

1 FREDERICK A. BLACK  
United States Attorney  
2 EDWARD J. LYNCH  
Special Assistant United States Attorney  
3 GREGORY BAKA  
Assistant United States Attorney  
4 P.O. Box 500377  
Saipan MP 96950-0377  
5 (670) 236-2986

6  
7 EDWARD S. GELDERMANN  
Senior Trial Attorney  
8 United States Department of Justice  
Environment & Natural Resources Division  
9 General Litigation Section  
P.O. Box 663  
10 Washington, DC 20044-0663  
Tel: (202) 305-0242  
11 FAX: (202) 305-0506  
12 Attorneys for the United States

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13  
14 THE UNITED STATES DISTRICT COURT  
15 FOR THE DISTRICT OF THE NORTHERN MARIANA ISLANDS

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16 THE COMMONWEALTH OF THE )  
17 NORTHERN MARIANA ISLANDS, )

18 Plaintiff, )

19 v. )

20 THE UNITED STATES OF AMERICA, )

21 Defendant and )  
22 Counterclaim Plaintiff. )

No. CV 99-0028

**UNITED STATES' CROSS  
MOTION FOR SUMMARY  
JUDGMENT AND  
MEMORANDUM IN SUPPORT**

23  
24  
25  
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1 FREDERICK A. BLACK  
United States Attorney  
2 EDWARD J. LYNCH  
Special Assistant United States Attorney  
3 GREGORY BAKA  
Assistant United States Attorney  
4 P.O. Box 500377  
5 Saipan MP 96950-0377  
(670) 236-2986

6 EDWARD S. GELDERMANN  
7 Senior Trial Attorney  
United States Department of Justice  
8 Environment & Natural Resources Division  
General Litigation Section  
9 P.O. Box 663  
10 Washington, DC 20044-0663  
Tel: (202) 305-0242  
11 FAX: (202) 305-0506

12 Attorneys for the United States

---

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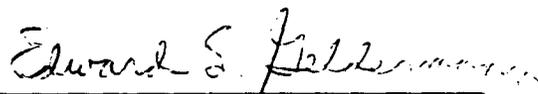
23 **UNITED STATES' MOTION FOR SUMMARY JUDGMENT**

24 The United States of America, defendant and counterclaimant herein, hereby moves for summary  
25 judgment seeking dismissal of the complaint filed by the Commonwealth of the Northern Mariana Islands  
26 ("Commonwealth" or "CNMI"), as well as a judgment decreeing that, as of November 4, 1986, the CNMI  
27 "Submerged Lands Act," as amended, Pub. l. 6-13, 2 CMC § 1201 et seq., and the CNMI "Marine  
28

1 Sovereignty Act of 1980," 2 CMC §§ 1101 et seq., are both null and void under the Supremacy Clause of  
2 the U.S. Constitution, Sections 101 and 102 of the "Covenant To Establish A Commonwealth of the  
3 Northern Mariana Islands in Political Union with the United States of America" ("Covenant"), and Articles  
4 XI and XIV of the CNMI Constitution, because they purport to claim the CNMI's sovereignty, ownership,  
5 and exclusive right to control submerged lands and marine resources underlying a 12-mile territorial sea,  
6 as well as a 200-mile exclusive economic zone, as measured from straight archipelagic baselines. These  
7 local laws are preempted by federal law because they conflict with the United States' ownership and/or  
8 paramount right to control and regulate the submerged lands and marine resources seaward of the  
9 Commonwealth's low-water mark.  
10

11 This motion is based on the following memorandum in support.

12  
13 Respectfully submitted,

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16 

17 Dated: December 6, 2002

18 Edward S. Geldermann  
19 Senior Trial Attorney

20 U.S. Department of Justice  
21 Environment and Natural Resources Division  
22 General Litigation Section  
23 Washington, D.C.  
24  
25  
26  
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1 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF UNITED STATES'**  
2 **MOTION FOR SUMMARY JUDGMENT**

3 **A. Factual Background**

4 The former Trust Territory of the Pacific Islands ("TTPI") encompassed a group of approximately  
5 2,000 islands and atolls in the Western Pacific Ocean. Commonwealth of the Northern Mariana Islands v.  
6 Atalig, 723 F.2d 682, 685 n. 3 (9<sup>th</sup> Cir. 1984). From the onset of World War I in 1914 until the defeat of  
7 Japan in World War II in 1945, these islands were under the control of Japan. See Gale v. Andrus, 643 F.2d  
8 826, 828-30 (D.C.Cir.1980).<sup>1/</sup> Between 1944 and 1947, the island group was placed under the military  
9 control of the United States. On July 18, 1947, the United Nations Security Council entered into an  
10 agreement ("Trusteeship Agreement") with the United States as Trustee, pursuant to which the U.S. accepted  
11 a non-sovereign, oversight authority over the peoples of the TTPI. In that trustee capacity, the U.S. was  
12 granted full powers of administration, legislation, and jurisdiction over the Trust Territory to promote the  
13 development of the economic, social, political, and educational well-being of the TTPI's inhabitants. Joint  
14 Resolution of July 18, 1947, ch. 271, 61 Stat. 397.<sup>2/</sup>

5 **1. The United States - Northern Mariana Island Negotiations Concerning The Future**  
6 **Political Status Of The NMI**

7 In 1965, the people of Micronesia formed a Congress of Micronesia, with representatives from each  
8 of six administrative districts: the Northern Mariana Islands, Yap, Truk, Ponape, Palau, and the Marshall  
9 Islands ("TTPI districts"). In 1966, the TTPI districts petitioned the United States to establish a joint  
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21 <sup>1/</sup> From 1920 to 1935, Japan governed Micronesia pursuant to a "Class C" Mandate from the  
22 former League of Nations. Saipan and Tinian were seized from the Japanese by the United States'  
military in 1944, during World War II.

23 <sup>2/</sup> Authority to administer the trusteeship was vested in the President of the United States, who  
24 was authorized to delegate that responsibility through such agency or agencies as the President may  
25 direct. Section 1 of the Act of June 30, 1954, ch. 423, 68 Stat. 330 (48 U.S.C. § 1681(a)). Until  
26 1962, the Navy Department was responsible for the civil administration of the Northern Mariana  
27 Islands (except Rota), while the Department of the Interior had administrative authority over the  
remainder of the Trust Territory Islands. Exec. Order No. 10470, July 17, 1953, 3 C.F.R. § 951  
(1949-53 comp.). In 1962, civil administrative authority for the entire Trust Territory (including  
all of the Northern Mariana Islands) was consolidated in the Secretary of the Interior.

1 commission to consider the future political alternatives for the TTPI. In 1969, the Micronesian Congress  
2 began negotiations with the United States through a Joint Committee on Future Status. When the Congress  
3 of Micronesia rejected a U.S. proposal in May 1970 for all of the TTPI districts to enter into a  
4 "Commonwealth" relationship of "permanent association" with the United States, and elected instead to  
5 form a looser, more autonomous relationship of "free association," the Northern Mariana Islands ("NMI")  
6 broke ranks and sought separate negotiations directed toward a closer and more permanent political  
7 relationship with the United States. See generally U. S. ex rel. Richards v. De Leon Guerrero, 1992 WL  
8 321010, \*5 (D.N.M.I.).<sup>3/</sup>

9 In 1972, the United States agreed to hold separate negotiations with the NMI. Toward that end, the  
10 United States and the NMI commenced what proved to be several rounds of negotiations to determine the  
11 NMI's future political relationship with the U.S. See Exhibit Nos. 1 and 3-7 of the U.S. Exhibits In Support  
12 Of Motion For Summary Judgment ("U.S. Exh."). On May 10, 1973, prior to the second round of  
13 negotiations, James M. Wilson, U.S. Deputy Representative for Micronesian Status Negotiations, issued a  
14 memorandum in which he set forth the following United States' position concerning the future status of  
15 CNMI submerged lands after the Commonwealth's political relationship between the NMI and the United  
16 States had become established:

17 So far as submerged lands are concerned, we feel these should vest in the future Marianas  
18 government under the new arrangement, as in the case of the states of the United States and  
19 other territories.

20 (U.S. Exh. 2 at 7.) The reports of the second round and subsequent rounds of negotiations between the  
21 United States and the NMI are silent on the subject of ownership and jurisdiction over oceanic submerged  
22 lands after the new political relationship between the United States and the NMI became effective. See U.S.  
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24 <sup>3/</sup> "So strong was this desire for union that at one point the then Mariana Islands District  
25 Legislature passed a resolution warning the Security Council and Trusteeship Council of the United  
26 Nations that it was prepared to secede from the TTPI, 'by force of arms if necessary,' in order to  
27 pursue a closer relationship with the United States." U.S. ex rel. Richards v. De Leon Guerrero, 1992  
28 WL 321010, \*38 (D.N.M.I. 1992.)

1 Exhs. 3-7.<sup>4/</sup>

2 2. The Department of the Interior's 1973 Land Return Policy Statement and Secretarial  
3 Order No. 2969

4 In the meantime, throughout 1972 and beyond, the United States continued to pursue negotiations  
5 separately with the remaining Micronesian districts about their future political status. In early 1973,  
6 representatives of Palau expressed unwillingness to participate in any further negotiations with the United  
7 States concerning its future political status while title to Palau land was still being held by the Trust Territory  
8 Government. (U.S. Exh. 8 at 1.) The Congress of Micronesia subsequently adopted a similar negotiating  
9 stance. Id. To remove this impediment to the political status negotiations, the Secretary of the Interior in  
10 November 1973 issued a policy statement, applicable to all of the Micronesian districts, concerning the  
11 return of public land to the districts. (U.S. Exh. 8.)<sup>5/</sup> In that statement, the Secretary stated:

12 The U.S. Government, as administering authority in the [TTPI], has always considered public  
13 land in Micronesia to be property held in trust for the people of Micronesia . . . . Recently  
14 requests have been made in Palau that public land in that district be turned over now to its  
15 traditional leaders to be held in trust for the people of Palau. This position has received the  
16 support of the Palau District Legislature. Subsequently it was formally endorsed by the  
17 Congress of Micronesia's Joint Commission on Future Status and communicated to the U.S.  
18 Government . . . . The United States has now completed an extensive study of the problem  
19 in all districts . . . . As a result of that study, the United States has now concluded that if  
20 it is the desire of the people in a district that public lands in that district be turned over to the  
21 district now before the termination of the Trusteeship the United States is willing to accede  
22 [sic] to their wishes and to facilitate the transfer of title. This transfer, however, must be  
23 subject to certain limitations and safeguards . . . designed to protect those individuals who  
24 have acquired property interests in public lands under the trusteeship and to meet the  
25 continuing land needs of the Trust Territory Government for public use. These limitations  
26 and safeguards will apply until the Trusteeship ends, at which time the new government will  
27 be free to modify them as it chooses.

28 Id. at 2.

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23 <sup>4/</sup> As used herein, the term "oceanic submerged lands" is shorthand for "lands seaward of the  
24 Commonwealth's coastlines." It does not include lands underlying the Commonwealth's inland  
25 waters.

26 <sup>5/</sup> According to the policy statement, at that time (late 1973), "over sixty percent of  
27 Micronesia's total land area [was] public land. The public land area in each of the districts [was]:  
28 Palau (68%); Yap (4%); Truk (17%); Ponape (66%); Marshall Islands (13%); and the Northern  
Mariana Islands (90%)." (U.S. Exh. 8 at 1.)

1 Included among the "limitations" and "safeguards" established by the land return policy statement  
2 were that public land still needed by the Trust Territory Administration for defense purposes, and former  
3 public land conveyed to individuals pursuant to a homestead program, would not be transferred to the  
4 districts. In addition, the Trust Territory Government would "retain the right to control activities" within  
5 "tidelands, filled lands, submerged lands and lagoons" to the extent they "affect[ed] the public interest." (Id.  
6 at 4.)

7 The land return policy statement called on the Congress of Micronesia to enact legislation enabling  
8 the transfer of TTPI public lands to the TTPI districts. (Id. at 2.) When the Congress of Micronesia had  
9 failed to do so by late 1974, the Interior Secretary proceeded to implement the public land return policy on  
10 his own initiative by issuing Secretarial Order No. 2969, 40 Fed. Reg. 811 (1974). (U.S. Exh. 9.) That  
11 order, which became effective on December 28, 1974, directed the High Commissioner of the Trust Territory  
12 to convey the Trust Territory's right, title, and interest, in public lands to district legal entities that had been  
13 empowered by their respective TTPI district legislatures to receive and hold such lands. Id.; 40 Fed. Reg.  
14 at 812. Consistent with the land return policy statement, Secretarial Order No. 2969 went on to prohibit the  
15 High Commissioner from transferring any submerged lands to a district until its legislature enacted laws  
16 "providing for . . . reservation of the right of the central government of the Trust Territory of the Pacific  
17 Islands to regulate all activities affecting conservation, navigation, or commerce in and to the navigable  
18 waters and tidelands, filled lands, submerged lands and lagoons." Id.; 40 Fed. Reg. at 812. <sup>6/</sup>

### 19 3. The CNMI Covenant

20 On February 15, 1975, just six weeks after Secretarial Order No. 2969 became effective,  
21 representatives of the Northern Mariana Islands and the United States signed a Covenant to govern the future  
22 relationship between the NMI and the U.S. (U.S. Exh. 10.) The NMI legislature unanimously endorsed the  
23 Covenant, and the people of the NMI approved it by a seventy-eight percent majority vote on June 17, 1975.  
24

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25 <sup>6/</sup> The Northern Marianas District Legislature did establish a Marianas Public Lands  
26 Corporation but it never became operational. (U.S. Exh. 15 at 142; see also p. 39, n. 35, infra.) The  
27 constitutional CNMI government later established a corporation by the same name, but, by that time,  
28 Secretarial Order No. 2989 (discussed infra) had already superseded Secretarial Order No. 2969.

1 Congress thereafter enacted the Covenant as law. See Joint Resolution of March 24, 1976, Pub. L. No.  
2 94-241, 90 Stat. 263, reprinted in 48 U.S.C. § 1681 note.

3 The Covenant consists of ten articles that define the political relationship between the NMI and the  
4 United States. (U.S. Exh. 10.)<sup>7/</sup> Under the Covenant, upon termination of the U.N. Trusteeship Agreement,  
5 the CNMI would become a self-governing commonwealth in political union with, and under the sovereignty  
6 of, the United States of America. Covenant, § 101. (U.S. Exh. 10, at 5.)<sup>8/</sup> A Section-By-Section Analysis  
7 (“SBS Analysis”), dated February 15, 1975, that accompanied the Covenant describes this sovereignty  
8 concept as follows:

9 [t]he United States will have sovereignty, that is, ultimate political authority,  
10 with respect to the Northern Mariana Islands. The United States has  
11 sovereignty with respect to every state, every territory and the  
12 Commonwealth of Puerto Rico. United States sovereignty is an essential  
13 element of a close and enduring political relationship with the United States,  
14 whether in the form of statehood, in the traditional territorial form, or as a  
15 commonwealth.

16 (U.S. Exh. 11, at 7.)<sup>2/</sup> Section 104 of the Covenant, which likewise did not become effective until  
17 termination of the Trusteeship, provides that the U.S. has complete responsibility for and authority with  
18 regard to foreign affairs and defense affecting the NMI. (U.S. Exh. 10, at 6.)

19 Section 102 of the Covenant, which became effective on January 9, 1978, states that the relations  
20 between the NMI and U.S. will be governed by the Covenant, which, together with the provisions of the  
21 Constitution, treaties and the laws of the United States applicable to the NMI, will be the supreme law of

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22 <sup>7/</sup> The authority of the United States towards the CNMI now arises solely under the Covenant.  
23 Hillblom v. U.S., 896 F.2d 426, 429 (9<sup>th</sup> Cir. 1990). Accordingly, the Covenant must be examined  
24 carefully to determine the precise nature of the Commonwealth’s governance, and the CNMI’s  
25 relationship to the United States. Fleming v. Department of Public Safety, 837 F.2d 401, 404 (9<sup>th</sup>  
26 Cir.), cert. denied, 488 U.S. 889 (1988).

