

STATEMENT OF DEPUTY ASSISTANT SECRETARY KEONE NAKOA
INSULAR AND INTERNATIONAL AFFAIRS
U.S. DEPARTMENT OF THE INTERIOR
BEFORE
COMMITTEE ON ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE
MARCH 29, 2022
REGARDING PROGRESS OF NEGOTIATIONS ON
COMPACT OF FREE ASSOCIATION BETWEEN UNITED STATES
REPUBLIC OF PALAU, FEDERATED STATES OF MICRONESIA
AND REPUBLIC OF THE MARSHALL ISLANDS

Chairman Manchin, Ranking Member Barrasso and Members of the Committee, I am Keone Nakoa, Deputy Assistant Secretary of the Interior for Insular and International Affairs. It is an honor for me to appear before the Senate Committee on Energy and Natural Resources as the representative of Secretary of the Interior Deb Haaland in today's hearing.

I do so as the current lead Department of the Interior (DOI) official directly responsible for managing administration of the Compact of Free Association (COFA) between the United States (U.S.) and, respectively, the Federated States of Micronesia (FSM), Republic of Palau, and Republic of the Marshall Islands (RMI), collectively the freely associated states (FAS). My duties have also included representation of DOI in U.S. negotiations with the FAS on behalf of the Biden-Harris Administration to amend the COFA, as may be necessary. We share the mutual goal to strengthen and deepen the successful bilateral relationships thriving under the Compacts between the United States and our COFA partners, both the governments and the peoples of the United States and each of the three FAS.

The written statements and the testimony of my fellow Biden-Harris Administration colleagues representing the Department of Defense (Defense) and the Department of State (State) describe the decades-long contributions of the Compacts related to U.S. national security

interests and American foreign policy goals in the Indo-Pacific Region – contributions which are more important than ever before.

I. Introduction

My testimony will focus on DOI's role in administration and implementation of the Compacts – carried out through the Office of Insular Affairs (OIA). I will begin with the historical context for the relationship between the United States and the FAS before and during the Compacts. Next, I will address the Committee's questions related to the need for timely and adequate progress of the COFA negotiations, starting with this administration's review of the negotiating strategy we inherited from the last administration.

Finally, I will provide an update on Biden-Harris Administration efforts to create a more productive dialogue with the FAS, in a collaborative process addressing a broader discussion of COFA-related issues in a way that is respectful of all parties. This administration is taking action to amend COFA and subsidiary agreements with the FAS before certain provisions expire at the end of Fiscal Year (FY) 2023 in FSM and RMI, and the end of FY 2024 in Palau. The primary goal driving our review of the previous administration's policies to craft our approach to advance negotiations has been strengthening U.S. relationships with the FAS to promote long-term U.S. interests in a free, open, and secure Indo-Pacific.

II. Context for the relationship between the United States and the FAS

A. United States historical roles before Compacts of Free Association

To understand the many unique aspects of the Compacts and our current negotiations, it is helpful to briefly review how these unique state-to-state relationships developed, applying

both international and domestic principles over the last 75 years – first under the U.N. trusteeship and then the enduring reciprocal commitments embodied in the Compacts.

The success of the COFA has been and will continue to be played out in a region that has been vital to American strategic interests since World War II. More than 100,000 Americans lost their lives liberating what today are the islands of the three FAS from imperial Japan, which used the islands as strategic outposts to stage and wage war against our nation. Since the strategic success and battlefield horror of the island-hopping military campaign in WWII, an underlying goal of the United States under the 1947 United Nations trusteeship and the Compacts approved by Congress in 1986 has been to keep these island nations out of the path of war. Another great purpose was to redeem our commitments and obligations to preserve democratic self-determination and self-government enabling the people of the islands to realize their potential for political and economic development.

With the backdrop of WWII and the looming threats of Russia during the Cold War, the Compacts were created to be international agreements that established unprecedented interdependent bilateral relationships between the United States and three strategically located island nations, with an area subject to their sovereign rights and jurisdiction comparable in geographic size to the whole continental United States, but with populations and economies a fraction the size of the United States.

After U.S. nuclear testing ended in 1958, the U.S. strategic and military footprint in the Trust Territory of the Pacific Islands (TTPI) and the FAS has remained limited but, but Kwajalein obviously remained of vital and paramount importance to international peace. At the same time, under Article 9 of the Trusteeship Agreement and subsequently under the Compacts,

the United States has extended a package of foundational federal programs and services for 75 years. This has enabled public safety, transportation, healthcare, communications, education, and related infrastructure at the local level beyond the capacity of the local governments, and more comparable in many respects to public sector capabilities in the nearby U.S. territories.

