

## Final Technical Report

# Republic of the Marshall Islands Comprehensive Fisheries Legislation Review

Project ref. CU/PE1/SI/10/001

Region: Pacific Country: Marshall Islands

June 2011

A project implemented by:

MRAG Ltd.



AFRICA



CARIBBEAN



PACIFIC



Project Funded by the European Union.

*"This publication has been produced with the assistance of the European Union. The contents of this publication are the sole responsibility of "name of the author" and can in no way be taken to reflect the views of the European Union."*

*"The content of this document does not necessarily reflect the views of the concerned governments."*

## TABLE OF CONTENTS

<b>EXECUTIVE SUMMARY .....</b>	<b>1</b>
<b>1 PROJECT BACKGROUND.....</b>	<b>3</b>
<b>2 APPROACH TO THE ASSIGNMENT .....</b>	<b>4</b>
<b>3 COMMENTS ON TERMS OF REFERENCE .....</b>	<b>4</b>
<b>4 ORGANIZATION AND METHODOLOGY .....</b>	<b>6</b>
4.1 Delivery of Terms of Reference .....	6
4.2 Conduct of assignment/details of the assignment .....	9
<b>5 CONCLUSION AND RECOMMENDATIONS.....</b>	<b>17</b>
<b>ANNEX 1: PROJECT TERMS OF REFERENCE.....</b>	<b>18</b>
<b>ANNEX 2: INTERIM TECHNICAL REPORT.....</b>	<b>30</b>
<b>ANNEX 3: MARSHALL ISLANDS COUNTRY INFORMATION AND FISHERIES PROFILE .....</b>	<b>46</b>
<b>ANNEX 4: SUMMARY OF FISHERIES AND RELATED LEGISLATION OF RMI .....</b>	<b>53</b>
<b>ANNEX 5: SUMMARY OF KEY INTERNATIONAL FISHERIES INSTRUMENTS APPLICABLE TO RMI.....</b>	<b>60</b>
<b>ANNEX 6: GAPS ANALYSIS OF RMI LEGISLATION AGAINST OBLIGATIONS UNDER INTERNATIONAL FISHERIES INSTRUMENTS .....</b>	<b>66</b>
<b>ANNEX 7: REGIONAL INSTRUMENTS GAPS ANALYSIS.....</b>	<b>89</b>
<b>ANNEX 8: SUB-REGIONAL GAPS ANALYSIS.....</b>	<b>114</b>
<b>ANNEX 9: TEMPLATE LEGISLATIVE PROVISIONS FOR THE IMPLEMENTATION OF THE EU IUU REGULATION .....</b>	<b>126</b>
<b>ANNEX 10: CONSOLIDATED LEGISLATIVE GAPS.....</b>	<b>130</b>
<b>ANNEX 11: WORKSHOP I REPORT .....</b>	<b>136</b>
<b>ANNEX 12: RMI SHIP REGISTRY.....</b>	<b>144</b>
<b>ANNEX 13: DRAFT BILL .....</b>	<b>151</b>
<b>ANNEX 14: DRAFT CONDITIONS OF LICENSE .....</b>	<b>177</b>
<b>ANNEX 15: DRAFT LOCAL GOVERNMENT ORDINANCE TEMPLATE.....</b>	<b>190</b>
<b>ANNEX 16: PROJECT WORKSHOP 2 REPORT.....</b>	<b>197</b>

### List of Tables

Table 1: Status of key international and regional conventions/agreements in RMI .....	11
Table 2: Implementation Status of Non-binding “Soft Law” Instruments in RMI .....	11
Table A3.1: Number of PS, LL & PL Vessels Licensed by MIMRA (2005 – 2009 ).....	49
Table A3.2: RMI Access Agreements.....	50

### List of Figures

Figure 3.1: The number of Licensed Vessels from 1998/99 to 2008/09 .....	51
Figure A12.1: Fleet growth through September 30, 2010 .....	144
Figure A12.2: Fleet type through September 30, 2010 .....	145
Figure A12.3: Registrations by Nationality .....	146
Figure A12.4: Seafarer Growth .....	147
Figure A12.5: Seafarer Documentation by Nationality .....	147

