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U.S. House of Representatives

Committee on Merchant Marine and Fisheries

Room 1334, Longworth House Office Building

Washington, D.C. 20515

August 27, 1979

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Honorable Cecil D. Andrus
 Secretary
 Department of the Interior
 Washington, D. C. 20240

Dear Mr. Secretary:

Enclosed is a copy of a letter I have received from Governor Carlos S. Camacho of the Commonwealth of the Northern Mariana Islands (CNMI) together with a copy of a Position Paper submitted by the Governor's Fishery Task Force regarding the applicability of the Fishery Conservation and Management Act of 1976 (FCMA) to the CNMI.

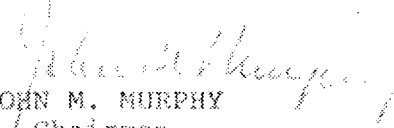
You will note that the Governor and the Fishery Task Force desire to have the CNMI excluded from the coverage of the FCMA and recommend that the President accomplish this purpose pursuant to his authority provided by Section 1004 of the Covenant to establish the CNMI. Conversely, in April of last year, the Administration forwarded an Executive Communication to the Congress, which I introduced as H.R. 12300, copy enclosed, to amend the FCMA to include the CNMI as a member of the Western Pacific Fishery Management Council. Time did not permit action on the legislation before the adjournment of the 95th Congress and legislation to accomplish this purpose has not been forwarded to the Congress by the Administration this year.

In view of the apparent inconsistency in the position of the Administration and that of the Governor and his Fishery Task Force, I would appreciate your providing me with your comments on their proposal along with any recommendations you may care to make. To the extent that the enclosures raise issues of concern and interest to your agency, I would appreciate your comments on these issues as well.

-2-

Your early attention to this matter will be greatly appreciated.

Sincerely,


JOHN M. MURPHY
Chairman

Enclosures

cc: Hon. John B. Breaux



Commonwealth of the Northern Mariana Islands
Office of the Governor

Saipan, Mariana Islands 96950

Cable Address:
Gov. NMI Saipan

July 25, 1979

The Honorable John M. Murphy
Member
Subcommittee on Fisheries, Wildlife
Conservation, and the Environment
United States Congress
Capitol Hill
Washington, D.C.

RECEIVED
AUG 1 1979
COMMITTEE ON MERCHANT MARINE
AND FISHERIES

Dear Honorable Murphy:

On behalf of the people of the Northern Mariana Islands, I am seeking your assistance in a matter of serious economic and social concern.

Article 6(2) of the Trusteeship Agreement for the Former Japanese Mandated Islands places the duty upon the United States as the administering authority to promote the economic advancement and self-sufficiency of our citizens and to encourage the development of fisheries as a viable local industry.

The enclosed Position Paper of the Commonwealth of the Northern Mariana Islands (CNMI) regarding the applicability of the Fishery Conservation and Management Act (FCMA) of 1976, as amended, demonstrates that the application of the FCMA to the waters within and adjacent to the CNMI would have a significant detrimental effect on the economic development and growth of the Commonwealth. Because of our location, the impact of the FCMA would retard economic advancement and self-sufficiency and discourage the development of our fisheries. This would be inconsistent with the duties and responsibilities of the United States imposed by Article 6(2) of the Trusteeship Agreement.

The Presidential authority pursuant to Section 1004 of the Covenant to establish a Commonwealth of the Northern Mariana Islands, (CNMI) in Political Union with the United States of America (U.S.P.L. No. 94-241, 48 U.S.C. 1681) and reserved by Presidential Proclamation

The Honorable John M. Murphy

July 25, 1979

Page 2

No. 4534 (October 24, 1977) would allow the President to resolve our dilemma expeditiously.

Without prejudice to the Commonwealth's position and legal rights, I am respectfully requesting you to join us in requesting the President in issuing a Presidential Proclamation suspending the application of the Fishery Conservation and Management Act (FCMA) to the waters within and adjacent to the Commonwealth of the Northern Mariana Islands.

The people of the Northern Mariana Islands wish to express their appreciation for any consideration you may give us in this important matter.

Hafa Adlai,



Carlos S. Camacho
Governor

MEMORANDUM


TO : Governor


FROM : Fishery Task Force

SUBJECT: Applicability of FCMA

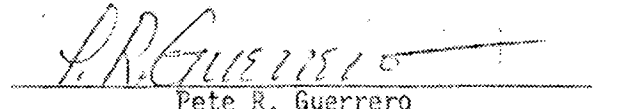
DATE: June 27, 1979

Enclosed please find Position Paper and attachments strongly recommended by the members of the Fishery Task Force for your endorsement and promulgation. It is, also, recommended that this Position should be uniformly adopted by the Executive and Legislative Branches.



