

Subcommittee on Indian, Insular and Alaska Native Affairs  
Don Young, Chairman  
Hearing Memorandum

July 5, 2016

To: All Subcommittee Indian, Insular and Alaska Native Affairs Members

From: Majority Committee Staff,  
Subcommittee on Indian, Insular and Alaska Affairs (x-6-9725)

Hearing: Legislative hearing on H.R. 4531 (**Rep. Gregorio Kilili Camacho Sablan**), To  
approve an agreement between the United States and the Republic of Palau, and  
for other purposes.  
**July 6, 2016, 2:00 p.m., 1324 Longworth HOB**

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**Summary of the Bill**

H.R. 4531 was introduced by Rep. Gregorio Sablan on February 10, 2016. The bill would approve the agreement and appendices signed by the United States and the Republic of Palau on September 3, 2010. In addition to the bill being referred to the Committee on Natural Resources, a subsequent referral was given to the House Foreign Affairs Committee.

**Cosponsors:** None

**Invited Witnesses**

*The Honorable Esther Kia'aina*  
Assistant Secretary  
Office of Insular Affairs  
U.S. Department of the Interior  
Washington, D.C.

*His Excellency Hersey Kyota*  
Ambassador  
Republic of Palau  
Washington, D.C.

*Dr. David Gootnick, M.D.*  
Director  
International Affairs and Trade  
U.S. Government Accountability Office  
Washington, D.C.

## **Background**

The Freely Associated States (FAS) which include the Republic of the Marshall Islands (RMI), the Federated States of Micronesia (FSM) and the Republic of Palau share a special relationship with the United States. These three tiny island nations located in the Pacific region, far west of Hawaii and on the boarder of the Asian continent, were once administered by the United States immediately following the conclusion of World War II. The U.S. entered into compacts with the FSM and the RMI in 1986, with amendments to those compacts occurring in 2003. In 1994, the U.S. entered into a compact with Palau, with a review of the compact mandated after 15 years. Through the Compacts of Free Association, the United States has maintained very close ties with FAS. In FY16, the Department of the Interior (DOI) administered over \$214 million in assistance to support their local governance and economic advancements.<sup>1</sup>

On September 3, 2010, the Obama Administration and the Government of Palau made an agreement to renew the compact for which Congress has yet to provide funding. H.R. 4531 would approve the agreement and provide funding for it. The review agreement made in 2010 between the U.S. and the Republic of Palau calls for the U.S. to provide \$229 million to Palau through the year 2024. However, since the agreement has not been brought into force, DOI has been making annual payments of approximately \$13.1 million a year since 2010, totaling \$92 million in discretionary funding thus far.

The Republic of Palau is a small Micronesian nation made up of approximately 250 islands currently in compact of free association with the United States. The population of this small island nation is roughly 18,000 living on just 465 km<sup>2</sup> of total land mass, with the most populous island being Koror. The nation's capital of Ngerulmud is located on the nearby island of Babeldaob. Palau is located roughly 7,600 km to the west of Hawaii, 1,500 km east of the Philippines, and 1,800 km to the north of Papua New Guinea. Of the three Freely Associated States and the three U.S. territories located in the Pacific region, the Republic of Palau is located the furthest to the west of the U.S. mainland, and thus is the closest to the continent of Asia than any of the other U.S. alignments. Although Palauans are not U.S. citizens, due to the terms of compact, they may migrate freely within the United States and all U.S. territories. All citizens of the Freely Associated States may exercise this open migration policy throughout the entire United States and territories.

## **Analysis of H.R. 4531**

H.R. 4531 would approve the agreement reached on September 3, 2010 between the United States and the Republic of Palau.

H.R. 4531 would amend Public Law 99-658 (48 USC 1933) by adding at the end of Title I of that Act new sections, described as follows:

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<sup>1</sup> OIA Budget Justifications FY 2017, page 7. <https://www.doi.gov/sites/doi.gov/files/uploads/2017-OIA-Budget-Master-for-Print.pdf>

Section 105(a) would approve the bilateral agreement between the U.S. and Palau with certain exceptions.

Section 106(b) concerns the withholding of funds from Palau. Specifically, if Palau withdraws more than \$5,000,000 from the trust fund established under section 211(f) of the Compact of Free Association in FY15, amounts payable under sections 1, 2(a), 3, and 4(a) of the Agreement shall be withheld from the Republic of Palau until the date in which Palau reimburses the trust fund for the total amount that exceeded the \$5,000,000.