## ABBREVIATIONS AND ACRONYMS

ACP	African, Caribbean and Pacific
ALC	Automatic Location Communicator
CMM	Conservation and Management Measures
CU	Co-ordination Unit
EC	European Commission
EEC	European Economic Commission
EEZ	Exclusive economic zone
EU	European Union
FAD	Fish Aggregating Device
FFA	Forum Fisheries Agency
FTR	Final Technical Report
IMO	International Maritime Organisation
INTERCO	International Code of Signals
IPOA	International Plan of Action
IRCS	International Telecommunication Union Radio Call Signs
IRI	International Registries Inc.
ITR	Interim Technical Report
IUU	Illegal, unreported and unregulated
KE	Key Expert
LOA	Length of vessel overall
LOSC	United Nations Convention on the Law of the Sea
MCS	Monitoring, Control and Surveillance
MICS	Marshall Islands Conservation Society
MIMRA	Marshall Islands Marine Resources Authority
MIRC	Marshall Islands Marine Resources Act
MODU	Mobile Off-shore Drilling Units
MOU	Mobile Off-shore Units
MRA	Marine Resources Act
NPOA	National Plan of Action
NGO	Non-governmental organisations
OSV	Off-shore Supply Vessels
PNA	Parties to the Nauru Agreement
RFMO	Regional Fisheries Management Organisation
ROP	Regional Observer Programme
RFU	Regional Facilitation Units
RMI	Republic of the Marshall Islands
SPC	Secretariat of the Pacific Community
TCMI	Trust Company of the Marshall Islands
TOR	Terms of Reference
UNCLOS	United Nations Conference on the Law of the Sea
UNCTAD	United Nations Conference on Trade and Development
UNFSA	United Nations Fish Stock Agreement
VDS	Vessel day scheme
WCPF	Western and Central Pacific Ocean
WCPFC	Western and Central Pacific Ocean Fisheries Commission
WIN	WCPFC Identification Number

## EXECUTIVE SUMMARY

This project was initiated by a request by the Republic of the Marshall Islands (RMI) for funding under the European Union (EU), ACP FISH II Programme. The objective of the project was to comprehensively review and update the offshore and inshore fisheries legislation of RMI so as to align with regional and international best practice and provide the necessary framework towards ensuring that fisheries resources are managed sustainably and in the best long term interests of the people of the Marshall Islands.

The current RMI fisheries legislation was adopted in 1997 and has not been substantively updated since. Given the importance marine living resources, particularly fisheries resources, to the economy and food security of RMI, it was deemed necessary to develop amendments to the fisheries legislation of RMI to ensure that it provides an effective legal framework to address those issues that have emerged since the development of the current version, and to rectify any weaknesses in the current legislation that have come to light since its adoption.

### **RMI Fisheries Legislative Framework**

The first modern fisheries legislation of RMI was enacted in 1997, in the form of the Marine Resources Act, 1997. In 2005, the original Marine Resources Act was codified as five separate chapters under Title 51 of the RMI Revised Code. The five chapters are the Marshall Islands Marine Resources Act (51 MIRC Chapter 1), the Fisheries Act (51 MIRC Chapter 2), the Fishing Access and Licensing Act (51 MIRC Chapter 3), Development of Local Fisheries Act (coastal fisheries) (51 MIRC Chapter 4) and the Fisheries Enforcement Act (51 MIRC Chapter 5). These laws are supplemented by Maritime Administrations Act, Documentation and Identification of Vessels Act, RMI Ports Authority Act, the Ports of Entry Act and Control of Shipping Act.

### **Review of International, Regional and Sub-Regional Fisheries Legal and Policy Framework**

A number of international and regional fisheries instruments were analysed to provide a framework for international best practice to determine whether the RMI fisheries legal framework reflects international law as defined in these instruments. The international instruments fall into two categories, namely: (a) the legally binding instruments and (b) the non-legally binding (“soft law”) instruments. The regional and sub-regional instruments analysed include the Convention on the Conservation and management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPF Convention), the various conservation and management measures implemented under the WCPF Convention, the various instruments under the Pacific Islands Forum Fisheries Agency and the Nauru Agreement. At the request of RMI a review was also carried out of the EU Regulation 1005/2008 ‘Establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing’ (the EU IUU Regulation) to determine what legislative actions are required by RMI to comply with the EU IUU Regulation.

### **Major findings**

The review shows that Title 51, the principal RMI fisheries legislation, adequately implements the conservation and management obligations under the UN Law of the Sea Convention, UN Fish Stocks Agreement and the WCPF Convention. Consequently, no new legislative action is required by the RMI to implement these obligations.

The review, however, reveals several areas where there are gaps in RMI legislation to implement its international and regional fisheries obligations; including: flag State duties; port State measures;

high seas boarding and inspections procedures; Terms and Conditions of Fishing under Annex 3 of WCPF Convention; observer requirements; regulation of transshipment; combating IUU fishing; and catch certification requirements.