Michael De Angelo
Acting Attorney General
Office of the Attorney General

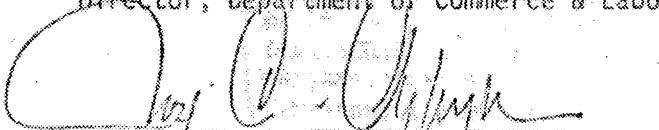

Pedro Dela Cruz
Director, Department of Natural Resources

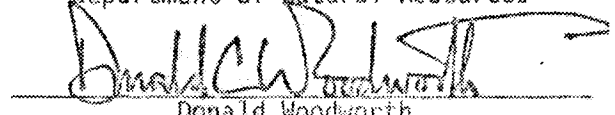

Roger St. Pierre
Special Legislative Counsel
Northern Marianas Commonwealth Legislature

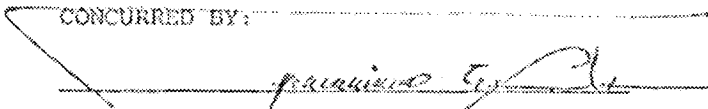

Pete R. Guerrero
Executive Assistant for Carolinian Affairs

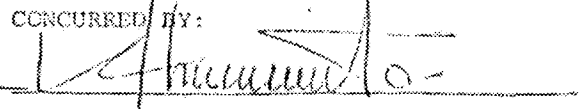

David L. Cahn
Director, Department of Commerce & Labor



Jack Viltagoniz
Chief, Division of Marine Resources
Department of Natural Resources



Jose Ayuyu
Chief, Division of Economic Development

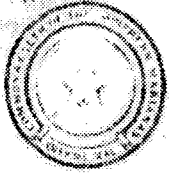

Donald Woodworth
Micronesia Legal Services
Counsel for Marianas Fisheries, Inc.

CONCURRED BY: 
Francisco C. Ma
Lieutenant Governor

CONCURRED BY: 
Carlos S. Camacho
Governor


OSCAR C. RISA
Speaker, House of Representatives
Commonwealth of the Northern Marianas
Legislature


LORENZO T. GUERRERO
President of the Senate
Commonwealth of the Northern Marianas
Legislature



Commonwealth of the Northern Mariana Islands

Office of the Governor

Saipan, Mariana Islands 96950

Cable Address:
Gov. CNMI Saipan

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS POSITION PAPER REGARDING APPLICABILITY OF THE FISHERY CONSERVATION AND MANAGEMENT ACT (FCMA) OF 1976, AS AMENDED

I. LEGAL POSITION

The FCMA cannot apply to the CNMI for the following reasons:

1. The FCMA Section 3 (21) defines coastal state as any of the Commonwealths, Territories or possessions of the United States. Section 101 of the Covenant provides that the CNMI will not become a Commonwealth in political union with and under the sovereignty of the United States until the termination of the Trusteeship Agreement. As noted in the FCMA Analysis, Section 3, the CNMI, according to the terms of the United Nations Charter, Articles 73-91 and the Trusteeship Agreement, may not be considered to be a possession territory or Commonwealth of the United States.
2. Section 101 of the FCMA establishes a Fishery Conservation Zone contiguous to the territorial sea of the United States which would not include the waters of the CNMI because United States sovereignty may not attach until termination of the Trusteeship Agreement. THERE IS NO UNITED STATES TERRITORIAL SEA IN THE WATERS SURROUNDING THE NORTHERN MARIANA ISLANDS. Since the FCMA must be tied to the U.S. Territorial sea, no restrictions relating to fishing in a Fishery Conservation Zone (FCZ) apply to the waters surrounding the Northern Mariana Islands and 502(A)(2) of the Covenant does not make FCMA applicable. However, the FCMA is a unique statute since it has a spatial and resources tracking jurisdiction through the concept of an established fishery conservation zone (FCZ). The waters surrounding the Northern Marianas and the living resources therein are under the exclusive regulatory authority of the CNMI. Section 102 (1) of FCMA Title I provides that the U.S. shall exercise exclusive fisheries management authority over all fish in the FCZ except highly migratory species. There can

be no fisheries management authority without a FCZ, since only the fish of the FCZ can be managed. Section 102 (2 and 3) further establish that the U.S. authority to manage fisheries resources is a species identified authority based on a species/territorial sea concept. Section 502(a) (2) of the Covenant in defining what U.S. laws apply to the FCMA is unique and its own peculiarity makes it impossible to apply in waters of the CNMI.

