

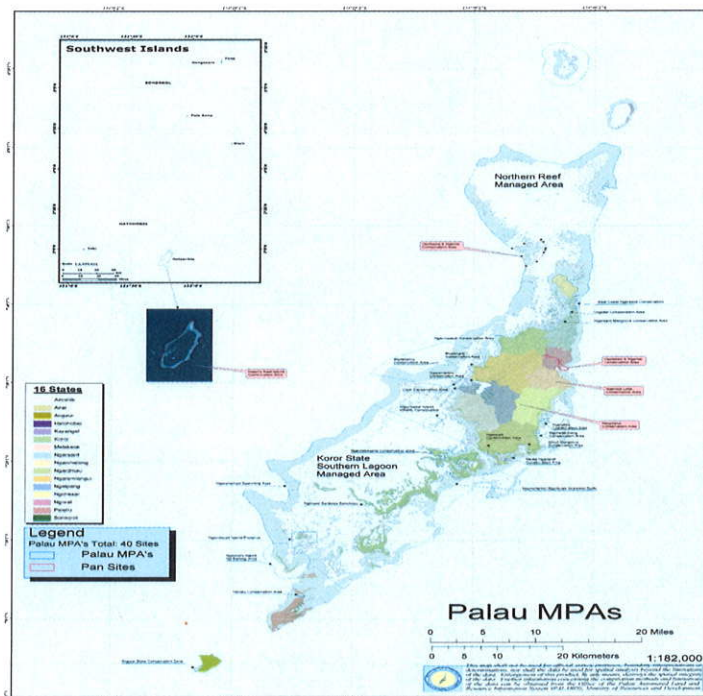


**OFFICE OF THE PUBLIC AUDITOR**  
**REPUBLIC OF PALAU**

**PERFORMANCE AUDIT REPORT**

ON

**PROTECTED AREAS NETWORK FUND**



**GREEN FEES**

**REPUBLIC OF PALAU**

**FOR THE PERIOD OF OCTOBER 1, 2009 THROUGH MARCH 31, 2011**

**PANF-GR09-11P-01\*opa20**



## REPUBLIC of PALAU

Office of the Public Auditor

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May 9, 2012  
*Serial#: opa12-0067au*

Tutii Chilton  
Chairman, Board of Directors  
Protected Areas Network Fund  
Koror, Republic of Palau 96940

**Subject: Final Audit Report on Protected Areas Network Fund (PANF) Green Fees for the period of October 1, 2009 through March 31, 2011.**

Dear Chairman Tutii:

This report presents the results of our audit on Protected Areas Network Fund (PANF) Green Fees for the period from October 1, 2009 through March 31, 2011.

The Office of the Public Auditor (OPA) received your response to the draft audit report. Your response has been incorporated and published in the final audit report. The OPA also has included responses (or lack thereof) from other agencies having responsibilities regarding matters discussed in the report.

The OPA has established an Audit Recommendation Tracking System (ARTS) to keep track of the status of recommendations issued in this report. Accordingly, the OPA will conduct follow up inspections on your responses and corrective action measures to assess their implementation and operation. On a semi-annual basis, June 30 and December 31 each year, the OPA will report the status of the recommendations to the Office of the President and Presiding Officers of the Olbiil Era Kelulau for their information and disposition.

If you have any questions regarding matters of audit findings and recommendations, the OPA will be available to discuss such matters at your request.

Sincerely,

A handwritten signature in black ink, appearing to read 'Satruning Tewid', is written over a large, stylized oval flourish.

Satruning Tewid  
Acting Public Auditor  
Republic of Palau

# **PROTECTED AREAS NETWORK FUND GREEN FEES**

**Republic of Palau**

**For the Period from October 1, 2009 through March 31, 2011**

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Office of the Public Auditor

May 9, 2012

Tutii Chilton  
Chairman, Board of Directors  
Protected Areas Network Fund  
P.O. Box 8005  
Koror, Republic of Palau 96940

Dear Chairman Chilton:

At the request of the Senate, Eight Olbiil Era Kelulau, the Office of the Public Auditor (OPA) conducted an audit of the Protected Areas Network Fund Green Fees. The scope of the audit covered the period October 1, 2009 through March 31, 2011. The objective of the audit was to determine whether (1) Green Fees were properly assessed, collected, and deposited into National Treasury and (2) Green Fees were disbursed or expended in accordance with applicable laws and regulations.

As a result of the review, the Office of the Public Auditor made the following observations and identified specific issues regarding the Protected Areas Network Fund (PANF) and the administration of Green Fees, which we believe should be addressed to the attention of the Board of Directors of the PANF for appropriate action and disposition. We also propose recommendations, which we believe, if implemented, will correct the problems identified as summarized below:

**First**, we found that the Bureau of National Treasury established a separate account within National Treasury to account for the revenues and expenditures of Green Fees in accordance with the intent of RPPL No. 8-9.

We recommend the Bureau of National Treasury continue to account for the Green Fees revenues and expenditures in this manner unless directed by law to do otherwise.

**Second**, the audit revealed that the Bureau of Revenue, Customs and Taxation did not establish controls to safeguard and account for the production and issuance of cash receipts books for Green fees.

We recommend the Director of Bureau of Revenue, Customs and Taxation establish essential controls to safeguard and account for the production and issuance of cash receipts books for Green Fees.

**Third**, in the first year of Green Fees collections the Division of Customs did not file the National Treasury-issued cash receipts together with the Green Fees cash receipts to evidence deposit of collections into National Treasury; however, in the subsequent year the National Treasury established a separate bank account into which direct deposits were made.

We recommend the Division of Customs be more attentive to its internal control processes to ensure that cash receipts are maintained and filed securely to support deposit of Green Fees collections. In addition, shift supervisors should periodically review Green Fees collection activities to ensure the files contain the appropriate supporting documents.

**Fourth**, the PAN Coordinator (PAN Office under the Ministry of Natural Resources, Environment and Tourism, MNRET) entered into an agreement with the Minister of MNRET to transfer \$29,814 of expenditures from the Ministry to the PAN Green Fees Fund.

We recommend the PAN Green Fees be used and expended only for the purpose of the PAN, which the PAN enabling legislation advocates to that end by prohibiting the reprogramming of the same.

**Fifth**, the Olbiil Era Kelulau (OEK), in haste to resource the PAN Green Fees, rather than working with the Executive Branch to expedite the constitution of the PANF Board of Directors, preempted PANF and its implementing framework by appropriating funds directly to State PAN sites without the requisite accountability mechanism in place.

We recommend that in future programs similar to the PAN, the OEK works with the Executive Branch to expedite the formation of the financing institution, as was intended by the OEK in creating the PANF, instead of acting hastily to preempt the responsibilities of the financing institution by appropriating funds directly to PAN sites without the requisite accountability framework in place.

**Sixth**, the Minister of Natural Resources, Environment, and Tourism has not established the PAN Management Committee and the PAN Technical Committee as required under RPPL No. 7-42, which Committees serve a critical role in working with the Minister and the PANF in the administration of the PAN and related programs and projects.

We recommend the Minister of Natural Resources, Environment and Tourism expedite the process for establishing the PAN Management Committee and the PAN Technical Committee to facilitate the execution of the Committees duties and responsibilities prescribed in RPPL No. 7-42.

Office of the Public Auditor

**Seventh**, the PAN Office, under the Ministry of Natural Resources, Environment and Tourism, started using PAN Green Fees to supplement its operations funding in fiscal years 2010 and 2011 contrary to the intent of the PAN enabling legislation and related amendments.