The important issue to highlight for the purpose of this review is the significance of the obligations on flag State duties/responsibilities for the RMI. As illustrated in the Report, RMI is currently the third largest flag State in the world, with responsibilities for a growing number of fishing vessels fishing beyond the RMI fisheries waters. The current arrangements for the management of vessels on the RMI Registry are not adequate to ensure effective control of the fishing activities of these vessels. It is therefore imperative that adequate legislation is implemented to enable RMI to discharge its flag State duties under the various international and regional fisheries instruments. Equally important is the implementation of port State measures. Although the Port State Measures Agreement is not yet in force and RMI had not signed or ratified it, the provisions of the Agreement reflect contemporary international measures to combat IUU fishing.

### **Draft Legislation**

Based on the overall legislative gaps identified which were subjected to extensive discussion in two stakeholder workshops, draft legislation has been prepared to address the gaps identified.

The analysis identified that many of the obligations of RMI under regional and sub-regional fisheries instruments can be implemented through conditions of license. This novel approach, which is strongly recommended by FFA, ensures flexibility and avoids yearly amendment of fisheries legislation to keep abreast of new Conservation and Management Measures. Consequently, a consolidated Conditions of License has been developed to support the implementation of existing and the draft legislation.

A key issue identified during the national consultations requiring legislative attention is to strengthen coastal fisheries management in RMI through the development of a Council Ordinances Template. Accordingly, a draft Template has been prepared to guide the management of the domestic fisheries of RMI to support the food security of the people of RMI.

## 1 PROJECT BACKGROUND

This project was initiated through a request by the Republic of the Marshall Islands (RMI) for funding under the European Union (EU) ACP FISH II Programme, designed to contribute to the sustainable and equitable management of fisheries in African, Caribbean and Pacific (ACP) regions, thus supporting poverty alleviation and improving food security in ACP States. The focus of the project on coastal and offshore fisheries resources supports the overall objectives to achieve poverty alleviation, food security, economic development and fisheries sustainability in RMI.

The specific objective of the RMI project is to comprehensively review and update the offshore and inshore fisheries legislation of the RMI so that they are aligned with regional and international best practice and provide the necessary framework towards ensuring that fisheries resources are managed sustainably and in the best long-term interest of the people of RMI. The Terms of Reference (TOR) for the Project is included in **Annex 1** to this Report.

The project was in response to two urgent needs of RMI, namely: (a) the significance of marine resources to the economy and food security of RMI and (b) the fact that RMI fisheries legislation is significantly out of date and do not reflect some of the contemporary international concepts underpinning responsible fishing practices. These two points are elaborated further below.

First, in RMI, living marine resources have long been exploited for subsistence purposes and to support the fragile economy of the RMI. Income from coastal fisheries is of particular importance for outer islands development, in the face of the rapid decline in copra trade. Small-scale commercial coastal fisheries, with transport bases, have been established on Arno, Ailinglaplap, Jaluit, Aur, Namu, Likiep and Maloelap atolls, to supply fresh food to the local urban centres of Majuro and Ebeye. Thus, coastal fishery has, over the years, become vitally important for providing income to outer-island populations. RMI, like many other Pacific Island States, depends heavily on income from its offshore fisheries to support its national budget. Traditionally, much of the income from the offshore fisheries sector has come from access agreements. This trend is, however, changing. A report prepared for the Pacific Islands Forum Fisheries Agency (FFA) in 2009 demonstrated that a greater percentage of the contribution of the offshore fisheries sector to the economy of RMI in the period 2006/07 came from onshore investment rather than from licensing of foreign fishing vessels.<sup>1</sup> The report estimated that the gross economic contribution of the offshore fisheries sector to the RMI economy in that period was valued about \$15.6 million. This figure takes into account employment earnings of RMI nationals (valued at \$942,638); spending by local businesses (valued at \$11,494,813); government revenue (valued at \$3,128,104) and other benefits (valued at \$123,603).

The second important consideration for this project is the fact that the RMI fisheries legislation, originally the Marine Resources Act, 1997, which has since 2005 been codified as five separate chapters under Title 51 of the Marshall Islands Revised Code (hereafter, Title 51) has not been substantively updated since. A number of important international and regional developments have occurred since that time, including the negotiation of the *Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean* (hereafter WCPFC Convention), to which the RMI is a party, the adoption of new conservation and management measures under the Parties to the Nauru Agreement (PNA) and the adoption of the Apia Policy on coastal fisheries. The main task of this assignment is, therefore, to develop amendments to Title 51 RMI to ensure that it provides an effective legal framework to address those issues that have

---

<sup>1</sup> Amanda Hamilton, Linda Kaua and Berry Muller, 'Economic Evaluation of Domestic Tuna Fisheries Development in the Marshall Islands' (A Report Prepared for the FFA) November 2009, p. 32.

emerged since the enactment of the legislation in 1997 in order to rectify any weaknesses that have come to light since then.

