FSM SUPREME COURT TRIAL DIVISION

THE PEOPLE OF THE MUNICIPALITY OF TOMIL, YAP, by and through CHIEFS STEVEN MAR, JOHN KADANNGED, and JESSE FAIMAW, Plaintiffs, vs. F/V HWA GWO NO. 6, *in rem*, its engines, masts, bowsprits, boats, anchors, chains, cables, rigging, apparel, furniture and all necessaries thereunto pertaining; *In rem* Defendant, HUANG SHAO CHOU, CAPTAIN CHERN HER TYAN, and LIANCHENG OVERSEAS FISHERY (FSM) CO. LTD., *In Personam* Defendants.	)	CIVIL ACTION NO. 2020-3001

ORDER CERTIFYING CLASS

Larry Wentworth
Associate Justice

Decided: May 4, 2021

APPEARANCES:

For the Plaintiffs:	Daniel J. Berman, Esq. 111 Chalan Santo Papa, Suite 503 Hagatna, Guam 96910
For the Defendants: (Hwa Gwo No. 6, Huang Shao Chou, & Chern Her Tyan)	Marstella E. Jack, Esq. P.O. Box 1274 Colonia, Yap FM 96943
For the Defendant: (Liancheng Overseas Fishery)	Stephen V. Finnen, Esq. P.O. Box 1450 Kolonia, Pohnpei FM 96941

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HEADNOTES

Civil Procedure – Parties; Civil Procedure – Pleadings

A party generally cannot assert the rights of another (a third party) as the party's own. A defendant cannot plead, as a defense to a plaintiff's claim, the alleged superior right of a third party (*jus tertii* – the right of a third party) to the property; a defendant can only plead its own defenses. That is because a defendant who is otherwise liable to the plaintiff for harm or interference to a property interest is not relieved of that liability because a third person has a legally protected interest in that property superior to the plaintiff's. People of Tomil ex rel. Mar v. F/V Hwa Gwo No. 6, 23 FSM R. 268, 272 (Yap 2021).

Civil Procedure – Class Actions

The plaintiffs bear the burden of showing that all the requirements for a class action have been met, and, under Civil Procedure Rule 23, all class actions must satisfy all four prerequisites in subsection (a) – numerosity, commonality, typicality, and adequacy of representation – and any one of the three subparts in subsection (b). People of Tomil ex rel. Mar v. F/V Hwa Gwo No. 6, 23 FSM R. 268, 272 (Yap 2021).

Civil Procedure – Class Actions

A court will certify a subsection (b)(3) class action only if the court finds that the class members' common questions of law or fact predominate and that a class action is superior to other methods of adjudication. People of Tomil ex rel. Mar v. F/V Hwa Gwo No. 6, 23 FSM R. 268, 272 (Yap 2021).

Civil Procedure – Class Actions

Since class certification must take place as soon as practicable after the commencement of an action brought as a class action, the court should make its class determination before turning to the case's merits. People of Tomil ex rel. Mar v. F/V Hwa Gwo No. 6, 23 FSM R. 268, 272 (Yap 2021).

Civil Procedure – Class Actions

A court must consider whether the proposed class is sufficiently definite to determine who its members might be, and it must determine whether the proposed class meets the Rule 23(a) prerequisites of numerosity, commonality, typicality, and adequacy of representation. People of Tomil ex rel. Mar v. F/V Hwa Gwo No. 6, 23 FSM R. 268, 273 (Yap 2021).

Civil Procedure – Class Actions – Numerosity

To maintain a class action, the class must be so numerous that joinder of all members is impracticable, and the practicability of joinder depends on the size of the class, ease of identifying members and determining their addresses, facility of making service on members joined and their geographic dispersion. There are no arbitrary rules regarding class size. People of Tomil ex rel. Mar v. F/V Hwa Gwo No. 6, 23 FSM R. 268, 273 (Yap 2021).

Civil Procedure – Class Actions – Typicality; Civil Procedure – Parties

To satisfy the typicality prerequisite, a class representative must not only be a member of the class but must also possess the same interest and suffer the same injury as the other class members. This prerequisite is inherent in Civil Procedure Rule 17(a)'s requirement that every action must be prosecuted in the name of the real party in interest. People of Tomil ex rel. Mar v. F/V Hwa Gwo No. 6, 23 FSM R. 268, 273-74 (Yap 2021).

