

**STATEMENT OF THE HONORABLE JOHN M. SILK,
MINISTER OF FOREIGN AFFAIRS
REPUBLIC OF THE MARSHALL ISLANDS
BEFORE THE
UNITED STATES SENATE COMMITTEE ON ENERGY AND NATURAL
RESOURCES
May 19, 2010**

Mr. Chairman, Distinguished Members of the Senate Committee on Energy and Natural Resources, Ladies and Gentlemen:

Thank you for the opportunity to appear before you today. His Excellency President Jurelang Zedkaia once again takes this opportunity to personally thank you Chairman Bingaman for introducing S. 2941, the Republic of the Marshall Islands Supplemental Nuclear Compensation Act of 2010, and for convening this hearing so that we may present our views on this most important and historic legislation.

I would also like to take this opportunity to recognize other members of our delegation present here today, and to thank them for their presence and contributions.

S.2941, Republic of the Marshall Islands Supplemental Nuclear Compensation Act of 2010.

There is no question that the U.S. Government's detonation of sixty-seven atmospheric nuclear weapons in our country created profound disruptions to human health, the environment, as well as our economy, culture, political system, and virtually every aspect of life. The U.S. nuclear weapons testing program was the marking period of our modern history; the trajectory of our people, our islands, and our institutions reflect the chaos and problems caused by extensive contamination, public health crises, and the upheaval and repeated relocation of several populations.

A small country with seventy square miles of land, and only six feet above sea level, and a population one tenth the size of Washington, D.C. does not have the financial, human, or institutional capacity to respond to and address the magnitude of problems caused by the nuclear weapons testing program -- problems which continue to plague our nation to this day, and into the future.

The RMI Government appreciates all the assistance the U.S. Government has given to date to address some of the needs related to the testing program. The health programs, the environmental monitoring, and the food support programs for the atolls most impacted by the testing program are perhaps the most important programs that the U.S. has provided to the RMI, particularly from a symbolic perspective as they demonstrate the U.S. commitment in taking responsibility for the damages and injuries caused by U.S. testing. However, the RMI Government and the atoll leaders have been telling the U.S. Government continuously over many decades and through multiple administrations and

Congressional hearings that the needs are much greater than the U.S. is taking responsibility for.

Mr. Chairman, S 2941, which was introduced on January 20, 2010, is identical to the original version of S 1756 which you introduced in 2007, at the request of President Note. Although a new draft of S 1756 was presented to the RMI as a complete substitute after a hearing before your Honorable Committee on September 25, 2007, I will speak to the present S 2941, and then discuss the proposed substituted version of S 1756 in light of those comments.

Consequently, I would like to discuss some of the issues addressed in S 2941, as well as those issues that need to be further considered and acted upon by our governments to fully address the consequences of the U.S. Nuclear testing program in the Marshall Islands.

Runit Nuclear Waste Storage Facility

We are most pleased to note the inclusion of provisions to address the monitoring of the Runit Nuclear Waste Storage Facility at Enewetak Atoll.

The partial cleanup of Enewetak Atoll in the late 1970's resulted in the creation of an above ground nuclear waste storage site on Runit Island that has come to be known as the Runit Dome. Inside the Runit Nuclear Waste Storage Facility is over 110,000 cubic yards of radioactive material scraped from other parts of Enewetak Atoll. This nuclear waste storage site is of concrete construction and the material inside is radioactive for 24,000 years. This type of nuclear waste storage facility would not have been permitted in the US because it would not have been considered to be adequately protective of human health and the environment.

In addition, there is an area on Runit Island where particles of plutonium were dispersed and not cleaned up. These particles remain on the island covered only by a few inches of dirt.

We all know that monitoring of Runit Nuclear Waste Storage Facility and other parts of Runit Island needs to be done as part of a long-term stewardship program. Neither my government nor the Enewetak people have the expertise or resources to conduct such monitoring. The Runit Nuclear Waste Storage Facility and the surrounding contaminated land and marine area should be monitored and treated as any nuclear storage site in the US in order to provide the same level of protection to the Enewetak people as US citizens receive. That means that the monitoring needs to be part of a long-term stewardship program under the direction and responsibility of the DOE or other appropriate US agency.

This has always been a major issue of concern for the people of Enewetak who live in the immediate area of Runit, and consume fish and other seafood from the reef area adjoining Runit. Accordingly, we ask the Committee to remain engaged in the oversight of the

Department of Energy's survey reports regarding the radiological conditions at Runit, and to see to it that these surveys are adequately and consistently funded to allow the Department of Energy to carry out the surveys in a complete and timely manner, and to take immediate action if a problem is discovered.