27 <sup>8/</sup> Sovereignty was fully established as of 12:01 a.m., November 4, 1986, NMI time. Pres. Proc.  
28 5564, Nov. 3, 1986, sec. 2; Smith v. Pangilinan, 651 F.2d 1320, 1321 (9<sup>th</sup> Cir. 1981); CNMI v.  
Atalig, 723 F.2d at 685.

<sup>9/</sup> The SBS Analysis has been declared authoritative by the Ninth Circuit. Fleming v.  
Department of Public Safety, 837 F.2d at 408.

1 the NMI. Id. at 5-6. As the SBS Analysis explained:

2 [Section 102] is similar to Article VI, Clause 2 of the Constitution of the  
3 United States, which makes the Constitution, treaties and laws of the United  
4 States the supreme law in every state of the United States. This means that  
5 federal law will control in the case of a conflict between local law (even a  
6 state's constitution) and a valid federal law. Federal law is also supreme, of  
7 course, in the territories and the Commonwealth of Puerto Rico.

8 SBS Analysis at 10; S. Rep. No. 94-433, 94<sup>th</sup> Cong., 1<sup>st</sup> Sess. 65, 66 (1975); 1975 U.S. Code, Cong., & Ad.  
9 News 448. (U.S. Exh. 11, at 10.)

10 Section 103 of the Covenant, also effective January 9, 1978, guarantees the people of the NMI the  
11 "right of local self-government" and the right to govern themselves "with respect to internal affairs in  
12 accordance with a Constitution of their own adoption." (U.S. Exh. 10, at 6.) Complementing Covenant §  
13 103, Section 201 of the Covenant requires the people of the Northern Mariana Islands to "formulate and  
14 approve a Constitution." Id. at 7.

15 Article VIII of the Covenant is entitled "Property." Section 801 of the Covenant provides, as relevant  
16 here:

17 [a]ll right, title and interest of the Government of the Trust Territory of the Pacific Islands  
18 in and to real property in the Northern Mariana Islands on the date of the signing of this  
19 Covenant or thereafter acquired in any manner whatsoever will, no later than upon the  
20 termination of the Trusteeship Agreement, be transferred to the Government of the Northern  
21 Mariana Islands.

22 (U.S. Exh. 10, at 28.) Sections 802 and 803 of the Covenant provide that the CNMI will lease to the United  
23 States specified acreage on, inter alia, Tinian and Farallon de Medinilla Island (including "immediately  
24 adjacent" waters) for fifty years (with an option to renew for an additional 50 years) at specified U.S. dollar  
25 amounts. Id. at 29-30.

26 **4. Secretarial Order No. 2989**

27 On the same day, March 24, 1976, the Acting Secretary of the Interior issued Secretarial Order No.  
28 2989, 41 Fed. Reg. 15,892 (1976), which established a civil administration of the Marianas wholly separate  
from the Trust Territory governance of the other Micronesian districts, effective until such time as the  
President of the United States issued a Proclamation pursuant to Section 1003(b) of the Covenant. (U.S. Exh.

1 12.)<sup>10/</sup> Secretarial Order No. 2989 established a position of "Resident Commissioner" to oversee a broad  
2 range of executive and legislative responsibilities of the new civil administration in the Marianas. Id.; 41  
3 Fed. Reg. at 15,893. With respect to TTPI public lands, Secretarial Order No. 2989 provided, in pertinent  
4 part:

5 Title to public lands of the Trust Territory of the Pacific Islands which are situated in the  
6 Northern Mariana Islands and which are actively used by the Trust Territory Government is  
7 hereby transferred to and vested in the Resident Commissioner subject to the continued use  
8 of such land by the Trust Territory Government until relocation of the capital of the [TTPI]  
9 . . . . All other public lands situated in the [NMI] title to which is now vested in the  
Trust Territory Government and which have not been transferred to the legal entity created  
by the Mariana Islands District Legislature according to Secretary of the Interior Order No.  
2969 shall vest in the Resident Commissioner.

10 Id.; 41 Fed. Reg. at 15,895.

11 **5. The CNMI Constitution**

12 As previously stated, Section 201 of the Covenant required the people of the Northern Mariana  
13 Islands ("NMI") to "formulate and approve a Constitution." (U.S. Exh. 10, at 7.) From October to  
14 December 1976, an NMI Constitutional Convention gathered, drafted, and approved a constitution to fulfill  
15 § 201's mandate. (U.S. Exh. 13.) On March 6, 1977, the CNMI Constitution was ratified by a 92% majority  
16 vote. The Constitution was deemed approved by Presidential Proclamation No. 4534 on October 4, 1977,  
17 see U.S. Exh. 14, and the constitutional government of the NMI became effective on January 9, 1978.<sup>11/</sup>

18 The drafters of the NMI Constitution adopted several constitutional provisions of particular  
19 importance to this case. Article XI, Section 1, of the NMI Constitution provides, in pertinent part, that "the

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20  
21 <sup>10/</sup> Section 1003(b) of the Covenant provides that "Sections 102, 103, 204, 304, Article IV,  
22 Sections 501, 502, 505, 601-605, 607, Article VII, Sections 802-805, 901 and 902 [of the Covenant]  
23 will become effective on a date to be determined and proclaimed by the President of the United  
24 States which will be not more than 180 days after this Covenant and the Constitution of the Northern  
Mariana Islands have both been approved." (U.S. Exh. 10, at 39.) That date turned out to be January  
9, 1978.

25 <sup>11/</sup> Pursuant to Sections 1003(b) and 1004(b) of the Covenant, the NMI Constitution and Section  
26 502 of the Covenant were to become effective on a date specified by the President of the U.S. In  
27 Proclamation No. 4534 (U.S. Exh. 14, at 56,594), President Carter designated January 9, 1978, as  
the date on which the Constitution and Covenant § 502 would become effective.

1 submerged lands off the coast of the Commonwealth to which the Commonwealth now o  
2 have a claim of ownership under United States law are public lands and belong collectively to the people  
3 of the Commonwealth who are of Northern Marianas descent.” (U.S. Exh. 13, at 19.) Article XI, Section  
4 2, provides that the “management and disposition of submerged lands off the coast of the Commonwealth  
5 shall be as provided by law.” Id. Article XI, § 3, provides that “the management and disposition of public  
6 lands except those provided for by section 2 [i.e., submerged lands] shall be the responsibility of the  
7 Marianas Public Land Corporation” established by CNMI Const. Article XI, § 4. Id. at 19-20. Finally,  
8 Article XIV, § 1, of the CNMI Constitution provides that:

9       The marine resources in waters off the coast of the Commonwealth over which the  
10       Commonwealth now or hereafter may have any jurisdiction under United States law shall be  
11       managed, controlled, protected, and preserved by the [Mariana] legislature for the benefit of  
12       the people.

12 (U.S. Exh. 13, at 23.)

13       In an Analysis of the Constitution of the Commonwealth of the Northern Mariana Islands (“CNMI  
14 Constitutional Analysis”) formally adopted by the NMI Constitutional Convention on December 6, 1976,  
15 the framers explained the intent behind Article XI of the Constitution as follows:

16       [Article XI] Section 1 includes all submerged lands to which the Commonwealth now or at  
17       any time in the future may have any right, title or interest. The United States is the owner  
18       of submerged lands off the coasts of the states under territorial waters. The states have no  
19       rights in these lands beyond that transferred by the United States. The federal power over  
20       these lands is based on the provisions of the United States Constitution with respect to  
21       defense and foreign affairs. Under article 1 [sic], section 104 of the Covenant, the United  
22       States has defense and foreign affairs powers with respect to the Commonwealth and thus  
23       has a claim to the submerged lands off the coast of the Commonwealth as well. Section 1  
24       recognizes this claim and also recognizes that the Commonwealth is entitled to the same  
25       interest in the submerged lands off its coasts as the United States grants to the states with  
26       respect to the submerged lands off their coasts. Under this section, any interest in the  
27       submerged lands granted to the states or to the Commonwealth in the future also will become  
28       part of the public lands of the Commonwealth.

23 (U.S. Exh. 15, at 144.)

24       Explaining the scope of Article XIV, § 1, of the CNMI Constitution, entitled “Marine Resources,”  
25 the framers stated in the CNMI Constitutional Analysis:

26       This section provides that the marine resources found in waters off the coast of the  
27

1 Commonwealth over which the Commonwealth has jurisdiction shall be managed,  
2 controlled, protected, and preserved by the legislature for the benefit of the people of the  
3 Commonwealth. Marine resources are those resources found in the water such as fish,  
4 dissolved minerals, plant life suspended in the water and other resources. Marine resources  
do not include resources found on or under submerged lands. Those resources are public  
lands and are provided for by Article XI, section 2.

5 The jurisdiction of the Commonwealth over the waters off the coast is the same as  
6 that of the states. Currently the states have the power to regulate fisheries within territorial  
7 waters as part of the police powers. The power of the states extends only to what the United  
8 States claims as territorial waters. Depending on the claims asserted by the United States and  
United States law with respect to these waters, the jurisdiction of the Commonwealth might  
be extended. This section provides that the legislature has the power to control marine  
resources for whatever distance into the ocean is available under United States law.

9 Id. at 181.

10 6. **Regulatory Developments Affecting NMI-Related Submerged Lands And Oceanic**  
11 **Resources From January 1978 Until The End Of The U.N. Trusteeship In November**  
12 **1986**

13 Almost immediately after the NMI constitutional government became effective in January 1978,  
14 questions arose as to the NMI government's authority to regulate submerged lands and marine resources off  
15 the coast of the Commonwealth, at least until the end of the Trusteeship. Contributing to the uncertainty  
16 was the fact that Section 1003(b) of the Covenant (U.S. Exh. 10, at 39) implemented different sections of  
17 the Covenant in three phases. Thus, real property provisions of Sections 801 of the Covenant (calling for  
18 return of TTPI real property to the NMI government no later than termination of the Trusteeship) became  
19 effective at the beginning of the first phase, which commenced on March 24, 1976. The leasing provisions  
20 of Covenant §§ 802 and 803 became effective at the beginning of the second phase, on January 9, 1978.  
21 The sovereignty, foreign affairs, and defense provisions of Sections 101 and 104 of the Covenant, however,  
22 did not become effective until the third phase, which commenced when the Trusteeship terminated on  
23 November 4, 1986. See U.S. Exh. 10, at 39. Consequently, at least from January 1978 through November  
24 1986, doubts and/or disagreements surfaced by and between representatives of the CNMI and the United  
25 States over the extent to which the CNMI was empowered to regulate submerged lands and marine resources  
26 off the coast of the Commonwealth.  
27  
28

1 a. **The U.S. Government's Assertion Of Fishery Management Authority Over A**  
2 **200-Mile Belt Seaward Of A Three-Mile Territorial Sea Surrounding The**  
3 **Commonwealth**

4 On January 11, 1978, two days after the second phase of the Covenant (including Covenant §  
5 502(a)(2)) became effective,<sup>12/</sup> the U.S. Department of State published a notice in the Federal Register, 43  
6 Fed. Reg. 1658 (1978) (U.S. Exh. 16) declaring that the United States government had established a 200-  
7 mile fishery conservation zone near the NMI "within which the United States will exercise its exclusive  
8 fishery management authority as set forth in the Fishery Conservation and Management Act of 1976." (U.S.  
9 Exh. 16; 43 Fed. Reg. at 1658.) The Federal Register notice went on to state that "the seaward limit of the  
10 fishery conservation zone is 200 nautical miles from the baseline from which the breadth of the territorial  
11 sea is measured, except that to the north of the Northern Mariana Islands, the limit of the fishery  
12 conservation zone shall be determined by straight lines" connecting geographical coordinates specified in  
13 the notice. Id. Although the NMI government shortly thereafter protested this assertion of fishery  
14 management jurisdiction by the United States, it was ultimately confirmed by the Ninth Circuit as a lawful  
15 exercise of U.S. authority under Section 502(a)(2) of the Covenant. Hillblom v. United States of America,  
16 896 F.2d 426, 431 n.3 (9<sup>th</sup> Cir. 1990).

17 b. **The CNMI's June 1978 Request To The United States For Clarification Of**  
18 **Jurisdiction Over Submerged Lands And The U.S. Response**

19 On June 9, 1978, five months after the CNMI Constitution became effective, Oscar C. Rasa, then  
20 Speaker of the NMI's House of Representatives wrote to Ruth Van Cleve, Director of DOI's Office of  
21 Territorial Affairs ("OTA"), explaining that several firms had recently contacted CNMI legislators seeking  
22 authorization to conduct preliminary exploration to determine the feasibility of extracting minerals from  
23 submerged lands abutting the NMI's shorelines. (U.S. Exh. 17.) According to Mr. Rasa's letter, the firms  
24 had "been advised informally that the [NMI] may not have exclusive jurisdiction over submerged lands off  
25 the coast of the [NMI]." Id. at 1. While asserting the NMI's legislature's position that the NMI owns the

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26 <sup>12/</sup> Section 502(a)(2) of the Covenant (U.S. Exh. 10, at 14-15) provides that the "laws of the  
27 United States in existence on the effective date of this Section and subsequent amendments to such  
28 laws will apply to the Northern Mariana Islands" to the extent that they are "applicable to Guam and  
which are of general application to the several States as they are applicable to the several states."

1 submerged lands and resources underlying the territorial sea, and could "manage and dispose of same by  
2 law," the Rasa letter nonetheless asked DOI's OTA for a legal opinion whether jurisdiction over submerged  
3 lands and ocean resources was vested exclusively in the Commonwealth. Id.

4 On June 22, 1978, Ms. Van Cleve referred the Speaker's letter to C. Brewster Chapman, Jr., Asst.  
5 Solicitor for DOI's Division of General Law - Territories. (U.S. Exh. 18.) By letter dated June 29, 1978  
6 (U.S. Exh. 19), Mr. Chapman responded that:

7 The Government of the Northern Mariana Islands probably has ownership of and exclusive  
8 jurisdiction over these submerged lands, at least at this time. But this is only a temporary  
9 title and jurisdiction. When the Northern Mariana Islands are proclaimed a Commonwealth  
10 and territory of the United States, the laws of the United States applicable to its territories  
11 will come into effect in the Northern Marianas. One of the rules . . . is that submerged  
12 lands around an island territory belong to the federal -- not to the local -- Government.

13 By the 1974 amendments of the Territorial Submerged Lands Act . . . , the  
14 Congress has clearly indicated its intent that, subject to the limitations in that Act, title to the  
15 submerged lands surrounding our territories should be in the respective local governments,  
16 and there is absolutely no reason to believe that the [NMI] will not eventually be included  
17 under the provisions of that Act. In fact, I would recommend seeking a legislative  
18 amendment to the Territorial Submerged Lands Act now but for one problem. That Act  
19 conveys all right, title, and interest of the United States in those submerged lands to the  
20 respective named territories. The United States does not now have any right, title or interest  
21 in the submerged lands of the [NMI] and, therefore, has nothing to convey. Such right, title,  
22 or interest will only attach as an incidence of U.S. sovereignty when the Northern Mariana  
23 Islands becomes a territory of the United States. At that time, then, the grant can be made.

24 Id. at 2-3. Consistent with its conclusion that oceanic submerged lands abutting the NMI would belong to  
25 the Federal Government as soon as the NMI became a Commonwealth of the United States, Mr. Chapman's  
26 letter went on to suggest that it would be prudent for the NMI government to "accept the applicable  
27 limitations and exceptions contained in the 1974 amendments to the Territorial Submerged Lands Act  
28 . . . which are not inconsistent with its current legal status, in managing and disposing of its submerged  
29 lands and their resources." Id. at 3.

