



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

JAN 11 1980

To: The Secretary

From: Acting Director, Office of Territorial Affairs

Subject: Attached correspondence proposing a Presidential Proclamation to resolve the Northern Marianas fisheries controversy

Attached for your signature is a letter to the President requesting that a proclamation be issued suspending until termination of the trusteeship provisions of the vessel documentation laws now applicable to the Northern Mariana Islands. Section 1004(a) of the Northern Marianas Covenant authorizes the President to suspend the application of United States laws that he finds to be inconsistent with the Trusteeship Agreement.

This action is further follow-up to NMI Item #5 in Mr. Carlson's memorandum to you dated December 12, 1979, concerning your commitments made while in the Trust Territory. Prompt action is required in view of the Northern Mariana Government's suit against the United States in the District Court of the Northern Mariana Islands. Your letter of January 8 to Governor Camacho, copy attached, outlined this approach to the problem.

A Presidential Proclamation is necessary due to the coming into force, on January 9, 1978, of provisions of the vessel documentation laws. These laws effectively prohibit the people of the Northern Mariana Islands from using foreign-built vessels in their fisheries, an effect unforeseen at the time the Northern Marianas Covenant was enacted in 1976.

Article 6(2) of the Trusteeship Agreement requires the United States to promote the economic advancement and self-sufficiency of the inhabitants and encourage the development of the fisheries. The applicability of the vessel documentation laws to the Northern Mariana Islands, however, would require the Northern Marianas citizens to use in their fisheries vessels built in the United States. The combination of higher purchase prices for U. S.-built vessels and greater shipping costs to the Northern Marianas as compared with those associated with foreign-built vessels makes it uneconomical for the Northern Marianas citizens to purchase U. S.-built vessels. We believe this to be inconsistent with the objectives of the Trusteeship Agreement and believe further that these laws should be suspended by proclamation.

The Secretary

-2-

We have, in conjunction with the concerned Federal agencies (i.e., State, Commerce, Justice, and Transportation), explored all other possible mechanisms to resolve the Northern Marianas fisheries problem, including possible legal interpretations of existing laws and proposed amendatory legislation. We have jointly concluded that no other mechanism, other than a proclamation, currently exists that would grant the relief immediately required. In that regard, we have cleared the attached letter to the President, as well as the draft proclamation, at the working level with representatives of each concerned Federal agency.


George R. Milner

Attachments



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

The President
The White House
Washington, D. C. 20500

Through the Director, Office of Management and Budget

Dear Mr. President:

Re: Proposed Presidential Proclamation

Section 1004(a) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, approved by the United States by the Joint Resolution of March 24, 1976, 90 Stat. 277, invests you with authority to find and declare in appropriate cases that the application to the Northern Mariana Islands of any provision of the Constitution or laws of the United States prior to termination of the Trusteeship Agreement for the Former Japanese Mandated Islands, 61 Stat. 3301, would be inconsistent with the Trusteeship Agreement.

Such a finding and declaration operates to suspend the application of such provision which would otherwise apply to the Northern Mariana Islands until the termination of the Trusteeship Agreement. On behalf of all the concerned Departments, including Commerce, State, Transportation, and the Interior, I hereby request that you exercise this authority in order to suspend the provision of the United States vessel documentation laws which restricts the ability of citizens of the Northern Mariana Islands to use foreign-built, U. S. registered fishing vessels to fish in the territorial sea and fishery conservation zone around the Northern Mariana Islands.

The United States is the administering authority of the Trust Territory of the Pacific Islands pursuant to Article 2 of the Trusteeship Agreement, entered into by the United States and the Security Council of the United Nations on April 2, 1947, and approved by the United States by the Joint Resolution of July 18, 1947, 61 Stat. 397. Pursuant to Article 4 of the Trusteeship Agreement, the United States agreed to apply the objectives of the international trusteeship system,

as set forth in Article 76 of the Charter of the United Nations, to the people of the trust territory. In discharging its obligations under Article 76(b) of the Charter, the United States agreed in Article 6(2) to promote the economic advancement and self-sufficiency of the inhabitants and encourage the development of the fisheries.

The Northern Mariana Islands are a part of the Trust Territory of the Pacific Islands. On February 15, 1975, the Marianas Political Status Commission, the duly appointed representative of the people of the Northern Mariana Islands, and the Personal Representative of the President of the United States signed the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (Covenant). The Mariana Islands District Legislature and the people of the Northern Mariana Islands, voting in a plebiscite, subsequently approved the Covenant. On March 24, 1976, the United States approved the Covenant, 90 Stat. 263, 48 U.S.C. 1681 note.

Section 502(a) of the Covenant provides that, except as otherwise specified in the Covenant, United States laws applicable to Guam are to be deemed applicable to the Northern Mariana Islands as of a date to be established by proclamation. This date was proclaimed to be January 9, 1978. Proclamation No. 4534, of October 24, 1977, 42 F.R. 56593-56594.