We recommend the PAN Office cease using PAN Green Fees to fund its operations until it receives proper authorization to do so and the PANF Board of Directors seize the Green Fees until a plan has been formulated and approved by the Board regarding the use of funds and disbursement of the Green Fees by the Board to intended recipients.

**Eighth**, the PAN Office under the Ministry of Natural Resources, Environment and Tourism may have expended Green Fees revenues without proper authorization and appropriation by the Olbiil Era Kelulau (OEK).

We recommend the PAN Office expend public funds in accordance with the Republic of Palau's laws, which require that funds be authorized and appropriated by the OEK authorizing expenditure of funds.

**Ninth**, the appointment of the Board of Directors of the Protected Areas Network Fund (PANF) by the President of the Republic may have contravened with the intent of RPPL No. 7-42, which requires that the initial members of the Board of Directors be nominated by the incorporators of the corporation.

We recommend the leadership of the Olbiil Era Kelulau confer with the President of the Republic the appointment process for the Board of Directors of the PANF and take appropriate action to resolve the inconsistency.

**Tenth**, we found that the Bureau of Revenue, Customs and Taxation has not promulgated regulations governing the collection of Green Fees pursuant to RPPL No. 8-15.

We recommend the Minister of Finance direct the Director of the Bureau of Revenue, Customs and Taxation to promulgate regulations governing the collection of Green Fees to fulfill the intent of RPPL No. 8-15.

Finally, we would like to thank the staff and management of the PAN Office (Ministry of Natural Resources, Environment and Tourism), Bureau of National Treasury, and the Division of Customs for the professional courtesy and cooperation extended to us during the audit.

Sincerely,



Satrunino Tewid  
Acting Public Auditor

## **INTRODUCTION**

On March 30, 2011, the Office of the Public Auditor (OPA) received a letter from the Senate of the 8<sup>th</sup> Olbiil Era Kelulau requesting an audit of the Protected Areas Network Fund (PAN) Green Fees. Specifically, the letter requests the OPA to conduct an audit of the receipt and disbursement of “Green Fees” by the National Government. In their letter, the Senators state “The information we have gathered suggests that nearly \$1.5 million of these funds have been misspent and we ask that you undertake an investigation of this matter and provide a report on the propriety of any expenditures.”

## **BACKGROUND**

The islands that make up Palau together form one of the most environmentally diverse regions in Micronesia. Our island possess unique geological features and distinctive freshwater, marine, and terrestrial ecosystem, including plants, animals and other organisms, many which occur nowhere else in the world. All of these natural resources are highly vulnerable to loss or destruction by the growth of population and development. Thus, a nationwide approach and effort is needed to ensure that these natural resources are protected and preserved for future generations to come.

With this as a backdrop, the Olbiil Era Kelulau on November 26, 2003 enacted RPPL No. 6-39 establishing the Protected Areas Network Act, repealing the Natural Heritage Reserve System. The RPPL No. 6-39 formally established a roadmap for the protection of Palau’s environment. It provided for a comprehensive program for identifying and setting aside locations throughout Palau in order to protect their unique marine and terrestrial ecosystems, including plants, animals and other organism which are endemic to Palau only. Presently, several states have designated protected areas, but there has been no system in place by which the National Government recognized these areas or assisted the states in identifying, designating, and maintaining these valuable resources.

Thereafter, on May 8, 2008, the RRPL No. 6-39 was amended by RPPL No. 7-42 to provide a funding source for the Protected Areas Network (PAN). Section 2, § 3413 of the law authorized the Minister of Finance to implement the tourist and visitor environmental protection arrival fee (Green Fee) of thirty dollars (\$30.00), effective October 1, 2008. The Green Fee is to be collected as follows: (1) Twenty dollars (\$20.00) of the money collected through environmental arrival fee shall be used for the sole purpose of the operation of the Protected Areas Network (PAN) and shall be deposited into an account within the National Treasury that shall be separate and distinct from all other accounts and (2) Ten dollars (\$10.00) of the money collected through the environmental protection arrival fee shall be deposited into an account within the National Treasury that shall be separate and distinct from all other accounts. The RPPL No. 7-42 also authorized the creation of the Protected Areas Network Fund (PANF), a non-profit corporation governed by a nine-member Board of Directors responsible for the administration, management, investment, monitoring, and disbursement of PAN funds. Basically, the RPPL No. 7-42 constructs the framework for financing PAN activities and programs. On January 13, 2009, the

RPPL No. 7-42 was amended by RPPL No. 7-57, postponing the implementation date of the Green Fee to April 1, 2009 and assigning collection responsibilities to each airline company operating in Palau and to remit all collections of funds to the National Treasury no later than the fifth day of each month. Thereafter, on September 30, 2009, RPPL No. 7-57 was amended by RPPL No. 8-9 further postponing the imposition of Green Fee to November 1, 2009 and reducing the Green Fee to fifteen dollars (\$15) per visitor. The implementation of the Green Fee took effect on November 2, 2009 whereby all non-Palauan passport holders are assessed fifteen dollars (\$15.00) before departing the Republic of Palau. The Division of Customs, Bureau of Revenue, Customs and Taxation, is assigned the responsibility for the collection of Green Fees. In addition, Section 18 of RPPL No. 8-18 contained a further amendment which reads as follows: ...The PANF shall place five percent (5%) received from the environmental protection fee and any unallocated funds remaining at the end of each Fiscal Year in the Micronesia Conservation Trust Endowment for PANF's exclusive use at a later time...As of the drafting of this report, the RPPL No. 8-40, The Fiscal Year 2012 Annual National Budget Act, is the latest amendment to the PAN, which among other provisions, increased the Green Fee to \$30 per visitor departing the Republic. In addition, the Act allocates the collection of the \$30 as follows: (1) fifty percent (50%) of the funds generated from the collection of the Green Fee shall be authorized and appropriated for the sole purpose of the operation of PAN, to be transferred to the Protected Area Network Fund... (2) fifty percent of the funds generated from collection of the Green Fee shall only be authorized and appropriated for the sole purpose of improving the water and sewer system of the Republic...

## **OBJECTIVE, SCOPE AND METHODOLOGY**

The objective of the audit was to determine whether (1) Green Fees were properly assessed, collected, and deposited into National Treasury and (2) Green Fees were disbursed or expended in accordance with applicable laws and regulations.

The scope of the performance audit covered the period October 1, 2009 through March 31, 2011. As this is a performance audit, we did not conduct audit procedures to assess the fairness of the financial statements of the PAN Special Revenue Fund or any component or account within the fund and therefore express no opinion on the financial statements.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

To accomplish our audit objective, we reviewed Green Fees accounting records and reports maintained at the Bureau of Revenue, Customs and Taxation and the Bureau of National Treasury. We also reviewed pertinent bank statements, green fee passbooks, and other relevant records. In addition, we reviewed applicable Republic of Palau Public Laws; in particular, RPPL No's. 6-39, 7-42, 7-57, 8-9, 8-15, 8-18, and 8-40 and other relevant regulations pertaining to



## Office of the Public Auditor

Protected Areas Network and Green Fees. And finally, we conducted interviews with the Coordinator of PAN Office (MNRET), the Director of the Bureau of National Treasury, and Bureau of Revenue, Customs and Taxation Officials.