Civil Procedure – Class Actions – Adequacy; Civil Procedure – Class Actions – Typicality

Each named plaintiff must qualify as a class representative on his or her own merits and does not automatically qualify because another named plaintiff has, and, if a named plaintiff is not qualified, some

other plaintiff(s) who can satisfy the typicality and adequacy prerequisites may need to appear as class representative(s). People of Tomil ex rel. Mar v. F/V Hwa Gwo No. 6, 23 FSM R. 268, 274 (Yap 2021).

Civil Procedure – Class Actions – Adequacy

A class action may be maintained only if it appears that the representative parties will fairly and adequately protect the interests of the association and its members. The prerequisite that the named plaintiff will fairly and adequately protect the interests of the class is met when the representative shares, without conflict, the interests of the unnamed class members and the court is assured that the representative will vigorously prosecute the rights of the class through qualified counsel. People of Tomil ex rel. Mar v. F/V Hwa Gwo No. 6, 23 FSM R. 268, 274 (Yap 2021).

Civil Procedure – Class Actions

The court may make a class certification order conditional, and, if an order defining and certifying a class action later proves inadequate, the order may be altered or amended before a decision on the merits. People of Tomil ex rel. Mar v. F/V Hwa Gwo No. 6, 23 FSM R. 268, 274 (Yap 2021).

Civil Procedure – Class Actions; Civil Procedure – Class Actions – Adequacy

If a class representative is not qualified, instead of dismissal of class claims, notice will be given to class to allow other class members to come forward who may be ready and able to carry on the litigation. People of Tomil ex rel. Mar v. F/V Hwa Gwo No. 6, 23 FSM R. 268, 274 n.1 (Yap 2021).

Civil Procedure – Class Actions – Adequacy

Even when the named plaintiffs are adequate class representatives, qualified class counsel must also be present and be able to adequately represent the class and to vigorously prosecute the class's rights. People of Tomil ex rel. Mar v. F/V Hwa Gwo No. 6, 23 FSM R. 268, 274 (Yap 2021).

Civil Procedure – Class Actions – Commonality

The commonality prerequisite is satisfied when the plaintiffs seeking class certification do not allege any individual personal injuries and all of the damages sought are economic damages, and when the liability question is common and central to all claimants and the causation and damages questions are also common to the class members because all class members' damages are based on their alleged loss of their subsistence use of the natural marine resources. People of Tomil ex rel. Mar v. F/V Hwa Gwo No. 6, 23 FSM R. 268, 275 (Yap 2021).

Civil Procedure – Class Actions – Commonality; Civil Procedure – Class Actions – Predominance

When all four Rule 23(a) prerequisites are satisfied, the court must consider whether one of the Rule 23(b) subparts is also satisfied, and a subsection (b)(3) class action can be maintained only if the court finds that the class members' common questions of law or fact predominate and that a class action is superior to other methods of adjudication. That is, the court must find that the questions in common to the class predominate over those affecting only individual class members. People of Tomil ex rel. Mar v. F/V Hwa Gwo No. 6, 23 FSM R. 268, 275 (Yap 2021).

Civil Procedure – Class Actions – Predominance

To determine whether the predominance standard is met, courts focus on the issue of liability, and if the liability issue is common to the class, common questions are held to predominate over individual ones. When the basis for each class member's claim is the same, common questions of law and fact predominate the liability issue and causation and damages can appropriately be proven on a class basis. People of Tomil ex rel. Mar v. F/V Hwa Gwo No. 6, 23 FSM R. 268, 275 (Yap 2021).

Civil Procedure – Class Actions – Predominance

Common issues may predominate when liability can be determined on a class-wide basis, even when

there are some individualized damage issues, but to meet the predominance requirement, it is not enough that the claims arise out of a common nucleus of operative fact because the common questions must be central to all claims, such as when the liability question is common and central to all claimants and the causation and damages questions are also common to the class members because all class members' damages are based on their alleged loss of their subsistence use of the natural marine resources. People of Tomil ex rel. Mar v. F/V Hwa Gwo No. 6, 23 FSM R. 268, 275 (Yap 2021).

Civil Procedure – Class Actions – Superiority

To qualify under Rule 23(b)(3), a class action must also appear to be superior to any other method of adjudication. Given the communal nature of Yapese reef ownership rights, the large number of potential plaintiffs with claims, and the great difficulty in handling those claims in any other fashion, no method of adjudication other than a class action would be workable, let alone equal or superior to a class action. People of Tomil ex rel. Mar v. F/V Hwa Gwo No. 6, 23 FSM R. 268, 275-76 (Yap 2021).

