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ROLE OF NATIVE HAWAIIANS AND INDIGENOUS PACIFIC ISLANDERS IN THE CONSERVATION, MANAGEMENT AND DEVELOPMENT OF WESTERN PACIFIC FISHERIES CONSISTENT WITH THE GOALS OF CONSERVATION AND MANAGEMENT OF OCEAN RESOURCES

JOINT HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS

AND THE

SUBCOMMITTEE ON OCEANS AND

FISHERIES

OF THE

COMMITTEE ON COMMERCE

UNITED STATES SENATE

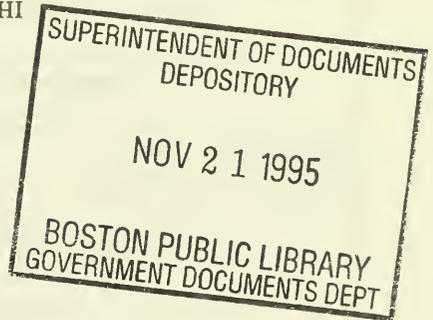
ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

ON

PROPOSED AMENDMENTS TO THE MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT

JUNE 1, 1995
HONOLULU, HI



U.S. GOVERNMENT PRINTING OFFICE

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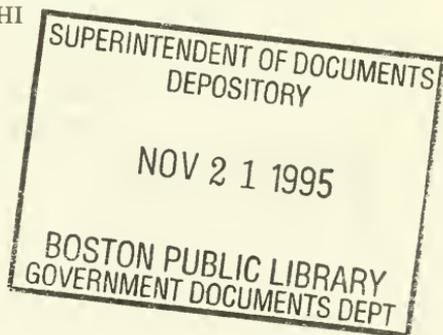
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**JOINT OVERSIGHT FIELD HEARING ON THE
ROLE OF NATIVE HAWAIIANS AND INDIGENOUS
PACIFIC ISLANDERS IN THE CONSERVATION,
MANAGEMENT AND DEVELOPMENT OF WESTERN
PACIFIC FISHERIES CONSISTENT WITH THE GOALS
OF CONSERVATION AND MANAGEMENT OF OCEAN
RESOURCES**

THURSDAY, JUNE 1, 1995

**U.S. SENATE, COMMITTEE ON INDIAN AFFAIRS, MEETING
JOINTLY WITH THE SUBCOMMITTEE ON OCEANS AND
FISHERIES OF THE COMMITTEE ON COMMERCE,**

Honolulu, HI.

The committees met, pursuant to notice, at 9 a.m. at Aha Kaulike, U.S. District Court room, fourth floor, U.S. Court House Building, 300 Ala Moana Boulevard, Honolulu, HI, Hon. Daniel K. Inouye (vice chairman of the Committee on Indian Affairs) presiding.

Present: Senators Inouye and Akaka.

**STATEMENT OF HON. DANIEL K. INOUE, U.S. SENATOR FROM
HAWAII, VICE CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS**

Senator INOUE. Good morning.

The Senate Committee on Indian Affairs and the Subcommittee on Oceans and Fisheries of the Senate Committee on Commerce meet this morning to receive testimony on proposed amendments to the Magnuson Fishery Conservation and Management Act. As a member of both committees, I have been authorized to chair this joint hearing of the two committees.

A bill to reauthorize the Magnuson Act has recently been reported by the Committee on Resources in the U.S. House of Representatives. In the next few weeks, the Senate Committee on Commerce will undertake work on a bill to reauthorize the Magnuson Act.

We have scheduled this hearing this morning so that the committees might have the benefit of your testimony as the Senate begins consideration of the reauthorization of the Magnuson Fishery Conservation and Management Act.

There are three concepts that we will be focusing on today. The first is a proposed amendment to the Magnuson Act that would

provide authority for the Western Pacific Regional Fishery Management Council to establish a community development quota program, similar to the one that is now successfully operating in Alaska. There are four stated purposes of this program:

First, to promote the economic well-being of coastal communities through involvement in fishery resources;

Second, enabling participating communities to diversify local economies;

Third, providing participating community residents with new opportunities to obtain stable, long-term employment; and

Fourth, allowing participating community residents a fair and reasonable opportunity to participate in fisheries which have been closed to them because of the high capital investments that are usually associated with meaningful participation.

The question is, how does this program work in Alaska? First, there is a percentage of a biologically-harvestable resource set aside for communities in a specified geographic area; that is to say, we set aside a certain type of fish for a certain community. In this case, the percentage is 7 percent of the total allowable catch of pollock. For Hawaii, it would be another type of fish. Applications to participate in the program are submitted on a biennial basis to the Governor of Alaska, who evaluates the applications and makes recommendations on the size of the quota to be awarded. The recommendations are reviewed by the Northern Pacific Regional Fishery Management Council authorized by the Magnuson Act, and are then submitted for final approval by the Secretary of Commerce. When approved, the participating communities have exclusive access to the designated quota of the particular fishery resource, both in terms of harvesting and in terms of processing.

It is this exclusive access to the harvesting and processing opportunities that have brought participating communities a means of economic development in the areas where they have always fished. Through this mechanism, these communities are developing the economic capability to compete with large-scale fishing operations. In Alaska, it is primarily Alaska Native fishing communities that are participating in the program.

These are some of the goals that these communities have identified for their participation in the program:

First, they want to make funds available for the purchase of fishing vessels, individual fishing quotas, and other business opportunities;

Second, they want to implement a community development plan which would consist of employment training programs, grants for processing and marketing, and extension services to halt the regional loss of limited entry permits;

Third, they want to establish a boat loan program for the purchase and/or construction of vessels that are capable of participating in the multi-species fisheries;

Fourth, they want to enable joint venture approaches to enhancing access to commercial fishery opportunities;

Fifth, they want to establish training programs so that community residents can learn traditional fishing practices, as well as work at all levels of the fish industry, including harvesting and processing, marketing and business management;

Sixth, they want to enable the purchase or construction of fish processing capabilities, either on shore or on vessels;

Seventh, they want to create a financing mechanism for purchasing limited entry permits, and provide low-interest loans for fishermen to purchase such permits, or fishing gear, or to upgrade their boats;

Eighth, they want to establish a scholarship fund for careers in fisheries and fishery management, enabling community residents to obtain advanced education or technical school training in fisheries-related areas; and

Ninth, they want to develop a fleet of small catcher vessels designed to operate in local longline or other fisheries.

These are the objectives that native communities in Alaska have established for their participation in the community development quota program, and I am happy to report that, they are enjoying considerable success with only a small allocation of one fishery resource, the 7 percent of pollock, and all of these objectives are now well on their way to being realized.

The amendment I would propose to the Magnuson Act would establish a Western Pacific counterpart to the Alaska community development program. The Western Pacific Regional Fishery Management Council would establish criteria for participation in the program which might include consideration of:

One, historical fishing practices in and dependence on the fishery by communities petitioning to participate in the program;

Two, the cultural and social framework relevant to the fishery and the communities that wish to participate in the program;

Three, economic barriers to access to the fishery by participating communities, whether that access is for subsistence or commercial purposes; and

Four, a demonstration that the community has not previously developed harvesting or processing capabilities sufficient to support substantial participation in the Western Pacific fisheries.

The second concept that we will address this morning is an amendment to the Magnuson Act that would provide authority for community-based fishery demonstration projects. Under this amendment, the Secretary of Commerce would make direct grants to at least three, and as many as five, community-based fishery demonstration projects. The purpose of providing this authority is to support the involvement of communities of the Western Pacific in the management, conservation, and economic enhancement of traditional fisheries. Its purpose is also to protect the traditional fishing practices of Western Pacific communities and to provide for the planning, management, conservation, enhancement, orderly development, and wise use of the resources upon which the meaningful continuation of traditional fishing practices depends.

A no less important purpose is to encourage communications and authorize cooperative agreements between Federal, State, and other relevant agencies that are responsible for multi-jurisdictional fisheries resources planning and management, and Western Pacific communities.

Authority for the Western Pacific Regional Fishery Management Council to take into consideration indigenous, traditional fishing

practices in the development of any fishery management plan under the Magnuson Act is also provided.

The third and last concept on which the committees will receive testimony today is entitled The Pacific Insular Areas Fisheries Empowerment Act, which also proposes amendments to the Magnuson Act. I will leave the description of these proposed amendments to the experts in the field, from whom the committees will be hearing this morning.

The committees look forward to receiving the testimony today, testimony which will be reviewed closely by many when we return to Washington with the transcript of this hearing and your written submissions.

Now, if I may, I would like to call on the first panel. The first panel consists of the Chairman of the Western Pacific Regional Fishery Management Council, Edwin A. Ebisui, Jr.; Jesus C. Borja, Lieutenant Governor of the Commonwealth of Northern Mariana Islands; High Chief Alo Paul Stevenson, Manager, BHP Petroleum, South Pacific, Inc., Pago Pago, American Samoa; April K. Romero, Mid-Pacific Hawaii Fishery, Inc., Hilo, HI; and James Keliipio Kahea Mawae of Hoolehua, Molokai, HI.

Before we proceed, I would like to call on my very good friend and colleague, Senator Akaka.

STATEMENT OF HON. DANIEL K. AKAKA, U.S. SENATOR FROM HAWAII

Senator AKAKA. Thank you very much, and welcome to all of you. I want to say mahalo to our chairman for holding this hearing on the proposed amendment to the Magnuson Fishery Conservation and Management Act, and I want to thank the chairman for the opportunity to make this statement this morning.

The Western Pacific fisheries hold great cultural and economic significance for Native Hawaiians. Generations of Native Hawaiians and indigenous peoples have used marine resources for their daily needs. A significant part of their lifestyle, culture, customs, and religion is associated with the sea. Fishing was a part of their daily lives. Today, fisheries provide food and livelihood for many local communities.

Much can be learned from the traditional fishing practices of Native Hawaiians. Before western contact, Native Hawaiians managed and conserved the fisheries by regulating the taking of the fish. A kapu was placed on certain fish. Fishing seasons were established to promote the long-term health of the fishery. Native Hawaiians managed the marine resources for the benefit of all.

Today, however, there are major problems facing the world's fisheries. Many of the highly valued fish stocks are in decline. It is critical that we implement effective management measures to prevent any further decline.

We must actively conserve, manage, and allocate the fisheries off our shores. This will require strong, collaborative efforts among all who use this resource if long-term management goals are to succeed. We must all work together to conserve the resource for future generations.

I look forward to hearing the testimony today on this important issue. Again, I say mahalo to our guests.

[Prepared statement of Senator Akaka appears in appendix.]
 Senator INOUE. I thank you very much, Senator Akaka.
 Now, if I may, I will call on Chairman Ebisui.

**STATEMENT OF EDWIN A. EBISUI, JR., CHAIRMAN, WESTERN
 PACIFIC FISHERY MANAGEMENT COUNCIL, HONOLULU, HI**

Mr. EBISUI. Thank you, Mr. Chairman. Good morning to you and to Senator Akaka. On behalf of the Western Pacific Regional Fishery Management Council, I thank you for the opportunity to testify today in favor of the proposed amendments to the Magnuson Fishery Conservation and Management Act, which would authorize the community-based fishery demonstration projects and authorize community development quota programs in the Western Pacific.

We believe that these proposed amendments are especially appropriate and suited for the Western Pacific region, where cultural and historic diversity abound. Despite such diversity, however, certain commonalities exist throughout the region. The ocean has always been a dominant part of the region's indigenous people's historical, cultural, religious, and economic lives. Further, the region's indigenous people have traditionally practiced conservation of the marine resources through various means.

Today's commercial fleets are technological wonders, with on-board computers, sonar devices, fish-finding devices, radars, satellite navigation and communications systems, fax systems, hi-tech fishing gear, high-powered gear deployment and retrieval systems, and refrigeration systems. Consequently, fishing pressure in the Pacific Ocean is escalating. Limited access programs for more Pacific fisheries are becoming more and more likely. Both the community-based fishery demonstration projects and the community development quota program can provide effective means and avenues for participation in the fisheries and fishery management by the native people of the region.

The community-based fishery demonstration projects, properly implemented, can result in many desirable attributes, such as perpetuation of traditional knowledge, practice, and culture; promotion within the community of a sense of being part of the decisionmaking process; promotion of a sense of partnership in common goals between the communities and State and Federal agencies; promotion of a sense of resource stewardship and planning for tomorrow, as well as integration of local knowledge with more academic information.

Similarly, the community development quota program can produce many significant and desirable results. It would provide assurances for the participation in the fisheries by indigenous people of the region. The program could level the economic playing field, thus allowing native people to participate in fisheries that currently require substantial capital investments which oftentimes are beyond their means and prohibit their participation in the fishery. And the program can provide the communities with significant economic opportunities in the fisheries and related shoreside enterprises.

One of the strongest points of the councils' system is regionalism. The councils have the ability to craft regulations specifically suited to the uniqueness of their respective regions and fisheries. The

council system, despite the comments of its detractors, is better suited to deal with fishery issues in its geographic region as compared with some centralized agency many thousands of miles removed. This is particularly true of the western Pacific region. We often wonder whether such a faraway agency would be cognizant of and responsive to the cultures and histories in our region. The community-based, fishery demonstration projects and the community development quota program represent a fine-tuning of this principle of regionalism. We find those amendments to be in harmony with the intent, purposes and goals of the Magnuson Act.

I would also like to take this opportunity to briefly note our support for another proposed amendment to the Magnuson Act. This proposed amendment was prepared by the Joint Interior Commerce Working Group to review Federal fisheries policies in the Pacific and is referred to as the Pacific Insular Areas Fisheries Enhancement Act of 1995. The proposed amendment would allow for greater control of the EEZ waters by territorial and commonwealth governments of American Samoa, Guam and Northern Mariana Islands.

The U.S. Pacific Islands currently are at a disadvantage relative to their Pacific neighbors in that they are not authorized to negotiate access agreements and fees for foreign fishing in their waters. By granting this authority to the island governments, they will gain more direct benefits from their resources and would be in a better position to coexist with their neighbors both as competitors and as partners.

The Western Pacific Regional Fisheries Management Council supports the amendments to the Magnuson Fishery, Conservation and Management Act, recognizing the rights of indigenous people of the Western Pacific to participate more fully in the fisheries and management of the fisheries.

On behalf of the Council, I again thank you for this opportunity to present our perspective of the proposed amendments to the Magnuson Act.

Thank you.

[Prepared statement of Mr. Ebusui appears in appendix.]

Senator INOUE. Thank you very much, Mr. Ebusui. We will receive testimony from each member of the panel before we ask questions.

Now, it is my pleasure to call upon a very distinguished citizen and leader of the Commonwealth of the Northern Marianas Islands, the Lieutenant Governor, Jesus C. Borja.

**STATEMENT OF JESUS C. BORJA, LIEUTENANT GOVERNOR,
COMMONWEALTH NORTHERN MARIANA ISLANDS, CAPITOL
HILL, SAIPAN, M.P.**

Mr. BORJA. Good morning, Mr. Chairman. My name is Jesus C. Borja. I bring you and Senator Akaka and the members of the committee greetings from the Governor and the people of the Northern Mariana Islands.

I am honored to testify before the committee. I have given the committee my written statement.

The committee is considering the fishing rights of indigenous islanders including the Northern Mariana Islands. Our government appreciates the opportunity to address this important topic.

Let me begin by congratulating the U.S. Coast Guard and the National Marine Fisheries Service for the recent arrest of two Japanese fishing vessels. These vessels were illegally fishing in our exclusive economic zone and had about 30 tons of tuna aboard. Our government commends this enforcement effort. We have urged more energetic surveillance and enforcing restrictions in such isolated areas such as our northern islands is very difficult.

These were not isolated incidents. One vessel admitted to 22 incursions into our zone in the last 3 months. The Coast Guard reports three other vessels seized, cited and fined in our waters since October 1993. The arrests demonstrate what we have said all along, there are foreign vessels fishing in the EEZ surrounding our islands and our commonwealth is not profiting from their harvest. The five arrests suggests a higher rate of illegal activity than we had suspected. If we were able to license these vessels and collect royalties from them rather than arrest them, there would be a benefit to our people from this exploitation.

We are pleased by these enforcement efforts for another reason. They reveal the existence of substantial tuna stocks. We have been told that the stocks of tuna in our waters were not commercially attractive but we have always thought otherwise. Our people recall the sizable, pre-war commercial fishery; our history tells us that these resources have sustained our people for at least 3,000 years. Our ancestors shared the Pacific traditions of high seas navigation and fishing so proudly revived here in Hawaii with Hokule'a and other seagoing canoes.

Our high seas fishing tradition was dictated by nature. About 175 miles west of our islands lies a chain of submerged sea mounts. These fishing grounds have been known to our people for many generations. One commentator described our ancestors' traditions in this way,

They own the sea. They own it because they live in it. They own it because until this century, they have been the only people to use it for purposes other than transit. They own it because they have sailed it for thousands of years. They own it because they learned how to tame it and cope with its awesome power before anyone else did.

During the colonial era, efforts were made to eradicate these seafaring skills. After the terrible battles of World War II, things began to improve. The United States took power, not as a sovereign, but under a United Nations trusteeship. In the trusteeship agreement, the United States recognized our resource rights and obligated itself to protect us against the loss of our resources.

In 1975, while still subject to the trusteeship agreement, our people voted to approve our Covenant with the United States. For the first time in 400 years, we regained the right to govern ourselves. The Covenant contains no provision conveying our fishing resources to the Federal Government. The people of the NMI did not, by entering into the covenant, vote to grant the Federal Government control of these resources.

Under international law, indigenous people who do not have the right to vote in national elections, who are not given full and equal representation of the national government, retain jurisdiction of

their fisheries and ocean resources. Our citizens are not represented in the U.S. Congress and do not vote in national elections. Consequently, our people should retain ownership interest in and primary jurisdiction over the resources of our territorial sea and exclusive economic zone.

One of the first projects of our commonwealth government was a fisheries development project. In 1979, a small group of local fishermen was given use of a war claims tuna vessel, the Motor Vessel Olwol. For reasons that are still mysterious, the NMFS informed our fishermen that their project would violate the Magnuson Act. During a shakedown cruise, the U.S. Coast Guard boarded the vessel and ordered it to port. This spelled the end of the venture. Our people were shocked to learn that the Federal Government intended to control our waters even to the extent of excluding our own people from fishing in them.

Mr. Chairman and members of the committee, 12 years ago I sat downstairs in this same building discussing these same issues. President Carter had appointed me to be a member of the Northern Mariana Islands Commission on Federal laws. It was my honor to discuss these issues with my colleagues on the Commission including such notables as the late Congressman Philip Burton of California and Myron Thompson of Hawaii.

The Commission decided without dissent to recommend to Congress that the Magnuson Act not apply to the Commonwealth. More than a decade has passed, the act still applies to our Commonwealth.

Some say we should give up, but it is not the same Magnuson Act anymore. Tuna are now included. Before the NMFS was arresting our fishermen while allowing foreign tuna fleets an open season in our waters. Now our people are free to fish in their traditional waters and the Service arrests the unlicensed foreigners. This is progress. At least now they know who to arrest.

The Magnuson Act still does not work for us. Under the act we cannot generate revenues or collect the kind of data that we need. But more progress is possible. We have admired the management efforts of WESPAC over the years. I, for one, would like to work with WESPAC within the National Fisheries Program under the Magnuson Act, but in fairness, participation should not require surrender of our fishing rights.

Since the arrest of the Olwol, we have made every effort to strike a workable compromise. After the Commission report, we consulted for more than 5 years with the White House under Section 902 of our Covenant. In 1994, we participated in the Joint Working Group on EEZ Fisheries Policy in the Pacific Insular Areas. Each process has come tantalizingly close to resolving the issue. The Joint Working Group efforts look promising. Several draft amendments to the Magnuson Act for the Pacific Insular Areas have been circulated.

A recent draft would allow the Governors of the Pacific Insular Area to request the Secretary of State to negotiate an international Fisheries Agreement for the adjacent EEZ and to participate in those negotiations. We could operate a permit system for the domestic fishing by agreement with the Secretary of Commerce. Cooperative enforcement would be encouraged and fees would be paid to the Insular Area Government. Unfortunately, these proposals

have apparently not been approved by the administration and the group's deliberations seem to have stalled. The last meeting of the working group was in July 1994. There are a variety of proposals before the committee today. I will not take time to comment on each of these now, although I have done so in my written testimony.

Using the Federal draft as a starting point, the Commonwealth has developed additional proposals to accomplish these purposes. Attached to my written statement is draft legislation we offer for your consideration.

Our proposal is basically one, we ask that our traditional right to our fish and waters be recognized. Once it is recognized, all of our other proposals naturally flow because these are our traditional waters, resources and submerged lands. It is only natural that our people realize revenues from them, help plan how to manage and conserve them, negotiate access agreements with foreign fishing nations, and prosecute violations in our Federal court.

None of these proposals contravene our covenant with the United States. We respect and honor the Federal authority over national defense and foreign affairs. We respectfully request that the Federal Government recognize our interest in these resources and that Congress legislate a practical program for cooperative conservation and management of our fisheries resources.

Thank you.

[Prepared statement of Mr. Borja appears in appendix.]

Senator INOUE. Thank you very much, Governor Borja.

May I now call upon the High Chief Alo Paul Stevenson.

STATEMENT OF HIGH CHIEF ALO PAUL STEVENSON, MANAGER, BHP PETROLEUM, SOUTH PACIFIC, INC., PAGO, AMERICAN SAMOA

Mr. STEVENSON. I bring you greetings from the Governor, who unfortunately could not be here this morning.

Thank you, Mr. Chairman, for allowing me the opportunity to testify before your committee today.

I'm a fisherman from American Samoa and a member of the Western Pacific Regional Fishery Management Council. I support the proposed amendments to the Magnuson Act that would allow recognition of our native fishermen and their fishing rights in Samoan waters.

In Samoa, fishing and the sharing of fishing and formal presentation of nearshore and offshore fish to village chiefs and council members has always been a central part of our culture, our identity and our survival. Our elders and our tautai or master fishermen often share stories of fishing and proverbs that tell of the cultural significance of certain fish and certain types of fishing. We believe that American Samoans should be the ones most directly involved in managing and developing our fisheries. We also believe that we Samoans should have preferential access to offshore fish stocks and our portion of the EEZ should limited entry management of these stocks become necessary in the future.

What we have always known from our ancestors and elders has been confirmed by outsider scientists as well. Our generations have fished for offshore fish like atu, pelagics, bottomfish and lobsters.

Anthropological and historical documentation, including oral histories passed down through generations have confirmed for us that there was and is a set of native Samoan fishing practices focused on a significant portion of the offshore and deepwater management species, including tuna, sharks, mahi-mahi, wahoo, billfish, jacks, snappers, ulua, groupers, and emperors. Samoans historically had and still have a continuing dependence on these species. These fish provide nutrition, but are also an important contributions to the maintenance of long-held traditions, customs and ceremonies. Fish and the ability to fish wisely and productively are very important to Samoans and Samoan culture.

There also clearly was and is a social and cultural framework reflecting cultural, social and religious values and traditions based on fishing effort, tuatai status, the master fisherman, and the ceremonial presentations of certain species to chiefs, pastors, and village councils.

The Samoan Islands were first settled nearly 3,500 years ago by seafaring Polynesian ancestors. Archaeologists have found evidence of coastal occupations dating back 2,400 years ago and evidence of Samoan fishing for shark and snapper and other deep water fish. While more archaeological work must be done before authoritative statements regarding continuity in ancient fishing strategies can be made, we Samoans know that our ancestors fished regularly for these species and it was a way of life.

Linguistic evidence and oral history have recorded the role of fish, fishing and social relations in Samoan society. For example, many commonly used proverbs are based on fishing practices. "o le pa ua sala i le maga," which can be translated, the hook has been torn off at the shaft, is an expression referring to losses easy to bear, just as loss of the hook, "maga," is easier to bear than loss of the shaft, "pa."

Review of ethnohistories prepared by western anthropologists show other evidence of the importance of fishing within our culture such as bonito hooks. These hooks were elaborately crafted from mother of pearl, turtle shell and "fausoga" bark. Bonito or skipjack tuna fishing is a complex undertaking using specialized canoes and gear. Samoans believe that bonito is a fish of high status, a fish for chiefs and the great god Tagaloa. Linguistic evidence shows that reference to bonito also served as a reference to chiefs. Bonito fishing and the ceremonial distribution of the catch is only one example of numerous fishing rituals that are very important to our Samoan culture.

The significance of the tautai or fishing specialist also reveals the importance of fishing and the sea to Samoans. Samoans make a clear distinction between authority over the land, held by matai, and authority over the sea, the realm of tautai. The head tautai of each village directed all aspects of bonito fishing, making all the decisions, not only in bonito fishing but also with regard to fishing regulations and customs.

The most valuable system of fishery management in Samoa today is the combination of the matai/tautai system of village government, as old as Samoa itself. The matai system functions with each head of an extended family in a village being a village chief, with a high chief representing the village as a whole, and other

talking chiefs as selected. Together, these matai govern the affairs of the village.

The village matai and tautai are responsible for wise management of their marine resources. Traditional Samoan reef management is rich in customs and taboos which control who may fish on the reef, how much fish may be taken, when they may occur, and so on. These measures have many parallels to the precautionary approach underlying the Magnuson Act, they just work on a local level.

Since before Western contact, and until the late 1950's and 1960's, American Samoa fishermen pursued tuna in offshore waters using specialized canoes and gear custom-fitted to the crew and tautai. Mahi-mahi, wahoo, and billfish were also caught in the open sea with handlines and trolling gear. Additionally, sharks were noosed as recently as 1968 and continue to be caught with contemporary gear, which has come to dominate most of Samoa's fisheries. Upon returning from offshore sharkfishing expeditions, the fisherman are still met by villagers who have prepared for the culturally important ceremony cutting and distribution of sharks.

Handlining for bottomfish has been, and still is, a culturally important practice of American Samoan fishermen. Bottomfish are culturally important species for formal presentations and events. Lobsters are also still caught by Samoans and still have important cultural and historic value both for consumption and presentation at various ceremonies.

Present fishing is sound in practice. Our bottomfish fisher, for example, had in 1994 a catch per unit of effort statistic known as CPUE of 89 percent of the estimated CPUE of a virgin stock. Our pelagic fishery has had a stable CPUE in the past few years. Many of our Samoan fishermen feel concerned that the crustacean fishery should be protected and that all commercial exploitation of lobster should remain small scale and limited to Samoan residents.

Full-time commercial fishermen often target specific species for certain feasts and ceremonies, distributing fish to relatives and other villagers when needed. Large fish when caught are often presented to the village by commercial and recreational fishermen. Samoan cultural values related to the competitive expression of strength, bravery, and service continue to be displayed in the effort and catch distribution by all types of fishermen. Chiefs of various rank continue to receive formal presentations of management species in a number of villages. Management species continue to be targeted and purchased in local markets for culturally and religiously important events.

The great majority of active commercial, quasi-commercial, and recreational fishermen in Samoa are native Samoans. We feel very strongly that the offshore fish in our waters are our fish, to be used as we decide. We would like to see our fisheries carefully developed, yet we would also like them to follow traditional and modified cultural rules and customs that will ensure proper conservation and management of our fish stocks. We do not want outside profit-taking fishing to damage our fish stocks, destroy current wise-use practices, or prevent sound management of our stocks.

With commercialization and the introduction of motorboats, and large canner boats with accommodations so small and uncomfort-

able that Samoans opted not to participate actively in the longline and purse seine fisheries a stereotype developed that few Samoans were interested in offshore fishing. The evidence, however, shows that this stereotype is not true. It also shows important historical and cultural continuity in offshore fishing for management species by American Samoans. There is also a continuing cultural, social, and religious framework based on the capture and distribution of numerous management species.

Natural Regulation and matai and tautai control of the near-shore and offshore fishery has been an appropriate strategy throughout most of American Samoa's history because domestic pressure on the stocks has never been high enough to stress the stocks close to overfishing. Allowing outsider and foreign fishing would require that native Samoans keep close tabs on the catch and also have the ability to impose fees, as proposed in some amendments to the Magnuson act currently not directly before this committee.

Current fishing by Samoans has luckily not resulted in any significant problems with stock decline due to domestic fishing. But it is obvious, from speaking to my fellow Samoans, that they are wary about overexploitation and want to keep fish stocks healthy, both through our lifetimes and our children's lifetimes.

Samoans have had a long and intimate history with the ocean and its fish. This attitude must be kept and actively supported by the U.S. Government. This amendment should be included in the Magnuson Act to allow Samoans the same indigenous rights mainland Indians have. Samoans should be granted preferential rights and encouraged to maintain our customs and traditions. Anything less than this could be a cultural calamity for us.

Thank you, Mr. Chairman.

[Prepared statement of Mr. Stevenson appears in appendix.]

Senator INOUE. Thank you very much, High Chief.

May I now call upon April K. Romero.

STATEMENT OF APRIL K. ROMERO, MID-PACIFIC HAWAII FISHERY, INC., HILO, HI

Ms. ROMERO. Good morning, Senators. Thank you for the opportunity to come before you and present testimony.

I ask you today what is the essence of being Hawaiian for the ocean runs through the very fabric of our lives. If you take the Hawaiian away from the ocean and he is disoriented. He doesn't know where he is; he's detached without dignity and purpose. Yet, systematically over the course of history, the ocean and its resources has been usurped from the Hawaiian, inch by inch, foot by foot, mile by mile. Everyone else has control except the Hawaiian. He has to stand in line for permission to go fishing; he has no mooring set aside for him in the State of Hawaii; he has to file this and file that, notify this agency and that coordinator, answer to NOAA, NMFS, DLNR, DOT—the list is very long. He has no consideration, no preference; he is unrecognized.

There was an old Hawaiian longline fisherman in Hilo who recently passed away. He had a little sampan, set traditional Japanese ropegear, had no radio, had no GPS, had no electronics. He

was overwhelmed by all the regulation and until his dying day couldn't understand why he had to do this.

What is the essence of being an Hawaiian? The essence of being an Hawaiian is access to the ocean and all its resources. Instead of signs that say "keep out," "private property," "no trespassing," and "no access," the essence of being Hawaiian is going down to the ocean and catching your meal for the day and rejoicing in this simple act. The Hawaiian always took care of his land and his ocean. He took care of this because that was all he had.

The Hawaiian today is a stranger in his own land. The host culture is the immigrant, the disenfranchised, the disillusioned, suppressed and unrecognized. Pain and anger have replaced Hawaiian generosity and aloha. Hawaiians are not extinct, they are no longer invisible; they are alive and the renaissance has begun.

What obligation does the Federal Government have to Hawaiians? If you ask me, you should give them back all that was theirs to begin with. The Government has an obligation to level the playing field.

In the fishing industry today, it is very competitive. Aside from all the normal business risks, it is a very lucrative business, but the kind of capital needed and the level of skill and knowledge is enormous and sometimes insurmountable. What kind of opportunity does the Hawaiian have in this setting? None. He's out of the loop; he's been crossed out. He wasn't even considered. In the very arena that he should be most comfortable, there is a "keep out" sign.

One handful of working, longline vessels in Hawaii are owned by part-Hawaiian, one handful. Less than 5 percent of all the fishing licenses are for Hawaiians. In the future, sadly, I see a Hawaiian eating fish caught in the Nicaragua. Can you imagine what my grandmother would say to that?

If we continue on this present course, we will be eating fish caught somewhere else by someone else. We will no longer see our boats come home; we will have no legacy. Without this committee's help, all traces of our cultural link to the ocean will vanish and that destiny is in your hands.

Thank you.

[Prepared statement of Ms. Romero appears in appendix.]

Senator INOUE. I thank you very much, Ms. Romero.

May I now call upon Mr. Mawae.

STATEMENT OF JAMES KELIPIO KAHEA MAWAE, HOOLEHUA, MOLOKAI, HI

Mr. MAWAE. Aloha Kakahiaka and good morning, Senators Inouye and Akaka.

On behalf of Molokai, I want to talk about the management fishing. We have to learn more about operating ships so our young generations can learn about that. Our young generations had to learn about this from the old fishermen from way back in the 1940's.

I was concerned about the longline fishing in Hawaii. We've got to do something about that, take it 200 miles out or something like that. Otherwise, we're not going to have the hohonu kai and the 'aina in Hawaii. So as the native Hawaiian community, we have to stick to our ground and fight for what we believe.

If you get these longline guys coming over here, I think they are going to destroy the island of Hawaii because these guys use the longline from Molokai to Oahu and they're catching everything. I think they've got to say way out, 200 or 300 miles out and leave a portion for the commercial fisherman.

I want to thank Senators Inouye and Akaka for letting me express my feelings about fishing. Aloha kakou. Thank you.

[Prepared statement of Mr. Mawae appears in appendix.]

Senator INOUE. I thank you very much, Mr. Mawae.

I should point out before we proceed with questions, that the measure before us, the amendments to the Magnuson Act could be a source of much controversy. It would put an extra burden upon the councils. We do not, for example, designate Native Hawaiians or Samoans. We give the council the authority to designate your geographical areas. In Alaska, when certain geographical areas are designated, it may be that most of the people living in that geographical area are Alaska Natives. So without designating Alaska Natives, by specifying a geographical area, one avoids constitutional questions.

Second, it requires the council, in its determination of grants to take into consideration the experience in traditional fishing practices. That would theoretically almost limit grants to the natives of that area.

It will not be an easy decision because in Alaska, for example, notwithstanding the success of the community development quota program, sports fishermen in Alaska and the Pacific northwest area of the United States, are opposed to that program. They think they are being deprived even though the fish that the council selected there is a very populous fish. There are a lot of pollock there. Even at that, they have opposed it. So it is not a cut and dried exercise, I should like to point out to you. This is the first step in the process.

Some would ask why wasn't salmon selected for the program in Alaska. There are a lot of salmon there; it is a traditional fish, but the council has to take into consideration the population of the resource, the availability of the resource, the politics involved, the economies involved. It is not an easy decision. If this bill becomes law of the land, the council will first face the problem of geographically designating an area. There are certain places in the State of Hawaii that come to mind immediately.