The Public Auditing Act of 1985 empowers the Office of the Public Auditor to specifically act to prevent fraud, waste and abuse in the collection and expenditures of public funds. The Public Auditor may make recommendations on the prevention and/or detection of fraud, waste and abuse of public funds.

### **PRIOR AUDIT COVERAGE**

As the Protected Area Network and its funding mechanism, Green Fees, is a fairly new program, this would be the first time the Office of the Public Auditor has conducted an audit of the program. However, the Single Audit of the National Government for Fiscal Year 2010 may have covered some of the programs revenues and expenditures.

## FINDINGS AND RECOMMENDATIONS

### Finding No. PAN-01

#### Establishment of Green Fees Account Within National Treasury

RPPL No. 8-9, Section 7, Sub-section 3413 (a) states “Effective November 1, 2009, every visitor departing from the Republic shall be assessed, and shall pay, an environmental protection departure fee (“Green Fee”) of fifteen dollars (\$15.00). The money generated from collection of the Green Fee shall be deposited into an account within the National Treasury that shall be separate and distinct from all other accounts.”

During the audit, we found that on November 1, 2009, Bureau of Revenue, Customs and Taxation implemented the collection of Green Fee of \$15 assessed for every non-Palauan passport holder departing the Republic, with exceptions to certain individuals permitted by law. Based on the intent of RPPL No. 8-9, Section 7, Subsection 3413(a), the Bureau of National Treasury established a separate account within National Treasury to account for the revenues and expenditures of Green Fees. Our review revealed that from November 1, 2009 through September 30, 2010 (Fiscal Year 2010), a total of \$1,142,948.10 of Green Fee collections were deposited into the separate account identified as Fund Org 100100-1150, sub-account 5247, Green Fee collections. For the period from October 1, 2010 through March 31, 2011, a total of \$719,475 was also deposited to the account. For the same period covering Fiscal Year 2010, the PAN Fund showed expenditures totaling \$63,443.35 and \$180,980.10 for the period from October 1, 2010 through March 31, 2011.

According to the Director of Bureau of National Treasury he was aware of the requirements of RPPL No. 8-9 and established a separate Fund within National Treasury to account for Green Fees revenues and expenditures.

As a result, it appears the Bureau of National Treasury complied with the intent of RPPL No. 8-9, Section 7, subsection 3413(a).

#### **Recommendation**

It appears the Ministry of Finance; the Bureau of National Treasury in particular, complied with the intent of RPPL No. 8-9 by establishing a separate account within National Treasury to account for the revenues and expenditures of Green Fees (PAN Special Revenue Fund). We recommend the Bureau of National Treasury continue to account for Green Fees revenues and expenditures in this manner unless directed by law to do otherwise.

**PANF’s Response:** *The board has reviewed and discussed the report and we have no objections to the report and all of its recommendations. We will take the information into consideration as we continue to finalize the PAN-F Office and hire a General Manager.*

**OPA's Comments:** *The OPA has reviewed the PANF's response and takes the position that the response falls short of the requirements of the Public Auditing Act. Section 229 of the Act states in part: ... "The agency shall submit to the Public Auditor within 30 days after the receipt of the list of findings, its written statement of explanation or rebuttal concerning any of the adverse or critical audit findings, including any corrective action to be taken to preclude a recurrence of any adverse findings." However, in view of the fact that the PANF is in the process of hiring its General Manager, the OPA will defer further action regarding the findings and recommendations contained in this report until such time that a General Manager is on board and directed by the Board to take corrective action, at which time the OPA will conduct its follow up.*

**Ministry of Finance's (MOF) Response:** *The Ministry of Finance did not provide a written response to the Draft report despite being provided a copy of the Draft report and thirty (30) days grace period to submit a response.*

## **Finding No. PAN-02**

### **Production and Distribution of Green Fees Cash Receipts Books**

A proper system of internal control dictates that departments issuing cash receipts should establish controls to safeguard the production and distribution of cash receipts books to ensure that all cash receipts books are in proper numerical sequence and accounted for.

During the audit we found that the Division of Customs did not maintain a log book or a similar book of original entry to log in the production and distribution of cash receipts books for Green Fees. The cash receipts books are ordered and printed directly from a local vendor and provided to the Division.

It appears the Director of Bureau of Revenue, Customs and Taxation has not established controls to safeguard and account for the production and issuance of cash receipts books for Green Fees.

As a result, the Division of Customs lack procedures to control or account for Green Fees cash receipts books. Thus, the Division does not have readily available information regarding the (1) number and numerical sequences of receipt books printed by the vendor and issued to the Division, (2) date, cash receipt book, and identity of tax official on duty issued a cash receipt book, etc.

### **Recommendation**

We recommend the Director of Bureau of Revenue, Customs and Taxation establish a log book to (1) account for cash receipt books printed by the vendor and issued to the Division of Customs, (2) record information such as date, cash receipt book, and identity of tax official on duty issued a cash receipt book, etc.

**PANF's Response:** *The board has reviewed and discussed the report and we have no objections to the report and all of its recommendations. We will take the information into consideration as we continue to finalize the PAN-F Office and hire a General Manager.*

**OPA's Comments:** *The OPA has reviewed the PANF's response and takes the position that the response falls short of the requirements of the Public Auditing Act. Section 229 of the Act states in part: ... "The agency shall submit to the Public Auditor within 30 days after the receipt of the list of findings, its written statement of explanation or rebuttal concerning any of the adverse or critical audit findings, including any corrective action to be taken to preclude a recurrence of any adverse findings." However, in view of the fact that the PANF is in the process of hiring its General Manager, the OPA will defer further action regarding the findings and recommendations contained in this report until such time that a General Manager is on board and directed by the Board to take corrective action, at which time the OPA will conduct its follow up.*

**MOF's Response:** *The Ministry of Finance did not provide a written response to the Draft report despite being provided a copy of the Draft report and thirty (30) days grace period to submit a response.*

### **Finding No. PAN-03**

#### **Cash Receipts Issued by National Treasury**

Cash receipts are an integral component of the overall internal control system over cash receipts as they evidence cash collections.

In the first year of Green Fees collections, November 02, 2009-September 30, 2010, the Division of Customs collected the Green Fees and deposited the collections to National Treasury. The National Treasury issued a Cash Register-generated cash receipt to evidence the deposit. The cash receipt issued by National Treasury entered only the total amount deposited. The Division of Customs should attach the National Treasury-issued receipt to the batch of Green Fees receipts making up the collections deposited to National Treasury. This process was not followed and the Division misplaced the National Treasury receipts and therefore the early Green Fees collections lacked cash receipts to evidence deposit into National Treasury. However, Cash Receipts Reports of Green Fees Collections produced by the Bureau of National Treasury show that the Green Fees collections were deposited into National Treasury. In addition, we found that after September 30, 2010 (beginning Oct.1, 2010), the Bureau of National Treasury established a separate National Treasury bank account into which the Division of Customs make direct deposit of Green Fees collections, which upon further review we found to contain sufficient supporting documents (i.e. cash receipts and deposit slips, etc.)

We were unable to determine the reason why the Division of Customs did not file the National Treasury-issued cash receipt together with the initial Green Fees cash receipts to evidence deposit to National Treasury.

As a result, the initial Green Fees collections lacked cash receipts to support their deposit into National Treasury; thus, secondary evidence (cash receipts report) had to be used to verify deposit.

