

STANDING COMMITTEE REPORT NO. 14-148

RE: MISCELLANEOUS COMMUNICATION NO. 14-102/R&D

SUBJECT: PACIFIC FOODS AND SERVICES INCORPORATED FISHING AGREEMENT

MARCH 29, 2007

The Honorable Peter M. Christian
Speaker, Fourteenth Congress
Federated States of Micronesia
Sixth Special Session, 2007

Dear Mr. Speaker:

Your Committee on Resources and Development ("R&D"), to which was referred M.C. No. 14-102, entitled:

"CONGRESS APPROVAL OF FISHING AGREEMENT.",

begs leave to report as follows:

The intent and purpose of the communication are expressed in its title.

The subject resolution would approve the Federated States of Micronesia Agreement for Foreign Fishing Vessels between the National Oceanic Resources Management Authority (NORMA) and Pacific Foods and Services Incorporated Arrangement (PFS) for Regional Fisheries Access ("**Agreement**") above.

The Agreement is a continuation of a previously approved Agreement, approved by Congress on 9 November 2004 and continuing until November 8, 2006.

1. The new Agreement

Under the amended Title 24 of the Code of the Federated States of Micronesia, any Agreement submitted to Congress for approval will continue in force until approved or rejected by Congress.¹

The terms of the 'new' Agreement have not changed from the approved Agreement, and is viewed by NORMA as simply a continuation of the approved Agreement.

A maximum of 55 longliners is permitted under the Agreement. 54

¹ **Section 405.** Access agreements - effective date.

"To take effect within the exclusive economic zone, an access agreement involving ten or more vessels shall be submitted to the Congress of the Federated States of Micronesia for approval by resolution. If the Congress does not approve or reject an access agreement before a pre-existing access agreement, if any, expires, then the pre-existing access agreement shall be deemed to be revived and in force from the date on which the access agreement is submitted to Congress and shall be deemed to remain in force until Congress approves or rejects the access agreement submitted for consideration."

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vessels are currently registered under the Agreement, with 154 licenses issued in the first year of operation, and 124 in the second year.

2. Financial benefits

Since November 2004, this Agreement generated \$1,835,000.000 in access fees as well as \$32,400 from annual registration fees and \$16,200 from observer fees.

When questioned regarding the fact that access fees were not negotiated to increase under the new Agreement, NORMA responded that there are increasing costs to the fishing companies and its vessels. Permit fees for the FSM are "plateauing off" due to these increasing costs, and NORMA believes that the negotiated fees should remain the same to ensure fishing remains viable in the region.

Further, NORMA states that as PFS is a "domestic" company, the company's financial ability to survive and continue to pay its fees and ultimately contribute to the local economy of the FSM is to be taken into consideration. There is some confusion as to the status of the PFS Fleet. NORMA sent over the request for approval of "Foreign Fishing Vessels", and the Agreement itself names the Agreement as a Foreign Agreement. However, NORMA refers to the PFS as a "domestic" fleet when explaining the fees charged. This does not, however, affect the approval process by Congress, as section 405 of title 24 of the Code of the Federated States of Micronesia requires Congress approval for any Fishing Agreement over 10 vessels. Your Committee recommends NORMA be requested to provide details of the status of PFS - Domestic or Foreign.

NORMA maintains that this Agreement provides business activities for the local agents and the potential for additional economic benefits will generate revenue. Further, the number of licenses issued under the Agreement is "well within our target catch levels" and will not negatively impact the target tuna stocks.

3. Does the Agreement comply with Section 404?

Section 404 of the Code of the Federated States of Micronesia stipulates minimum terms for Foreign Fishing Agreements.

On the face of it, the Agreement itself meets the requirements in section 404 with the following 3 exceptions which require further investigation:

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I. Observer fees

Section 404 requires that:

- (3) the operator shall:
 - (c) meet the following costs of the authorized observer:
 - (i) full travel costs to and from the vessel
 - (ii) salary
 - (iii) full insurance coverage

The Agreement instead provides for an annual fee of \$150 to be paid to meet the observer costs.

This does not, in itself, cover the observer's 'full' fees. However, on July 8, 1992 President Jacob Nena signed Congressional Act No. 7-77 amending Title 55 of the FSM Code into Public Law No. 7-76. This established the Fisheries Observer Revolving Fund (Fund). This provides an ongoing revolving fund to cover observers cost, and all travel expenses are paid by the fund. As the observers do not board every fishing boat, but aim for a target of 20% of the boats, this system appears to cover the costs effectively. Small local longline vessels pay \$150, and large purse seiners may contribute up to \$1,000. Section 634 requires the President (or designee) to report at the end of each financial year on the status of the fund. Unfortunately, the revolving fund refers to sections of Title 24 that no longer exist.

Interpretation of the compliance of the Revolving Fund contributions with the requirements of section 404 of the Code of the Federated States of Micronesia is recommended. Your Committee recommends requesting a legal opinion from the Attorney-General's Department.

II. Transponders

Section 404 of Title 24 Chapter 4 of the Code requires the Agreement to "ensure that, promptly upon direction by the Authority, each vessel will have installed, maintained and fully operational at all times on board a transponder, in accordance with section 611 of chapter 6 of this subtitle, and shall be responsible for all operational and maintenance costs of the transponder and cooperate fully with the Authority in their utilization."

There is no requirement in the Agreement for vessels to have transponders. NORMA state that instead of the requirement being in the Agreement "no license is issued to any vessel to operate

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in the FSM waters without a working transponder on board."

While this achieves in practice the requirement to have a transponder, it does not comply with the requirements for Foreign Fishing Agreements in Title 24 of the Code.

III. International Code of Signals

Section 404 of title 24 Chapter 4 of the Code requires the Agreement to "ensure that a recent and up-to-date copy of the International Code of Signals (INTERCO) is on board and accessible at all times."

There is no requirement in the Agreement for the International Code of Signals to be on board a vessel. NORMA states that this is a flag state responsibility and vessels that operate in the WCPFC Convention area have to be authorized by flag states. NORMA only licenses vessels that are authorized by WCPFC, and is confident that vessels have an up-to-date copy of the International Code of Signals.

This may achieve in practice the requirement for vessels to have a copy of the International Code of signals onboard, it does not comply with the requirements for Foreign Fishing Agreements in title 24 of the Code.

4. The state of Fish Stocks in the FSM's EEZ

Your Committee has previously expressed concern over the level of fish stocks in the region, and notes that a study into the levels of stocks in the region is due out in March - April 2007. Further, it notes that foreign agreements are very political, and the FSM must take care to keep good relations with other fishing nations who have traditionally supported the FSM.

5. Financial Viability of the PFS

Your Committee requests further information on the PFS to ensure that Fishing Agreements are renewed to Companies with sustainable financial operations. Your Committee requests NORMA provide the financial statements for PFS for the past two years.

6. Conclusions

Your Committee cannot consider the Agreement as it does not comply with the requirements of Title 24 of the Code of the Federated States of Micronesia.

7. Recommendation

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Your Committee recommends that Congress neither approve nor reject the Agreement, to enable NORMA to negotiate a new Agreement with the required minimum terms, to provide the financial statements of PFS to the Committee and to provide details of the status of PFS - whether it is domestic or foreign.

Respectfully submitted,

/s/ Manny Mori
Manny Mori, chairman

/s/ Ramon Peyal
Ramon Peyal, vice chairman

Alik L. Alik, member

/s/ Peter M. Christian
Peter M. Christian, member

Do Not Concur
Dion G. Neth, member

/s/ Simiram Sipenuk
Simiram Sipenuk, member

Do Not Concur
Peter Sitan, member