30 Mr. Chapman's June 29, 1978 letter was transmitted to the NMI legislature. See U.S. Exh. 20.  
31 According to a State Department press release dated July 25, 1978, Roger St. Pierre, a legal consultant to  
32 the NMI legislature, disputed Mr. Chapman's conclusions and was reported to have said that because the  
33 Marianas Constitution grants ownership of the submerged lands to the Commonwealth, and because the

1 United States approved the Constitution, the federal government has no jurisdiction over them. Id.

2 In a letter dated July 31, 1978 (U.S. Exh. 21), Mr. Chapman issued a rebuttal to the press reports of  
3 Mr. St. Pierre's position on submerged lands, reaffirming the U.S. position that:

4 When the Northern Marianas becomes a Commonwealth and a territory of the  
5 United States the submerged lands will belong to the United States by  
6 operation of law, and thereafter it will take an act of Congress, pursuant to its  
7 plenary authority under Article IV, Section 3, Clause 2, of the [U.S.]  
8 Constitution to convey title in them to the local government. It is a well  
9 settled rule that the United States cannot be divested of its title to property  
10 except by an Act of Congress.

11 Id. at 2.

12 **c. The NMI's Submerged Lands Act and Marine Sovereignty Act**

13 Notwithstanding Articles XI, § 1, and XIV, § 1, of the CNMI Constitution and Mr. Chapman's legal  
14 opinions, the NMI legislature enacted two statutes during the 1979-1980 time frame, which purported to  
15 assert the NMI government's sovereignty and/or exclusive jurisdiction over submerged lands and marine  
16 resources off the coast of the Commonwealth. In the NMI "Submerged Lands Act," the NMI legislature  
17 asserted ownership of submerged lands "out to the ocean to a distance of two hundred nautical miles." (U.S.  
18 Exh. 22, at 141.) That legislation also assigned to the CNMI "Director of Natural Resources" the  
19 responsibility to issue exploration licenses and development leases for the oceanic submerged lands abutting  
20 the NMI. Id. at 142. In May 1980, the NMI legislature enacted a so-called "Marine Sovereignty Act of  
21 1980." (U.S. Exh. 23.) That legislation purported to assert that the NMI government has sovereignty over  
22 a twelve-mile territorial sea, as measured from straight archipelagic baselines, as well as a 200-mile  
23 exclusive economic zone measured from the same baselines. Id. at 2-104 to 2-106. Neither the NMI  
24 Submerged Lands Act nor the Marine Sovereignty Act contained a sunset provision providing for expiration  
25 to coincide with the termination of the Trusteeship. To date, neither statute has been repealed.

26 **d. The U.S. Department of Defense's January 1983 Lease Of Military Lands On  
27 Tinian and Farallon de Medinilla Island**

28 Section 802(a) of the Covenant provides that "[t]he following property will be made available to the  
Government of the United States by lease to enable it to carry out its defense responsibilities:

(1) on Tinian Island, approximately 17,799 acres (7,203 hectares) and the  
waters immediately adjacent thereto; . . . . [and]

1 (3) on Farallon de Medinilla Island, approximately 206 acres (83 hectares)  
2 encompassing the entire island, and the waters immediately adjacent thereto.

3 (U.S. Exh. 10, at 29.) A separate "Technical Agreement," executed pursuant to Covenant § 803(c),<sup>13/</sup>  
4 provides that the United States would forfeit these leasing rights unless payment therefor was received by  
5 the NMI Government within five years after Section 802 became effective (a deadline which turned out to  
6 be January 9, 1983). (U.S. Exh. 24, at 2-3.)

7 To meet the five-year leasing deadline, the U.S. Department of Defense commenced negotiations  
8 with the CNMI over leasing the areas contemplated by Covenant § 802(a). Because the Marianas Public  
9 Land Corporation (established by Article XI, § 3, of the CNMI Constitution) possessed leasing authority  
10 concerning only surface lands, *i.e.*, uplands, the NMI legislature enacted a statute authorizing the NMI  
11 Governor to execute a lease with the United States concerning the "waters immediately adjacent" to "the  
12 leased surface lands on Tinian and Farallon de Medinilla Islands," including the right "to facilitate access  
13 and egress to the leased surface areas and to construct reasonable port facilities." Commonwealth Code, §  
14 1412; Pub. L. No. 3-40, § 2 (Jan. 1, 1983); see also U.S. Exh. 25. On January 6, 1983, the United States  
15 executed a single, integrated lease with the Mariana Public Lands Corporation for surface areas, and with  
16 the Governor for the waters immediately adjacent to the leased surface areas, on Tinian and Farallon de  
17 Medinilla ("FDM") Island. (U.S. Exh. 26.)

18 e. **The U.S. Presidential Proclamation Asserting U.S. Sovereignty (Consistent**  
19 **With The Covenant and The U.N. Trusteeship Agreement) Over A 200-Mile**  
20 **Exclusive Economic Zone Seaward Of The Territorial Sea Surrounding The**  
21 **NMI**

22 On March 10, 1983, more than three years before the U.N. Trusteeship terminated, President Ronald  
23 Reagan issued Proclamation No. 5030, 48 Fed. Reg. 10605 (1983), establishing an "exclusive economic  
24 zone" ("EEZ") confirming that the United States claims sovereign rights and control over the natural  
25 resources (living and non-living) of the seabed, subsoil, and superjacent waters beyond the territorial sea but

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26 <sup>13/</sup> Section 803(c) provides, as relevant here: "A separate Technical Agreement Regarding Use  
27 of Land To Be Leased by the United States in the Northern Mariana Islands will be executed  
28 simultaneously with this Covenant. The terms of the lease to the United States will be in accordance  
with this Section and with the terms of the Technical Agreement." (U.S. Exh. 10, at 30-31.)

1 within 200 nautical miles of United States' coasts. (U.S. Exh. 27, at 2-3.) The Proclamation expressly  
2 applied to the NMI (to the extent consistent with the Covenant and the U.N. Trusteeship Agreement). Id.;  
3 48 Fed. Reg. at 10605.

4 f. **The Second Interim Report of the Northern Mariana Islands Commission on**  
5 **Federal Laws**

6 In August 1985, the "Northern Mariana Islands Commission on Federal Laws" ("Commission on  
7 Federal Laws") issued "Welcoming America's Newest Commonwealth," a report to the U.S. Congress  
8 pursuant to Section 504 of the Covenant. (U.S. Exh. 28).<sup>14/</sup> In that report, the Commission stated that  
9 "[u]ntil termination of the trusteeship, the United States has no claim to ownership of submerged lands in  
10 the [NMI]." Id. at 175. On the other hand, the Report conceded "that the Northern Mariana Islands is now  
11 the owner of the submerged lands adjacent to its shores does not mean its ownership will survive termination  
12 of the Trusteeship." Id. at 178. As the Commission explained, "[o]n termination of the Trusteeship,  
13 sovereignty over the Northern Mariana Islands will become vested in the United States. At that time,  
14 ownership of the submerged lands becomes uncertain." Id. at 177. Citing to two of the U.S. Supreme

15  
16 <sup>14/</sup> Section 504 of the Covenant provides, as relevant here:

17 The President will appoint a Commission on Federal Laws to survey  
18 the laws of the United States and to make recommendations to the  
19 United States Congress as to which laws of the United States not  
20 applicable to the Northern Mariana Islands should be made applicable  
21 and to what extent and in what manner, and which applicable laws  
22 should be made inapplicable and to what extent and in what manner.  
23 The Commission will consist of seven persons (at least four of whom  
24 will be citizens of the Trust Territory of the Pacific Islands who are  
25 and have been for at least five years domiciled continuously in the  
26 Northern Mariana Islands at the time of their appointments) who will  
27 be representative of the federal, local, private and public interests in  
28 the applicability of laws of the United States to the Northern Mariana  
Islands.

(U.S. Exh.10 at 16-17; emphasis added.) In early 1980, President Carter appointed seven  
individuals to the Commission, a majority of whom, per § 504, were NMI residents. The  
Commission met on ten occasions between May 1980 and May 1985. See U.S. Exh.28 at  
0434-35.

1 Court's seminal "tidelands" cases, United States v. California, 332 U.S. 19, 34 (1947) and United States v.  
2 Texas, 339 U.S. 707 (1950), see id. at 177-78, and noting that there were arguments both in favor and  
3 against continued CNMI ownership of submerged lands after the Trusteeship terminated, id. at 177, the  
4 Commission recommended that Congress enact legislation to "clarify" that the CNMI was the owner of  
5 "lands permanently or periodically covered by tidal waters within three geographical miles of the coastlines  
6 of the [NMI]." Id. at 172. According to the Report, "[t]he legislation here proposed thus follows the track  
7 already laid by Congress in conveying lands to the States and to other territories." Id. at 180 (referencing in  
8 a subsequent discussion, id. at 180-83, the federal Submerged Lands Act, 43 U.S.C. § 1301(a),(b), and the  
9 Territorial Submerged Lands Act, 48 U.S.C. § 1705(a)).

10 7. **The Termination Of The U.N. Trusteeship And The § 902 Consultations Between The**  
11 **Representatives Of The Governor Of The CNMI And The President Of The United**  
12 **States Over The Status Of Submerged Lands And Ocean Resources**

13 In 1985, the remaining TTPI districts (other than Palau) entered into a Compact of Free Association  
14 pursuant to which independent sovereignties would be formed. Compact of Free Association Act of 1985,  
15 Pub. L. No. 99-239, 99 Stat. 1770 (1986) (which appears at 48 U.S.C. § 1901 note (1994)). On November  
16 3, 1986, President Reagan issued Proclamation No. 5564, declaring that the U.N. Trusteeship was terminated  
17 with respect to the Marshall Islands, the Federated States of Micronesia, and the Northern Mariana Islands.  
18 (U.S. Exh. 29; 51 Fed. Reg. 40,399.) Pursuant to Section 1002 of the Covenant, the President proclaimed  
19 that Sections 101 and 104, among others, would become effective as of 12:01 a.m. on November 4, 1986,  
20 and that, as of that date, "the Commonwealth of the Northern Mariana Islands in political union with and  
21 under the sovereignty of the United States of America is fully established." Id.; 51 Fed. Reg. at 40,400.

22 Soon thereafter, on November 23, 1986, the CNMI requested formal consultations with a "special  
23 representative" of the President of the United States, pursuant to Section 902 of the Covenant, concerning  
24 the ownership of submerged lands and marine resources. (U.S. Exh. 30.)<sup>15/</sup> On March 30, 1987, the Special

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25 <sup>15/</sup> Section 902 of the Covenant specifies that

26 The Government of the United States and the Government of the Northern Mariana  
27 Islands will consult regularly on all matters affecting the relationship between them.

(continued...)

1 Representative of the CNMI's Governor prepared a position paper, stating that "[t]he jurisdiction of the  
2 Commonwealth over its oceans, submerged lands and the natural resources of the surrounding sea was not  
3 specified in the Covenant." (U.S. Exh. 31, at 4.) Ignoring the recommendations of the Commission on  
4 Federal Laws made less than two years earlier (i.e., that U.S. legislation be enacted to convey three miles  
5 of oceanic submerged lands to the CNMI), the CNMI § 902 representative asserted that the Commonwealth  
6 should have the "same rights in the ocean and exclusive economic zone (EEZ) as are recognized for coastal  
7 states in the United Nations Convention on the Law of the Sea (UNCLOS), subject only to appropriate  
8 oversight by the Government of the United States in the areas of foreign affairs and defense." Id. at 6.  
9 Accordingly, the CNMI recommended that U.S. legislation be enacted that establishes the Commonwealth's  
10 right, on a permanent basis, to exercise exclusive jurisdiction over a 12-mile territorial sea as well as a 200-  
11 mile exclusive economic zone. Id. at 55-64.

12 On April 12, 1990, a special representative of the President of the United States, Timothy W.  
13 Glidden, executed a memorandum of agreement indicating that Mr. Glidden would personally support the  
14 Commonwealth's proposal that the CNMI's alleged sovereign right to ownership and jurisdiction of the  
15 waters and seabed surrounding the NMI be recognized and confirmed "to the full extent permitted by  
16 international law." (U.S. Exh. 32, at 1.) In that memorandum, Mr. Glidden also agreed to seek resolution  
17 of the issue within the Government of the United States consistent with the CNMI's proposal. Id. at 2.

18 On September 18, 1990, Mr. Glidden prepared a position paper detailing what proved to be his  
19 unsuccessful efforts to obtain support within the U.S. government for the Commonwealth's proposed  
20 resolution of the submerged lands and ocean resources issue. (U.S. Exh. 33.) According to Mr. Glidden's  
21 position paper, the U.S. government was of the view that exclusive jurisdiction and control over the

22 \_\_\_\_\_  
23 <sup>15/</sup>(...continued)

24 At the request of either Government, and not less frequently than every ten years, the  
25 President of the United States and the Governor of the Northern Mariana Islands will  
26 designate special representatives to meet and to consider in good faith such issues  
27 affecting the relationship between the Northern Mariana Islands and the United States  
as may be designated by either Government and to make a report and  
recommendations with respect thereto.

1 submerged lands and marine resources off the coast of the CNMI had passed to the United States when the  
2 U.S. acquired sovereignty over the CNMI in November 1986, and that there was no basis in law for the  
3 CNMI's claim of ownership and/or control over 200-mile exclusive economic zone. Id. at 3-4.

4 In 1992, and again in 1995 and 1996, the disagreement over the CNMI's claim to submerged lands  
5 and ocean resources became the subject of additional rounds of Section 902 consultations. During this  
6 period, the special representatives of the CNMI Governors and of the President of the United States  
7 exchanged several more position papers, each adhering to their opposing positions on the issue of submerged  
8 lands and ocean resources. U.S. Exhs. 34 - 40. From 1987 to 1997, U.S. officials made several offers to  
9 sponsor legislation that would grant CNMI authority to control submerged lands and marine resources to  
10 a point three miles from shore. See U.S. Exhs. 61, at 0879; 63, at 0884; 64, at 0888; 65, and 66. The CNMI  
11 declined all such offers. (U.S. Exh. 38, at 0638; 63, at 0884; 64, at 0888.)

12  
13 **8. The Dispute Between The United States And The CNMI Over The Authority To Enter**  
14 **Into A Concession Agreement With The Marine Revitalization Corporation For The**  
**Outer Cove Marina Project**

15 On August 21, 1995, the CNMI's Department of Land and Natural Resources executed a  
16 "Submerged Lands Lease Agreement" with the Marine Revitalization Corporation ("MRC") pursuant to  
17 which the MRC was to construct a seventy-six boat marina complex at American Memorial Park in Saipan.  
18 (U.S. Exh. 41.) That agreement made no reference to the United States' authority over the portion of the  
19 leased premises that consisted of submerged lands, and did not expressly require the MRC to obtain U.S.  
20 approval. During the spring of 1986, the U.S. Department of the Interior notified MRC of the United States'  
21 authority over the submerged lands aspect of the lease. See U.S. Exh. 42. Accordingly, the Park Service  
22 and the MRC executed a separate concession agreement for the Outer Cove Marina, which contained  
23 language acknowledging the dispute between the United States and the CNMI over the ownership of  
24 submerged lands, and stating that "neither the Commonwealth nor the United States waives or concedes any  
25 claim to ownership or control of the submerged lands . . . ." (U.S. Exh. 43, at 0749.)

26 The CNMI's Quiet Title Act complaint followed.

1 **ARGUMENT**

2 **I. STANDARD OF REVIEW**

3 Rule 56 of the Federal Rules of Civil Procedure authorizes a grant of summary judgment:  
4 if the pleadings, depositions, answers to interrogatories, and admissions on file, together with  
5 the affidavits, if any, show that there is no genuine issue as to any material fact and that the  
6 moving party is entitled to a judgment as a matter of law.