We also note that the provisions contained in the proposed substitute for S 1756 provided additional support and assurances beyond the provisions presently contained in S. 2941. We would ask that those changes also be made to S 2941.

Eligibility for Energy Employees Occupational Illness Compensation Program

The inclusion of citizens of the Trust Territory of the Pacific Islands for coverage under the Energy Employees Occupational Illness Compensation Program Act of 2000 is also most welcomed by the RMI. Approximately 50 Marshallese worked for the United States or its contractors in the Marshall Islands during this period in efforts to clean-up or monitor these severely contaminated sites, but unlike their U.S. citizen co-workers, have been denied access to health care to address the health consequences of their very hazardous work.

In this connection, we note that the US government has recently expanded its coverage under the Energy Employees Occupational Illness Compensation Program and is increasing the number of Americans eligible for nuclear compensation through "special exposure cohorts", groups of people who were exposed at US nuclear facilities, including Bikini and Enewetak.

Section 177 Healthcare

S. 2941 also appropriates the sum of \$2 million annually, as adjusted for inflation in accordance with the Section 218 of the RMI-U.S. Compact for purposes of providing primary health care to the four atoll communities. The RMI welcomes and fully supports this measure and wishes to thank the Chairman for making this a permanent rather than discretionary appropriation; an issue that has caused significant problems in other Compact assistance.

Section 1(a) of Article II of the Section 177 Agreement provided that \$2 million annually be made available to address the health consequences of the nuclear testing program. This amount was never subject to an inflation adjustment, despite the fact that health care cost inflation rates have always been substantially higher in the U.S. than overall inflation rates. Applying the Medical Care CPI in Hawaii, where most medical referral cases from the RMI were sent during the period in question, the adjusted rate would have been \$4.42 million annually as of 2001. These costs have continued to increase even as nuclear related health care funding has declined.

As stated in the November 13, 2009, letter from President Zedkaia to Chairman Bingaman, "The provisions contained in Section 4 of the substituted version of S.1756 that provided the sum of \$4.5 million annually plus adjustment for inflation as a

continuing appropriation through FY 2023 to address radiogenic illnesses and the nuclear related health care needs of Bikini, Enewetak, Rongelap, Utrik, Ailuk, Mejit, Likiep, Wotho, and Wotje, is acceptable to my Government.”

There is more than ample evidence and justification to support this request. The scope of 177 Health Care Program needs to be examined, especially in light of the September 2004 NCI report prepared at the specific request of the Senate Committee on Energy and Natural Resources. In addition to stating that more than half of the estimated 532 excess cancers had “yet to develop or be diagnosed” (page 14), the report also indicates that more than half of those excess cancers will occur in populations that were at atolls other than the four included in the 177 Health Care Program. Table 3 on page 20 of the report provides more than adequate justification for including in the program the populations of the “Other Northern Atolls” of Ailuk, Mejit, Likiep, Wotho, Wotje, and Ujelang. That table indicates 227 estimated excess cancers among the 2005 people who were living at those atolls during the testing period, an amount representing more than 11% of those populations. It could also be argued that there should be an active and ongoing medical diagnostic program carried out across the RMI, specifically including the outer islands, in order to diagnose the excess cancers so that they can be treated at the earliest possible stage.

While the NCI Report continues to undergo peer review, new reports continue to support the need for a substantial increase in Section 177 Health Care, beyond the provisions of S.2941. The President’s Cancer Panel Annual Report entitled “Reducing Environmental Cancer Risk, What We Can Do Now” (PCP) published by the U.S. Department of Health and Human Services, National Institutes of Health and the National Cancer Institute comment in the Report’s Executive Summary that:

“Of special concern, the U.S. has not met its obligation to provide for ongoing health needs of the people of the Republic of the Marshall Islands resulting from radiation exposures they received during U.S. nuclear weapons testing in the Pacific from 1946–1958.”

The PCP goes on to state:

“Funding issues are exacerbated by the limited health resources available in the Marshall Islands and elsewhere in the Pacific Islands to treat affected individuals who seek care through the Section 177 and Special Medical Care programs.”

The PCP notes that despite the ongoing increased risk of several hundred new cancers caused as a result of the Nuclear Testing Program in the Marshall Islands, actual funding to address these health risks has declined considerably since the mid 1980’s notwithstanding the exponential increase in health care costs during the same period. In this connection, the PCP notes that the Section 177 healthcare has been significantly underfunded; annual funding beginning in 1986 was \$4 million. Annual funding dropped to \$2 million after about 4 years. Since 2006, funding has been level at approximately \$984,000 per year.