3. It is clear from Sections 502 (b) and 503 (b) of the Covenant that the U.S. and the CNMI clearly intended to exclude any existing U.S. fisheries or coastwise law that worked a hardship or retarded the development of the CNMI. These Sections are a recognition by the U.S. Congress of the distinctly different location of the CNMI as a developing economic entity as opposed to be developed entity such as the U.S. The FCMA was not law when the CNMI was established. It is also clear from the Purposes Section of the FCMA itself that the development of domestic commercial and recreational fisheries are favored. However, the FCMA works a reverse result upon CNMI fisheries development. Read with the intentions of Section 502(b) and 503(b) of the Covenant, the spirit of the FCMA purpose is violated by its own application to the CNMI. Moreover, had the FCMA been in existence the CNMI delegates in the Covenant would have specifically excluded its onerous sections from application in the CNMI through the Covenant.
4. The FCMA does not impose the 5-ton limit alleged by the U.S. Coast Guard. The 5-ton provision arises from Coast Guard Regulations based upon coastwise laws which specifically do not apply to the CNMI by Section 502 (b) of the Covenant. The 5-ton limit on State-registered vessels qualifying as "Vessels of the United States" for purposes of the FCMA, as set out in 50 CFR 611.299, is in direct conflict with the statute and constitutes an illegal exercise of authority beyond that granted by the Congress. Section 3 of the FCMA states that "As used in this Act, ... (25) the term "Vessel of the United States" means any vessel documented under the laws of the United States or registered under the laws of any State". There is no limit on the size of the State-registered vessels which may qualify under this definition. The fact that the term "Vessel of the United States" may be defined differently for purposes of other Acts is immaterial. Only the way this term is "used in this Act" can serve as the basis for regulation under this Act. The only regulation legally setting a 5-ton limit on foreign-built State-registered vessels is 46FR67.01. This relates to shipping and not to activities under the FCMA.

It is based on laws designed to protect the U.S. shipbuilding industry from large foreign-built vessels being used in the coastwise trade. However, the Coastwise Laws are not applicable to the CNMI, pursuant to Section 502(b) of the Covenant. Consequently, even if the 5-ton limit applies to FCMA activities in other areas, which is doubtful, it cannot apply to CNMI-registered vessels, because the statutes on which it is based do not apply.

Should these regulations apply, they would be in direct conflict with Section 301(a)(4)(A & C) and 301(a)(7) of the FCMA.

II. ADVERSE ECONOMIC IMPACT

- A. Application of the FCMA to the waters within and adjacent to the CNMI would have a significant detrimental effect on the economic development and growth of the Commonwealth. This would severely inhibit its attempts to achieve a reasonable measured self-sufficiency by the time the funds provided by the Covenant run out in 1985 and virtually insure continued reliance on massive U.S. subsidies beyond that date.
1. The distance of the CNMI from U.S. shipyards, as well as its extremely low per capita income, makes the purchase of U.S.-built fishing vessels prohibitively expensive for CNMI fishermen. Conversely, the proximity of the countries of Asia, and the lower prices for ships and materials, brings them within an affordable range of CNMI fishermen and makes these countries the logical and natural market for purchase of vessels. It has been estimated that U.S. vessels cost twice as much delivered to the CNMI as equivalent foreign-built vessels. CNMI fishermen do not have sufficient capitalization to subsidize U.S. shipyards in this fashion. If the alleged 5-ton limit on foreign bottoms is held applicable, therefore, CNMI citizens would be relegated to subsistence fishing only, and the hopes of building a domestic CNMI commercial fishery would be quashed forever.
 2. The primary impetus for Congressional passage of the FCMA was the protection of domestic commercial fishing interests from foreign fishing in traditional U.S. fishing grounds. Its application to the CNMI would have the opposite effect. As discussed above, CNMI fishermen would not be able to afford to conduct commercial fishing activities, and U.S. fishing

companies are not active in CNMI and adjacent waters. This leaves only foreign fishermen, who are close to home, who could use their own foreign-built ships, and who could operate under a GIFA or IFA, as the only interests for whom it would be both economically and legally possible to fish off the CNMI. Rather than protect domestic fishery, application of this law destroys it.

