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United States Department of State

Washington, D.C. 20520

MAY 18 1990

Dear Mr. Darman:

This is in reply to your Legislative Referral Memorandum of May 11, 1990, concerning the draft report of the President's Special Representative for the Northern Mariana Islands on S.1025, the Fishery Conservation Amendments of 1990.

The proposed legislation would amend the Magnuson Act to provide that tuna and highly migratory species resources in the exclusive economic zone around the Commonwealth of the Northern Mariana Islands would belong to the people of the Commonwealth of the Northern Mariana Islands and would be managed for their benefit. The Department opposes these amendments offered by the President's Special Representative.

It is the view of the United States that customary international law as reflected in article 64 of the 1982 United Nations Convention on the Law of the Sea does not grant coastal States sovereign rights in their exclusive economic zones over highly migratory species of tuna. The amendments proposed to S.1025 would thus be contrary to customary international law as interpreted by the United States.

Moreover, under the proposed amendments, the Commonwealth of the Northern Mariana Islands would implicitly be granted sovereign rights and jurisdiction to the exclusive economic zone surrounding those islands, which are under U.S. sovereignty pursuant to the Covenant that established the Northern Marianan Islands as a Commonwealth, discussed below. No state, commonwealth or territory of the United States owns the exclusive economic zone off its shores.

On February 15, 1975 the representatives of the people of the Northern Mariana Islands entered into a covenant with the United States to establish a self-governing commonwealth within the American political system, which was approved unanimously by the Mariana Islands District Legislature on February 20, 1975, and by 78.8% of the people of the Northern Mariana Islands in a plebiscite held on June 17, 1975. Thereafter, the

The Honorable
Richard Darman, Director,
Office of Management and Budget.

Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America was approved by the U.S. Congress (Public Law 99-239, approved on January 14, 1986, 48 U.S.C.A. sec. 1681 note) and the President (Presidential Proclamation No. 5564, November 3, 1986, 51 Federal Register 40399).

Article VIII of the Covenant represents in all aspects an affirmative grant of rights to the Commonwealth in regard to real property only, and does not accord to the Commonwealth control over the exclusive economic zone. In 1976 the Magnuson Fishery Conservation and Management Act established the fishery conservation zone of the United States, the inner boundary of which was the seaward boundary of each of the coastal States. 16 U.S. Code sec. 1811. Section 1802(21) of that Act defined "States" as including "any other Commonwealth, territory or possession of the United States." Consequently the U.S. Congress has claimed the fishery conservation zone around the Northern Mariana Islands belongs to the United States. Presidential Proclamation No. 5030 of March 10, 1983, establishing the 200 nautical mile exclusive economic zone of the United States, defined the zone as including the Commonwealth of the Northern Mariana Islands "to the extent consistent with the Covenant and the United Nations Trusteeship Agreement."

The Commonwealth of the Northern Mariana Islands is no longer a trust territory and, of its own volition, freely became incorporated into another independent State. Thus, rights and obligations of the trusteeship are superseded by the rights and duties of the "parent" State and the Commonwealth as set out in the Covenant. Had it preferred to become a sovereign nation in free association with the United States, as did the Marshall Islands and the Federated States of Micronesia, it would commensurately have enjoyed greater rights, such as the resource rights at issue explicitly granted to the freely associated states under Article II, section 121(b)(1), of the Compact of Free Association, Public Law 99-239, January 14, 1986, 16 U.S.C.A. sec. 1681 note, as interpreted by the Congress in Section 104(f) of Public Law 99-239.

The Commonwealth of the Northern Mariana Islands gave up control of its ocean resources in exchange for U.S. citizenship and other benefits of commonwealth status when it entered into close political relationship with the United States. The United States should not grant one commonwealth greater rights than those enjoyed by all the other coastal states, commonwealths and territories of the United States.

Another proposed amendment would authorize the Governor of the Commonwealth of the Northern Mariana Islands to negotiate international tuna fishery agreements. Generally speaking, no state, commonwealth or territory of the United States has the authority to enter into international negotiations. The amendment would also give the Governor the right to veto any tuna agreement negotiated by the United States and approved by the Secretary of State. These amendments are inconsistent with §104 of the Covenant which provides that the United States will have "complete responsibility for and authority with respect to matters relating to foreign affairs and defense affecting the Northern Mariana Islands."

We are extremely concerned not only that these amendments and associated negotiations were conducted without interagency coordination, but that they are entirely inconsistent with prior approved positions of the U.S. Government. Accordingly we do not believe the actions of the President's Special Representative are binding on the Department.

With best wishes,

Sincerely,

Janet G. Mullins

Janet G. Mullins
Assistant Secretary
Legislative Affairs