Civil Procedure – Class Actions – Notice

Once a class is certified, plaintiffs' counsel will be ordered to prepare, and have approved as to form by defendants' counsel, a bilingual notice, defining membership in the class, stating that the class has been certified as plaintiffs in this action, identifying this action and the court it is in, and advising each member that the court will exclude the member from the class if the member so requests by a specified date; that the judgment, whether favorable or not, will include all members who do not request exclusion; and that any member who does not request exclusion may, if the member desires, enter an appearance through counsel. People of Tomil ex rel. Mar v. F/V Hwa Gwo No. 6, 23 FSM R. 268, 276 (Yap 2021).

Civil Procedure – Class Actions – Notice

The court must require the best notice practicable under the circumstances. People of Tomil ex rel. Mar v. F/V Hwa Gwo No. 6, 23 FSM R. 268, 276 (Yap 2021).

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COURT'S OPINION

LARRY WENTWORTH, Associate Justice:

On March 23, 2021, the plaintiffs filed their motion and supporting memorandum for class certification. On April 5, 2021, Liancheng Overseas Fishery (FSM) Co. ("Liancheng") filed its Opposition to Motion for Class Certification. The plaintiffs filed a reply to the opposition on April 23, 2021. Class certification is granted as explained below.

I. WHETHER GRANTING CLASS CERTIFICATION NOW WOULD BE PREMATURE

This action arises from the F/V *Hwa Gwo No. 6*'s September 17, 2020 allision with the Yap outer reef in the Paelak Channel area (purportedly in Tomil Municipality), the vessel's grounding thereon, and its attempted extraction therefrom. (The F/V *Hwa Gwo No. 6* was eventually removed from the reef on February 20, 2021.) The plaintiffs claim to have traditional usage or ownership rights to that reef area and therefore to have suffered damages.

Liancheng contends that any class certification right now is premature, and should be deferred to later, because there are persons from Gagil Municipality, who, according to Liancheng, claim to have ownership rights to the reef on which the F/V *Hwa Gwo No. 6* grounded, and who may potentially be an entirely different class. Liancheng argues that certification should await the appearance and intervention of those other persons. While Liancheng's assertion might be a helpful foreshadowing of a future event,

Liancheng cannot assert another's rights.

A party generally cannot assert the rights of another (a third party) as the party's own. FSM v. Kana Maru No. 1, 14 FSM R. 368, 373 (Chk. 2006); Sipos v. Crabtree, 13 FSM R. 355, 363 (Pon. 2005); Dorval Tankship Pty, Ltd. v. Department of Finance, 8 FSM R. 111, 115 (Chk. 1997); Robert v. Chuuk Public Utility Corp., 22 FSM R. 150, 154 (Chk. 2019). A defendant cannot plead, as a defense to a plaintiff's claim, the alleged superior right of a third party (*jus tertii* – the right of a third party) to the property; a defendant can only plead its own defenses. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 200 (Pon. 2019). That is because a defendant who is otherwise liable to the plaintiff for harm or interference to a property interest is not relieved of that liability because a third person has a legally protected interest in that property superior to the plaintiff's. *See* Rosario v. College of Micronesia-FSM, 11 FSM R. 355, 360 (App. 2003) *aff'g* 10 FSM R. 175, 187-88 (Pon. 2001) (real property); Fishy Choppers, Inc., 22 FSM R. at 201 (chattel property).

Since Liancheng's opposition is primarily based on the alleged superior right of others, it will be disregarded to that extent.

II. Class Certification Requirements

The plaintiffs ask the court to certify the plaintiffs, purportedly an unincorporated association under Rule 23.2, as the following class:

> those residents of Tomil municipality who by tradition or custom own in common with other residents the rights to use or exploit the natural resources affected by the reef damage, including but not limited to the reef, the water column, fish and other sea life, and other affected natural resources following the damage by the vessel [the F/V *Hwa Gwo No. 6*] on September 17, 2020.

The plaintiffs bear the burden of showing that all the requirements for a class action have been met. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 12 FSM R. 192, 196 (Yap 2003).

Under Civil Procedure Rule 23, all class actions must satisfy all four prerequisites in subsection (a) – numerosity, commonality, typicality, and adequacy of representation – and any one of the three subparts in subsection (b). People of Weloy ex rel. Pong v. M/V Micronesian Heritage, 12 FSM R. 613, 616 (Yap 2004); M/V Kyowa Violet, 12 FSM R. at 196. An inability to satisfy all four of the Rule 23(a) prerequisites precludes class certification. People of Gilman ex rel. Tamagken v. M/V Nationwide I, 16 FSM R. 34, 38 (Yap 2008); M/V Micronesian Heritage, 12 FSM R. at 616.

