat. 884 (1945).

73. 43 U.S.C. §§ 1331–1356 (1988).

74. 43 U.S.C. §§ 1301–1315 (1988).

75. Solicitor, U.S. Department of the Interior, Memorandum MMS.ER.0057, DOI's Authority to Lease Polymetallic Sulfides in the Gorda Ridge Area 1 (May 30, 1985) [hereinafter *Gorda Ridge* opinion].

76. Id.

77. Office of Technology Assessment, U.S. Congress, supra note 3, at 6.

78. Andreasen, supra note 4.

79. *Gorda Ridge* opinion, supra note 75, at 1.

80. Id. at 51.

81. Offshore Governor's Forum, Proclamation of the Inalienable Right to the Resources of the Exclusive Economic Zone (Feb. 3, 1991), referenced in *Territorial Sea and Contiguous Zone Extension and Enforcement Act: Hearings on H.R. 3842 Before the House Comm. on Merchant Marine and Fisheries*, 102d Cong., 2d Sess. 323 (1992) (copy on file with the House Merchant Marine and Fisheries Committee and the MacMeekin & Woodworth law firm).

82. P.R. Laws Ann. tit. 12, §§ 41–71 (1978).

83. The limit of the territorial sea of Puerto Rico has been established at three marine leagues (9 nautical miles or 10.35 statute miles) by Pub. L. No. 96-205, § 606(a), 94 Stat. 84, 91 (1980) (codified at 48 U.S.C. § 749 (1988)).

84. P.R. Laws Ann. tit. 28, § 111 (1985).

85. Id.

86. See, for example, S. 712, 101st Cong., 1st Sess., tit. II, § 5(b), tit. III, § 3.1, and tit. IV, subpart 9 (1989).

87. Pub. L. No. 93-435, 88 Stat. 1210 (1974), amended by Pub. L. No. 96-205, 94 Stat. 91 (1980) (codified as amended at 48 U.S.C. § 1705 (1988)).

88. Id.

89. Am. Samoa Admin. Code §§ 24.0201–.0208 (1984). The author does not know whether this depth of coastal water lies beyond the three-mile boundary.

90. The following constitutional language was approved: "The Territory of American Samoa asserts and reserves its rights and interests in its exclusive economic zone for the purpose of exploring and exploiting, conserving and managing natural resources, both living and nonliving, of the seabed and subsoil, and superadjacent waters, and with regard to other activities of the economic exploration and exploitation of the exclusive economic zone." Memorandum from Larry M. Eig, Legislative Attorney, American Law Division, Congressional Research Service, Library of Congress, to the Honorable Eni F. M. Faleomavaega, Delegate from American Samoa 1 (Oct. 21, 1992). Pursuant to 48 U.S.C. § 1662a, this amendment, to become effective, must be approved by Congress.

91. 1 Guam Code Ann. § 402 (1980).

92. Guam Commission on Self-Determination, The Draft Guam Commonwealth Act (Feb. 1988) (copy on file with author).

93. Id. at 61.

94. Commonwealth Pub. L. No. 2-7, 2 C.M. Code §§ 1101 et seq.

95. 2 C.M. Code §§ 1123 and 1124, respectively.

96. Id. § 1114(b).

97. Id. §§ 1132, 1134.

98. Id. § 1136.

99. Position Paper by the Special Representative of the President for Section 902 Consultations on Ocean Rights and Resources, reprinted in *Compilation of Documents from the Ninth Round of Covenant Section 902 Consultations* 59, 63 (MacMeekin & Woodworth 1990).

100. See supra text accompanying note 29.

101. Even though the federal government retains political sovereignty vis-à-vis the states of the Union, it has no right to own or control the resources of the submerged lands adjacent to the coastal states since enactment of the Submerged Lands Act.

102. Presidential Proclamation No. 5030, supra note 2.

103. 332 U.S. 19 (1947).

104. Id. at 32.

105. Id. at 33.

106. 339 U.S. 699 (1950).

107. 339 U.S. 707 (1950).

108. 339 U.S. at 705.

109. 339 U.S. at 717, 718.

110. 332 U.S. at 35.

111. Convention on the Territorial Sea and the Contiguous Zone, Apr. 29, 1958, 15 U.S.T. 1606, T.I.A.S. No. 5639, 516 U.N.T.S. 206; Convention on the Continental Shelf, Apr. 29, 1958, 15 U.S.T. 471, T.I.A.S. No. 5578, 499 U.N.T.S. 312; Convention on the High Seas, Apr. 29, 1958, 13 U.S.T. 2312, T.I.A.S. No. 5200, 450 U.N.T.S. 82.

112. United States v. California, 332 U.S. at 30 (quoting 9 Stat. 452). Constitutional authority for the statutes of admission stems from the Admissions Clause Article 4, Section 3, Clause 1 of the Constitution: "New States may be admitted by the Congress into this Union." The clause does not contain equal footing language.