Having said that, it would then provide the affected population of Hawaii an extraordinary challenge because the people of one community alone cannot carry out this project, so it might take the efforts of several communities designated by the council to work together where grants will make a difference. So this will be an extraordinary challenge and will require much patience and much wisdom.

I do not know what type of fish would qualify as a resource. If we say aku, I am certain the aku fishing industry will suddenly take out their spears. So whatever it is, I want you to know that as authors of this measure, we will do everything to implement this. We want the U.S. Government to recognize, as Ms. Romero, the High Chief and the Governor said, these waters were theirs because you were there first, you used it first, you sustained yourself

with that water around you. What is sacred to you and the ocean is sacred. We hope that in this small, but I think significant way, that water will be returned to the natives of this area.

Mr. Ebisui, what type of fishery resources could be available as being designated for this project?

Mr. EBISUI. My personal opinion would be that the tuna would probably be the most logical one, perhaps yellow fin, perhaps aku.

Senator INOUYE. Is there any suggestion from the Northern Marianas?

Mr. BORJA. Mr. Chairman, in addition to what Mr. Ebisui has stated, I would perhaps include mahi-mahi in there. Tuna, I think, is the greatest resource in our islands also.

Senator INOUYE. High Chief.

Mr. STEVENSON. I concur with Mr. Ebisui and the Lieutenant Governor. I think perhaps the greatest fishery we should develop for our own people, that's where the resources are at and if that resource could be developed by our people, all Polynesians regardless where they come from, I think it's a beginning, Senator.

Senator INOUYE. Ms. Romero.

Ms. ROMERO. I appreciate the complexity of the issues, especially the avoiding of the constitutional problem we can have but the traditional fishing grounds in Hawaii have been decimated by stress and pollution especially. We cannot look at those areas to say where can we line up. Where the commercial fishing industry in Hawaii today is, the money is in the longline fishing industry. Even those have been significantly changed. The fish patterns have been changed and altered.

I agree with Mr. Ebisui that the tuna is the most prolific and the area we're talking about is, for the inshore tuna industry, between 5 and 20 miles and for the longline fleet, 25 miles to infinity, and the tuna stocks. This is an area where there's a lot of interest internationally and nationally and this is where the competition is. We can compete out there and those are the stocks that should be available and looked at.

Senator INOUYE. We will have to work together with the council to decide on the areas.

Mr. Mawae.

Mr. MAWAE. I agree with him but most important is conservation.

Senator INOUYE. Senator Akaka.

Senator AKAKA. Thank you very much, Mr. Chairman.

I very much agree with Mr. Ebisui that kumu is a fish that we don't find anymore. It is rare. I'm trying to think of that blue, yellow-stripped fish that is not so populous. I would want to say that nabeta and kumu are fish that need to be considered as well as some of the others.

Again, I thank the Chairman because this is so important and I'm so grateful that we bring this up for your thoughts. I hope that we can pass these amendments so that we hear the beneficiaries of the kind of fish they have lived on culturally in the past.

There are other parts of this of training. It is true we need to get people acquainted with the laws and help them to live with those laws.

I just want to say thank you to all of you folks for your statements and hopefully we can work together with the council to bring out the best management for the indigenous peoples.

Thank you very much, Mr. Chairman.

Senator INOUE. Mr. Borja, I can assure you that the amendments that you have suggested will be given very serious consideration.

I would like to announce that this measure will be subject to a markup, consideration by the committee, full committee, before the July recess which is just about a month from now. At this moment, I have a good feeling that we will have a lot of supporters. That is why I wanted all of you to know what is at stake because I hope the bill is going to pass. If it does pass, Mr. Ebisui is going to have a big tiger on his back. I just hope that the Hawaiian population will join hands and come forth with proposals that can be supported by the council, supported by the community, and supported by the Governor. I think we can work that out.

With that, I would like to thank all of you for joining us this morning. Thank you very much Lieutenant Governor and High Chief.

Now, may I call upon the second panel: first, the distinguished Chairman of the Board, Department of Land and Natural Resources of the State of Hawaii, Michael Wilson; the Director of the Department of Marine and Wildlife Resources, Pago Pago, American Samoa, High Chief Ufagafa Ray A. Tulafono; and from Kailua-Kona, Buddy Keala; and from Kualapuu, Molokai, Mr. Kelson Poepoe.

Chairman Wilson, welcome, sir.

**STATEMENT OF MICHAEL WILSON, CHAIRMAN OF THE BOARD,
DEPARTMENT OF LAND AND NATURAL RESOURCES, HONOLULU, HI**

Mr. WILSON. Thank you very much, Chairman Inouye. Good morning, Senator Akaka, it's good to see you. I'm certainly honored to be testifying before your committee.

I have submitted testimony on behalf of the Department of Land and Natural Resources, but if I may, I'd like to depart a little bit and speak to you about the importance of this particular bill to our programs here in the State of Hawaii.

The challenge that we have at the Department of Land and Natural Resources is to do our best to take care of Hawaii's natural resources. The areas that are focused upon in this particular bill are especially important to our task because we really have two different ways to try to help the society protect these natural resources and instill the idea that has always been common to the Hawaiian community: The idea that we need to conserve and protect.

One of those two ways is sort of a traditional approach, sort of a western scientific approach. We have many able scientists to help us with that at the Department of Land and Natural Resources, we are studying the scientific background of a particular marine ecosystems and then determining the capacity of that ecosystem and how some of our human activity might be creating a problem.

There is another way that is tremendously important to helping the community come in contact with the importance of protecting our natural resources and that second one is one that Hawaii is blessed to still have. That comes from the kind of indigenous cultural ethic in States such as ours where we're lucky enough to have an indigenous culture that is still in contact with its heritage. It provides a fantastic opportunity, in a more practical way, to let people know what it means to understand Hawaii's resources and take care of them.

To give an example of that, we have obviously a lot of young people in Hawaii that can react very quickly and in a way that might even affect their life views in the future very quickly when they have a good example of how to conduct themselves when they get into the water, protect reef systems and how to fish. It's easier for them to do that when they have someone that is a great teacher and someone who comes from a coherent culture with a conservation ethic than it is to sit down in the classroom and have some scientists explain to them all the background and whatnot and then try from that point of view to have them conduct themselves in a way that shows they understand the resource.

We have, at the Department of Land and Natural Resources, been able to take advantage of some of the great teachers, well-known teachers in the Hawaii community in the conservation ethic and marine resources. Mac Poepoe, it's always great to see him, is a very good example of that type of leader. He has provided us with a specific proposal at the Department of Land and Natural Resources from the Hawaiian community on Molokai, the community centered around Moomomi Bay. This is a bay surrounded by Hawaii homelands; it's also the site of Hawaiian people who are intact with their Hawaiian heritage. In this instance Mac and also some of his friends there, Wayne Lee, being one of them.

Mac and others are part of ancient Hawaiian fishing families. When they go into the bay they really understand the resource in a way that would allow them to teach others what it means to protect the resource.

I've had the pleasure of seeing Mac and what happens when he goes in the water and what happens when he walks around Kahoolawe. I sit on the Kahoolawe Island Reserve Commission, which is a great honor, and I had the chance to go to Kahoolawe with Mac and some others.

His understanding of natural resources is such that we, at the State, would like to be able to show our confidence in his abilities and get his help in managing the resource by putting together a formal program where we delegate some of the authority to actually regulate the resource to Mac and also the native Hawaiians in that community. What they would do is actually, on behalf of the State, come in contact with people that want to use the Bay, speak to them about the proper areas in the Bay to fish, explain those areas that should be used as a sanctuary and also be able to provide us with information about how the Bay is being used.

We have other youth programs that we want to include with the kind of work that Mac is going to be doing in the Bay so that young people will circulate through Molokai, circulate through Mac's program and in that sense, we believe, come up with at least as pow-

erful if not more powerful awareness of what it means to actually take care of Hawaii's resources.

It is a great thing about our State that I think most carry around with them, sort of a love for Hawaii. Especially many of us that aren't in contact with teachers from an indigenous past, we're not quite sure how to take that concern and actually use it practically when we get in the water, when we go fishing and when we go hunting, and whatnot. I think the natural concern people have is there ready to be used if we just are given the people to teach us.

The amendments proposed by your committee are just a wonderful opportunity for us to be able to go that step in taking peoples' concern, using the Native Hawaiian conservation ethic and being able to translate it in a very real way using the help of individuals like Mac.

I'd just cite that as an example of how excited we are and how much we could really benefit from the participation of the Federal Government and some of its resources in being able to encourage these activities.

Hawaii is at a point now where I know both of you, with your long experience in this State, have seen we've gotten more and more to the point of limited resources. It's not like it was 30 or 40 years ago when we didn't have as many people and we didn't have as many demands on water, on fishing and that kind of thing. Now we've gotten to the point where we have to regulate. If we regulate in a way that is enforcement-oriented, I kind of fear what the consequences might be long term because it doesn't really encourage people to want to protect and be part of the process.

On the other hand, if we're trying to conserve in a way that doesn't involve enforcement but involves education, appreciation and to a certain extent an element of pride, we take care of our resources, we do it in a good way, and we get what is sort of the golden rule for resource management which is voluntary compliance where people, on their own, decide they want to protect the fish or only take so much fish because they realize that is the best thing for them and their children and future generations.

I'm very anxious to help in any way I can. I know the Governor is also quite interested in pursuing this way of doing resource management and anything we can do at the Department of Land and Natural Resources to help, we'd like to do.

Thank you for this opportunity to testify.

[Prepared statement of Mr. Wilson appears in appendix.]

Senator INOUE. Thank you very much, Mr. Wilson.

I would like to assure all the witnesses that their full statements will be made a part of the record and to further assure everyone that if you have statements you would like to submit, they too will be made a part of the record, and if you have supplemental statements you would like to provide us, that will also be made a part of the record.

At this time, without objection, the testimony of R. Kahone Fairbanks, Executive Director, Kahoolawe Island Reserve Commission, will be made a part of the record.

[Prepared statement of Mr. Fairbanks appears in appendix.]

Senator INOUE. Now it is my pleasure to call upon a very distinguished citizen of Samoa, High Chief Tulafono.

STATEMENT OF HIGH CHIEF UFAGAFA RAY A. TULAFONO, DIRECTOR, DEPARTMENT OF MARINE AND WILDLIFE RESOURCES, PAGO PAGO, AMERICAN SAMOA

Mr. TULAFONO. Chairman Inouye, Senator Akaka, good morning. I'm honored to be here this morning on behalf of the Governor and the American Samoan Government to testify before your committee on this important bill.

I have long been involved in developing our educational system and managing our natural resources in the territory. I also am a member of the Western Pacific Region Fishery Management Council. I would like to use my experience to offer a few comments about resource comanagement systems and how they relate to the proposed Magnuson Act amendment.

The distinction between comanagement and cooperative management is not clear to everyone. In the field of resource management, cooperative management is the situation that exists when two or more groups or units work together to actively protect, conserve, enhance, or restore natural resources. Comanagement is similar, except that the cooperating groups or units each have legally established management responsibility.

The U.S. Fish and Wildlife Service, an agency with the Department of the Interior, has a draft policy regarding its relationship and comanagement responsibilities with federally-recognized tribal governments. The Native American Policy is the guiding principle behind the Fish and Wildlife Service's government-to-government relationship with Native American governments for the conservation of fish and wildlife resources. The Fish and Wildlife Service wants to cooperate with Native Americans in protecting, conserving, and utilizing their lands and resources. The Policy is intended to be flexible and dynamic and to allow for variations and adjustments that are necessary with each Native American government.

The proposed amendment is needed so that Congress can repair a flaw in previous legislation. The flaw is that people indigenous to the American-flag Pacific Islands are not considered Native Americans. This legislation will allow Pacific Islanders from Hawaii, Guam, American Samoa and the Northern Mariana Islands to have the same kind of self-determination that the Fish and Wildlife Service has granted mainland Native Americans.

Pacific Islanders deserve to be allowed to use traditional community-based fishery projects to manage their fisheries and have those practices approved and supported by United States law, just as they are for mainland Native Americans.

Fishery management in Samoa today is a form of comanagement between the local villages and the Department of Marine and Wildlife Resources. The matai system or the chief system of the village council has responsibility for the affairs of the village. The village matai are responsible for wise management of their resources, particularly their reefs and nearshore areas which historically provided a bounty of fish.

In addition to the local Samoan style of matai management, it's the more general responsibility of the Department of Marine and Wildlife Resources. The Department works cooperatively with the village to manage reef fisheries and is the principal agent for conservation of offshore fishery resources.

My extensive experience, both with the Department and the Western Pacific Council, leads me to believe that, just as the Department aids Samoan villages with their fishery management, the Council would be well suited to aid us in comanagement of our fishery resources if the Magnuson Act is amended to allow community-based fishery development programs throughout the American-flag Pacific Islands.

If ingenuous Pacific islanders intend to manage fishery projects, they will need direct monetary and technical assistance. They will also need aid in developing, managing, and monitoring their fisheries.

Development of fishery requires direct financial, training, and management assistance. Samoans entering such a contemporary fishery will need specialized training, with equipment obtained through financial assistance and skills derived from the technical assistance. A training program must be created to translate cash and technical manuals into effective, knowledgeable fishermen. The indigenous community fishery projects must find an appropriate agency to coordinate the technical assistance program.

As the policymaking institution for fishery management within the United States Western Pacific EEZs, the Council would be an excellent resource, working in cooperation with State or territorial agencies like the Department of Marine and Wildlife Resources in American Samoa for these developing fisheries. These groups, especially the Council, are equipped with all the necessary fishery information and background to assist the indigenous fishery development projects. The Council has always worked toward a sustainable development of its fisheries, as mandated by the Magnuson Act.

In short, Mr. Chairman, the Council's resources would be almost as big a blessing to the indigenous fishermen of American-flag Pacific Islands as the ocean resources they will be managing. The Council, together in consultation with appropriate local agencies, will be indispensable comanagers.

We Samoans are seafaring people who have always depended heavily on our fishery resources. We have a long history of offshore and nearshore fishing and fish are important to our culture and its continuity in many ways. This legislation will allow indigenous Pacific Islanders to exercise their cultural and social traditions and regain some of level of self-determination over their resources, their environment, and themselves. It will merely raise Pacific Islanders to the level of respect and responsibility already accorded to mainland Native Americans. We too are natives on land that is now part of America.

I fully support this legislation and believe that Pacific Islanders deserve legal acknowledgement of our control over our marine resources and technical and financial support for community-based development of our fisheries.

Once again, Mr. Chairman, I thank you for the opportunity to testify before your committee this morning.

[Prepared statement of Mr. Tulafono appears in appendix.]

Senator INOUE. Thank you very much, Mr. High Chief.

May I now call upon Mr. Buddy Keala.

STATEMENT OF BUDDY KEALA, KAILUA-KONA, HI

Mr. KEALA. I am Graydon Keala, a native Hawaiian born in Honolulu and raised on the island of Kauai from year one. I learned traditional Hawaiian fishing methods from my grandfather and a Hawaiian fishing family on Kauai. When I finally decided upon aquaculture as a career, I was educated in western techniques at the University of Hawaii that served to confirm and strengthen the wisdom of traditional Hawaiian fishing methods. In addition to aquaculture, I have a certificate in Environmental Studies and Marine Options Program—Hawaiian Fishponds. I consider my university education to be supplemental to the education I received in the traditional Hawaiian way of observation and practice, and feel privileged to continue to learn from the kupuna.

Thank you for inviting me to speak to you today. It is an honor to be here. My first involvement in the understanding of your committee and the kinds of issues it represents came by way of S. 1526, the Indian Fish and Wildlife Resource Management Act of 1993. I was invited to provide input to the development of this measure by Senator Inouye's office.

The Magnuson Fishery Conservation and Management Act would be a key element not only to promote these issues but would also to empower Native Americans' organizations and communities to play a more proactive role in determining its process and provide management and oversight of the resource.

In a generic sense, most indigenous people have an inherent connection with their environment. In many cases, there is an underlying spiritual reverence and even familial ties associated with these elements. The symbiotic relationship and the harmonious union of Native peoples with their surroundings were develop into a type of stewardship over hundreds and sometimes thousands of years.

I firmly believe that in the present time with dwindling resources, pollution and environmental destruction, the contribution of sustaining ourselves would involve successful concepts that worked for our forefathers. By blending the old with the new, we should incorporate what is available and applicable today from the technological side with appropriate customary knowledge and practices.

Religion played an integral part in the day-to-day life of the Hawaiian. Religious protocol is involved in all aspects of everyday life from a prayer to greet the morning sun to opening up a new fishpond. Special fishes and animals are ceremonially blessed and offered to different gods.

Traditional water codes provides for the streams to always be flowing and pristine from its source to where it embraced the ocean in a fishpond. The interdependence of the system also provided economic arrangement of trade between upland produce and materials with coastal supplies and food.

Today, you can still find traditional knowledge and practices in rural, grassroots, predominantly native Hawaiian communities. These communities have made a conscious effort to promote traditional and cultural knowledge, and to provide a needed backdrop for future generations of Hawaiians. It is said by many Hawaiians that our purpose is to maintain and enhance what resources are

available and sustain them for future generations. Currently, there is a strong Hawaiian resurgence of cultural activities and practices being rediscovered and enhanced.

My personal interest and professional involvement has led me to the area of lokoia, traditional Hawaiian fishponds, unique in the world. While many other peoples have practiced a form of aquaculture, Hawaii provided a uniquely sophisticated version. Although not an open ocean fishery resource, it played an important part in the wellbeing of the fishery and it's nearshore environment. Traditional Hawaiian fishpond systems and its associated activities have been my passion for almost 20 years.

Lokoia were ecologically-balanced environments that were utilized for the cultivation and production of fish, shellfish and sea plants. This was accomplished by the observation, transfer and development of low impact, extensive aquaculture systems developed over 700 years by Hawaiians. Natural elements of tides, lunar phases, fishing seasons and other phenomena indicated times to harvest, stock, rest and rebuild walls.

The methodology of Hawaiian fishpond aquaculture should not be misconstrued as modern intensive aquaculture practices. These systems are very different. Modern aquaculture looks at intensive production to make a profit, usually above 2,000 pounds per acre per year. In order to do this in a Hawaiian fishpond, which has very little internal control, you would have to impact the harmony of its ecological and environmental balance through external inputs like paddle wheels, aeration, feed, et cetera.

The Hawaiian fishpond itself is on a biologically deteriorating process called eutrophication. Eutrophication is the progression and evolution of an open-pond system into a wetland swamp, eventually becoming a marsh, then a pasture. A prime example of this is Kawainui Marsh, once a large productive fishpond, it is in its final stages of evolution as a result of not being actively managed and used. To compound this, developments of all kinds, introduced species such as mangrove and tilapia, and mud/silt run-off have accelerated the eutrophication process.

I am educated Native Hawaiian aquaculturist with a university degree, yet I never fail to be amazed and humbled at the genius involved in the creation and development of the lokoia system, and the degree of intelligence with which it was managed and operated. The rehabilitation of traditional lokoia practices and methodologies should be recognized for its merits, and incorporated into aspects of our culture as we live it today.

Lokoia systems are capable of being used toward the rehabilitation of native species through fishery enhancement. Fortunately for modern aquaculture research, we can aquaculturally produce fish stocks, thereby, improving fish stocks of Hawaii's fisheries. This is just an example of the blend of traditional and modern which we see as securing this future fishery.

There are several Hawaiian fishponds that are being used in nursery systems for stock enhancement activities already. Aquaculturally produced seedstocks leave larval rearing facilities and are nursed to fingerling size in fishponds until they can be tagged and released for the recreational fishermen. Tagging these fish allows fishery population dynamics to be researched and iden-

tified. The use of striped mullet, actually enhances the environment, purely as a species characteristic.

Within my experience as an aquaculturist, I have had the opportunity to develop field and classroom curricula that has contributed to hands-on education processes using lokoia as a teaching resource for various disciplines—Hawaiian culture, fine arts, chemistry, astronomy, computer programming, biology, history, oceanography, archaeology, environmental studies, resource management. It is Hawaiian sciences at it's best.

Compromising all Hawaiian Fishpond Revitalization efforts are the existence of Federal, State and County permits and regulations that put the Hawaiian fishpond at risk of never being utilized again. The main issue in the restoration of the lokoia is the permit process. When this problem is resolved all the other beneficial by-products can be realized; that is, education, economic development, cultural rehabilitation, self-sufficiency, fishery enhancement, resource renewal, et cetera.

In 1995, House Bill 1763 was introduced and passed as a streamlined permit process to assist Hawaiian Fishpond restoration and preservation activities. Although a bill was crafted, there were some key compromises and the Federal Government was not included intimately in the development of the bill strategy. Federal cooperation would have played a major role in Hawaiian fishpond exemptions, permit cost reductions, and time conditions that would benefit this initiative. Permit facilitation is the next area of consideration, what specific form the new application will take, what new criteria will be issued, and the integration of all agencies into the process, especially Hawaiian representation.

I'm elated to see the first step in the Magnuson Fishery Conservation and Management Act. The amended Section, Hawaiian Community Fisheries Act, will provide necessary language to generate the type of cooperative efforts identified and allow more impact for Native Americans, Native Hawaiians and Pacific Islanders. It will also allow the opportunity they deserve to self-determination, the chance to restore customary rights and practices and most importantly, a stake in the future of their resources.

I support the understanding of traditional resource management concepts in government agencies. This will also assist in the development of a management plan that is sensitive to tribe or area-specific issues. Including Native Hawaiians and Hawaiian organizations in the development of resource management strategies is imperative. Also, where applicable and appropriate, I would like to envision their input, knowledge, and oversight on the rehabilitation and enhancement of our fishery.

Hawaii is essentially an oasis, over 2,000 miles away from the nearest continental land mass. Based on this, many open ocean species migrate to the island chain to renourish themselves for continued migratory travel or to reproduce offspring in the nutrient-rich environment the Hawaiian archipelago has to offer. The orderly fashion of developing strategy should take into account the dependency of the nearshore fishery with offshore productivity. Intertwined with this would be the way we view and protect the nearshore environment by regulating land-generated pollution and destruction of productive coastal areas.

With the existing amount of red tape bureaucracy to be faced with coastal and open ocean fisheries, any changes to statutes and laws will also impact State, County and even Federal cross-jurisdiction. Careful coordination of strategic development will be the key elements. I support the Native Hawaiian involvement in the resource protection, planning, management, and coordination with governmental agencies. These are critical to the success of this vision.

Today, the concerns I see come from the Native Hawaiians who have experienced the bounty of the past and want these resources maintain for their future generations. It is a concern that looks at benefits of education, cultural practices, history, economic development, and self-determination.

Traditional beliefs and practices can be a valuable resource and can also provide many other positive contributions as a vehicle for economic development, all levels of growth in education, environmental enhancement, social rehabilitation, not to mention a source of food production.

In closing, I would like to say that as a contemporary Hawaiian, I was able to focus my energy and direction back coming by to my traditional roots. As it becomes harder and harder to practice our culture without offending those who are not Hawaiian, I truly believe that the Native Hawaiians, Native Americans, and Pacific Islanders should be included in the process of determining and ultimately managing their own resources. What these indigenous people knew can make positive contributions in achieving the objectives manifested in this legislation, not only for the Native people but for all people.

Mahalo for this opportunity to testify.

[Prepared statement of Mr. Keala appears in appendix.]

Senator INOUE. Thank you very much, Mr. Keala.

May I now call upon Mr. Poepoe.

STATEMENT OF KELSON "MAC" POEPOE, KUALAPUU, MOLOKAI, HAWAII

Mr. POEPOE. Good morning, Senator Inouye and Senator Akaka. I am honored to be here to testify before you.

I support the proposed amendments to the Magnuson Act that would benefit indigenous fishing rights in Native Hawaiian communities. As a Native Hawaiian fisherman, I would like to have our Hawaiian fishing rights recognized in all Federal fisheries management plans and actions. I am involved in subsistence fisheries projects and would like to see amendments which would authorize the establishment of native Hawaiian and other indigenous community-based fishery demonstration projects.

There is a need for Federal funding and assistance for Native Hawaiian/Pacific fisheries projects. It is critical to our survival as a people to be able to practice traditional methods in fisheries resource management.

Historically, traditional Hawaiian spiritual beliefs and practices centered around a very complex and detailed management program in which a natural balance was maintained so that there was never a scarcity of ocean products to provide food for the population. This was because care was given to the management of each species.

Growth and breeding cycles were carefully studied and strict rules adhered to in order to allow species to proliferate. By tradition, these results were passed on to generations of family members and weaved into the spiritual fiber of the Hawaiian people's daily existence.

Every Hawaiian family had access to a large variety of food from the ocean and today, we're not as lucky they were back in the old days. That made we think we should start looking at our natural resources and have some kind of protection program to many of these areas we feel are very important to us because for many generations we've been using these areas and we see the difference that came about and this has been missing in the last 10 or 15 years. We see all these changes coming about and it's at a point where if we don't do something about it, it's going to get out of hand. That is really important for us culturally.

For the island of Molokai, our culture is really very important to us because we live pretty much like people did back in the old days, although we adjusted to the western ways but we still hang on to the values that we feel are very important that were passed on to us. We would like to continue them by establishing the subsistence areas for our community and that we can be able to manage these areas in the way we were taught. I think it is real important for everyone to look at not just the people from Molokai but people from other communities as well that live pretty much the same way we do.

Talking about quotas, I think we have a problem where our quota might be a little different from what the quota in Alaska. Since we're talking subsistence fishing, our quota would be different and unique.

Some of the objectives of our program include: seeking funding for training and educational programs; funding for fishing and management equipment; scholarship funds for careers in traditional fisheries and fisheries management; funding for research in traditional fisheries; establishment of natural and artificial hatcheries for stock enhancement programs.

We would like to work with and receive assistance from the Federal Government in our efforts as indigenous natives of Hawaii to use traditional conservation methods to preserve and enhance our coastal fisheries for the economic and cultural well-being of our people.

Thank you.

[Prepared statement of Mr. Poepoe appears in appendix.]

Senator INOUE. Thank you very much, Mr. Poepoe.

I would like to note two things. First, when we speak of the quota, this measure, that quota is over and above subsistence fishing. It does not include subsistence fishing.

Second, these amendments are a demonstration of what I have contended and believed in throughout all of my adult life that the designation Native American should be extended not only to North American Indians but also to indigenous natives who occupied these islands with sovereign authority and responsibility long before the coming of the European.

Under that, which I consider an international designation, Samoa and Samoans should be Native Americans; Hawaiians should be Native Americans.

I would like to thank all of you for sharing your wisdom with us. I am happy, for one thing, that all of you agree that this is a good first step. If you have any other suggestions that could be incorporated, now is the time to share it with us because once we get back to Washington, we will begin the process of marking up the measure.

We have two hearings, as some of you may know. This is the first hearing on the amendments to the Magnuson Act. The second one is on the Native Hawaiian housing problems and the witnesses are waiting here. So if I may, there are certain technical questions I would like to submit to the Fisheries Council and if I may, to your office in Samoa and to the Land and Natural Resources. It may be a little too technical to be discussing at this stage.

Mr. KEALA AND MR. Poepoe, do you think at this moment, this fits the bill?

Mr. KEALA. Yes, Senator Inouye; if I can add one thing that I heard in the first panel. They identified the tuna fisheries as being the most important resource to take care of. The offshore tuna fishery is definitely dependent on what happens inshore. Mr. Poepoe is a inshore fisherman; I'm an inshore fisherman, but we need to take care of where that resource is getting its sustenance or that part will not be able to grow and prosper.

Senator INOUE. We asked you to testify because we were aware that you would be speaking of fishponds because this measure, although it appears to speak only of fishing boats and deep sea fishing, is not limited to that type of fishing. It also involves conservation, also involves education, also involves propagation; and we know that the fishponds will qualify as a community demonstration project, so I wanted that to be made very clear to the council when this measure becomes law. So you get your fishponds together.

It might be of interest to all of us here that there was a time when I believe there were over 600 fishponds in the Hawaiian chain, all flourishing, providing sustenance to Native Hawaiians ranging from shrimps to lemu and fishes of all sizes. It must have been an exciting time. We cannot hope to rebuild 600 fishponds now but I am glad to see that successful attempts are now being made on Kauai and Molokai to restore some of these fishponds, so I look forward to that day.

Gentlemen, I thank you very much.

Senator Akaka, do you have any questions?

Senator AKAKA. Mr. Chairman, I thank you for the panel for the hearing for these amendments. I am glad that we all recognize the problem and we are looking for solutions.

Again, I just want to urge all of you and all of us to connote that we must be working together with the Council on this one and we hope that there will be good cooperation, coordination and help from all quarters, including the government sector.

I wanted to mention to Mr. Keala and all of the panel, that I have crafted an agriculture bill, the first agricultural bill in the United States. I did offer it last year and was not able to get it through and am doing it again this year.

What I want to note is when I saw agriculture bill, it departs in a way from the traditional method of these marine resources. The type of agriculture we're talking about that you compare it to, the traditional, the traditional is where the natural resources are used and the time to feed and everything is there, but in what you call the modern method, you have to have aeration, you have to have feed, you have to have the proper stocks and also the current through whatever area you're using, whether it's a pond or something else.

These speak to the problems we're facing in the future. Population is growing on earth and in a sense, no longer can we go out and hunt fish or get out to the wild because as we pointed out, the resources are being depleted. So we have to look inward and begin to grow our own and what it is is growing fauna and flora not on land but in water. So this is a method that is being used in the United States and hopefully even in Hawaii, we can use this modern method as well as well as traditional methods. I just point that out as another step in being sure that we have the kind of resources we need for our people.

Again, I want to thank all of you and I want to thank the Chairman for this hearing.

Senator INOUE. Thank you very much.

Before we adjourn this hearing on the Fisheries Act, the committee has received requests to testify from three citizens and so if I may, I would like to call them up: Sherry Broder to present testimony for Clayton Hee; Scotty Bowman of OHA; and Harold Meheula, President of the Native Hawaiians Fishermens Association.

Ms. Broder, welcome.

I hope we will be able to accommodate the next hearing, so if you could summarize your statement, I would appreciate it.

STATEMENT OF SHERRY P. BRODER, ESQUIRE, ON BEHALF OF CLAYTON H. HEE, CHAIRMAN, BOARD OF TRUSTEES, STATE OF HAWAII, OFFICE OF HAWAIIAN AFFAIRS

Ms. BRODER. Good morning, Senators Inouye and Akaka. My name is Sherry Broder. I'm the attorney for the Trustees of the Office of Hawaiian Affairs.

Today, I'm testifying on behalf of Chairman Clayton Hee. He regrets that he was not able to attend. Because of the importance of these Federal matters to Native Hawaiians, Chairman Hee wishes to offer testimony in addition to the testimony of Scotty Bowman of the Office of Hawaiian Affairs.

In this testimony, the focus is on the similarities between Native Hawaiians and other Native Americans in terms of their legal status. Native Hawaiians are not Indians ethnically or culturally. Native Hawaiians are Polynesians with a rich tradition of their own but in their relationship with the United States, and in their legal status, the similarities are clear.

Like other Native Americans, the Native Hawaiians have had their own sovereign nation and their own highly evolved and sophisticated culture prior to Western contact. And like other Native Americans, the Native Hawaiians lost their autonomy and much of their culture as a result of this contact.

As a result of the leadership of Senators Akaka and Inouye, the U.S. Congress and President Clinton recognized the justice of the Native Hawaiian claim in November 1993 when the apology resolution was signed.

The Hawaiian Community Fisheries Act is designed to amend the Magnuson Fishery Conservation and Management Act to make funds available to "not less than three and not more than five Native Hawaiian community-based fishery demonstration projects." These funds will be allocated to appropriate organizations.

This proposed Act is an innovative and creative approach that recognizes the justified claims of Native Hawaiians to these ocean resources. Other Native Americans have made great strides in regaining their fishery resources. The Indians in the State of Washington have rights to a substantial percentage of the salmon in the Columbia River and its tributaries and the Indians in the Puget Sound area have just received a 50-percent right to all the shellfish in that productive area. Similarly, the Maori have been given ownership of the major commercial fishery operations in recognition of their justified claims.

The Native Hawaiians deserve no less and this bill is at least a step in the right direction. Thank you.

[Prepared statement of Ms. Broder on behalf of Mr. Hee appears in appendix.]

Senator INOUE. Thank you very much, Ms. Broder.
Mr. Bowman.

STATEMENT OF SCOTTY BOWMAN, GOVERNMENT AFFAIRS OFFICER, OFFICE OF HAWAIIAN AFFAIRS

Mr. BOWMAN. Thank you for this opportunity to present testimony on behalf of the Office of Hawaiian Affairs.

Although OHA does not believe fishing rights should be separated from customary and traditional practices or segregated into designated areas of allowed use, we recognize it is very difficult today to describe fishing rights in the traditional way because coastline development in Hawaii has displaced ahupua'a tenants and disrupted Native Hawaiian fishing rights which were commonly practiced for centuries.

During meetings with community groups on each island, OHA representatives have been saddened by numerous stories relating to drastic reduction, or total depletion, of marine resources. The examples, too numerous to list, include Lahaina on Maui, Mo'omomi on Molokai, Miloli'i on the island of Hawaii and Laie on Oahu.

In its effort to find options for protecting Hawaiian fishing rights, OHA has learned that numerous factors negatively impact traditional fishing practices. These include the interaction of deep water fishing practices, an endless list of environmental impacts and international fishing covenants.

In view of this knowledge, OHA supported legislation introduced into the 1994 State Legislature which authorized the Division of Aquatic Resources of the State Department of Land and Natural Resources to establish a Subsistence Fishing Pilot Demonstration Project at Kawaaloo and Mo'omomi Bays on the island of Molokai.

We believe this pilot project will serve as an important step toward expanding our knowledge of the State's fishing resources in

this area by: determining where the fishing resources are located; identifying the competitive forces which impinge on these resources; determining how these negative and counterproductive forces can be mitigated or eliminated; and assessing the management strategies, enforcement of rules and regulations, and examining funding requirements for assuring full exercise of traditional fishing and marine gathering rights.

