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TRIAL DIVISION--POHNPEI STATE
SUPREME COURT OF THE
FEDERATED STATES OF MICRONESIA

STATE OF CHUUK, STATE OF KOSRAE,)
STATE OF POHNPEI, and STATE OF)
YAP,)

Plaintiffs,)

vs.)

SECRETARY OF THE DEPARTMENT OF)
FINANCE, Federated States)
of Micronesia, and the)
National Government of the)
FEDERATED STATES OF MICRONESIA,)
Defendants.)

Civil No. 1995-085

SECOND AMENDED COMPLAINT

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COMPLAINT

INTRODUCTION

1. This lawsuit seeks a declaratory judgment, injunctive relief, and damages from this Honorable Court. The four Plaintiffs States seek a declaratory judgment that they are the underlying owners of the resources within their marine boundaries and that the Defendants are required by Micronesian tradition, customs, and concepts of ownership and by the Constitution of the Federated States of Micronesia (FSM) to distribute to the four Plaintiff States the revenues received from fishing licenses minus reasonable administrative costs. Plaintiffs also seek, in the alternative, a declaratory judgment that the revenues received by the National Government are "taxes," and that Article IX, Section 5 of the FSM Constitution requires the Defendants to distribute at least 50 percent of these revenues to the four Plaintiff States. Pursuant to the declaratory judgment, Plaintiffs seek an injunction issued to Defendant Secretary of the Department of Finance requiring him

to distribute revenues received from fishing licenses according to the requirements of the FSM Constitution and damages equal to the amount of revenues received from the fishing licenses that the Defendants should have distributed to Plaintiffs in previous years.

JURISDICTION AND VENUE

2. This action is brought pursuant to Article XI, Section 6(a) of the FSM Constitution, which establishes jurisdiction in the Trial Division of the FSM Supreme Court for all cases in which the FSM National Government is a party, and pursuant to Article XI, Section 6(b) of the FSM Constitution which establishes jurisdiction in the Trial Division of the FSM Supreme Court over all cases arising under the FSM Constitution.

3. This action involves the interpretation and application of Article I, Sections 1 and 2; Article IX, Sections 2(m) and 5; and Article XI, Section 11 of the Constitution of the Federated States of Micronesia.

4. Plaintiffs are seeking declaratory relief, injunctive relief, and damages in this action against Defendant Secretary of the Department of Finance in his official capacity and against Defendant FSM National Government under Rules 8(a), 54, 57, and 65 of the Rules of Civil Procedure for the Trial Division of the FSM Supreme Court.

5. Venue is proper in Pohnpei because the Defendants' offices are in Pohnpei.

PARTIES

6. The Plaintiffs are the States of Chuuk, Kosrae, Pohnpei, and Yap, the four states that make up the nation of the Federated States of Micronesia. They have an official stake in the distribution of the fishing revenues by virtue of their ownership of the fishing resources and by virtue of Article IX, Section 5 of the FSM Constitution, as explained below.

7. The Defendant Secretary of the FSM Department of Finance is being sued in his official capacity. He has the ministerial responsibility to distribute the revenues collected by the Federated States of Micronesia in accordance with the mandates found in the Constitution and laws of the Federated States of Micronesia.

8. The Defendant Federated States of Micronesia is an independent nation and is the National Government for the four Plaintiff States.

COUNT ONE--THE PLAINTIFF STATES REQUEST A DECLARATORY JUDGMENT THAT THEY ARE THE OWNERS OF THE LIVING RESOURCES IN THEIR ADJACENT OCEAN WATERS, AND ARE THEREBY ENTITLED TO THE REVENUES RECEIVED FROM FISHING LICENSES, MINUS REASONABLE ADMINISTRATIVE COSTS.

9. Plaintiffs incorporate by reference the statements made in paragraphs 1-8 above.

10. The four Plaintiff States have as their territories (a) their islands and (b) the surrounding waters up to the "marine boundary" established by the "principle of equidistance" as stated in Article I, Section 2 of the FSM Constitution. This result is also supported by the language of Article I, Section 1, which refers to the waters connecting the islands as "internal waters regardless of dimensions." Although Article IX, Section 2(m) of

the FSM Constitution grants to the FSM Congress the power "to regulate the ownership, exploration, and exploitation of natural resources within the marine space of the Federated States of Micronesia beyond 12 miles from island baselines," the states nonetheless own the underlying title to the resources and are entitled to the dominant share of the revenues generated by these resources.