Additionally, a key policy objective of RMI is to gradually phase out fisheries access agreements over time and focus economic development on onshore processing. This policy shift will require access to international markets and compliance with international biosecurity standards. Of particular importance is the desire by RMI to align its fisheries legislation and management practices with international legal requirements to combat illegal, unreported and unregulated (IUU) fishing. In this context, compliance with the EU IUU Regulation is paramount to enable RMI to gain access to the EU market.

## 2 APPROACH TO THE ASSIGNMENT

The proposed methodology for the assignment is described in our technical proposal that forms part of the Interim Technical Report which is provided at **Annex 2** to this Report. The main changes to the approach arising since the commencement of the assignment are:

- Key Expert 2 (KE2) arrived in Majuro earlier (during the week of 21<sup>st</sup> March) than previously planned, to maximise time for consultation with stakeholders in country;
- Attendance at the 1<sup>st</sup> Project Workshop was broadened (while remaining within the overall cap of 30 participants) to include a wider base of interested stakeholders – for example, representatives of Foreign Affairs, the private sector and non-governmental organisations (NGOs) – to attempt to capture the full range of possible amendments required to Title 51 fisheries legislation early in the project;
- Attendance at the 2<sup>nd</sup> Project Workshop was more focused, concentrating on inviting participants with experience in fisheries law and policy;
- FFA and the Secretariat of the Pacific Community (SPC) staff involved in reviews of other Pacific Island countries legislation were invited to both project workshops;
- In our Interim Technical Report, we flagged the possibility of KE2 attending the 2<sup>nd</sup> Project Workshop to ensure continuity and local knowledge. We were able to achieve this outcome, with KE2 arriving in Majuro 5 days ahead of Project Workshop 2 to prepare for the Workshop.

## 3 COMMENTS ON TERMS OF REFERENCE

As outlined in our project proposal, we identified two main issues that will determine the successful achievement of the terms of reference and contract objectives. The first is to ensure the proposed amendments are relevant, address all the legal deficiencies and emerging issues that have arisen since the passage of Title 51 in its original form in 1997 and have broad based stakeholder support. The second is to ensure uptake of the study recommendations by the RMI Government.

In relation to the first issue, MRAG has aimed to ensure broad based stakeholder support for the study outputs by taking an inclusive and participatory approach to the consultation phase of the assignment, as well in the two project workshops. The list of people consulted, and those invited to the workshops, was discussed with MIMRA and other relevant agencies (e.g. RMI Attorney General's Department), and the final project report reflects the views and priorities of each of the major stakeholders expressed during the course of the study. A classic illustration of this is provisions made in the draft legislation at the request of the Historic Preservation Office in Project Workshop 1 to

protect historic monuments from destructive fishing activities. Another illustration is the inclusion of provisions on the EU IUU Regulations in the draft legislation at the request of MIMRA.

In relation to the second issue, we noted in our Interim Technical Report that the extent of uptake of the recommendations from the project will be dependent, first, on the degree of stakeholder support for the recommendations, and second, an intimate knowledge of RMI Government processes and existing relationships with key decision makers. We took steps to ensure that the RMI Government and other RMI fisheries associated stakeholders were well aware of the intervention and its implications. The local knowledge of our KE2 Mr Filimon Manoni, immediate past Attorney General of the RMI, who has both the confidence of the RMI administration as well as a successful track record in navigating new legislation through the RMI legislative process was a tremendous asset. Moreover, Mr Manoni's intimate familiarity with RMI policy and legal processes, as well as the main Government and non-Government sector stakeholders, has been very invaluable and has ensured that project recommendations are relevant, practical and well-positioned for adoption.

Another important issue we identified is to ensure that the revised legislation provides the necessary legal framework for RMI to discharge its obligations as an important member of the Western and Central Pacific Fisheries Commission (WCPFC). This has been achieved through the comprehensive review provided of the WCPF Convention and Conservation and Management Measures adopted by the WCPFC in the various Annexes to the Technical Report.

In our Interim Report, we noted that the key risk associated with the contract is the absence of effective uptake of the recommendations discussed above. To mitigate this risk, MRAG has used participatory approaches to maximise stakeholder 'buy in' to recommend changes. This is reflected in the calibre of persons invited to the First and Second Workshops (including Ministers, Senators and community leaders) and the local knowledge of the two Key Experts used by MRAG to execute the project.