113. Case v. Toftus, 39 F. 730, 732 (C.C.D. Or. 1889).

114. See Note, "Statehood and the Equal Footing Doctrine: The Case for Puerto Rican Seabed Rights," 88 *Yale L. J.* 825 (1979).

115. 43 U.S.C. §§ 1301–1315.

116. Reprinted in 59 Stat. 1031, 1048 (1945) (emphasis added).

117. Timothy W. Glidden was appointed the Special Representative of President George Bush for Consultations with the Northern Mariana Islands pursuant to Section 902 of the Covenant, supra note 32, on February 27, 1990. Glidden also served during the period of his appointment as counselor to Secretary of the Interior, Manuel Lujan.

118. Memorandum of Agreement Regarding Ocean Rights and Resources (Apr. 12, 1990), reprinted in *Compilation of Documents from the Eighth Round of Covenant Section 902 Consultations* 287 (MacMeekin & Woodworth 1990). This agreement and related agreements are discussed in Woodworth and Bruce, supra note 41, at 308.

119. Memorandum of Agreement Regarding Ocean Rights and Resources, supra note 118, at 288.

120. The Department of State argued that, "[u]nlike the people of the Freely Associated States, the people of the Commonwealth of the Northern Mariana Islands chose U.S. citizenship and the 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." Letter from Edward Wolfe, Deputy Assistant Secretary of State for Oceans and Fisheries Affairs, to Tim Glidden (June 21, 1990), reprinted in *Compilation of Documents from the Ninth Round of the Covenant Section 902 Consultations*, supra note 99, at 65. The Justice Department advised Glidden that "it is firmly established that as an incident of that transfer of sovereignty [from the Northern Mariana Islands to the United States], the Commonwealth has relinquished to the United States any claim the Commonwealth may have had to the water and seabed surrounding it." Position Paper by the Special Representative of the President, supra note 99, at 62. See also Woodworth and Bruce, supra note 41, at 309.

121. Although he was a presidential appointee, Glidden deferred to other federal agencies on this issue, explaining that he "was advised that the positions taken by the Special Representatives and myself in the Memorandum of Agreement on Ocean Resources during the Eighth Round was [*sic*] inconsistent with established laws and policy positions of the United States Government." Position Paper by the Special Representative of the President, supra note 99, at 62.

122. See, for example, Memorandum of Understanding Between the Interim Special Representative of the President and the Special Representatives of the Governor Regarding the Tuna Fishery, Sept. 19, 1990, reprinted in *Compilation of Documents from the Ninth Round of Cove-*

nant Section 902 Consultations, supra note 99, at 55; Joint Agreement of the Special Representatives on the U.S.–Japan Maritime Boundary, May 22, 1992, reprinted in *Compilation of Documents from the Twelfth Round of Covenant Section 902 Consultations* 43 (MacMeekin & Woodworth 1992).

123. Joint Agreement on Membership in the Western Pacific Regional Fishery Management Council, Dec. 16, 1992, reprinted in *Compilation of Documents from the Thirteenth Round of the Covenant Section 902 Consultations* 205 (MacMeekin & Woodworth 1992). The special representatives further agreed to establish a working group to study (1) the proprietary and beneficial interests of the Marianas people in the fish surrounding their islands; (2) the commonwealth deriving revenues from fishing in its EEZs; (3) the commonwealth having joint approval of fishing permits within its EEZ; and (4) providing appropriate oversight of the above activities by the United States in the areas of defense, foreign affairs, and navigation.

124. Letter from Governor Lorenzo I. De Leon Guerrero to Bruce Babbitt, Secretary of the Interior (May 21, 1993).

125. Letter from Bruce Babbitt, Secretary of the Interior, to Ron Brown, Secretary of Commerce (Nov. 9, 1993) (proposing a working group on federal fisheries policy in the insular areas).

126. Id.

127. Id.

128. Id.

129. U.S. Department of the Interior, United States Fishery Policies and the U.S. Insular Areas: Background and Recommendations 7 (Nov. 9, 1993). This background paper was included as an enclosure to Secretary Babbitt's letter of the same date, supra note 125. The paper outlined policy reforms for consideration. The proposed reforms are based on those set out in the Joint Agreement on Membership in the Western Pacific Regional Fishery Management Council in the Northern Mariana Islands' Covenant Section 902 Consultations and outlined in this article. They include recognizing the proprietary and beneficial interests of insular peoples in their fisheries; enhancing the role of insular governments by requiring their approval for fisheries management plans and permits; allowing insular governments to derive revenues from their fishing resources; allowing participation of insular governments in international management efforts; and providing for federal oversight of these activities in the areas of defense, foreign affairs, and navigation.

130. Letter from the Honorable Ronald H. Brown, Secretary of Commerce, to the Honorable Bruce Babbitt, Secretary of the Interior (Dec. 23, 1993).