### **Recommendation**

We recommend the Division of Customs be more attentive to its internal control processes to ensure that cash receipts are maintained and filed securely to support deposit of Green Fees collections. In addition, shift supervisors should periodically review Green Fees collection activities to ensure the files contain the appropriate supporting documents.

**PANF's Response:** *The board has reviewed and discussed the report and we have no objections to the report and all of its recommendations. We will take the information into consideration as we continue to finalize the PAN-F Office and hire a General Manager.*

**OPA's Comments:** *The OPA has reviewed the PANF's response and takes the position that the response falls short of the requirements of the Public Auditing Act. Section 229 of the Act states in part: ... "The agency shall submit to the Public Auditor within 30 days after the receipt of the list of findings, its written statement of explanation or rebuttal concerning any of the adverse or critical audit findings, including any corrective action to be taken to preclude a recurrence of any adverse findings." However, in view of the fact that the PANF is in the process of hiring its General Manager, the OPA will defer further action regarding the findings and recommendations contained in this report until such time that a General Manager is on board and directed by the Board to take corrective action, at which time the OPA will conduct its follow up.*

**MOF's Response:** *The Ministry of Finance did not provide a written response to the Draft report despite being provided a copy of the Draft report and thirty (30) days grace period to submit a response.*

### **Finding No. PAN-04**

#### **Expenditure of Green Fees**

The RPPL No.7-42 that established the Protected Area Network Fund Green Fees and related amendments require that Green Fees shall only be used for the purpose of the Protected Area Network (PAN) and shall not be subject to reprogramming.

Our audit revealed that on November 5, 2010, the PAN Coordinator (PAN Office under the Ministry of Natural Resources, Environment and Tourism) entered into an agreement with the Minister of Natural Resources, Environment and Tourism to transfer \$29,814 of expenditures from the Ministry to the PAN Green Fees Fund. The expenditures were for electricity (\$22,547.04) and communication (\$7,266.96) for the Bureau of Marine Resources for fiscal year 2010. A review of supporting documents shows that an "Inter Organization Transfer" was

prepared and approved on November 1, 2010, before the agreement was executed, to transfer the expenditures.

It appears the Bureau of Marine Resources, Ministry of Natural Resources, Environment and Tourism, was in a delicate position to overspend its budget so the Minister had to take measures to avoid the budget shortfall.

As a result, PAN Green Fees were used for purposes in violation of the intent of the PAN enabling legislation and related amendments. In addition, the agreement to transfer expenditures and the approval of the “Inter Organization Transfer” may have lacked proper authority.

### **Recommendation**

We recommend the PAN Green Fees be used and expended only for the purpose of the PAN. The PAN enabling legislation restricts the use of PAN Fees only for the purpose of the PAN and shall not be subject to reprogramming. We further recommend the Office of the Attorney General further investigate the transfer of expenditures and take appropriate action for any improper and unauthorized expenditure of PAN Green Fees.

**PANF’s Response:** *The board has reviewed and discussed the report and we have no objections to the report and all of its recommendations. We will take the information into consideration as we continue to finalize the PAN-F Office and hire a General Manager.*

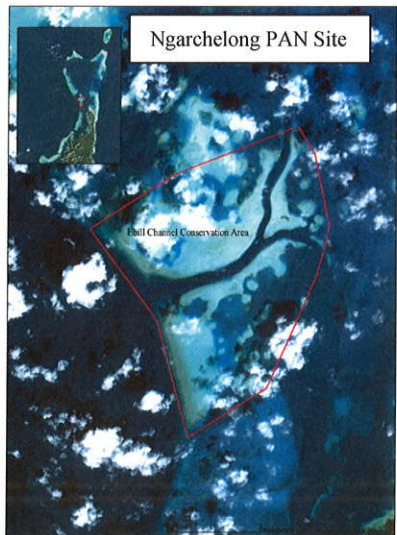
**OPA’s Comments:** *The OPA has reviewed the PANF’s response and takes the position that the response falls short of the requirements of the Public Auditing Act. Section 229 of the Act states in part: ... “The agency shall submit to the Public Auditor within 30 days after the receipt of the list of findings, its written statement of explanation or rebuttal concerning any of the adverse or critical audit findings, including any corrective action to be taken to preclude a recurrence of any adverse findings.” However, in view of the fact that the PANF is in the process of hiring its General Manager, the OPA will defer further action regarding the findings and recommendations contained in this report until such time that a General Manager is on board and directed by the Board to take corrective action, at which time the OPA will conduct its follow up.*

**MOF’s Response:** *The Ministry of Finance did not provide a written response to the Draft report despite being provided a copy of the Draft report and thirty (30) days grace period to submit a response.*

## Finding No. PAN-05

### Protected Area Network Fund (PANF) and Board of Directors

The RPPL No. 7-42, effective May 8, 2008, requires the incorporation of a non-profit corporation to be known as the Protected Area Network Fund (PANF), which shall act as the financial trustee corporation for all money received for the PAN. The PANF shall be governed by a nine (9)-member Board of Directors. The Board shall have all the powers necessary or convenient to carry out the purposes and provisions of this Chapter, including, but not limited to: To promulgate a policy for the acceptance and approval of donation agreements and arrangements for any gifts, grants, and aid..., to determine the criteria under which PAN sites will receive PANF Funds, to be a fiduciary of the PANF and financial trustee of the PAN. In addition, RPPL No. 7-42, Section 2 §3422 (a) states...The PANF, through a Board of Directors,



shall administer and manage all funds received for the sustainable operation of the PAN and disburse these revenues to provide financial support for the PAN sites and the PAN Office to implement the PAN system-wide and individual management and sustainable development plans. Basically, the RPPL No. 7-42 constructs the framework for financing the PAN network and sites selected for inclusion in the PAN.

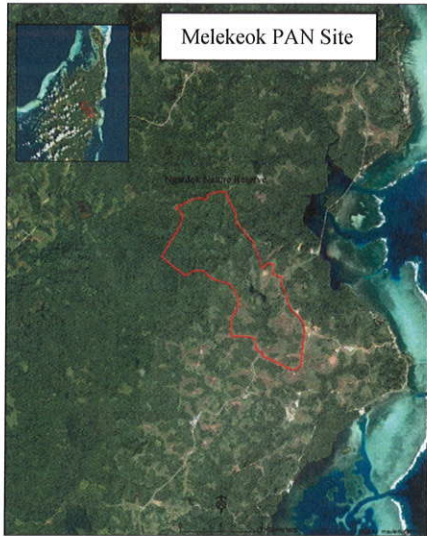
The audit revealed that as of August 17, 2011, two (2) vacancies on the Board of Directors of the PANF were still pending appointment and confirmation by the Senate, although the Board had enough members to have a quorum to conduct business. As previously mentioned, the Board is empowered to determine the criteria under which PAN sites will receive PANF funds and disburse the funds to PAN sites. Despite having a quorum to conduct business, the Board had not elected

its officers, establish an office and hire staff at the time, and thereby had not progressed to the point of commencing granting financial assistance to PAN sites; thus, the Olbiil Era Kelulau on September 30, 2010, in RPPL No. 8-18, authorized and appropriated Green Fees revenues in the sum of \$200,000 to the following PAN sites: (1) \$50,000 for Ebiil and Northern Reef, Ngarchelong State; (2) \$50,000 for Ngiwal State for developing PAN site regulations, awareness and completion of management plan; (3) \$50,000 for refining and implementation of Lake Ngerdok PAN site management plan, and (4) \$50,000 for Helen Atoll. The funds were disbursed as “bridge funds” for conservation sites that were already designated PAN sites in fiscal year 2011.