3. Another reason for Congressional interest in enacting the FCMA was to ensure that there would be enough fish landed in the U.S. to feed its people. Application of the FCMA to the CNMI would have the opposite effect. The U. S. Government would give away CNMI fish to foreign countries without the consent of the CNMI, at the same time if effectively prohibit fishing by CNMI citizens. Because of this, the CNMI will have to continue to import fish while sitting in the middle of one of the richest fisheries in the world. Fish could be caught in CNMI waters under a GIFA and foreign fishing permit, landed in a foreign country, then process and returned to the CNMI. This keeps food prices high, the standard of living low, and increases the need for food stamps, SSI, and other U.S. welfare payments.
4. By no means does the CNMI intend to totally prohibit foreign interests from participating in the CNMI fishery. To the contrary, the CNMI needs foreign capital to finance the expansion of its commercial fishing industry. The FCMA, however, sets extremely rigorous requirements for functional joint ventures and does not even contemplate the sort of equity sharing which provides capitalization for the domestic enterprise itself.
5. In the absence of the FCMA, the CNMI could act to ensure that fish taken by foreign interests in CNMI waters are first landed at a CNMI port to the extent necessary to meet CNMI nutritional and market needs. This landing of fish by foreign bottoms is guaranteed under Section 503(b) of the Covenant. This not only would solve the problem discussed in paragraph 3, but would increase CNMI port development as well.
6. The CNMI does not have a shipbuilding industry at present. If it were to attempt to establish one, however, it would founder in the face of regulations which require all of a ship's major

components and at least half of its engines to be of U.S. origin in order to qualify for U.S. documentation. The long distances from the U.S. make the cost of shipping such components to the CNMI prohibitive. Foreign components are the only practical alternative, and the FCMA would then act to prevent the CNMI from using its own locally-built boats to catch its own fish.

The U.S. fishing and shipbuilding industries do not need protection against the CNMI. The Commonwealth is too small and too far away to be a threat. On the other hand, application of the FCMA is a direct threat to CNMI fishery, port, and shipbuilding development, and works against the economic advancement and well-being of its people.

- B. The negative impact of the FCMA upon efforts to develop a local fishing industry in the Mariana Islands which is set out in paragraph II a., above is in direct conflict with the declared purposes of the Act itself, especially with Section 2(b)(3) 16 USC 1801 (b) (3) which states in part that the act is designed to "...promote domestic commercial and recreational fishing...". Applying the FCMA directly to the Northern Mariana Islands without modification clearly does not "...take into account the social and economic needs of..." the Northern Mariana Islands, as is required by Section 2(b)(5)(B) (16 USC 1801 (b)(5)(B)).

The problems we have identified above, the ways in which the FCMA frustrates economic development in the Northern Mariana Islands, are not abstract fears. Already the application of this act threatens the existence of a creative and highly desirable fisheries development project within the Commonwealth. Marianas Fisheries Inc. is a private non-profit corporation registered under the laws of the Commonwealth of the Northern Mariana Islands." From the beginning, this corporation has been sponsored and aided by the Carolinian Affairs division of the Governor's Office. The Commonwealth Government has authorized Marianas Fisheries Inc. to use for one year a 26 ton Japanese built War Reparations fishing vessel known as the M/V OLNOL.

The corporation has planned, with the encouragement of the government, to use the M/V OLNOL to teach commercial fishing methods in the waters surrounding the Mariana Islands. Since the corporation is entirely controlled by the Carolinian Community (an ethnic and economically disadvantaged minority on Saipan), it has planned that specialized and traditional Carolinian bottom fishing techniques would be used and taught

on board the M/V OLNOL. Earnings derived from the sale of its catch would be used to pay the crew and other employees of the Corporation, and to finance the purchase of additional equipment and supplies.

Relying upon this plan, members of the Corporation recently spent several weeks working without compensation to prepare the M/V OLNOL for fishing. The vessel is now fully prepared and a crew of experienced Carolinian fisherman and younger trainees are ready and waiting to go fishing.

Unfortunately, because of the questionable application of the FCMA, the U.S. Coast Guard has advised this fledgling organization that they risk arrest and prosecution if they attempt to fish offshore of their own island. Solely because they wish to use a Japanese-built vessel which was given to the Marianas' Government for fishing purposes, with the full knowledge and concurrence of the U.S. Department of State, in part payment for the devastation suffered here during WW-II, the Federal Government wants to keep them on the beach.

Thus, because of the clumsy application of the FCMA in an undeveloped island context Marianas Fisheries Inc., an exciting economic development project which is the product of long months of work by the members of the corporation and numerous government employees, may be destroyed. With it will go any immediate hope for the development of a locally controlled fishery.