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United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

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Memorandum

To: Chairman, NSC Under Secretaries Committee

From: Secretary of the Interior

Subject: Micronesian Status Negotiations: LOS and Related Foreign Relations Issues

The Department of the Interior has reviewed the draft memorandum to the President requesting instructions for the President's Personal Representative to the Micronesian status negotiations. The question of the control of marine resources in Micronesia's territorial sea and economic zone as defined by international agreement under any compact of free association is important, and bears not only on our ability to achieve a satisfactory political relationship with Micronesia but also on our long-range interests in reducing potential conflicts which may arise in the exercise of U.S. authority for Micronesia's foreign affairs under the envisioned compact.

An Agreement between the United States and Micronesia recognizing the beneficial interest of the Micronesian people in marine resources would not itself establish a binding legal precedent in respect of the status of U.S. jurisdiction over the marine resources off Puerto Rico or U.S. territories. However, Puerto Rico has made the exercise of jurisdiction by the Federal Government over marine resources off the coast of Puerto Rico an issue in the Executive Branch and in Congress. Unless Puerto Rican demands are satisfied, it appears that the issue will go to the courts. Similar pressure may develop from U.S. territories. If the United States agrees to allow Micronesia to control marine resources after Micronesia becomes a part of the American political system, it will be difficult to resist similar demands from others in the same political system regardless of differences in nature of the relationship. The United States is exposed to this difficulty under Options 2, 3, and 4. From this perspective, we would

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find the position contained in Option 1 of the draft memorandum retaining for the U.S. jurisdiction over all matters relating to marine resources, to be the preferred approach. However, it should be noted that in past discussions the Micronesians have flatly rejected our non-recognition of any special interest or control of the Micronesian people over marine resources, and have been active in expressing their point of view in other international forums, including the UN Law of the Sea Conference.

If the United States is to recognize the concept of a special Micronesian interest in marine resources as proposed in Options 2 through 4, serious difficulties could arise in implementation of the compact. The source of these difficulties would be the United States "shared" responsibility with Micronesia in managing marine resources and engaging in foreign relations concerning them. We must recognize that for the foreseeable future the only significant economic value of an economic zone to the islands of Micronesia is the tuna resource to be found in that zone. In effect, the responsibility for managing Micronesian fishery resources in the economic zone may entail significant United States commitments under either Option 2 or 3. Moreover, our experience in international forums, for example, the Law of the Sea Conference, demonstrates the potential conflicts which may arise from a United States responsibility to represent the interests of Micronesia in international negotiations, where a conflicting responsibility to represent the commercial interests of our domestic tuna industry is also involved.

Accordingly, if the President's Personal Representative determines that recognition of some degree of Micronesian interest and control over marine resources is essential to satisfying our broader negotiating objectives in connection with the status of Micronesia, this Department believes that the compact should limit to the maximum extent possible United States responsibilities for foreign relations associated with Micronesian marine resources. The United States should not put itself in a position of even residual responsibility vis-a-vis third countries knowing that it will be unable to fulfill its obligations. Likewise, the United States should not obligate itself to Micronesia for international aspects of marine resources knowing that Micronesia's demands are inconsistent with domestic resource interests. Under Option 2, the United States should have an obligation to protect Micronesia's beneficial interest in the resource. Unless the Micronesian perception of that interest--which conflicts with our West Coast tuna fishermen's view--changes, the United States will be charged with failure to discharge

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its duties. The same difficulty exists under Option 3, and is compounded by Micronesian participation in international negotiations. We would not support either Option 2 or 3.

The support of the Department of the Interior for the negotiating authority requested in Option 4 of the draft memorandum is dependent upon Micronesia's formal and stated agreement to and compliance with all the conditions listed on pages 23 and 24 of the draft. With specific regard to the activities of the Congress of Micronesia in international Law of the Sea conferences between the present time and the termination of the Trusteeship Agreement, the Interior Department approval of Option 4 is given only if the Congress of Micronesia will formally commit itself to the withdrawal of its support for the "Transitional Provision" and the cessation of its attempt to secure signatory status in any international ocean resources or Law of the Sea agreement. We recommend that this commitment by the Congress of Micronesia be in the form of a formal subsidiary agreement to the political status negotiations. Secondly, we believe that U.S. acceptance of Option 4 should be conditioned on the inclusion in the compact of clear language delegating full responsibility to Micronesia for exercising the powers over marine resources in relation to foreign governments provided for in the agreement. Thirdly, Interior approval to Option 4 is given with the condition that the U.S. be accorded "right of first refusal" treatment in the area of economic access to Micronesian marine resources. Finally, Interior support for Option 4 is given with the requirement that U.S. agreement to its substance will secure a completed, signed and Congress of Micronesia-approved draft compact of Free Association. The President's Personal Representative should be instructed to inform the Micronesians that the United States will not accept any substantive modification to any title or section of the June 2, 1976 draft compact save in the areas of marine resources as stated above or internal distribution of grant revenues. He should also be instructed to make clear to the Micronesians that any feasance on their part with regard to the above conditions during the final draft compact approval process will be viewed as a breach of negotiation by the United States and will have the effect of voiding the remainder of the draft compact. Failure of the Micronesians to comply with the undertakings of this option shall render the offer of the United States under this agreement null and void. Any failure on their part to comply with the undertakings and conditions of U.S. agreement to Option 4 will render the U.S. offer of the authorities contained therein null and void.

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