

Oil and Gas Task Force

C/o Office of the President
P.O. Box 6051, Koror, PW 96940

Summary of the Oil & Gas Task Force Public Forum Preliminary Report on the Development of a Hydrocarbon Sector in Palau Palau International Coral Reef Center Conference Room December 03, 2007

Prepared By: Mr. Warren S. Umetaro
Assistant Clerk, Committee Affairs
Senate 7th Olbil Era Kelulau

With input by: Ms. Emeraech Sadang
Sr. Administrative Coordinator
Office of Environmental Response and Coordination
Office of the President

Ms. Vicky Riungel
Administrative Assistant II
Protected Areas Network, Ministry Resources and Development

The Forum began at approximately 9:30 a.m. with opening remarks by Co-Chairman of the Task Force, Delegate and **Vice Speaker Noah Idechong**, Chairman the House Committee on Resources & Development. Delegate Idechong's remarks were followed by an introduction of panelists and members of the O&G Task Force.

As an update, information was shared on the recent history of oil related legislation in the Palau Congress to include the status of House Bill No. 7-16-1, HD1 reintroduced in the 7th OEK and reflective of outlined directions set in the House Legislative Agenda. This bill is now under consideration by the Senate Committee on RCTD.

The adoption of a subsequent Senate Joint Resolution No. 7-54, SD2, HD1 requested the President to seek technical assistance from donor organizations to conduct a comprehensive study and provide advice in the form of recommendations to improve the Palau National Petroleum Act. This in part enabled the continued and focused expert assistance from the World Bank. Other notable activities as a prelude to today's forum include a Memorandum of Agreement between the President of the Republic of Palau and the respective Chairmen of the House R&D and the Senate RCTD Committees leading to the establishment of the O&G Task Force through Executive Order No. 241.

Delegate Idechong shared that the continuing work of the O&G Task Force has dealt with a myriad of pertinent issues to include in depth review and discussions on environmental, social impacts and fiscal issues among many others. Important considerations are still to be made in both the exploration and production phases of this undertaking. It is imperative that we are ever conscious of the timetable we have set for ourselves as ample time must be afforded legislative consideration. Since the bill to



Oil and Gas Task Force

C/o Office of the President
P.O. Box 6051, Koror, PW 96940

consider is currently in the Senate, they will appropriately take the lead in further deliberations. We have expert technical and other assistance from the World Bank to utilize for our benefit. We then must address the political issues that only we can resolve to ensure that the task moves forward in a timely fashion.

***** A listing of the members of the O&G Task force and the invited public is an attachment to this summary for reference.**

O&G Task Force **Co-Chairman Senator Santy Asanuma**, Chairman of the Senate Committee on RCTD, remarks began with a recognition that the issue of oil exploration is not new to Palau noting efforts in the past that have met with sector resistance and ended unsuccessfully. He went on to state that although our understanding of the oil industry has been limited, we have expanded our knowledge with the ever-growing pool of information more readily available than before. This of course is due in part to the persistence of our President to seek and to insist on having recommendations from technical experts like the World Bank as a basis for decision making. "Our Economy is our Environment", a noteworthy quote from President Remengesau portrays a national commitment that holds second to none the preservation and protection of our environment; thus, international recognition and award winning efforts.

Senator Asanuma commented that we recognize that the discovery of oil can indeed bring about economic and social benefits. Available data and other supporting documents hint that there may in fact be reserves of oil in our territories. We, just as the rest of the world are conscious of the social, environmental and other impacts that we face and move forward respective of this. That is why we have as part of this task force individuals like Mr. Gillham and Mr. Dengokl who are well versed with environmental considerations we must make.

He continued by conveying that through the World Bank missions we build upon our understanding of the technical aspects of this undertaking. Failed efforts with drastic effects in other countries exemplify the direct result of entering this type of industry without an adequate institutional framework, sound legislation, appropriate and effective regulations. Ours should be a national approach. Concerns we must look after are of national interest as they ultimately will have varying degrees of effect to the entire nation. Senator Asanuma continued on to point out the many factors that received in depth considerations from the O&G Task Force as outlined in the Table of Contents of the preliminary report. Your input today and in future discussions will contribute to the formulation of sound legislation that takes into account national, state and the overall needs and benefits of a stakeholder. It is critical then that we effectively utilize the technical expertise and funding assistance from the World Bank to achieve timely results and meet the tentative February 2008 goal for a final draft of this report.



Oil and Gas Task Force

C/o Office of the President
P.O. Box 6051, Koror, PW 96940

Co-Chairman Idechong suggested that since the above opening statements are sufficient updates of the progress of the O&G Task Force, that we should move on to discussions of the points and recommendations outlined in the Executive Summary. Further, to assure productive discussions, we should progress from this juncture forward conscious of issues we have already resolved.