Section 106(c) concerns funding for certain provisions under section 105 of the Compact, stating that not later than 30 days the Secretary of the Treasury shall transfer to the Secretary of the Interior such sums necessary to implement main sections of the Agreement.

Section 106(d) authorizes appropriations for the Secretary of the Interior to subsidize the postal services provided by the US Postal Service to the Republic of Palau, the RMI and FSM for \$1,500,000 each of the fiscal years (FY) 2016 through 2024, and to fund the head of each Federal entity described in section 221(a) of the Compact to carry out their responsibilities.

H.R. 4531 makes further changes to the Compact, as follows:

The bill provides the total amount of \$30,250,000 that the United State shall contribute to the Fund referred to in section 211 (f) of the Compact, according to the following disbarment schedule: 1) \$17,000,000 in FY16; 2) \$3,000,000 in FY17; 3) \$2,000,000 in FY18 through FY22; 4) \$250,000 in FY23. Also, the U.S. Government shall provide a grant of \$12,000,000 in FY16 and a grant of \$2,000,000 annually beginning in FY17 through FY24 to create a trust fund to be used for routine and periodic maintenance of major capital improvement projects financed by funds of the U.S. The Government of Palau will contribute matching funds of \$150,000 to the Infrastructure Maintenance Fund on a quarterly basis beginning in FY16 through FY24.

The U.S. shall provide \$10,000,000 in FY16 for deposit interest to be used by Palau. In addition to the economic assistance of \$13,147,000 provided to Palau in FY10 through FY15, the U.S. will also provide Palau with an additional \$45,750,000 distributed as follows: \$10,000,000 in FY16; \$8,500,000 in FY17; \$7,250,000 in FY18; \$6,000,000 in FY19; \$5,000,000 in FY20; \$4,000,000 in FY21; \$3,000,000 in FY22; \$2,000,000 in FY23.

The U.S. will provide Palau with \$40,000,000 in FY16 towards one or more mutually agreed upon infrastructure projects. The bill also makes an extension from 2009 to 2024 for the Continuing Programs and Laws section of the Compact of Free Association Amendments Act of 2003 (48 U.S.C. 1921d(f)(1)(B)(ix)).

The Secretary of the Interior is directed to fund amounts necessary to conduct certain audits required by section 6 and Appendix D of the Agreement.

Finally, the bill contains miscellaneous provisions regarding lawful admittance for an individual in Palau to engage in occupations and establish residence as a nonimmigrant of the

United States and its territories and possessions without regard to applicable sections of the Immigration and Nationality Act.

### **Cost**

A CBO score for this bill is not yet available.

### **Administration Position**

On April 5, 2016, Assistant Secretary for Insular Areas, Department of the Interior, Esther P. Kia'aina testified before the U.S. Senate Committee on Energy and Natural Resources on S. 2610 (Sen. Murkowski, R-AK), a similar bill to H.R. 4531. In her testimony, the Assistant Secretary reiterated the importance of affirming the agreement for the benefits it would provide to Palau in the form of economic assistance while also establishing solid ground for continued long term relations between the U.S. and Palau amidst growing outside influence in the region from China and Russia. Assistant Secretary Kia'aina also highlighted the other aspects contained in the 2010 agreement which would help invoke necessary economic, legislative, financial and management reforms within the Government of Palau with the goals of increasing fiscal accountability and efficiency firmly in mind.

On June 23, 2016 the Deputy Assistant Secretary of State for the Bureau of East Asian and Pacific Affairs with the U.S. Department of State, Mr. Matthew Matthews, testified before the House Foreign Affairs Committee, Subcommittee on Asia and Pacific. In his testimony, the Deputy Assistant Secretary outlined the importance of the compacts that the U.S. maintains with the Freely Associated States, especially with regards to security and defense matters within the Pacific region. On Palau, Mr. Matthews stated the State Department's support for bringing the bilateral agreement into force, and in doing so, demonstrate to Palau and all partners across the Pacific region that the U.S. is committed to maintaining strong ties of support.

Although there is general support within the Administration, the State Department and the Department of the Interior that the 2010 agreement should be approved immediately, there are differences between S. 2610 (Murkowski) and the Sablan bill with regards to the level of funding to be appropriated, and it is unknown what the Administration's position is on funding.