The RPPL No. 7-42, Section 2 §3433, spells out the fund use and disbursement of funds. Clause (3) (c) states: “Money will be disbursed to site activities on a quarterly basis after the



PANF has received a Quarterly technical and financial report from the site.” In addition, Clause (3) (d) states: “PANF will monitor the operation of each site at least once a year or as many times that site requires.” According to the PAN Coordinator (Ministry of Natural Resources, Environment and Tourism), in absence of the PANF, there is no reporting mechanism governing the use of the above funds or monitoring as to the progress of the projects.



It would appear that funding for the above PAN sites were prematurely provided without first ensuring that the PAN financing and monitoring framework (PANF) is in place, the analogy of the horse placed after the carriage comes to mind. The PANF is the PAN financing and monitoring framework and should have been put in place first before the disbursement of funds to PAN sites. For example, the PANF is empowered to determine the criteria under which PAN sites will receive funding, an essential element lacking in the enabling appropriation law. In addition, without the PANF in place, the control element requiring disbursements of allotments to PAN sites on a quarterly basis, the purpose of which is to ensure reporting by PAN sites, is lacking. Also, an essential requirement mandating the PANF to monitor the progress of work on PAN sites is lacking as well. According

to the PAN Coordinator, in absence of the PANF, there is no reporting mechanism governing the use of the above funds or monitoring as to the progress of work.

As a result, the \$200,000 appropriated and disbursed by National Treasury to the above-designated PAN sites lacks a mechanism for reporting by PAN sites and monitoring by an oversight agency to ensure accountability and progress of work and that the work is undertaken in accordance with an approved PAN site management and sustainable development plan.

### Recommendation

We recommend that for future programs similar to the PAN, the Olbiil Era Kelulau (OEK) works with the Executive branch to expedite the appointment and confirmation of the members of the Board of Directors of the funding agency to ensure that the program framework is in place first, rather than preempting the PANF by appropriating funds directly to PAN sites. In this context, the OEK should have worked closely with the Executive Branch to ensure the PANF and its Board of Directors is in place to implement the financing and monitoring of State PAN sites. In haste to preempt the PANF and its financing framework, the OEK appropriated Green Fees to designated State PAN sites without the requisite reporting requirements or designating oversight agencies to monitor the progress of work and ensuring that the work is





undertaken in accordance with an approved PAN site management and sustainable development plan. The implementation of the PAN has long been delayed since 2008 while the Green Fees collections for financing the PAN programs has continued to accumulate funds to the point that idleness in the use of the funds, especially at a time that the Republic is faced with critical cash flow and revenue shortfall problems, attracts alternative propositions to use the money to fund other programs or projects. The Green Fees are intended by law to fund the PAN and requires the collective effort of the leadership of the Republic to implement the PAN and PANF's financing mechanism so that the eventual use of the Green Fees to protect and preserve designated PAN sites can be realized.

**House of Delegates' (HOD) Response:** *My recommendations and comments are as follows:*

1. *Generally, this section wrongly implies that the PANF Board is currently inoperative. Although the appointment and confirmation of two more members is yet to take place, the Board has enough members to have a quorum and thus has begun to operate and perform its duties. I suggest the following change to the first sentence of the second paragraph under this Section:*

*"...of August 17, 2011, the Board has enough members to have quorum and perform its duties, although two (2) vacancies..."*

**OPA's Comments:** *We concur. However, when the OPA was prepared to issue the Draft of the PAN Report back in September 2011, the Board had not organized and elected its officers, despite having a quorum to do so. The delay endured until December 16, 2011, when the Board of Directors of the PANF submitted a list of its officers to the OPA, at which time the Board was at full membership, with the exception of 1 member representing the donor community.*

**HOD's Response:** *2. With the current sentence construction of the third sentence in the second paragraph, it echoes the general implication mentioned in "1" above. I suggest the following change:*

*"On September 30, 2010, because the PANF had yet to be fully established at the time, meaning PAN funds could not be legally disbursed to State PAN sites at that time, the Olbil Era Kelulau..."*

**OPA Comments:** *We concur and the finding has been revised accordingly.*

**HOD's Response:** *3. The current language of this section also implies that there was no foundation for the disbursement of funds in September, 2010. I suggest the following change. At the end of the second full paragraph, add the following sentence:*

*"The funds were disbursed as "bridge funds" for conservation sites that were already designated PAN sites in fiscal year 2011."*

**OPA's comments:** *The foundation (designated PAN sites) was established, but the framework (PANF) for financing and monitoring was not operational yet; it was created by law but yet to be*

*established and organized to execute its duties and responsibilities. The OEK created the PANF by law as a corporate instrument to provide financing (PAN Green Fees) to designated PAN sites, sites which by the same law empowers the PANF to set the criteria for sites to receive PANF funding. Hence, whether the funds were disbursed as bridge funds or otherwise, the entity (PANF) that is designated the responsibility for financing PAN projects and programs was preempted by the OEK in the provision of funds to the above PAN sites, which is the gist of this finding.*

**HOD's Response:** 4. *On page 11 and 12, there are references to the implementation of PAN. These are misleading because this section is talking about the PANF and its Board. It should be clear and consistent that in the PAN system, the PANF is not an implementing mechanism. It is the financing mechanism of PAN. The owning party (either State and/or National Government) creates the management plan and once it is approved by the Ministry of NRET to become part of the Protected Areas Network; then the PANF Board gets involved with financing that management plan while the owning party implements that management plan. Therefore, I would suggest removing all language referring to the PANF and its board as an implementing arm of the PAN.*

**OPA's Comments:** *We concur with your suggestions and the finding is revised accordingly.*

**HOD's Response:** 5. *On page 11, the last three sentences of the second full paragraph on that page echo the same sentiment as that mentioned in "1" above. And because the PANF and its Board is now fully functional, I would suggest removing these sentences in their entirety and even replace with a sentence indicating that the financing mechanism or financing arm of PAN is now operating as mandated.*

**OPA's Comments:** *We understand the PANF and its Board of Directors is in the process of organizing the PAN office (i.e., hiring staff, etc.), however, the finding reflects conditions that existed at the time we conducted the audit.*

**HOD's Response:** 6. *On page 11, the last full paragraph: As for the \$200,000 that was allocated in September 2010, the PANF Board will most likely be taking these past disbursement into consideration when looking at future funding for these sites. Thus, it is inaccurate to state that these funds and these sites "lack a mechanism for reporting by PAN sites and monitoring by an oversight agency to ensure accountability..." There is already a financing mechanism, which is the PANF. And the states will report to the PANF and the PANF will ensure accountability. I suggest rewriting this sentence according to this information, or striking it out in its entirety.*

**OPA's Comments:** *The funds (\$200,000) were disbursed to the above PAN sites early in 2011. It has been a little over a year since the funds were disbursed yet the PANF is still in the process of setting up its office. According to a member of the Board (PANF), there has been no monitoring by the PANF or reporting by the recipients concerning the use of the funds to date. The PANF framework is structured such that funds are allotted on a periodic basis and accompanied by regular monitoring to ensure the projects are moving forward and that the funds are expended for their intended purpose. In the funding format in its present form (directly*

by OEK), if the PANF finds, as a result of monitoring, that the projects are not progressing and the funds were not being used for their intended purpose, then suspending allotments can not be used as a disciplinary tool because funding was provided in lump sum. Hence, to disburse funding in lump sum to PAN sites and conduct monitoring a year after defeats the whole purpose of monitoring (controls). In addition, the language in RPPL No. 8-18 does not designate the PANF as the oversight agency or the agency to which the PAN sites report to, which brings up the issue of jurisdiction over monitoring and reporting for these initial "bridge" funds.