Congress and every President since Truman intentionally supported this relationship model, understanding the consequential involvement of the United States in the formation of the FAS, and the relationship we share which simply has no parallel. At its core, the ultimate purposes of the U.N. trusteeship and now the Compacts were a transition from pre-WWII imperialism to decolonization and respect for self-determination, at the same time promoting stability that prevents threats to peace and security in the region.

B. The United States continued close relations with FAS under Compacts

Through exercises of self-determination, U.S. administration of the islands of Palau, FSM, and RMI as districts of the trust territory with constitutions but not yet fully self-governing ended and new state-to-state relationships took its place. The United States approved the Compacts for the FSM, RMI and Palau in 1986, although the initial Compact for Palau was not implemented until 1994. In 2003, the FSM and RMI Compacts were amended to extend expiring economic provisions, also making significant changes to government relations and security and defense provisions proposed by U.S. negotiators under the COFA Amendments Act of 2003 (P.L. 108-188). On September 3, 2010, the Compact for Palau also was amended by the Compact Review Agreement (CRA) was concluded and reflected the review that the United States and Palau had engaged in under Section 432 of the Palau COFA. The CRA and its amendments entered into force in 2018. Congress appropriated the necessary funds to implement the CRA, as

amended, and approved it on December 12, 2017. Section 1259C of the National Defense Authorization Act, 2018 (48 U.S.C. 1931 note); *also* at P.L. 115-91, 131 Stat. 1687.

Under both the U.N. trusteeship and COFA, the United States has sought to keep commitments it made to the peoples of the FAS to address their needs in the aftermath of war, including the U.S. nuclear testing program in the Marshall Islands. Notably, the U.N. recognized and through Security Council oversight confirmed U.S. military and civilian strategic programs were authorized by Article 3 and Article 5 of the Trusteeship Agreement, and as such were sustained as consistent with U.N. and U.S. goals of preserving international peace during the early years of the Cold War. Under the Compact Section 177, the United States took responsibility and authorized a “just and adequate” settlement for claims related to consequences of the U.S. nuclear testing program in the RMI from 1946 to 1958. In 1986 the Section 177 Agreement provided for compensation and mutually agreed measures constituting a “full settlement” of “all claims, past, present, and future” by the RMI, its citizens, and its nationals against the United States that are settled by the agreement. The terms of this agreement are binding on the parties and remain in force “until terminated or otherwise amended by mutual consent.”

The three Compacts were not approved as Senate-ratified treaties, but rather approved by and incorporated into federal statutes. In addition to providing the necessary authorities and appropriations to implement the Compacts, as amended, the Compact of Free Association Amendments Act of 2003 and various other U.S. statutes further authorize and continue in the FAS features of domestic law and policy comparable to federal measures applicable in U.S. states and territories. For example, Section 105(b)(4)(6)-(8) in the COFA Amendments Act of 2003 gives the Secretaries of State and the Interior both shared and separate authorities and

responsibilities to coordinate, provide policy guidance and recommendation on implementation of the Compacts and manage both international and domestic governance models in relations with the FAS. DOI remains the lead agency for implementing the most direct people-to-people measures under the Compact, including COFA grants and federal program, optimally in close interagency coordination with the National Security Council (NSC), State, and Defense. These measures make the unique international and domestic framework of this free association the envy of many other small nations in the region and around the world.

Much of the COFA success story lies not only in the Compacts themselves, but in the Congressional approval and implementing statutes, which provide a combination of co-equal, shared, and separate authorities and responsibilities for federal agencies to operate in the FAS.

For example, under the Compacts, as amended, and the Federal Programs and Services Agreements with the FSM and RMI, USAID operates in conjunction with the Federal Emergency Management Agency (FEMA) to provide disaster assistance in FSM and RMI, based on features of both international and domestic program models. Other agencies like the Federal Aviation Administration (FAA), National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Education, and the U.S. Postal Service (USPS) have operated in the FAS consistent with the Federal Programs and Services Agreement and Palau CRA, under a primarily domestic model.

C. DOI has played a lead role in the FAS since just after WWII

DOI's role in the Pacific Islands that make up FAS nations today began when it replaced the U.S. Navy's military governance during and after WWII with civilian administration. Specifically, in 1951, DOI assumed authority and responsibility for the internal civil affairs of

the TTPI, under both executive and secretarial orders and federal statutes, including federal laws funding the costs of U.S. stewardship for the trusteeship.¹

As agreed by the FAS governments, and approved by their people in U.N. observed plebiscites, the Compacts are consistent with resolutions of the U.N. General Assembly defining free association as a non-colonial political status. That includes the principle that the FAS are sovereign nations with full rights of democratic self-determination and self-government. Accordingly, consistent with U.N. Resolution 2625 (XXV), October 24, 1970, and under the Compacts, both the United States and the FAS individually retain the right to full independence. That includes the unencumbered ability to terminate the free association status defined by the Compacts. Termination may be done by mutual agreement, or each nation may do so unilaterally or by mutual agreement, subject to the transitional terms and provisions set forth in the Compact.