Among the laws that became applicable to the Northern Mariana Islands on January 9, 1978, are the United States vessel documentation laws. One of those laws, 46 U.S.C. 11, permits foreign-built vessels owned by citizens of the United States to be registered. Northern Marianas citizens have been interpreted to qualify for treatment as citizens of the United States for purposes of the vessel documentation laws. Coast Guard Chief Counsel Opinion, June 27, 1978. However, these documentation laws also provide that the use of foreign-built vessels is limited to foreign trade and trade with the Islands of Guam, Tutuila, Wake, Midway, and Kingman Reef, to the exclusion of fishing in the American fisheries. Since by virtue of the Covenant these laws are applicable to the Northern Mariana Islands they operate to prevent Northern Marianas citizens from using foreign-built vessels to fish in the waters around their islands, a situation that has newly arisen as of January 9, 1978.

The Northern Mariana Islands are located a great distance from the mainland of the United States and much closer to East Asia. The combination of higher purchase prices and greater shipping costs to the Northern Mariana Islands of vessels built in the United States, as compared with foreign-built vessels, therefore makes it uneconomical

for Northern Mariana citizens to purchase vessels built in the United States for use in the fisheries around the Northern Mariana Islands. On the average, it is estimated that the cost of a U. S.-built fishing vessel, including the cost of shipping to the Northern Mariana Islands, would be approximately twice as much to the Northern Marianas purchaser as the cost of a similar vessel built in the Far East.

Because it is uneconomical for Northern Marianas citizens to purchase vessels built in the United States for the fisheries around the Northern Mariana Islands, the provisions of the vessel documentation laws, which prevent Northern Marianas citizens from using foreign-built vessels to fish in the waters around their islands, may impede the development of the fisheries of the Northern Mariana Islands or hinder the economic advancement and self-sufficiency of the inhabitants of the Northern Mariana Islands. These laws are therefore not consonant with the objectives agreed to by the United States in Article 6(2) of the Trusteeship Agreement to promote the economic advancement and self-sufficiency of the inhabitants and encourage the development of the fisheries, to the extent that it prevents citizens of the Northern Mariana Islands from using foreign-built, U. S. registered vessels owned by them to fish in the waters around the Northern Mariana Islands.

The Covenant provides a mechanism whereby inconsistencies with the Trusteeship Agreement may be eliminated. Sec. 1004(a) of the Covenant provides that the application of any provision of the Constitution or laws of the United States which would otherwise apply to the Northern Mariana Islands may be suspended until termination of the Trusteeship Agreement if the President finds and declares that the application of such a provision prior to termination would be inconsistent with the Trusteeship Agreement.

The Departments of Commerce, State, the Interior, and Transportation believe that the situation reviewed above justifies action by you to find and declare that the application to the Northern Mariana Islands of any provision of the United States vessel documentation laws, which restricts the ability of Northern Marianas citizens to use foreign-built vessels, U. S. registered, owned by them to engage in the fisheries in the waters around the Northern Mariana Islands prior to the termination of the Trusteeship Agreement, is inconsistent with the Trusteeship Agreement to the extent that it has such an effect. The consequence of this finding and declaration will be suspension, until the termination of the Trusteeship Agreement, of the application of any provision of the United States vessel documentation laws, which restricts the ability of Northern Marianas citizens to fish with foreign-built, U. S. registered, vessels owned by them in the waters around the Northern Mariana Islands, to the extent it has this effect.

Pursuant to the provisions of Executive Order No. 11030, I forward herewith for your consideration a proposed presidential proclamation to accomplish this action.

The proposed proclamation applies to foreign-built vessels owned by citizens of the Northern Mariana Islands or owned by or in the custody of the Government of the Northern Mariana Islands. The language "in the custody of" is included to ensure that the M/V OLOWOL, a fishing vessel that was acquired by the Trust Territory of the Pacific Islands from Japan in lieu of war reparations and which is currently in the custody of the Government of the Northern Mariana Islands, will be able to be used in fishing.

The proposed finding and declaration will apply only to the waters around the Northern Mariana Islands. This is consistent with the limited purpose of the proclamation, which is to promote the objective of development of the fisheries of the Northern Mariana Islands as has been undertaken by the United States in the Trusteeship Agreement. Moreover, the proposed finding and declaration will not suspend the requirements for vessel registration, but is tailored solely to remove a restriction on the use of the vessel, once registered.

The operative language of the proposed proclamation specifically names 46 U.S.C. 11, but ensures the suspension of any other provision of the United States vessel documentation laws which would restrict the ability of Northern Marianas citizens to use foreign-built vessels owned by them in the fisheries around the Northern Mariana Islands. Paragraphs 1 and 2 of the proposed proclamation contain the proposed finding and declaration. Paragraph 3 defines the outward extent of the waters to which the proclamation would be applicable, and paragraph 4 defines "citizen of the Northern Mariana Islands" for purposes of the proclamation.