11. The ownership rights of the Plaintiff States to the ocean resources is confirmed by the traditional practices and customs of the Micronesian people from time immemorial that the adjacent island community owns the offshore fishing resources. These traditional practices and customs form the fabric governing all decisions of the FSM courts, as required by Article XI, Section 11 of the FSM Constitution, which says that "[c]ourt decisions shall be consistent with this Constitution, Micronesian customs and traditions, and the social and geographical configuration of Micronesia."

12. The Plaintiff States have never given up or delegated their ownership rights to their adjacent ocean and its resources to the FSM National Government. The ownership rights of the Plaintiff States are confirmed by language in the Constitutions of the four Plaintiff States. Article I, Section 1 of the Pohnpei State Constitution, for instance, says that:

Territory. The territory of Pohnpei comprises the islands and reefs of Pohnpei, a marine space of two hundred nautical miles measured outward from appropriate baselines, the sea bed, subsoil, water column, insular and continental shelves, and any other territory and waters belonging to any island of Pohnpei by historical right, custom, or legal title. (Emphasis added.)

Similarly, Article XIII, Section 5 of the Yap State Constitution recognizes "traditional rights and ownership of natural resources and areas within the marine space of the State, within and beyond 12 miles from island baselines" (emphasis added), and Article XIII, Section 6 prohibits foreign fishing from "the marine space of the State, except as may be permitted by the appropriate persons who exercise traditional rights and ownership and by statute." Article XI, Section 4 of the Kosrae State Constitution recognizes the "public" nature of "waters, land, and natural resources within the marine space of the State." And Article I, Section 1 of the Chuuk State Constitution states that:

The territory of the State of Chuuk includes the islands, reefs, shoals, banks, sands, oceans, and other natural landmarks bearing names or identities known in any of the dialects of the State, and any other territory or water belonging to the State by historic right, custom, or legal title. Unless limited by law, this territory shall also include a marine space of 200 nautical miles measured from appropriate baseline, as well as related seabed, subsoil, and water column, insular and continental shelves, and airspace over land and water. (Emphasis added.)

13. These ownership rights are further confirmed by Title 24, Section 510 of the Code of the Federated States of Micronesia, which mandates that 50 percent of the "fines and the proceeds of sale of all forfeitures" collected by the Defendant National Government because of illegal fishing "shall then be distributed to the States affected." Upon information and belief, some of these revenues have not, however, been distributed to the Plaintiff States as required by this statute.

14. Since 1979, the Micronesian Maritime Authority (MMA) (an agency of the FSM National Government) has issued permits to and

collected license fees from fishing organizations. The MMA has collected more than \$123,000,000 in license fees since 1979. \$70,500,000 (or 57 percent) of this amount has been collected in the past four years. These revenues are vastly greater than the amount needed to administer the MMA.

15. In his State of the Nation Message, delivered on March 23, 1995, President Bailey Olter referred to the figures listed in paragraph 14 above, and stated that "Fisheries remain the largest revenue generator for the FSM."

16. As a result of Defendants' failure to follow the Micronesian traditions regarding ownership of ocean resources and the language of the FSM Constitution, the four Plaintiff States have been deprived of the revenues they deserve and require to provide the services needed by their citizens.

17. For the above stated reasons, Plaintiffs request this Honorable Court to issue a declaratory judgment that the Plaintiff States are the underlying owners of the resources within their marine boundaries and that the Defendants are required by Micronesian tradition, customs, and concepts of ownership and by the FSM Constitution to allocate to the four Plaintiff States the revenues received from fishing organizations for the right to fish within the marine boundaries of the Plaintiff States, minus reasonable administration costs. Plaintiffs also request this Honorable Court to issue a declaratory judgment that the Plaintiff States are entitled to 50 percent of the revenues from fines and forfeitures for illegal fishing pursuant to 24 FRMC Section 510,

and to award damages for 50 percent of the revenues collected under this statute, plus appropriate interest.

COUNT TWO--IN THE ALTERNATIVE, THE PLAINTIFF STATES REQUEST A DECLARATORY JUDGMENT THAT THE LICENSE FEES RECEIVED FROM FISHING ORGANIZATIONS ARE "TAXES" WITHIN THE MEANING OF ARTICLE IX, SECTION 5 OF THE FSM CONSTITUTION, AND THAT THE PLAINTIFF STATES ARE THEREBY ENTITLED TO RECEIVE AT LEAST 50 PERCENT OF THESE REVENUES.