Failure to acquire this knowledge for this area, and eventually for the entire State, may extinguish, rather than expand, Native Hawaiian fishing rights. The information gathered from this and similar endeavors will be invaluable in formulating governmental policies to enhance and protect traditional fishing practices throughout the entire State.

While this legislation was being discussed during the 1994 legislative session, representatives from other Hawaiian fishing communities throughout the State indicated a keen interest in establishing similar subsistence fishing projects in the waters fronting their communities.

Amending the Magnuson Fishery Conservation and Management Act by passing the Hawaiian Community Fisheries Act will provide the United States with an excellent opportunity to preserve and protect traditional Native Hawaiian fishing practices, including the management and conservation of fisheries resources, the enforcement of conservation measures and the integration of such practices with modern management and conservation principles vital to the well-being of Native Hawaiians. In addition, adoption of these amendments in fact becomes recognition of the distinct rights of Native Hawaiians to continue to use their fishery resource for subsistence, economic, social, cultural and spiritual sustenance.

Thank you for allowing us to provide this information to you this morning.

[Prepared statement of Mr. Bowman appears in appendix.]

Senator INOUE. Thank you very much, Mr. Bowman.

Mr. Meheula.

STATEMENT OF HAROLD H. MEHEULA, PRESIDENT, NATIVE HAWAIIAN FISHERMENS ASSOCIATION

Mr. MEHEULA. I want to thank you for inviting but I only had 24 hours to get this testimony together which was pretty hard for me. I'm going to get it together on paper and present it to you folks in a couple of days.

What I want to say is that the Native Hawaiian Fishermens Association is what this State needs and the people of Hawaii. Due to the fact that our vessels can only go out 30 miles and come back, we are creating a fishing industry where you're going to have a mother ship to take the small boats out to where the fish is and from there bring them back here. It's going to be a mother ship where there are going to be ten 50-foot vessels on it and go out. The airplane will be going out to spot the fish within at least 200 miles of Hawaii and everything is going pretty good. It will take time but we're going to go through the Federal Government for grants because we would like to get the money now if possible because the vessels and ships at Washington and Alaska are very cheap, so hopefully it will be okay.

Thank you very much.

[Prepared statement of Mr. Meheula appears in appendix.]

Senator INOUE. Thank you very much, Mr. Meheula. I can assure you that the record will be kept open for 2 weeks and if your statement is presented to us before then, it will be made a part of the official record so that members and staff can study the words as we prepare ourselves for the markup of this measure. Once again, thank you.

With that, we will adjourn the hearing on the amendments to the Magnuson Fisheries Act.

[Whereupon, the committee adjourned, to reconvene at the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF HIGH CHIEF ALO PAUL STEVENSON, VILLAGE OF FAGASA,
ITUAU COUNTY, AMERICAN SAMOA

Good morning Senator Inouye, thank you for allowing me the opportunity to submit this written testimony to this committee today. I am a fisherman from American Samoa and a member of the Western Pacific Regional Fishery Management Council. I support the proposed amendments to the Magnuson Act that will allow recognition of our native fishermen and their fishing rights in Samoan waters.

In Samoa, fishing and the sharing and formal presenting of nearshore and offshore fish to village chiefs and council members has always been a central part of our culture, our identity and our very survival. Our elders and our tautai or master fishermen often share stories of fishing and proverbs that tell of the cultural significance of certain fish and certain types of fishing. We believe that American Samoans should be the ones most directly involved in managing and developing our fisheries. We also believe that we Samoans should have preferential access to offshore fish stocks in our portion of the EEZ should limited entry management of these stocks become necessary in the future.

What we have always known from our ancestors and elders has been confirmed by outsider scientists as well. We have always fished for offshore fish like atu (skipjack tuna) and other pelagics, bottomfish and lobsters. Anthropological and historical documentation, including oral histories passed down through generations, have confirmed for us that there was and is a water management species, including tunas, shark, mahimahi, wahoo, billfish, jacks, snappers, ulua, groupers, and emperors. Samoans historically had and still have a continuing dependence on these species. These fish provide nutrition, but are also important contributions to the maintenance of long-held traditions, customs, and ceremonies. Fish and the ability to fish wisely and productively are very important to Samoans and Samoan culture.

There also clearly was and is a social and cultural framework reflecting cultural, social, and religious values and traditions based on fishing effort, tautai status (an accomplished fisherman), and the ceremonial presentation of certain species to chiefs, pastors, and village councils.

The Samoan Islands were first settled nearly 3500 years ago by our seafaring Polynesian ancestors. Archaeologists have found evidence of coastal occupations dating about 2400 years ago and evidence for Samoan fishing for shark and snappers and other deep water fish. While more archaeological work must be done before authoritative statements regarding continuity in ancient fishing strategies can be made, we Samoans know that our ancestors fished regularly for these species. Fishing was a way of life for Samoans; not only important traditions but also the smallest day-to-day activities somehow related to or revolved around fishing.

Linguistic evidence and oral history have recorded the role of fishing, fish, and social relations in Samoan society. For example, many commonly used proverbs are based on fishing practices. "o le pa ua sala i le maga," which can be translated, the

hook has been torn off at the shaft, is an expression referring to losses easy to bear, just as the loss of the hook, "maga," is easier to bear than the loss of the shaft, "pa."

Review of ethnohistories prepared by western anthropologists show other evidence of the importance of fishing within our culture such as with bonito hooks. These hooks were elaborately crafted from mother of pearl, turtle shell, and "fausoga" bark. Bonito or skipjack tuna fishing is a complex undertaking using specialized canoes and gear. Samoans believe that bonito is a fish of high status, a fish for chiefs and the great god Tagaloa. Linguistic evidence shows that reference to bonito also served as reference to chiefs. Bonito fishing and the ceremonial distribution of the catch is only one example of numerous fishing rituals that are very important to our Samoan culture.

The significance of the tautai or fishing specialist also reveals the importance of fishing and the sea to Samoans. Samoans made a clear distinction between authority over the land, held by matai, and authority over the sea, the realm of tautai. The head tautai of each village directed all aspects of the important bonito fishing, making all the decisions, not only in bonito fishing but also with regard to other fishing regulations and customs.

The most valuable system of fishery management in Samoa today is the combination of the matai/tautai system of village government, as old as Samoa itself. The matai system functions with each head of an extended family in a village being a chief, with a high chief representing the village as a whole, and other talking chiefs also selected. Together, these matai govern the affairs of the village. The village matai and tautai are responsible for wise management of their marine resources. Traditional Samoan reef management is rich in customs and taboos which control who may fish on the reef (usually people from the home village), how much fishing may take place, when it may occur, and so on. These measures have many parallels to the precautionary approach underlying the Magnuson act, they just work on a local level.

In addition to local matai management is the more general responsibility of the Division of Marine and Wildlife Resources (DMWR). The DMWR addresses technically complex issues such as the impacts and variations on reefs and offshore fisheries and habitat restoration. The DMWR effectively coordinates with village management and achieves a level of comanagement which conserves reef and offshore fishery resources.

Since before Western contact, and until the late 1950's and 1960's, American Samoa fishermen pursued tuna in offshore waters using specialized canoes and gear custom-fitted to the crew and tautai. Mahimahi, wahoo, and billfish were also caught on the open sea with handlines and trolling gear. Additionally, sharks were noosed as recently as 1968 and continue to be caught with contemporary gear, which has come to dominate most of Samoa's fisheries. Upon returning from offshore sharkfishing expeditions, the fishermen are still met by villagers who have prepared for the culturally important ceremonial cutting and distribution of the sharks.

Handlining for bottomfish has been, and still is, a culturally important practice of American Samoan fishermen. Bottomfish are culturally important species for formal presentation at ceremonies and events. Lobsters also are still caught by Samoans and still have important cultural and historic value both for consumption and presentation at various ceremonies.

Present fishing is sound in practice. Our bottomfish fishery, for example, had in 1994 a catch per unit of effort statistic known as CPUE of 89% of the estimated CPUE on a virgin stock. Our pelagic fishery has had a stable CPUE in the past few years. Many of our Samoan fishermen feel concerned that the crustacean fishery should be protected and that all commercial exploitation of lobster should remain small scale and limited to Samoan residents.

Fulltime commercial fishermen often target specific species for certain feasts and ceremonies, distributing fish to relatives and other villagers when needed. Large fish when caught are often presented to the village by commercial and recreational fishermen. Samoan cultural values related to the competitive expression of strength, bravery, and service continue to be displayed in the effort and catch distribution by all types of fishermen. Chiefs of various rank continue to receive formal presentations of management species in a number of villages. Management species continue to be targeted and purchased in local markets for culturally and religiously important events.

The great majority of active commercial, quasi-commercial, and recreational fishermen in Samoa are native Samoans. We feel very strongly that the offshore fish in our waters are our fish, to be used as we decide. We would like to see our fisheries carefully developed, yet we would also like them to follow traditional and modified cultural rules and customs that will ensure proper conservation and man-

agement of our fish stocks. We do not want outside profit taking fishing to damage our fish stocks, destroy current wise-use practices, or prevent the sound management of our stocks.

With commercialization and the introduction of motorboats, and large cannery boats with accommodations so small and uncomfortable that Samoans opted not to participate actively in the longline and purse seine fisheries a stereotype developed that few Samoans were interested in offshore fishing. The evidence, however, shows that this stereotype is not true. It also shows important historical and cultural continuity in offshore fishing for management species by American Samoans. There is also a continuing cultural, social, and religious framework based on the capture and distribution of numerous management species.

Natural Regulation and matai and tautai control of the nearshore and offshore fishery has been an appropriate strategy throughout most of American Samoa's history because domestic pressure on the stocks has never been high enough to stress the stocks close to overfishing. Allowing outsider and foreign fishing would require that native Samoans keep close tabs on the catch and also have the ability to impose fees, as proposed in some amendments to the Magnuson Act currently not directly before this Committee. Current fishing by Samoans has luckily not resulted in any significant problems with stock decline due to domestic fishing. But it is obvious, from speaking to my fellow Samoans, that they are wary about overexploitation and want to keep fish stocks healthy, both through our lifetimes and our children's lifetimes. Samoans have had a long and intimate history with the ocean and its fish. This attitude must be kept and actively supported by the U.S. Government. This amendment should be included in the Magnuson Act to allow Samoans the same indigenous rights mainland Indians have. Samoans should be granted preferential rights and encouraged to maintain our customs and traditions. Anything less than this could be a cultural calamity for us. Thank You.

PREPARED STATEMENT OF JAMES KELI'IPIO KAHEA MAWAE

Aloha kakahiaka and good morning Senator Inouye. Thank you for the opportunity to testify this morning in support of amendments to the Magnuson Act. The changes being considered to the federal statute—that recognize traditional fishing practices and the value of community-based fishery demonstration projects to Native Hawaiians and other indigenous Pacific islanders—are much needed and long overdue. Native Hawaiians and their neighbors in other Pacific island communities are truly blessed in having you as their champion in the Nation's Capital—Mahalo nui loa no kou kako'o ia makou a ho 'opomaika'i i kau hana i kawa mahope (Thank you very much for your support for us and bless you in your future endeavors).

I am James Keli'ipio Kahea Mawae from the island of Moloka'i. I am a resident on homestead land in Ho'olehua and a true kanaka maoli-descendant of the People. My family of four, including my 80-year old father, subsist on what we are able to grow and gather from the 'aina and catch from the hohonu kai (ocean depths). My family is not unique in this regard, as it was reported that among the Hawaiian families living on the island, over 38% of all food was acquired through subsistence. It is a hard life; but one that is culturally enriching as it is rewarding to those who are willing to put in an honest day's work cultivating the land and sharing in the bounty of the ocean.

I truly believe that small-scale subsistence fishing benefits the Native Hawaiian community in many ways other than placing food on the table or, through ho'o ku'aku'ai (sale or exchange), acquiring other necessities of life. It also cultivates a strong sense of individual accomplishment as well as community pride, both essential building blocks for reinforcing the spiritual and cultural relationship of the Hawaiian people with their natural surroundings. This consciousness isn't taught in the schools; nor can it be gained from watching television or reading books. It can only be acquired through the teachings of one generation of lawai'a [fishermen] or other kumu [teachers] to the next generation of practitioners. I know this is true because that is how I learned.

I have been fishing in Hawai'i for over 50 years. I learned from my father at age 9 to pole fish, net fish, and spearfish. I still fish as a means for putting food on my table and to share with my friends and community. Over the years, I have fished in most Hawaiian waters to catch reef fish like the he'e, uhu, manini, moi, kala, kumu, and nenu. I have also fished the open ocean for akule, weke-ula, ulua, and opelu. I also admit to have taken an occasional honu-when it was legal to do so—and being one for lobsters at family gatherings. One of my fondest recollections was of my days as an aku (skipjack tuna) fisherman and the memories of all the aku-boats that used to dock at Ma'alaea.

The many faces that come to mind, many of whom already make, take me back to those days when I worked and learned from the best: Herman Reed from the boat Kilohana and Kula kai; Captain Kinney from the Lehua; Kendall Fuji of the Orion; and George Kuni of the iron-hulled vessel Anela who spent the time to teach me the skills of the trade. Sadly, the old-style of pole fishing for aku has disappeared, a victim of larger purse seining vessels and their capacities for finding and catching more fish. Along with this loss are the opportunities to help the maka'ainana preserve their cultural and spiritual identity as Native Hawaiians and to curb the growing trend that sees increasing numbers of Moloka'i youth leaving the island for O'ahu or the mainland. For this and other reasons, I am deeply concerned about the aku fishing industry in the islands. I want to help keep the industry alive and use it as a means to create jobs for the younger generation. There is only a small handful of knowledgeable old-time fishermen left who know how to catch aku commercially. I would like to see opportunities created that would preserve the art of aku fishing by passing on the knowledge of the lawai'a to the younger generations.

The art of catching aku the old-style with poles is actually a conservation method of keeping the fish population healthy. For much the same reason that the kanaka maoli protected the resources of the land and sea, bringing back the oldstyle aku boat fishing would help ensure that the next generation would always be able to catch fish. It is my belief that fish stocks in Hawai'i are smaller than before because of the large number of outside vessels operating in local waters, which also means that it is becoming more difficult for small boats and Native Hawaiians to scratch out a subsistence living. I would like to see more Hawaiian-owned and operated fishing vessels in the aku fishing industry in Hawai'i.

Today, you have the opportunity to consider changes to the federal law that would allow Native Hawaiians and other indigenous people in the Pacific to help themselves by giving them the tools to create and manage a healthy fishery.

These tools would include: (1) recognition in the federal law that Native Hawaiians and other indigenous Pacific islanders and their traditional fisheries deserved special recognition and protection; (2) fishermen training and education programs that would channel the knowledge of one generation to the next; and (3) community-based decision making in the management of fish koa (habitat) and fish stocks. I support both of the amendments that call attention to the unique needs and help to "level the playing field" when it comes to access to capital and opportunity for the Hawaiian community.

Before closing, let me share my dream that one day we will be able to see more pole-fish aku boats in local waters and in the harbor at Ma'alaea, see more Native Hawaiians catching fish for home and sale, and see the return to old-time values where hard work was honored and its rewards, spiritual as much as they were monetary.

Mahalo ke kua [Thank the Lord]. Malama ka 'aina [Thank the Land]. Malama ka po'e (Thank the People). Malama ka kai [Thank the Ocean]. Malama ka 'i'a [Thank the Fish]. Aloha kakou.

PREPARED STATEMENT OF HIGH CHIEF UFAGAGA RAY TULAFONO, MEMBER, WESTERN PACIFIC REGIONAL FISHERY MANAGEMENT COUNCIL; DIRECTOR, AMERICAN SAMOA DEPARTMENT OF MARINE AND WILDLIFE RESOURCES

Good morning Senator Inouye, thank you for allowing me the opportunity to testify before this committee today. I am High Chief Ufagafa Ray Tulafono from the village of Alofau, Saole County in American Samoa. I have long been involved in developing our educational system and managing our natural resources. I also a member of the Western Pacific Regional Fishery Management Council. I would like to use my experience to offer a few comments about resource co-management systems and how they relate to the proposed Magnuson Act amendment.

The distinction between co-management and cooperative management is not clear to everyone. In the field of resource management, cooperative management is the situation that exists when two or more groups or units work together to actively protect, conserve, enhance, or restore natural resources. Co-management is similar, except that the cooperating groups or units each have legally established management responsibility.

The U.S. Fish and Wildlife Service [EWS], an agency within the Department of the Interior, has a draft policy regarding its relationships and co-management responsibilities with federally recognized tribal governments. The Native American Policy is the guiding principle behind the FWS' government-to-government relationships with Native American governments for the conservation of fish and wildlife resources. The FWS wants to cooperate with Native Americans in protecting, con-

servicing, and utilizing their lands and resources. The Policy is intended to be flexible and dynamic and to allow for variations and adjustments that are necessary with each Native American government.

The proposed amendment is needed so that Congress can repair a flaw in previous legislation. The flaw is that peoples indigenous to the American-flag Pacific Islands [AFPI] are not considered Native Americans. Yet just like the Alaska Natives, Cherokee, Leni Lenape, Seminole, Sioux, Apache, and other mainland tribes, the Hawaiians, Samoans, Chamorus, Carolinians, and other indigenous peoples were unwillingly placed under the trust and authority of the USA. This legislation will allow Pacific Islanders from Hawaii, Guam, American Samoa, and the Northern Mariana Islands to have the same kind of self-determination that the FWS has granted mainland Native Americans. Pacific Islanders deserve to be allowed to use traditional community-based fishery projects to manage their fisheries and have those practices approved and supported by U.S. law, just as they are for mainland Native Americans.

Fishery management in Samoa today is a form of co-management between the local villages and the Department of Marine and Wildlife Resources (DMWR). The matai system of the village council has responsibility for the affairs of the village. The village matai are responsible for wise management of their resources, particularly their reefs and nearshore areas which historically provided a bounty of fish. In addition to the local Samoan style of matai management is the more general responsibility of the Department of Marine and Wildlife Resources. DMWR addresses technically complex issues such as impacts upon reef and offshore fisheries, and habitat restoration. The DMWR works cooperatively with villages to manage reef fisheries and is the principal agent for conservation of offshore fishery resources.

My extensive experience both at DMWR and the Western Pacific Council (Council) leads me to believe that, just as the DMWR aids Samoan villages with their fishery management, the Council would be well suited to aid us in co-management of our fishery resources if the Magnuson Act is amended to allow community-based fishery development programs throughout the American-flag Pacific islands [AFPI].

If indigenous Pacific islanders intend to manage fishery projects, they will need direct monetary and technical assistance. They will also need aid in developing, managing, and monitoring their fisheries.

Development of a fishery requires direct financial, training, and management assistance. Samoans entering such a contemporary fishery will need specialized training, with equipment obtained through financial assistance and skills derived from the technical assistance. A training program must be created to translate cash and technical manuals into effective, knowledgeable fishermen. The indigenous community fishery projects must find an appropriate agency to coordinate the technical assistance program.

As the policymaking institution for fishery management within the U.S. western Pacific EEZs, the Council would be an excellent resource, working in cooperation with state or territorial agencies like DMWR, for these developing fisheries. These groups, especially the Council, are equipped with all the necessary fishery information and background to assist the indigenous fishery development projects. The Council has been always worked toward sustainable development of its fisheries, as mandated by the Magnuson Act.

The Council will also be helpful to the community fishery with management direction, if this amendment is included in the Magnuson Act. Although it is true that many of the Samoan traditional conservation measures like area and seasonal closures have been in existence much longer than the Council, the Council will be able to provide important assistance in communication and in dealing with contemporary problems. A traditional community-based fishery program certainly will not have a comprehensive communications network. The Council will be able to provide information concerning sources of additional funding, gear development, and the coordination of important information from other agencies and groups. The communication structure that the Council will provide to these community projects is crucial. The Council, will, for instance, be able to provide the communities with information like an impending fishkill or the recent rise of ciguatera (poisoned fish) in a particular species. It will also transmit information the opposite direction, and be able to inform this Committee on the needs and status of the traditional community fisheries.

In short, the Council's resources would be almost as big a blessing to the indigenous fishermen of the American-flag Pacific Islands as the ocean resources they will be managing. The Council, together in consultation with appropriate local agencies, would be indispensable co-managers. We Samoans are a seafaring people who have always depended heavily on our fishery resources. We have a long history of offshore and nearshore fishing and fish are important to our culture and its continuity

in many ways. This legislation will allow indigenous Pacific Islanders to exercise their cultural and social traditions and regain some level of self-determination over their resources, their environment, and themselves. It will merely raise Pacific Islanders to the level of respect and responsibility already accorded to mainland Native Americans. We too are natives on land that is now part of America. I fully support this legislation and believe that Pacific Islanders deserve legal acknowledgement of our control over our marine resources and technical and financial support for community based development of our fisheries.

PREPARED STATEMENT OF GRAYDON "BUDDY" KEALA, KAILUA-KONA, HAWAII

I am Graydon Keala, a native Hawaiian, born in Honolulu and raised on the Island of Kauai from year one. I learned traditional fishing methods from my grandfather and a Hawaiian fishing family on Kauai. When I finally decided upon aquaculture as a career, I was educated in western techniques at the University of Hawaii that served to confirm and strengthen the wisdom of traditional Hawaiian fishing methods. In addition to aquaculture, I have certificates in Environmental Studies and Marine Options Program—Hawaiian Fishponds. I consider my university education to be supplemental to the education I received in the traditional Hawaiian way of observation and practice, and feel privileged to continue to learn from the kupuna [elders].

Thank you for inviting me to speak to you today, it is an honor to be up here. My first involvement in the understanding of your committee and the kinds of issues it represents came by way of S. 1526 The Indian Fish and Wildlife Resources Management Act of 1993. I was invited to provide input to the development of the measure by Senator Inouye's office.

The concerns that I saw being proposed, the approach of understanding them and the problem-solving methods would be inclusive and sensitive to the indigenous and customary rights and practices of the native American and Pacific Island people. The other caveat is that the initiative have a solid voice in what happens at the Federal level and that these concerns could be made into laws to protect and preserve these customary rights.

This was a godsend, for many reasons that I will try to cover in my testimony. Primarily though, I was to the point of frustration with the existing state of affairs with regards to our limited resources, its management, and especially with regards to including native customary practices and beliefs. The Act before me would be a key element to not only promote these issues, but would also empower native Americans, organizations and communities to play a more pro-active role in determining its process and providing management and oversight of the resource.

In a generic sense, most indigenous people have an inherent connection with their environment. In many cases, there is underlaid spiritual reverence and even familial ties associated with these elements. The symbiotic relationship, [beneficial to both host and hostee], and the harmonious union of the native people with their surroundings were developed into a type of stewardship over hundreds and sometimes thousands of years. I firmly believe that in the present time, with dwindling resources, pollution and environmental destruction, the contribution of sustaining ourselves would involve successful concepts that worked for our forefathers. By blending the old with the new, we should incorporate what is available and applicable today from the technological side, with appropriate customary knowledge and practices.

Native Hawaiians developed a type of relationship with the environment that evolved over more than 1,000 years. Their understanding and management of available resources grew more important as the population increased. The most knowledgeable were given the task of management of a particular resource. This knowledge was passed down to a chosen member of the family, and on and on. This was an accumulation of knowledge that allowed the resource to flourish and still be productive for those that depended on it.

Traditional beliefs and customary practices for many Native Hawaiians have been able to transcend time. The management of the fishery was so important that a very strict Kapu [law] applied. Harvesting fish out of season or female species with eggs were punishable by death or removal of an eyeball. The State has recognized traditional Hawaiian fishing conservation practices into the management of the State fisheries. The same months and seasons from the past are used in current statutes to dictate the open and closed fishing seasons for most species today.

From a religious and social aspect, there are many, many connections to our traditional past that I try to incorporate today. Religion played an integral part in the day-to-day life of the Hawaiian. There were the main gods, lesser gods, family

guardians, plant and animal deities, et cetera. Sometimes physical areas and structures were religious. Hawaiians were environmentally oriented and dependent on nature. Religious protocol was involved in all aspects of every day life, from a prayer to greet the morning sun, to opening up a new fishpond. Special fishes and animals were ceremonially blessed and offered to the many different gods.

The beliefs associated with nature provided a social consciousness of respect to the environment strongly backed with religious conviction. This attitude is unique in that it puts the responsibility of harmony and relationship on everyone to everything around them, both physical and spiritual.

For instance, water was spoken of in the context of being life-producing. The traditional water code provided for the stream to always be flowing and pristine from its source to where it embraced the ocean in a fishpond. The inter-dependence of the system, also provided economic arrangement of trade between upland produce and materials with coastal supplies and food. The development of the Hawaiian "almanac" of when to plant, when to harvest, the seasonal cycles, et cetera is still in use by many Hawaiians today.

Today, you can still find traditional knowledge and its practices in rural, grass-roots, predominantly native Hawaiian communities. These communities have made a conscious effort to promote traditional and cultural knowledge, and to provide a needed backdrop for future generations of Hawaiians. It is said by many Hawaiians that our purpose is to maintain and enhance what resources are available and sustain them for future generations. Currently there is a strong Hawaiian resurgence of cultural activities and practices being rediscovered and enhanced. (see Patrick Johnston. "Hana community builds storm-proof fishpond," Ka Wai Ola O OHA, vol. 12, no. 1 (January 1995), p.8.)

I was fortunate to have been raised at a time to have experienced some things of the past that have been negatively impacted by new statutes and laws. As a youth growing up on the island of Kauai, I remember the traditional practice and management of the akule fishery at Kalihiwai Bay, North Kauai. At springtime, these fish would migrate into the bay to rest and feed off the nutrients of Kalihiwai river. A Hawaiian family was the designated konohiki or traditional fishery manager. As it had been for generations, the family was responsible to oversee and manage the areas akule resource.

Watching and observation of what that family did was distinctly traditional to this area. In any case, it would start with the watching of the fishes movement from an elevated spot, usually a mountain outcropping or tall tree. An assessment would tell them what type of fish, size of fish for net mesh determination, amount of fish they would harvest, how much nets to make ready, were they eating, playing, et cetera.

The most critical part of the "catch" was the directing of the net boat around the ball of akule, without scaring the fish and surrounding them totally. This was done by the kilo, from his overlook, he would direct the harvest with flags or arms waving, later using walkie-talkies. I remember two methods of harvest, the hilau which pulled the fish into shore after surrounding the fish in a semi-circle of long net.

The second method, was for larger harvests and utilized a floating net pen that held the fish for up to a week right in the bay. The pen used bamboo floats, and every day divers would check the condition of the fish, remove dead fish, repair holes, and on occasion remove sharks. These sharks were never killed because they were family aumakua or guardian.

Harvesting fish was a hands-on community activity and everyone would come down to help pulling the net into shore, removing fish from the net, carrying fish to be iced, et cetera. Once completed, the harvest was always shared. Anyone who helped got an amount in proportion to their efforts. As a kid, I remember being so proud bringing home my bag of akule for my family, and sharing with my neighbors. The kupuna or elders were given fish out of respect and because they did the same as they were taught by their kupuna. The family watched over and protected the fishery from abuse. This is what I remember of the cultural practices from my youth.

In 1959, the State of Hawaii developed fishing rules and regulations that did away with traditional konohiki fishing rights. The management and care of waters and resources of Hawaii fell under the responsibility of the State's Department of Land and Natural Resources. [see Hawaii Fishing Regulations. State of Hawaii, Division of Aquatic Resources, Dept. of Land and Natural Resources, September 1994].

There is a car bumper sticker that says, "THINK GLOBALLY, ACT LOCALLY." When I see this, I always think, "Not! It should be THINK LOCALLY, ACT GLOBALLY!" I have always felt that Native Hawaiians, as with most indigenous peoples, have inherent knowledge regarding their local environment. This knowledge, if accepted, can provide needed input in dealing with today's global concerns and issues.

Pacific Islanders have always had to view their island as a limited resource. Survival of the population depended on their ability to manage those resources. We are facing a time when the Earth is indicating depleted and limited resources, something unheard of 100 years ago. We feel, as native people, that we may have much to contribute in these important areas today.

My personal interest and professional involvement has led me to the area of loko i'a, traditional Hawaiian Fishponds unique in the world. While other native peoples may have practiced a form of aquaculture, Hawaii provided a uniquely sophisticated version, different from anyplace else in America and the Pacific. Although not an open ocean fishery resource, it played an important part in the well being of the fishery and its nearshore environment. Traditional Hawaiian Fishpond systems and its associated activities have been my passion for almost 20 years. [see Hawaiian Fishpond Revitalization Project and the Oceanic Institute. Hawaiian Fishpond Revitalization, A Manual. 1993.]

Loko i'a were ecologically balanced environments that were utilized for the cultivation and production of fish, shellfish and sea plants. This was accomplished by the observation, transfer and development of low impact, extensive aquaculture systems developed over 700 years by Hawaiians. Natural elements of tides, lunar phases, fishing seasons and other phenomena indicated "times" to harvest, stock, rest and rebuild walls.

The methodology of Hawaiian Fishpond operations included kia i loko or pond operators that utilized enclosed bays or ponds to maintain an estuary-like environment using fresh, nutrient rich stream run-off to fuel the primary productive level for the extensive cultivation [300-600 lbs/acre] of mullet [ama'ama] and milkfish [awa], herbivorous fishpond species. Various other traditional species of fish, sea plants and shellfish were grown, but were water quality dependent.

These systems of inland or coastal fishponds were "controlled" through the input of spring or stream fed channels [auwai] and/or by the manipulation of "sea" gates [makaha] that provide water circulation, fish stock recruitment and harvesting. Fishpond walls [kuapa] of kuapa and puuone type ponds, were constructed of rock material that were designed to absorb wave energy and allow the percolation of oxygenated water to enter the loko ia. Although the detailed management from fishpond to fishpond might have been site specific, the overall methodology is the same.

The methodology of Hawaiian Fishpond aquaculture should not be misconstrued as modern intensive aquaculture practices. These systems are very different. Modern aquaculture looks at intensive production to make a profit, usually above 2000 lbs/acre/year. In order to do this in a Hawaiian fishpond, which has very little internal control, you would have to impact the harmony of its ecological and environmental balance through "external inputs" like paddle wheels, more feeds, artificial aeration, introduced species, \$\$\$\$, etc. The Best Management Practices of modern aquaculture practices is where these approaches apply. Loko ia methodology does not harm the environment if operated traditionally.

The Hawaiian fishpond is itself based on a biologically deteriorating processes called eutrophication. Eutrophication is the progression and evolution of an open-pond system into a wetland swamp, eventually becoming a marsh, then a pasture. A prime example of this is Kawainui Marsh, once a large productive loko i'a, it is in the final stages of evolution as a result of not being actively managed and used. To compound this, development of all kinds, introduced species such as mangrove and tilapia, and silt/mud run-off have accelerated the eutrophication process.

I am an educated Native Hawaiian aquaculturist with a university degree, yet I never fail to be amazed and humbled at the genius involved with the creation and development of the loko i'a system, and the degree of intelligence with which it was managed and operated. The rehabilitation of traditional loko i'a practices and methodology should be recognized for its merits, and incorporated into aspects of our culture as we live it today.

Loko i'a systems are capable of being used toward the rehabilitation of native species through fishery enhancement. Traditionally, Hawaiian Fishponds were able to naturally recruit fish "seedstock" from the adjacent nearshore fishery. Today, the fishery is incapable of providing fish stocking materials due to many negative factors. Fortunately for modern aquaculture research, we can aquaculturally produce fish stocks, thereby, improving fish stocks of Hawaii's fisheries. This is just an example of the "blend" of traditional and modern, which we see as securing this future fishery. [see "Mullet Spawn Year Round at the Oceanic Institute," The Oceanic Institute Newline, Vol. 7, No. 2 [Summer 1994], pps. 1-2.]

There are several Hawaiian Fishponds that are being used as nursery systems for stock enhancement activities already. Aquaculturally produced seedstocks leave larval rearing facilities and are nursed to fingerling size in fishponds until they can be tagged and released for the recreational fishermen. Tagging these fishes allow

for fishery population dynamics to be researched and identified. The use of striped mullet, actually enhances the environment, purely as a species characteristic. They graze and are 90% efficient in consuming organic silt and detritus build-up. (see "Stock Enhancement Program Meets with Success," The Oceanic Institute Newline, Vol. 4, No. 4 (December 1991), pps. 1-2.)

Within my experiences as an aquaculturist, I have had the opportunity to develop field and classroom curriculum that has contributed to hands-on education process using loko i'a as a teaching resource for various disciplines—Hawaiian culture, fine arts, chemistry, astronomy, computer programming, biology, history, oceanography, archaeology, business entrepreneurship, resource management, environmental studies and so on. It is Hawaiian Sciences at it's best. (see "Aquaculture Workshop Participants Perform Baseline Study for National Park," The Oceanic Institute Newline, Vol. 5, No. 3 (September 1992), pps. 1-2)

I would advocate for an educational curriculum utilizing these Hawaiian Sciences. A type of learning that would incorporate traditional applications and eventually accommodate and integrate all levels of academics in elementary, secondary, higher education, research, thesis, etc. And the loko i'a is the textbook. (see Nakagawa, Alan. "Aquaculture Science Project, Grades 11-12," Invitation to Excellence, New Ideas for Teaching Mathematics and Science, Macmillan/McGraw-Hill, 1992 Business Week Awards.)

To re-open the use of these dormant farms would contribute to releasing land for other uses, as the physical structure of the fishponds are still intact. Economic contributions are more straight forward, once the loko i'a are removed from the heavy permit criteria and restored. The benefits take many economic forms of fishery enhancement not only for food but for recreation and eco tourism. (see Kent Fleming, Graydon Keala and William Monahan. "The Economics of Revitalizing Hawaiian Fishpond Production," AgriBusiness, Number 9, February 1995.)

Compromising all Hawaiian Fishpond Revitalization efforts are the existence of Federal, State and County permits and regulations that put the Hawaiian fishpond at risk of never being utilized again. The main issue in the restoration of the loko i'a is the permit process. When this problem is resolved all the other beneficial by-products can be realized; i.e., education, economic development, cultural rehabilitation, self-sufficiency, fishery enhancement, resource renewal, etc. (see Permits and Regulations for Aquaculture in Hawaii. Aquaculture Development Program, Dept. of Land and Natural Resources.)

