STATEMENT
OF
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UNITED STATES DEPARTMENT OF THE INTERIOR

BEFORE THE
SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

REGARDING
S. 1237 – THE OMNIBUS TERRITORIES ACT OF 2013

July 11, 2013

Mr. Chairman and members of the Committee on Energy and Natural Resources, I am pleased to discuss, on behalf of the Department of the Interior, certain provisions of the Omnibus Territories Act of 2013, S. 1237. Sections 14, 15, 17, 18 and 20 of the bill pertain to matters outside of the Department's jurisdiction; as such the Department defers to the relevant federal agencies for their views on these provisions.

Territorial Sea

Section 3 would give the Commonwealth of the Northern Mariana Islands (CNMI) authority over the submerged lands out to three geographical miles from its coast lines.

At present, the CNMI is the only United States territory that does not have title to the submerged lands in that portion of the United States territorial sea that is three miles distant from its coastline. It is appropriate that the CNMI be given the same authority as other territories.

On January 6, 2009, by presidential proclamation, the Marianas Trench Marine National Monument (Monument) was created, including the Islands Unit, comprising the submerged lands and waters surrounding Uracas, Maug, and Asuncion, the northernmost islands of the CNMI. While creation of the monument

is a historic achievement, it should be remembered that the leaders and people of the CNMI were and are these three islands' first preservationists. They included in their 1978, plebiscite-approved constitution the following language:

> ARTICLE XIV: NATURAL RESOURCES
> Section 1: Marine Resources. The marine resources in the waters off the coast of the Commonwealth over which the Commonwealth now or hereafter may have any jurisdiction under United States law shall be managed, controlled, protected and preserved by the legislature for the benefit of the people.
>
> Section 2: Uninhabited Islands . . . . The islands of Maug, Uracas, Asuncion, Guguan and other islands specified by law shall be maintained as uninhabited places and used only for the preservation and protection of natural resources, including but not limited to bird, wildlife and plant species.

It is important to note that the Northern Marianas Commonwealth Legislature has never taken action adverse to the preservation of these northern islands and the waters surrounding them. The people of the CNMI are well aware of their treasures. CNMI leaders consented to creation of the monument because they believed that the monument would bring Federal assets for marine surveillance, protection, and enforcement to the northern islands that the CNMI cannot afford.

If enacted, section 3 would become a public law enacted subsequent to the creation of the Monument, and would convey to the CNMI the submerged lands surrounding Uracas, Maug, and Asuncion without addressing the effect of this conveyance on the administrative responsibilities of the Department of the Interior and the Department of Commerce. Presidential Proclamation 8335 (Proclamation) assigned management responsibility of the Monument to the Secretary of the Interior, in consultation with the Secretary of Commerce. The proclamation further states that the "Secretary of Commerce shall have the primary management responsibility . . . with respect to fishery-related activities regulated pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. §§ 1801 *et seq*.) and any other applicable authorities." The Proclamation provides that submerged lands that are granted to the CNMI "but remain controlled by the United States under the Antiquities Act may remain part of the monument" for coordinated management with the CNMI. As envisioned by the Proclamation establishing the Monument, the Administration remains committed to protecting

the outstanding resources in the waters surrounding the CNMI's three northernmost islands.

Specifically, the Department strongly recommends an amendment to section 3 that addresses the coordination of management as contemplated within the Proclamation, prior to the transfer of the submerged lands within the Islands Unit of the Monument to the CNMI. Such language would protect the Islands Unit of the Monument and at the same time acknowledge the prescient and historic conservation effort of the leaders and people of the CNMI in protecting Uracas, Maug, and Asuncion, and their surrounding waters.

The Department of the Interior strongly supports section 3 and strongly recommends the above-referenced amendment. The Department of the Interior looks forward to the Commonwealth of the Northern Mariana Islands gaining rights in surrounding submerged lands similar to those accorded other territories.

Adjustment of Scheduled Wage Increases in the CNMI

Section 4 of the bill would slow minimum wage increases in the CNMI by forgoing the increases slated to take effect on September 30, 2013, and 2015. The 50-cent increases scheduled to occur in 2014, 2016 and annually thereafter would remain in effect.

In 2007, the Congress put American Samoa and the CNMI on a path to match the United States minimum wage within a few years. Legislation dictated increases to the minimum wage of 50-cents per year, until parity was achieved.

Due to substantial economic hardship in American Samoa – the closure of one of its two tuna canneries – the law was amended to skip the increases for American Samoa from 2011 through 2014.