7 Fed. R. Civ. P. 56(c). The core requirement of Rule 56 is that there be no genuine issue of material fact in  
8 dispute. De Leon v. Bristol-Myers Squibb Company Long Term Disability Plan, 203 F. Supp.2d 1181, 1184  
9 (D. Or. 2001) (citing, *inter alia*, Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247- 48 (1986)  
10 ("Anderson"). The initial burden is on the movant to establish that there are no genuine issues of material  
11 fact. Celotex v. Catrett, 477 U.S. 317, 322-24 (1986). Once the movant's burden has been discharged, the  
12 onus is upon the nonmovant to establish that there is a genuine issue of material fact. Id. at 324. To satisfy  
13 this burden, the nonmovant "may not rest upon the mere allegations or denials of [its] pleadings," but must  
14 instead "set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e); see  
15 Celotex, 477 U.S. at 324. An issue of fact is material if, under the substantive law of the case, resolution  
16 of the factual dispute could affect the outcome of the case. Anderson, 477 U.S. at 248. Factual disputes  
17 are genuine if they "properly can be resolved only by a finder of fact because they may reasonably be  
18 resolved in favor of either party." Id. at 250. On the other hand, after a court has drawn all reasonable  
19 inferences in favor of the nonmoving party, if "the evidence is merely colorable, or is not significantly  
20 probative, summary judgment may be granted." Id. at 249-50 (citations omitted).

21 **II. THE UNITED STATES CURRENTLY POSSESSES PARAMOUNT RIGHTS OVER THE  
22 SUBMERGED LANDS OFF THE COAST OF THE COMMONWEALTH**

23 This Court should declare that the United States is the owner of, and has paramount authority over,  
24 the submerged lands lying seaward of the Commonwealth's coastlines and inland waters, because the CNMI,  
25 in Covenant § 101, entered into a sovereignty relationship with the United States, like every other U.S. state  
26 and territory, and that relationship officially became effective on November 4, 1986. As we now explain,  
27 wherever a sovereignty relationship exists between the United States and a state or territory abutting oceanic

1 waters, the United States' paramount authority over submerged lands seaward of the low water mark, as a  
2 matter of U.S. law, attaches as an incident of that sovereignty.

3 **A. Pursuant to Section 101 of the Covenant, the United States Acquired the Paramount**  
4 **Rights to the Submerged Lands and Marine Resources Underlying the Oceanic**  
5 **Waters Surrounding the CNMI's Coastlines When the U.N. Trusteeship Agreement**  
6 **Terminated in November 1986**

7 As previously stated, the Covenant controls the rights, responsibilities, and political relationship  
8 between the U.S. and the CNMI. Section 101 of the Covenant specifies that the United States is sovereign  
9 over the CNMI. As an incident of external sovereignty, the United States, under U.S. law, acquired  
10 ownership and paramount rights in the submerged lands and marine resources seaward of the CNMI's low-  
11 water mark at the termination of the U.N. Trusteeship.

12 Under federal constitutional law, paramount power over submerged lands is vested in the United  
13 States as a necessary element of national external sovereignty. In United States v. California, 332 U.S. 19  
14 (1947), the Supreme Court rejected the State of California's claim to ownership of the oceanic submerged  
15 lands within three miles of the coastline. It went on to hold that the protection and control of adjacent seas  
16 is a function of national external sovereignty which, under the U.S. constitutional system, requires that  
17 paramount rights over the submerged lands underlying adjacent oceanic waters and their natural resources  
18 be vested in the federal government. 332 U.S. at 34. The Court also made clear that "the Federal  
19 Government has the paramount right and power to determine in the first instance when, how, and by what  
20 agencies . . . the oil and other resources of the soil of the marginal sea . . . may be exploited." 332  
21 U.S. at 29.<sup>16/</sup>

22 In United States v. Texas, 339 U.S. 707 (1950), a similar submerged lands case involving lands  
23 underlying the Gulf of Mexico, the Supreme Court concluded that even if Texas, prior to admission to  
24 statehood, had full ownership and sovereignty over the adjacent seas and seabed, such ownership could not

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25 <sup>16/</sup> In subsequent litigation between the federal government and the States of Louisiana and  
26 Texas, the Court extended the California doctrine from the three-mile belt to the outer continental  
27 shelf ("OCS"). In United States v. Louisiana, 339 U.S. 699, 704 (1950), the Court explained that,  
28 with respect to the OCS, "[t]he problems of commerce, national defense, relations with other powers,  
war and peace focus there. National rights must therefore be paramount in that area."

1 survive the State's admission to the Union:

2 It is said that . . . the sovereignty of the sea can be complete and unimpaired no matter if  
3 Texas owns the oil underlying it . . . . Yet, . . . once the low-water mark is passed  
4 the international domain is reached. Property rights must then be so subordinated to political  
5 rights as in substance to coalesce and unite in the national sovereign . . . . If the  
6 property, whatever it may be, lies seaward of the low-water mark, its use, disposition,  
7 management, and control involve national interests and national responsibilities. That is the  
8 source of national rights in it.

9 339 U.S. at 719. <sup>17/</sup>

10 The paramountcy doctrine applies to U.S. territories to the same extent as to States. In 1958, long  
11 before the NMI representatives commenced negotiations with the United States over the NMI's future  
12 political status, the Solicitor of the U.S. Department of the Interior ("DOI") issued a legal opinion addressing  
13 the applicability of the paramount rights doctrine to unincorporated territories that, like the CNMI, are  
14 subject to U.S. sovereignty. In that opinion (see U.S. Exh. 44), <sup>18/</sup> the DOI Solicitor declared that 48 U.S.C.  
15 § 1421 et seq., a statute that transferred to the Government of Guam "all property, real or personal,"  
16 previously used by the "naval government in Guam in the administration of the civil affairs of the inhabitants  
17 of Guam," and "all other property, real and personal, not reserved by the [U.S.] President," did not convey  
18 to the Guamanian government title to the oceanic submerged lands adjacent to Guam. Although  
19 acknowledging that the paramount rights doctrine had previously been applied in cases only involving states  
20 and incorporated territories, the Solicitor concluded that the doctrine must also apply to unincorporated  
21 territories such as Guam "since to hold otherwise would result in the granting to such a territory of powers  
22 or rights greater than those of the incorporated territories, which would be unreasonable." <sup>19/</sup>

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23 <sup>17/</sup> In United States v. Maine, 420 U.S. 515 (1975), the Supreme Court rejected a claim by  
24 Atlantic Coast states that they had acquired rights to the seabed which had survived the formation  
25 of the Union, thereby reiterating the continued vitality of the paramountcy doctrine.

26 <sup>18/</sup> "Rights Of Abutting Upland Property Owners To Claim Title To Reclaimed Land Produced  
27 by Filling On Tidelands And Submerged Lands Adjacent To The Territory Of Guam," 65 Int. Dec.  
28 193 (1958). (U.S. Exh. 44.)

<sup>19/</sup> Id. at 195; U.S. Exh. 44 at 0778.

(continued...)

1 Consistent with the Interior Solicitor's conclusions, the Ninth Circuit more recently made clear that  
2 the federal paramountcy doctrine is not confined to oceanic submerged land disputes between U.S. states  
3 and the Federal Government, but extends to all cases in which any Plaintiff asserts a claim of ownership in  
4 submerged lands underlying the ocean abutting an area over which the U.S. has sovereignty. Village of  
5 Gambell v. Hodel, 869 F.2d 1273 (9th Cir. 1989) ("Gambell III"). Indeed, in Gambell III, the Ninth Circuit  
6 rejected a contention that the principles enunciated in the Supreme Court's paramountcy cases did not apply  
7 in cases where the plaintiff is not a U.S. state, holding that the fact that the paramountcy cases involved  
8 States rather than Alaskan natives was "a distinction without a difference . . . ." 869 F.2d at 1276.  
9 Similarly, in Native Village of Eyak v. Trawler Diane Marie, Inc., 154 F.3d 1090 (9<sup>th</sup> Cir. 1998), the Ninth  
10 Circuit unequivocally declared:

11 the paramountcy doctrine is not limited merely to disputes between the national and state  
12 governments. Any claim of sovereign right or title over the ocean by any party other than  
13 the United States, including Indian tribes, is equally repugnant to the principles established  
14 in the paramountcy cases.

15 154 F.3d at 1095 (second emphasis added; citations omitted). As the Eyak court further expounded:

16 Whatever interests the states might have had in the OCS and marginal sea prior to statehood  
17 were lost upon ascension to the Union. The Constitution allotted to the federal government  
18 jurisdiction over foreign commerce, foreign affairs, and national defense so that as attributes  
19 of these external sovereign powers, it has paramount rights in the contested areas of the sea.  
20 This principle applies with equal force to all entities claiming rights to the ocean: whether  
21 they be the Native Villages, the State of Oregon, or the Township of Parsippany. "National  
22 interests, national responsibilities, national concerns are involved" in all these cases.

23 Id. at 1096 (emphasis added; citations omitted).

24 \_\_\_\_\_  
25 <sup>19/</sup>(...continued)

26 The United States believes that the federal paramountcy doctrine, as a matter of U.S. law,  
27 bars the CNMI's claim of ownership of oceanic submerged lands, by virtue of the provisions of  
28 Covenant § 101 vesting sovereignty over the CNMI in the United States, as of November 4, 1986.  
But the applicability of the federal paramountcy doctrine to the CNMI's claim to oceanic submerged  
lands is also reinforced by Covenant § 502(a)(2) which makes applicable to the CNMI those "laws  
of the United States" which are "applicable to Guam and which are of general application to the  
several States as they are applicable to the several states." (U.S. Exh. 10, at 14-15.) Because, as  
explained above, the federal paramountcy doctrine is "applicable to Guam" (see U.S. Exh. 44, at  
195), and is of "general application to the several states," it applies equally to the Commonwealth  
pursuant to Section 502(a)(2) of the Covenant.

1 Because the Covenant, in Section 101, grants the United States full sovereignty over the NMI at the  
2 termination of the Trusteeship, and does not expressly reserve to the CNMI ownership of the submerged  
3 lands and marine resources underlying the oceanic waters off its coastlines, the United States, based on long-  
4 standing precedent, possesses the paramount rights in the marine resources and oceanic submerged lands  
5 abutting the Commonwealth, contrary to the CNMI's claim of ownership and assertions of sovereignty. On  
6 this basis alone, the United States is entitled to summary judgment rejecting the CNMI's quiet title  
7 complaint seeking a "judgment declaring that title to the submerged lands underlying the . . . archipelagic  
8 waters, and territorial waters adjacent to the [NMI] is vested in the [CNMI]" (CNMI Comp. at p. 16).<sup>20/</sup> For  
9 the same reason, the United States is entitled to the relief requested in its counterclaim, namely, a declaratory  
10 judgment decreeing that the United States possesses "paramount rights in and powers over the waters  
11 extending seaward of the ordinary low water mark on the Commonwealth coast and the lands, minerals, and  
12 other things of value underlying such waters." (U.S. Counterclaim, ¶ 44.)

13 **B. The CNMI's Allegations to the Contrary Are Without Merit**

14 As we have shown above, the federal paramountcy doctrine is predicated on federal sovereignty and  
15 is a doctrine of Constitutional dimensions. In order for the Commonwealth to hold ownership of oceanic  
16 submerged lands in the face of the federal paramountcy doctrine, a clear, express and unequivocal  
17 Congressional enactment transferring such lands to the Commonwealth would be required. Neither the  
18 Covenant nor any other Federal law with which we are familiar expressly and unequivocally transfers control  
19 of any submerged lands to the Commonwealth. Thus, the federal paramountcy doctrine is dispositive of the  
20 United States' claim to the oceanic submerged lands abutting the Commonwealth.

21 In its complaint, the Commonwealth nonetheless raises a number of allegations and arguments  
22 calculated to avoid application of the federal paramountcy doctrine to its claim of ownership of oceanic  
23 submerged lands and a 200-mile EEZ. As explained below, none has merit.

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24  
25 <sup>20/</sup> At Comp. 16, the CNMI also seeks the same declaratory relief concerning its internal waters.  
26 Because the United States makes no claim of ownership of or paramount rights to waters inland of  
27 the CNMI's low-water mark, there is no case or controversy that would permit this Court to exercise  
subject matter jurisdiction over the claim for declaratory relief concerning the CNMI's internal  
waters. See also p. 30, n.27 infra.

1                   **1. The CNMI's Allegation That Section 801 Of The Covenant Constitutes A**  
2                   **Conveyance Of Oceanic Submerged Lands And Associated Natural Resources**  
3                   **To The Commonwealth Is Without Merit**

4                   In its complaint (at ¶ 34), the CNMI alleges that "in Section 801 [of the Covenant] Defendant United  
5 States agreed to transfer and Plaintiff Commonwealth agreed to receive 'all right, title, and interest of the  
6 Trust Territory of the Pacific Islands' in and to the submerged lands . . . no later than the termination  
7 of the Trusteeship Agreement." This claim must be rejected because, under U.S. law, the United States  
8 cannot be divested of property subject to its sovereignty, ownership, and jurisdiction absent an explicit  
9 congressional grant or conveyance, and because section 801 of the Covenant contains no clear and explicit  
grant or reservation of oceanic submerged lands to the Commonwealth.

10                   In United States v. Texas, 339 U.S. 707 (1950), the Supreme Court declared that "[d]ominion over  
11 navigable waters and property in the soil under them are so identified with the sovereign power of  
12 government that a presumption against their separation from sovereignty must be indulged . . . ." Id.  
13 at 717 (emphasis added). Indeed, it has long been the law that "disposals by the United States . . . are  
14 not lightly to be inferred, and should not be regarded as intended unless the intention was definitely declared  
15 or otherwise made very plain." United States v. Holt State Bank, 270 U.S. 49, 55 (1926) (emphasis added).  
16 Consequently, this Court's determination as to whether Congress intended to divest the United States, as  
17 sovereign, of its paramount interests in the oceanic submerged lands off the coasts of the CNMI must be  
18 analyzed in light of the bedrock principle that "land grants are construed favorably to the Government, that  
19 nothing passes except what is conveyed in clear language, and that if there are doubts they are resolved for  
20 the Government, not against it." Watt v. Western Nuclear, Inc., 462 U.S. 36, 59 (1983)(emphasis added);  
21 see also California ex rel. State Lands Comm'n v. United States, 457 U.S. 273, 287 (1982); United States  
22 v. Union Pac. R.R. Co., 353 U.S. 112, 116 (1957).

23                   Since at least 1947, Congress has been aware that, in light of the federal paramountcy doctrine, it  
24 takes explicit legislative action to convey oceanic submerged lands to U.S. states and territories before the  
25 latter may own and/or regulate such lands. In response to the Supreme Court's 1947-1950 "tidelands" cases,  
26 Congress in 1953 enacted the federal Submerged Lands Act, which grants to the U.S. coastal states, with  
27

1 some exceptions, title and ownership of the lands beneath the navigable waters three geographical (nautical)  
2 miles seaward of their coasts. 43 U.S.C. §§ 1301, 1311(a). Similarly, in 1963 and 1974, Congress enacted  
3 the Territorial Submerged Lands legislation to convey to the governments of Guam, the Virgin Islands, and  
4 American Samoa, submerged lands within three geographical miles seaward of their coasts. See Pub. L. No.  
5 183, 88<sup>th</sup> Cong. 1<sup>st</sup> Sess., 77 Stat. 338 (1963); see also 48 U.S.C. §§ 1705(a), (b).<sup>21/</sup> Thus, in 1976, when  
6 Congress considered and approved the Covenant, it had no reason to expect that a transfer or reservation of  
7 oceanic submerged lands to a U.S. territory would occur, except by explicit language in the Covenant or by  
8 separate legislation.

9 The CNMI nonetheless has taken the position that it is unnecessary for Congress to enact legislation  
10 to convey submerged lands to the Commonwealth because Congress already vested the CNMI with  
11 ownership of those lands in Section 801 of the Covenant. See U.S. Exh. 38, at 0638. When the language  
12 of Section 801 of the Covenant is carefully parsed, however, the conclusion is inescapable that § 801 reflects  
13 no congressional agreement that ownership of oceanic submerged lands should vest in the Commonwealth.