Permit Problems and Issues. The permit and regulatory process has held Hawaiian Fishponds hostage for decades. In a pending Fishpond Restoration project on Molokai, the pond operator has faced a multitude of Federal, State and County permit applications that has cost over \$65,000 in costs and is on its 3rd year of permit application approvals-pending. This actual case study involving permits, has also caused a division in the community and conflicts within departmental agencies. (see Hawaian Fishpond Revitalization Project and the Oceanic Institute. Hawaiian Fishpond Revitalization, Proceedings of Hana Symposium II, September 22-24, 1993.)

In the 1994 and 1995 State Legislature Session, an initiative was introduced as legislation to "streamline" the permits for restoration of these traditional Hawaiian Fishponds. House Bill 3010 and its successor House Bill 1763 were promoted. This bill provided an aggressive approach to the permit process, removing all elements of rules and regulations and putting this process under one "clearing-house". This "clearing-house" would be allowed the ability to provide an affordable, short track process incorporating protective measures to provide safeguards to any regulatory abuse and misuse. In order to do this, Traditional Hawaiian Fishpond Management methodology would be mandatory in the restoration process and operational management of all loko ia.

"Traditional Hawaiian Fishpond Management methodology would support the restorative outcome as a benign environmental impact, Hawaiians incorporated harmony with the environment as religious protocol. The economic incentive would involve an extensive rather than intensive production level, traditionally 350-600 lbs./ acre/year. Use of traditional ia species—ama ama, awa, moi, ahole, etc., would be cultured. These fishes enhanced their environment and are biologically more compatible with each other. From a federal and state level, there are historic preservation laws that support and protect this type of cultural effort."

In 1995, House Bill 1763 introduced and passed a "streamline" permit process to assist Hawaiian Fishpond restoration and preservation activities. Although a bill was crafted, there were some key compromises and the Federal Government was not included intimately in the development of the bill strategy. Federal cooperation would have played a major role in Hawaiian fishpond exemptions, permit cost reductions, and time conditions that would benefit this initiative. Permit facilitation is the next area of consideration, what specific form the new application would take,

what new criteria will be issued, and the integration of all agencies into the process, especially Hawaiian representation.

I am elated to see the first step in Proposed Amendments to the Magnuson Fishery Conservation and Management Act. The amended Section, Hawaiian Community Fisheries Act, will provide necessary language to generate the type of cooperative efforts and allow more impact for Native Americans, Native Hawaiians and Pacific Islanders. It will allow the opportunity they deserve to self-determination, the chance to restore customary rights and practices and most important, a stake in the future of their resources.

I support incorporating the understanding of traditional resource management concepts in Government agencies. This will also assist in the development of a management plan that is sensitive to tribe or area-specific issues. Including Native Hawaiians and Hawaiian organizations in the development of resource management strategies is imperative. Also, where applicable and appropriate, I would like to envision their input, knowledge, and oversight on the rehabilitation and enhancement of our fishery.

Hawaii is essentially an oasis over 2,000 miles away from the nearest continental land mass. Based on this, many open ocean species migrate to the island chain to nourish themselves for continued migratory travel or to reproduce offspring in the nutrient-rich environment the Hawaiian archipelago has to offer. The orderly fashion of developing strategy should take into account the dependency of the nearshore fishery with offshore productivity. Intertwined with this would be the way we view and protect the nearshore environment by regulating land generated pollution and destruction of productive coastal areas.

With the existing amount of "redtape" bureaucracy to be faced with coastal and open ocean fisheries, any changes to statutes and laws will also impact State, County and even Federal cross jurisdiction. Careful coordination of strategic development will be the key elements. I support the Native Hawaiian involvement in the resource protection, planning, management and coordination with governmental agencies. These are critical to the success of this vision.

Strategic Intent Plan—

1. Understanding the fishery issue
 - a. Native Hawaiian Rights perspective
 - b. Existing status and agency responsibility
2. Identification of accepted traditional practices and fishery resources
 - a. Matrix with applicable high-tech research
 - b. Development of "blended" application if appropriate
3. Development of New Laws and Mandates
 - a. Institutionalize combined efforts of Federal, State, County, and Hawaiian agencies
 - b. Identify existing rules and amendments with regard to traditional practices
4. Empowerment of Hawaiian communities and organizations
 - a. Foster the development of Hawaiian communities and organization towards management, conservation, enforcement, and economic enhancement
 - b. Identification of organization

Today, the concerns I see come from Native Hawaiians who have experienced the bounty of the past and want these resources maintained for their future generations. It is a concern that looks at benefits of education, cultural practices, history, economic development, and self-determination, all of which are manifested in this bill.

Tradition beliefs and practices can be a valuable resource, and can also provide many other positive contributions as a vehicle for economic development, all levels of growth in education, environmental enhancement, social rehabilitation, not to mention a source of food production.

As lawmakers, you have the power to amend the law and fulfill recommendations identified in the intent of the Magnuson Act. It is imperative that we wait no longer, for to wait, in my opinion, is to lose more of our culture, a vital aspect of our identity.

In closing, I'd like to say that as a contemporary Hawaiian I have been able to focus my energy and direction by coming back to my traditional roots. As it becomes harder to practice our culture without offending those who are not Hawaiian, I truly believe that Native Hawaiians, Native Americans and Pacific Islanders should be included in the process of determining and ultimately managing their own resources. What these indigenous people knew can make positive contributions in achieving the objectives manifested in this legislation, not only for the Native people, but for all people. Mahalo for this opportunity to testify.

PREPARED STATEMENT OF KELSON K. POEPOE, KUALAPU'U, MOLOKAI

Good morning Senator Inouye. I am pleased to appear before you this morning in support of the proposed amendments to the Magnuson Act that will benefit indigenous fishing rights and Native Hawaiian communities.

As a native Hawaiian fisherman, I would like to have our Hawaiian fishing rights recognized in all Federal fisheries management plans and actions. I am involved in subsistence fisheries projects and would like to see amendments which would authorize the establishment of native Hawaiian and other indigenous community-based fishery demonstration projects.

There is a need for federal funding and assistance for Native Hawaiian/Pacific fisheries projects. It is critical to our survival as a people to be able to practice traditional methods in fisheries resource management.

Historically, traditional Hawaiian spiritual beliefs and practices centered around a very complex and detailed management program in which a natural balance was maintained so that there was never a scarcity of ocean products to provide food for the populations. This was because care was given to the management of each species. Growth and breeding cycles were carefully studied and strict rules adhered to in order to allow species to proliferate. By tradition these rules were passed on to generations of family members and weaved into the spiritual fiber of the Hawaiian peoples' daily existence. A natural balance was maintained through the belief that man's role was as caretaker of the natural bounty provided to him by the benevolence of the Akua—or gods.

Behind every action was an underlying reason based on conservation and natural balance. Observations were made of seasons, moon cycles, weather, coastal and deep-water characteristics, gathering practices and even eating habits, to insure a continuity in the tapping of the ocean as a food source and to prevent the depletion of any fishing grounds.

Every Hawaiian family had access to a large variety of food from the sea, whether they were fishing families or involved in other occupations that served the community. The Hawaiian community was an interdependent one—they relied on each other to insure provision for all. There was no land ownership system. A drastic shift in the Hawaiian way of life came about as a result of the Western influence of economic gain and capitalism. Concern for the individual became more important than that for the community. Land ownership and acquiring wealth were the goals that individuals sought. The resulting shift created many changes, among them two unfortunate ones in terms of Hawaiian fishing practices. One was the eventual discontinuance of a conservation and management fishing program that would insure a supply that would meet the demands of the people. The other was the Hawaiian fisherman's disadvantage of neither having understood the new economic system nor having had the savvy to compete successfully in the market. Hawaiian fishermen continue to be at a disadvantage as simple gathering becomes more and more influenced by competition against the larger fishing fleets and dwindling fish populations. There has become a need to move into deeper waters, farther off places and more difficult and treacherous locations in order to gather food.

Traditionally, the situation of land and coastal features provided a framework in which management was based on a social hierarchy that included the ali'i or chief and his main adviser, the konohih. Main land divisions ran from mountain top shore regions because of the integral relationship that the land ecosystems had with the ocean ecosystems. In short, what happened on the land affected what happened in the ocean. This land division was called an 'ahupua'a. The 'ahupua'a contained everything the people needed in order to survive.

The Mo'omomi area is located within a large 'ahupua'a on the northwest side of the island of Moloka'i. This is a traditional Hawaiian fishing area which the community has selected as an ideal site for a conservation program using traditional Hawaiian practices to maintain the economic well-being of our coastal community and the island as a whole.

With relation to traditional 'ahupua'a land/sea management practices, a viable conservation program could be initiated and maintained, with the Hui Malama o Mo'omomi, our fishery management program, set up to promote the economic health of our community. Traditional Hawaiian conservation practices, management, and enforcement are at the heart of our project. The intent is to preserve and enhance our coastal resources and at the same time use the resources to feed our families, in the same fashion as did our ancestors.

Traditional regulations of species harvest will be according to size, sex and season. Quotas will be based on family size, using the principle of, "take only what you need to feed your family and leave the rest for another day and another family." "En-

forcement will be a joint effort between the state Department of land and Natural Resources and the community based members.

Some of the objectives of our program include:

- seeking funding for training and educational programs for residents to learn traditional fishing practices,
- funding for fishing and management equipment
- scholarship funds for careers in traditional fisheries and fisheries management
- funding for research in traditional fisheries
- establishment of natural and artificial hatcheries for stock enhancement programs

We would like to work with and receive assistance from the Federal Government in our efforts as indigenous natives of Hawai'i to use traditional conservation methods to preserve and enhance our coastal fisheries for the economic and cultural well-being of our people.

PREPARED STATEMENT OF CLAYTON H.W. HEE, CHAIRMAN, OFFICE OF HAWAIIAN AFFAIRS

Good morning, Senators Inouye and Akaka. My name is Sherry P. Broder. I am the Attorney for the Trustees of the Office of Hawaiian Affairs and represent the Board of Trustees in a wide variety of issues. Today, I am testifying on behalf of the Chairman of the Board of Trustees, Clayton H.W. Hee. Because of the importance of these federal matters to the Native Hawaiians, Chairman Hee wishes to offer this testimony in addition to the Office of Hawaiian Affairs testimony given by Scotty Bowman. Chairman Hee urges this Committee to enact the Hawaiian Community Fisheries Act.

In this testimony, the focus is on the similarities between Native Hawaiians and other Native Americans in terms of their legal Native Hawaiians are Polynesians, with a rich tradition of their own. But in their relationship with the United States, and in their legal status, the similarities are clear.

Like other Native Americans, the Native Hawaiians had their own sovereign nation and their own highly evolved and sophisticated culture prior to Western contact. And like other Native Americans, the Native Hawaiians lost their autonomy and much of their culture as a result of this contact. Through oppression and disease, through misunderstandings and manipulations, many Native Hawaiians lost their lands, their culture, their heritage, their language, and their resources. Like other Native Americans, the Native Hawaiians are now seeking to restore their sovereign autonomy and have a justified claim to resources. As a result of the leadership of Senators Akaka and Inouye, the United States Congress and President Clinton recognized the justice of the Native Hawaiian claim in November 1993, when the Apology Resolution was signed.

The Hawaiian Community Fisheries Act is designed to amend the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) to make funds available to "not less than three and not more than five Native Hawaiian community-based fishery demonstration projects" to allow Native Hawaiians to manage and develop fisheries in the waters surrounding the Hawaiian Islands. These funds will be allocated to Native Hawaiian organizations that are composed primarily of Native Hawaiians and are organized for the purpose of protecting and developing traditional fisheries practices.

This proposed act is an innovative and creative approach that recognizes the justified claim of Native Hawaiians to these ocean resources. This enactment should not be viewed as a handout to Native Hawaiians, but rather as a recognition of their valid claim to share in the coastal resources around Hawaii.

The Hawaiians traditionally lived off the sea and had a close and respectful relationship with the creatures that inhabit the ocean. They traveled throughout the archipelago to fish, and carefully managed their coastal resources. The konohiki declared certain coastal species to be off limits during certain times of year in order to ensure their continued survival. Fish ponds were built on all the islands to produce more fish for food. Some of these are now being restored and used.

The State of Hawaii has recognized that the submerged lands (and thus the resources of the sea) are part of the "ceded lands" that were illegally acquired by the United States in 1898 without the consent of or compensation to the Hawaiian people. These lands are now part of the public trust that generates revenue for the Office of Hawaiian Affairs. The Native Hawaiians have a claim to these resources, and this act would take a small but important step toward recognizing that claim and

enabling the Hawaiians to participate in managing and developing the offshore fisheries.

Other Native Americans have made great strides in regaining their fishery resources. The Indians in the State of Washington have rights to a substantial percentage of the salmon in the Columbia River and its tributaries, and the Indians in the Puget Sound area have just received a right to 50% of the shellfish in that productive area. Similarly, the Maori in Aotearoa (New Zealand) have been given ownership of the major commercial fishery operations in recognition of their justified claims to the offshore resources. The Native Hawaiians deserve no less and this bill is at least a step in the right direction.

PREPARED STATEMENT OF SCOTTY BOWMAN, GOVERNMENT AFFAIRS OFFICER, OFFICE HAWAIIAN AFFAIRS

Aloha kakahiaka Senators Inouye and Akaka. I am Scotty Bowman, Government Affairs officer for the Office of Hawaiian Affairs (OHA), and I speak this morning in support of passage of proposed amendments to the Magnuson Fishery Conservation and Management Act, referred to as the Hawaiian Community Fisheries Act. OHA looks forward to your sharing our testimony with your colleagues on the Senate committees on Indian Affairs and Commerce, Science and Transportation.

Although OHA does not believe fishing rights should be separated from customary and traditional practices or segregated into designated areas of allowed use, we recognize it is very difficult today to describe fishing rights in the traditional way because coastline development in Hawai'i has displaced ahupua'a tenants and disrupted Native Hawaiian fishing rights which were commonly practiced for centuries.

During meetings with community groups on each island, OHA representatives have been saddened by numerous stories relating to drastic reduction, or total depletion, of marine resources. The examples, too numerous to list, include Lahaina on Maui, Mo'omomi on Moloka'i, Miloli'i on the island of Hawai'i, and La'ie on Oah'u.

In its effort to find options for protecting Hawaiian fishing rights, OHA has learned that numerous factors negatively impact traditional fishing practices. These include the interaction of deep water fishing practices, an endless list of environmental impacts and international fishing covenants.

In view of this knowledge, OHA supported legislation introduced into the 1994 State Legislature which authorized the Division of Aquatic Resources of the State Department of Land and Natural Resources to establish a Subsistence Fishing Pilot Demonstration Project at Kawa'aloa and Mo'omomi Bays on the island of Moloka'i.

We believe this pilot project will serve as an important step toward expanding our knowledge of the State's fishing resources in this area by:

1. Determining where the fishing resources are located.
2. Identifying the competitive forces which impinge on these resources.
3. Determining how those negative and counter-productive forces can be mitigated or eliminated.
4. Assessing the management strategies, enforcement of rules and regulations, and examining funding requirements for assuring full exercise of traditional fishing and marine gathering rights.

Failure to acquire this knowledge for this area, and eventually for the entire State, may extinguish, rather than expand, Native Hawaiian fishing rights. The information gathered from this and similar endeavors will be invaluable in formulating governmental policies to enhance and protect traditional fishing practices throughout the entire State.

While this legislation was being discussed during the 1994 Legislative Session, representatives from other Hawaiian fishing communities throughout the State indicated a keen interest in establishing similar subsistence fishing projects in the waters fronting their communities.

Amending the Magnuson Fishery Conservation and Management Act by passing the Hawaiian Community Fisheries Act will provide the United States with an excellent opportunity to preserve and protect traditional Native Hawaiian fishing practices, including the management and conservation of fisheries resources, the enforcement of conservation measures and the integration of such practices with modern management and conservation principles vital to the well-being of Native Hawaiians. In addition, adoption of these amendments is recognition of the distinct rights of Native Hawaiians to continue to use their fishery resource for subsistence, economic, social, cultural and spiritual sustenance.

Thank you for allowing us to provide testimony on this important measure. I will be happy to answer any questions you may have.

PREPARED STATEMENT OF HAROLD H. MEHEULA, SR., PRESIDENT, NATIVE HAWAIIAN FISHERMENS' ASSOCIATION

Aloha Kakahiaka Senator Daniel K. Akaka and Senator Daniel K. Inouye

I am Harold H. Meheula, Sr., President of the Native Hawaiian Fishermen's Association.

I believe this amendment is a step forward to help the Hawaiian people with management and fishery conservation. Hawaiians have been in community fisheries before 1778, as inhabitants of the most isolated archipelago in the world, the native Hawaiian people relied on their ocean fishery resources for economic, social, cultural, and spiritual sustenance. The United States should assume special responsibility for native Hawaiian lands and resources. Furthermore, the United States should recognize that the federal policy of self-determination and self governance extends to the native Hawaiian people.

I am on the fishing panel as chairman of the Kane'ohe Bay and also a voting member with the Regional Kane'ohe Bay Board. This year I was appointed by Governor Cayetano, my term is to expire in 1998. Efforts to bring the Hawaiian and commercial fishermen together in the past two months have been very difficult. The organization tried for six years without success. I would like to differentiate between groups by using Hawaiian Konohiki rights as an example. Primarily in reference to the kaukau fishermen who have exclusive rights from the shore to one mile out, then beyond the one mile boundary marker, the commercial fishermen boundaries begin.

Due to recent cutbacks in employment, the Native Hawaiian Fishermen's Association would like to organize a union membership that would create opportunities for the people of Hawai'i. Fishing is a competitive industry, our vessels are limited to about twenty-five miles. There could be a Mother ship type of fishing by transporting small boats (10 each) on the deck of large freighters (Mother ship) into deeper waters. All heading to fishing areas and returning safely home with fish caught during a venture. Other considerations would be fishing canneries on the sea by having airplanes spot fishing schools and identifying locations of them with the use of ship-to-shore radios. Mahalo a nui loa for this opportunity to address this with you.

PREPARED STATEMENT OF FRANCIS I. KUAILANI, SR., PARK SUPERINTENDENT, KALOKO-HONOKOHAU NATIONAL HISTORICAL PARK, NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR

Thank you for this opportunity to comment on the Role of Native Hawaiian and Indigenous Pacific Islanders on the Conservation, Management and Development of Western Pacific Fisheries Consistent with the Goals of Conservation and Management of Ocean Resources in Honolulu on June 1, 1995. I appreciate the comments you and Senator Daniel Akaka made to the group on dealing with concerns relating to in-shore fishing and Hawaiian fishpond management.

Kaloko-Honokohau National Historical Park, Establish and authorized by Congress in 1978 by Public Law 95-625 "to provide a center for the preservation, interpretation, and perpetuation of traditional native Hawaiian activities, and culture, and to demonstrate historic land use patterns as well as provide needed resources for the education, enjoyment, and appreciation of such traditional native Hawaiian activities and culture by local residents and visitors..." and be administered in accordance with "provision of the law generally applicable to the national park system, including the Acts approved August 25, 1916, and August 21 1935..." These acts give direction in preserving natural and cultural resources of the park. Because the park has extensive archaeological and biotic features, both the National Historic Preservation Act and management options. Nearly all of the land area in the park has been designated a national historic landmark; two endangered vertebrate species nest within the park.

Congressional authorization of the national historical park was based primarily on a proposal contained in the 1974 study report, Spirit of Kaloko-Honokohau. Mandated by Congress, this study report was developed by an advisory commission of native Hawaiians Kaloko-Honokohau is located on the North Kona coast of the island of Hawai'i, approximately three miles north of the town of Kailua and three miles south of the Keahole Airport. Hualalai volcano's 8,271-foot summit lies 10 miles east of the park. The park area consists of those lands in the ahupua'a of Kaloko and Honokohau makai of the Queen Kalahumanu Highway, a coastal strip extending to Wawahiwa Point in the ahupua'a of Kohanaiki, and two small parcels located in the ahupua'a of Kealakehe next to the Honokohau small boat harbor (see Figure 2). The park also includes the waters of Honokohau Bay.

In 1982, the National Park Service effected a minor refinement of the park's southern boundary on State of Hawai'i lands in the vicinity of the small boat harbor (notice of this boundary revision appeared in the Federal Register of March 25, 1983). The purpose of the revision was to recognize the expansion of the small boat harbor. The revision was carried out in consultation and cooperation with the State Department of Transportation (Harbors Division).

At the time of authorization, park lands and waters were composed of four parcels of privately owned lands totalling in excess of 630 acres, and approximately 500 acres under the jurisdiction of the State of Hawai'i (nearly all of the State holdings within the park are the offshore waters of Honokohau Bay). Section 505(b) of the authorizing legislation state that "Except for any lands owned by the State of Hawai'i or its subdivisions, which may be acquired only by donation, the Secretary is authorized to acquire the lands above by donation, exchange, or purchase through the use of donated or appropriated funds..."

Due to the unavailability of appropriated funds to acquire privately owned lands in the park and the lack of success in acquiring these lands by other means, in the 1980, Public Law 95-625 was amended to authorize the National Park Service to acquire Federal surplus lands from the General Services Administration (GSA) for the purpose of equal value exchange for privately owned lands in the park. In 1983, authority was given to the National Park Service to acquire privately owned lands in the park by the issuance of credits in payment for the lands to surplus property accounts to be established by GSA for the former landowners. Further, the former landowners could then use the credits to purchase surplus properties without geographical limitation by bidding on them. The above described methods have been used to acquire lands at Kaloko-Honokohau.

The National Park Service has acquired three of the four privately owned parcels, the last one in October 1990, and has achieved a land base sufficient to begin master planning for the future operation and development of the national historical park. A general management plan is now needed to provide a long-range framework to permit orderly development and public use of the park.

The general management plan for Kaloko-Honokohau is to be based on the recommendations for preservation, interpretation, management, and research contained in the 1974 Spirit of Ka-loko Hono-ko-hau. The study report's advisory commission called for the site of the Honokohau Settlement National Historical Landmark and adjacent waters to be preserved for the benefit of the Hawaiian people and the nation as a part of the national park system. The park was envisioned by the study commission as a center for the reorientation and perpetuation of Hawaiian activities, culture, and basic and use patterns.

Other planning documents used in the preparation of this general management plan consist of the 1982 Resource Protection Case Study, the 1984 Land Protection Plan and Addendums (1986 and 1989), the 1988 Statement for Management, and the 1991 Resource Management Plan. The case study recommended (1) that the boundaries of the park remain as originally authorized, except for a refinement in the southern boundary around the boat harbor, and (2) that all privately owned lands in the park be acquired in fee. The land protection plan and its addendums reiterated the need for fee acquisition of the privately held lands in the park. This was judged to be the most effective way to ensure permanent protection of resources, provision of visitor use, and the development of visitor and cultural centers, as well as to satisfy the long-held concerns of property owners. The plan also set priorities for land acquisition on a tract-by-tract basis. The statement for management identifies management objectives for the park in resource management, research, interpretation/visitor use, cooperation, and operation/safety. The resource management plan focuses on the major cultural and natural resource related issues now facing Kaloko-Honokohau. After identifying and describing these issues, the plan identifies individual resource management projects and sets a funding priority for future programming activity needs on a project-by-project basis.

This general management plan takes the concepts of preservation, use, and development contained in the 1974 Spirit of Ka-loko Honoko-hau report and translates them into specific proposals for action. These proposed actions will encompass the full spectrum of general management plan issues, including visitor services, the interpretation of park resources, park administration and maintenance, and the protection and management of resources. Cost estimates to carry out the proposed actions have been developed for construction and staffing.

Direction provided in the authorizing legislation germane to the development of this general management plan includes: (1) the provision of traditional native Hawaiian accommodations; (2) entering into cooperative agreements with the State of Hawai'i for the management of submerged lands within the authorized boundary; and (3) agreements with other government entities and private landowners to estab-

lish adequate controls on air and water quality and scenic and aesthetic values of the surrounding land and water. The authorizing legislation also called for the establishment of a nine-member advisory commission for the park. The commission, to be appointed by the Secretary of the Interior, is to have at least six members be native Hawaiians.

Kaloko-Honokohau's general management plan must deal not only with customary resource management and visitor use matters, it must also attempt to convey a real sense of this very special place. When Congress authorized the park, it endorsed the concept of a place where Hawaiians and others could return to live, at least temporarily, in the manner of their forefathers, and to have the opportunity to learn by experiencing some of the cultural values of the past. Therefore, in the planning of needed visitor park facilities and in the future management and interpretation of park resources, we (the National Park Service and others involved in the development of this master plan) must be open to the "spirit" of Kaloko-Honokohau and allow it to guide us. We must try to look at things as the Hawaiians would have and see not only what's there physically, but what's there spiritually.

This general management plan is the first comprehensive planning document for the park. Consequently, it was prepared in sufficient detail to proceed directly to design of needed facilities and the implementation of proposed resource management actions.

At the onset of the planning process, public scoping meetings were held followed by an open period to receive comment. During this period, views and concerns were expressed by the public. Based on the careful consideration of these views and concerns, major plan issues were defined. This general management plan deals with the following major issues now facing Kaloko-Honokohau. These issues, in turn, form the basis for the development of plan alternatives, including the proposed action.

Within authorized boundaries, an 18-acre coastal strip in the ahupua'a of Kohanaiki from the Kaloko ahupua'a line north to Wawahiwaa Point remains in private ownership. This parcel contains significant archaeological features, including a heiau, and is the northern anchor of Honokohau Bay, an important park resource.

The intent of the National Park Service is to acquire all privately-owned lands within the authorized boundaries of Kaloko-Honokohau National Historical Park. In 1986 land classification of the 18 acres within Kaloko-Honokohau was changed from Conservation to Urban by the State Land Use Commission. The change was requested by the property owner in order to permit the development of a large resort-residential project on several hundred acres of the makai lands in the Kohanaiki ahupuaa. Lands within the authorized boundaries of the national park comprise most of the coastal portion of the total project.

Local residents have publicly expressed opposition to the development project, particularly the coastal portion. To date, no permits have been obtained by the developer from either the Corps of Engineers or Hawai'i County for the marina portion of the project, which falls within the parks authorized boundary. At one of the public scoping meetings, the developer's representative stated that plans for the marina portion of the project had been postponed.

During the scoping period for general management plan preparation, the National Park Service received more than 900 responses in the form of public comment on many plan issues. Of these 900 responses, nearly 60 percent were concerned with the land acquisition issue and called on the National Park Service to include the 18-acre parcel in the park and opposed plans for development there. Only one response objected to the National Park Service acquiring additional beach front property.

The park contains within its authorized boundaries more than 500 acres under the jurisdiction of the State of Hawai'i. Nearly all of this area is comprised of the offshore waters of Honokohau Bay these waters are administered by the State Department of Land and Natural Resources. Two small land parcels on either side of the entrance to Honokohau Harbor total about 26 acres and are also administered by the Department of Land and Natural Resources. Both parcels contain significant archaeological sites. In addition, the portion of the historic Mamalahoa Trail corridor within the park is also under the jurisdiction of the Department of Land and Natural Resources. Outside park boundaries, the Department of Transportation has an easement over the entrance to Honokohau Harbor. The National Park Service believes it would be desirable to be involved in the management and protection of the lands and waters within the park owned by the State because of the nationally significant cultural, natural, and marine resources found there.

The National Park Service is attempting to negotiate a lease agreement with the Department of Land and Natural Resources covering the 26 acres of land within authorized boundaries owned by the State of Hawai'i and containing important park

resources. These lands consist of a nine-acre parcel just north of the Honokohau Harbor entrance containing archaeological features and anchialine ponds, and a 17-acre parcel south of the harbor containing the Makazopio heiau, anchialine ponds, and the fine sand beach at Alazula cove. Alternate lease language is under consideration by State and National Park Service officials.

To date, there has been no action on the National Park Service's request to the State Department of Land and Natural Resources to designate the offshore waters within Kaloko-Honokohau's boundaries as a Marine Fisheries Management Area or Marine Life Conservation District.

Future planning for the park because of its location next to an expanding urbanized area needs to be done in a regional context, taking into account what is happening on lands around the park. Over the past two decades, major changes in land use have occurred in the vicinity of Kaloko-Honokohau. The coming decades promise even greater change will take place on these adjacent lands. No longer will they be in open space and unoccupied. Light industrial development has already occurred on some of the mauka lands and there are plans for much more to the north and south of the park resorts, residential housing, commercial and governmental centers, educational facilities—all part of the plan to make nearby Kailua town a major future urban growth area for the island of Hawai'i.

The study report, Spirit of Ka-loko Hono-ko-hau, calls for the use of the traditional Hawaiian ahupua'a concept of land use in securing offsite controls to ensure that the integrity of Kaloko-Honokohau is maintained. The study report stated that the State of Hawai'i should be prevailed upon to keep much of the area around the then proposed park in the Conservation District classification. Unfortunately, in the intervening years, the opposite has occurred and much of the land around Kaloko-Honokohau has been reclassified from the Conservation to the Urban District to pave the way for future development. Regarding adjacent land uses, the 1974 report also those activities which are compatible with a national park. Similarly, the report calls for Hawai'i County to zone adjacent lands to preserve the integrity of the park and protect its water resources.

Developing the needed coordination with Federal, State, and local agencies leading to the establishment of adequate controls on air and water quality and the scenic and aesthetic values of the surrounding land will be very difficult in light of the extent and nature of the existing zoning and developments new proposed on these lands.

At Kaloko-Honokohau the significance and density of Hawaiian archaeological sites and features intermixed with important natural values such as endangered water bird habitat and overlaid with an expanding demand for recreational use foretell that resource management will be a complicated interplay of goals that may sometimes conflict. Further complicating resource management in the park are the rapid changes in land use now occurring on surrounding lands. These developments on adjacent lands and the infrastructure required to support them have great potential to harm resources within the park.

Although there are some gaps in needed baseline resource information, quite a lot is known about the cultural and natural values at Kaloko-Honokohau. Resource management is ongoing. The removal of alien red mangrove from Kaloko fishpond has received high priority and is now completed. Some mangrove removal is also taking place at 'Aimakapa fishpond, along with selective removal of kiawe, another alien plant. Many mangrove seedlings still remain in the park and are constantly sprouting. The effort to eradicate mangrove from the park is ongoing and will likely continue over the next several years. Stabilization and restoration work on the historic Mamalahoa Trail and other important cultural sites has also been carried out.

A resource management plan (1991), the first, has been prepared for the park. Specific cultural and natural resource management issues have been identified and strategies developed for dealing with them. The cultural values connected with Kaloko-Honokohau are of utmost importance not only because of the significance of the resource found there—i.e., the physical sites and features themselves—but because of the deep emotional significance this particular place has for Hawaiians. This significance is manifested in the spiritual sacredness of Hawaiian burial sites scattered throughout the area and the guardian spirit said to be associated with Kaloko fishpond, and the belief that somewhere in the park the bones of Kamehameha the Great are interred. These intangibles make caring for the park's cultural values and resources especially important. Implicit in this care will be maintaining a special sensitivity to Hawaiian traditions and religious beliefs.

Visitors to Kaloko-Honokohau are certain to increase substantially in the future. In 1988, the first year that visitation figures were kept, about 12,500 visit were recorded. In 1989, visitation to the park had risen to well over 17,000, by 1990 it was 23,600, and by 1991 it had doubled over the previous year to 46 790. During this

entire period, the park lacked visitor amenities and still was relatively unknown to the public. Nearly all of the 1991 increase came from beach users of the Honokohau parcel acquired in late 1990.

West Hawai'i (South Kohala and North Kona) is the principal visitor destination area for the island of Hawai'i. The visitor industry here has become a major source of economic activity and, judging by the number of development projects for new hotels and condominiums, will continue to grow. Too, it is expected that the resident population of the area will be growing significantly in the coming decades as planned major urban expansion takes place.

There has been trespass beach use of the Honokohau ahupua'a lands in the park for many decades prior to the National Park Service's acquiring them. This use was primarily by nude sunbathers utilizing the sand beach next to Aimakapa fishpond. Occasionally, some of these visitors walk to the nearby anchialine pond surrounded by large ahu (cairns). The water quality in the pond and the archaeological features associated with it have been deteriorating over the past several years due to human impacts. Access to the beach has been and continues to be via the Honokohau Harbor.

Comments received from the public at the scoping meetings related to the future use of the Honokohau beach were numerous. Out of the more than 900 received, many called for the National Park Service to consider designating the beach at Honokohau as "clothing optional." Nearly all of these comments came from off-island visitors. A substantial number of comments were received urging that nudity be banned from the beach. The latter came from local residents, many of whom felt this practice to be insulting to the Hawaiian culture.

During the open review period to receive public comment on the draft general management plan/environmental impact statement, this issue came up again. At the public meetings, a total of 19 people spoke in opposition to allowing nude sunbathing at Honokohau beach. Petitions with a total of 442 signatures were received opposing nude sunbathing. On the other side of the issue, 42 people spoke and a petition with 189 names was received recommending that the National Park Service designate Honokohau beach as clothing optional.

Up until the National Park Service's acquisition of the Kaloko ahupua'a area in 1986, public access was prohibited here. Presently, visitor use consists primarily of interpretive tours of certain areas by park personnel for individuals and groups. Access to the Kaloko area is presently via a one-car width, unimproved and temporary access road. Most visitors arrive by auto, some after having stopped at park headquarters presently located across the highway.

Preliminary estimates of visitor carrying capacity were projected in the 1974 study report, Spirit of Ka-loko Hono-ko-hau. The daily capacity for the then proposed park was envisioned to be 1,500, with 250 to 350 being the capacity at any one time. This projects that Kaloko-Honokohau will have more visitors than Pu'uohoua o Honauanau National Historical Park and will probably exceed one-half million visitors/year. Little monthly fluctuation in visitor numbers would be expected. The goal of providing a quality visitor experience in keeping with the parks intended purpose will need to involve tempering public access to certain areas; for example, where Hawaiians and others will be pursuing educational and cultural activities, sacred areas such as burial sites, endangered species habitat, and other areas.