The plaintiffs seek to proceed as a class under Rule 23(b)(3). A court will certify a subsection (b)(3) class action only if the court finds that the class members' common questions of law or fact predominate and that a class action is superior to other methods of adjudication. M/V Kyowa Violet, 12 FSM R. at 196; Saret v. Chuuk, 10 FSM R. 320, 321 (Chk. 2001); Lavides v. Weilbacher, 7 FSM R. 591, 593 (Pon. 1996).

Since certification must take place "[a]s soon as practicable after the commencement of an action brought as a class action," FSM Civ. R. 23(c)(1), the court should make its class determination before turning to the case's merits. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 262, 266 (Yap 2012); People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 159 (Yap 2007). Civil Procedure Rule 23(c)(1) imposes this responsibility on the court.

III. ANALYSIS

A. *Definiteness*

The court must consider whether the proposed class is sufficiently definite to determine who its members might be. The plaintiffs assert that ownership of the reef in question "is held by each Tomil resident in common with all other residents." Memo. of Points & Auths. in Support of Class Certification at 4 (Mar. 23, 2021) ("Memo."). In regards to ownership rights in the reefs around the main island of Yap, the court has previously held that:

> Under Yap traditional rights and ownership of natural resources and marine areas inside the Yap fringing reef – the rights to use and exploit, to the exclusion of all others, the marine resources of particular areas of the submerged lands inside the fringing reef around Yap – stem from a concept called a *tabinaw*. A *tabinaw* entails rights, duties and obligations for its members, and includes families and households. But a *tabinaw* is more than a concept. A *tabinaw* includes an estate in identifiable land and specific areas within the Yap fringing reef within which a *tabinaw* member can exploit the marine resources. . . . A *tabinaw* member can only exploit marine resources in the marine area that appertains to his *tabinaw*. Each village includes a number of *tabinaw*.

People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 415 (Yap 2006). The proposed class, as described above in part II., thus appears to be sufficiently definite for adjudication.

B. *Rule 23(a) Prerequisites*

The court must determine whether the proposed class meets the Rule 23(a) prerequisites of numerosity, commonality, typicality, and adequacy of representation.

1. *Numerosity – Rule 23(a)(1)*

To maintain a class action, the class must be so numerous that joinder of all members is impracticable, and the practicability of joinder depends on the size of the class, ease of identifying members and determining their addresses, facility of making service on members joined and their geographic dispersion. Saret, 10 FSM R. at 322; Lavides, 7 FSM R. at 593-94. There are no arbitrary rules regarding class size. M/V CEC Ace, 15 FSM R. at 157-58.

The class of Tomil residents who use or have an interest in the damaged area of the reef could be less than all residents. The plaintiffs assert that there are hundreds of (over 1,023) potential class members because there are hundreds of Tomil residents. Pls.' Verified Amended Compl. in Rem and in Personam para. 30 (Oct. 14, 2020) ("Amended Compl."). Mere speculation about the number of persons involved is not sufficient to satisfy Rule 23(a)(1). M/V CEC Ace, 15 FSM R. at 158 (court can conditionally find that the numerosity prerequisite has been met subject to later evidence that either confirms that or negates that). But the assertion in the supporting memorandum that each Tomil resident holds the reef in question in common with all other Tomil residents, Memo. at 4, appears to satisfy any numerosity concerns. This, of course, is subject to any later evidence negating that assertion. M/V CEC Ace, 15 FSM R. at 158.

2. *Typicality – Rule 23(a)(3)*

The plaintiffs assert that the named chiefs are typical representatives of the people of Tomil. To satisfy the typicality prerequisite, a class representative must not only be a member of the class but must also possess the same interest and suffer the same injury as the other class members. M/V Nationwide I,

16 FSM R. at 39; M/V CEC Ace, 15 FSM R. at 159; M/V Kyowa Violet, 12 FSM R. at 199. This prerequisite is inherent in Civil Procedure Rule 17(a)'s requirement that every action must "be prosecuted in the name of the real party in interest." *See* F/V Teraka No. 168, 18 FSM R. at 268; M/V Nationwide I, 16 FSM R. at 39; M/V CEC Ace, 15 FSM R. at 159. If a named plaintiff (Chiefs Mar, Kadannged, and Faimaw) is a member of, or chief of any of the one or more *tabinaw* that claim rights to the allegedly affected reef, that named plaintiff is an adequate class representative and his claims are typical of the class claims.