### **Effect on Current Law (Ramseyer):**

#### **Showing Current Law as Amended by H.R. 4531**

[new text highlighted in yellow; text to be deleted bracketed and highlighted in blue]

Section 104 of Title I—Approval of Compact; Interpretation of And United States Policies Regarding, Compact; Supplemental Provisions: Approval of Compact of Free Association (43 U.S.C. 1933)

## **§1933. Supplemental provisions**

### **(a) Civic Action Teams**

(1) In recognition of the special development needs of Palau and the Marshall Islands, the United States shall make available United States military Civic Action Teams for use in Palau or the Marshall Islands under terms and conditions mutually agreed upon by the Government of the United States and the Governments of Palau or the Marshall Islands, as appropriate. The Government of Palau may use the amount of \$250,000 annually from current account funds provided pursuant to section 211 of the Compact to defray expenditures attendant to the operation of the Civic Action Teams made available pursuant to this subsection. The Government of the Marshall Islands may use the amount of \$250,000 annually from current account funds provided under section 211 of Title Two of the Compact of Free Association with the Marshall Islands to defray expenditures attendant to the operation of the Civic Action Teams made available pursuant to this subsection.

(2) For expenditures that the Department of Defense makes pursuant to paragraph (1), the Secretary of Defense may accept up to the amount of \$250,000 in annual funds from the Government of Palau as specified in paragraph (1). Funds accepted by the Secretary from the Government of Palau under this paragraph shall be credited to and merged with appropriations available to the Department of Defense and shall be used to defray expenditures attendant to the operation of the United States military Civic Action Team in Palau. Funds so credited and merged shall be available for the same time period as the appropriations to which the funds are credited and merged.

### **(b) Inventory and study of natural, historic, and other resources**

The Secretary of the Interior shall conduct, upon request of Palau, the Federated States of Micronesia or the Marshall Islands, and through the Director of the National Park Service, a comprehensive inventory and study of the most unique and significant natural, historical, cultural, and recreational resources of Palau, the Federated States of Micronesia or the Marshall Islands. Areas or sites exhibiting such qualities shall be described and evaluated with the objective of the preservation of their values and their careful use and appreciation by the public, along with a determination of their potential for attracting tourism. Alternative methodologies for such preservation and use shall be developed for each area or site (including continued assistance from the National Park Service); current or impending damage or threats to the resources of such areas or sites shall be identified and evaluated; and authorities needed to properly protect and allow for public use and appreciation shall be identified and discussed. Such inventory and study shall be conducted in full cooperation and consultation with affected governmental officials and the interested public. A full report on such inventory and study shall be transmitted to Palau or the Federated States of Micronesia or the Marshall Islands, the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate no later than two complete calendar years after November 14, 1986. The inventory and study shall also identify areas or sites which, if they were located in the United States, would qualify to be listed on the Registry of Natural Landmarks and the National Register of Historic Places.

### **(c) Omitted**

### **(d) Peleliu and Angaur**

Not later than one year after November 14, 1986, the Secretary of Agriculture, after appropriate studies conducted in consultation with the Government of Palau, shall report to the President and the Congress concerning the feasibility and cost of rehabilitating and restoring the fertility of the topsoil of the islands of Peleliu and Angaur. Upon the request of the Government of Palau, the President shall make the report of the Secretary of Agriculture available to the

Government of Palau. Technical assistance to accomplish such rehabilitation and restoration, if feasible, may be provided to the Government of Palau on a nonreimbursable basis, subject to the availability of appropriated funds.

**(e) Power generation**

Neither the Secretary of the Treasury nor any other officer or agent of the United States shall pay or transfer any portion of the sum and amounts payable to the Government of Palau pursuant to this joint resolution to any party other than the Government of Palau, except under the procedures established by the Compact and its related agreements. No funds appropriated pursuant to the Compact, this Act, or any other Act for grants or other assistance to Palau may be used to satisfy any obligation or expense incurred by Palau prior to November 14, 1986, with respect to any contract or debt related to any electrical generating plant or related facilities entered into or incurred by Palau which has not been specifically authorized by Congress in advance, except that the Government of Palau may use any portion of the annual grant under section 211(b)<sup>1</sup> not required to be devoted to the energy needs of those parts of Palau not served by its central power generating facilities and any portion of the funds under section 212(b) of the Compact for such purpose.