This is a new park not yet fully operational. No facilities exist on site for resource management, park administration, maintenance, visitor use, sanitation, or interpretation. Some resource management, primarily removing alien red mangrove from Kaloko fishpond and at Aimakapa, has been going on for about two years. A temporary chemical toilet near Kaloko fishpond and a composting toilet near Honokohau beach are the only existing park-related structures. Access to the chemical toilet near Kaloko fishpond is via an unimproved gated service road at the highway end. Access to the composting toilet near Honokohau beach is via trail beginning at the harbor end of the park. Park offices housing administrative and maintenance activities are presently located across the highway in the Kaloko Industrial Park. Only very limited visitor services are provided here and no interpretation takes place.

No formal road access to Kaloko-Honokohau off the Queen Ka'ahumanu Highway presently exists. Vehicular access to park lands is either via the entrance road to Honokohau Harbor to the south or via the unimproved service road to Kaloko fishpond. A few hikers presently enter the park via the coastal trail on Kohanaiki lands to the north. The service road access to Kaloko fishpond is intended to be temporary.

The location of the existing network of unimproved roads, trails, and tracks in the park is unsuitable for providing access to interpret resources for visitors. Moreover,

some go through areas where management and protection of certain resources requires controlling visitor use.

At the southern end of the park several small waterfront dwellings are located in the vicinity of the Aizopio fish trap. These dwellings have been on property of the Federal government since 1988 when the Park Service acquired the land. The permittees, who have been residents here for years, have been allowed to maintain their residency under the provisions of individual, nontransferable, special use permits granted by the Park Service. The continuation of these permits to prior residents for a specific period of time has been carried out by the National Park Service (following a recommendation made in the Spirit of Ka-loko Hono-ko-hau). As individuals choose to leave, the long-term goal is to stabilize and restore this area as the prehistoric Puzuoina heiau and Ai'opio fish trap.

The Spirit of Ka-loko Hono-ko-hau discussed needed park facilities in general, calling for the precise location and size of these to be determined after more detailed planning and archaeological research. The development concepts discussed in the report consisted of a live-in cultural education center for Hawaiians, an orientation complex for park visitors (parking, a structure and administrative offices), a cultural activities area, wayside exhibits, rest rooms, and a central maintenance facility. None of these now exist in the park.

The locations of these and other needed facilities, including providing adequate and safe visitor access from the highway, have been determined in this general management plan. At issue here is to make certain these facilities are sited so as not to adversely impact the resources of Kaloko-Honokohau, the tangible and the intangible.

As recommended in the study report, Spirit of Ka-loko Hono-ko-hau, the park's 1978 enabling legislation authorized the Secretary of the Interior to appoint a park advisory commission. The commission (nine members, at least six to be native Hawaiian) was to advise the park regarding its "...historical, archaeological, cultural, and interpretive programs" and to "...afford particular emphasis to the quality of traditional native Hawaiian culture demonstrated in the park." Section 505(f)(7) of Public Law 95-625 provided that the Na Hoa Pili O Kaloko-Honokohau Advisory Commission would terminate within ten years of the enactment of Public Law 95-625. Public Law 95-625 was enacted in November 1978. Since more than ten years have passed since the date of enactment of this statute, the National Park Service cannot use Public Law 95-625 as the basis for establishing the Na Hoa Pili O Kaloko-Honokohau Advisory Commission.

At the public meetings held to scope out general management plan issues, several requests were made to establish the advisory commission. Establishment of the park's advisory commission surfaced again during the review period for the draft plan and environmental impact statement. Public comment was unanimous to establish the park's official advisory commission, Na Hoa Pili O Kaloko-Honokohau.

Since February 1993, the Department of the Interior and the National Park Service have not been able to sponsor the establishment of an advisory commission for Kaloko-Honokohau National Historical Park. Executive Order 12838, issued February 10, 1993 and entitled Termination and Limitation of Federal Advisory Committees, places restrictions and limitations on all federal executive departments and agencies with regard to sponsoring the continuation or establishment of federal advisory committees. As part of the federal executive branch, the National Park Service must comply with the provisions of this executive order (see Appendix A for the full text).

To address this situation, Congressional representatives have proposed legislation in both the House of Representatives and in the Senate. This legislation has passed in both the House and Senate. If enacted, it would allow the National Park Service to establish the Na Hoa Pili O Kaloko-Honokohau Advisory Commission.

PREPARED STATEMENT OF MADELEINE Z. BORDALLO, LIEUTENANT GOVERNOR, ACTING GOVERNOR OF GUAM

There is perhaps no other natural resource that is as fundamentally critical to the quality of life for the people of Guam as the benefits we derive from our surrounding ocean, and I thank you for the opportunity to provide testimony on the proposed amendments to the Magnuson Fishery Conservation and Management Act in support of the basic rights of native and indigenous islanders.

From Guam's standpoint, our inherent rights to our resources must be the starting point for any discussion of policy with respect to our marine resources. In the forum provided by today's hearing we are inherently discussing the Exclusive Eco-

conomic Zone (EEZ) of a non-self governing territory. Thus, the issue of fisheries policy cannot be separated from resource rights.

As you are aware, Guam's EEZ has been established for over 14 years under Public Law 15-114. The utilization of the near and off-shore areas of our ocean resources predates the Magna Carta and even contact with Europeans. A compilation of fishing practices was done in a 1989 report entitled, "Native Fishing Rights and Limited Entry on Guam" (which is submitted under separate cover), where it is estimated that the prehistoric human settlement of Guam occurred 2,500 years ago.

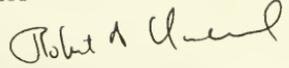
Moreover, international convention clearly establishes the principles which prescribe the exploitation of resources of colonial peoples by colonial administrations. And, if we are to honestly address the issues which are being discussed today, we must recognize that these are not technical matters but political issues. These issues involve culture rights and the resources of indigenous people who are under the administering power of the United States. The resolution of what we believe to be a misstated, and exploitative, U.S. claim to our resources require the U.S. government to genuinely readdress its current position.

One issue that should also be addressed in support of indigenous fishing rights in the territories is the recent signing by the U.S. of the United Nations Convention on the Law of the sea, and its implications on the provisions of the Magnuson Act. With respect to territories that are not self-governing, the UNCLOS declares in Final Act, Annex I, Resolution III,1(a) that, "In the case of a territory whose people have not attained full independence or other self-governing status recognized by the United Nations, or a territory under colonial domination, the provisions concerning rights or interests under the Convention shall be implemented for the benefit of the territory with a view to promoting their well-being and development". In order to bring U.S. fisheries policies contained within the MFCMA in line with the U.S. must ensure that its domestic fisheries policies are not in conflict with any international agreements.

As an island micro-state, every resource is needed in order for Guam's people to survive. The MFCMA affects the island's greatest natural potential for economic self sufficiency—its marine resources. And it is the people of Guam who are best suited to, and vested with the inherent right to implement necessary policies which will promote the best interests of the well-being and development of the people of Guam.

Thank you for the opportunity to provide testimony.

Testimony of Congressman Robert A. Underwood
Joint Hearing of the Senate Commerce
and Indian Affairs Committees
June 1, 1995



Mr. Chairman:

Thank you for allowing me to submit this statement for the record to the Senate Commerce and Indian Affairs Committees to discuss the reauthorization of the Magnuson Fishery Conservation and Management Act and its impact on Guam. I would also like to commend the Chairman for his leadership on issues affecting the Pacific islands and thank him for his enduring support of Guam and the many issues affecting our people.

Guam is located in the midst of one of the world's richest natural resources, the Pacific Ocean. This resource must be utilized thoughtfully and for the benefit of the people who live in these waters, especially the indigenous people of these areas. Actions must be taken to increase the opportunities for these indigenous people to benefit from their resources. Pacific Islanders, who have responsibly managed these waters for thousands of years, should receive a portion of the proceeds gained from the use of their resources. Through the Magnuson Act this idea is currently being employed in Alaska where a portion of the catch caught in Alaskan waters must be shared with Native Alaskans.

During the Resource Committee's consideration of the Magnuson Fishery Conservation and Management Act of 1995 I offered an amendment that would begin to give the U.S. insular areas a greater role in the utilization and management of their resources. Developed by the Federal-Pacific Insular Area Working Group on insular fisheries and endorsed by the Western Pacific Regional Fishery Management Council, this amendment would allow the governor of an insular area to request that the Secretary of State negotiate and enter into a Pacific Insular Area Fishing Agreement or PIAFA.

Under a PIAFA, foreign fishing vessels would be permitted to harvest in the EEZs adjacent to the territories of the United States. Currently, these vessels are not permitted to fish in the EEZ of the U.S. territories. Fees from such permits and licenses would be used by the participating U.S. territory for the purposes of conservation and management of the waters adjacent to the affected insular areas.

Although foreign fishing vessels are not permitted to fish in the EEZs of the insular areas, violations are common. In fact, in the same week the House Committee on Resources considered the Magnuson Act, two Japanese vessels were seized by the U.S. Coast Guard in waters adjacent to Guam for illegal fishing. An important benefit of my amendment would be to increase the incentive to regulate the foreign fleets in our waters.

Along with this testimony, I am submitting a copy of the amendment I offered during the Committee's consideration of the Magnuson Act. I would like to commend the Western Pacific Regional Fishery Management Council for their assistance and active participation in the drafting of this amendment. Mr. Chairman, I look forward to working with you on this issue as Congress considers the reauthorization of this act.

AMENDMENT TO H.R. 39
OFFERED BY MR. UNDERWOOD

Designate the existing text as title I, and at the end of the bill add the following new title:

1 **TITLE II—INSULAR AREAS**

2 **SEC. 201. SHORT TITLE.**

3 This title may be cited as the “Pacific Insular Areas
4 Fisheries Empowerment Act of 1995”.

5 **SEC. 202. FINDINGS, PURPOSES AND POLICY.**

6 (a) **FINDINGS.**—Section 2(a) (16 U.S.C. 1801(a)) is
7 further amended by adding at the end the following:

8 “(10) The Pacific Insular Areas of the United
9 States contain a unique historical, cultural, legal, po-
10 litical, and geographic circumstance, including the
11 importance of fisheries resources to their economic
12 growth.”.

13 (b) **POLICY.**—Section 2(c) (16 U.S.C. 1801) is
14 amended—

15 (1) by striking “and” at the end of paragraph
16 (5);

17 (2) by striking the period at the end of para-
18 graph (6) and inserting “; and”; and

19 (3) by adding at the end the following new
20 paragraph:

1 “(7) to assure that the fishery resources adja-
2 cent to Pacific Insular Areas, including those within
3 the exclusive economic zone of such areas and any
4 Continental Shelf fishery resources of such areas, be
5 explored, exploited, conserved, and managed for the
6 benefit of the people of each such areas.”.

7 **SEC. 203. DEFINITIONS.**

8 Section 3 (16 U.S.C. 1802) is further amended by
9 adding at the end the following new paragraph:

10 “(41) The term ‘Pacific Insular Area’ means
11 American Samoa, Guam, or the Commonwealth of
12 the Northern Mariana Islands.”.

13 **SEC. 204. FOREIGN FISHING AND INTERNATIONAL FISHERY**
14 **AGREEMENTS.**

15 (a) **AUTHORITY FOR FOREIGN FISHING UNDER A**
16 **PACIFIC INSULAR AREA AGREEMENT.**—Section 201(a)(1)
17 (16 U.S.C. 1821(a)(1)), as amended by title I of this Act,
18 is further amended by inserting “or (e)” after “section
19 204(d)”.

20 (b) **AUTHORITY TO ENTER INTO A PACIFIC INSULAR**
21 **AREAS AGREEMENT.**—Section 202(c)(2) (16 U.S.C.
22 1822(c)(2)) is amended by inserting before the period at
23 the end the following: “or section 204(e)”.

1 (c) PACIFIC INSULAR AREA AGREEMENTS.—Section
2 204 (26 U.S.C. 1824) is further amended by adding at
3 the end the following:

4 “(e) PACIFIC INSULAR AREAS.—(1) Upon the re-
5 quest of the Governor of a Pacific Insular Area, and with
6 the participation of such Governor, the Secretary of State
7 in consultation with the Secretary, may negotiate a Pacific
8 Insular Area Fishery Agreement (in this subsection re-
9 ferred to as a “PIAFA”) to authorize foreign fishing with-
10 in the exclusive economic zone adjacent to such Insular
11 Area or for Continental Shelf fishery resources beyond
12 such zone.

13 “(2) It is the sense of the Congress that the Secretary
14 of State should not negotiate a PIAFA to authorize for-
15 eign fishing within the exclusive economic zone adjacent
16 to an Insular Area, or Continental Shelf fishery resources
17 beyond such zone, without the concurrence of and con-
18 sultation with the Governor of such Insular Area.

19 “(3)(A) Fees pursuant to a PIAFA shall be paid to
20 the Governor of an Insular Area by the owner or operator
21 of any foreign fishing vessel for which a permit has been
22 issued pursuant to this section. The Governor, with the
23 concurrence of the Secretary and the Secretary of State,
24 shall establish a schedule of reasonable fees that shall
25 apply nondiscriminatorily to each foreign nation. The pre-

1 description of such fees is not subject to section 9701 of
2 title 31, United States Code.

3 “(B) Amounts received by the United States as fees
4 under this paragraph shall be deposited in the general
5 fund of the treasury of the Insular Area, and shall be used
6 for fishery conservation and management purposes.

7 “(4) Foreign fishing under a PIAFA shall not be sub-
8 ject to subsections (d) through (g) of section 201 or sub-
9 section (i) of section 201.

10 “(5) A PIAFA shall become effective according to the
11 procedures of section 203.”.

12 **SEC. 205. DOMESTIC FEES.**

13 Section 304 (16 U.S.C. 1854) is further amended by
14 adding at the end the following:

15 “(3) PACIFIC INSULAR AREA FEES.—

16 “(A) The Secretary may enter into a coop-
17 erative agreement with the Governor of a Pa-
18 cific Insular Area, under which the Pacific In-
19 sular Area may administer a permit system and
20 collect fees authorized under a fishery manage-
21 ment plan for fisheries in the exclusive eco-
22 nomic zone off the Pacific Insular Area pursu-
23 ant to section 303(b)(1). A cooperative agree-
24 ment under this paragraph may provide that all
25 or part of the fees collected under the Pacific

1 Insular Area permit system shall be deposited
2 into the treasury of the affected Pacific Insular
3 Area and used for fishery conservation and
4 management purposes.

5 “(B) The Secretary, with consultation of
6 the Governor of the Pacific Insular Area, may
7 establish by regulation the level of any fees
8 which are authorized to be charged. The
9 amount of any fees collected under this sub-
10 section shall be reasonable, fair, and equitable
11 to all participants in the fisheries. The prescrip-
12 tion of such fees is not subject to section
13 9701(b) of title 31, United States Code.

14 **SEC. 206. ENFORCEMENT.**

15 Section 311 (16 U.S.C. 1861) is amended by adding
16 at the end the following new subsection:

17 “(f) **ENFORCEMENT IN THE INSULAR AREAS.**—The
18 Secretary, in consultation with the Governors of the Pa-
19 cific Insular Areas shall, to the greatest extent practicable,
20 support cooperative enforcement agreements between Fed-
21 eral and Pacific Insular Area authorities.”.

22 **SEC. 207. CONFORMING AMENDMENT.**

23 (a) Section 311(g) (16 U.S.C. 1857(g)) is amended
24 by striking “201(b) or (c)” and inserting “201(b), (c), or
25 (d)”.

1 (b) Section 301(b) of Public Law 102-251 (106 Stat.
2 62) is amended—

3 (1) by amending paragraph (1) to read as fol-
4 lows:

5 “(1) by redesignating paragraphs (25) through
6 (33) as paragraphs (26) through (34), respectively;
7 and”; and

8 (2) in paragraph (2) by striking “(23)” and in-
9 serting “(24)”.



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Testimony of Edwin A. Ebisui, Jr., Chair
Western Pacific Regional Fishery Management Council

Hearing before the
Senate Committee on Commerce, Subcommittee on Ocean and Fisheries,
and Senate Committee on Indian Affairs

1 June 1995

Thank you for the opportunity to testify on behalf of the Western Pacific Regional Fishery Management Council, and the draft amendments to the Magnuson Fishery Conservation and Management Act. As written, the revised bill would amend the Act to authorize community-based fishery demonstration projects, and address the issue of preferential access to fishery resources by the indigenous people of our region by placing language in the Act that would direct our Council to consider indigenous fishing practices in preparing fishery management plans.

The proposed amendments would expand and enhance the principals upon which the Act was founded, as well as the mechanism created by it. The Regional Fishery Management Council system was an experiment begun by the Act in 1976. The results of the experiment are far from complete, and the preliminary results contain a mixture of management successes and failures. Most of the successes, however, can be directly attributed to that most important aspect of the Council system, that is regionalism. Only recently has the US legislative process begun to codify mechanisms that accurately measure the social and economic costs of the federal decision-making process. While always well-intended, the prescribed formula used by most federal and state legislatures and agencies usually falls short in identifying the impacts on the smallest units of society, individuals and their communities. We need to include individuals and communities in the decision-making process, and rely on them to take the management lead or to

A Council Authorized by the Magnuson Fishery Conservation and Management Act of 1976

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work in a true co-management system. This is the underlying philosophy of the Council system.

The western Pacific region is unique in that the traditional management practices of our indigenous peoples are still in the minds of our citizens, and are still practiced in some communities. Although these traditional practices were very effective in their day, they have become diluted by increased human populations and encroaching western (indeed, foreign) management approaches. While the goals of conservation and the tools of traditional management (e.g., allocation of resources, limited access to harvesting activities in relation to seasons and areas, etc.) are still pervasive in our current practices, the lack of local involvement often makes their implementation less than effective.

Now is the time that we should modify our most important federal fishery law to bring elements of resource management back to the community. We must strive to preserve our societies as strongly as we strive to preserve our fish. We need to preserve the cultural and religious beliefs, and the principles of resource stewardship, of our region's native peoples. To do this under the constraints of the overlying federal system, however, we need to formally acknowledge the uniqueness of these indigenous people and their social values. This is not possible under the current Act, but the proposed amendments would change this and require our Council to recognize these communities, and to consider them and their traditional management practices when developing federal management plans.

Fishing and related activities are interwoven with all aspects of community and cultural identity in our region. An integration of customary management practices with western regulations would be an ideal way to manage our fisheries. Traditional fishing practices and rules could better emphasize education and ensure the concept of sustainable use by promoting ancestral knowledge. In this regard, a community-based management system would be consistent with community-based development quotas. For example, once given the authority to recognize our indigenous people under the Act, our Council could authorize any number of management tools to be employed at the community level. Under

such a system, each community could decide how best to allocate resources. Controls that target fish, fishing areas, seasons, gear types, community development quotas, market shares, affordable development loans, enforcement effort, educational effort, and others, are all useful management tools. What is especially meaningful about local co-management is that a particular community of people be allowed to reach a consensus, the "island way", on what is best for a specific management need. This is the goal of the community-based development projects that would be created by the proposed amendments.

Examples of possible outcomes of more local authority, or community-based management might include: 1) building of a more effective partnership with state and federal agencies to share ideas and resources; 2) maintenance of traditional fishery management practices, the term "traditional" meaning practices and observances that evolve as societies change and as communities adopt new approaches to resource management; 3) training of community leaders to assist in resource monitoring and enforcement; and 4) integration of local knowledge with more academic information through the implementation of educational programs to perpetuate fishing methods that are consistent with the values of wise use.

With the Committees' permission, I would like to take this opportunity to note our Council's support of another proposed change to the Magnuson Act. The amendment was prepared by the Joint Interior-Commerce Working Group to Review Federal Fisheries Policy in the Pacific, and is referred to as the Pacific Insular Areas Fisheries Enhancement Act of 1995. This amendment would allow for greater control of EEZ waters by the territorial and commonwealth governments of American Samoa, Guam and the Northern Mariana Islands. The US Pacific islands are at a disadvantage relative to their many Pacific neighbors, in that they are not currently authorized to negotiate access agreements and fees for fishing in their waters. By granting this authority to the islands, they will gain more direct benefit from the resources in their waters, and they will be in a better position to co-exist with their neighbors, both as competitors and partners.

The Western Pacific Council supports any amendments to the Magnuson Act that would recognize the rights and fundamental requirements of local communities to have a greater hand in the management of their resources, throughout the western Pacific region. More efficient and effective management at the local and regional level would be a significant positive first step toward more competent conservation and management of our nation's fishery resources.

Thank you.



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REV. 24 JUNE 1984

GENERAL BACKGROUND

The Magnuson Fishery Conservation and Management Act of 1976 established US jurisdiction over fisheries in federal waters of the Exclusive Economic Zone (EEZ, from 3-200 nautical miles offshore) and created eight-quasi-federal regional councils to oversee fisheries in their respective areas. The Western Pacific Council is the policy-making organization for the management of fisheries in the EEZ around American Samoa, Guam, Hawaii, the Northern Mariana Islands and other US possessions in the Pacific (see map on reverse), an area of nearly 1.5 million square miles.

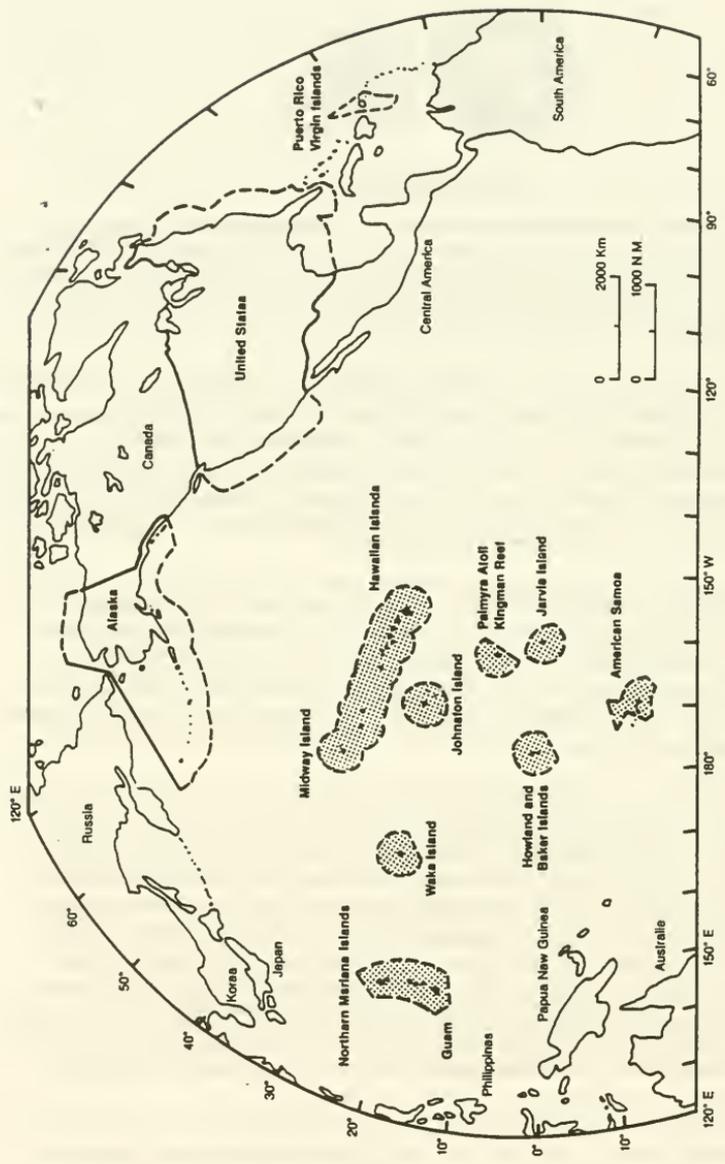
Sixteen Council members represent the fishing community and government agencies of the region:- Half of the members are designated territorial, state and federal officials with fishery management responsibilities. The others are appointed by the US Secretary of Commerce to represent commercial and recreational fishing interests. Several committees (Scientific and Statistical Committee, Fishery Management Plan Teams, Advisory Panel and diverse *ad hoc* groups) provide advice on all aspects of the region's fisheries, and suggest management strategies. The Council Staff coordinates the activities of the Council and its advisory committees. Meetings of the Council and its committees are open to the public, and the public is actively encouraged to participate in the policy-making process. Meetings and hearings are held at locations throughout the Council's area of jurisdiction.

The main task of the Council is to protect fishery resources while maintaining opportunities for domestic commercial and recreational fishing at sustainable levels of effort and yield. To accomplish this, the Council identifies fish species and species groups that are in danger of overfishing, or otherwise need management. With the help of its member agencies, the Council then analyzes the biological, environmental, economic and social factors affecting these fisheries, and prepares and modifies, as needed, fishery management plans and regulations for domestic and foreign fishing in the region. The regulations are enforced jointly by agents of the National Marine Fisheries Service, deputized state agents and US Coast Guard. The Council encourages cooperative fishery management among the island governments throughout the Pacific.

The Council currently has four fishery management plans (FMPs). The FMP for Crustaceans (lobster) was implemented in 1983, and has been amended seven times as conditions in the fishery have changed. The most important fishery operates in the Northwestern Hawaiian Islands, targeting spiny and slipper lobster. That fishery operates under a system of limited entry, closed seasons and harvest quotas. The FMP for Precious Corals has also been effective since 1983, and has been amended twice. At present, there is little or no domestic harvest of precious corals in the region. The FMP for Bottomfish and Seamount Groundfish has been in place since 1986, and has been amended four times. A limited entry program exists for the bottomfish fishery in part of the Northwestern Hawaiian Islands. The FMP for Pelagic species was implemented in 1987, and has been amended seven times. The Pelagics FMP originally banned drift gillnet fishing in the EEZ, and placed restrictions on foreign fishing for non-tuna species in the EEZ. There are closed areas for longline fishing around Hawaii and Guam, and a limited entry program for Hawaii-based longliners. Pelagic fisheries in the region are the most important, both in terms of jobs and revenues. The Council is working toward regional and international cooperation regarding fishery monitoring and research on important pelagic species, so that these fisheries can be properly managed.

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Western Pacific Council jurisdiction (shaded) — the EEZ around American Samoa, Guam, Hawaii, the Northern Mariana Islands and other US islands in the Pacific.



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Value of Fisheries in the Western Pacific Region

The Western Pacific Regional Fishery Management Council's jurisdiction is nearly 1.5 million square miles, an area larger than that of the combined US Exclusive Economic Zones (EEZ) of the other seven regional fishery management Councils.

This area encompasses waters surrounding the US Pacific islands of American Samoa, Guam, Hawaii (including the Northwestern Hawaiian Islands), the Northern Mariana Islands, plus the smaller islands an atolls of Baker, Howland, Jarvis, Johnston, Kingman, Palmyra and Wake.

The value of the region's fishery to Pacific island economies and its contribution to the nation's gross domestic product has steadily increased over the last decade.

In terms of landings and revenues, pelagic fisheries are the most important producers in the western Pacific. In 1993, some 525.2 million lb of pelagic fish and bottomfish, valued at over \$429 million, were landed at, or transshipped through, US ports in the western Pacific. These landings were from the US distant water fleet, foreign vessels, and domestic boats operating from the islands.

The Western Pacific Region has four of the top seven US ports, including the most valuable, Pago Pago, American Samoa, measured in terms of the value of landings and transshipment activities.

The Hawaii-based swordfish longline fishery, almost non-existent in 1988, now represents over 60% of all US landings.

Added to the commercial landings taken by other methods, the per capita value of the Hawaii fisheries exceeds that of many coastal states on the US mainland, and contribute proportionately more to the state's gross product.

The domestic longline fishery remains healthy and catches have increased six-fold over the past seven years.

The geographic distances separating these US Pacific islands complicate the management of the regional fisheries and increase administrative, surveillance, and enforcement complexity and costs.

Management is also complicated by the proximity of US EEZs to waters of other nations in the western Pacific, thus requiring broad regional collaboration on trans-boundary issues related especially to movements of fishing fleets and highly migratory pelagic fish.

There is a need to coordinate the management of US Pacific pelagic stocks throughout their range, while at the same time creating a framework for broader regional and international cooperation.

Ten Most Valuable US Fishing Ports, 1993

National Rank	Port	Ex-Vessel Value (US\$ million)
1	<i>Pago Pago, AS</i>	193.8
2	Dutch Harbor-Unalaska, AK	161.2
3	New Bedford, MA	107.5
4	<i>Saipan & Tinian, MP</i>	97.1
5	Kodiak, AK	81.5
6	<i>Agana, GU</i>	72.3
7	<i>Honolulu, HI</i>	65.8
8	Empire-Venice, LA	52.3
9	Portland, ME	49.1
10	Dulac-Chauvin, LA	48.0

Ex-Vessel Value (US\$) of Fish Delivered to US Ports in the Western Pacific, 1993

Port	Locally-Based Fleets	US Distant-Water Fleets	Foreign Fleets	Total
Pago Pago, AS	120,900	111,768,300	81,891,500	\$193,780,700
Saipan & Tinian, MP	286,377	21,143,900	75,702,000	\$97,132,277
Agana, GU	577,183	n/a	71,777,200	\$72,354,383
Honolulu, HI	65,812,000	n/a	n/a	\$65,812,000
Total	\$66,796,460	\$132,912,200	\$229,370,700	\$429,079,360

(value.sml/bh)

(rev. 22 February 1995)

Testimony of April K. Romero
Mid-Pacific Hawaii Fishery, Inc.

Hearing before the
Senate Committee on Commerce, Subcommittee on Ocean and Fisheries
and
Senate Committee on Indian Affairs

1 June 1995
Honolulu, Hawaii

Thank you for coming to Hawaii to hold this hearing. We are pleased that you have given us an opportunity to participate in the process of amending the Magnuson Fishery Conservation and Management Act. I am co-owner of Mid-Pacific Hawaii Fishery, Inc. in Hilo, on the island of Hawaii. My family is engaged full-time in fish marketing as well as commercial and recreational fishing. I am of Hawaiian ancestry and have been for many years a member of the Council's Pelagics Advisory Panel. My niece Flora Ho'oulualoa Hookano Collins, comes from a long line of traditional Hawaiian fishing families, and in her submitted written testimony, which I encourage you to read, she shares a short overview of Hawaiians and their cultural ties to the ocean. The ocean ecosystem is like poetry; it perpetuates in harmony and balance.

Today, native Hawaiians cannot return to their traditional ways of fishing. The grounds have been decimated by pollution and overfishing. The value of traditional fishing is in the methods that were used to conserve, manage and enhance the bounty of the sea. These values were instilled in the population and allowed for uninterrupted and perpetual production. The Hawaiian fully understood and appreciated the wisdom of using and managing their coastal resources. The present day applications of the ancient Hawaiian *kapu* system (of fishing prohibitions) would be beneficial to the overall health of the ocean ecosystem and its fish stocks. We all fret about the continual depletion of nearshore fish stocks, as their decline is obvious. Yet few officials have the economic or political will to implement protective action.

Hawaii's present commercial fishing community includes very few native Hawaiians. The Hawaiian has had little opportunity to participate. They now lack the necessary technical expertise and capital. The majority of Hawaiians have been reduced to being just another customer for locally caught fish. To be a successful fisherman, you need skill and knowledge and the best equipment. Current job opportunities in the local fishing industry are diverse and can be financially and culturally rewarding. Given proper training and skills, more Hawaiians would be hired as opposed to preference for recent immigrants. Throughout the industry there are many distinct immigrant groups who have used commercial fishing to better their lives and status. They have sent their children on to college and have basically made themselves respected members of our community. Now the Hawaiian must be re-educated into seeing commercial fishing as a viable and desirable employment opportunity. Commercial fishing has been considered a low status occupation. It should once again be elevated to that of other skilled or professional occupations. On the processing side of commercial fishing there are tremendous opportunities to market value-added products and at the same time create more job opportunities. Along with these opportunities should be incentives to train and hire Hawaiians and part-Hawaiians. Pride in the Hawaiian culture and heritage should be encouraged and nurtured. The pragmatic Hawaiian management skills long since replaced by outside philosophies should once again be evaluated. Application of these ancient skills should benefit both Hawaiians and non-Hawaiians alike.

With regard to the Magnuson Act amendment, I support the inclusion of provisions for native Hawaiian fishing rights, and any kind of affirmative action that could be taken on the part of all indigenous peoples of the western Pacific region. Such recognition should help preserve the wealth of traditional Hawaiian ways and values. I strongly support initiatives to better educate indigenous peoples in the skills and experience needed to compete in the today's world of Pacific fisheries. I support any job-related programs that develop incentive, improve self-esteem and help the disadvantaged Hawaiian get back into an area that should come natural to him. Training and experience is essential.

What is the Federal obligation to native Hawaiians and other indigenous groups in the western Pacific region? If nothing else, it should be to recognize the merit of their management skills and to make sure that these values are not lost. The Federal government should help to establish community education programs with an emphasis on hands-on job training. It should work to establish meaningful management programs that are rational, comprehensive, and integrated, for both nearshore and offshore fisheries.

Mahalo and aloha!

May 25, 1995

Flora Ho'oulualoa Hookano-Collins
132 Ho'omalu St.
Hilo, Hawaii 96820

To: United States Senate, Committee on Indian Affairs
Washington, DC 20510-6450

Re: Hawaiian Fishing Practices

The Hawaiian culture and traditions is centered around "Aloha 'Aina", the love for the land and its surroundings. The native Hawaiians of old Hawai'i were spiritually linked to every element of nature. To understand Hawaiian thought, a person must realize that the Hawaiian truly experiences the world differently. We view the world as being alive, conscious, and able to be communicated with, and it has to be dealt with that way. The Hawaiian participates in a community with all of the species of nature, a community in which all beings have rights and responsibilities to one another (Dudley4).

Before the introduction of Western culture, the Hawaiians recognized two main classes of food: 'Ai, or vegetable food, particularly taro and poi, and I'a, or fish which was the main source of protein. The poi was the bland staple, and the fish was the most tasty accompaniment that made eating a delight.

The fishermen of old relied on their knowledge, skills and experience to help them secure the fish and other protein foods from the sea. They shared these foods with their 'ohana (family), and members of the community.