**HOD's Response:** 7. Lastly, for the recommendation section, I would suggest that again the language referring to implementation as a duty of PANF, as well as language implying that the PANF Board is not yet operational be removed.

**OPA's Comments:** The OPA agrees with your suggestion to a certain degree and therefore the language of the finding has been revised accordingly. However, the OPA disagrees with your suggestion pertaining to the operation of the PANF Board as offered in our comments under item 1 above.

**Senate's Response to Finding No. PAN-05:** I am writing on behalf of the Senate to provide a response to the above Finding concerning the appropriation of \$200,000.00 of Protected Area Network (PAN) Funds by way of Section 18 of RPPL No. 8-18, the FY 2011 Budget Act. Specifically, you have proposed a finding that the appropriations funding for certain PAN sites was "prematurely provided without first ensuring that the PAN implementing framework (was) in place". The basis of this that the PAN Board was not fully constituted at the time that the appropriation was enacted, and you therefore have preliminarily concluded that there was not an adequate system of control and oversight in place to monitor the expenditure of the appropriated funds.

Initially, I note that RPPL No. 8-18 was enacted by both houses of the OEK, and signed into law by the President. Obviously, the Senate can only provide comments on its understanding of the legislation, and the House of Delegates and President should also be afforded the opportunity to offer input on the issues involved.

Before directly addressing the substance of the proposed funding, it may be useful to furnish a very brief history of how Section 18 came to be enacted. During the FY 2011 budget process, the House of Delegates, in its HDI version of the budget bill, actually provided for tapping the PAN Fund to support \$880,000.00 in appropriations, many of which were, at best, only peripherally related to the stated PAN objectives. A political compromise by an OEK Conference Committee resulted in the much more modest and limited appropriations of Section 18, all of which are unquestionably and directly consistent with the stated purposes of the PAN Act.

In this procedural context, the Senate and House enacted Section 18 in accordance with the OEK's constitutional authority and in its judgment that the four entities that would be receiving the appropriated funds possessed the institutional capabilities and controls to properly manage, expend, and account for the moneys received by them. Of course, you may not agree with the OEK's judgment, but we respectfully suggest that the wisdom of the premises of any particular legislative act is beyond the purview of the audit. There certainly was no illegality or

*questionable motive behind the Section 18 appropriations, and, so far as we are aware, the appropriated funds have been properly expended by the recipients for the intended purposes, which have advanced the objectives of the PAN program.*

*Despite this, your draft findings have been twisted and used as the basis for comments made on the Senate floor that imply that several Senators and the Palau public were somehow deceived that the PAN funds was "inappropriately authorized and appropriated". These same Senators had the opportunity to provide their input and vote on RPPL No. 8-18, including its Section 18, at the time that it went through the legislative process. It cannot be ignored that at any time they were not fully aware of the PAN fund appropriation. To their credit, even they do not go as far as to make any suggestion that there has been any illegality regarding the appropriation or expenditure, but we are still troubled by the interpretation that is misinformation to our constituents.*

*In any event, we thank you for the opportunity to make the foregoing points.*

**OPA Comments:** *The OPA does not in any way or form insinuate that the appropriation of PAN funds was illegal. In a nutshell, the OPA is simply saying that earlier the OEK ratified RPPL No. 7-42, which constructs the framework for financing (PANF) PAN projects and programs, including essential control mechanisms inherent in the framework. In haste to provide direct financial assistance, the OEK preempted the PANF and the built-in framework for financing procedures, monitoring, and related control mechanisms absent from RPPL No. 8-18.*

## **Finding No. PAN-06**

### **PAN Management and Technical Committees**

The RPPL No. 7-42, Section 2 §3404(f) and §3405, requires the Minister of Resources and Development (presently Ministry of Natural Resources, Environment and Tourism) to establish a PAN Management Committee and a PAN Technical Committee respectively. The PAN Management Committee shall be composed of the Minister of Resources and Development and the Minister of Finance as ex-officio members, one individual representative from each of the states with PAN sites, one individual representing the Governor's Association, one individual representing the Council of Chiefs, one individual representing Palau Public Lands Authority and two independent individuals appointed and approved by no less than two-thirds (2/3) vote of the Senate and House of Delegates for a term of two years...Thereafter, the Management Committee shall advise and work with the Minister on the following: (1) Structure and operations of the PAN office, (2) Applications and other issues related to the PAN, (3) Monitoring the implementation of the overall PAN work plan and budget, and (4) developing an annual system-wide management and sustainable development plan that focuses on the provision of funding and technical assistance to states.

In addition, the Ministry of Resources and Development, in consultation with the PAN Management Committee, shall establish a PAN Technical Committee which shall consist of at

least five (5) members of relevant community organizations that represent the broad interests of the Republic, including but not limited to: environment, cultural, conservation, marine science and terrestrial science organizations or institutions. The Technical Committee shall advise the Ministry and the PAN Management Committee concerning applications for the inclusion of sites to the PAN. The Technical Committee also shall assist the Management Committee, the Ministry, PAN, PANF, and States in the overall functioning of the PAN...

As of August 17, 2011, neither the PAN Management Committee nor the PAN Technical Committee has been established. In addition, due to the delay in establishing these two Committees, the Ministry of Natural Resources, Environment and Tourism has not developed a system-wide management and sustainable development plan that outlines the general criteria for the management of the PAN sites, and for the creation of work plans for individual sites as required under RPPL No. 7-42, Section 2 § 3406.

According to the Minister of Natural Resources, Environment and Tourism (formerly Ministry of Resources and Development), he is awaiting the appointment and confirmation of the Board of Directors of the PANF before proceeding to establish the PAN Management and Technical Committees. The RPPL No. 7-42, however, contains no prerequisites or preconditions with regard to the PANF Board of Directors and the establishment of the two Committees. On the contrary, upon the full constitution of the PANF Board of Directors, the delay in the creation of these Committees presents a risk of further delaying or derailing the implementation of the PAN, PANF, and the Board as the Committees have a statutory role to work with and provide advice to the Minister and the various PAN-implementing partners.

Without the PAN Management and Technical Committees, the implementation, financing, and administration of the PAN is technically handicapped as the Committees are given statutory responsibilities to work with and advise the Ministry of Natural Resources, Environment and Tourism, PAN, PANF and its Board of Directors with the overall functioning of the PAN. In addition, the development of the system-wide management and sustainable development plan, which requires consultation between the Minister and the two Committees, is critical to the PAN as it formulates the plans and strategies for the management and financing of the overall PAN and individual PAN sites.

### **Recommendation**

We recommend the Minister of Natural Resources, Environment and Tourism takes the necessary measures to expedite the establishment of the PAN Management Committee and PAN Technical Committee in accordance with the intent of RPPL No. 7-42. The Committees perform a critical role in the PAN framework and, recognized so, by being given statutory responsibilities to work with and advise the Ministry of Natural Resources, Environment and Tourism, PAN, PANF and its Board of Directors with the overall functioning of the PAN.