As evidenced from the Minister's opening speech during Workshop 1, the Government gives the highest priority to this project and there is commitment to ensure that the legislative amendment is passed in the August 2011 sitting of Parliament.

A significant issue which was not reflected in the TOR, but arose in the course of the project was the implication of the EU IUU Regulations for RMI and the need to ensure that the updated legislation provides legislative provisions to enable RMI to comply with the requirements of the Regulations.. In response to MIMRA's request, a review has been undertaken of the EU IUU Regulations and provisions have been made in the draft legislation to enable RMI to comply with the requirements of the Regulations. It is understood that ACP Fish II will be supporting the assessment and development of a catch documentation scheme for RMI in compliance with the EU IUU regulations. This will be an important follow-up to the current project to ensure the provision of the necessary technical support for the implementation of the project recommendations.



## 4 ORGANIZATION AND METHODOLOGY

### 4.1 Delivery of Terms of Reference

	Terms of Reference	How TORs were delivered
1.	Briefing with MIMRA, RFU	In late February, inception discussions in relation to project operational details were held with Augustine Mobiha at the RFU, Honiara. The key issues discussed and agreed included: MRAG to examine whether it is possible to have KE2 to attend the 2 <sup>nd</sup> Workshop; consideration to be given to broadening the attendance at the 1 <sup>st</sup> Workshop to include a wider set of stakeholders (Foreign Affairs, private sector representatives, NGOs), while staying within the overall limit of 30 people. Consideration to be given to making the 2 <sup>nd</sup> Workshop a smaller, more focused event (perhaps 10-15 people) involving the main stakeholders, but focusing in particular on people with experience in fisheries legislation; further exploration of suitable dates for Workshops 1 and 2 based on the availability of MIMRA Director, Glen Joseph in view of impending PNA and FFC meetings; the importance of inviting FFA staff involved in the member legislation review to attend the project workshops.
2.	Preliminary background document collection	A comprehensive list of relevant background documents, comprising reports, legislation and international, regional and sub-regional agreements were collected and later analysed to establish the benchmarks against which the fisheries legislation of the Marshall Islands were analysed.
3.	Summary of Country Information and Fisheries Profile	To provide the basis for the legislative review and subsequent drafting of legislation, preliminary reviews were undertaken of country and fisheries profile of RMI. This summary confirms the importance of the fisheries sector for the food security and economic development of RMI. The country information and fisheries profile is provided at <b>Annex 3</b> of this Report.
4.	Review of RMI Fisheries and Related Legislation	The review examined a number of RMI laws that were deemed relevant to the objective of the exercise. The laws reviewed were Title 51 the Maritime Administrations Act, Documentation and Identification of Vessels Act, RMI Ports Authority Act, the Ports of Entry Act, Control of Shipping Act, Marine Zones Act, Marine Mammal Protection, and the Tuna and Game Fish Conservation Act. A detailed summary of these pieces of legislation is provided at <b>Annex 4</b> of this Report. The gaps in these pieces of legislation are later analysed against the international and regional obligations..
5.	Review of International Legal Framework	A thorough review and analysis of the key international fisheries instruments that provide the benchmark for the sustainable management and utilisation of the fisheries resources in the RMI



		fisheries waters were carried out. A summary of these instruments is provided at <b>Annex 5</b> of this Report. Following the summary, the key obligations in the instruments which provide the basis for sustainable fisheries management were analysed and tested against RMI fisheries legislation. A matrix summary of the obligations under these various instruments against which the fisheries legislation of MRI has been analysed is provided at <b>Annex 6</b> of this Report.
6.	Review of Regional Legal Instruments	A thorough analysis of the WCPF Convention and the Conservation and Management Measures implemented by the WCPFC were carried out and assessed against the fisheries legislation of RMI to determine the gaps in legislation. An assessment of the fisheries legislation of RMI against the WCPF Convention and the Conservation and Management Measures implemented by the WCPFC to date is provided at <b>Annex 7</b> to this Report.
7.	Review of Sub-Regional Legal Instruments	RMI is a member of two sub-regional fisheries management organizations/arrangements: FFA and the Parties to the Nauru Agreement (PNA). Review and analysis of the obligations under the relevant sub-regional instruments were carried out and gaps in RMI domestic legislation identified against these sub-regional instruments. This gap analysis is presented at <b>Annex 8</b> to this Report.
8.	Review of EU IUU Regulation	Although not included in the original TOR, RMI requested that a review of the EU IUU Regulation be included in the project. This request was carried out and a matrix of the EU IUU Regulation showing areas where legislative implementation is required by RMI to meet the requirements of the Regulation is presented at <b>Annex 9</b> to this Report.
9.	Consolidated Gaps Matrix	Following Project Workshop 1, a consolidated matrix of gaps was developed by Workshop participants to form the basis of subsequent legislative revision. This matrix is presented in <b>Annex 10</b> to this Report.
10.	Project Workshop 1	In accordance with the Project Work plan, Project Workshop I took place from 14-15 April 2011 in Majuro, RMI. The Workshop was attended by a number of people, drawn from key government institutions, regional organizations, the private sector and civil society. FFA and SPC were also in attendance. The purpose of Workshop 1 was to review the legislative gaps identified and agree on priority areas for legislative amendment. A full report of Workshop 1 is presented in <b>Annex 11</b> to this Report.
11.	Marshall Islands Registry	RMI is a major flag State in the world. Today, RMI's Open Registry is ranked as the third largest open registry in the world, with a number of fishing vessels carrying the RMI flag and fishing on the high seas or in waters under the jurisdiction of other States. Given the central role flag State responsibilities and duties play in the contemporary international legal framework for responsible fisheries and in combating IUU fishing, analysis has been carried out of the RMI registry to ascertain the ability of RMI