Under the terms of the Compacts, the relevant subsidiary agreements, and related statutes, DOI coordinates the administration and management of U.S. grant assistance, and with the Department of State, provides fiscal accountability consistent with Title Two of the Compacts, as amended, with the RMI and FSM and the associated Fiscal Procedures Agreements. Both agencies work to coordinate programs and operations of U.S. domestic federal programs and services in the FAS. In most respects, DOI acts as a partner with departments and agencies operating in the FAS under the Compacts and/or relevant U.S. statutes, first and foremost with State and Defense, but also with FAA, FEMA, USPS, Federal Deposit Insurance

¹ While ten other U.N. trusteeships were overseen by the U.N. Trusteeship Council and the General Assembly, the U.S.-administered TTPI was the only trusteeship classified as “strategic” and subject to oversight by the Security Council. In 1978 the Carter Administration determined that trusteeship status should be continued or ended based on self-determination on future status options recognized by the U.N. and the U.S. under U.N. resolutions, including full integration, independence, or free association.

Corporation, and the Departments of Education, Energy, Health and Human Services, Homeland Security, Labor, NOAA, and Veterans Affairs, among others.

DOI also works with the Department of State on government relations under Title One of the Compacts, and with the Department of Defense on security and defense relations under Title Three. For example, DOI facilitates financial transfers for COFA provisions such as the Joint Committee on Security and Defense Relations.

DOI also employs a combination of strategies in coordination with other agencies to conduct relationships with the FAS as nations with equal sovereignty, while also acting consistent with domestic model programs like those in the U.S. territories that began in the TTPI era. This model respects the sovereignty of each of the FAS and the United States and their ability to terminate the agreement in accordance with the Compact's terms – if it were to determine that such termination is preferred over its continuation.

Within this framework the United States relies on international and/or domestic law as necessary. Not only do the Compacts secure our defense rights, they enable DOI, together with State and other agencies, to administer operations ranging from sector grants, including for infrastructure and Compact trust fund management to education programs that provide school lunches. Further, Compacts include variations between the three FAS in how to promote the sustainable economic development for the FAS.

D. The Compacts have produced a 35-year success story

The sustainability and resiliency of our partnership with all three FAS is being contested in a new era of superpower competition. Yet, even as strong incentives and inducements are offered by third country interests seeking to undermine known strengths and to exploit any

perceived weaknesses in U.S. relationships with these three sovereign nations, the United States remains each Compact government's preferred partner among the nations of the world. Reciprocally, the United States has no closer strategic, political, economic, social, and cultural partnership than our unique associations with the FAS.

Accordingly, as we negotiate amendments related to the Compacts to effectively strengthen our relationships with the FAS – and in the process address our changing present and future needs in the Indo-Pacific – we must make a clear statement to the world that the United States is committed to its role as a Pacific nation, and that the mutually beneficial social, political, economic, and strategic relationships between the United States and the FAS will be an even more enduring success story in the future.

III. The last administration's negotiation strategy

While the last administration began the third round of COFA negotiations in 2020 by emphasizing the strategic importance of the FAS, it was hampered by the determination of some of the FAS to address unresolved issues relating to current implementation of both the Compacts, as amended, and relevant U.S. law, as well as issues settled in the 1986 Compact that the RMI wishes to revive from the second rounds of COFA negotiations in 2003. As such, the primary objective of obtaining agreements to amend the Compacts and related agreements was not achieved by the end of 2020.

With the constrained timeline of that objective, the negotiators for the U.S. side employed negotiating tactics interpreted by the FAS as indicative of a downgraded process compared to historical experience in the 1978 and 1986 original COFA negotiations, including limiting negotiations only to extend and amend certain expiring economic assistance provisions and a

perceived downgrading of assurance levels for all economic assistance. Instead of “full faith and credit” assurances in the original 1986 Compacts, or mandatory funding like that which was used to implement Compacts, as amended, with the FSM and RMI the 2003 amendments, all economic assistance was proposed to be funded through discretionary appropriations.