**PANF's Response:** *The board has reviewed and discussed the report and we have no objections to the report and all of its recommendations. We will take the information into consideration as we continue to finalize the PAN-F Office and hire a General Manager.*

**OPA's Comments:** *The OPA has reviewed the PANF's response and takes the position that the response falls short of the requirements of the Public Auditing Act. Section 229 of the Act states in part: ... "The agency shall submit to the Public Auditor within 30 days after the receipt of the list of findings, its written statement of explanation or rebuttal concerning any of the adverse or critical audit findings, including any corrective action to be taken to preclude a recurrence of any adverse findings." However, in view of the fact that the PANF is in the process of hiring its General Manager, the OPA will defer further action regarding the findings and recommendations contained in this report until such time that a General Manager is on board and directed by the Board to take corrective action, at which time the OPA will conduct its follow up.*

### **Finding No. PAN-07**

#### **Administration and Expenditure of PAN Green Fees**

The RPPL No. 7-42, Section 2 §3422 (a) states...The PANF, through a Board of Directors, shall administer and manage all funds received for the sustainable operation of the PAN and disburse these revenues to provide financial support for PAN sites... In addition §3422(c) states: The funds administered, managed, and invested by the PANF as the financial Trustee Corporation to the PAN shall consist of: (1) Funds from the environmental protection fee as donated by the national government to be used for the general operation of the PAN... Moreover, the RPPL No. 7-42, Section 2 §3429, provides that the PANF Board of Directors shall employ a General Manager for the PANF to run the day-to-day operations of the PANF and to serve as a non-voting member of the Board. Finally, §3430 empowers the General Manager to hire and terminate any support staff, technical experts, and other employees for the sole purpose of the PAN.

Presently, a PAN Office has been in existence and operating for the past six (6) years, albeit not in accordance with the intent of RPPL No. 7-42. Organizationally, the PAN Office has been under the Ministry of Natural Resources, Environment and Tourism, as well as its funding via OEK appropriations. We found, however, that in Fiscal Year 2010 the office began using PAN Green Fee collections (PAN Fund) to supplement its operations, contrary to the mandates of RPPL No. 7-42. According to a legal opinion obtained by the Office of the Public Auditor (OPA), only the PANF is authorized by law to administer and disburse PAN Green Fees. The PAN Office presently employs two (2) employees: a Pan Coordinator and an Administrative Assistant, both of which were paid through the PAN Green Fees revenues in Fiscal year 2011. Although the PAN Office has made enormous contributions to the establishment and operations of the PAN, we believe the existing arrangement of funding the office using Green Fees revenues runs contrary to the intent of RPPL No. 7-42 and, furthermore, may lack the proper legal authority to do so. Only the PANF has the authority to expend PAN Green Fees, unless the OEK authorizes and appropriates Green Fees for a specific purpose. Based on personnel records, the official authorizing payroll charges to the Green Fee Account is the PAN Coordinator, not PANF. In addition, other operations expenditures (i.e. POL, office equipment and supplies, travel, etc...) are also charged to the PAN Fund. Based on expenditures reports obtained from

the Bureau of National Treasury, the schedule below shows the breakdown of PAN Office expenditures charged to the PAN Fund for Fiscal Years 2010 and 2011 (October 1, 2009-March 31, 2011):

**Fiscal Year 2010 PAN Office Expenditures**

Period: October 1, 2009 – September 30, 2010

Expenses:	Amounts
Salaries and Wages	\$ 376.81
Personnel Benefits	87.65
Machinery & Equipment Repair	1,397.50
Vehicle Repair	1,840.40
Vehicle Rental	375.00
Communications (Transferred from Bureau of Marine Resources)	7,266.96
Travel & Transportation	7,505.54
General Supplies	15,925.65
Electricity (Transferred from Marine Resources)	22,547.04
Fuel & Other POL Products	3,643.85
Equipment	2,376.95
Donations, Gifts & Contribution	100.00
Total Expenditures	<u>\$ 63,443.35</u>

**Fiscal Year 2011 PAN Office Expenditures**

Period: October 1, 2010 – March 31, 2011

Expenses:	Amounts
Salaries and Wages	\$ 18,167.29
Personnel Benefits	2,488.30
Machinery & Equipment Repair	1,273.00
Other Rentals	1,000.00
Communications	99.85
Travel & Transportation	1,582.00
General Supplies	4,677.40
Fuel & Other POL Products	1,692.26
Ngarchelong State Government	50,000.00
Melekeok State Government	50,000.00
Hatohobei State Government	50,000.00
Total Expenses	<u>\$ 180,980.10</u>

The legal opinion obtained by the OPA concludes that only the PANF is authorized by law to administer and disburse PAN Green Fees as the Financial Trustee Corporation for the PAN. Based on this interpretation, we were unable to determine the legal authority under which the PAN Office (Ministry of Natural Resources, Environment and Tourism) and the Bureau of National Treasury charged PAN office expenditures to the PAN Fund.

As a result, although related to the purpose of the PAN, charging the PAN Office expenditures to the Green Fee Account (PAN Fund) may run in conflict with the intent of RPPL No. 7-42 and, furthermore, may lack the proper legal authority.

### **Recommendation**

We recommend the PAN Office cease using PAN Green Fees to fund its operations until it receives proper authorization to do so. In addition, the PANF Board of Directors should seize the Green fees until a plan has been formulated and approved by the Board regarding the use of funds. Moreover, we recommend the Board refer this matter to the Office of the Attorney General for further investigation of the expenditures charged to the Green Fees Fund and take appropriate action for any unauthorized or illegal expenditures.

**PANF's Response:** *The board has reviewed and discussed the report and we have no objections to the report and all of its recommendations. We will take the information into consideration as we continue to finalize the PAN-F Office and hire a General Manager.*

**OPA's Comments:** *The OPA has reviewed the PANF's response and takes the position that the response falls short of the requirements of the Public Auditing Act. Section 229 of the Act states in part: ... "The agency shall submit to the Public Auditor within 30 days after the receipt of the list of findings, its written statement of explanation or rebuttal concerning any of the adverse or critical audit findings, including any corrective action to be taken to preclude a recurrence of any adverse findings." However, in view of the fact that the PANF is in the process of hiring its General Manager, the OPA will defer further action regarding the findings and recommendations contained in this report until such time that a General Manager is on board and directed by the Board to take corrective action, at which time the OPA will conduct its follow up.*

**MOF's Response:** *The Ministry of Finance did not provide a written response to the Draft report despite being provided a copy of the Draft report and thirty (30) days grace period to submit a response.*

### **Finding No. PAN-08**

#### **Expenditures Lacking Authorization and Appropriation**

Article XII, Section 1 of the Republic of Palau Constitution states in part: There shall be a National Treasury into which all revenues derived from taxes or other sources shall be deposited. No funds shall be withdrawn from the treasury except by law.

The audit revealed that the PAN Office may have expended Green Fees revenues in Fiscal Years 2010 and 2011 without proper authorization and appropriation by the Olbiil Era Kelulau. The Fiscal Year 2011 Annual National Budget Authorization and Appropriation Act, RPPL No. 8-18, and RPPL No. 8-9 does not authorize and appropriate Green Fees revenues to the PAN Office.



The RPPL No. 8-8, the Annual National Budget Authorization and Appropriation Act for Fiscal Year 2010, however, provided \$44,800 of local revenues (other than Green Fees) to the PAN Office. The PAN Office charged expenditures against both PAN Green Fees Revenues Fund and its operating budget for fiscal year 2010. According to expenditures report from the Bureau of National Treasury, the PAN Office charged the sum of \$63,443 of expenditures in Fiscal Year 2010 and \$30,980 (as of 3/31/2011, excluding the appropriations to State PAN sites previously mentioned above) in fiscal year 2011 to the Green Fee Fund.