131. "Federal Agencies to Review Fisheries Policies for U.S. Insular Areas," U.S. Department of the Interior News Release (Jan. 6, 1994).

132. Id.

133. LOSC, supra note 1, art. 64(1).

134. D. Woodworth, "U.S. Tuna: A Proposal for Resource Management in the American Pacific Islands," 10 *U. Haw. L. Rev.* 152 (1988); J. Van Dyke and C. Nicol, "U.S. Tuna Policy: A Reluctant Acceptance of the International Norm," in *Tuna Issues and Perspectives in the Pacific Islands Region* 105, 112–115 (D. Doulman ed., 1987).

135. Woodworth, supra note 134, at 161.

136. Id. at 154.

137. See supra text accompanying notes 63–64.

138. See supra text accompanying note 66.

139. *Trade Bulletin* No. 4 (Government of the Federated States of Micronesia, Division of Planning and Statistics), Aug. 1991, at 2.

140. Letter from James Lukan, Embassy of the Federated States of Micronesia, to author (Dec. 18, 1992) (regarding fishing rights fees). These figures may understate real income attributable to fishing because compensation for fishing licenses is often paid as development aid rather than as fees or royalties. For example, the United States pays about $14 million annually in economic assistance under the South Pacific Tuna Treaty, supra note 11, compared with about

$1.75 million in license fees. Statement of the Principal Deputy Press Secretary to the President on Pacific Regional Fisheries Treaty, 22 *Weekly Comp. Pres. Doc.* 1434 (Oct. 23, 1986).

141. F. Hezel. "FSM Fishing: FSM Must Act to Exploit Its Richest Resource," *Pac. Daily News*, Feb. 1, 1994. Islander Magazine, at 6, 7, col. 1.

142. Statement of the Principal Deputy Press Secretary to the President on Pacific Regional Fisheries Treaty, supra note 140, at 1434.

143. In 1986, the Commonwealth of the Northern Mariana Islands applied for membership in the Forum Fisheries Agency. The application was declined by the agency, even though territories are eligible for membership, because "as a Commonwealth of the United States and subject to U.S. sovereignty, [it] does not have the status to discharge the obligations contained in the Convention." Letter from D. A. P. Muller, Director of the Forum Fisheries Agency, to author (Sept. 21, 1987).

144. South Pacific Tuna Treaty, supra note 11.

145. Agreed Minute, supra note 11.

146. Letter from Edward E. Wolfe, Deputy Assistant Secretary of State for Ocean and Fisheries Affairs, to Pedro P. Tenorio, Governor, Northern Mariana Islands (Aug. 24, 1989) (copy on file with author).

147. Forum Fisheries Agency, *Harmonized Minimum Terms and Conditions for Foreign Fishing Vessel Access* (1990) (copy on file with author); Annex I is a Common Regional Vessel Fisheries License Form.

148. Forum Fisheries Committee, Forum Fisheries Agency, Doc. FFC 22/TM6/Info.4(ii), *Report of the Working Group on the Implementation of the Minimum Terms and Conditions* (1992) (copy on file with author). Forum Fisheries Agency, FFA Report 92/51, *Niue Treaty on Cooperation in Fisheries Surveillance and Law Enforcement in the South Pacific Region* (1992) (copy on file with author).

149. S. Saito, *Coastal State–Distant Water Fishing State Relations Focusing on Management of Central and Western Pacific Tuna* 7 (1992).

150. "Fishing Limits in the Pacific," *Wall St. J.*, Oct. 29, 1992, at A10.

151. Woodworth, supra note 134, at 174.

152. South Pacific Tuna Treaty, supra note 11, art. 2.2.

153. Precedent for this kind of distinction exists in the Submerged Lands Act, which contains provisions ensuring that the United States retains all rights of sovereign *imperium* in the territorial sea and submerged lands. These provisions might serve as a model for sharing sovereignty in the EEZ: "(a) The United States retains all its navigational servitude and rights in and powers of regulation and control of said lands and navigable waters for the constitutional purposes of commerce, navigation, national defense, and international affairs, all of which shall be paramount to, but shall not be deemed to include, proprietary rights of ownership, or the rights of management, administration, leasing, use and development of the lands and natural resources which are specifically recognized, confirmed, established, and vested in and assigned to the respective States and others. . . . (b) In time of war or when necessary for national defense, and the Congress or the President shall so prescribe, the United States shall have the right of first refusal to purchase at the prevailing market price, all or any portion of the said natural resources, or to acquire and use any portion of said lands by proceeding in accordance with due process of law and paying just compensation therefor." 43 U.S.C. § 1314.

154. P. Webber, *Abandoned Seas: Reversing the Decline of the Oceans* (1993); Greenpeace International, *It Can't Go on Forever: Implications of the Global Grab for Declining Fish Stocks* (1993).

155. Western Pacific Regional Fishery Management Council, *Valuing U.S. Western Pacific Fisheries: The Need for Increased Management Support* (1993).