Both territories have isolated locations in the Pacific Ocean in neighborhoods of low wages. The CNMI has also suffered the loss of one of its two major industries – garment manufacturing. The purpose of section 4 is to spread out the minimum wage increases for the CNMI to help ensure the survival of island businesses and their employees' jobs. Specifically, section 4 would slow the pace of minimum wage increase until after 2015, when the annual increases would resume, similar to the adjustment made previously for American Samoa.

The Department of the Interior has no objection to section 4.

CNMI Immigration Issues

Section 5 deals with fees and funding vocational education curricula and development of educational entities, and a five year extension of the statutory period (through December 31, 2019) for lowering the number of CNMI-only foreign transitional worker permits to zero.

Subsection 1 of Section 5 requires the CNMI government to provide a plan for the expenditure of educational funds collected (as required by statute) by the Department of Homeland Security as a supplemental fee on CNMI employers' transitional worker immigration petitions and provided to the CNMI government, and a projection of the effectiveness of these funds in finding employment for U.S. workers. Every two years the Secretary of Homeland Security must report on the effectiveness of meeting the goals set out in the annual plan.

Subsections 2 and 3 of section 5 also relate to CNMI-specific immigration provisions contained in the Consolidated Natural Resources Act of 2008 (CNRA). The CNRA shifted administration of immigration in the CNMI from CNMI to Federal authority, but also established a five-year transition period to allow the CNMI economy to adjust to the new regime.

Coincident with change in World Trade Organization rules and the demise of the CNMI garment industry in the late 2000s, the CNMI's economy has struggled. The resulting tax and revenue decline has been challenging for the CNMI government.

The Department of the Interior has always supported measures that promote economic development in the CNMI, and in the CNRA, the Congress specifically directed the Department of the Interior to aid the CNMI economy during the immigration transition. As a result, in 2011, the Department conducted a Forum on Economic and Labor Development (FELD) in Saipan, designed to elicit from the CNMI community ideas and goals for the CNMI economy. The Department later provided $1 million in grant funds to implement the FELD findings.

While it cannot yet be characterized as an economic rebound, statistics from recent months show increases in CNMI tourism and hotel bookings.

Nevertheless, businesses and CNMI government officials are concerned that if the approximately 12,000 foreign workers resident in the CNMI under the transitional worker program were forced to leave at the end of 2014, the reduction would have significant adverse consequences for the CNMI economy.

Under the CNRA, the Secretary of Labor already has the discretion to extend the CNMI-only transitional worker program by up to five years if warranted by economic conditions. The Department of Labor is now conducting studies that will inform that decision.

The Department of the Interior defers to the Departments of Labor and Homeland Security regarding important aspects of section 5.

Study of Electric Rates in the Insular Areas

Section 6 of the bill is entitled "Study of Electric Rates in the Insular Areas." The legislative language that follows, however, goes much beyond a study. The language calls for an "energy action plan" for each territory and freely associated state (FAS) and implementation of those plans. The legislative language is largely duplicative of section 604 of Public Law 96-597 (48 USC 1492), except that, the Secretary of the Interior would be responsible for the described energy effort, rather than the Secretary of Energy.

It should be noted that eight years ago, Interior undertook a comprehensive effort to study energy needs in the U.S. territories and FAS, and to develop viable energy plans (which included an appropriate role for renewable energy sources) for each jurisdiction. Currently, the Office of Insular Affairs is supporting broad renewable energy planning efforts through the National Renewable Energy Laboratory (NREL) financed by our Technical Assistance Program. The President's 2014 budget for OIA includes funding for specific energy projects under Empowering Insular Communities to implement a number of the NREL recommendations.

The Department of the Interior opposes section 6 of S. 1237 as being unnecessary because it is duplicative of section 604 of Public Law 96-597, and of current efforts to implement the energy plans that have been and are being developed.

Chief Financial Officer of the Virgin Islands

Section 7 includes a provision for establishing a chief financial officer (CFO) for the Virgin Islands, and a plebiscite of Virgin Island voters on the issue.

In the mid-2000s, an earlier CFO bill would have placed significant restrictions on local self-government and the powers of the elected Governor of the Virgin Islands as established in the Virgin Islands Revised Organic Act. A revised CFO bill was the subject of a hearing last year in the House of Representatives. The Department of the Interior had no objection to that bill because it would have constituted "only *de minimus* interference with self-government in the Virgin Islands." We noted that the purpose of the bill was to rein in deficit spending, but that the bill did not require a balanced budget.

S. 1237 adds a new provision requiring a plebiscite on the question of whether or not a chief financial officer position should be established. This extra layer of approval for the CFO position by the voters of the Virgin Islands would demonstrate acceptance of the concept or not, by the citizens of the Virgin Islands.