**(f) Reduction of appropriations**

Amounts appropriated to be paid pursuant to section 177 of Article I of Title One or Articles I and III of Title Two of the Compact of Free Association with the Federated States of Micronesia and the Marshall Islands, as set forth in Title II of the Compact of Free Association Act of 1985, or pursuant to section 103(h), 103(k), or 105(m) of such Act [48 U.S.C. 1903(h), (k), 1905(m)] (Public Law 99–239), or pursuant to Article I of Title Two of the Compact with Palau, as set forth in Title II of this joint resolution, or section 104(l) of this joint resolution<sup>2</sup> shall not be reduced, notwithstanding Public Law 99–177, Public Law 99–366, and other law enacted to implement Public Law 99–177, or any other provision of law.

**(g) Understandings, interpretations, and policy statements**

The Congress reaffirms all of the understandings, interpretations, and policy statements contained in Public Law 99–239 (99 Stat. 1770) [48 U.S.C. 1901 et seq., 2001 et seq.]. Congressional Resolution 4–60 adopted by the 4th Congress of the Federated States of Micronesia on March 26, 1986 and Resolution No. 62 adopted by the Nitijela of the Marshall Islands on February 18, 1986 do not exclude, limit or modify any provision of the Compact of Free Association as approved by the United States. To the extent that any understandings, interpretations, and policy statements contained in such Resolutions are inconsistent with the provisions of Public Law 99–239, the United States does not concur therein. The President shall take such steps, including but not limited to, communicating with the Governments of the Federated States of Micronesia and the Republic of the Marshall Islands, as may be necessary to preserve all rights of the United States in connection with interpretation and implementation of such Public Law.

**(h) Additional provisions relating to Title Three of Compact**

(1) The Government of the United States recognizes and respects the scarcity and special importance of land in Palau. In making any designation of land pursuant to section 322 of the Compact, the Government of the United States shall follow the policy of requesting the minimum area necessary to accomplish the required security and defense purpose, of requesting only the minimum interest in real property necessary to support such purpose, and of requesting first to satisfy the requirement through public real property, where available, rather than through private real property.

(2) The Armed Forces of other nations invited to use military areas and facilities in Palau pursuant to section 312 of the Compact shall be permitted only as it is incident to the authority

and under the control of the United States. The activities of such third country forces shall be subject to the same limitations and restrictions applicable to the authority of the United States under the terms of the Compact.

(3) The Government of the United States considers "Exclusive use" areas established for the United States pursuant to Title Three of the Compact to be "within the jurisdiction of Palau," as that term is used in section 324 of the Compact.

**(i) Availability of appropriations**

Notwithstanding any other provision of law, funds appropriated for the Compact of Free Association, Public Law 99–239 [48 U.S.C. 1901 et seq., 2001 et seq.], or this joint resolution, in the act of making supplemental appropriations for fiscal year 1986, shall remain available until expended.

**(j) Authority to contract or make payments**

(1), (2) Omitted

(3) No authority under this subsection to enter into contracts or to make payments shall be effective except to the extent and in such amounts as provided in advance in appropriations Acts. Any provision of this subsection which authorizes the enactment of new budget authority shall be effective only for fiscal years beginning after September 30, 1985.

**(k) Annual report**

The Departments of Energy and Interior are directed to provide the Committees on Appropriations of the House and Senate with a report by December 1 of each fiscal year detailing how funds were spent during the previous fiscal year for the special medical care and logistical support program for Rongelap and Utrik and for the agriculture and food programs for Eniwetok and Bikini as referenced in Section 103(h) of Public Law 99–239 [48 U.S.C. 1903(h)]. The report shall also specify the anticipated needs during the current and following fiscal years in order to meet the radiological health care and logistical support program for Rongelap and Utrik and the planting, agricultural maintenance, and food programs for Eniwetok and Bikini. It is the sense of the Congress that the special medical care and logistical support program for Rongelap and Utrik and for the agriculture and food programs for Eniwetok and Bikini described in section 103(h) of Public Law 99–239 represent special and continuing moral commitments of the United States which will be annually funded to the extent of the need of the populations of such atolls for such assistance.