14 Section 801 of the Covenant provides, as relevant here:

15 All right, title and interest of the Government of the Trust Territory of the  
16 Pacific Islands in and to real property in the Northern Mariana Islands on the  
17 date of the signing of this Covenant or thereafter acquired in any manner  
18 whatsoever will, no later than upon the termination of the Trusteeship  
19 Agreement, be transferred to the Government of the Northern Mariana

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20 <sup>21/</sup> The 1963 Territorial Submerged Lands legislation, 77 Stat. 338 (1963), authorized the U.S.  
21 Department of the Interior to convey a three-mile belt of submerged lands to those U.S. territories.  
22 The 1974 legislation, 48 U.S.C. §§ 1705(a), (b), conveyed those submerged lands to the specified  
23 U.S. territories outright.

24 In the legislative history of the Territorial Submerged Lands Act (i.e., the 1974 legislation),  
25 the U.S. Department of Justice reported to Congress about the 1958 decision (discussed supra at p.  
26 20) by the Solicitor of the Department of the Interior, 65 Int. Dec. 193 (1958), that "tidelands and  
27 submerged lands . . . were not transferred to the Government of Guam . . . in view of the  
28 general rule that such lands do not ordinarily pass under the general statutes but must be specified  
particularly." 1974 U.S. Code Cong. & Ad. News 5464, 5466 (1974). Consistent with that view, the  
Senate Report on the Territorial Submerged Lands Act declared, "the submerged lands of Guam, the  
Virgin Islands, and American Samoa are owned by the Federal Government and administered by the  
Department of the Interior." Id. at 5464-65.

1 Islands.

2 (U.S. Exh. 10, at 28; emphasis added.) The Section-By-Section Analysis accompanying the Covenant  
3 explains the scope of Section 801 as follows:

4 Section 801 provides that all of the real property (including buildings and  
5 permanent fixtures) to which the Government of the Trust Territory of the  
6 Pacific Islands holds any right, title, or interest, will be transferred to the  
7 Government of the Northern Marianas. The transfer will take place no later  
8 than the time of the termination of the trusteeship. The Section applies to all  
9 land to which the Trust Territory Government has rights on the date that the  
10 Covenant is signed, or which it acquires thereafter in any manner whatsoever.  
11 The Section serves as a guarantee that all of the public land in the Northern  
12 Marianas will be returned to its rightful owners, the people of the Northern  
13 Marianas. It is expected that a very substantial amount of land will be  
14 returned far sooner than the termination of the Trusteeship. Under the  
15 United States Land Policy Statement and its implementing Secretarial Order,  
16 it is expected that much public land will be transferred as soon as a land  
17 entity is established by the Mariana Islands District Legislature to hold land  
18 in trust for the people of the Northern Marianas. This section assures all of  
19 the land will come back no later than termination, and that no land can be  
20 disposed of other than to the Government of the Northern Mariana Islands.

21 (U.S. Exh. 11, at 95-96.) As Section 801 does not define "real property,"<sup>22/</sup> and as the SBS Analysis does  
22 not make any reference to oceanic submerged lands as among the "public lands" which must be returned to  
23 the Commonwealth, there is no indication that the drafters of the Covenant considered "real property" to  
24 mean anything other than "fast lands," i.e., dry, above-surface lands. At the very least, it cannot be said that  
25 either Covenant § 801 or the SBS Analysis contains an express reservation of oceanic submerged lands that

26 <sup>22/</sup> In the absence of any definition of "real property" in the Covenant, this Court must construe  
27 the "term in accordance with its ordinary or natural meaning." FDIC v. Meyer, 510 U.S. 471, 476  
28 (1994) (citing Smith v. United States, 508 U.S. 223, 228 (1993)). The Random House Unabridged  
Webster's Dictionary's sole definition of "real property" (CD-Rom Version) is:

an estate or property consisting of lands and of all appurtenances to  
lands, as buildings, crops, or mineral rights (distinguished from  
personal property).

(U.S. Exh. 45.) The same dictionary's first definition of "land" as "any part of the earth's surface  
not covered by a body of water; the part of the earth's surface occupied by continents and islands."  
(U.S. Exh. 46.) Thus, the ordinary, plain meaning construction of "real property" would not include  
oceanic submerged lands within Covenant § 801's coverage.

1 would permit a divestiture from the United States of the paramount rights to those lands that the U.S.  
2 acquired as an incident of the sovereignty that became effective upon termination of the Trusteeship  
3 Agreement.<sup>23/</sup>

4 **2. The CNMI Has Already Conceded That The Status Of Oceanic Submerged**  
5 **Lands And Marine Resources Was Not Addressed By The Covenant**

6 The CNMI itself long ago conceded that Section 801 of the Covenant is not a clear expression by  
7 Congress of intent to vest title to submerged lands in the Commonwealth. In the Second Interim Report  
8 (August 1985), the Commission on Federal Laws, dominated by CNMI representatives, acknowledged that  
9 “[b]ecause neither Section 801 nor its negotiating history mentions submerged lands, it can be argued, with  
10 the Department of the Interior opinion as precedent, that section 801 [of the Covenant] transfers only fast  
11 lands.” (U.S. Exh. 28, at 179 n\*).<sup>24/</sup> For that reason, among others, the Commission recommended that:

12 **Legislation . . . be enacted to convey to the [NMI] any property rights of**  
13 **the United States in lands permanently or periodically covered by tidal waters**  
14 **within three geographical miles of the coastlines of the [NMI]. The proposed**  
15 **legislation is similar to laws already enacted to convey federal interests in**  
16 **submerged lands to the States of the Union, Guam, the Virgin Islands, and**  
17 **American Samoa.**

18 Id. at 172.

19 The foregoing was not the only occasion on which CNMI officials conceded that Section 801 does  
20 not constitute an agreement to convey oceanic submerged lands to the CNMI. In subsequent position  
21 papers, the CNMI candidly admitted that “the Covenant is silent on the subject of ocean jurisdiction of the  
22 Northern Mariana Islands in general,” and that “it is a curious blind spot in the Covenant that the jurisdiction

23 <sup>23/</sup> As stated above, Section 801 refers to a U.S. obligation to return “all right, title and interest  
24 of the Government of the Trust Territory of the Pacific Islands in and to real property in the Northern  
25 Mariana Islands.” (U.S. Exh. 10, at 28.) It says nothing about establishing or reserving to the  
26 Commonwealth a 200-mile economic zone. Thus, regardless of whatever one may think about the  
27 merits of the CNMI’s oceanic submerged lands claim in relation to Covenant § 801, section 801 of  
28 the Covenant affords absolutely no support for the CNMI’s claim to a 200-mile EEZ.

29 <sup>24/</sup> The Report was referencing the Interior Department’s Guam submerged lands opinion  
30 discussed at p. 20, supra. See also U.S. Exh. 44.

1 of the Commonwealth over its oceans, submerged lands, and the natural resources was not specified.”(U.S.  
2 Exh. 30, at 3; see also U.S. Exh. 31, at 4). <sup>25/</sup> In light of these concessions, the CNMI’s allegation in ¶ 34  
3 of its Complaint that Section 801 constitutes an “agreement” by the United States to “transfer” oceanic  
4 submerged lands to the Commonwealth cannot be sustained.

5 **3. The CNMI’s Argument That Section 801 of the Covenant Transferred Oceanic**  
6 **Submerged Lands To The Commonwealth Is Belied By The CNMI’s Own Constitution**

7 Apart from the CNMI’s admissions that the Covenant is silent concerning oceanic submerged lands,  
8 there is an abundance of other evidence in the historical record negating the allegation in ¶ 34 of the  
9 Complaint that Section 801 of the Covenant conveyed oceanic submerged lands to the Commonwealth.  
10 As previously stated, the drafters of the CNMI Constitution demonstrated their understanding in late 1976 --  
11 approximately nine months after Section 801 of the Covenant became effective -- that oceanic submerged  
12 lands would pass to the Commonwealth, if at all, pursuant to “United States law” and not Section 801 of the  
13 Covenant. Specifically, Article XI, Section 1, of the CNMI Constitution provides:

14 **Section 1: Public Lands.**

15 The lands as to which right, title or interest have been or hereafter are  
16 transferred from the Trust Territory of the Pacific Islands to any legal entity  
17 in the Commonwealth under Secretarial Order 2969 promulgated by the  
United States Secretary of the Interior, on December 26, 1974,

18 the lands as to which right, title or interest have been vested in the Resident  
19 Commissioner under Secretarial Order 2989 promulgated by the United  
States Secretary of the Interior on March 24, 1976,

20 the lands as to which right, title or interest have been or hereafter are  
21 transferred to or by the government of the Northern Marianas Islands under  
22 Article VIII of the Covenant, and

23 the submerged lands off the coast of the Commonwealth to which the  
24 Commonwealth now or hereafter may have a claim of ownership under

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25  
26 <sup>25/</sup> See also U.S. Exh. 31, at 46, where the CNMI stated: “Unlike the protections included for  
27 land, the Covenant makes no specific provision for ownership, conservation or control of the oceans  
and marine resources.”

1                    United States law

2                    are public lands and belong collectively to the people of the Commonwealth who are  
3                    of Northern Marianas descent.

4 (U.S. Exh. 13, at 19; emphases and outline formatting supplied). If oceanic submerged lands abutting the  
5 Commonwealth were already subsumed within "real property" of the Trust Territory Government within  
6 the meaning of Section 801 of the Covenant, there would have been no reason for the NMI constitution's  
7 framers to describe these submerged lands in Article XI, § 1 separately from lands transferred to the CNMI  
8 "under Article VIII of the Covenant" pursuant to Art. XI, § 1 of the CNMI Constitution. Thus, by describing  
9 oceanic submerged lands separately from lands transferred pursuant to Article VIII of the Covenant, the  
10 framers in Article XI, § 1 of the CNMI Constitution effectively conceded that ownership and control of  
11 oceanic submerged lands would not pass to the Commonwealth pursuant to Article VIII of the Covenant.

12                    As a separate matter, it is highly significant that the framers in Art. XI, § 1 of the CNMI Constitution  
13 characterized any claim that the CNMI might have to ownership of submerged lands as governed by "United  
14 States law." Explaining this reference to "United States law" in Article XI, the CNMI Constitutional  
15 Analysis issued December 6, 1976, stated:

16                    Section 1 includes all submerged lands to which the Commonwealth now or at any time in  
17 the future may have any right, title or interest. The United States is the owner of submerged  
18 lands off the coasts of the states under territorial waters. The states have no rights in these  
19 lands beyond that transferred by the United States. The federal power over these lands is  
20 based on the provisions of the United States Constitution with respect to defense and foreign  
21 affairs. Under article 1 [sic], section 104, of the Covenant, the United States has defense and  
22 foreign affairs powers with respect to the Commonwealth and thus has a claim to the  
23 submerged lands off the coast of the Commonwealth as well. Section 1 recognizes this claim  
and also recognizes that the Commonwealth is entitled to the same interest in the submerged  
lands off its coasts as the United States grants to the states with respect to the submerged  
lands off their coasts. Under this section, any interest in the submerged lands granted to the  
states or to the Commonwealth in the future also will become part of the public lands of the  
Commonwealth.

24 (U.S. Exh. 15, at 144; emphasis added.) The foregoing strongly suggests that the framers of the CNMI  
25 Constitution -- a mere nine months after Section 801 became effective -- did not believe that title to oceanic  
26 submerged lands had passed to, or was reserved to, the Commonwealth by virtue of Section 801 of the  
27

1 Covenant, but instead would pass to the CNMI in the same way title to oceanic submerged lands had passed  
2 to the states and other U.S. territories, i.e., by future U.S. legislation.<sup>26/</sup>

3 **4. The CNMI's Allegation That The NMI's People's Right to Local Self-**  
4 **Government Includes Ownership of Submerged Lands Is Without Substance**

5 In apparent reference to Section 103 of the Covenant, the CNMI alleges, in paragraph 31 of the  
6 complaint, that:

7 **The people of the Northern Mariana Islands have the right of self-government**  
8 **and the right to govern themselves with respect to internal affairs pursuant to**  
9 **their own Constitution. These rights include ownership of the public**  
10 **resources, including the submerged lands, of the Northern Mariana Islands.**

11 (Emphasis added.) As we now explain, this claim cannot withstand analysis.

12 The United States' exercise of paramount rights over the oceanic submerged lands abutting the  
13 Commonwealth does not infringe upon the CNMI's right of local self-government under Covenant § 103.  
14 Section 103 provides:

15 **The people of the Northern Mariana Islands will have the right of local self-**  
16 **government and will govern themselves with respect to internal affairs in**  
17 **accordance with a Constitution of their own adoption.**

18 (U.S. Exh. 10, at 6; emphasis added.) As the above language shows, nothing in Section 103 of the Covenant  
19 addresses the question of ownership of oceanic submerged lands, or intimates that the Commonwealth's  
20 authority to "govern themselves with respect to internal affairs pursuant to their own Constitution" extends

---

21 <sup>26/</sup> Of course, in 1979 and 1980, CNMI legislators sought to take advantage of the fact that the  
22 sovereignty provisions of Covenant § 101 had not yet become effective, by enacting a local  
23 Submerged Lands Act and a local "Marine Sovereignty Act," without any sunset provisions or  
24 expiration dates set to coincide with the termination of the Trusteeship. See U.S. Exhs. 22, 23. Both  
25 enactments, which have never been repealed, collectively purport to proclaim CNMI sovereignty  
26 over, and the exclusive authority to regulate, a twelve-mile territorial sea (measured from straight  
27 archipelagic baselines), and a 200-mile EEZ. Although these enactments clearly set the stage for a  
future conflict with U.S. law, the United States could not claim any actual conflict with U.S. law  
until after November 4, 1986, when the Trusteeship terminated. As discussed *infra* (see pp. 44-47),  
however, because the Trusteeship has long since ended, those local statutes are now plainly null and  
void because they conflict with the Supremacy Clause of the U.S. Constitution, with Section 102 of  
the Covenant, and with Art. XI, § 1 and Art. XIV, § 1, of the CNMI Constitution.

1 to the ownership of such lands. To the contrary, insofar as Section 103 of the Covenant expressly  
2 subordinates the CNMI's local self-government authority to the CNMI Constitution, Covenant § 103 points  
3 to U.S. law as the basis upon which the CNMI's claims to submerged lands must be determined.

4 As previously explained, the CNMI Constitution, explicitly acknowledges that whatever claim the  
5 CNMI may have to ownership of oceanic submerged lands and resources would be governed by United  
6 States law, not Section 801 of the Covenant. See CNMI Const. Art. XI, § 1 and Art. XIV, § 1 (and  
7 corresponding sections CNMI Constitutional Analysis); U.S. Exh. 13, at pp. 19, 23; and U.S. Exh. 15, at pp.  
8 144, 181. Under U. S. law, ownership of submerged lands seaward of the coastline is neither an incident  
9 of local self-government nor within the police powers of any U.S. state or territory. Rather, as the Supreme  
10 Court succinctly put it: “[i]f the property, whatever it may be, lies seaward of the low-water mark, its use,  
11 disposition, management, and control involve national interests and national responsibilities.” United States  
12 v. Texas, 339 U.S. at 719. Indeed, as the Court declared more emphatically in United States v. Louisiana:

13 Protection and control of the area are indeed functions of national external  
14 sovereignty. The marginal sea is a national, not a state concern. National  
15 interests, national responsibilities, national concerns are involved. The  
16 problems of commerce, national defense, relations with other powers, war  
17 and peace focus there. National rights must therefore be paramount in that  
18 area.

19 339 U.S. at 704. Given that control of oceanic submerged lands, as a matter of U.S. law, is a “function of  
20 national external sovereignty,” and given that the United States has acquired complete “national external  
21 sovereignty” over the Commonwealth pursuant to Section 101 of the Covenant, the CNMI's claim to  
22 ownership of submerged lands (see Complaint, ¶ 31) as a “right of self-government and the right to govern  
23 themselves with respect to internal affairs” must be rejected. <sup>27/</sup>

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24 <sup>27/</sup> Despite the United States' position that Section 801 requires the transfer of only fast lands  
25 to the Commonwealth, the United States makes no claim to the bed and banks underlying the  
26 CNMI's internal waters, or to the CNMI's tidelands (i.e., the intermittently submerged lands between  
27 the high and low water marks on the CNMI's coasts. This is consistent with the May 1973 statement  
28 of U.S. negotiating position by James M. Wilson, Deputy Representative for the U.S. Office of  
Micronesian Status Negotiations wherein Mr. Wilson stated: “[s]o far as submerged lands are

(continued...)