The 4 Atoll Health Care Program (formerly the 177 Health Care Program) has been operating on borrowed time and resources since its beginnings. We have continued to watch medical and pharmaceuticals, supplies, and logistical costs increase year after year while our financial support stayed flat. After 24 years of the Compact, with medical costs at an all time high, we faced the challenge of trying to continue the program with a more than 50% cut in our already seriously inadequate budget.

What are the challenges we face?

We need a commitment for longer term funding that maintains its value in light of rapidly increasing health care costs.

We need adequate and reliable water supply systems.

We need affordable and reliable power supply systems.

We need reliable transportation services for patients and medical supplies.

We continue to lack the ability to diagnose or treat cancers in the RMI. We have no full time oncologist and lack the necessary personnel and equipment to treat cancers, although we have started a national cancer registry.

We lack autoclaves because these sterilizers require a continuing supply of distilled water to operate. Other sterilization supplies such as Formalin can only be transported by boat and are difficult to ship into the Marshall Islands. This means we do without basic minor surgery equipment unless we use cost-prohibitive disposable sets and supplies.

None of our clinics have basic laboratory setups for simple diagnostics and many of the one step lab tests are either too costly or require cool storage. We have extremely limited diagnostic equipment and much of it has to be shared on a rotating basis. We have no proctoscopes, we cannot do PSA's. Both of these would be needed for cancer screenings. In addition, we lack reliable cold storage.

Facing these limits, we have been very lucky to recruit physicians from third world countries with strong clinical skills, experience relative to our diseases, and a willingness to work under these difficult circumstances. These doctors continue to live and work in our outer atolls despite limitations in supplies, equipment, and logistical support. Hiring these doctors has also been a matter of necessity as neither our previous or current budget would have supported hiring physicians with greater salary expectations. The recruiting and relocation costs for these doctors can be relatively high. This expense is compounded as we deal with year to year funding. Lack of secured funding prevents us from recruiting and hiring on longer term contracts and seriously impacts the program's continuity and the related recruiting costs.

Some have suggested that sector grants available under the Compact, as amended, can fill this program and funding gap. Nothing could be further from the truth. Although introduced into the record in prior hearings before this committee and the House

Resources and Foreign Affairs committees, the U.S. Administration specifically excluded in writing any consideration of nuclear related health issues when the amended Compact was negotiated. Instead, it was pointed out to our government that nuclear related health issues were to be taken up by the Congress under Article IX of the Section 177 Agreement. Thus, we look to Congress as provided in the Section 177 Agreement to address these issues.

NAS Study

S.2941 makes provision for the National Academy of Sciences to conduct an assessment of the health impacts of the nuclear testing program on the residents of the RMI. The RMI strongly supports this assessment as it will look at the overall health impacts caused by the Nuclear Testing Program rather than focusing on just one aspect of those impacts. The RMI would like to make it clear, however, that the NCI and other data previously presented to this Committee provides the justification for taking action now to establish a cancer screening and treatment program, and to address the radiogenic healthcare needs of several communities beyond the 4 atolls.

The proposed National Academy of Sciences assessment of the health impacts of the nuclear program on the residents of the Marshall Islands should consider all data and analyses relating to dose reconstructions, exposure pathways, and potential health outcomes. In particular, two reports prepared for the Centers for Disease Control by S. Cohen & Associates and dated May, 2007, should be reviewed as part of the assessment and the authors of the reports should be given an opportunity to meet with the NAS experts to discuss their findings. The two reports are: “Historical Dose Estimates to the GI Tract of Marshall Islanders Exposed to BRAVO Fallout”(Contract No. 200-2002-00367, Task Order No. 9) and “An Assessment of Thyroid Dose Models Used for Dose Reconstruction,” Vols. I and II (Contract No. 200-2002-00367 ,Task Order No. 10).

We also believe that the NAS study should consider Marshallese perspectives on illness caused by the testing. Instead of looking for effects that the NAS expects to find, it should incorporate a research methodology that includes an opportunity for Marshallese to explain the changes from their perspectives.

We know from the PCP and other reports that knowledge is constantly changing in this area, and there is an ongoing need for a continuing assessment of the health impacts of the nuclear testing program in the Marshall Islands.

While the NAS study provision had been removed from the proposed substitute of S 1756, we ask that it be retained in S. 2941, so that both governments can stay fully apprised of updated information concerning the health impacts of the nuclear program on residents of the Marshall Islands.

