

STANDING COMMITTEE REPORT NO. 15-47

RE: C.R. NO. 15-50/R&D

SUBJECT: PACIFIC FOODS AND SERVICES INCORPORATED FISHING AGREEMENT

SEPTEMBER 26, 2007

The Honorable Isaac V. Figir
Speaker, Fifteenth Congress
Federated States of Micronesia
Second Regular Session, 2007

Dear Mr. Speaker:

Your Committee on Resources and Development ("R&D"), to which was referred C.R. No. 15-50, entitled:

"A RESOLUTION DENYING APPROVAL OF THE FOREIGN FISHING AGREEMENT BETWEEN THE NATIONAL OCEANIC RESOURCE MANAGEMENT AUTHORITY AND PACIFIC FOODS AND SERVICES INCORPORATED.",

begs leave to report as follows:

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

That communication from NORMA sought approval of a proposed Foreign Fishing Vessel Agreement (Agreement) with Pacific Foods and Services Incorporated (PFS) that was dated November 6, 2006.

1. HISTORY OF COMMITTEE REVIEW:

The Fourteenth Congress Committee on Resources and Development previously held hearings and reviewed the proposed Agreement in detail. It submitted its Standing Committee Report 14-148 on March 29, 2007. That Report expressed two primary concerns. The first was with the written terms of the Agreement. CR 14-148 outlined several specific provisions that did not meet requirements of Section 404 of the Title 25 of the FSM Code. Secondly, based upon uncertainty concerning the financial viability of the company, it also requested additional information from the company in the form of financial statements. It recommended that Congress neither approve nor deny the Agreement until those concerns were addressed.

The matter was first raised before this Committee during a NORMA oversight hearing held on May 23, 2007. During that hearing, Deputy Director Eugene Pangelinan explained the need for definitive action by Congress on the Agreement. Pursuant to Title 24, Section 405, FSM Code, Pacific Foods is permitted to continue to operate under the old Agreement until action is taken by Congress to approve or reject the new Agreement. Without action PFS could continue to operate under the old agreement indefinitely. He pointed out that the old agreement with PFS had been for a two-year period and that the renewal agreement

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was for only a one-year period. He acknowledged that PFS currently has a serious problem with payment of its obligations and has large sums due to NFC and others. He stated that the one-year period was intended to provide an opportunity for PFS to prove it could get its finances in order.

On May 25 your Committee met to discuss the action it would take in the matter. The Committee conducted a detailed review of the proposed Agreement (dated November 6, 2006), Standing Committee Report 14-148 and NORMA's response to that Report dated March 29, 2007. After a full discussion of the issues, it was the consensus of the Committee that it would give further consideration to a Fishing Agreement with Pacific Foods only if the agreement were revised to comply with the requirements of Section 404. This Committee also adopted the position of the prior Committee that it would require financial information demonstrating the financial condition of PFS.

On June 8, 2007 NORMA provided a timely response to the request of this Committee for a revised agreement and also for financial statements and balance sheets from PFS. The new Agreement is dated June 8, 2007. "Income Statements" of PFS for calendar years 2005 and 2006 were provided together with a "Statements of Assets and Liabilities" dated as of June 5, 2007.

2. TERMS OF REVISED AGREEMENT:

The version of the Agreement submitted on June 8 makes several minor technical changes to the wording of the original:

- (a) To address the requirement that the agreement ensure that all vessels have fully operational transponders aboard at all times, the amended agreement adds language to Paragraph 3 to read, "The Authority agrees to permit fishing within the EEZ by the Company's longline fishing vessel in good standing on the South Pacific Forum Fisheries Agency Vessel Register of Foreign Fishing Vessels, **which includes the South Pacific Forum Fisheries Agency Vessel Monitoring System ('FFA VMS System')**, up to a maximum of 55 longline fishing vessels." Additionally, the words "Regional Register and the regional Vessel Monitoring System" appearing in Section 7(a) were replaced by "FFA Vessel Registry."

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- (b) To address the requirement that the agreement ensure a recent and up-to-date copy of the International Code of Signals (INTERCO) is on board and accessible, the amended agreement adds the final sentence to Paragraph 9 stating, **"The Authorized Vessel shall ensure that a recent and up-to-date copy of the International Code of Signals (INTERCO) is on board and accessible at all times."**
- (c) The third concern with the form of the agreement was more substantive. A "minimum term" of an access agreement is that the "operator" shall meet all of the travel, salary and insurance costs of the Authority's authorized observers. The original agreement stated merely "Each Authorized Vessel shall contribute an annual fee of US \$150.00 for the expenses incurred by the Authority in placing observers." That provision was obviously intended to implement the "Fisheries Observer Revolving Fund" arrangement established in 1992. That arrangement, which appears at Chapter 6 of Title 55, Code of the FSM, is tied to requirements of the old marine resources statute that was replaced by the current Marine Resources Act of 2002. The amended Agreement inserted additional words in Subparagraph 22(i) that **"Authorized Vessels shall meet the full costs of the authorized observer including travel to and from the vessel, salary and full insurance coverage."** However, the Agreement still goes on to provide for an annual fee of \$150 for each longline vessel. Obviously that amount, standing alone, would not meet the costs to the FSM of a single observer placed aboard an individual vessel. The "revolving fund" arrangement recognizes that only one in five vessels actually "hosts" an observer and spreads the cost among all licensed boats, whether hosting an observer or not. The prior Committee recommended that a legal opinion be obtained from the Department of Justice concerning whether the continued use of the Revolving Fund meets the requirement of the current law. That issue still exists and is not resolved by the additional language inserted into the amended agreement.