1           **5. The CNMI's Contention That It Owns The Oceanic Submerged Lands Abutting**  
2           **The Coast of The Commonwealth Because It Did Not Enter Into A Political**  
3           **Union With The United States On An "Equal Footing" With U.S. States Lacks**  
4           **Merit**

5           In paragraph 32 of the complaint, the CNMI alleges that it owns the oceanic submerged lands  
6           abutting the Commonwealth because:

7                     [u]nder the Covenant, the Commonwealth is not incorporated into the United  
8                     States, that is, it is not intended to eventually become a State of the United  
9                     States. The Commonwealth is not on an equal footing with the States of the  
10                    United States.

11           As we now explain, the "equal footing" doctrine has no legal bearing upon the United States' paramount  
12           rights to the submerged lands abutting the Commonwealth's shorelines.

13           Article IV, § 3, Cl. 1, of the U.S. Constitution provides for the admission of new States to the Union.  
14           In Pollard's Lessee v. Hagan, 44 U.S. (3 How.) 212, 228-229 (1845), the Supreme Court ruled that, under  
15           the U.S. Constitution, new States are admitted to the Union on an "equal footing" with the original thirteen  
16           colonies. As relevant here, "equal footing" means that a newly admitted State presumptively succeeds to  
17           the United States' ownership of tidelands (viz., coastal lands between high and low tide) and lands beneath  
18           inland navigable waters within the State's boundaries. Id.; see Phillips Petroleum Co. v. Mississippi, 484  
19           U.S. 469 (1988); Shively v. Bowlby, 152 U.S. 1, 26-31 (1894). The equal footing doctrine has no  
20           application, however, to submerged lands seaward of the low-water mark. United States v. California, 332  
21           U.S. 19 (1947). Because the submerged lands at issue in this case are neither "coastal lands between high  
22           and low tide" nor "lands beneath inland navigable waters" within the CNMI's boundaries, the equal footing  
23           doctrine is wholly irrelevant to this case.

24           <sup>27/</sup>(...continued)

25           concerned, we feel that these should vest in the future Marianas government under the new  
26           arrangement, as in the case of the states of the United States and other territories." (U.S. Exh. 2, at  
27           7; emphasis added). Thus, even though (as explained infra at pp. 31-32,) the equal footing doctrine  
28           is inapplicable to the CNMI, it is the United States' position that the CNMI owns and may regulate  
                  pursuant to Covenant § 103 the bed and banks underlying internal waters, and the tidelands, i.e., the  
                  lands between the high and low water mark on the CNMI's seacoasts, just as U.S. States do under  
                  the equal footing doctrine.

1 The United States is not predicating any part of its claim to paramount rights over submerged lands  
2 off the coast of the CNMI on a notion that the CNMI has entered into a political union with the United States  
3 pursuant to pursuant to Art. IV, § 3, Cl. 1 of the U.S. Constitution or is otherwise on an equal footing with  
4 U.S. states. The CNMI nonetheless has argued in past position papers that the paramount rights doctrine  
5 is inapplicable where (as here) a U.S. territory has not entered into a political union on an equal footing with  
6 U.S. states. See, e.g., U.S. Exh. 39, at 39. This argument must be rejected because it is based on a distorted  
7 interpretation of the Supreme Court's tidelands cases. There is nothing in United States v. California or its  
8 progeny to suggest that federal paramountcy principles are not applicable when the claimant of oceanic  
9 submerged lands is not a U.S. state. To the contrary, after assessing a claim by Native Americans to oceanic  
10 submerged lands abutting Alaska in light of the Supreme Court's tidelands cases, the Ninth Circuit ruled:

11 the paramountcy doctrine is not limited merely to disputes between the  
12 national and state governments. Any claim of sovereign right or title over the  
13 ocean by any party other than the United States, including Indian tribes, is  
equally repugnant to the principles established in the paramountcy cases.

14 Native Village of Eyak v. Trawler Diane Marie, Inc., 154 F.3d at 1090. In the same case, the court went  
15 on to declare that the federal paramountcy doctrine applies "with equal force to all entities claiming rights  
16 to the ocean: whether they be the Native Villages, the State of Oregon, or the Township of Parsippany." Id.  
17 at 1096.<sup>28/</sup> Thus, contrary to the allegations in the Complaint, at ¶ 32, the equal footing doctrine has no  
18 bearing on any issue in this case.

19  
20  
21  
22 <sup>28/</sup> In United States v. Texas, 339 U.S. at 715-20, the Supreme Court ruled that the State of  
23 Texas was precluded by the equal footing doctrine from seeking to introduce extrinsic evidence that,  
24 prior to the Republic of Texas' admission into statehood, United States "recognized Texas ownership  
25 of the three-league area claimed by Texas," i.e., that Texas would retain ownership of the submerged  
26 lands off the coast of Texas in the Gulf of Mexico after Texas was admitted into the Union. In this  
27 case, the CNMI has conducted massive discovery. And when all the extrinsic evidence is  
28 considered, it simply confirms that there was no intent that CNMI would hold ownership of the  
oceanic submerged lands abutting the shorelines.

1                   **6. The CNMI'S Allegation That the United States' Lease of Commonwealth Lands**  
2                   **and Adjacent Waters for Defense Purposes Pursuant to Covenant § 802**  
3                   **Constitutes A U.S. Acknowledgment That The CNMI Owns The Oceanic**  
4                   **Submerged Lands Abutting The Commonwealth Is Groundless**

5                   As previously stated, on January 6, 1983, the CNMI and the United States executed a lease pursuant  
6 to Covenant § 802, which provides, in pertinent part:

7                   The Commonwealth does hereby . . . [lease to] the United States . . . and the United  
8 States does hereby accept and rent from the Commonwealth pursuant to Section 802 of the  
9 Covenant waters of the [CNMI] immediately adjacent to the leased surface lands on Tinian  
10 and Farallon de Medinilla Islands . . . . The United States shall have the right within  
11 the waters to facilitate access and egress to the leased surface lands and to construct  
12 reasonable port facilities; PROVIDED, that the United States shall disturb to the minimum  
13 extent possible the seabed and subsoil in exercising its right of construction. The  
14 Commonwealth retains the right, without undue interference to the rights of the United States  
15 under this Lease Agreement to exploit the living and non-living resources of the waters  
16 immediately adjacent to the leased surface lands.

17 (Exh. 26, at 4.)

18                   In paragraph 38 of the complaint, the CNMI suggests that the foregoing lease language reflects a  
19 concession on the part of the United States that the CNMI was, at the time of the lease, the owner of the  
20 oceanic submerged lands adjacent to the leased surface lands on Tinian and Farallon de Medinilla Islands.  
21 As we now explain, nothing could be further from the truth.

22                   Without making a concession that the CNMI owns oceanic submerged lands off the coast of the  
23 Commonwealth, the United States deemed it necessary to lease from the CNMI waters immediately adjacent  
24 to Tinian and FDM Islands because coastal tidelands (in this case, the CNMI's intermittently submerged  
25 lands between the high and low water mark, which the Defense Department must traverse to access and  
26 egress leased surface areas),<sup>29/</sup> and waters within port facilities such as harbors and harborworks, and other

27                   <sup>29/</sup> Under United States law, the lands between the high and low water marks are not owned by  
28 the United States, but by the adjacent states themselves, in trust for their people. Pollard's Lessee  
29 v. Hagan, 44 U.S. (3 How.) 212 (1845). The language in Section 802 of the Covenant that provides  
30 for the United States to lease waters "immediately adjacent" to leased surface areas reflects the  
31 United States' recognition that, as a matter of U.S. Government policy (not the equal footing

(continued...)

1 coast protective structures that facilitate access and egress to shorelines, such as artificial breakwaters,  
2 jetties, and groins, are considered internal waters not subject to the federal paramountcy doctrine. See  
3 United States v. Louisiana, 394 U.S. 11, 49-50 n. 64 (1969); see generally M. W. Reed, Shore and Sea  
4 Boundaries, Volume Three, U.S. Eh. 47, at 50-57 (U.S. Govt. Printing Office 2000). As previously stated,  
5 the United States makes no claim to the internal waters and tidelands of the CNMI, and those waters and  
6 intermittently submerged lands are not at issue in this case. See pp.30-31 n. 27, supra. Thus, the United  
7 States' lease of the waters "immediately adjacent" to Tinian and FDM Islands for the purposes of facilitating  
8 access and egress and constructing reasonable port facilities cannot reasonably be viewed as a concession  
9 by the United States that the CNMI owns the submerged lands seaward of the low water mark abutting the  
10 Commonwealth's coasts.

11 **7. There Is No Substance To The CNMI's Allegations That The United States, In**  
12 **A Land Return Policy Statement, And In Secretarial Order Nos. 2969 and 2989,**  
13 **Promised To Convey Permanent Ownership Of Submerged Lands Off The**  
14 **Coast Of The Commonwealth To The CNMI**

15 In paragraphs 26, 27, and 35 of the complaint, the Commonwealth seeks to portray a series of events  
16 aimed at returning public lands to the TTPI districts generally (a 1974 land return policy statement, and  
17 Secretarial Order No. 2969), and transferring civil administration of the NMI to a "Resident Commissioner"  
18 (Secretarial Order No. 2989), as evidence that the United States agreed to make a permanent conveyance  
19 of oceanic submerged lands to the Commonwealth. Specifically, the CNMI alleges that on November 4,  
20 1973, the Secretary of the Interior and the President's Personal Representative for Micronesian Status  
21 Negotiations issued a policy statement reflecting their agreement that the NMI oceanic submerged lands then  
22 being held by the TTPI government would be returned to the NMI people, permanently. Comp. ¶ 26. The  
23 Commonwealth complaint goes on to allege that, on December 28, 1974, the Interior Secretary issued  
24 Secretarial Order No. 2969 specifically to implement the alleged policy of returning oceanic submerged

25 <sup>29/</sup>(...continued)

26 doctrine), the rule of Pollard's Lessee applies within the CNMI, such that the CNMI has dominion  
27 over the tidelands (intermittently submerged lands) between the high and low water mark. See U.S.  
28 Exh. 3 at 7.

1 lands to the NMI people. Comp. ¶ 27. In paragraph 35 of the complaint, the CNMI alleges that on April  
2 1, 1976, the Interior Secretary issued Secretarial Order No. 2989, to separate the administration of the NMI  
3 from the TTPI government's administration of the rest of Micronesia, and thereby vested in the Resident  
4 Commissioner (a U.S. government position established by Order No. 2989) title to all oceanic submerged  
5 lands. According to the Commonwealth, the NMI government "succeeded to all powers, rights, and  
6 authority of the Resident Commissioner, thereby receiving title to all submerged lands in the [NMI]," on  
7 January 9, 1978, i.e., when the NMI constitutional government superseded the civil administration  
8 established by Secretarial Order No. 2989. Comp. ¶ 35. As we now explain, the CNMI's reliance on the land  
9 return policy statement, and Secretarial Order Nos. 2969 and 2989, to show an alleged U.S. intent to make  
10 a permanent disposition of oceanic submerged lands to the Commonwealth, is misplaced.

11 **a. The November 1973 Land Return Policy Did Not Contemplate A**  
12 **Transfer Of Unrestricted Control Over Oceanic Submerged Lands To**  
13 **The Northern Mariana Islands**

14 There is no substance to the Commonwealth's assertion (Comp. ¶ 26) that the land return policy  
15 statement constituted a U.S. agreement to convey the U.S. interest in oceanic submerged lands abutting the  
16 Commonwealth. By its terms, the policy statement was finite in duration; it applied only to the status of  
17 public lands for the remaining life of the Trusteeship and did not purport to decide the legal status of such  
18 lands after termination of the Trusteeship. See U.S. Exh. 8 at 2 ("these limitations and safeguards will apply  
19 until the Trusteeship ends, at which time the new government will be free to modify them as it chooses").  
20 More importantly, the land return policy did not alter the TTPI government's "quasi-sovereignty" over the  
21 TTPI districts, including the NMI. See Temengil v. Trust Territory, 881 F.2d 647, 652 (9th Cir.1989).<sup>30/</sup>

22 <sup>30/</sup> In Temengil, the Ninth Circuit stated:

23 [A]lthough the United States for the most part dealt with the  
24 Northern Mariana Islands as though it was a Commonwealth  
25 beginning in 1978, the area formally remained a part of the  
26 Trust Territory until the Trusteeship Agreement was dissolved  
in 1986.

27 (continued...)

1 Until termination of the Trusteeship, the Trust Territory government continued to act as a "quasi-sovereign"  
2 over all of the TTPI districts, including the NMI, and was still responsible for the defense of the Northern  
3 Mariana Islands until the Trusteeship ended.<sup>31/</sup> As an incident of that "quasi-sovereignty" and responsibility  
4 for NMI defense, the TTPI government continued to control submerged lands seaward of the low water mark  
5 on the CNMI coastlines between March 24, 1976, when the Covenant was enacted by Congress, and  
6 November 4, 1986, when the Trusteeship terminated. Anticipating that continued control, the land return  
7 policy statement in November 1973 expressly provided that any return to the TTPI districts of "tidelands,  
8 filled lands, submerged lands, and lagoons," was subject to the retained right of the TTPI government "to  
9 control activities within these areas affecting the public interest." (U.S. Exh. 8, at 4.)

10 It is equally significant that, while the land return policy statement became the subject of extensive  
11 discussions during the December 1973 round of the Marianas Political Status Negotiations, the record of  
12 that round and all later rounds of negotiations makes no reference to submerged lands. See U.S. Exhs. 3-7.  
13 The sole focus of those discussions was the return of surface lands to be used for defense purposes.  
14 Similarly, a Marianas Political Status Commission paper addressing the return of public lands to the  
15 Marianas people, dated December 13, 1973 (just six weeks after the Land Return Policy Statement issued),

16 \_\_\_\_\_  
17 <sup>30/</sup>(...continued)  
18 881 F.2d at 650.

19 <sup>31/</sup> Article 5 of the Trusteeship Agreement provides:

20 In discharging its obligations under Article 76(a) and Article 84 of the  
21 Charter, the administering authority shall ensure that the trust territory shall  
22 play its part, in accordance with the Charter of the United Nations, in the  
23 maintenance of international peace and security. To this end the  
24 administering authority shall be entitled:

- 25 1. to establish naval, military and air bases and to erect  
26 fortifications in the Trust Territory; [and]
- 27 2. to station and employ armed forces in the territory . . . .

28 (U.S. Exh. 67, at 0896.)

1 makes no reference to submerged lands and is devoted entirely to the return of dry lands. See U.S. Exh. 50.

2 As a separate matter, there is no reasonable basis for inferring that the land return policy statement  
3 reflected U.S. intent permanently to convey oceanic submerged lands to the Commonwealth because such  
4 an inference would be at odds with the U.S. Office of Micronesian Status Negotiations' ("OMSN") public  
5 position on the status of these lands. In May 1973, just six months before the policy statement issued,  
6 James M. Wilson, Jr., U.S. Deputy Representative for the OMSN, presented the United States' position on  
7 a broad range of issues including political status, public lands, economic issues and transitional matters,  
8 prior to the opening of the second round of the Marianas future political status negotiations. (U.S. Exh. 2.)  
9 In discussing the U.S. position on the return of public lands, Mr. Wilson addressed submerged lands in a way  
10 that clearly differentiated them from dry lands, stating:

11 So far as submerged lands are concerned, we feel that these should vest in the  
12 future Marianas government under the new arrangement, as in the case of the  
13 states of the United States and other territories.