The Department of the Interior has no objection to the enactment of section 7.

Reports on Estimates of Revenue

Section 8 would require the governors of American Samoa, the Northern Mariana Islands, Puerto Rico, Guam and the Virgin islands each to submit a report on the process for developing annual estimates of the government's revenues and expenditures and any supporting documents and schedules to appropriate committees of the Congress and the Comptroller General of the United States, and also require the Comptroller General to submit a report evaluating the reasonableness of those estimates and if necessary submit recommendations for improving the processes for developing the estimates to appropriate committees of the Congress.

Over the years, in statements related to the legislation that would create a Chief Financial Officer of the Virgin Islands, the Department of the Interior has stated that all the territories have had difficulty with rising debt due to problematic budgeting processes. Section 8 would provide a framework for studying the budget processes of the territories.

Because the governors of each of the territories would be so intimately involved, the Department of the Interior defers to the opinions of the governors of each of the United States territories with regard to this provision.

Low-Income Home Energy Assistance Program

Section 9 would provide that under the Low-Income Home Energy Assistance Act of 1981 energy assistance would be 300 percent of the normal rate when applied to households located in the Virgin Islands in years 2014 through 2017.

United States Virgin Islanders are struggling with some of the highest electric rates in the U.S. Currently, the residential rate in the Virgin Islands is 50 cents per kilowatt hour, with the commercial rate at 54 cents per kilowatt hour. These high Virgin Islands rates contrast significantly with rates elsewhere in the United States, which average 12.8 cents per KWH.

Considering both the high poverty rates and high electric rates in the Virgin Islands, one can understand the extreme difficulty under which many Virgin Islands residents are living. Many residents cannot afford to keep the lights on, and businesses are closing.

Given the fact that electric rates in the Virgin Islands are five times that on the U.S. mainland, a LIHEAP payment of three times the mainland amount for a limited, four-year period of time would not be unreasonable.

In addition, the territories of Guam, CNMI, and American Samoa are also paying significantly higher residential rates than in the rest of the United States. The rates are 24.5 cents per KWH on Guam, 32 cents per KWH in the CNMI, and 39 cents per KWH in American Samoa.

The Department of the Interior has no objection to the enactment of section 9, but suggests, based on the rates paid by each of the territories, that a formula for Guam, CNMI, and American Samoa be included in this section as well.

Castle Nugent National Historic Site Establishment

Section 10 would establish the Castle Nugent National Historic Site on the island of St. Croix in the U.S. Virgin Islands as a unit of the National Park System. This

proposed national historic site was the subject of a special resource study, completed in 2010, that found that the site met the National Park Service's criteria for inclusion in the National Park System.

This 2,900-acre site is located along the arid southeastern shore of St. Croix, about three miles south of the town of Christiansted. The terrain is mostly rolling and hilly with a mixture of dry forest, native vegetation, and rangeland that offers picturesque views to the Caribbean Sea and to distant parts of the island. Establishing this site as a unit of the National Park System would provide the opportunity to preserve and protect this outstanding Caribbean cultural landscape and interpret the cotton era and related agricultural themes that have been instrumental in the development of St. Croix and the Virgin Islands. It would also help protect five pre-Columbian archeological sites, two of which are among the oldest sites on St. Croix.

The Department supports this section with an amendment. The recommended amendment, which would insert the standard language used in bills establishing new areas of the National Park System, is to strike "consists" on line 12 of page 19 and insert "shall consist".

St. Croix National Heritage Area

Section 11 would establish the St. Croix National Heritage Area on the island of St. Croix. A feasibility study completed in 2012 by the National Park Service found that this proposed heritage area, which would include the entire island, met the Service's interim criteria for designation as a National Heritage Area. The heritage area would be focused on five themes: early cultures, slavery and emancipation, the influence of seven colonial powers, the island's unique geography and natural environment, and modern-day cultures.

The Department supports the objectives of this section. However, the Department recommends that Congress enact program legislation that establishes criteria to evaluate potentially qualified National Heritage Areas and a process for the designation, funding, and administration of these areas before designating any additional new National Heritage Areas. There are currently 49 designated national heritage areas, yet there is no authority in law that guides the designation and administration of these areas. Program legislation would provide a much-needed framework for evaluating proposed national heritage areas, offering guidelines for successful planning and management, clarifying the roles and

responsibilities of all parties, and standardizing timeframes and funding for designated areas.

If the committee moves forward on S. 1237 with section 11 included, we would like to recommend amendments to some of the terms used in this section. We would be happy to provide the committee with our recommended amendments.