3. FINANCIAL CONDITION OF PARTY TO FOREIGN FISHING AGREEMENT:

During the discussion at the May 23 hearing it was reported that PFS owed more than \$250,000 to NFC and substantial amounts to other local

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creditors as well. Deputy Director Pangelinan pointed out that the claim of the NFC against Pacific Foods is disputed and currently involved in litigation. He characterized the PFS debts as civil matters that are not directly the concern of NORMA or the FSM. He stated that PFS does not owe any money to the FSM or NORMA since no license or permit is issued pursuant to a fishing access agreement without prior payment of the fees.

Mr. Pangelinan stated that NORMA requires financial statements from applicants for new agreements but that they were not a requirement for renewals. On the other hand, he said that if a civil judgment were to be obtained against a party during the term of an agreement, NORMA could bar the issuance of any further licenses under that agreement. The NFC lawsuit had not yet progressed to judgment.

PFS has been operating since November, 2006 under its old agreement, which had been for a two-year period. He stated the term of that agreement was reduced to one year specifically to give PFS an opportunity to get its financial house in order and that any judgment against PFS could shorten that period. He urged approval of the new agreement to begin a one-year rehabilitation period.

On July 13, 2007 your Committee once again discussed the matter of approval or rejection of the proposed agreement. It was the consensus at that time that the Committee would defer action again to look into reports that Pacific Foods had long-term delinquencies with other creditors and to review the status of the lawsuit involving NFC.

On or about August 29, 2007 your Chairman received a written communication from the President and CEO of Pacific Foods seeking to promote the Committee's review of the pending agreement. On September 25, this Committee was informed that a Judgment in the amount of \$150,000 was entered against Pacific Foods Services in the lawsuit with NFC on September 21, 2007.

Section 109 of the Marine Resources Act requires denial of fishing permits where an "operator of the vessel with respect to which application for a permit has been made has failed to satisfy a judgment or other final determination * * * until such time as the judgment or other determination is satisfied." In March, 2005 Public Law No. 13-86 further amended Title 24 to ban "any and all fishing vessels and fishing vessel owners" which or who have judgments against them from applying for or obtaining fishing licenses. That amendment

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specifically provides such vessels or owners shall be allowed to exhaust the current term of any existing permit.

The provisions of the Marine Resources Act described above relate specifically to the approval by NORMA of permits and licenses as opposed to fishing access agreements that are subject to approval by Congress if more than 10 vessels are involved.

Concerns for the financial condition and reputation of the parties to fishing agreements can hardly be less significant than that of the owners and operators of vessels operating pursuant to such an agreement. This Committee believes there is much more at stake with the financial condition of the persons it contracts with in the fisheries industry than simply a risk of direct financial loss from unpaid license fees.

Section 105 of the Marine Resources Act requires that an "applicable access agreement" be in force before any foreign fishing vessel permits will be issued. The Committee had learned during its earlier hearing that NORMA was changing the way it deals with foreign fishing vessels and now is attempting to license boats through fishing agreements with Micronesia based companies. Under the new approach the "applicable access agreement" would be with a local company, which in turn would deal directly with the owners and operators of foreign vessels. The Committee feels that such an arrangement requires that the Micronesian companies be financially responsible and enjoy a solid reputation for business honesty and integrity. The interests of the nation and the interests of the Micronesian fisheries industry demand nothing less.

A review of the "Statements of Assets and Liabilities" as of June 05, 2007" provided by PFS reveals claimed assets valued at nearly six and a half million dollars of which six point two million is in real estate holdings unrelated to fisheries activities. "Current assets" were listed \$137,562. Liabilities listed totaled slightly more than \$921,000 of which nearly nine hundred thousand was bank loans.

The NFC claim referred to above is shown as "pending in court" and was shown at "0.00". The Committee confirmed independently that the amount of the disputed claim was in the area of \$250,000, was for fisheries related activities and has now been reduced to a judgment in the amount of \$150,000.

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The Committee also made independent inquiry and was also able to identify at least one additional claim of an unpaid account not listed on the "Statement of Liabilities" that was in the amount of \$109,016. That claim is also for fisheries related activities. PFS claims it has no payable account due that creditor.

From the financial statements provided by PFS it appears its focus is more on real estate investments than fisheries related activities and that timely payment of fisheries related charges and expenses is not a priority of the company.

CONCLUSION:

It is the consensus of the Committee that it is in the best interest of the Federated States of Micronesia that the amended Agreement For Foreign Fishing Vessels between the National Oceanic Resources Management Authority and Pacific Foods Services Incorporated be rejected by this Congress.

RECOMMENDATION:

Your Committee recommends that Congress adopt C.R. No. 15-50 rejecting the Pacific Foods and Services Incorporated Fishing Agreement.

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Respectfully submitted,

/s/ Dion G. Neth

Dion G. Neth, Chairman

/s/ Setiro Paul

Setiro Paul, Vice Chairman

Joseph J. Urusemal, member

Resio S. Moses, member

/s/ Peter Sitan

Peter Sitan, member

/s/ Joe N. Suka

Joe N. Suka, member

/s/ Paliknoa K. Welly

Paliknoa K. Welly, member