Ngiwal Governor Masasinge Arurang expressed the importance of clarifying jurisdictional issues especially state vs. national ownership and regulation of resources. It is vital to have in place regulations to address environmental impacts. This will require tax laws that may entail changes, even increases. Are we prepared for all of these? Are standard regulations used in bigger countries appropriate for us? Questions like these leave me with a sense of apprehension.

OGTF Co-Chairman Asanuma agreed. Clarity in this area is critical and ultimately, proper legislation should address these issues. With consideration and guidance from the consultants and the expert recommendations of the World Bank, our environmental regulations will be added to and tailored to suit our needs in terms of developing a petroleum sector.

After **Vice Speaker Idechong's** suggestion that discussions continue following the order of the Executive Summary, **Vic Uherbelau** clarified that the preliminary report is part of phase 1 of a 3 phase process and basically identifies important areas that must be considered.

Governor Ngiraingas shared his experiences from failed exploration efforts in the past in Ngkesoll reef and stressed the importance of giving proper attention to jurisdictional issues and formulating needed technical regulations. By accomplishing this, we show the needed foresight to successfully anticipate and resolve potential problems in this area.

Chief Redechor of Kayangel asked, "So where is this oil? If it is, as they say, in Kayangel then all discussions should be with the Kayangel traditional chiefs (Rubak) and the people of Kayangel.

Maderngbuked Thomas Remengesau agrees in part with Redechor. He went on to state that ownership is an important issue and discussions must include the people of Kayangel, but also noted that there are other factors that one must take into account. He commented that when you begin a business, you must go through the process of acquiring a business license from the national government. Much of what we do includes both state and national considerations. He recalls that the Midori Maru, after experiencing problems in the waters of Kayangel, was eventually found adrift in the southwestern-most Helen's Reef. Oil related accidents I know will impact more than just Kayangel.



Oil and Gas Task Force

C/o Office of the President
P.O. Box 6051, Koror, PW 96940

Concerns were raised by **Kayangel Legislator Kemesong** regarding the timeline of February 2008 for a final report and the availability of sufficient funding to reach this goal. He stressed that the O&G Task Force should make an effort to assist Kayangel in its work on oil. **Redechor** reiterated his question on the presence of oil in Kayangel. "If you know it is there, these discussions should be in Kayangel, not here.

"In response, **Mr .Uherbelau** informed all present that there would be other meetings with the people in Kayangel in the future. **Ngiraingas** added that all aspects of ownership/jurisdictional issues will be considered by the Task Force. **Senator Asanuma** also noted that with the assistance of the World Bank, reliable legislation and regulations will be formulated to address all pertinent factors inclusive of environmental, fiscal and taxation concerns.

Ms. Silvana Tordo, World Bank Representative, clarified the funding assistance by the World Bank as being a combination of monetary contribution from the Governments of the Faroe Islands and Australia, matched by a special allocation in Palau's National Budget, and in-kind contribution in terms of advisory and technical assistance provided by the World Bank and the Government of the Faroe Islands.

Senator Asanuma explained that the funding from the World Bank is not meant for exploration. Rather, the funds are meant to enable the preparation and completion of the framework that eventually will be a guide for every aspect of the hydrocarbon sector.

Ngiraingas further added that there will be ample opportunity for state participation in all three phases. A final report and recommendations will be presented to the OEK to consider as legislation. The public hearings they will conduct will give the states further opportunities to participate. The final versions of both this document and legislation will ultimately include state input.

Asked for further clarification, **Silvana Tordo** stressed that the multi-donor trust fund was created to provide financial support for the preparation of the legal, regulatory, contractual and fiscal framework for hydrocarbon exploration, development and production in Palau. This would foster clarity and certainty of rights, and the development of an investment environment that is safe and conducive to fair competition, while protecting the interests of Palau in all phases of development of the sector. Consistency and uniformity attracts investors. With continued discussions on state and national jurisdictional issues, the general understanding that an equitable approach to state representation is a part of the work to finalize a national hydrocarbon policy for the Republic.

Mr. Larry Goddard stated that outlined in our constitution are distinctions of state and national jurisdictions and ownership. In instances where an overlap is presented, the final resolve of each inevitably will involve both the national and state governments.



Oil and Gas Task Force

C/o Office of the President
P.O. Box 6051, Koror, PW 96940

A final question from **Jeffrey Titiml** regarding the possibility to use part of the Trust Fund resources to hire a lawyer to represent state interest in discussions between the State and National Governments. **Silvana** reiterated that the multi-donor trust fund administered by the World Bank is to be used in accordance with underlying legal agreements. In particular, the resources of the Trust Fund shall be used for the sole purpose of preparing the legal, regulatory, contractual, and fiscal framework for hydrocarbon exploration, development and production in Palau.

A general understanding that state representatives are free to hire a lawyer to represent them in any meeting of the Task Force that they are asked to participate in was reached before a short lunch break at 12:45 p.m.

Resuming the meeting at 1:00 p.m., **Chairman Asanuma** summarized the morning's discussions and moved on to review and ask for comments for each of the eight preliminary findings and recommendations of the Executive Summary.