Guam War Claims Review Commission

Section 12 would approve payments and a funding source for claims arising from the World War II Japanese occupation of Guam.

Sixty-nine years ago this month, U.S. forces stormed the beaches of Asan and Agat on the island of Guam. The fierce battles in the weeks that followed would end Japan's two-and-a-half year occupation of Guam. Approximately a thousand United States national residents of Guam died during the occupation; the people of Guam were subjected to summary executions, beheadings, rapes, torture, beatings, forced labor, forced march and internment.

With the passage of the Guam Meritorious Claims Act of 1945, the people of Guam became the first group of United States nationals to be made eligible for payment of claims by the United States for damages suffered during the war. In the years that followed, however, many on Guam came to question whether the Guam Meritorious Claims Act, as implemented, sufficiently compensated the people of Guam for their suffering.

The Guam War Claims Review Commission, created pursuant to legislation passed in 2002, was charged with determining whether there was parity in the treatment of Guamanians' World War II claims as compared with the claims of U.S. citizens or nationals in other areas occupied by Japan during the war. The commission determined that Guamanians did not receive treatment in parity with other United States individuals who similarly suffered during World War II.

This section would provide payments to persons now living on Guam who actually suffered the Japanese occupation during World War II. It would not provide payments to heirs of survivors of the Guam occupation, but would compensate heirs of the approximate 1,000 United States national residents of Guam who died during the Japanese occupation.

Funding for this section would be provided from the Guam Organic Act section 30 funding that is in excess of section 30 funding for fiscal year 2012.

The Department of the Interior recommends that the committee seek broad counsel among leaders in Guam regarding the financing of claims under section 12.

Use of Certain Expenditures as In-Kind Contributions

Section 13 would allow territorial and Hawaii government costs ascribed to the migration of freely associated state (FAS) citizens to Guam, Hawaii, the CNMI and American Samoa to be valued and applied as in-kind local matching contributions for Federal programs.

With amendments to the Compacts of Free Association legislation passed in 2003, the Congress appropriated $30 million annually to be distributed among the four affected U.S. jurisdictions based on an enumeration of FAS citizens in those four jurisdictions. The Congress provided an additional $5 million in each of fiscal years 2012 and 2013. It is uncontested that the impact of migration to Guam, Hawaii, CNMI and American Samoa exceeds the amounts appropriated.

Under section 13 of S. 1237, amounts above the annual payments could be classified as eligible amounts to be drawn on as "in-kind contributions" that would aid the affected jurisdictions in satisfying matching requirements for Federal programs.

In addition, under the compact legislation, the governors of Guam, Hawaii, the CNMI and American Samoa are invited annually to provide reports on the impact of migration from the freely associated states of the Marshall Islands, the Federated States of Micronesia, and Palau on their respective jurisdictions. Guam produces such a report annually; Hawaii sporadically; American Samoa and the CNMI do not. The Department of the Interior forwards these reports to the Congress.

Among the governments, there is no consistent format or standards for inclusion of costs, and no inclusion of benefits that FAS citizens provide the respective jurisdiction. In its 2012 report on FAS migration, the Government Accountability Office (GAO) stated:

> . . . some jurisdictions did not accurately define compact migrants, account for federal funding that supplemented local expenditures,

or include revenue received from compact migrants.

The GAO recommendations did not include specific recommendations necessary to achieve accuracy in reporting impacts of the compacts.

The Department of the Interior has urged the governors to develop consistent standards of reporting among themselves, including the definition of FAS migrants, accurate accounting of migrant costs to the affected government, and benefits received by the affected jurisdiction from employment, taxation and consumption. To date, they have not done so.

Assuming that accurate reporting is achieved in future reports, the accuracy of past reports remains a problem for calculating the amounts from which "in-kind contributions" could be drawn.

Without establishing standards, the language in section 13 is untenable. For example, subsection (b) calls on the Secretary of the Interior to determine amounts eligible for "in-kind" classification "based on a reasonable estimate of the amount of impact expenditures for the Freely Associated States." The words I quoted give no direction for the Secretary to arrive at an estimate and the expenditures are not stated to be those of the four U.S. affected jurisdictions. Specific and exacting standards are missing.

The Department of the Interior opposes the enactment of section 13.

Waiver of Local Matching Requirements

Section 16 would amend section 501 of Public Law 95-134, which allows waiver of local matching requirements for Federal grants for U.S. territories, to require the waiver of all matching of $500,000 or less.

The original waiver provision, giving all federal agencies permissive authority to waive local matching requirements of $200,000 or less, has been in effect since 1977. Since 1980, statute has required the matching waiver for grants of the Department of the Interior. Generally the law has been interpreted not to apply to discretionary grants, because a granting agency could decide, in its discretion, to forgo making the grant if a territory were to insist on the waiver of the match. Such an eventuality would harm the territories.