**SEC. 105. RESULTS OF COMPACT REVIEW.**

(a) IN GENERAL.—The Agreement and appendices signed by the United States and the Republic of Palau on September 3, 2010 (referred to in this section as the 'Agreement'), in connection with section 432 of the Compact of Free Association between the Government of the United States of America and the Government of Palau (48 U.S.C. 1931 note; Public Law 99-658) (referred to in this section as the 'Compact of Free Association'), are approved—

(1) except for the extension of Article X of the Agreement Regarding Federal Programs and Services, and Concluded Pursuant to Article II of Title II and section 232 of the Compact of Free Association; and

(2) subject to the provisions of this section.

(b) WITHHOLDING OF FUNDS.—If the Republic of Palau withdraws more than \$5,000,000 from the trust fund established under section 211(f) of the Compact of Free

Association in fiscal year 2015, amounts payable under sections 1, 2(a), 3, and 4(a), of the Agreement shall be withheld from the Republic of Palau until the date on which the Republic of Palau reimburses the trust fund for the total amounts withdrawn that exceeded \$5,000,000 in that fiscal year, except that funds to be provided under section 3 of the Agreement may be released to replenish the 211(f) Fund if an arrangement had been made between the United States and the Republic of Palau to advance funds during such fiscal year from the 211(f) Fund for the purposes allowable under section 3 of the Agreement.

(c) FUNDING FOR CERTAIN PROVISIONS UNDER SECTION 105 OF COMPACT OF FREE ASSOCIATION.—Not later than 30 days after the date of the enactment of this section, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary of the Interior such sums as are necessary for the Secretary of the Interior to implement sections 1, 2(a), 3, 4(a), 5, and 6 of the Agreement, which sums shall remain available until expended without any further appropriation.

(d) AUTHORIZATIONS OF APPROPRIATIONS.—There are authorized to be appropriated—

(1) to the Secretary of the Interior to subsidize postal services provided by the United States Postal Service to the Republic of Palau, the Republic of the Marshall Islands, and the Federated States of Micronesia, \$1,500,000 for each of fiscal years 2016 through 2024, to remain available until expended but may be available pursuant to this paragraph to the United States Postal Service only so long as domestic postage may be used for mail to Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands; and

(2) to the head of each Federal entity described in paragraphs (1), (3), and (4) of section 221(a) of the Compact of Free Association (including the successor of each Federal entity) to carry out the responsibilities of the Federal entity under section 221(a) of the Compact of Free Association such sums as are necessary, to remain available until expended.

Act of June 30, 1954 (68 Stat. 330, 82 Stat. 1213, chapter 423)

#### AN ACT

To provide for a continuance of civil government for the Trust Territory of the Pacific Islands.

Whereas, pursuant to the authority of Public Law 204, Eightieth Congress, approved July 18, 1947, the President approved a trusteeship agreement for the Trust Territory of the Pacific Islands between the United States Government and the Security Council of the United Nations; and

Whereas responsibility for civil administration of the Trust Territory was vested in the Secretary of the Navy by Executive Order Numbered 9875 of July 18, 1947; and Whereas responsibility for such administration was transferred to the Secretary of the Interior, effective July 1, 1951, by Executive Order Numbered 10265 of June 29, 1951, as amended by Executive Order Numbered 10408 of November 10, 1952, and Executive Order Numbered 10470 of July 17, 1953: Therefore

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That until Congress shall further provide for the government of the Trust Territory of the Pacific Islands, all executive, legislative, and judicial authority necessary for the civil administration of the Trust Territory shall continue to be vested in such person or persons and shall be exercised in such manner and through such agency or agencies as the President of the United States may direct or authorize.

SEC. 2. There are hereby authorized to be appropriated such sums, not in excess of \$7,500,000 per year, as may be necessary to carry out the provisions of this Act.

[SEC. 3. There are hereby authorized to be appropriated such sums as the Secretary of the Interior may find necessary, but not to exceed \$10,000,000 for any one year, to alleviate suffering and damage resulting from major disasters that occur in the Trust Territory of the Pacific Islands. Such sums shall be in addition to those authorized in section 2 of this Act and shall not be subject to the limitations imposed by section 2 of this Act. The Secretary of the Interior shall determine whether or not a major disaster has occurred in accordance with the principles and policies of section 2 of the Act of September 30, 1950 (64 Stat. 1109), as amended (42 U.S.C. 1855a).]