We want to also raise an issue that concerns the people of Utrik. In 2003, the Department of Energy established a Whole Body Counting (WBC) facility for radiological testing of the people of Utrik. Due to insufficient power supply on Utrik Atoll, the Department of

Energy located the Utrik WBC on Majuro. As a result, the people who live on Utrik Atoll must travel to Majuro, which is approximately 250 miles away, in order to be tested at the WBC facility. The significant cost of air transportation, when it is available, and inconvenience to travel to Majuro from Utrik has led to infrequent and sporadic WBC testing of the inhabitants of Utrik. Congress acknowledged this problem when it passed legislation in 2004 to transfer a decommissioned NOAA vessel to Utrik Atoll for the purpose of helping to alleviate this transportation issue. While Utrik supported and welcomed that Congressional gesture, a professional analysis showed that if Utrik took possession of the vessel it would be a heavy financial burden, so unfortunately the NOAA vessel was not the solution.

So today, with only a portion of the Utrik community being tested, many are left unexamined. This is extremely problematic because recent WBC data gathered by Lawrence Livermore Laboratory has demonstrated that the people living on Utrik have received the highest body burdens of radionuclides of any group in the Marshall Islands. The people of Utrik strongly feel that relocating the WBC facility to Utrik is the right solution and is long overdue. They therefore request that language be added to S. 1756 that grants the Department of Energy the authority and funding necessary to construct a WBC facility with an adequate power supply on Utrik Atoll. While the people of Utrik do not have an exact cost estimate at this time, they believe this can be achieved with a relatively modest expenditure.

I note that provision for a WBC was included in the proposed substitute version of S 1756, but does not appear in S 2941 before us today. We urge that this provision be included in S 2941 to support and the people of Utrik on this important health and safety concern.

Assessment of the Marshall Islands Nuclear Claims Tribunal

Absent from the S.2941 is any reference to the decisions and awards made by the Marshall Islands Nuclear Claims Tribunal. The administrative and adjudicative processes of the Tribunal over the past 19 years are an important mutually agreed to component of the Section 177 Agreement and its implementation to resolve claims for damage to person and property arising as a result of the nuclear testing program. We cannot simply ignore the Tribunal's work and awards that it has made.

Understanding that there continues to be concerns in Congress, we would support a further study of the decision-making processes of the Marshall Islands Nuclear Claims Tribunal and its awards by an appropriate organization. The RMI has presented a Report on this subject prepared by former United States Attorney General Richard Thornburgh in January, 2003, however, issues and concerns apparently continue. We should move forward and resolve any remaining issues and concerns regarding the Tribunal and its work. We would therefore respectfully suggest that the GAO may be appropriate to undertake such a study and provide recommendations to the Congress should these concerns persist.

We note that there recently has been a great deal of activity in the United States in respect to amending the U.S. Radiation Effects Compensation Act (RECA) to increase the parameters of eligibility; the amounts of compensation; and the number of qualifying conditions that are presumed eligible for compensation. The RMI would take this occasion to point out as we have in the past that the Tribunal's personal injury program is based on the U.S. RECA program. The difference is that while RECA expands, the Tribunal is not provided with the resources necessary to carry out its statutory and Compact mandate and obligations. Given that test yields in the Marshall Islands were almost 100 times as great as those from the Nevada Tests, there is clearly a gross disparity between the treatment of U.S. and Marshallese victims. We ask that nuclear victims in the RMI be provided equity in compensation and treatment with their US counterparts.

Conclusion

The RMI first presented its petition under Article IX of the Section 177 Agreement regarding "changed circumstances" almost 10 years ago, and as noted earlier, the ensuing Compact negotiations excluded any discussion or measures to address issues related to the US Nuclear Testing Program. Subsequently, we were most pleased that hearings took place in the House and Senate in 2005, and again in 2007. Specifically, our Government had the opportunity to testify before this Committee on September 25, 2007, on S. 1756, in its initial version which is identical to S 2941 before us here today.

Finally, our government was provided with a proposed substituted version which increased health care assistance and expanded eligibility to ten atolls. That version was never submitted to the Committee, so S 1756 died at the end of 2008.

Meanwhile, many Marshallese have died from radiogenic related cancers without adequate health care or ever receiving their full awards from the Nuclear Claims Tribunal. Problems related to clean-up and resettlement continue to this day with inadequate resources and with no resolution in sight. We need to look for ways forward in addressing these problems, and we should not continue to put off action that should have been taken years ago.

The RMI notes that the Section 177 Agreement continues in the Compact, as amended. It does not have an expiration date, including Article IX. We need to look for solutions rather than impediments and obstacles. Contrary to what the U.S. Administration seems to believe, taking steps under Article IX of the Section 177 Agreement does not reopen the settlement. Rather it allows us to work together and address the shortcomings of the settlement as those shortcomings have become apparent over time, and need to be addressed.

We ask that this process start again today with consideration of S 2941 and timely passage of these important measures.

Thank you, and I would be pleased to answer any questions that you may have.

