



UNITED STATES DEPARTMENT OF THE INTERIOR

WASHINGTON, D.C. 20500

IN REPLY REFER TO:

June 23, 1978

Memorandum

To: Director, Office of Territorial Affairs
From: Assistant Solicitor, Territories
Subject: Submerged Lands - Northern Mariana Islands

This responds to your June 22, 1978 memorandum on the above subject in which you ask for my comments on those questions posed to you by the Speaker of the House of Representatives of the Northern Mariana Islands. The questions and my answers are as follows:

1. What is the definition of submerged lands i.e., what are the boundaries of submerged lands?

Answer - For the purposes of the Northern Mariana Islands, the description contained in the 1974 amendments to the Territorial Submerged Lands Act, 48 USC (Supp. V, 1975) § 1705, is probably the best guide for defining the boundaries of their submerged lands. It is as follows:

1. [L]ands permanently or periodically covered by tidal waters up to but not above the line of mean high tide and seaward to a line three geographical miles distant from the coastlines of the territories...as heretofore or hereafter modified by accretion, erosion and reliction and...artificially made, filled in, or reclaimed lands which were formerly permanently or periodically covered by tidal waters...

2. Is jurisdiction over submerged lands vested exclusively in the Commonwealth?

Answer - The answer to this question is not altogether clear. Section 502(a)(2) of the Covenant does not make the 1974 amendments to the Territorial Submerged Lands Act which conveyed title to the submerged lands to Guam, American Samoa and the Virgin Islands, applicable to the Northern Mariana Islands, because that act is not "of general application to the several States."

On the other hand, Section 803 of the Covenant provides that the laws of the Trust Territory are inconsistent with the Covenant or with those provisions of the Constitution, treaties or laws of the United States applicable to the Northern Mariana will remain in force and effect until and unless altered by the Government of the Northern Mariana Islands.

A law of the Trust Territory (67 T.T.C. § 2) provides:

That portion of the law established during the Japanese Administration of the area which is now the Trust Territory, that all marine areas below the ordinary high water mark belong to the government, is hereby confirmed as a part of the law of the Trust Territory.

Based upon these provisions it can be argued that, subject to the limitations contained in Section 2, the submerged lands in question now belong to the Government of Northern Mariana. It has been suggested, however, that the submerged lands cannot belong to the Northern Mariana Islands until they are actually transferred pursuant to Section 801 of the Covenant. But a reading of the Section-by-Section Analysis of the Covenant prepared by the Mariana Political Status Commission to explain the Covenant to the Mariana District Legislature and to the electorate of the Northern Mariana Islands strongly indicates that the real property referred to in Section 801 were fast lands as well as the improvements thereon and not the submerged lands.

Under the circumstances, I am persuaded that the Government of the Northern Mariana probably has ownership of and exclusive jurisdiction over these submerged lands, at least at this time. But this is only a temporary title and jurisdiction. When the Northern Mariana Islands are proclaimed a Commonwealth and territory of the United States, the laws of the United States applicable to its territories will come into force and effect in the Northern Mariana. One of the rules that will become applicable is that the submerged lands around an island territory belong to the federal - not to the local - Government. Solicitor's Opinion M-36449 "Rights of Abutting Upland Property Owners to Claim Title to Reclaimed Land Produced by Filling on Tidelands and Submerged Lands Adjacent to the Territory of Guam," 65 I.D. 193 (1958).

By the 1974 amendments to the Territorial Submerged Lands Act, *supra*, the Congress has clearly indicated its intent that, subject to the limitations contained in that Act, title to the submerged lands surrounding our territories should be in the respective local governments, and there is absolutely no reason to believe that the Northern Mariana Islands will not eventually be included under the

... of ...
... agreement ...
... Act ...
... interest of ...
... territories. The United States does not have any right, title or interest in the submerged lands of the Northern Mariana Islands and, therefore, has nothing to convey. Such right, title or interest will only attach as an incidence of U.S. sovereignty when the Northern Mariana become a territory of the United States. At that time, then, the grant can be made.

3. What limitations, if any, are imposed upon the Commonwealth in managing and disposing of submerged lands?

Answer - In view of what has been said above, it would be prudent for the Government of the Northern Mariana Islands to accept the applicable limitations and exceptions contained in the 1974 amendments to the Territorial Submerged Lands Act, 48 USC (Supp V, 1975) § 1705, et seq., which are not inconsistent with its current legal status, in managing and disposing of its submerged lands and their resources.

Please let me know if I can be of further assistance.



C. Brewster Chapman, Jr.