14 (U.S. Exh. 2 at 7.) This statement appears to have contemplated specific U.S. legislation expressly  
15 conveying submerged lands to the Commonwealth, which is the method by which oceanic submerged lands  
16 vested in "the states of the United States and other territories."<sup>32/</sup>

17 Although the CNMI might argue that there had been a shift in the United States' position with  
18 respect to the status of oceanic submerged lands between May 1973 and November 1973 (when the land  
19 return policy statement issued), there is no evidence in the historical record of any such shift. To the  
20 contrary, the Analysis of the CNMI Constitution (approved in December 1976), see U.S. Exh. 15, at 144,  
21 addresses the legal status of oceanic submerged lands in a way that is perfectly consistent with the United  
22  
23  
24

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25 <sup>32/</sup> Submerged Lands Act, 67 Stat. 29, 43 U.S.C. § 1301 et seq. (granting title to submerged  
26 lands beneath a 3-mile belt of the territorial sea to the several states of the U.S.); see also Pub. L. No.  
27 183, 88<sup>th</sup> Cong. 1<sup>st</sup> Sess., 77 Stat. 338 (1963) (authorizing the Department of the Interior authority  
to convey certain oceanic submerged lands to Guam, the Virgin Islands, and American Samoa).

1 States' May 1973 position. See U.S. Exh. 2, at 7.<sup>33/</sup> This negates any inference that the United States'  
2 position on the issue of oceanic submerged lands off the coast of the Marianas ever shifted between May  
3 and November 1973.

4 **b. Secretarial Order No. 2969 Did Not Vest Ownership of Oceanic**  
5 **Submerged Lands In The Commonwealth**

6 There is likewise no merit to the CNMI's allegation, in paragraph 27 of the complaint that Secretarial  
7 Order No. 2969 effectuated any transfer of oceanic submerged lands to the NMI government. Although the  
8 Order expressly applied to TTPI "public lands," defined by Sections 1 and 2 of Title 67 of the Trust Territory  
9 Code to include land below the ordinary high water mark (see U.S. Exh. 51), it expressly prohibited the High  
10 Commissioner from transferring any submerged lands to a district until its legislature enacted laws  
11 "providing for . . . reservation of the right of the central government of the Trust Territory of the Pacific  
12 Islands to regulate all activities affecting conservation, navigation, or commerce in and to the navigable  
13 waters and tidelands, filled lands, submerged lands and lagoons." (U.S. Exh. 9, at 0170 (rt. col.)) The pre-  
14 constitutional Marianas legislature enacted legislation reserving this right to the Trust Territory Government.  
15 See Marianas District Code § 15.12.020. (U.S. Exh. 48 at 131-2.)<sup>34/</sup> Thus, even if Secretarial Order No.  
16 2969 contemplated a transfer of oceanic submerged lands underlying the territorial sea to the  
17 Commonwealth, the transfer was always subject to the TTPI's paramount right to control "conservation,

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18 <sup>33/</sup> Compare U.S. Exh. 2 at 7 (submerged lands "should vest in the future Marianas government  
19 under the new arrangement, as in the case of the states of the United States and other territories)"  
20 with U.S. Exh. 15 at 144 (under "[Article] 1, section 104, of the Covenant, the United States has  
21 defense and foreign affairs powers with respect to the Commonwealth and thus has a claim to the  
22 submerged lands off the coast of the Commonwealth as well. Section 1 recognizes this claim and  
23 also recognizes that the Commonwealth is entitled to the same interest in the submerged lands off  
24 its coasts as the United States grants to the states with respect to the submerged lands off their  
25 coasts.")

24 <sup>34/</sup> Although the reservation in Marianas District Code § 15.12.020 of the right in the Trust  
25 Territory Government to regulate all activities affecting conservation, navigation, and commerce in  
26 "navigable waters" and "submerged lands" purported to be limited in duration "until separate  
27 administration or termination of the trusteeship whichever shall sooner occur," see U.S. Exh. 48 at  
28 131-2, nothing in Secretarial Order No. 2969 authorized the Marianas legislature to terminate the  
Trust Territory Government's reserved rights to control oceanic submerged lands any time before  
termination of the trusteeship. See U.S. Exh. 9, at 0170 (rt. col.).

1 navigation, or commerce” on or over such lands. (U.S. Exh. 9, at 0170 (rt. col.).)

2 In any event, Order No. 2969 did not, in fact, precipitate a transfer of any public lands (fast lands or  
3 submerged lands) to the NMI government. By its own terms, before any lands could be transferred by the  
4 TTPI government, Secretarial Order No. 2969 required that a government agency be created by the district  
5 legislatures to receive the lands transferred pursuant to its provisions. (U.S. Exh. 9, at 0170 (rt. col.); 40 Fed.  
6 Reg. at 812.) As the CNMI constitution framers conceded, although the Marianas district legislature  
7 established a land corporation to receive Order No. 2969 land transfers, the corporation never became  
8 operational before Order No. 2989 displaced Order No. 2969. See U.S. Exh. 15, at 142.<sup>35/</sup> Thus, insofar  
9 as the Northern Marianas were concerned, Secretarial Order No. 2969 was a nullity because it was never  
10 formally implemented according to its terms.<sup>36/</sup>

11 **c. Secretarial Order No. 2989 Did Not Vest Title To Oceanic Submerged**  
12 **Lands In The Commonwealth**

13 The CNMI’s claim, in paragraph 35 of the complaint, that Secretarial Order No. 2989 vested title  
14 to oceanic submerged lands in the Commonwealth is equally without merit. Although the Order did vest

15  
16 <sup>35/</sup> In the December 1976 CNMI Constitutional Analysis, the CNMI framers acknowledged that:

17 the Marianas District Legislature passed a statute, Mariana Islands  
18 District Code title 15, chapter 15.12, Act 100-75, establishing the  
19 Marianas Public Land Corporation and designating it as the legal  
20 entity under Order No. 2969. The formation of the Corporation was  
not complete, however, by the time Order 2989 established a separate  
administration for the Marianas district and vested title to the public  
lands in Resident Commissioner.

21 (U.S. Exh. 15, at 142; emphasis added.)

22 <sup>36/</sup> If oceanic submerged lands abutting the Commonwealth were already subsumed within the  
23 meaning of TTPI “public lands” for the purposes of Secretarial Order No. 2969, there would have  
24 been no reason for the CNMI constitution framers to describe oceanic submerged lands in Article  
25 XI, § 1 separately from lands transferred to the CNMI “under Secretarial Order 2969, promulgated  
26 by the United States Secretary of the Interior on December 26, 1974” in the same article and section  
27 of the CNMI Constitution. See U.S. Eh. 13, at 19. Thus, by describing oceanic submerged lands  
separately from lands transferred to the CNMI under Secretarial Order 2969, the framers in Article  
XI, § 1 of the CNMI Constitution effectively conceded that ownership and control of oceanic  
submerged lands would not pass to the Commonwealth pursuant to Secretarial Order No. 2969.

1 title to all TTPI "public lands" situated in the Northern Mariana Islands in the "United States Resident  
2 Commissioner," see U.S. Exh. 12 at 0288 (rt. col.), the Order does not define "public lands" and makes no  
3 reference to submerged lands.

4 More to the point, Secretarial Order No. 2989 was simply an administrative vehicle chosen by the  
5 Department of the Interior to transfer the civil administration of all TTPI government functions, from the  
6 TTPI's High Commissioner to a U.S. Resident Commissioner. Order No. 2989 was not focused on  
7 management of public lands any more than any other civil administrative function. See U.S. Exh. 12. It  
8 did not purport to implement Section 801 of the Covenant, and did not authorize the Resident Commissioner  
9 to transfer title to any lands to the Commonwealth. Id. <sup>37/</sup> In short, Order No. 2989 was not an  
10 administrative vehicle through which the United States implemented Section 801 of the Covenant, much  
11 less a vehicle through which oceanic submerged lands not contemplated by Section 801 were transferred to  
12 the Commonwealth.

13 In addition, Order No. 2989 became effective on April 1, 1976, one week after the Covenant was  
14 enacted into law. By that time, Section 1003(b) had already vested in the United States a fully protected  
15 future interest in the oceanic submerged lands off the coast of the Commonwealth that would become a fully  
16 vested present interest upon termination of the Trusteeship pursuant to Covenant § 101. As already  
17 explained (see pp. 23-29, supra), Section 801 of the Covenant did not authorize the Secretary of the Interior  
18 to convey or reserve to the Commonwealth ownership of oceanic submerged lands, and there is no other  
19 U.S. legislation explicitly authorizing the Secretary to convey oceanic submerged lands to the NMI  
20 government. Thus, even if Secretarial Order No. 2989 could somehow be construed as conveying to the  
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22 <sup>37/</sup> Secretarial Order No. 2989 remained in effect only until January 9, 1978, when the NMI's  
23 constitutional government became effective. On or about February 5, 1979, Brewster Chapman,  
24 DOI Assistant Solicitor for Territories wrote a memorandum to the Director of DOI's Office of  
25 Territorial Affairs explaining that Secretarial Order No. 2989 was not self-executing, and did not  
26 convey any TTPI public lands to the NMI government. (U.S. Exh. 49.) Mr. Chapman concluded  
27 that an actual transfer of legal title by the Trust Territory government was required before title could  
vest in the Northern Marianas government. Id. And the United States is unaware of any instance  
in which the TTPI, post-Order No. 2989, ever transferred to the Commonwealth any title to any real  
property pursuant to Section 801 of the Covenant.

1 Commonwealth the United States' future property interest in oceanic submerged lands established by  
2 Covenant § 1003(b), it would have been null and void as an ultra vires administrative action conveying an  
3 interest in U.S. property without explicit congressional authorization.<sup>38/</sup>

4 **8. Even If Section 801 of the Covenant And/Or Secretarial Order Nos. 2969 and**  
5 **2989 Were Deemed To Convey Ownership Of Oceanic Submerged Lands To**  
6 **The Commonwealth, The Lands Conveyed Would Not Exceed Three Nautical**  
7 **Miles From The CNMI's Shorelines**

8 As explained above, there is no merit to the CNMI's assertion that Section 801 of the Covenant,  
9 and/or Secretarial Order Nos. 2969 or 2989, vested ownership of oceanic submerged lands in the  
10 Commonwealth. But even assuming arguendo that a permanent transfer of the TTPI's interest in oceanic  
11 submerged lands to the Commonwealth was contemplated by Section 801 of the Covenant and/or Secretarial  
12 Order Nos. 2969 or 2989, such a transfer would have conveyed submerged lands underlying, at most, a  
13 three-mile belt seaward of the CNMI shorelines, and not the twelve mile territorial sea (as measured from  
14 archipelagic baselines) as claimed in the Complaint (see Comp., ¶ 37, and Comp. at pp.15-16).

15 As previously explained, the Section-By-Section Analysis of the Covenant describes Section 801  
16 of the Covenant in these terms:

17 Section 801 provides that all of the real property (including buildings and permanent  
18 fixtures) to which the Government of the Trust Territory of the Pacific Islands will be  
19 transferred to the Government of the Northern Marianas . . . . The Section applies to  
20 all land to which the Trust Territory Government has rights on the date that the Covenant is  
21 signed, or which it acquires thereafter in any manner whatsoever. The Section serves as a  
22 guarantee that all of the public land in the Northern Marianas will be returned to its rightful  
23 owners, the people of the Northern Marianas.

24 (U.S. Exh. 7, at 95; emphasis added.) The foregoing description of Section 801's scope does not reference  
25 submerged lands, but does expressly apply to "public land" and "all land to which the Trust Territory  
26 Government has rights." As we now explain, even if it assumed that the terms "public land" and "all land  
27

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28 <sup>38/</sup> The CNMI Constitution expressly differentiates from submerged lands from lands "vested  
in the Resident Commissioner under Secretarial Order 2989." See CNMI Const. Art. XI, § 1; U.S.  
Eh. 13, at 19. If, as the CNMI now contends, submerged lands off the coast of the Commonwealth  
were already subsumed within "lands . . . vested in the Resident Commissioner under Secretarial  
Order 2989," there would have been no reason for the framers to describe oceanic submerged lands  
separately in Article XI, §1 of the CNMI Constitution.

1 to which the Trust Territory Government has rights” could reasonably be construed to encompass oceanic  
2 submerged lands, the reference must be limited to the those lands that are situated within three nautical miles  
3 seaward of the low-water mark on the CNMI’s shorelines.

4 Section 1 of Title 67 of the Trust Territory Code defines “public lands” as “those lands situated  
5 within the Trust territory which were owned or maintained by the Japanese government as government or  
6 public lands . . . .” (U.S. Exh. 51, at 1.) TTPI Code section 32 of the Trust Territory Code provides  
7 that:

8 That portion of the law established during the Japanese Administration of the area which is  
9 now the Trust territory of the Pacific Islands is hereby confirmed, that all marine areas below  
10 the high water mark belong to the government, is hereby confirmed as part of the law of the  
11 Trust Territory . . . .

12 (U.S. Exh. 52, at 0821.) Accordingly, the Trust Territory Code does not define the seaward extent of  
13 submerged lands appertaining to the NMI, except by reference to Japanese law.

14 Japan administered the Mariana Islands pursuant to a mandate from the League of Nations between  
15 World War I and World War II. During that time, Japan claimed and recognized three nautical miles as the  
16 maximum breadth of its territorial sea. (U.S. Exh. 55 at 0836.) That also appears to have been the limit of  
17 the territorial sea from the shoreline under international law as of 1947, when the United States assumed the  
18 Trusteeship over Micronesia. (U.S. Exh. 56 at 0839; U.S. Exh. 57, at 0843.) Thus, assuming that the term  
19 “public land” as used in the SBS Analysis (see U.S. Exh. 11, at 95), expands the definition of “real property”  
20 as used in Section 801 of the Covenant to include oceanic submerged lands, the maximum area of  
21 submerged lands that could possibly have been conveyed by Section 801 of the Covenant, when it became  
22 effective in January 1978, was three miles seaward of the low water mark on the CNMI’s shores. <sup>39/</sup> In these

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23 <sup>39/</sup> Such an interpretation that Section 801 could convey no more than three nautical miles of  
24 oceanic submerged lands (as determined from the low water mark on the CNMI’s coasts) would be  
25 consistent with Congress’s definition of “submerged lands” in the Abandoned Shipwreck Act of  
26 1987, Pub. L. No. 298, 100<sup>th</sup> Cong. 2d Sess., 102 Stat. 432, wherein Congress defined the term  
27 “submerged lands” in the CNMI, for the purposes of that Act only, as “the lands of the [CNMI] as  
described in section 801 of the Pub. L. 94-241 (48 U.S.C. § 1681) [i.e., the Covenant].” (See U.S.

(continued...)

1 circumstances, the CNMI's claim to a twelve-mile territorial sea, and a 200-mile EEZ, must be rejected  
2 because it is at odds with the Trust Territory Code's definition of "public lands."<sup>40/</sup>

3 The CNMI's claim to archipelagic baselines (see Comp. at 16) as the demarcation points upon which  
4 to differentiate its claim to ownership of submerged lands underlying inland waters from its claim of  
5 ownership of submerged lands underlying a 12-mile territorial sea is equally defective. That claim derives  
6 from the CNMI's local "Marine Sovereignty Act of 1980," which purports to establish the CNMI's right to  
7 draw straight archipelagic baselines joining the outermost points of the outermost islands and drying reefs  
8 of the purported archipelago. (U.S. Exh. 18.) Nothing in the Trust Territory Code provided for the drawing  
9 of straight archipelagic baselines to differentiate the Commonwealth's internal waters from the territorial  
10 sea, and there is no evidence that, during its League of Nations Mandate over what would become the TTPI,  
11 the Japanese Administration differentiated the Trust Territory's inland waters from the territorial sea on that  
12 basis.<sup>41/</sup> Accordingly, Section 801 of the Covenant could not have transferred submerged lands to the CNMI

13  
14 <sup>39/</sup>(...continued)

15 Exh. 45.) In the legislative history of that Act, Congress made clear that it did not consider Section  
16 801 of the Covenant to include submerged lands situated more than "three miles distant from the  
17 coastline of the Northern Mariana Islands." 1988 U.S. Code Cong. & Ad. News (Leg. Hist. 366).  
18 See U.S. Exh. 46. As for the definition of "submerged lands" in that Act, i.e., as lands described  
19 in section 801 of the Covenant, it is unclear why Congress defined "submerged lands" in this manner  
20 in light of the Department of the Interior's contemporaneous advice that the CNMI Covenant does  
21 not refer to submerged lands, and that the status of submerged lands had not yet been determined by  
22 federal law." See U.S. Exh. 59.