The head fisherman, and other successful fishermen were descended, in most cases, from a long line of fisherfolk. These men were in possession of knowledge and secrets which had been passed down from those who made this form of food-getting their daily life. There were elements of the unknown and unpredictable in the activities of the fisherman. His domain usually extended from the shore seaward to the horizon. Sometimes he fished so far out that he could see but the tops of the mountains of his homeland.

Those lawai'a (fishermen) that could supply large amounts of fish from ponds or make big catches at sea were believed to have supernatural powers or have access to magic implements that attract fish. Many legends were written about these famous Hawaiian fishermen. Through these legends it express two

socioeconomic concerns of the Hawaiians: the conservation of fish resources and the fair and generous distribution of the catch. The ali'i (chiefs) of Hawai'i used kapu (laws) to prevent the people from overfishing an area or fishing during spawning. Hau tree branches were used to indicate a kapu against shore fishing along a stretch of beach. Pukui explains how the fishing kapu worked in the district of Ka'u on the Big Island of Hawai'i:

There was never a time when all fishing was tabu. When inshore fishing was tabu (kapu), deep sea fishing was permitted and vice versa. Summer was the time when fish were most abundant and therefore the permitted time for inshore fishing... In winter, deep sea fishing was permitted... When the kahuna (priest) had examined the inshore area and noted the condition of the animal and plant growths, and decided that they were ready for use, that is, that the new growth had had a chance to mature and become established he reported to the chief of the area, and the chief would end the kapu. For several days it remained the right of the chief... After this, a lesser number of days were the privilege of the konohiki (overseer of lands under an ali'i). Following this period the area was declared open to the use of all. (Titcomb 14)

Kamakau describes the fishing kapu during the reign of Kamehameha (b.1736-d.1819): "He placed restrictions on sea fisheries for periods of five months, and on the sixth month when the restriction was removed and fishing was allowed all over the land, the king and the commoners were usually the only ones to share the first day's catch, and the landlords and the commoners the second day's catch. After this the restrictions were removed, allowing all to fish for six months. At the end of this period restrictions were again placed over certain fish in order that they might increase. These restrictions were also extended to the deep sea fishing grounds where the kahala were caught and the fish that go in schools, such as deep-sea squid, uhu, aku, and flying fish" (Ruling Chiefs of Hawaii 177-8).

An important ancient fishing kapu concerned the 'opelu (mackerel) and the aku (bonito), two fish caught in great numbers in Hawaiian waters: 'Opelu was made kapu during the winter season and free during the summer season and Aku was made kapu during the summer and free during the winter season. This kapu had religious sanction: both were descendants of a High chief Pa'ao. Breaking the kapu could result in death.

Like the fishing kapu with its threat of the death penalty, it was also used to frighten people into obeying the rules of conservation. Hawaiians were strict about taking more than is needed or wasting. Every part of the fish was eaten, even bones

of small fish. Hawaiians believed that wasting would cause an ancestor to come back and punish you. The fair distribution of the catch was another major concern of the Hawaiian community. The first catch was usually offered to the fishing god ('aumakua or Ku'ula) on a fishing shrine called a Ko'a. Today there are many fishermen who still place their first catch on shrines to ensure successful fishing. After the offering the fish was shared with relatives. The fair distribution of food was a Polynesian tradition throughout Polynesia.

Today, only a few practices these traditions. There is a great need to educate more Native Hawaiians to these practices, so that they will be more responsible not only to the land but the oceans. Many Hawaiians are left with purchasing fish from the store, which is so expensive, that it is only eaten on special occasions. This is why so many Hawaiians have poor health. We need to get back to basics so that we Hawaiians and Non-Hawaiian will always have fish in the sea. Through conservation and protection we can teach the children of Hawai'i to value our natural resources.

Mahalo Nui Loa Kakou
Thank you,

Irene A. D. Collins

BENJAMIN J. CAYETANO
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
P O BOX 621
HONOLULU, HAWAII 96809

CHAIRPERSON
MICHAEL D. WILSON
BOARD OF LAND AND NATURAL RESOURCES
DEPUTY
GILBERT S. COOKA-KARAN

AQUACULTURE DEVELOPMENT
PROGRAM
AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
CONSERVATION AND
ENVIRONMENTAL AFFAIRS
CONSERVATION AND
RESOURCES ENFORCEMENT
CONVEYANCES
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION PROGRAM
LAND MANAGEMENT
STATE PARKS
WATER AND LAND DEVELOPMENT

TESTIMONY OF MICHAEL D. WILSON, CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
STATE OF HAWAII

BEFORE THE UNITED STATES SENATE COMMITTEE ON INDIAN AFFAIRS
ON THE ROLE OF NATIVE HAWAIIANS AND INDIGENOUS PACIFIC
ISLANDERS IN THE CONSERVATION, MANAGEMENT AND DEVELOPMENT
OF WESTERN PACIFIC FISHERIES
JUNE 1, 1995

All Pacific Islanders, including native Hawaiians, to this day, depend heavily on fish and other renewable ocean resources for sustenance. Unlike natives of the continental United States, land area and therefore land-based food resources are very limited.

Historically, the original Hawaiians made maximum use of ocean resources without depleting them. Strict kapu were established to conserve the resources and violations could be punishable by death. Such conservation practices have eroded over the years yielding to western and eastern fishing practices, and external factors such as pollution, runoff and other modern conflicting uses of our oceans. Now, nearly all of Hawaii's fisheries resources are considered fully or over-exploited. I am committed to curb this situation and have recently convened a task force to address the management of certain bottomfishes.

However, State resources alone cannot accomplish our goals. There is definite need for the Federal Government's as well as Hawaii's residents commitment to this task. I know that government spending is being carefully scrutinized and any available resources directed to public safety, health and education, putting natural resource management on the "back-burner."

However, we must recognize native rights and natural resource uses for all. We are most pleased with the proposed amendments to the Magnuson Fishery Management and Conservation Act. The suggested funding and technical assistance to be realized by community-based fishery demonstration projects is a step in the right direction.

With reference to our efforts for co-management of Hawaiian natural resources, I submit the following. In 1993, a joint government and community "Governor's Molokai Subsistence Task Force" was formed to address the needs and concerns of subsistence practitioners on that financially depressed island. One of the recommendations was to let the community on the Northwest end of Molokai manage shoreline marine resources in the area for subsistence fishing. A copy of the Final Report is being submitted for the record.

To follow up this effort, we introduced legislation for consideration by the 1994 Legislature which the Governor signed into Law as Act 271 (1994).

SECTION 1 of the Act authorized our Department to designate community based subsistence fishing areas thru adoption of Hawaii Administrative Rules. Proposals for any subsistence fishing area would be prepared by the community groups and submitted to DLNR with a description, justification, management plan, and other information. The DLNR would review and promulgate the Rules for the proposals that are approved.

SECTION 2 of the Act mandates us to establish a subsistence fishing pilot demonstration project for native Hawaiian subsistence fishing, non-native Hawaiian recreational fishing, and continue existing commercial fishing. The project area would be between Ilio Point and Nihoa Flats along northwestern Molokai. The pilot demonstration project Rules are to be adopted by June 30, 1995, and shall cease to function on July 1, 1997. A report is due to the 1997 Legislature to allow evaluation of the effectiveness of community-based natural resource management.

The Board of Land and Natural Resources considered the adoption of the final draft of the Rules, Chapter 13-59, "Kawaaloa-Moomomi Bays Subsistence Fishing Pilot Demonstration Project, Molokai" (copy attached). Staff have been meeting with and discussing a proposal to establish a community-based Fisheries Management Area encompassing the coastline area between Ilio Point and Nihoa Flats on Molokai subsequent to the Pilot Demonstration Project.

Another fisheries-related co-management endeavor relates to Hawaiian fishponds. Local community interest in restoring and utilizing them is increasing. We support putting these fishponds into production in order to preserve them and associated cultural practices for future generations. The Department has been co-funding a community-based demonstration project at Ualapue Fishpond on Molokai since 1989. The Department also chaired the "Governor's Task Force on Molokai Fishpond Restoration" and is following through with the permitting of two Task Force initiated, community-based resource management demonstration projects.

Thank you for inviting me to provide input on this matter.

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HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 4 FISHERIES

PART II MARINE FISHERIES MANAGEMENT AREAS

CHAPTER 59

KAWAALOA-MOOMOMI BAYS SUBSISTENCE
FISHING PILOT DEMONSTRATION PROJECT, MOLOKAI

- §13-59-1 Definitions
- §13-59-2 Prohibited activities
- §13-59-3 Permitted activities
- §13-59-4 Fishing permits
- §13-59-5 Revocation of permits
- §13-59-6 Penalty
- §13-59-7 Effective and termination dates

§13-59-1 Definitions. As used in this chapter unless otherwise provided:

"Kawaaloo-Moomomi Bays" means the bays situated offshore of Northwestern Molokai, County of Maui, Hawaii.

"Marine life" means any type or species of saltwater fish, shellfish, mollusks, crustaceans, coral, or other marine animals, including any part, product, egg, or offspring thereof; or seaweeds or other marine plants, including any part, product, seed, or root thereof.

"Native Hawaiian" means any descendant of the races inhabiting the Hawaiian islands prior to 1778.

"Pilot project area" means the Kawaaloo-Moomomi Bays subsistence fishing pilot demonstration project containing Zones 1 and 2 located in that portion of Northwestern Molokai bounded by a straight line drawn from Kaiehu Point to Naaukahiki Point, thence along the shoreline of Moomomi Bay and along the shoreline of Kawaaloo Bay back to Kaiehu Point as delineated in the "Map of Kawaaloo-Moomomi Bays subsistence fishing pilot demonstration project, Molokai, 10/05/94" located at the end of this chapter.

"Recreational fishing" means to fish for or take marine life for purposes other than producing income.

"Subsistence" means the customary and traditional native Hawaiian uses of renewable ocean resources for direct personal or family consumption or sharing.

§13-59-1

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"Zone 1" means the shoreward portions of Kawaaloo and Moomomi Bays enclosed by straight lines drawn between Points "A," "B," and "C."

"Zone 2" means the seaward portion of the Kawaaloo-Moomomi Bays Subsistence Fishing Pilot Demonstration Project, Molokai, seaward of Zone 1. [Eff]
(Auth: HRS §§188-22.6, 188-53) (Imp: HRS §§188-22.6, 188-53)

§13-59-2 Prohibited activities. (a) No person shall engage in any fishing or use marine life within the pilot project area, except with a permit issued under section 13-59-3 providing for:

- (1) Within Zone 1, a permittee may fish or take marine life only with hook-and-line, thrownets, scoop nets, and hand harvesting methods; and
 - (2) Within Zone 2, all of the fishing provisions in Zone 1 shall apply, and a permittee may use spears between the hours of 6:00 a.m. and 6:00 p.m.; and use nets specifically to take akule.
- (b) All existing regulatory measures contained in title 12, Hawaii Revised Statutes (HRS) and title 13, Hawaii Administrative Rules (HAR), relating to fishing or marine life shall apply in the pilot project area.

(c) Nothing in this section shall be interpreted to prohibit any native Hawaiian traditional and customary rights to the extent allowed by law. [Eff]
(Auth: HRS §§187A-5, 188-22.6, 188-53) (Imp: HRS §§187A-5, 188-22.6, 188-53)

§13-59-3 Permitted activities. (a) The department may issue a permit to fish in the pilot project area that is valid for not more than one-year in duration to the following:

- (1) Native Hawaiians to engage in subsistence fishing;
- (2) Commercial fishermen to continue existing commercial fishing; provided that the person has a valid state commercial marine license, has no standing violation or delinquency with the department, and has fished in the pilot project area (Statistical Area No. 312) during 1993 as recorded by monthly fish catch reports submitted to the department or has an exemption to reporting as a crew member of a vessel recorded fishing in the project area during 1993;
- (3) Non-native Hawaiians to continue existing recreational fishing; and
- (4) Others to collect or take marine life for other purposes pursuant to HRS and HAR.

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(b) The department may limit the number of permits issued and specify terms and conditions to manage the fishing and marine life in the pilot project area. [Eff]
 (Auth: HRS §§187A-5, 187A-6, 188-22.6, 188-29, 188-31, 188-53) (Imp: HRS §§187A-5, 187A-6, 188-22.6, 188-29, 188-31, 188-53)

§13-59-4 Fishing permit. (a) All applications for the fishing permit to use the pilot project area and fishing activity reports shall be made on forms provided by the department and containing the following information:

- (1) Name(s), signature(s), and address(s) and at least one telephone number to serve as a point of contact;
- (2) Type of fishing gear, method, and marine life to be taken; and
- (3) Commercial marine license number of each person applying for commercial fishing, and boat name, registration number and description.

(b) The permit shall be free.

(c) Each permittee shall submit a signed monthly report of the date, hours of use or fishing, and number and amount of marine life taken in specific locations within 10-days after each month. [Eff] (Auth: HRS §§187A-5, 188-22.6, 188-29, 188-31, 188-53) (Imp: HRS §§187A-5, 188-22.6, 188-29, 188-31, 188-53)

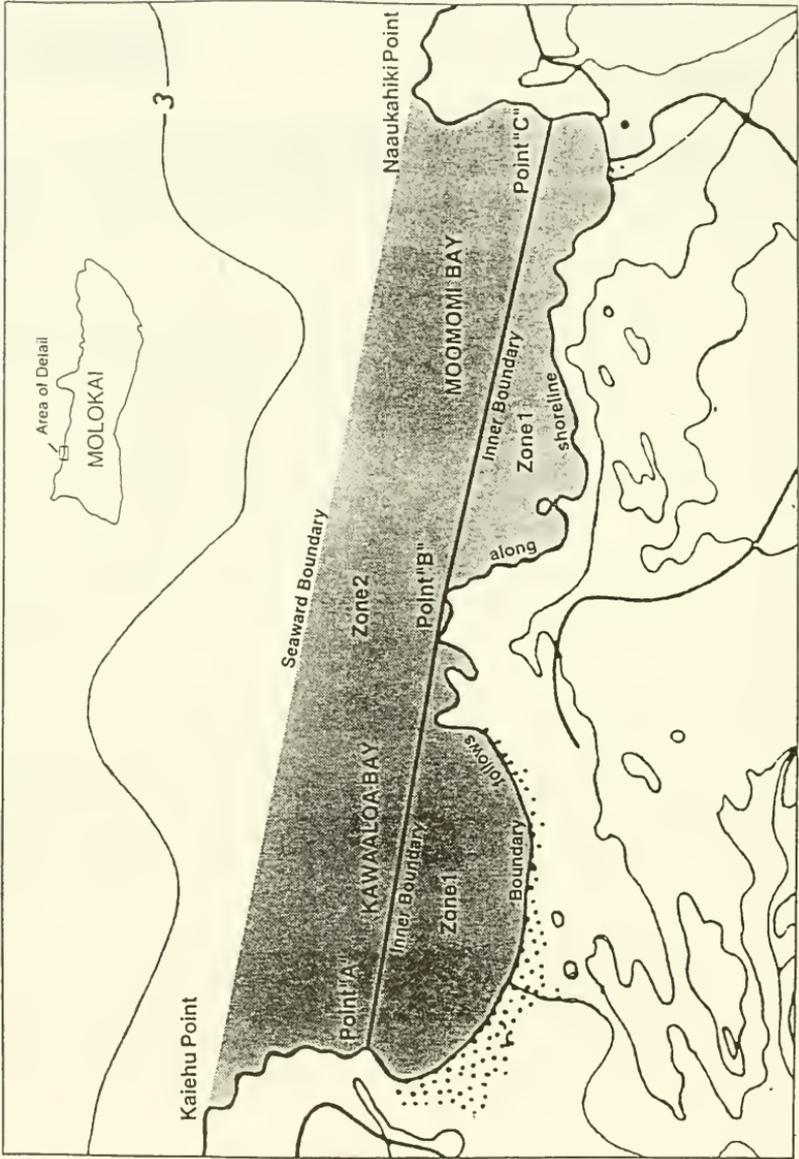
§13-59-5 Revocation of permit. The Department may revoke any permit issued as provided by this rule for any infraction of the terms and conditions of the permit or violation of Statutes and Rules in the pilot project area, and a person whose permit has been revoked shall not be eligible to apply for another permit until the expiration of one year from the date of revocation. [Eff]
 (Auth: HRS §§187A-5, 187A-6, 188-22.6, 188-29, 188-31, 188-53) (Imp: HRS §§187A-5, 187A-6, 188-22.6, 188-29, 188-31, 188-53)

§13-59-6 Penalty. A person convicted of violating the provisions of this chapter or the terms and conditions of any permit issued as provided by this chapter, shall be guilty of a petty misdemeanor, and upon conviction thereof, shall be punished as provided by law. [Eff]
 (Auth: HRS §§187A-5, 187A-6, 188-22.6, 188-29, 188-31, 188-53) (Imp: HRS §188-70)

§13-59-7

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§13-59-7 Effective and termination dates. This rule shall take effect on July 1, 1995 and terminate on June 30, 1997. [Eff] (Auth: HRS §§187A-5, 188-22.6) (Imp: HRS §188-22.6)



Map of Kawaaloo-Moomomi Bays Subsistence Fishing Pilot Demonstration Project, Molokai, 10/05/94

BENJAMIN J. CAYETANO
 GOVERNOR OF HAWAII



KŪIULUA KE EA A KANALOA

KAHO'OLAWE ISLAND RESERVE COMMISSION

33 South King Street, Room 403 Honolulu, Hawaii 96813
 Telephone: (808) 586-0761

TESTIMONY OF

**R. KEONI FAIRBANKS, EXECUTIVE DIRECTOR
 KAHO'OLAWE ISLAND RESERVE COMMISSION
 STATE OF HAWAII**

**BEFORE THE UNITED STATES COMMITTEE ON INDIAN AFFAIRS
 AND SENATE COMMITTEE ON COMMERCE,
 SUBCOMMITTEE ON OCEAN AND FISHERIES**

JUNE 1, 1995

Thank you for the opportunity to testify on behalf of the Kaho'olawe Island Reserve Commission (KIRC). The KIRC supports the draft amendments to the Magnuson Fishery Conservation and Management Act to authorize community-based fishery demonstration projects. Please allow me to provide you with some information about Kaho'olawe and the proposed management of its ocean resources.

On May 7, 1994, the island of Kaho'olawe was formally conveyed to the State of Hawaii from the U.S. Navy. The 1993 Hawaii State Legislature set aside the island and its surrounding waters out to two miles as the Kaho'olawe Island Reserve by creating Chapter 6K, Hawaii Revised Statutes. Chapter 6K establishes the Kaho'olawe Island Reserve Commission to manage the Reserve. The purposes of the Reserve are:

1. Preservation and practice of all rights customarily and traditionally exercised by native Hawaiians for cultural, spiritual, and subsistence purposes;
2. Preservation and protection of its archaeological, historical, and environmental resources;
3. Rehabilitation, revegetation, habitat restoration, and preservation; and
4. Education.

The law prohibits commercial uses within the Reserve and establishes the Reserve as a trust to be transferred to a sovereign Native Hawaiian entity upon its recognition by Congress and the State of Hawaii.

Traditional Hawaiian 'ohana values are intended to guide the use of the resource:

- With rights of use come the obligation to care for and protect the resources;
- Take only what is needed for the subsistence of your 'ohana;
- Allow the resources to reproduce, and overharvested areas rest to recover.

COMMISSION MEMBERS

NOA EMMETT ALLUI M.D. CHAIRPERSON
 A. FRENCHY OESD
 NALANI KANAKA OLE
 COLETTE Y. MACHADO
 BRIAN MISKAL
 CRAIG NEFF
 Michael D. Wilson

EXECUTIVE DIRECTOR
 R. KEONI FAIRBANKS

The KIRC has adopted administrative rules (HAR Chapter 13-260 - attached) which try to balance :

- Hawaiian "customary and traditional practices";
- Protecting public safety;
- The sustainability of the resources in the Reserve;
- Subsistence uses;
- Trust status for eventual transfer to a sovereign Hawaiian entity.

The Commission is presently receiving proposals to develop an Ocean Management Plan for the Reserve in order to gather information and management strategies for:

- the unsafe conditions of the Reserve;
- areas around the island which serve as natural hatcheries;
- ecosystem types and communities
- traditional fishing ko'a
- enforcement and administration, and
- habitat restoration.

The Commission will use this Management Plan to formulate potential amendments to the rules.

Recognition of indigenous needs, values and traditional management practices by the Federal government is very encouraging and the Kaho'lawe Island Reserve Commission hopes to work with the Western Pacific Regional Fishery Council in this area if the proposed amendment becomes law.

Mahalo for the opportunity to testify.

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 12

KAHO`OLAWA ISLAND RESERVE COMMISSION

CHAPTER 260

KAHO`OLAWA ISLAND RESERVE

- §13-260-1 Kaho'olawe island reserve restricted area
- §13-260-2 Definitions
- §13-260-3 Prohibited uses
- §13-260-4 Permitted uses
- §13-260-5 Penalties

Historical Note: Act 340, SLH 1993, established the Kaho'olawe island reserve, by adding chapter 6K to the Hawaii Revised Statutes. The legislature found that the island of Kaho'olawe is of significant cultural and historical importance to the native people of Hawai'i. Chapter 6K, HRS further provides for the transfer of the island reserve to the sovereign native Hawaiian entity upon its recognition by the United States and the State of Hawai'i. The reserve is to be used solely and exclusively for the preservation and practice of all rights customarily and traditionally exercised by native Hawaiians for cultural, spiritual, and subsistence purposes; preservation and protection of its archaeological, historical, and environmental resources; rehabilitation, revegetation, habitat restoration, and preservation; and education. Commercial uses are strictly prohibited, except that the commission is authorized to adopt rules pursuant to chapter 91 to permit fishing in the waters around Kaho'olawe, consistent with the purpose of the law and which takes into consideration the health and safety of the general

§13-260-1

public. After finding that there is an imminent peril to public health and safety, based on the presence of unexploded ordnance and hazardous material on the island and in the surrounding waters, the board of land and natural resources and the Kaho'olawe island reserve commission, pursuant to section 91-3(b), Hawaii Revised Statutes, and section 13-1-35, Hawaii Administrative Rules, adopted emergency rules, effective May 6, 1994 to September 6, 1994, relating to the Kaho'olawe island reserve. The United States Navy has used the island as a military target since 1941 and has an established danger zone which includes the waters extending approximately two miles from the shoreline. Access into the area is restricted (32 CFR Part 763 and 33 CFR §334.1340), in recognition of the substantial amount of unexploded and hazardous materials present on the island and in the adjacent waters. Restricted access has been allowed by the Navy under the terms of the Consent Decree as set forth in Aluli vs. Brown (1980). Title X of Public Law 103-139, 107 STAT.1418, 1479-1484 authorized the conveyance and return of the island to the State and required the U.S. Navy to remove unexploded ordnance and environmentally restore the island. Accordingly, on May 7, 1994, the island of Kaho'olawe was conveyed to the State of Hawai'i from the U.S. Navy. The imminent threat to public health and safety will continue to exist until the Kaho'olawe island reserve has been cleared of unexploded ordnance and hazardous waste.

§13-260-1 Kaho'olawe island reserve restricted area. (a) The Kaho'olawe island reserve restricted area means the entire island of Kaho'olawe and the waters of the Kaho'olawe island reserve encompassing waters seaward of the shoreline of Kaho'olawe island to a distance of two nautical miles as shown on Exhibit "000", dated June 20, 1994, which is located at the end of this subchapter and made part of this chapter. The boundaries are described as follows:

Beginning at a point at the high water mark of Lae o Kealaikahiki Point; then by azimuth measured clockwise from True South, 103 degrees for a distance of 2.70 nautical miles to a point located in the ocean waters; then 215 degrees for a distance of 3.80 nautical miles; 242 degrees for a distance of 6.65 nautical miles; 270 degrees for a

distance of 2.00 nautical miles; 302 degrees for a distance of 3.32 nautical miles; 350 degrees for a distance of 4.80 nautical miles; 032 degrees for a distance of 3.35 nautical miles; 085 degrees for a distance of 9.19 nautical miles; 132 degrees for a distance of 3.67 nautical miles; then along straight line to the point of beginning.

(b) Restricted zones:

- (1) Zone A means all the area within the Kaho'olawe island reserve, including the island, and the waters from the shoreline to a depth of twenty (20) fathoms of water.
- (2) Zone B means all the area within the Kaho'olawe island reserve from a depth of twenty (20) fathoms of water to the boundary of the reserve. [Eff AUG 29 1994] (Auth: HRS §§6K-1, 199-1, 199-7) (Imp: HRS §§6K-3, 6K-4, 6K-7, 199-7)

§13-260-2 Definitions. For the purposes of this chapter:

"Commercial activities" shall mean any activity carried on for a profit including every kind of commercial enterprise, recreational activities offered for fee, and taking or removing any aquatic life, mineral, or vegetation for the purpose of sale.

"Person" shall mean any individual, firm, partnership, corporation, trust, association, joint venture, organization, institution, or any other legal entity.

"Reserve" shall mean the Kaho'olawe island reserve restricted area as described in section 13-260-1 above.

"Subsistence use" shall mean the customary and traditional native Hawaiian uses of renewable ocean resources for direct personal consumption while staying on the island, and not for sale. [Eff AUG 29 1994] (Auth: HRS §§6K-1, 199-1, 199-7) (Imp: HRS §§6K-3, 6K-4, 6K-7, 199-7)

§13-260-3 Prohibited uses. (a) No person shall enter the reserve for any purpose, or operate, leave unattended, beach, park, anchor, or moor vessels or any other water craft, or use the reserve except in cases of

§13-260-3

emergency or as provided in this chapter.

(b) No person shall remove or attempt to remove any aquatic life, mineral, or vegetation from the reserve, except as provided in this chapter.

(c) No person shall engage in any activity which shall include but not be limited to fishing from shore, fishing by trolling or drifting, bottom fishing, spearfishing, net or trap fishing, diving, surfing, swimming, snorkeling, and walking in shallow waters, within the reserve, except as specifically provided below.

(d) No commercial activities shall be allowed within the reserve, except for vessels transitting the island reserve that are engaged in intra-state, inter-state or foreign trade.

(e) None of the above is intended to conflict with international law nor to apply to the State, or the United States, or their contractors in carrying out any of the requirements of Title X of Public Law 103-139, 107 STAT.1418, 1479-1484 and the provisions of the Consent Decree as set forth in Aluli vs. Brown (1980), for the purposes of access only. [Eff AUG 29 1994] (Auth: HRS §§6K-1, 199-1, 199-7) (Imp: HRS §§6K-3, 6K-4, 6K-7, 199-7)

§13-260-4 Permitted uses. (a) Fishing by trolling, where the vessel remains underway at all times, shall be allowed within Zone B on two weekends per month, as noticed by publication in the Local Notice To Mariners issued by Commander Fourteenth Coast Guard District (OAN).

(b) Escorted access to reserve for the purpose of the following uses may be permitted by written authorization of the Kaho'olawe island reserve commission, and as necessary, subject to final approval by the U.S. Navy:

- 1) Customary and traditional native hawaiian cultural, spiritual and subsistence use, in areas deemed safe;
- 2) Activities for the preservation, protection and restoration of cultural, archaeological and historical sites;
- 3) Rehabilitation, revegetation, habitat restoration and preservation; and

4) Educational activities.

[Eff AUG 29 1994] (Auth: HRS §§6K-1, 199-1, 199-7)
(Imp: HRS §§6K-3, 6K-4, 6K-7, 199-7)

§13-260-5 Penalties. Any person who violates this subchapter shall be guilty of a misdemeanor and shall be fined not more than \$1,000 or imprisoned not more than one year, or both, for each offense. Each day of each violation shall be deemed a separate offense.

[Eff AUG 29 1994] (Auth: HRS §§6K-1, 199-1, 199-7)
(Imp: HRS §§6K-3, 6K-4, 6K-7, 199-7)

DEPARTMENT OF LAND AND NATURAL RESOURCES

Chapter 13-260, Hawaii Administrative Rules, on the Summary Page dated August 10, 1994 was adopted on August 10, 1994, following a public hearing held on August 4, 1994, after public notice was given in the Maui News on July 3, 1994, and in the Honolulu Advertiser on July 5, 1994.

The adoption of chapter 13-260 shall take effect 10 days after filing with the Office of the Lieutenant Governor.

Noa Emmett Aluli

Noa Emmett Aluli, M.D.
Chairperson,
Kaho'olawe Island Reserve Commission

APPROVED:

John D. Waihe'e

John D. Waihe'e
Governor,
State of Hawai'i

Dated: AUG 18 1994

APPROVED AS TO FORM:

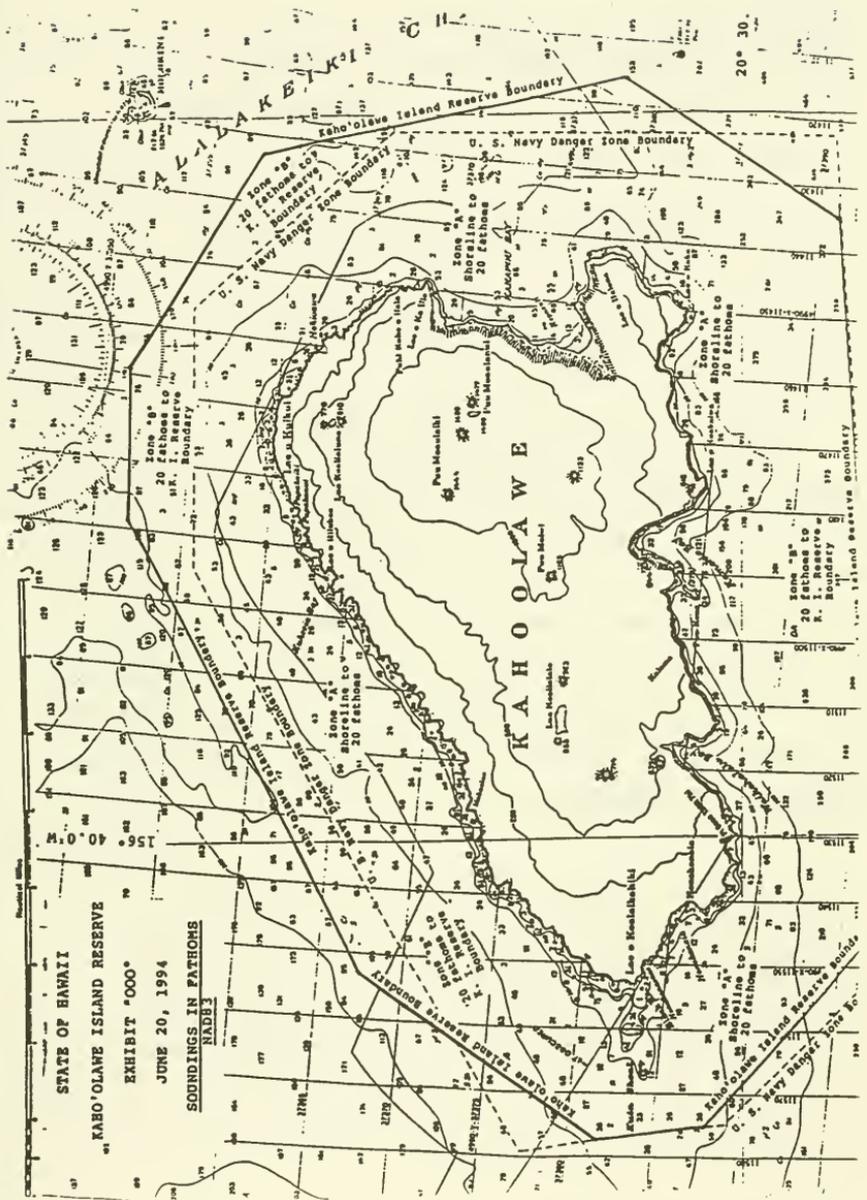
[Signature]

Deputy Attorney General

 AUG 18 1994

Filed

AUG 18 4 02 PM '94



Statement of
Jesus C. Borja, Lieutenant Governor,
Commonwealth of the Northern Mariana Islands
on
Protection of Indigenous Fishing Rights
in
The Northern Mariana Islands

On behalf of the Governor and the people of the Commonwealth of the Northern Mariana Islands, I am honored to present this statement to the Senate Committee on Indian Affairs. The Committee is considering the role of indigenous Pacific islanders, including those of the Northern Mariana Islands, in the conservation, management and development of western Pacific fisheries. Our government appreciates the opportunity to address this important topic, for it is one that has troubled us since the very beginning of our Commonwealth.

SEAFARING AND FISHING TRADITIONS IN THE NORTHERN MARIANA ISLANDS

For three thousand years our people have lived in the middle of the ocean, far out in the western Pacific. Every day we see, hear and smell the ocean. At night we are refreshed by the winds that sweep the wide Pacific. We are surrounded by the sea and it is close at hand. Our ancestors shared the Pacific tradition of high seas navigation, an art that has been so proudly revived here in Hawaii through the voyages of the Hokule'a and other sea-going canoes.

Chamorro tradition

The very first Europeans to visit our islands marveled at the Chamorro skill at sailing and fishing. On March 6, 1521, Ferdinand Magellan in the Victoria made landfall in the Marianas. Antonio Pigafetta, an Italian scholar aboard the Victoria, recorded that:

The pastime of the men and women of this place, and their diversion, is to go with their little boats to catch those fish which fly, with hooks made of fish-bones. The pattern of their canoe . . . are like the fusileres, but narrower. Some of them are black and white, and others are red. On the opposite side to the sail, they have a piece of wood, pointed above, with poles across, which are in the water, in order to go more securely under sail. . . . [T]hey are like dol-

phins, leaping from wave to wave.¹

Indeed, the early commentators were unanimous in their praise of the speed and maneuverability of these vessels. Another example is from the Legazpi expedition in 1565:

[Whenever] one attempts a description of the canoes, one cannot but ceaselessly praise their skillful velocity and maneuverability, for in all the universe, methinks, that naught could prove their equal for beauteous celerity. When they demonstrate their mastery of the waves, verily they do resemble flying darts, and no steed could better heed the driver's reins than they, nor swifter move. For even as we maneuvered the short distance of a harquebuse's shot, they had spun about six times. . . . [S]ome of these crafts are large as any frigate and tall both fore and aft so that the stern is hardly distinguished from the prow. . . . So small the frail masts and so simple the gear that the Indians command a veritable frigate and navigate into the wind with a facility till now unknown to us.²

Carolinian tradition

Our Chamorro and Carolinian people share this tradition. The inhabitants of the Caroline Islands regularly navigated to the Northern Mariana Islands in ocean-going outriggers prior to arrival of the European colonizers. This sea route to the north became known as "metawal wool" to the Carolinians, one of the

¹ Quoted in D. Farrell, History of the Northern Mariana Islands 123 (1991).

