



REPUBLIC OF THE MARSHALL ISLANDS
MINISTRY OF FOREIGN AFFAIRS
P.O. BOX 1349
MAJURO, MARSHALL ISLANDS 96960

05 August 2016

Honorable Kenneth Kedi
Speaker
Nitijela
Majuro, Marshall Islands

Dear Honorable Speaker Kedi:

RE: ENEN KIO

The Ministry of Foreign Affairs is in receipt of a Note Verbalé from the Embassy of the United States of America to the Republic of the Marshall Islands regarding the RMI's Baseline and Maritime Zones Outer Limits for the Island of Enen Kio. Hence, the United States Government considers Enen Kio as an U.S. territory and and such, objects to the assertion by the RMI of the maritime zones around this island.

To this regard, the Ministry of Foreign Affairs further wishes to forward a copy of said communication from the U.S. for Nitijela's kind review and comments.

Should you have any questions or concerns regarding this, please do not hesitate to contact the Ministry. Kommel tata.

Sincerely,

A handwritten signature in black ink, appearing to read 'John M. Silk'.

John M. Silk
Minister of Foreign Affairs

Cc : H.E. Dr. Hilda C. Heine, President
Hon. Alfred Alfred, Jr., Minister of Resources & Development
Mr. Filimon Manoni, Attorney General

No. 16-079

The Embassy of the United States of America in Majuro presents its compliments to the Ministry of Foreign Affairs of the Republic of the Marshall Islands.

The United States notes the Republic of the Marshall Islands' (RMI) "Baselines and Maritime Zones Outer Limits Declaration" of April 18, 2016 (hereinafter the "Declaration"), pursuant to the RMI Maritime Zone Declaration Act of 2016, which describes the purported outer limits of the RMI's maritime zones. The United States generally supports efforts by countries to clarify and publish the limits of their maritime entitlements in accordance with international law as reflected in the 1982 Law of the Sea Convention. The United States has serious concerns and objections, however, with respect to the Declaration and the maritime zones declared in it.

The Declaration appears to claim maritime entitlements that, under the international law of the sea, could only be derived from a claim of sovereignty over Wake Island. Wake Island is U.S. territory and, as such, subject solely to the sovereignty of the United States. Any assertion of maritime entitlements generated by Wake Island by an entity other than the United States would therefore be inconsistent with international law. Accordingly, the United States objects to the assertion by RMI of maritime zones around Wake Island.

To the extent that the Declaration signals a claim of RMI sovereignty over Wake Island, the United States further objects. Wake Island is U.S. territory, over which U.S. sovereignty is based, in part, on nearly uninterrupted possession and administration since 1898, when the United States first claimed possession of the uninhabited atoll, formalizing its claim in 1899. The United States has engaged in extensive military and commercial activities on Wake Island since at least 1935, maintains absolute administrative control of Wake Island, has continued to occupy and use Wake Island, and strictly regulates access to Wake Island.

In contrast, Wake Island is not historically part of Marshallese territory. The Marshallese have never inhabited, occupied, or administered Wake Island, nor did they make commercial use of its lands and resources. Wake Island is neither part

of nor continuous to the natural archipelago of the RMI chains. When the RMI was successively administered by Spain, Germany, and Japan, Wake Island was never treated nor considered by these nations as subject to their administration. United States sovereignty over Wake Island has been historically undisputed by other nations until the RMI raised a claim in a 1980 session of the U.N. Trusteeship Council and has not been otherwise disputed by other nations since then. Moreover, the position of the RMI with respect to Wake Island has not been consistent since 1980. Most recently, in January 2015, then-Foreign Minister of the RMI proposed to the U.S. Ambassador that the two countries resolve the U.S.-RMI maritime boundary, and the United States has been preparing accordingly to commence negotiations on a maritime boundary agreement.

The United States reserves its position at this time with respect to whether other provisions of the Declaration are consistent with international law, including, for example, whether the declared archipelagic baselines comply with customary international law as reflected in the 1982 Law of the Sea Convention. The United States notes, for example, that RMI's archipelagic baselines are not consistent with international law if within such baselines the ratio of the area of the water to the area of the land, including atolls, is greater than nine to one.

Separately, the United States also has the honor to refer to the Constitutional Convention (Amendment) (1) Act of 2016 pending in the Nitijela, which proposes to amend the Constitution of the RMI to include Wake Island as part of the existing RMI “electoral district with which it is most closely associated, pursuant to the customary law or any traditional practice.” The United States objects to the proposed legislation for the same reason provided above: Wake Island is solely U.S. territory; it has never been and is not now RMI territory. Accordingly, the RMI has no authority to include Wake Island in an existing Marshallese electoral district, and the United States urges RMI not to enact this Act or any similar legislation with respect to Wake Island.

With the shared goal of delimiting the relevant maritime zones of the United States and the RMI with certainty and finality, the United States would welcome the negotiation of a maritime boundary agreement with the Government of the RMI to delimit the maritime boundary between the U.S. territory of Wake Island and the RMI, as proposed by the RMI to the United States in 2015, and would welcome the opportunity for U.S. Government experts to discuss this matter further with relevant experts in the Government of the RMI.

The Embassy of the United States of America avails itself of this opportunity to renew to the Ministry of Foreign Affairs the assurance of its highest consideration.

Embassy of the United States of America

Majuro, August 2, 2016.