23 <sup>40/</sup> On December 27, 1988, President Ronald Reagan issued a Proclamation No. 5928, extending  
24 the U.S. territorial sea from three-to-twelve nautical miles for international purposes. (U.S. Exh. 47;  
25 54 Fed. Reg. 777 (1988).) To prevent the proclamation from expanding state jurisdiction, President  
26 Reagan included a proviso stating that " nothing in this Proclamation: (a) extends or otherwise alters  
27 existing Federal or State law or any jurisdiction, rights, legal interests, or obligations derived  
28 therefrom. . . ." Id. The CNMI's claim of sovereignty over a 12-mile territorial sea is not only  
contrary to the paramount rights doctrine, it also clashes with Proclamation No. 5928, pursuant to  
which the President of the United States has asserted a conflicting claim of ownership of a 12-mile  
territorial sea.

<sup>41/</sup> Even if the Japanese Administration had made a claim to archipelagic baselines for the NMI,  
the claim would have violated international law. The drawing of straight archipelagic baselines did  
not become an accepted norm of international law until 1982, four years after Section 801 of the

(continued...)

1 on the basis of straight archipelagic baselines.

2        Apart from Covenant § 801, there is no other basis upon which the CNMI could lawfully assert the  
3 right to submerged lands underlying inland waters and a territorial sea, as determined by straight archipelagic  
4 baselines. The Law of the Sea did not recognize the right of countries to differentiate their internal waters  
5 from the territorial sea on the basis of straight archipelagic baselines until 1982, two years after the Marine  
6 Sovereignty Act was enacted and six years after Congress ratified the Covenant. See U.S. Exh. 54.  
7 Moreover, the right to draw straight archipelagic baselines is enjoyed only by "Coastal States," i.e.,  
8 independent sovereign nations. See id. The CNMI has never been an independent sovereign nation and thus  
9 is ineligible, of its own authority, to differentiate its internal waters from the territorial sea on this basis. <sup>42/</sup>

10 **III. THE COMMONWEALTH'S SUBMERGED LANDS ACT AND ITS "MARINE**  
11 **SOVEREIGNTY ACT OF 1980" SHOULD BE DECLARED NULL AND VOID UNDER**  
12 **THE SUPREMACY CLAUSE OF THE U.S. CONSTITUTION, SECTIONS 101 AND 102 OF**  
13 **THE COVENANT, AND ARTICLE XI, § 1, AND ARTICLE XIV, § 1, OF THE CNMI**  
14 **CONSTITUTION**

15        As explained above, the United States possesses paramount rights to submerged lands because  
16 Section 101 of the Covenant vests sovereignty over the CNMI in the United States, and the Supreme Court  
17 has ruled that paramount rights to such lands are an incident of U.S. sovereignty. And we have also shown  
18 above, there is no merit to the CNMI's allegations that the United States agreed to CNMI ownership and  
19 control of oceanic submerged lands, either in Section 801 of the Covenant, in Secretarial Order No. 2969,  
20 or in Secretarial Order No. 2989. That being the case, the CNMI's "Marine Sovereignty Act," 2 CMC §§

21 \_\_\_\_\_  
22 <sup>41/</sup>(...continued)

23 Covenant became effective, and 37 years after the Japanese control of the islands had terminated.  
24 See United Nations Convention on the Law of the Sea, Dec. 10, 1982, A/ Conf. 62/122, reprinted  
25 in 21 I.L.M. 1261 (1982) (U.S. Exh.54.)

26 <sup>42/</sup> From 1978 to 1986, the CNMI's foreign affairs, defense, and external sovereignty was  
27 subject to control of the U.N. Trust Territory Government. Since 1986, the CNMI has been a  
28 commonwealth in political union with and under the sovereignty of the United States. Covenant §  
101. As such, the CNMI is not now, nor has ever been, a "Coastal State" entitled to establish straight  
archipelagic baselines under the Law of the Sea.

1 1101 et seq.,<sup>43/</sup> and its “Submerged Lands Act,” 2 CMC §§ 1201 et seq., U.S. Exhs. 22 and 23, including  
2 amendments thereto,<sup>44/</sup> are preempted because the federal paramountcy doctrine, since November 4, 1986,  
3 has “occupied the field” of regulation of CNMI’s territorial sea and EEZ, and because, collectively speaking,  
4 the CNMI statutes purport to vest sovereignty, ownership, and exclusive jurisdiction concerning submerged  
5 lands underlying a 12-mile territorial sea (as delineated by straight archipelagic baselines), as well as a 200-  
6 mile EEZ, in direct conflict with at least six different federal statutes.

7 It is well-established that a local law is preempted by federal law when the latter is intended to  
8 occupy the field, and/or when the local law “stands as an obstacle to the accomplishment and execution of  
9 the full purposes and objectives” of federal law. Hines v. Davidowitz, 312 U.S. 52, 66-67 (1941); see also,  
10 Florida Lime & Avocado Growers, Inc. v. Paul, 373 U.S. 132, 142-143d 248 (1963). As we now explain,  
11 the CNMI Marine Sovereignty Act and Submerged Lands Act are preempted on both of the foregoing  
12 grounds.

13 Under the paramountcy doctrine, federal law has “occupied the field” of regulation of submerged  
14 lands seaward of the Commonwealth’s low-water mark ever since the sovereignty provisions of Covenant  
15 § 101 became effective in November 1986. As the Supreme Court recognized in 1947:

16 That the political agencies of this nation . . . claim and exercise broad  
17 dominion and control over our three-mile marginal belt is now a settled fact.

18  
19 <sup>43/</sup> The CNMI Marine Sovereignty Act declares that the Commonwealth is sovereign with  
20 exclusive jurisdiction over a 12-mile territorial sea, and an additional 200-mile EEZ as measured  
21 from straight archipelagic baselines. That statute bases the CNMI’s claim to archipelagic status on  
22 a proposed “Revised Informal Composite Negotiating Text of the United Nations Conference on the  
23 Law of the Sea” (“ICNT”), which contemplated treating non-self-governing territories as sovereign  
24 states for the purposes of claims to a territorial sea and related marine resources. Although, at the  
time the Marine Sovereignty Act was enacted, the ICNT was still under consideration, it was  
opposed by the United States, among other countries. It ultimately was not formally adopted by the  
UNCLOS because it was too controversial. See U.S. Exh. 60, at 0860-61.

25 <sup>44/</sup> In an amendment to the CNMI Submerged Lands Act, effective January 3, 1988, the CNMI  
26 legislature claimed ownership and control of submerged “lands below the ordinary high water mark  
27 extending seaward to the outer limit of the [EEZ] established pursuant to the Marine Sovereignty Act  
of 1980 . . . or to any line of delimitation between such zone and a similar zone of any adjacent  
State.” CNMI Public Law 6-13, 2 CMC § 1201 et seq.

1 And this assertion of national dominion over the three- mile belt is binding  
2 upon this Court . . . . Not only has acquisition, as it were, of the three-  
3 mile belt, been accomplished by the national Government, but protection and  
control of it has been and is a function of national external sovereignty.

4 United States v. California, 332 U.S. at 33-34 (citations and footnotes omitted). Thus, absent congressional  
5 legislation specifically conveying control over oceanic submerged lands and associated natural resources,  
6 the Supreme Court has concluded that local governments have no authority to legislate and/or regulate  
7 concerning the territorial sea. See id. at 35 (“The state is not equipped in our constitutional system with the  
8 powers or the facilities for exercising the responsibilities which would be concomitant with the dominion  
9 which it seeks”). Simply put, the CNMI’s Marine Sovereignty Act and Submerged Lands Act are preempted  
10 because the federal paramountcy doctrine (and any U.S. legislation enacted pursuant to the United States’  
11 paramount rights to waters seaward of the low-water mark) “occupy the field” of legislation in this  
12 geographical area.

13 As a separate matter, the CNMI Submerged Lands Act and Marine Sovereignty Act are preempted  
14 because they are in direct conflict with, and/or stand as obstacles to, the accomplishment of the purposes of  
15 several specific federal laws. Such federal laws include, among others, the Magnuson-Stevens Fishery  
16 Conservation and Management Act (“Magnuson Act”), 16 U.S.C. § 1801 et seq.,<sup>45/</sup> the Coastal Zone  
17 Management Act (“CZMA”), 16 U.S.C. § 1453 et seq.,<sup>46/</sup> the Marine Mammal Protection Act (“MMPA”),  
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21 <sup>45/</sup> The Magnuson Act established nine regional Fishery Management Councils, which make  
22 recommendations to the Secretary of Commerce for regulation of fishing in a 200-mile fisheries  
23 conservation zone. The Magnuson Act provides no mechanism for direct State management of  
24 fisheries conducted in the fisheries conservation zone offshore its coast.

25 <sup>46/</sup> For those states and territories that elect to participate, the CZMA requires approval of a state  
26 or territory’s coastal management plan by the U.S. Department of Commerce’s National Ocean  
27 Service. 16 U.S.C. § 1455. Participating states and territories are eligible to receive financial aid.  
The CNMI already has an approved CZMA coastal management plan and has received federal  
funding. Approved coastal programs are subject to ongoing National Oceanic and Atmospheric  
Administration (“NOAA”) review of the state’s or territory’s implementation of the plan. NOAA  
may withdraw plan approval or suspend federal funding under certain circumstances.

1 16 U.S.C. § 1361 et seq.; <sup>47/</sup> the National Marine Protection, Research and Sanctuaries Act ("Marine  
2 Sanctuaries Act"), 16 U.S.C. § 1431 et seq.; <sup>48/</sup> the Oil Pollution Act ("OPA"), 33 U.S.C. § 2701 et seq.,<sup>49/</sup>  
3 and the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq.  
4 ("CERCLA"). <sup>50/</sup> Each one of these laws expressly applies to the CNMI and regulates different activities  
5 in the territorial sea abutting the Commonwealth. In many of these laws, Congress chose to regulate  
6 expressly to the full extent of a 200-mile EEZ. <sup>51/</sup> If enforceable, the CNMI statutes' assertions of  
7 sovereignty over a twelve-mile territorial sea, and over a 200-mile EEZ, would nullify these federal laws as  
8 they pertain to the Commonwealth. Because the CNMI Submerged Lands Act and Marine Sovereignty Act  
9 conflict with, and stand as obstacles to the accomplishment of the full objectives of, these laws, both CNMI  
10 statutes must be declared preempted under Section 102 of the Covenant and Art. VI, cl. 2, of the U.S.

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11  
12 <sup>47/</sup> Depending on the species, the MMPA is administered by the National Marine Fisheries  
13 Service or by the U.S. Fish and Wildlife Service, and imposes a moratorium on the "taking" of  
14 marine mammals (with certain exceptions). It includes a regime to regulate and authorize limited  
15 taking in conjunction with scientific research. 16 U.S.C. § 1371(a)(1).

16 <sup>48/</sup> The Marine Sanctuaries Act governs the designation and management of federally protected  
17 marine areas of special significance. It was enacted in response to the increasing degradation of  
18 marine habitats and in recognition of the need to protect marine ecosystems. See S.Rep. No.  
19 100-595, 2d Sess. 1 (1988), reprinted in 1988 U.S.C.C.A.N. 4387. The Act confers authority for the  
20 designation and management of marine sanctuaries on the Secretary of Commerce, 16 U.S.C. §§  
21 1433, 1434, who has delegated these responsibilities to the NOAA. See generally United States v.  
22 Great Lakes Dredge & Dock Co., 259 F.3d 1300, 1304 (11<sup>th</sup> Cir. 2001). The Marine Sanctuaries Act  
23 imposes civil liability on "any person who destroys, causes the loss of or injures any sanctuary  
24 resource." 16 U.S.C. § 1443.

25 <sup>49/</sup> The OPA regulates the clean up of oil spills, and imposes strict liability on owners and  
26 operators of vessels that discharge oil into, among other things, the territorial sea and a 200-mile  
27 EEZ surrounding the CNMI. 33 U.S.C. §§ 2701(8),(21), (35), (36), and § 2702.

28 <sup>50/</sup> CERCLA regulates the clean up of hazardous substances, and imposes liability on any  
persons for the clean up of hazardous wastes released into, among other things, the territorial sea  
surrounding the CNMI. 42 U.S.C. §§ 9601 (30), 9604, 9607.

<sup>51/</sup> See Magnuson Act, 16 U.S.C. § 1802 (11) ("The term "exclusive economic zone" means the  
zone established by Proclamation Numbered 5030, dated March 10, 1983. For purposes of applying  
this chapter, the inner boundary of that zone is a line coterminous with the seaward boundary of each  
of the coastal States."); see also Marine Sanctuaries Act, 16 U.S.C. §§ 1432 (3), (9) (same); Oil  
Pollution Act, 33 U.S.C. § 2701(8) (same).

1 Constitution. <sup>52/</sup>

2 Finally, this case is not about whether the CNMI should have the right to regulate the submerged  
3 lands lying seaward of the CNMI's low water mark. It is a dispute over the means by which the CNMI  
4 acquires the right. Already, United States' officials have, on several occasions, proposed to introduce  
5 legislation to grant the CNMI the same interest in submerged lands and marine resources that most states  
6 and U.S. territories currently enjoy under the Submerged Lands Act and Territorial Submerged Lands Act.  
7 See U.S. Exhs. 61, at 0879; 63, at 0884; 64, at 0888; 65, and 66. The CNMI Government has steadfastly  
8 refused to support such legislation, see U.S. Exh. 38, at 0638; 63, at 0884; 64, at 0888, on the ground that  
9 it has a right to a 12-mile territorial sea and a 200-mile EEZ based on the misguided view that it should be  
10 treated like an independent sovereign and is entitled to enjoy the same rights as a Coastal State under  
11 UNCLOS III. Because the CNMI is subject to U.S. sovereignty per Covenant § 101, however, it cannot  
12 lawfully claim the right to a 12-mile territorial sea, the right to draw straight archipelagic baselines, and the  
13 right to its own 200-mile EEZ, as an independent sovereign nation would be entitled to under the 1982  
14 convention of the Law of the Sea.

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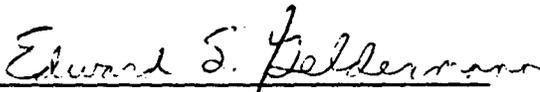
25 <sup>52/</sup> This Court should also declare the CNMI Submerged Lands Act and the CNMI Marine  
26 Sovereignty in violation of the CNMI Constitution. As previously explained, Art. XI, § 1 and Art.  
27 XIV, § 1, of the CNMI Constitution collectively provide that the CNMI's interests in submerged  
lands and marine resources, if any, shall be determined by reference to "United States law."

1 **CONCLUSION**

2 For the foregoing reasons, the Commonwealth's complaint to quiet title in waters seaward of the low-  
3 water mark should be dismissed with prejudice, and the United States' counterclaim for a declaratory  
4 judgment, decreeing that: 1) the United States possesses "paramount rights in and powers over the waters  
5 extending seaward of the ordinary low water mark on the Commonwealth coast and the lands, minerals, and  
6 other things of value underlying such waters;" and 2) the CNMI Marine Sovereignty Act and Submerged  
7 Lands Act are preempted by federal law, should be granted.

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10 Respectfully submitted,

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12  
13 Dated: December 6, 2002

14   
15 Edward S. Geldermann  
16 Senior Trial Attorney

17 U.S. Department of Justice  
18 Environment and Natural Resources Division  
19 General Litigation Section  
20 Washington, D.C.

21 OF COUNSEL:

22 Ashley J. Roach  
23 U.S. Department of State

24 Robin Friedman  
25 U.S. Department of the Interior

26 Judson Feder  
27 U.S. Department of Commerce

28 Robert Easton  
U.S. Department of Defense