² Quoted in id. at 104. For a summary description of early reports of Chamorro sailing and fishing techniques, see J. Amesbury, R. Hunter-Anderson & E. Wells, Native Fishing Rights and Limited Entry in the CNMI 23-27 (Micronesian Archaeological Research Services 1989).

COMMONWEALTH OF
THE NORTHERN MARIANA ISLANDS
Statement of Jesus C. Borja
June 1, 1995

greatest of their voyages.³ Indeed, they migrated to the Northern Marianas within recorded history. In about 1815, two chieftains, Aghurubw, of Satawal, and Nguschul, of Elato--their home islands having been devastated by typhoon--led their people on the "metawal wool" to settle on Saipan. Chief Aghurubw is buried on Managaha island in Saipan Harbor. This voyage from the Central Carolines to the Northern Marianas has been repeated several times in recent years by Mau Pialug, the first navigator of the Hokule'a.

We have always relied heavily on the bounty of the sea for basic sustenance. About 175 miles to the west of, and approximately parallel to, our islands lies a chain of submerged seamounts. The fishing grounds at these seamounts have been known to our people for many generations. Our fishermen have traditionally sailed far beyond the horizon to harvest the fish there and at other banks. Many of these grounds carry family names signifying those who were by custom entitled to harvest and con-

³ Inhabitants of atolls in the Caroline islands travelled to high islands in ancient times to replenish food supplies after storms or droughts. The "metawal wool" from the Carolines to the Marianas became a regular trade route, with annual commercial voyages to trade valuable shells for Chamorro pottery, spices, dyes, breadfruit wood for canoe-building and medicinal plants. Id. at 193-197.

trol the fish at each location.⁴ Our ancestors shared the Pacific tradition of high seas navigation and sailed far from land to harvest the bounty of distance fishing grounds.

Micronesians feel toward their sea the way inhabitants of continental nations feel toward their land. Micronesians own the sea. They own it because they live in it. They own it because until this century they have been the only people to use it for purposes other than transit. They own it because they have sailed it for thousands of years. They own it because they learned how to tame it and cope with its awesome power before anyone else did. They own it because they are totally dependent upon it for survival - both the subsistence form of survival of days past and the more materialistic form of the uncertain future. They own it because over the past centuries they have devised a system for defining and allocating rights in the sea and for passing those rights on from one generation to the next.

The most distant submerged reefs traditionally owned by Micronesians are found in the Northern Mariana Islands. Among these submerged peaks and reefs are many traditionally considered to be the property of the people of the Marianas.⁶

⁴ M. Nakayama & F. Ramp, Micronesian Navigation, Island Empires and Traditional Concepts of Ownership of the Sea (1974). For example, about 175 miles west of Pagan are two reefs together called "Fanupweiletal" traditionally owned by the inhabitants of Anatahan. About 150 miles west of Anatahan is Pathfinder Reef which, together with the reef to the north and the one to the east, is called "Ochensoufanachik" and owned by the Soufanachik clan. There are many reefs closer to land in the Marianas such as "Ochopengek" east of Saipan and "Maenmetin" north of Saipan. Id. at 90.

⁵ Id.

⁶ Id.

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Accounts of the intricate fishing techniques and skills of our ancestors are also found in the historical record. Fray Juan Pobre de Zamora, a lay brother of the Franciscans, visited Rota in 1602. He recorded fishing methods and events witnessed by the Spaniard Sancho, a shipwreck survivor. Sancho related how entire villages would fish from many boats for flying fish. He compared the abundant catch to the Spanish sardine harvest. He told of indigenous fishermen sailing far out to sea to catch blue marlin. They used flying fish bait and had to battle sharks for their catch. Sancho said the people of the Marianas "use the same kinds of tricks that our people use and many more. . . . [T]hese are the most skilled deepwater fishing people yet to have been discovered."⁷

⁷ Quoted in J. Amesbury, R. Hunter-Anderson & E. Wells, *supra*, note 2, at 25, 26. Another remarkable technique was reported by the French scientific expedition of Louis de Freycinet in 1819. Indigenous fishermen used a device called a poio, a small container made of a half coconut and weighted by a stone. They baited the poio with masticated coconut, and then lowered it six to eight fathoms to attract bottom fish which fed on the coconut. The fish were fed in this manner by refilling the poio all day. This feeding continued each day in the same spot, but each day the poio was lowered to a lesser depth. After as long as two months, the fish were feeding near the surface and could be caught in great numbers with a net. *Id.* at 26, 27.

Colonial efforts to eradicate traditional seafaring skills

During the colonial period efforts were made to eradicate the seafaring skills of the indigenous people. In the 1670s open warfare between the Chamorros and the Spanish had broken out throughout the Marianas islands. In 1695 the Spanish adopted a policy of "reduccion" of the islands north of Guam. From an estimated population of about 40,000 in 1668, by 1710 only 3,539 Chamorros remained. The islands north of Rota were completely depopulated and would remain so for more than one hundred years.⁸ As fighting became more severe on Guam and the heavily populated islands in the south, many Chamorros fled to the north. During this period, the Chamorro flying proas were systematically destroyed by the Spanish colonial government so that our people would not be able to flee to other islands.⁹

Later, in the late 1800s, the Carolinians were prohibited from sailing between islands of the Marianas by the colonial governments of Spain and Germany, although they appear to have continued sailing the "metawal wool" back and forth to the Car-

⁸ Farrell, supra, note 1, at 177.

⁹ J. Amesbury, R. Hunter-Anderson & E. Wells, supra, note 2, at 11.

olines.¹⁰

During the Japanese administration, a large commercial fishing industry developed. Manned mostly by Okinawans, with little participation by indigenous people, this industry flourished, supplying food for the large foreign population of the Marianas and exporting to Japan. The Saipan bonito fishery alone produced from 2,000-4,000 tons per year prior to World War II.¹¹ Indigenous fishing was largely confined to the subsistence economy in those days.

The Hopkins Committee, visiting the Pacific shortly after the Second World War, noted that ocean fisheries were highly developed throughout Micronesia during the Japanese administration and that 183 fishing vessels of various categories were based on Saipan alone. There were large installations for handling the catch, for storage, and for repairing vessels. More than twenty state-of-the-art fisheries research vessels cruised the Western

¹⁰ Id. at 9.

¹¹ Letter, March 9, 1995, A.D. Lewis, Oceanic Fisheries Coordinator, South Pacific Commission, to D. Woodworth, attorney for the Commonwealth.

Pacific, gathering oceanographic and biological data. The Committee noted, however, that the fishing industry in the Northern Marianas had been totally destroyed by the war.¹²

Our islands have endured four centuries of colonial domination by outsiders. As we adopted the new technologies brought by these outsiders, we have lost some of our highly-developed traditional skills and technologies. The arts of ocean canoe-making and astral navigation have been almost forgotten, but our seafaring and high-seas fishing tradition continues. Now our fishermen roam far beyond the horizon in Bayliners instead of proas to harvest the resources of the waters surrounding our islands.

The WESPAC study

In 1989, the Western Pacific Regional Fishery Management Council commissioned a study of indigenous fishing rights in the Northern Mariana Islands. The study evaluated the historical, archeological and ethnological evidence of indigenous fishing

¹² United States, Committee to Study the Naval Administration of Guam and American Samoa (the Hopkins Committee), Report for the Secretary [of the Navy] on the Civil Governments of Guam and American Samoa, "Discussion and Explanation" at 35 (1947). One of the last acts of the Japanese before the Allied invasion of the Northern Marianas was to scuttle the fishing fleet. J. Amesbury, R. Hunter-Anderson & E. Wells, supra, note 2, at 11.

practices in our islands. The study confirmed what we have always known, that for more than 3,000 years we have fished on the high seas surrounding our islands, that our people are dependent on fish for survival, that fishing has cultural, social and religious significance to us, and that we continue this fishing tradition.¹³

Considering the disruptive colonial history we have endured, it is remarkable that these rights and traditions have survived to the extent they have. One of our first acts as a Commonwealth government was to codify our right to manage and control our fisheries and other marine resources. We are glad to see this Committee focus on the issue of indigenous fishing rights.

STOCK ASSESSMENTS AND RECENT ENFORCEMENT EFFORTS

We have watched with dismay the decline of the world's fisheries. The scientific consensus appears to be that the Western Pacific tuna fishery is one of the few major fisheries in the world that is not overfished, that is not in immediate danger. We know it is only a matter of time before the world's fishing

¹³ Id. at 1, 69-71.

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fleets seek out our waters, to harvest the resources upon which our people have depended from time immemorial. Some of those foreign fleets have already arrived.

Our government has attempted to assess the fish stocks in the waters surrounding our islands. It is alarming how little is known. There seem to be no comprehensive studies of fisheries resources of the Northern Mariana Islands. The best statistics available from the Federal Government are based on voluntary reports by fish buyers compiled by our Commonwealth government. Thus, if fish are sold outside the Commonwealth, they are not recorded.

Even basic catch statistics required to be reported by foreign governments under Governing International Fishery Agreements (GIFAs) are not available. The GIFA between the United States and Japan signed in 1982 and amended in 1989 required that Japan report catches of tuna and other highly migratory species in the exclusive economic zone surrounding the Northern Mariana Islands. We requested that information from the Federal Government. We were informed that these reports were never received. Other sources, however, indicate that Japanese longline and pole and line fleets were very active in the area during this period. Some purse seine activity was also reported.

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Similarly, it is very difficult to determine how much illegal foreign fishing is taking place in the exclusive economic zone. Our local fishermen have always reported frequent fishing by foreign vessels. I have corresponded with the National Marine Fisheries Service and the U.S. Coast Guard asking what they know about illegal foreign fishing in our waters. The very preliminary information shared with us indicates that five foreign vessels have been seized in the last nineteen months.

Three weeks ago, two of those vessels, the Choko Maru No. 15 and the Miyu Zin Maru No. 131, were arrested for Magnuson Act violations well within the exclusive economic zone adjacent to the Northern Marianas. We applaud the vigilance of the Coast Guard in capturing these vessels. The efforts of the Coast Guard and the National Marine Fisheries Service, and of Special Agent Frederick Kyle in particular, are to be commended.

Two Coast Guard cutters attempt to patrol the exclusive economic zone adjacent to the Northern Marianas, although they also have other duties. They are assisted by an air surveillance flight once every three months and a visit from a "high endurance" cutter twice each year. The five arrests in the last nineteen months suggest a higher rate of illegal activity than we

had suspected. The arrests demonstrate what we have been saying all along: There are foreign vessels fishing in the exclusive economic zone surrounding our islands and no one from the United States, least of all any inhabitant of our Commonwealth, is profiting from their harvest.

THE HAWAIIAN COMMUNITY FISHERIES ACT

The Committee has provided us a draft Hawaiian Community Fisheries Act for review. In its present form, the Act would apply only to Native Hawaiians, not to other indigenous Pacific islanders.

The draft finds that Native Hawaiian people have "since time immemorial, relied on their fishery resources for economic, social, cultural, and spiritual sustenance," and that the protection of Native Hawaiian fisheries practices is vital to the well-being of the Native Hawaiian people. The Act would protect Native Hawaiian fishing rights, involve Native Hawaiians in fish management and conservation, and authorize Native Hawaiian community-based demonstration projects.

To promote these ends, the Act would add a new section 315 to the Magnuson Act requiring that the Western Pacific Regional

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Fishery Management Council "take into account indigenous fishing rights in preparing any fishery management plan under this section." On the technical side, whether the Council would take indigenous fishing rights into account only for plans applicable to Hawaii is unclear. Section 315, entitled "Hawaiian Community Fisheries," does not provide for fishery management plans applicable to the Northern Mariana Islands or other Pacific insular areas.¹⁴ The draft language would not require the Council to take indigenous fisheries rights into account for plans applicable to the Northern Mariana Islands.

Section 315(d) would fund three to five Native Hawaiian demonstration projects to foster and promote management, conservation, enforcement and economic enhancement of Native Hawaiian fisheries. Approved Native Hawaiian community-based entities would be funded to identify traditional fishery management practices, enforce existing State and federal laws, and engage in fishing development projects. We fully support the purposes of the draft statute for Native Hawaiians.

¹⁴ It is not clear even that fishery management plans for native Hawaiian community fisheries are to be prepared under section 315. This point should be clarified.

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To the extent that the Western Pacific Regional Fishery Management Council is preparing fishery management plans for the Northern Mariana Islands, the indigenous fishing rights of our people should also be taken into account. We know the Council supported research to investigate and confirm these rights. We commend the Council for this effort. For much of this century, our people have watched as outsiders harvested the bulk of these resources for their own benefit. It is past time that indigenous fishers be given a fair chance to compete for these harvests and other benefits of the industry.

Section 2 of the draft bill recites a number of federal laws recognizing the rights of the Native Hawaiians and the special responsibilities of the United States with respect to Native Hawaiian lands and natural resources. Our Covenant with the United States and our Commonwealth Constitution similarly recognize special resource rights for our native peoples. Section 806 of the Covenant provides that "the Government of the Northern Mariana Islands, in view of the importance of the ownership of land for the culture and traditions of the Northern Mariana Islands, and in order to protect them against exploitation and promote their economic advancement and self-sufficiency" may "regulate the alienation of permanent and long-term interests in real property." Article XI of our Constitution provides that all lands,

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including submerged lands, transferred to our Commonwealth by the Trust Territory of the Pacific Islands "belong collectively to the people of the Commonwealth who are of Northern Marianas descent."¹⁵

Section 2 of the draft bill recites that the "United States recognizes that the Federal policy of self-determination and self governance extends to all Native Americans." For the people of the Northern Mariana Islands, the principles of self-determination and self-government require more than protecting traditional fishing practices. They require recognition of existing property rights in these fishery resources and a practical means of managing them to the economic benefit of our people. Consequently, we have long sought broader changes in the way the Magnuson Act applies to our islands.

¹⁵ Sec. 1. Our Constitution was approved by Presidential Proclamation 4534, October 4, 1977.

OTHER LEGISLATIVE PROPOSALS

Late last week we received four other legislative proposals that bear on this subject. These proposals are:

- * the Western Pacific Region Community Development Quota Program;
- * the Western Pacific Community Fisheries Act;
- * the Individual Quota Limited Access Programs; and
- * the Pacific Insular Areas Fisheries Empowerment Act.

The Pacific Insular Areas Fisheries Empowerment Act is a new draft of legislation circulated by the Federal members of the Joint Working Group. This draft has not been formally discussed or adopted by the Working Group. Nonetheless, they contain some very positive proposals. We comment on those proposals in our discussion on the Joint Working Group, below.

We have reviewed the other three proposals, but need to study them further. We offer only preliminary comments now.

The Western Pacific Region Community Development Quota Program

This draft legislation is modeled on an experimental program for Native Alaskan communities, proposed to be made permanent as part of the Magnuson Act reauthorization bill, H.R. 39. The con-

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cept of a community-based fishery development quota has merit. The program would set aside a percentage of total allowable catch for Alaska Native fishing communities in certain areas. This would guarantee access to a portion of the harvest in a highly competitive fishery. Without such protection, the native fishermen might not be able to compete with well-financed, high-tech rivals.

Such a program could have benefits for our indigenous fishermen as well. It might not produce the immediate results seen in Alaska, however, because our fishing industry is not as highly developed as the Alaskan pollock fishery. The program is designed for fisheries where limited entry restrictions are necessary. We have no restricted fisheries now. Instead, we are trying to develop our industry. Our fishermen lack the financial ability to buy the vessels and equipment to be competitive, but access to fish is not now an obvious problem.

The Western Pacific Region Community Development Quota Program is racially and ethnically neutral: Communities receive quotas; indigenous fishermen do not. Given the small size of our island communities and the heterogeneous nature of our population, it might be difficult to tailor a program to benefit indigenous fishermen. As we explain above, ethnic preferences in fa-

vor of indigenous peoples are lawful in the insular areas. The possibility of indigenous quotas should be considered.

The Individual Quota Limited Access Program

The Individual Quota Program is not directly related to indigenous rights. The fees charged under the Individual Quota system are restricted to the costs of administering the program and are also limited by section 9701(b) of title 31 of the United States Code. In the Pacific Insular Areas Fisheries Empowerment Act, fees are exempted from section 9701(b). The same exemption should be applied to fees for Individual Quotas.

As with the Western Pacific Region Community Development Quota Program, above, the Individual Quota Limited Access Program is not particularly suited for our fisheries, where limited entry restrictions have not proven to be necessary. Since the days of the Olwol case, access to the fishery has not been a problem. Capitalization for indigenous fishing projects has been the major obstacle.

The Western Pacific Community Fisheries Act

This draft legislation is intended to expand the Hawaiian Community Fisheries Act, discussed above, to include the Pacific insular areas. The new draft changes the language of proposed

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section 315(c). In the original, the Council was required to take into account "traditional fishing rights". The new proposal requires that "traditional fishing practices" be taken into account. We prefer the original. Our right to fish, including the right to use modern techniques and equipment, should be recognized and protected.

All of these draft bills contain positive proposals, worthy of support. Those bills that establish quotas recognize individual, private rights in fisheries resources. The bills that recognize traditional rights or practices honor the historical fishing customs and methods of native Pacific islanders. None of the bills, however, addresses the fundamental issue: how to recognize and implement the current, collective and public fishing rights of the people of the Pacific insular areas as exercised through their contemporary governments. Efforts to reach a workable compromise on that subject have been underway for more than a decade.

THE RIGHTS OF THE COMMONWEALTH

The people of the Northern Mariana Islands collectively have a legitimate claim to the ownership, control, use, and benefit of the surrounding sea and its resources based upon the traditional

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ownership, use, and control of these waters and resources by generations of Chamorro and Carolinian inhabitants of the Northern Marianas. Our people have always claimed, defended, harvested and depended on the marine resources of the ocean surrounding their islands to distances approaching 200 miles.

After winning the terrible battles fought in our islands during World War II, the United States acquired governmental authority in the Northern Marianas pursuant to the United Nations Trusteeship Agreement for the Former Japanese Mandated Islands. The Trusteeship Agreement did not make the United States sovereign in our islands. It recognized the resource rights of the inhabitants of the Trust Territory, and obligated the United States to protect our people against the loss of their resources.

In 1975, while the islands were still subject to the Trusteeship Agreement, our people approved by plebiscite the Covenant to Establish a Commonwealth of the Northern Mariana Islands Political Union with the United States of America. The Covenant established a close political affiliation between the United States and our Commonwealth.

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The Covenant contains no provision conveying the fisheries resources surrounding our islands to the Federal Government. Certainly, the people of the Northern Mariana Islands did not, by entering into the Covenant, vote to grant the Federal Government control of these resources. Indeed, at the time the Covenant was approved, the Federal Government had not established a fishery conservation zone or an exclusive economic zone and did not claim any fisheries resource jurisdiction in our waters.

Given the obligation of the United States under Article 6 of the Trusteeship Agreement to "protect the inhabitants against the loss of their lands and resources," the United States was obligated to ensure that the Covenant retained these resources for the use and benefit of the people of the Northern Mariana Islands. Perhaps because the United States claimed no fisheries jurisdiction beyond its territorial sea at that time, no express provisions were included in the Covenant.

But it is equally clear that the Covenant makes no grant of proprietary or other rights over these fisheries resources to the Federal Government. Since the Covenant is a negotiated document,

a bargained-for exchange of compromises and concessions,¹⁶ no grant of powers or property should be implied when none is set out in the document. One need only look at the Covenant provisions on military land rights afforded to the Federal Government to see the specificity with which a grant is made in the Covenant to realize that no grant of proprietary or other rights over fisheries resources was intended.¹⁷

The division of jurisdiction between the Federal and Commonwealth governments over the fisheries in the sea surrounding the Northern Marianas should conform to international law and practice on the subject. This is especially so because the political status relationship between the Northern Marianas and the United States was negotiated while the United States administered the islands under the United Nations Trusteeship Agreement.

¹⁶ Report of the Joint Drafting Committee on the Negotiating History of the Covenant, at C-3 (1975) (comment on Covenant Sec. 505(b)), reprinted in Hearings before the Subcommittee on Territorial and Insular Affairs of the House Committee on Interior and Insular Affairs on H.J. Res. 549 et al. to Approve the "Covenant to Establish a Commonwealth of the Northern Mariana Islands," 94th Cong., 1st Sess. 374, 376 (1975).

¹⁷ Not only are three lengthy sections of the Covenant, Secs. 802-804, devoted to military land rights, but a separate "Technical Agreement Regarding Use of Land to Be Leased by the United States in the Northern Mariana Islands" was executed simultaneously with the Covenant.

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Under international law, the general rule is that nations with overseas territories or associated states do not claim a proprietary interest in, or jurisdiction over, the fisheries resources of the exclusive economic zone of such an area unless the citizens of that area are given full and equal representation in the national government.¹⁸ This norm is reflected in the United Nations Convention on the Law of the Sea. The Convention is open for signature by less than fully sovereign dependencies, including self-governing states and territories.¹⁹ At the same time, the Convention makes clear that, with regard to territories which have not attained "self-governing status recognized by the United Nations," the "provisions concerning rights and interests under the Convention shall be implemented for the benefit of the people of the territory with a view to promoting their well-being and development."²⁰

¹⁸ T. Franck, Control of Sea Resources by Semi-Autonomous States (1978).

¹⁹ Sec. 305(1).

²⁰ Resolution III. This resolution was adopted as an integral part of the Convention, is annexed to the Final Act of the Third United Nations Conference on the Law of the Sea, and is part of the Final Act of the Conference.

The citizens of the Commonwealth are not represented in the United States House of Representatives or the United States Senate, nor are they permitted to vote in national elections. Consequently, under international law, the people of the Northern Mariana Islands are vested with ownership and beneficial interests in and primary jurisdiction over the resources of the territorial sea and the exclusive economic zone adjacent to the Commonwealth.

THE MAGNUSON ACT

In 1976, three weeks after the Covenant came into effect, Congress enacted the Magnuson Act. The Act did not apply to the Northern Mariana Islands. The legislative history of that enactment made clear that the Act did not apply to the Trust Territory of the Pacific Islands, of which the Northern Marianas remained a part.²¹ In 1978, however, provisions of the Covenant making certain federal laws applicable to the Northern Marianas came into effect. The Department of State advised U.S. embassies overseas that the Magnuson Act was one of those laws that had become ap-

²¹ House Report 94-445, at 49 (1976).

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plicable to the Northern Marianas and that the waters surrounding the islands to the extent of 200 miles were part of the United States fishery conservation zone.²²

Almost immediately, the Magnuson Act was applied to restrict the right of our indigenous local tuna fishermen to fish in their traditional waters, even though at that time foreign tuna fishermen enjoyed a unrestricted "open season" in the exclusive economic zone adjacent to our islands. In 1979, a small group of local fishermen organized themselves as a nonprofit tuna fisheries development project, known as Marianas Fisheries, Inc., and secured a small skipjack tuna vessel, the M/V Olwol. They prepared her for sea and announced plans for her maiden fishing voyage. A priest was invited to bless the undertaking. Friends and relatives were invited to attend the launch.

The big day was spoiled, however, by agents of the Federal Government. The National Marine Fisheries Service informed our fishermen that the voyage would be in violation of the Magnuson Act and other federal laws because the Olwol was of Japanese man-

²² 1 Office of the Solicitor, U.S. Department of the Interior, The Application of Federal Laws in American Samoa, Guam, the Northern Mariana Islands [and] the U.S. Virgin Islands 447-48 (1993).

ufacture.²³ Eventually, during a shakedown cruise, the vessel was boarded by the U.S. Coast Guard and ordered ashore.

This event spelled the end of Marianas Fisheries, Inc. Our people were shocked to learn that the Federal Government intended to control our waters, even to the extent of excluding our own people from fishing in them. Although the restrictions applied to the Olowol in 1979 were suspended by Presidential Proclamation 4726, the incident put a damper on local efforts to start commercial fisheries operations and there have been few such efforts since.

The Government of the Commonwealth has sought at every opportunity to clarify its rights with respect to the fisheries resources surrounding its islands. The Commonwealth in 1980, less than two years after its government was established, enacted its Marine Sovereignty Act. This Act established a 12-mile territorial sea and asserted jurisdiction over the living and non-living resources in a 200-mile exclusive economic zone in confor-

²³ Ironically, the Olowol had been procured by the United States from the Government of Japan for the people of the Northern Marianas in partial settlement of claims for damages inflicted by Japan during World War II.

mity with the United Nations Convention on the Law of the Sea.²⁴

In 1983, however, Congress amended the Magnuson Act and made clear its intention that the Act apply to the Northern Marianas.²⁵ This amendment was made without consultation with the Northern Marianas and without affording the Commonwealth a hearing on the matter. This amendment was very unpopular in the Northern Marianas because the Magnuson Act then excluded tuna from regulation as a highly migratory species. As a result, the Commonwealth was precluded from regulating its most valuable fishery resource.

PRESIDENTIAL COMMISSION RECOMMENDS POLICY CHANGES

The Covenant established a presidentially-appointed commission to advise Congress on the application of federal laws to the Commonwealth. Application of the Magnuson Act had been raised with the Commission before the 1983 amendment. In August 1985 this bipartisan commission, the Northern Mariana Islands Commission on Federal Laws, without dissent and with the support of the

²⁴ 2 Commonwealth Code secs. 1101 *et seq.*

²⁵ House Report 97-549, at 17-18 (1982).

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Commonwealth, recommended to Congress that legislation be enacted to make the Magnuson Act inapplicable to the Northern Marianas.²⁶ At the same time, the Commission recommended enactment of legislation to require the Secretary of State, upon the request of and in cooperation with the governor of the Northern Mariana Islands, to negotiate and conclude international fisheries agreements for the conservation and management of tuna in the waters adjacent to the islands and to require that the benefits from any such agreements be paid to the Commonwealth government.²⁷

The honorable Vice Chairman of this Committee, Senator Inouye, introduced legislation to put the Commission's recommendations into effect²⁸ and a number of the Commission's recommendations eventually became law. Congress did not act, however, on the Magnuson Act or tuna fishery recommendations.

²⁶ Welcoming America's Newest Commonwealth: The Second Interim Report of the Northern Mariana Islands Commission on Federal Laws 114 (1985).

²⁷ Id. at 119. The Commission in fact adopted these recommendations at the very same time in 1983 that, unbeknownst to the Commission, Congress was amending the Magnuson Act in the opposite direction.

²⁸ S. 2735, 99th Cong., 2d Sess. (1986).

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PRESIDENTIAL REPRESENTATIVE RECOMMENDS POLICY CHANGES

The Commonwealth turned to another avenue. In 1986 it initiated formal consultations pursuant to Section 902 of the Covenant with a Special Representative of the President of the United States to clarify the Commonwealth's authority over its fisheries resources. The Commonwealth presented a position paper in these consultations on the Tuna Fishery in November 1986. This position paper asserted the Commonwealth's authority to manage and conserve the tuna resources found within the territorial sea and exclusive economic zone of the Northern Mariana Islands. The paper recommended enactment of federal legislation to implement this authority. The proposed legislation would have:

- 1) provided authority for the Commonwealth to negotiate international tuna fishing agreements with foreign nations;
- 2) provided for the membership and participation of the Commonwealth in the South Pacific Forum Fisheries Agency and other international organizations;
- 3) excluded the Northern Mariana Islands from the Magnuson Act; and
- 4) provided for appropriate federal oversight of the activities of the Commonwealth in the conservation

and management of tuna.²⁹

A second position paper, on Ocean Rights and Resources, was presented in these consultations in March 1987. It affirmed the right of the people of the Commonwealth to control, manage and develop the marine resources of their exclusive economic zone. The paper documented that the people of the Northern Mariana Islands have and should retain the full complement of rights in the ocean and the exclusive economic zone recognized for coastal states under the United Nations Convention on the Law of the Sea. The paper proposed that these rights be recognized by the United States by a mutual consent amendment to the Covenant and that authority to participate in international affairs as appropriate to a coastal state be formally recognized by federal legislation.³⁰

In 1990 the Special Representative of the President agreed to support the Commonwealth's authority to conserve, manage and control the marine resources of the territorial sea and exclusive

²⁹ Special Representatives of the Governor, Position Paper on the Tuna Fishery, reprinted in Compilation of Documents from the First and Second Rounds of the Covenant Section 902 Consultations 235 (1986).

³⁰ Special Representatives of the Governor, Position Paper on Ocean Rights and Resources, reprinted in Compilation of Documents from the Third Round of the Covenant Section 902 Consultations 249 (1987).

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economic zone adjacent to the Northern Marianas for the benefit of the people of the Commonwealth. The President's Special Representative also agreed to support the Commonwealth's participation, subject to the approval of and in cooperation with the United States, in regional and international agreements for the conservation and management of fisheries and other marine resources.³¹ At the same time, the President's Special Representative joined the Commonwealth's representatives in a letter to President Bush, recommending that the Commonwealth participate in all negotiations related to conservation and management of tuna in the Pacific region and that the United States assist the Commonwealth in conserving and managing its tuna resources for the

³¹ Special Representative of the President of the United States & Special Representatives of the Governor of the Commonwealth of the Northern Mariana Islands, Memorandum of Agreement on Ocean Rights and Resources (April 12, 1990), reprinted in Compilation of Documents from the Eighth Round of the Covenant Section 902 Consultations 287 (1990). A copy of this agreement is attached as Exhibit 1 to this statement. The Special Representatives also agreed to "send to the President a joint recommendation that the Commonwealth of the Northern Mariana Islands has authority to conserve, manage, and control the marine resources in the waters and seabed of the territorial sea and exclusive economic zone of the Commonwealth." Agreements After the Eighth Round of Consultations (April 12, 1990), reprinted in Compilation of Documents from the Eighth Round of the Covenant Section 902 Consultations 293, 295 (1990).

benefit of the people of the Northern Marianas.³²

Later in 1990, the White House wrote the Special Representatives to tell of the Administration's agreement that representatives of the Commonwealth should be part of any United States delegation conducting negotiations on the conservation and management of tuna "off the coast" of the Northern Marianas and could be included on other delegations for other Pacific tuna negotiations if their participation "would assist the work of the delegation." The Administration also agreed that the United States should support the Commonwealth in conserving and managing tuna resources "off the Northern Mariana Islands" "to the extent necessary and appropriate."³³

³² Letter, April 12, 1990, Timothy W. Glidden, Special Representative of the President & Benjamin T. Manglona, et al., Special Representatives of the Governor, to President George Bush, reprinted in Compilation of Documents from the Eighth Round of The Covenant Section 902 Consultations 293 (1990). A copy of this letter is attached as Exhibit 2 to this statement.

³³ Letter, Sept. 17, 1990, Ms. Ede Holiday, Special Assistant to the President and Secretary of the Cabinet, to Benjamin T. Manglona, Chairman, Special Representatives of the Governor, and Timothy W. Glidden, Interim Special Representative of the President, reprinted in Compilation of Documents from the Ninth Round of the Covenant Section 902 Consultations 54 (1990). A copy of this letter is attached as Exhibit 3 to this statement.

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Throughout this period our Commonwealth declined to nominate representatives to serve on the Western Pacific Regional Fishery Management Council (WESPAC), lest such nominations be seen as acquiescence in the federal claim to ownership of our fisheries resources. The Commonwealth took this position, even though it respected the expertise offered by the WESPAC and knew WESPAC could provide valuable services for the conservation and management of our fisheries.

Much of this history was told by the honorable Vice Chairman of this Committee and other Members of the Senate on the Senate floor in 1990. The Vice Chairman and Senator Stevens noted that these issues were under discussion in the Section 902 Consultations and expressed their hope that final agreement could be reached between the Federal Government and the Commonwealth and codified into law.³⁴

In 1992 Congress extended the Magnuson Act to the tuna fisheries. Tuna is the principal fisheries resource in our waters. This amendment removed a major objection by our Commonwealth to application of the Act to the Northern Marianas. Now, at least,

³⁴ 136 Congressional Record S14965 (daily ed. Oct. 11, 1990).

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the tuna in the waters surrounding our islands were recognized as a fish and could no longer be taken by foreign vessels without so much as a "by your leave". But, still, the benefits from the commercial fisheries harvest in our waters elude us.

In 1992 the Special Representative of the President agreed with our representatives in the Section 902 Consultations to recommend that the Federal Government assure the Commonwealth that its participation in the WESPAC would not prejudice the claims of the Commonwealth to ownership and control of its fisheries resources.³⁵ Early in 1993, the Department of Commerce assured our Government that the Federal Government agreed not to construe participation by the Commonwealth in WESPAC activities as prejudicial to any rights the Commonwealth might have in its adjacent waters.³⁶

³⁵ Special Representative of the President of the United States & Special Representatives of the Governor of the Commonwealth of the Northern Mariana Islands, Joint Agreement on Membership in the Western Pacific Regional Fishery Management Council (Dec. 16, 1992), reprinted in Compilation of Documents from the Thirteenth Round of the Covenant Section 902 Consultations 205 (1992).

³⁶ Letter, Jan. 22, 1993, William W. Fox, Jr., Acting Assistant Administrator for Fisheries, National Marine Fisheries Service, National Oceanic & Atmospheric Administration, U.S. Dep't of Commerce, to Lorenzo I. Guerrero, Governor, Commonwealth of the Northern Mariana Islands.