EXECUTIVE SUMMARY:

1. Jurisdictional issues for the Development of the Hydrocarbon Sector in Palau.

2. Geological and Geophysical Data Requirements.

Questions were raised on whether it would be better to establish the presence and size of oil and gas reserves through drilling before discussing revenue sharing at national and state level. The audience expressed an overwhelming preference for clarifying revenue distribution mechanisms before any oil is found, to avoid creating unnecessary social and political tension between states that are blessed with the resource and the rest of the nation. The representative of Kayangel State expressed their strong disagreement to the proposed approach.

3. Platform for the Creation of Business Opportunities. No comments.

4. Environmental and Socio-cultural Impacts. Comments on number 4 dealt with the prevailing issue of state representation and its legal capacity to be adequately represented. Environmental issues will involve jurisdictional issues as well and it is important to have these resolved at the outset. Apprehension was noted for the specific line "transfer funds from the state budget". Again assurance was given that the states will be afforded participation throughout the entire process. Transfer of funds and shared responsibilities are a reference to revenue generated from the hydrocarbon projects and is sustainable.

5. Transparency and Accountability. Points in this section seem to be generally agreed with and no comments were made.



Oil and Gas Task Force

C/o Office of the President
P.O. Box 6051, Koror, PW 96940

6. Legal Framework and Fiscal Systems for Hydrocarbon Exploration and Production.

Questions were raised as to the validity of existing contracts once the new legal and fiscal framework will be established. Sen. Asanuma indicated the government's intention to respect the sanctity of existing contracts. The new legal, regulatory, and fiscal framework will therefore supplement existing contracts and enable their application (save as otherwise mutually agreed upon between the parties).

Ms. Silvana Tordo was asked to advise on whether Kayangel and other states that have executed exploration and production licenses should move forward with implementation. Explaining the interrelation between state and national purviews, she recommended to wait until the sector policy and related legal, regulatory framework and institutional responsibility are defined. Again, she underlined that a clear and stable framework would foster fair competition and attract investors.

Request for clarification came on the structure and relative attractiveness to governments and investors of fiscal terms commonly applied in the petroleum sector. In particular corporate taxes and potential transfers of tax bases to the home country of the investor were of particular interest. Several members of the audience required **Ms Silvana Tordo** to provide a comparison between petroleum contracts currently in force in Palau and industry average in terms of total state and government take for existing contracts in Palau. **Ms Tordo** highlighted the key elements of fiscal regimes commonly used in the sector, and indicated that the average state take has been around 60 percent. However she stressed the statistical nature of this number and highlighted that risk considerations and economic conditions induce ample variations around the average across countries, projects and in time.

7. Hydrocarbon Revenue Allocation and Management. Comments on this section restate its intent of having in place a clear-cut fiscal regime that eliminates possible problems in the future. Given that the process will require complex and diverse management of revenue earned, it was agreed that the time should be well spent at this stage for study and analysis of recommendations from experts.

8. Institutional Provisions, Capacity Building, and Funding Arrangements. This section generally received supportive comments. A question was raised on whether the Government should invest directly in exploration and production of hydrocarbons, namely by creating a national oil company. **Ms Tordo** underlined that companies that invest in risky ventures as oil exploration usually team up to defray costs and risks. Given that Palau is in the initial stages of development of the hydrocarbon sector, it would not be advisable for the government to invest in petroleum exploration activities directly – especially if it had to borrow money - as it will have to bear the risk of potential losses alone.



Oil and Gas Task Force

C/o Office of the President
P.O. Box 6051, Koror, PW 96940

Jeffrey Titiml, given a chance for final comments, asked for examples of known success stories of countries that proceeded to explore and drill for oil in the absence of a national hydrocarbon law. Citing Malaysia as an example, he further commented that a variety of options must be explored and not just those offered by the World Bank. In considering other options, Palau can then tailor them to best suit its circumstances.

Clarification offered by Ms **Tordo** noted that the legal basis for hydrocarbon exploration, development and production is normally set in a country's constitution. Normally, the hydrocarbon law, formulated at parliamentary level, sets out the principles of law. Exploration, development and production rights in particular areas or blocks are granted by governments by means of concessions or contracts, depending on their legal systems. Where no unique policy regime exists, comprehensive contractual agreements between the government and investors are used. This approach may be favored by those countries that face the uncertainty of entering the sector for the first time, or in cases where the importance of the petroleum activity may not justify the design of unique policy regimes, or where historical/integration considerations are at play. For example, Yemen does not have a national hydrocarbon law, and detailed production sharing contracts – addressing a wide range of issues - are negotiated between the state and the investors on a case by case basis and are given the force of law.

Given that Palau's Constitution provides for shared and/or overlapping purviews between national and state governments, it would be advisable to define a common sector policy and legal and institutional framework. Practical issues may arise without such frameworks which are likely to hinder the development of the sector and its competitiveness. For example, environmental permits are issued at national level, by the EQPB, both state and national government can levy taxes, etc.