The amended complaint asserts that the named plaintiffs are chiefs and residents of Tomil and that all Tomil residents share rights in common to the damaged reef. The motion's supporting memorandum avers that each named plaintiff has an individual claim, which is the same as that of all other Tomil residents, to exploit the resources of the reef allegedly damaged by the F/V *Hwa Gwo No. 6*. Memo. at 2. The movants also point out that in an earlier class action, People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, Civil Action No. 2009-3002, the court approved Chief Steven Mar as a typical and adequate class representative for claims arising from a different vessel's allision with a different Tomil reef. Chiefs Kadannged and Faimaw were not named plaintiffs in that suit.

Each named plaintiff must qualify as a class representative on his (or her) own merits and does not automatically qualify because another named plaintiff has. M/V Nationwide I, 16 FSM R. at 39-40. But, if a named plaintiff is not qualified, some other plaintiff(s) who can satisfy the typicality and adequacy prerequisites may need to appear as class representative(s). M/V CEC Ace, 15 FSM R. at 159. Chief Mar's affidavit supporting the plaintiffs' reply further supplies details about the relationship between Chiefs Kadannged and Faimaw and the affected reef and its resources and their tabinaw positions. Aff. of Chief Steven Mar at 2-3 (Apr. 23, 2021) ("Mar Aff."). Based on the Verified Amended Complaint's allegations and the Chief Mar's averments in his affidavit, the court finds that the named plaintiffs meet the typicality prerequisite.

3. *Adequacy – Rule 23(a)(4)*

A class action may be maintained only if it appears that the representative parties will fairly and adequately protect the interests of the association and its members. People of Satawal ex rel. Ramoloilug v. Mina Maru No. 3, 10 FSM R. 337, 338 (Yap 2001). The prerequisite that the named plaintiff will fairly and adequately protect the interests of the class is met when the representative shares, without conflict, the interests of the unnamed class members and the court is assured that the representative will vigorously prosecute the rights of the class through qualified counsel. M/V CEC Ace, 15 FSM R. at 159.

The court may make a class certification order conditional, FSM Civ. R. 23(c)(1), and, if an order defining and certifying a class action later proves inadequate, the order may be altered or amended before a decision on the merits, M/V Micronesian Heritage, 12 FSM R. at 618. Because of the information provided in Chief Mar's affidavit, Mar Aff. at 2-3, the court finds that Chiefs Steven Mar, John Kadannged, and Jesse Faimaw are adequate class representatives with typical claims, subject, of course, to the submission of any later evidence that negates that.[1]

Even when the named plaintiffs are adequate class representatives, qualified class counsel must also be present and be able to adequately represent the class and to vigorously prosecute the class's rights. F/V Teraka No. 168, 18 FSM R. at 268. Current class counsel appears qualified since he has appeared in a number of other maritime class actions in Yap and vigorously prosecuted those cases. M/V Nationwide I, 16 FSM R. at 40.

[1] If a class representative is not qualified, instead of dismissal of class claims, notice will be given to class to allow other class members to come forward who may be ready and able to carry on the litigation.

The two parts of the adequacy prerequisite are thus satisfied.

4. *Commonality – Rule 23(a)(2)*

The commonality prerequisite is met when the plaintiffs seeking class certification do not allege any individual personal injuries and all of the damages sought are economic damages. M/V Kyowa Violet, 12 FSM R. at 198. The commonality prerequisite is satisfied when the plaintiffs seeking class certification do not allege any individual personal injuries and all of the damages sought are economic damages, and when the liability question is common and central to all claimants and the causation and damages questions are also common to the class members because all class members' damages are based on their alleged loss of their subsistence use of the natural marine resources. M/V Kyowa Violet, 12 FSM R. at 198.

The plaintiffs' causes of action all involve economic damages allegedly caused by the F/V *Hwa Gwo No. 6*'s striking and grounding on the harbor reef on September 17, 2020, and its remaining there until February 20, 2021, which affect the class as a whole. The plaintiffs' only economic claim not based on the plaintiffs' subsistence use of the reef is the claim of damage to Yap's image as an environmentally healthy, clean, and pristine marine environment that may be used for various tourist-related activities and attractions. Amended Compl. para 27.d. That claim may affect the general Yapese public and not just the plaintiffs. However, any claim that a particular tourist dive spot was directly impacted by the F/V *Hwa Gwo No. 6*'s grounding on the reef may affect Tomil residents in particular.