Considering that more than 30 years have passed since the $200,000 waiver was established, the increase to $500,000 would seem appropriate and consistent with inflation over time.

The Department of the Interior has no objection to the enactment of section 16 with regard to grants from the Department of the Interior. We express no view with regard to waiver changes for other Federal agencies.

American Samoa Citizenship Plebiscite Act

Section 19 would require the Secretary of the Interior to direct the American Samoa Election Office to conduct a plebiscite on whether or not persons born in American Samoa desire United States citizenship.

Under the Tripartite Convention of 1899, ratified February 16, 1900, Great Britain and Germany ceded claims of the eastern portion of the Samoan Islands to the United States. This portion of the archipelago became known as "American Samoa." The Matai (the chiefs) of Tutuila and Manu'a, signed voluntary Deeds of Cession in 1901 and 1904, respectively, which were subsequently accepted, ratified and confirmed retroactively by Congress. In 1929, the Congress provided that with regard to the government of the territory of American Samoa, all civil, judicial, and military powers shall be exercised as the President shall direct. In 1951, the President delegated his authority to the Secretary of the Interior.

Under the authority of the Secretary of the Interior, American Samoa adopted a constitution in 1960. The issue of citizenship versus status as a U.S. national was a key issue. The Samoan leaders and people were concerned that U.S. citizenship could cause the equal protection clause of the United States Constitution to interfere with their communal land tenure system, chiefly or *matai* titles, and the viability of Fono's Senate due to the selection of Senators from among persons with *matai* titles.

To protect and ensure continuation of *fa'a Samoa* (the Samoan way of life), Samoans chose to be U.S. nationals rather than citizens of the United States. Both citizens and nationals owe allegiance to the United States, although the United States Constitution grants certain privileges to citizens, but not persons who are nationals alone.

The United States national status of persons born in American Samoa was upheld on June 26, 2013, by the United States District Court for the District of Columbia in *Leneuoti Fiafia Tuaua et al. v. United States of America et al.* which included the following statement:

> To date, the Congress has not seen fit to bestow birthright citizenship on American Samoa, and in accordance with the law, this Court must and will respect that choice.

In the fifty years since the adoption of the original constitution of American Samoa, attitudes of many in the local population of American Samoa may have shifted. The plebiscite called for in section 19 will bring new discussion to these land, *matai* title and Senate issues. These are issues for the American Samoa polity to discuss and decide.

Should the proposed vote in American Samoa favor citizenship, leaders in American Samoa would then approach the Secretary of the Interior and the Congress, to seek action on the issue.

The Department of the Interior has no objection to the enactment of section 19.

Marine Turtles

Section 20 would extend the Marine Turtle Conservation Act of 2004 to United States territories and possessions. Marine turtles are "flagship species" for both local and international coastal conservation. Because marine turtles circumnavigate the world's oceans to reach their nesting beaches, their conservation must be addressed through global efforts. By focusing on these species and their habitats, we can more adequately conserve and manage ecologically critical coastal and marine habitats around the world.

The Department's U.S. Fish and Wildlife Service and the National Oceanic and Atmospheric Administration (within the Department of Commerce) share jurisdiction for the conservation of marine turtles. The Service focuses conservation activities on nesting beaches while NOAA works to conserve and recover turtles in their marine habitats. The Fish and Wildlife Service also administers the Marine Turtle Conservation Fund, which provides grants to countries with sea turtle nesting beaches on a cost share basis, to implement sea

turtle conservation programs. Such international conservation is a key part of the effort to recover and conserve these global species.

The Department of the Interior supports the intent of section 20 to provide greater funding opportunities for turtle conservation in the U.S. territories. However, we are concerned that this change would significantly dilute the limited funds available to implement conservation measures in foreign countries. There are resources already available for sea turtle conservation in the U.S., including the territories. The relatively small amount of Marine Turtle Conservation Fund grants (less than $1.8 million in FY 2012), which provide critical assistance to our international partners, accounts for about six percent of the overall funds spent by the U.S. on sea turtle conservation. If applicants in the U.S. are made eligible, this limited amount for critically important international work is likely to be significantly reduced.

Conclusion

Mr. Chairman, we at the Department of the Interior are pleased that you and the ranking member have introduced the Territorial Omnibus Act of 2013. Despite the fact that the Department cannot support each and every provision, the bill gives an airing to important territorial issues of long standing. We will be pleased to work with the Committee as it finalizes the legislation.