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THE JOINT WORKING GROUP

In the same 1992 agreement in the Section 902 Consultations, the Special Representatives agreed to establish a joint working group to study and make recommendations on the proprietary and beneficial interest of the people of the Northern Marianas in the fish within the adjacent exclusive economic zone, the derivation of revenues by the Commonwealth from fishing activities in that zone, and Federal-Commonwealth joint approval of fisheries permits within the zone.³⁷

On January 6, 1994, Secretary of Commerce Ron Brown and Secretary of the Interior Bruce Babbitt announced the formation of a Joint Working Group on EEZ Fisheries Policy in the Pacific Insular Areas. The Working Group was intended to address fisheries policy not only for the Northern Marianas, but for Guam and American Samoa. The Commonwealth has participated in the work of the Working Group. Our hope was that the Working Group would be able to recommend Magnuson Act amendments to be considered during the

³⁷ Special Representative of the President of the United States & Special Representatives of the Governor of the Commonwealth of the Northern Mariana Islands, Joint Agreement on Membership in the Western Pacific Regional Fishery Management Council (Dec. 16, 1992), reprinted in Compilation of Documents from the Thirteenth Round of the Covenant Section 902 Consultations 205 (1992).

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current reauthorization. The Working Group met only twice, however, the last meeting occurring in July 1994. Since then, the federal members from the Office of Territorial and International Affairs and the National Marine Fisheries Service (NMFS) have informally circulated draft amendments to the Magnuson Act to improve application of the Act to the Pacific insular areas.

These efforts have been constructive. The federal proposals would allow the governor of a Pacific insular area to request the Secretary of State to negotiate an international fisheries agreement for the adjacent exclusive economic zone and to participate in those negotiations. The proposals would allow Pacific insular area governments to operate a permit system for domestic fishing by agreement with the Secretary of Commerce and would encourage cooperative enforcement. Fees under these arrangements would be paid to the insular area government.

The federal proposals are very positive and would improve fishery conservation and management in the Pacific insular areas. Unfortunately, they have apparently not been approved by even the federal members of the Working Group and the Group's deliberations seem to have stalled. So far as we know, no meeting has been scheduled to consider these drafts or alternative proposals with the members of the Working Group from the Pacific

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insular areas.

The Commonwealth favors these proposals, as far as they go. They can and should be improved, however. The proposals do not, for example, recognize an ownership interest in the fishing resources by the people of the Pacific insular areas. They do not allow Commonwealth participation in regional or international fishery management organizations. They do not expressly establish that revenue-generating fees may be charged or that fines and penalties accrue to the insular area governments. They do not confer jurisdiction on the federal District Court for the Northern Mariana Islands to enforce the Magnuson Act.

THE COMMONWEALTH'S PROPOSAL

The Commonwealth, using the NMFS's drafts as a starting point, has developed additional proposals to amend the Magnuson Act. We here offer these proposed amendments for your consideration.³⁸

³⁸ The proposed amendments are attached as Exhibit 4 to this statement.

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The legislation we propose:

- * recognizes that the Pacific insular areas have ownership interests in the marine resources of the exclusive economic zone;
- * specifically recognizes the right of the Pacific insular areas to derive revenues, over and above the costs of administration and enforcement, from foreign and domestic harvesting of their fisheries resources;
- * allows the Pacific insular areas to participate in regional and international arrangements for the conservation and management of tuna and other fisheries, subject to appropriate oversight and control by the Department of State;
- * recognizes the role of Pacific insular areas in promulgating fisheries management plans in the adjacent exclusive economic zone and their right to regulate when no fishery management plan has been promulgated;
- * provides that the proceeds of fines, penalties and forfeitures for violations of federal fisheries laws in the waters adjacent to a Pacific insular area, less certain costs of enforcement, be paid to that insular area;
- * allows aliens allowed to be employed pursuant to the laws of a Pacific insular area authorized to control the employment of aliens to be employed on vessels fishing in the waters adjacent to that insular area; and
- * confers jurisdiction on the District Court for the Northern Mariana Islands to enforce the Magnuson Act.

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Ownership interests

Our proposed amendments to the Magnuson Act legislation acknowledge that the ownership interest in fisheries resources is vested in the people of the Commonwealth and the other Pacific insular areas, while other aspects of sovereignty are retained by the Federal Government. I have already explained why this acknowledgment should be made: our traditional dominion of the sea and international law require that the Federal Government recognize this ownership interest. This does not mean that we own outright all the fish that swim in these waters. Any fisherman who lawfully catches them owns those fish. Our people's interest is proprietary and beneficial. Neither does it mean that our interests exclude federal rights. I emphasize here that our draft amendments are careful to ensure that the rights of the Federal Government with respect to national security and the management of foreign affairs are not affected in any way by acknowledgment of our ownership interests.

Revenues

Congress and the Federal executive branch have long urged us to rely on our own natural resources and less on assistance from the Federal Government. One of the principal resources relied upon by the independent nations near us is fisheries, principally

large-scale tuna fisheries. These nations derive substantial revenues by selling rights of access to these fisheries. Neither the Federal Government nor the Pacific insular areas, however, derive any direct income from the fisheries adjacent to our insular areas.

We appreciate the specific exemption, in the most recent NMFS draft, of foreign and domestic fees from the requirements of section 9701 of title 31 of the United States Code. This exemption, however, may not be enough to allow the derivation of revenues in excess of governmental costs from the fisheries.³⁹

Fishery revenues should not be earmarked for "fishery conservation and management purposes." Self-governance means how fishery revenues are expended should be determined by the Pacific insular area receiving those revenues.

³⁹ Federal court decisions limiting "fees" to governmental costs do not appear to be grounded on section 9701, even though the predecessor of that section was applicable in those cases. See National Cable Television Association, Inc. v. United States, 415 U.S. 336, 340-41 (1974); Federal Power Commission v. New England Power Co., 415 U.S. 345 (1974); National Cable Television Association, Inc. v. Federal Communications Commission, 554 F.2d 1094, 1104-06 (1976); Electronics Industries Association, Consumer Electronics Group v. Federal Communications Commission, 554 F.2d 1109 (1976).

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Our draft amendments specifically allow the collection of such revenues for the right to fish in the waters of the Pacific insular areas.

Regional and international management

The predominant commercial species in the exclusive economic zone surrounding the Pacific insular areas are tunas, swordfish and other highly migratory species. Under Article 64 of the United Nations Convention on the Law of the Sea and section 102 of the Magnuson Act, these species are to be conserved and managed through regional and international efforts.

Other small Pacific island governments have energetically and successfully involved themselves in these regional efforts, notably through the South Pacific Forum Fisheries Agency. Because foreign affairs authority resides with the Federal Government, it has been difficult for the Pacific insular areas to become involved in regional management efforts. Yet the conservation and management of these highly migratory species are not, for the most part, diplomatic functions. Rather, they are mainly commercial and environmental activities. Pacific insular areas should be allowed to participate in these regional efforts.

Our draft amendments provide for appropriate federal oversight to ensure that this participation will not adversely affect the national security and foreign affairs interests of the United States.

Regulatory authority

Consistent with its ownership interests in fisheries resources, a Pacific insular area should be able to approve federal fishery management plans and to regulate fisheries in its adjacent territorial waters and exclusive economic zone when no plan has been promulgated. Where a plan is in effect, a Pacific insular area should be able to enforce its own laws that do not conflict with the plan. Our draft includes mechanisms to ensure that regulation by Pacific insular areas does not allow overfishing and does not conflict with federal interests.

Our draft amendments allow a Pacific insular area, in conjunction with the Secretary of Commerce, to establish conditions and restrictions on foreign fishing.

Turnover of proceeds of fines, penalties and forfeitures

The NMFS drafts provide that most permit and other fees will accrue to the Pacific insular areas or be shared with the United States, a principle that we endorse. But no similar provision is

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made for criminal fines, civil penalties, and forfeitures assessed under the Magnuson Act. These penalties can be substantial. For example, the prosecution of the Han Bok 309 for Magnuson Act violations resulted in a fine of more than one million dollars.

Our draft amendments provide that the Pacific insular areas are entitled to retain the proceeds from these fines, penalties, and forfeitures, less a deduction for federal administrative costs of enforcement.

Employment of alien fishermen

Fishing vessels based in the Northern Mariana Islands have been prevented from employing alien seamen to the same extent as vessels based in other United States jurisdictions. This is due to interpretations of section 8103 of title 46 of the U.S. Code by the U.S. Coast Guard, the U.S. Department of Transportation, and the Immigration and Naturalization Service.

The crewing restrictions imposed on U.S.-documented vessels may hamper the development of local fishing industries in Pacific insular areas, if insular area entrepreneurs are unable to find U.S. citizens and/or U.S. permanent residents to work on their

vessels.

Our draft amendments provide that the employment of aliens on vessels fishing in the territorial waters and exclusive economic zone adjacent to a Pacific insular area will be controlled by the government of that insular area, if that government has the power to control the employment of aliens. The Northern Mariana Islands and American Samoa currently have that power; Guam seeks similar authority in its proposed Commonwealth Act.

Federal district court jurisdiction

Finally, one of our proposed amendments affects only our Commonwealth. The provision of the Magnuson Act on court jurisdiction⁴⁰ was enacted before the federal District Court for the Northern Mariana Islands was established.⁴¹ The Magnuson Act provides that "[i]n the case of Guam, and any Commonwealth, territory, or possession of the United States in the Pacific Ocean, the appropriate court [for cases or controversies arising under the Magnuson Act] is the United States District Court for the

⁴⁰ Public Law 94-265, sec. 311(d), 90 Stat. 358 (1976), codified at 18 U.S.C. sec. 1861(d).

⁴¹ Public Law 95-157, sec. 2, 91 Stat. 1266 (1977), codified as amended at 48 U.S.C. sec. 1694a.

District of Guam, except that in the case of American Samoa, the appropriate court is the United States District Court for the District of Hawaii."⁴²

The District Court for the Northern Mariana Islands has the jurisdiction of any District Court of the United States.⁴³ There is no reason why it should not have jurisdiction over Magnuson Act cases arising in the waters surrounding the Northern Marianas.

CONCLUSION

Mr. Chairman and members of the Committee, a little over twelve years ago I sat downstairs in this building discussing these same issues. As a member of the Northern Mariana Islands Commission on Federal Laws, it was my honor to discuss what proper fisheries policy in the Northern Mariana Islands would be with my colleagues on the Commission, including, among others, such notables as the late Honorable Phillip Burton, of California, and

⁴² 18 U.S.C. sec. 1861(d).

⁴³ 48 U.S.C. sec. 1694a.

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Myron Thompson, of Hawaii. The Commission decided, on my motion and without dissent, to recommend that the Magnuson Act not apply to the Commonwealth.

More than a decade has passed and the Act still applies to our Commonwealth. Some say we should give up, because we have tried every avenue to resolve this issue for more than a decade, without success. But it is not the same Magnuson Act any more; tuna are now included as fish worthy of conservation and management. Before, the National Marine Fisheries Service was arresting our fishermen while allowing foreign tuna fleets an open season in our waters. Now, our people are free to fish in their traditional waters and the Service arrests the unlicensed foreigners. I see this as progress. At least now they know who to arrest. The Magnuson Act still does not work for our circumstances. It does not allow us to generate revenues or to collect the kind of data we need to build up our conservation capabilities.

But progress is possible. We have admired the management efforts of the WESPAC over the years. The WESPAC played a key role in bringing tuna into the Magnuson Act and its work on indigenous fishing rights has helped bring about the hearing today. We also appreciate the recent enforcement efforts of the NMFS and the U.S. Coast Guard. We understand the difficulty and

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complexity of proper management and enforcement. I, for one, would like to work with the WESPAC within the national fisheries program under the Magnuson Act. But, in fairness, participation should not require surrender of the fishing rights of our indigenous peoples.

Now is the time for us to resolve this issue, before we experience a disastrous collapse of the kind that has struck the New England fisherman. We must be allowed to retain these fisheries resources as one of the few assets upon which we can build our economy. We have labored for many years to strike a workable compromise. We respectfully request that the Federal Government recognize our legitimate interest in these resources, and that Congress legislate a practical program for cooperative conservation and management of these fisheries resources.

* * *

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THE SPECIAL REPRESENTATIVE OF
THE PRESIDENT OF THE UNITED STATES
and
THE SPECIAL REPRESENTATIVES OF
THE GOVERNOR OF
THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

MEMORANDUM OF AGREEMENT
ON
OCEAN RIGHTS AND RESOURCES

April 12, 1990

The Special Representative of the President of the United States and the Special Representatives of the Governor of the Commonwealth of the Northern Mariana Islands, appointed pursuant to Section 902 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, met and conferred at the Eighth Round of Consultations pursuant to 902 in Saipan, on April 9 through 12, 1990.

The Special Representatives of the President and the Governor agreed in principle to a basis for resolution of the issue of "Ocean Rights and Resources." This issue was raised by the Special Representatives of the Commonwealth in a position paper submitted in our consultations on March 30, 1987. The issue concerns the authority of the Commonwealth of the Northern Mariana Islands to conserve, manage and control the marine resources in the waters and seabed of the territorial sea and exclusive economic zone of the Commonwealth for the benefit of the people of the Northern Mariana Islands.

The Special Representative of the President agrees to support the Commonwealth's proposal that the authority and jurisdiction of the Commonwealth of the Northern Mariana Islands be recognized and confirmed by the United States to include the sovereign right to ownership and jurisdiction of the waters and seabed surrounding the Northern Mariana Islands to the full extent permitted under international law. Under this proposal, the Commonwealth shall have the rights of a coastal state in the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf as provided in the United Nations Convention on the Law of the Sea; provided that the exercise of those rights shall be done in cooperation with the United States and subject to the responsibility and authority of the United States with respect to foreign affairs and defense under Section 104 of the Covenant.

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In addition, the proposal provides that the Northern Mariana Islands shall, with the approval of and in cooperation with the United States, participate in regional and international organizations which are concerned with international regulation of the rights set out above, and may enter into treaties and other international agreements regarding the exercise of those rights, including such treaties and agreements relating to the harvesting, conservation, management, exploration or exploitation of the living and non-living resources from the marginal sea.

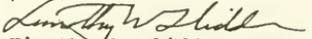
The United States assist or act on behalf of the Northern Mariana Islands in the area of foreign affairs as may be requested by the Northern Mariana Islands, and mutually agreed from time to time, to such extent as is required for the exercise of the rights of the Northern Mariana Islands in the exclusive economic zone.

The Special Representative of the President agrees to support this proposal for resolution of the issue within the Government of the United States, to seek agreement to the proposal within other agencies of the Government of the United States. The Special Representative of the United States will consider technical advice on appropriate means of recognizing, confirming and implementing the described rights of the Northern Mariana Islands in its territorial sea and exclusive economic zone and will respond to the Commonwealth's other proposals for resolving this issue at the earliest possible date.

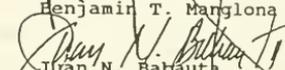
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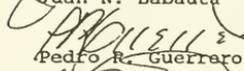
Agreement on Ocean Resources
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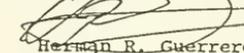
Respectfully Submitted,

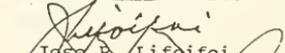

Timothy W. Glidden
Special Representative of
the President of the
United States

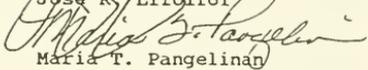

Benjamin T. Manglona


Juan N. Babauta


Pedro R. Guerrero


Herman R. Guerrero


Jose R. Lifoifoi


Maria T. Pangelinan

Special Representatives
of the Governor of the
Commonwealth of the
Northern Mariana Islands

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THE SPECIAL REPRESENTATIVE OF
THE PRESIDENT OF THE UNITED STATES
and
THE SPECIAL REPRESENTATIVES OF
THE GOVERNOR OF
THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

April 12, 1990

The Honorable George Bush
The President of the United States
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C.

Dear Mr. President:

The Special Representative of the President of the United States and the Special Representatives of the Governor of the Commonwealth of the Northern Mariana Islands, appointed pursuant to Section 902 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, met and conferred at the Eighth Round of Consultations pursuant to Section 902 in Saipan, on April 9 through 12, 1990. The Special Representatives considered the issues raised by the Commonwealth in its position paper regarding the Tuna Fishery submitted in these consultations on November 23, 1986.

The Commonwealth of the Northern Mariana Islands tuna fishery has been excluded from the South Pacific Tuna Treaty, signed on April 2, 1987 and from the Convention for the Prohibition of fishing with Long Driftnets in the South Pacific, signed on November 23, 1989. As a result, the Commonwealth's tuna stocks are isolated among the only unregulated tuna resources in the Pacific Region. We are pleased to jointly recommend that, pursuant to Section 904 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, approved by U.S. Public Law 94-241, the Commonwealth of the Northern Mariana Islands be included and participate in all future negotiations related to the conservation and management of tuna in the Pacific Region. We further recommend that the United States undertake to assist the Commonwealth to conserve and manage its tuna resources for the benefit of the people of the Northern Mariana Islands.

The Commonwealth's other proposals to resolve the tuna issue are still the subject of consultation, and we intend to make further recommendations on this subject in the near future.

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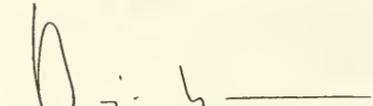
The Honorable George Bush
April 12, 1990
Page 2

Repectfully submitted,

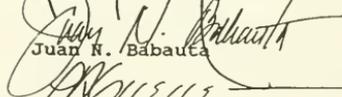


Timothy W. Glidden

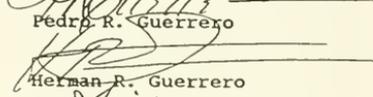
Special Representative of
the President of the
United States



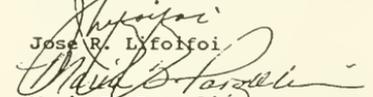
Benjamin T. Manglona



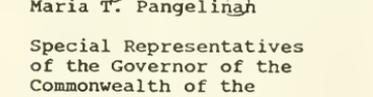
Juan N. Babauta



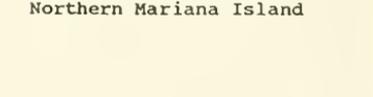
Pedro R. Guerrero



Herman R. Guerrero



Jose R. Lyfolfoi



Maria T. Pangeliñah

Special Representatives
of the Governor of the
Commonwealth of the
Northern Mariana Island

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THE WHITE HOUSE
WASHINGTON

September 17, 1990

The Honorable Benjamin T. Manglona
Lt. Governor/Chairman
Commonwealth of the Northern Mariana Islands
Capitol Hill
Saipan, MP 96950

Mr. Timothy W. Glidden
Special Representative of the President
for Consultations with the Commonwealth
of the Northern Mariana Islands
U.S. Department of the Interior
Washington, DC 20240

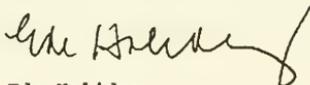
Dear Chairman Manglona and Representative Glidden:

This letter is in response to your letter of April 12, 1990, relating to Pacific tuna fisheries.

The Administration agrees that representatives of the CNMI should be part of any delegation conducting negotiations on the conservation and management of tuna off the coast of the Northern Mariana Islands. (In this regard, we note that neither the South Pacific tuna treaty nor the driftnet convention relates to fisheries off the Northern Mariana Islands.) Representatives of the CNMI might also be included on United States delegations negotiating on these and other matters concerning South Pacific tuna fisheries when to do so would assist the work of the delegation.

The Administration agrees with the other recommendation in the letter that the United States should assist the CNMI, to the extent necessary and appropriate, in conserving and managing tuna resources off the Northern Mariana Islands.

Sincerely,



Eda Holiday
Assistant to the President
and Secretary of the Cabinet

Exhibit 3

PACIFIC INSULAR AREAS FISHERIES AMENDMENTS

Commonwealth of the Northern Mariana Islands draft
May 24, 1995

A BILL

To provide for fisheries conservation and management in the Pacific insular areas, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SEC. 101. REFERENCE

(a) This Act may be cited as the "Pacific Insular Areas Fisheries Act of 1995".

(b) As used in this Act, "Magnuson Act" means the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 et seq.

SEC. 102. POLICY

Subsection (c) of section 2 of the Magnuson Act (16 U.S.C. 1801(c)) is amended--

(a) by striking out "and" at the end of paragraph (5);

(b) by striking out the period at the end of paragraph (6) and inserting in lieu thereof "; and"; and

(c) by adding after paragraph (6) the following new paragraph:

"(7) Aware of the unique historical, cultural, legal, political, and geographical circumstances of the Pacific insular areas of the United States, including the importance of fisheries resources to their economic growth, to recognize the special interests of the inhabitants of the Pacific insular areas in their fishery resources and to assure that the fishery resources adjacent to such areas, including those within the exclusive economic zone, be explored, exploited, conserved, and managed by and for the benefit of the people of each such area."

SEC. 103. DEFINITIONS

Section 3 of the Magnuson Act (16 U.S.C. 1802) is amended--

(a) by redesignating subsections (16) to (32) as subsections (17) to (33), respectively; and

(b) by inserting after subsection (14) the following new subsection:

"(15) The term "Pacific insular area" means American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands."

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SEC. 104. HIGHLY MIGRATORY SPECIES

Section 102 of the Magnuson Act (16 U.S.C. 1812) is amended by designating the first paragraph as subsection (a) and by adding at the end thereof the following new subsection:

"(b) Each Pacific insular area may participate in regional and other international organizations concerned with the conservation and management of tuna and other fisheries on a regional or international basis, including the South Pacific Commission and South Pacific Forum Fisheries Agency, provided that such participation is consistent with the foreign policy and defense interests of the United States. Where appropriate or necessary, the United States will sponsor and/or otherwise support any Pacific insular area in applying for membership in such organizations. Subject to the supervision of the Secretary of State, a Pacific insular area shall have the competence necessary to carry out the obligations of participation in such groups."

SEC. 105. INTERNATIONAL FISHERY AGREEMENTS

(a) Paragraph (1) of section 201(a) of the Magnuson Act (16 U.S.C. 1821(a)(1)) is amended by striking out "subsection (b) or (c);" and inserting in lieu thereof "subsection (b) or (c) or section 204(d);".

(b) Section 202 of the Magnuson Act (16 U.S.C. 1822) is amended--

(1) in subsection (a):

(A) by redesignating paragraph (5) as paragraph (6);

(B) by striking out "and" at the end of paragraph (4); and

(C) by inserting after paragraph (4) the following new paragraph:

"(5) shall, upon the request of the Governor of a Pacific insular area, and with the participation of such Governor and in consultation with the Secretary, initiate and conduct negotiations for the purpose of entering into a Pacific insular area fishery agreement to authorize foreign fishing within the exclusive economic zone adjacent to such insular area; and";

(2) by striking out the period at the end of subsection (c) and inserting in lieu thereof "or section 202(a)(5).";

(3) by redesignating subsection (f) as subsection (g); and

(4) by inserting after subsection (e) the following new subsection:

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"(f) PACIFIC INSULAR AREA FISHERY AGREEMENTS.

(1) The Secretary of State shall not negotiate a Pacific insular area fishery agreement to authorize foreign fishing within the exclusive economic zone adjacent to an insular area without consultation with and the concurrence of the Governor of such insular area.

(2) Foreign fishing under a Pacific insular area fishery agreement shall not be subject to sections 201(d) through 201(i) of this Act.

(3) A Pacific insular area fishery agreement shall become effective according to the procedures of section 203."

SEC. 106. PERMITS FOR FOREIGN FISHING

Section 204 of the Magnuson Act (16 U.S.C. 1824) is amended by adding at the end thereof the following new subsection:

"(d) PACIFIC INSULAR AREA PERMITS.--

(1) The Secretary and the Governor of a Pacific insular area shall jointly issue permits to appropriate fishing vessels of a foreign nation as provided in a Pacific insular area fishery agreement with that nation. Each permit shall contain a statement of all conditions and restrictions which shall apply to the fishing vessel for which the permit is issued.

(2) The Secretary and the Governor shall jointly establish conditions and restrictions which shall be included in each permit. These conditions and restrictions shall include, but are not limited to those set out in subparagraphs (A) through (F) of section 204(b)(7) of this Act.

(3) Fees paid pursuant to a Pacific insular area fishery agreement shall be deposited in the Treasury of the affected Pacific insular area.

SEC. 107. IMPORT PROHIBITIONS

Subsection (a) of section 205 of the Magnuson Act (16 U.S.C. 1825(a)) is amended by redesignating paragraphs (2) to (4) as paragraphs (3) to (5), respectively, and by inserting after paragraph (1) the following new paragraph:

"(2) he has been unable, within a reasonable period of time, to conclude with any foreign nation an international tuna fishery agreement to conserve and manage the tuna and other highly migratory species within the exclusive economic zone of the United States adjacent to a Pacific insular area, because such nation has (A) refused to commence negotiations, or (B) failed to negotiate in good faith;"

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SEC. 108. IMPLEMENTATION OF FISHERY MANAGEMENT PLANS IN THE
PACIFIC INSULAR AREAS

(a) Paragraph (1) of section 302(h) of the Magnuson Act (16 U.S.C. 1852(h)(1)) is amended by inserting "and, in the case of a fishery management plan applicable to a Pacific insular area, to the Governor of that area," after "Secretary".

(b) Subsection (a) of section 305 of the Magnuson Act (16 U.S.C. 1855(a)) is amended by striking out "or" at the end of paragraph (2), by striking out the period at the end of paragraph (3) and inserting in lieu thereof "; or", and by inserting at the end thereof the following new paragraph:

"(4) unless, within 35 days after the Council transmits to the Governor of a Pacific insular area a fishery management plan with respect to fisheries in the exclusive economic zone adjacent to that Pacific insular area, the Governor informs the Secretary of the Governor's disapproval of the fishery management plan as it applies to that Pacific insular area, in which case the plan shall not be implemented with respect to that Pacific insular area."

SEC. 109. DOMESTIC FEES

Subsection (d) of section 304 of the Magnuson Act (16 U.S.C. 1854(d)) is amended--

(a) by striking out "The Secretary" in the first sentence and inserting in lieu thereof "(1) GENERALLY.-- The Secretary"; and

(b) by adding at the end thereof the following new paragraph:

"(2) PACIFIC INSULAR AREA FEES.--

(A) The Secretary may enter into a cooperative agreement with the Governor of a Pacific insular area, under which the insular area may administer a permit system for fisheries in the exclusive economic zone adjacent to the insular area. A cooperative agreement under this paragraph may provide that the fees and royalties collected under the permit system shall be deposited into the Treasury of the affected insular area.

(B) Pursuant to a cooperative agreement between the Governor of a Pacific insular area and the Secretary, fees and royalties may be established for any fishery permit issued pursuant to a cooperative agreement for fishing in waters adjacent to such area.

(C) The amount of any fees and royalties collected under this subsection shall be fair and equitable to all participants in the fisheries. The amount of fees shall be based on the ex vessel value of all fish upon the first sale within the jurisdiction of the United

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States. The cooperative agreement shall provide the method of determining the value of such fish and the method of collecting such fees and royalties."

SEC. 110. STATE JURISDICTION

(a) Subsection (3) of section 306(a) of the Magnuson Act (16 U.S.C. 1856(a)(3)) is amended by inserting "and by subsection (d)" after "Except as provided by paragraph (2)".

(b) Section 306(b) of the Magnuson Act (16 U.S.C. 1856(b)) is amended:

(1) by redesignating paragraph (2) as paragraph (3);

and

(2) by inserting after paragraph (1) the following new paragraph:

"(2)(A) If the Secretary finds, after notice and an opportunity for a hearing in accordance with section 554 of title 5, that:

(i) the fishing in a fishery, for which there is no fishery management plan approved and implemented pursuant to this Act solely due to disapproval of a proposed plan by the Governor of any Pacific Insular Area pursuant to section 305(a)(4) of this Act, and which is subject to the conservation and management laws of a Pacific Insular Area under subsection (d), is engaged in predominantly within the exclusive economic zone and beyond such zone; and

(ii) that Pacific Insular Area has taken any action, or omitted to take any action, the results of which will substantially fail to prevent overfishing;

(B) If the Secretary of State shall certify to the Secretary that, in regulating fishing in a fishery described in paragraph (2)(A)(i), any Pacific Insular Area has taken any action, or omitted to take any action the result of which is substantially inconsistent with the treaty obligations or foreign affairs policies of the United States;

the Secretary shall promptly notify such Pacific Insular Area and the Western Pacific Regional Fishery Management Council of such finding or certification and of his intention to regulate the applicable fishery pursuant to such fishery management plan and regulations promulgated to implement such plan."

(c) Section 306 of the Magnuson Act (16 U.S.C. 1856) is amended by adding at the end thereof the following new subsection:

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"(d) PACIFIC INSULAR AREAS.--

(1) Within the sovereignty of the United States, the people of each Pacific insular area of the United States have, and may exercise, exclusive ownership rights, proprietary and beneficial, and jurisdiction for the purpose of exploring and exploiting, conserving and managing all fish and fishery resources within the territorial sea and exclusive economic zone adjacent to that insular area. These rights may be exercised in cooperation with the United States and shall be exercised consistently with the foreign affairs and defense interests of the United States.

(2) The Governor of each Pacific insular area may review and approve, disapprove or propose amendments to any proposed fishery management plan submitted pursuant to section 302(h)(1) of this Act to the extent that plan applies to the territorial sea and exclusive economic zone adjacent to that insular area. The Governor shall notify the Secretary of his disapproval or proposed amendment within 35 days after it is transmitted to him by the Western Pacific Regional Fishery Management Council. If the Governor fails to so notify the Secretary, the proposed plan is deemed approved.

(3) The Government of a Pacific insular area may permit, license, regulate and tax fishing conducted according to a Pacific insular area fishery agreement, subject to the terms of the agreement. All fees, royalties, taxes, payments or other consideration received pursuant to any agreement concluded under the authority of this section and attributable to the taking of fish, or to the right to take fish, by the vessels of foreign nations within the territorial sea and exclusive economic zone adjacent to a Pacific insular area shall be deposited into the Treasury of that insular area. The Secretary may enter into a cooperative agreement with a Pacific insular area under which the United States may assist that insular area in administering and regulating such foreign fishing. Such cooperative agreement may provide that all or part of the fees derived from such foreign fishing may be paid to the United States to defray the costs of administrative and enforcement assistance provided by the United States.

(4) For any fishery for which there is no fishery management plan approved and implemented pursuant to this Act, a Pacific insular area may enforce its laws and regulations pertaining to the taking of fish in the exclusive economic zone adjacent to that insular area or the landing of fish taken in the adjacent exclusive economic zone.



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(5) For any fishery for which there is a fishery management plan approved and implemented pursuant to this Act, a Pacific insular area may enforce its laws or regulations pertaining to the taking or landing of fish caught in the adjacent exclusive economic zone, so long as such law or regulation is not inconsistent with any relevant fishery management plan approved and implemented under this Act. Any Pacific insular area may request that the Secretary, in consultation with the Western Pacific Regional Fishery Management Council, issue a determination of consistency with respect to any specific law or regulation of that insular area.

(6) Any Pacific insular area seeking a determination of consistency pursuant to paragraph (5) shall submit such request to the Secretary and to the Western Pacific Regional Fishery Management Council. The Secretary shall immediately publish a notice in the Federal Register setting forth the request and inviting written data, views, or comments of interested persons. The law(s) or regulation(s) of the insular area that are the subject of the request shall be deemed consistent with the Federal fishery management plan if the Secretary has not notified the insular area in writing of his denial of the request for a determination of consistency within 90 days of the request."

SEC. 111. ENFORCEMENT

Section 311 of the Magnuson Act (16 U.S.C. 1861) is amended--

- (a) by redesignating subsection (g) as subsection (h);
- (b) by striking out "201(b) or (c)" in paragraph (1) of subsection (h), as redesignated by subsection (a), and inserting in lieu thereof "201(b), (c), or (d)"; and
- (c) by inserting after subsection (f) the following new subsection:

"(g) ENFORCEMENT IN THE PACIFIC INSULAR AREAS.--

(1) The Secretary, in consultation with the Governors of the Pacific insular areas, shall to the extent practicable support cooperative enforcement agreements between Federal and Pacific insular area authorities.

(2) The Secretary shall pay into the Treasury of a Pacific insular area such sums received as fines, penalties, and forfeitures of property for violation, in the territorial waters or exclusive economic zone adjacent to that insular area, of any provisions of this Act or of any other fishery resource law enforced by the Secretary, including the Lacey Act Amendments of 1981 (16 U.S.C. 3371 et seq.), deducting first any payments made by the Secretary pursuant to subsection (e) of this section."

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SEC. 112. JURISDICTION OF COURTS

Subsection (d) of section 311 of the Magnuson Act (16 U.S.C. 1861(d)) is amended by striking out "Commonwealth," in the second sentence thereof and by striking out the period at the end of that sentence and inserting in lieu thereof ", and in the case of the Commonwealth of the Northern Mariana Islands, the appropriate court is the District Court for the Northern Mariana Islands."

SEC. 113. VESSEL CREWING

Subsection (i) of section 8103 of title 46, United States Code is amended--

(a) by redesignating paragraph (3) as paragraph (4); and

(b) by inserting after paragraph (2) the following new paragraph:

"(3) Notwithstanding paragraphs (1) and (2) of this subsection, in any Commonwealth, territory, or possession of the United States that has the authority to regulate the employment of aliens, an alien allowed to be employed under the laws of that Commonwealth, territory, or possession may be employed as an unlicensed seaman on a fishing, fish processing, or fish tender vessel that is engaged in the fisheries in the navigable waters of the United States or the exclusive economic zone adjacent to that Commonwealth, territory, or possession."

SEC. 114. CONFORMING AMENDMENTS

(a) Paragraph (B) of section 307(2) of the Magnuson Act (16 U.S.C. 1857(2)(B)) is amended by striking out "204(b) or (c)" and inserting in lieu thereof "204(b), (c), or (d)".

(b) Subsection (b) of section 301 of Public Law 102-251 (March 9, 1992, 106 Stat. 62) is amended--

(1) by revising paragraph (1) to read as follows: "by redesignating paragraphs (25) through (33) as paragraphs (26) through (34) respectively; and"; and

(2) by striking out "(23)" in paragraph (2) and inserting in lieu thereof "(24)".



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