		to discharge its flag State duties with respect to fishing vessels entitled to fly its flag. This analysis is presented in <b>Annex 12</b> to this Report.
12.	Draft Legislation	Based on the outcomes and recommendations of Project Workshop 1, a draft was undertaken of legislation to amend Title 51 t to address the gaps identified. The draft legislation is presented in <b>Annex 13</b> to this Report.
13.	Draft Conditions of License	To allow for flexibility in implementing its international, regional and sub-regional fisheries obligations, a novel approach of incorporating as many of the international and regional obligations of RMI in Conditions of License was adopted. <b>Annex 14</b> to this Report represents consolidated Conditions of License which have been developed to support the implementation of existing and the draft legislation.
14.	Draft Local Government Ordinance	The key issue that was identified during the national consultations requiring legislative attention is to strengthen coastal fisheries management in RMI through the development of template Council Ordinances. A draft Template was drafted. This draft is presented at <b>Annex 15</b> to this Report.
15.	Project Workshop 2	Project Workshop 2 was a follow up meeting to Project Workshop 1 in April 2011. Workshop 2 took place on May 16, 2011 as scheduled in the Project Plan. The main purpose of Workshop 2 was to review the draft legislation that was recommended by Workshop 1. A report of Workshop 2 is presented as <b>Annex 16</b> . KE1 and KE2 presented draft amendments to Title 51, draft Conditions of License and draft Local Government Ordinance. The Workshop endorsed the drafts and recommended them to MIMRA and the Attorney-General's Department for finalization and presentation to the August 2011 sitting of Parliament for adoption.

## 4.2 Conduct of assignment/details of the assignment

This assignment was undertaken according to the work plan on page 4 of our Interim Technical Report. The main assignment activities are as follows:

### Preliminary Background Document Collection

The Project commenced with identification and collection of relevant RMI, international and regional and sub-regional documents which were later analysed. The work undertaken include:

- Identification and collection of relevant RMI legislation namely: *-Marshall Islands Marine Resources Act; Fisheries Act; Management and Development of Local Fisheries Act; Access to Fishing and Licensing Act; Fisheries Enforcement Act; Maritime Administrations Act and The Documentation and Identification of Vessels Act* (which provides for the registration of fishing vessels); *RMI Ports Authority Act; Fisheries Regulations.*
- Identification and collection of regional and sub-regional fisheries instruments: the Pacific Forum Fisheries Agency Convention; the Harmonised Terms and Conditions of Access (MTCs); Parties to the Nauru Agreement (and subsidiary arrangements such as the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> implementing Arrangements); Palau Arrangement (establishing the Vessel Days Scheme); Federated States of Micronesia Arrangement; WCPF Convention C (and subsidiary material – e.g. conservation and management measures).
- Identification and collection of the following international fisheries instruments: the United Nations Convention on the Law of the Sea (LOSC); the UN Fish Stocks Agreement; the FAO Compliance Agreement; the FAO Code of Conduct for Responsible Fisheries and relevant FAO Plans of Action - Seabirds, Capacity, Sharks and Illegal, Unreported and Unregulated (IUU) Fishing, EU IUU Regulation.

### Summary of Country Information and Fisheries Profile

To provide the basis for the legislative review and subsequent drafting of legislation, preliminary reviews were undertaken of the country and fisheries profile of RMI. The country information and fisheries profile is provided at **Annex 3** of this Report.