Due to the fact that the OEK did not authorize and appropriate PAN Green Fees to fund the operations of the PAN Office, and the legal opinion concluding that only the PANF is authorized to administer and expend PAN Green Fees, we were unable to determine the legal authority under which the PAN Office charged its expenditures to the Green Fees Fund, and the Bureau of National Treasury allowed it to do so. In hindsight, the PAN Office and the Bureau of National Treasury should have consulted with the Office of the Attorney General for legal advice before proceeding to charge expenditures against the Green Fees Fund.

As a result, the PAN Office and the Bureau of National Treasury may have violated the Republic of Palau Public Laws in the expenditure of public funds.

### **Recommendation**

We recommend the PAN Office expend public funds in accordance with the Republic of Palau Public Laws. In general, the authority to expend public funds requires authorization and appropriation by the Olbiil Era Kelulau (OEK) for a designated purpose and; in particular, it requires an act by the OEK to authorize and appropriate Green Fees revenues to the PAN Office authorizing the expenditure of Green Fees. Finally, we recommend the Office of the Attorney General further investigate the expenditures charged to the PAN Fund and take appropriate action for any unauthorized or illegal expenditures.

**PANF's Response:** *The board has reviewed and discussed the report and we have no objections to the report and all of its recommendations. We will take the information into consideration as we continue to finalize the PAN-F Office and hire a General Manager.*

**OPA's Comments:** *The OPA has reviewed the PANF's response and takes the position that the response falls short of the requirements of the Public Auditing Act. Section 229 of the Act states in part: ... "The agency shall submit to the Public Auditor within 30 days after the receipt of the list of findings, its written statement of explanation or rebuttal concerning any of the adverse or critical audit findings, including any corrective action to be taken to preclude a recurrence of any adverse findings." However, in view of the fact that the PANF is in the process of hiring its General Manager, the OPA will defer further action regarding the findings and recommendations contained in this report until such time that a General Manager is on board and directed by the Board to take corrective action, at which time the OPA will conduct its follow up.*

**MOF's Response:** *The Ministry of Finance did not provide a written response to the Draft report despite being provided a copy of the Draft report and thirty (30) days grace period to submit a response.*

**Finding No. PAN-09**

**PANF's Board of Directors**

With respect to the PANF's Board of Directors, the RPPL No. 7-42, Section 2 §3423(a), states: The Board of Directors shall consist of nine (9) voting members, including the Minister of Finance and the Minister of Resources and Development (presently Minister of Natural Resources, Environment and Tourism) as voting ex-officio members. The incorporators (Minister of Finance, Minister of Natural Resources, Environment and Tourism, and one representative from the donor community) shall unanimously nominate the first members of the Board of Directors for the PANF. The remaining Board members shall be appointed in accordance with the PANF's Articles of Incorporation and approved by no less than two thirds (2/3) of the members of the Senate.

Pursuant to the PANF's Articles of Incorporation, Section 12.3 states: "On and from the date of adoption of these Articles of Incorporation, five directors other than the ex-officio directors referred to in clause 12.1 shall be persons selected by the Incorporators. On and from the date of adoption of these Articles of Incorporation, two directors other than the ex-officio directors referred to in section 12.1 of the Articles of Incorporation must be persons selected by the donor community". The PANF's Articles of Incorporation was adopted on November 2, 2010.

Based on the language of RPPL No. 7-42 and PANF's Articles of Incorporation, it would appear that the recent appointment action by the President of the Republic to appoint the members of the Board of Directors of the PANF is in conflict with the foregoing provisions. The RPPL No. 7-42 and the PANF's Articles of Incorporation specifically states that five (5) directors, other than the ex-officio directors, shall be appointed by the Incorporators of the PANF and two (2) directors must be selected by the donor community.

As a result, it would appear the appointment of the members of the Board of Directors of the PANF by the President of the Republic contradicts with the requirements of RPPL No. 7-42 and the PANF's Articles of Incorporation.

**Recommendation**

We recommend the leadership of the Olbiil Era Kelulau confer with the President of the Republic the appointment process for the Board of Directors of the PANF and take appropriate action to resolve the inconsistency.

**PANF's Response:** *The board has reviewed and discussed the report and we have no objections to the report and all of its recommendations. We will take the information into consideration as we continue to finalize the PAN-F Office and hire a General Manager.*

**OPA's Comments:** *The OPA has reviewed the PANF's response and takes the position that the response falls short of the requirements of the Public Auditing Act. Section 229 of the Act states in part: ... "The agency shall submit to the Public Auditor within 30 days after the receipt of the list of findings, its written statement of explanation or rebuttal concerning any of the adverse or critical audit findings, including any corrective action to be taken to preclude a recurrence of any adverse findings." However, in view of the fact that the PANF is in the process of hiring its General Manager, the OPA will defer further action regarding the findings and recommendations contained in this report until such time that a General Manager is on board and directed by the Board to take corrective action, at which time the OPA will conduct its follow up.*

## **Finding No. PAN-10**

### **Regulation Governing Collection of Green Fees**

The RPPL No. 8-15, Section 11, §3413(d) states in part: Within thirty days of the effective date of this Act, the Director of the Bureau of Revenue, Customs and Taxation, with the approval of the President, shall forthwith promulgate regulations regarding collection of the Green Fee...

We found during the audit that the Bureau of Revenue, Customs and Taxation has not promulgated regulations governing the collection of Green Fees.

We were unable to determine the reason for the lack of efforts to promulgate regulations governing Green Fee collections.

As a result, the Bureau still lacks regulations governing collection of Green Fees.

### **Recommendation**

We recommend the Minister of Finance direct the Director of the Bureau of Revenue, Customs and Taxation to promulgate regulations governing the collection of Green Fees to fulfill the intent of RPPL No. 8-15.

**PANF's Response:** *The board has reviewed and discussed the report and we have no objections to the report and all of its recommendations. We will take the information into consideration as we continue to finalize the PAN-F Office and hire a General Manager.*

**OPA's Comments:** *The OPA has reviewed the PANF's response and takes the position that the response falls short of the requirements of the Public Auditing Act. Section 229 of the Act states in part: ... "The agency shall submit to the Public Auditor within 30 days after the receipt of the*

Office of the Public Auditor

*list of findings, its written statement of explanation or rebuttal concerning any of the adverse or critical audit findings, including any corrective action to be taken to preclude a recurrence of any adverse findings.” However, in view of the fact that the PANF is in the process of hiring its General Manager, the OPA will defer further action regarding the findings and recommendations contained in this report until such time that a General Manager is on board and directed by the Board to take corrective action, at which time the OPA will conduct its follow up.*

**MOF’s Response:** *The Ministry of Finance did not provide a written response to the Draft report despite being provided a copy of the Draft report and thirty (30) days grace period to submit a response.*



**ILLEGAL OR WASTEFUL ACTIVITIES  
SHOULD BE REPORTED TO:**

**OFFICE OF THE PUBLIC AUDITOR  
REPUBLIC OF PALAU  
P. O. BOX 850  
KOROR, REPUBLIC OF PALAU 96940**

**Ground Floor  
Orakiruu Professional Building  
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**MONDAY THRU FRIDAY  
7:30 a.m. - 4:30 p.m.**

**(Closed on Legal Holidays)**