Thus, all questions of law or fact are common to the class as a whole and this prerequisite is satisfied.

C. *Commonality, Predominance, and Class Action Superiority – Rule 23(b)(3)*

Since all four Rule 23(a) prerequisites are satisfied, the court must consider whether one of the Rule 23(b) subparts is also satisfied. "A subsection (b)(3) class action, as the plaintiffs seek here, can be maintained only if the court finds that the class members' common questions of law or fact predominate and that a class action is superior to other methods of adjudication." M/V Nationwide I, 16 FSM R. at 38. That is, the court must find that the questions in common to the class predominate over those affecting only individual class members. M/V CEC Ace, 15 FSM R. at 160.

To "determin[e] whether the predominance standard is met, courts focus on the issue of liability. If the liability issue is common to the class, common questions are held to predominate over individual ones." *Id.* When the basis for each class member's claim is the same, common questions of law and fact predominate the liability issue and causation and damages can appropriately be proven on a class basis. M/V Nationwide I, 16 FSM R. at 40. Furthermore, "[c]ommon issues may predominate when liability can be determined on a class-wide basis, even when there are some individualized damage issues." In re Visa Check/MasterMoney Antitrust Litig., 280 F.3d 124, 139 (2d Cir. 2001).

To meet the predominance requirement, it is not enough that the claims arise out of a common nucleus of operative fact because the common questions must be central to all claims, such as when the liability question is common and central to all claimants and the causation and damages questions are also common to the class members because all class members' damages are based on their alleged loss of their subsistence use of the natural marine resources. M/V Kyowa Violet, 12 FSM R. at 198. In this case, the liability issue is common to the class. All of the plaintiffs' claims that the defendants are liable are based on the defendants' alleged liability for maritime negligence, unseaworthiness, trespass, and public and private nuisance. The plaintiffs meet the predominance test.

To qualify under Rule 23(b)(3), a class action must also appear to be superior to any other method of adjudication. The court cannot imagine, given the communal nature of Yapese reef ownership rights, the

large number of potential plaintiffs with claims, and the great difficulty in handling those claims in any other fashion, that any method of adjudication other than a class action would be workable, let alone equal or superior to a class action. The court therefore concludes that, in this case, a class action is superior to any other method of adjudication.

D. *Certification and Required Notice to Plaintiff Class*

The plaintiffs have thus met all the prerequisites and requirements for class certification. Once a class is certified, plaintiffs' counsel will be ordered to prepare, and have approved as to form by defendants' counsel, a notice, in both Yapese and English, defining membership in the class, stating that the class has been certified as plaintiffs in this action, identifying this action and the court it is in, and advising "each member that (A) the court will exclude the member from the class if the member so requests by a specified date; (B) the judgment, whether favorable or not, will include all members who do not request exclusion; and (C) any member who does not request exclusion may, if the member desires, enter an appearance through counsel." FSM Civ. R. 23(c)(2); F/V Teraka No. 168, 18 FSM R. at 269-70. The court must require "the best notice practicable under the circumstances." FSM Civ. R. 23(c)(2).

The plaintiffs have submitted a proposed order that requires notice, in both the English and Yapese languages, by frequent, periodic announcements on radio station V6AI over a period of two weeks, the posting of copies in the village meeting place in each and every village in Tomil municipality, and the posting of copies in all public places in Yap, such as the courthouse, the post office, and the library, and other places where public notices may be posted. These methods appear to be the best notice practicable and are comparable to what the court would normally order on its own. *See, e.g.*, M/V CEC Ace, 15 FSM R. at 161. The methods of notice are thus approved. Counsel may, of course, also use any additional methods of notice designed to effect Rule 23(c)(2). The order will issue herewith.

The plaintiffs have also provided a proposed notice to class members. The court concludes that the proposed notice, which is in English, complies with Civil Procedure Rule 23(c)(2)'s requirements. A Yapese language notice must, as ordered above, also be prepared and used with equal frequency.

IV. CONCLUSION

Accordingly, the court hereby certifies the class of those residents of Tomil municipality who by tradition or custom own in common with other residents the rights to use or exploit the natural resources affected by the reef damage, including but not limited to the reef, the water column, fish and other sea life, and other affected natural resources following the damage by the F/V *Hwa Gwo No. 6* on September 17, 2020. An order approving the notice of the pendency of this class action will also issue herewith.

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