Finally, the last administration did not provide the U.S. Co-Negotiators with an appointment conferring all-of-government authority to enlist all federal agencies to participate in and support substantial U.S. offers of assistance and programs to the FAS. At the end of 2020, this strategy culminated with the U.S. negotiators presenting the three FAS with “Non-Paper” economic proposals that did not address demands from the FAS and lacked provisions from key federal agencies.

When I assumed my duties as Deputy Assistant Secretary in the fall of 2021 and was assigned to serve as the Interior Department’s COFA Co-Negotiator, the RMI and Palau had already refused to continue COFA negotiations without specific changes in negotiation processes, including the appointment of a Presidential representative. The RMI had responded in 2021 to the informal U.S. proposal with a conceptual counterproposal containing a proposed negotiating agenda, signed by the RMI Foreign Minister. The President of Palau came to Washington and explained to U.S. Cabinet-level officials in 2021 that the 2020 offers were inadequate and unacceptable.

In response to U.S. offers, the FSM has met with U.S. negotiators to seek clarification of the informal economic proposals, including informal talks in Honolulu and a discussion with USPS about their current operations in the FSM earlier this month. The FSM has also made significant progress on technical amendments to the federal services portion of the Compact;

however, many of the most complex issues remain, including infrastructure assistance and trust fund management processes.

Despite these many challenges, we have taken specific steps to address these issues, and we are close and hoping very soon to be able to announce progress on personnel and funding decisions that would demonstrate the Biden-Harris team is working with all stakeholders on a bipartisan basis to do just that.

IV. Biden-Harris Administration transition to enhanced COFA negotiation process

Faced with the fact that the 2020 COFA negotiation strategy did not produce adequate progress, particularly with Palau and the RMI, the Biden-Harris COFA team began an intensive review of the policies put in place during the last administration. As a result of that review, we identified several areas where the U.S. negotiation strategy and the expectations of the FAS were misaligned and have taken steps to put the negotiations back on a viable track for timely completion and approval of agreements by the U.S. and FAS, which is still achievable as long as we have the commitment and cooperation of all three FAS as well as federal stakeholders to move forward.

First, the COFA team recognized the necessity of considering mandatory spending proposals for economic assistance provisions. Similarly, it is also important to identify a source account for COFA funding to propose to Congress.

As previously discussed, the Interior's COFA responsibilities include coordinating with relevant agencies on federal programs and services, and managing sector grants, including for infrastructure, among many other implementation activities. This administration will request

necessary mandatory funding for implementing the agreements that are reached in the negotiation process.

Although, we have received considerable formal and informal feedback from the FAS on the previous U.S. offers, as described above, we still have yet to reach the point when we have specific funding proposals from the FAS. This makes it very difficult to account for how much mandatory funding we would request over the period of any new agreements. We look forward to the feedback of this Committee and others in Congress on this matter.

Second, the FAS have made clear their belief that an NSC-authorized and -coordinated COFA negotiation processes led by a Presidential representative was needed to successfully conclude negotiations. Acknowledging this, the Biden-Harris Administration has taken steps to establish enhanced all-of-government coordination, oversight, guidance, and exercise of policy discipline in the negotiations process, including the effective steering as needed by the NSC and OMB of all federal agencies with current or potential programs or commitments in the FAS.

Critically, this led to the appointment of the Special Presidential Envoy for Compact Negotiations, Joseph Yun, on March 22, 2022. Special Presidential Envoy Yun has the necessary backing of the White House, including NSC and OMB, and both Interior and State will remain highly involved in support of the policies promulgated and advanced with the FAS by Special Presidential Envoy Yun.

Finally, we recognized the Compacts are more than international agreements, as they are incorporated into federal statutes which also include significant domestic law and policy implications. That is why it was important to ensure the Special Presidential Envoy had interagency reach to address a broader range of issues than that of any single department.

We have received letters, calls, and questions from a number of Members of Congress, including some of the Members and staff of this Committee, weighing in on some of these policy questions, supporting careful consideration of FAS views and proposals.

Although we have not yet worked out every detail of the many complex issues raised in these negotiations, with the new Special Presidential Envoy, I am hopeful that we can quickly take the initial and necessary step of hearing each other out in a way that allows our countries to raise matters of importance and to find those areas for negotiation on which we do share a mutual understanding very soon. From there, we will need the FAS prepared to provide their own proposals to resume discussions leading to a new beginning to earnest negotiations. We look forward to the continued engagement from this Committee and from both chambers of Congress.

V. Closing

In closing, I remain optimistic that the negotiation team led by Special Presidential Envoy Yun will be able to move forward swiftly and complete the Administration's role in this process with enough time for Congress to complete yours. I thank you again for the opportunity to provide this testimony and am happy to take any questions.