18. Plaintiffs incorporate by reference the statements made in paragraphs 1-17 above.

19. Article IX, Section 5 of the Constitution of the Federated States of Micronesia states that:

National taxes shall be imposed uniformly. Not less than 50% of the revenues shall be paid into the treasury of the state where collected.

20. The fishing organizations fishing in Micronesian waters are charged license fees based on certain agreed formulae which determine the fee levels by gear types and number of trips and as a percentage of the landed catch. The current fee level is 5% of the value of the landed catch.

21. A "tax" is any revenue collected by a government for any public purpose where the amount collected substantially exceeds the cost of administering and regulating the activity for which the revenue is collected. A tax, in other words, is any fee collected by a government for the purpose of raising revenues.

22. As paragraphs 14 and 15 above establish, the fishing fees are collected by Defendants for the purpose of raising revenues to be used for general governmental purposes, and they are therefore taxes. The language in Article IX, Section 5 of the FSM

Constitution clearly requires that at least 50 percent of all these fishing fees must be distributed to the Plaintiff States.

23. As a result of Defendants' failure to follow the requirements of the FSM Constitution, the four Plaintiff States have been deprived of the revenues they deserve and require to provide the services needed by their citizens.

24. For the above stated reasons, Plaintiffs request this Honorable Court to issue a declaratory judgment stating that the license fees collected from fishing organizations are "taxes" and that the four Plaintiff States are entitled to at least 50 percent of all the revenues collected from fishing licenses issued to fishing organizations.

COUNT THREE--THE PLAINTIFF STATES REQUEST THIS HONORABLE COURT TO ISSUE AN INJUNCTION REQUIRING DEFENDANTS TO DISTRIBUTE THE REVENUES RECEIVED FROM FISHING LICENSES ACCORDING TO THE REQUIREMENTS OF THE FSM CONSTITUTION.

25. Plaintiffs incorporate by reference the statements made in paragraphs 1-24 above.

26. For the reasons stated in paragraphs 1-24 above, Defendants have a constitutionally-based obligation to distribute a substantial portion of the revenues received from fishing licenses to the four Plaintiff States. Plaintiffs request this Honorable Court to issue an injunction requiring Defendants to distribute the revenues received henceforth from fishing licenses according to the requirements of the FSM Constitution.

COUNT FOUR--THE PLAINTIFF STATES REQUEST THIS HONORABLE TO COURT TO AWARD DAMAGES EQUAL TO THE AMOUNT OF REVENUES THE PLAINTIFF STATES

SHOULD HAVE RECEIVED IN PREVIOUS YEARS FROM FISHING LICENSES, PLUS APPROPRIATE INTEREST.

27. Plaintiffs incorporate by reference the statements made in paragraphs 1-26 above.

28. As stated in paragraph 14 above, Defendants have collected considerably more revenues from fishing licenses than are needed to administer the Micronesian Maritime Authority. As explained in earlier paragraphs, the FSM Constitution requires that a substantial portion of these revenues be distributed to the four Plaintiff States. For these reasons, the four Plaintiff States request this Honorable Court to award damages to them equivalent to the amount of revenues they should have received in previous years, plus appropriate interest.

CLAIMS FOR RELIEF

WHEREFORE, Plaintiffs pray for relief against Defendants as follows:

(1) for a declaratory judgment stating that the Plaintiff States are the underlying owners of the resources within their marine boundaries and that the Defendants are required by the traditions and customs and by the Constitution of the Federated States of Micronesia to distribute to the Plaintiff States the revenues received from fishing licenses, minus reasonable administrative costs; or,

(2) in the alternative, for a declaratory judgment stating that the revenues received from fishing organizations pursuant to their licenses are "taxes," and therefore that Article IX, Section 5 of the FSM Constitution requires that the Plaintiff States

receive not less than 50% of the revenues collected from these fishing licenses;

(3) for a declaratory judgment that the Plaintiff States are entitled to 50 percent of the revenues from fines and forfeitures for illegal fishing pursuant to 24 FRMC Section 510, and that such distribution should be forthcoming;

(4) for an injunction requiring Defendants to distribute revenues received from fishing licenses in accordance with the requirements of the FSM Constitution;

(5) for a damage award equivalent to the amount of revenues the four Plaintiff States should have received in previous years from revenues received from fishing licenses, plus appropriate interest;

(6) for a damage award for 50 percent of the revenues received by Defendants from fines and forfeitures for illegal fishing pursuant to 24 FRMC Section 510, plus appropriate interest; and

(7) for such other relief as may be deemed appropriate by the Court.

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