Since there are already a number of foreign-built vessels owned by Northern Marianas citizens or owned by or in the custody of the Government of the Northern Mariana Islands, which citizens of the Northern Mariana Islands wish to use in fishing in the waters around the Northern Mariana Islands, expeditious consideration of this proclamation is desirable.

I stand ready to provide any further assistance you may require. Thank you for your consideration.

Respectfully yours,

SECRETARY

Enclosure

APPLICATION OF CERTAIN LAWS OF THE
UNITED STATES TO THE NORTHERN
MARIANA ISLANDS

By the President of the United States
of America

A Proclamation

The Northern Mariana Islands, as part of the Trust Territory of the Pacific Islands, are administered by the United States under a Trusteeship Agreement between the United States and the Security Council of the United Nations (61 Stat. 3301). Pursuant to Article 6, paragraph 2 of the Trusteeship Agreement, the United States has undertaken to promote the economic advancement and self-sufficiency of the inhabitants and to encourage the development of the fisheries of the Trust Territory of the Pacific Islands.

In accordance with those obligations, the United States and the Northern Mariana Islands have entered into a Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (Public Law 94-241; 90 Stat. 263) pursuant to which many provisions of the laws of the United States have become applicable to the Northern Mariana Islands as of January 9, 1978. Proclamation No. 4534, Sec. 2. Section 1004(a) of the Covenant provides that if the President finds a provision of the Constitution or laws of the United States to be inconsistent with the Trusteeship Agreement, the application of that provision to the Northern Mariana Islands may be suspended until the termination of that Agreement.

Certain provisions of the vessel documentation laws of the United States, applicable to the Northern Mariana Islands, restrict the ability of citizens of the Northern Mariana Islands and the Government of the Northern Mariana Islands to use

foreign-built, U.S. registered fishing vessels owned by such citizens or owned by or in the custody of the Government of the Northern Mariana Islands to fish in the territorial sea and fishery conservation zone around the Northern Mariana Islands and to land their catch of fish in the Northern Mariana Islands. Because of the considerable distance of the Northern Mariana Islands from American shipyards and resultant high transportation costs associated with the purchase of American-built ships for use in the Northern Marianas fisheries, this result is not consonant with the undertakings assumed by the United States in the Trusteeship Agreement to provide for the economic advancement and self-sufficiency of the inhabitants and to encourage the development of the fisheries of the Northern Mariana Islands.

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, by the authority vested in me by the Constitution and laws of the United States, including Section 1004(a) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, do hereby find, declare and proclaim as follows:

1. Any provision of the vessel documentation laws of the United States which restricts the ability of the citizens of the Northern Mariana Islands or the Government of the Northern Mariana Islands to use foreign-built, U.S. registered fishing vessels, owned by such citizens or owned by or in the custody of the Government of the Northern Mariana Islands, to fish in the territorial sea and fishery conservation zone around the Northern Mariana Islands and to land their catch of fish in the Northern Mariana Islands, including that part of R.S. 4132, as amended, 46 U.S.C. 11, which

roads "* * * which are to engage only in trade with foreign countries, with the Islands of Guam, Tutuila, Wake, Midway, and Kingman Reef * * *," would not be consonant with the objectives of the Trusteeship Agreement to the extent it has this effect.

2. Therefore the application of any such provision to foreign-built, U.S. registered fishing vessels owned by citizens of the Northern Marianas Islands or owned by or in the custody of the Government of the Northern Mariana Islands is suspended to the extent it is inconsistent as described in Section 1. above until the termination of the Trusteeship Agreement for the Former Japanese Mandated Islands in the Pacific (61 Stat. 3301). Foreign-built fishing vessels owned by citizens of the Northern Mariana Islands or owned by or in the custody of the Government of the Northern Mariana Islands may therefore be registered under R.S. 4132, as amended, 46 U.S.C. 11, and any restrictive endorsement upon such register, prescribed by 46 C.F.R. 67.63-9(b) pursuant to 46 U.S.C. 11, shall be without effect insofar as it would restrict the ability of citizens of the Northern Mariana Islands or the Government of the Northern Mariana Islands to use foreign-built, U.S. registered fishing vessels owned by such citizens or owned by or in the custody of the Government of the Northern Mariana Islands to fish in the territorial sea and fishery conservation zone around the Northern Mariana Islands and to land their catch of fish in the Northern Mariana Islands.

3. For the purposes of this proclamation, the seaward limit of the fishery conservation zone around the Northern Mariana Islands is 200 nautical miles from the baseline from which the breadth of the territorial sea is measured, except that to the north of the Northern Mariana Islands, the

the chairman of the board of directors are citizens of the Northern Mariana Islands as defined in (1) above and no more of its directors than a minority of the number necessary to constitute a quorum are not citizens of the Northern Mariana Islands as defined in (1) above.

IN WITNESS WHEREOF, I have hereunto set my hand this
day of _____, in the year of our Lord
nineteen hundred _____, and of the Independence of the
United States of America the two hundred and _____.

JIMMY CARTER