### Review of RMI Fisheries and Related Legislation

To provide context to the review of the fisheries laws of RMI, it is necessary first to provide a brief description of the legal system in place in RMI. Prior to independence on 21 October 1986, RMI was a United Nations Trust Territory administered by the United States of America (U.S). Uniquely, the legal system of RMI is a hybrid of the Westminster and American systems. The legislative arm of Government, called the “Nitijela,” is a thirty the member body that is elected every four years to represent twenty four electoral districts. Under the RMI Constitution, the “Nitijela” is based on the Westminster model and vested with the power to make laws, to hold the executive accountable and to supervise the expenditure of public funds. The Executive arm of Government, on the other hand, is based on the American model and is headed by the President who is both the Head of State as well as the Head of Government. The President is elected by members of the “Nitijela” from among its members

Similar to other States in Micronesia (Federated States of Micronesia and Palau), RMI adopted the U.S practice of rearranging public statutes passed by the “Nitijela” and publishing them according to

topical subject matter, a process called codification. These codes are divided into “Titles” (based on topics) and number. However, the system of codification of laws in RMI has not been applied consistently, with some statutes yet to be codified.

The first modern fisheries legislation of RMI was enacted in 1997, in the form of the Marine Resources Act, 1997. In 2005, the original Marine Resources Act was codified as five separate chapters under Title 51 of the RMI Revised Code. The five chapters are the Marshall Islands Marine Resources Act (51 MIRC Chapter 1), the Fisheries Act (51 MIRC Chapter 2), the Fishing Access and Licensing Act (51 MIRC Chapter 3), Development of Local Fisheries Act (coastal fisheries) (51 MIRC Chapter 4) and the Fisheries Enforcement Act (51 MIRC Chapter 5). The review examined these laws, in addition to the Maritime Administrations Act, Documentation and Identification of Vessels Act, RMI Ports Authority Act, the Ports of Entry Act and Control of Shipping Act. A detailed summary of these pieces of legislation is provided at **Annex 4** of this Report. The gaps in these pieces of legislation are analysed against the international and regional obligations of RMI.

### **Review of International, Regional and Sub-Regional Fisheries Legal and Policy Framework**

A number of international fisheries instruments were reviewed to provide a framework for international best practice to determine whether the RMI fisheries legal framework reflects international law as defined in these instruments. These international instruments fall into two categories, namely: (a) the legally binding instruments and (b) the non-legally binding (“soft law”) instruments. The legally binding instruments are: LOSC; UN Fish Stocks Agreement; FAO Compliance Agreement; and the recently concluded Port State Measures Agreement.

It should be noted that the Port State Measures Agreement is not yet in force and it is not clear what the position of RMI is with regard to signature and or ratification. Regardless, the Port State Measures Agreement represents a major international legal initiative to combat IUU fishing.

The non-legally binding (“soft law”) instruments analysed are: the FAO Code of Conduct for Responsible Fisheries and the four FAO International Plans of Actions to support the FAO Code of Conduct, namely: (a) IPOA to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU, 2001); (b) IPOA for the Management of Fishing Capacity (IPOA-Capacity, 2001); (c) IPOA for Reducing Incidental Catch of Seabirds in Longline Fisheries (IPOA-Seabirds, 2001); and IPOA for Conservation and Management of Sharks (IPOA-Sharks, 2001). Although these instruments are not legally binding, they present current international best practice and support the implementation of the binding international instruments. The IPOAs do not require ratification but some of them do demand the development and implementation of National Plans to implement them. They also require periodic reporting to FAO on actions taken at the national level to implement them.

At the regional and sub-regional levels, RMI is party to the WCPF Convention and a member of the WCPFC. RMI is also a member of the FFA and a founding member of the PNA which is a sub-regional group within the FFA. The FFA and PNA have since the 1980s developed a set of agreements and policies which require domestic implementation by RMI.

Table 1 below presents a consolidated list of the status of RMI with regard to the binding international, regional and sub-regional fisheries instruments; whilst Table 2 presents information on the implementation status of the “soft law” instruments by RMI.

It will be seen from Table 2 that with the exception of the Port State Measures Agreement and the Compliance Agreement, RMI is party to the major international and regional fisheries instruments. From Table 2, it can be concluded that RMI’s implementation of the “soft law” international fisheries

instruments is less encouraging. RMI has not implemented National Plans for any of the IPOAs. Draft IUU and Sharks NPOAs have been developed, but not yet finalized. RMI will be encouraged to develop NPOAs to implement these “soft law” instruments to support its implementation of the binding international fisheries instruments.

Table 1: Status of key international and regional conventions/agreements in RMI

Convention	Date of Signature	Date of Ratification
LOSC	-	9 August 1991 (accession)
UN Fish Stocks Agreement	4 December 1995	23 May 1997
FAO Compliance Agreement	Not signed	Not ratified-
Port State Measures Agreement	-	-
WCPF Convention	5 September 2000	26 April 2001
FFA Convention	-	27 March 1987
Nauru Agreement	11 February 1982	14 October 1982
Niue Treaty	9 July 1992	10 January 1995

Table 2: Implementation Status of Non-binding “Soft Law” Instruments in RMI

Non-binding Instrument	Reporting Status	National Plan Status
Code of Conduct	Provides Biennial Reports to FAO	N/A
NPOA-IUU	N/A	Draft NPOA developed in 2007 but not yet implemented
NPOA-Capacity	N/A	Not developed
NPOA-Sharks	N/A	Draft NPOA developed in 2004 but not yet implemented
NPOA-Seabirds	N/A	Not developed

A summary of the legally binding and “soft law” international fisheries instruments that provide the basis for the sustainable management of fisheries is provided at **Annex 5** of this Report. Following the summary, the key obligations in the instruments were analysed and tested against RMI fisheries legislation. A matrix summary of the obligations under these various instruments against which the fisheries legislation of RMI has been analysed is provided at **Annex 6** of this Report.

### RMI as a Major Flag State in the World

RMI is unique among many of the Pacific Island States in the sense that it is both a flag State and a major flag State in the world. Today, RMI’s Open Registry is ranked as the third largest open registry in the world, with a gross registered tonnage of over 63,000,000.<sup>2</sup> In this position, the RMI Registry trails only behind Panama and Liberia, the current top two biggest registries in the world.<sup>3</sup> There is also a number of fishing vessels carrying the RMI flag and fishing on the high seas or in waters under the jurisdiction of other States. Given the central role flag State responsibilities and duties play in the contemporary international legal framework for responsible fisheries and in combating IUU fishing, analysis has been carried out of the RMI registry, the legal arrangements for the registry and the ability of RMI to discharge its flag State duties with respect to fishing vessels entitled to fly its

<sup>2</sup>UNCTAD, ‘Review of Maritime Transport, 2009’ (Report by the UNCTAD Secretariat, 2009 -Table 13) 55.

<sup>3</sup>UNCTAD, ‘Review of Maritime Transport, 2009’ (Report by the UNCTAD Secretariat, 2009-Table 13) 55.

flag. This analysis, which is presented in **Annex 12**, shows that currently, RMI is not able to discharge its flag State duties in respect of fishing vessels entitled to fly its flag and fishing beyond the jurisdiction of the RMI. The draft legislation presented in **Annex 13** remedies the gaps identified with respect to flag State responsibility. This is done through the establishments of a Marshall Island Record of Fishing Vessels under the control of MIMRA, the creation of a license/permit for these vessels to fish beyond the jurisdiction of RMI and the creation of offences with regard to violation of the measures instituted.

### **Regional Legal Framework**

As already noted, the regional legal framework for the sustainable management of the tuna fisheries in RMI waters and on the high seas in the Western and Central Pacific Ocean is the WCPF Convention which entered into force in June 2004, creating one of the first regional fisheries management organizations to be established since the adoption in 1995 of the UN Fish Stocks Agreement. The objective of the WCPF Convention is to ensure, through effective management, the long-term conservation and sustainable use of highly migratory fish stocks in the western and central Pacific Ocean in accordance with the LOSC the UN Fish Stocks Agreement. For this purpose, the WCPF Convention establishes the WCPFC.

The implementation of the WCPF Convention has major legislative implications for all members of the WCPFC, particularly members of the FFA, previously unknown in the history of the FFA. There are two sources of legislative implication for the members of the WCPFC:

The first is from the Convention text itself: the WCPF Convention requires each member of the Commission to promptly implement the provisions of the Convention. In this respect, several provisions of the Convention impose direct legislative requirements on State Parties which need to be translated into domestic law. The second is from the authority given to the WCPFC by the WCPF Convention to adopt conservation and management measures which all members of the Commission are under obligation to implement promptly.

Since its establishment in 2004, the WCPFC has developed a number of Conservation and Management Measures which require domestic legislative implementation and subsequent reporting to the WCPFC. Members of the WCPFC are under obligation to provide annual reports to the Commission on national implementation measures consistent with the WCPF Convention and any Conservation and Management Measures adopted by the WCPFC.

### **Sub-Regional Instruments**

RMI is a member of two sub-regional fisheries management organizations/arrangements: FFA and PNA. Through the FFA and PNA, a number of measures have been developed which require domestic implementation. At the FFA level, the key instrument which the RMI is required to give effect to at the domestic level is the Harmonised Minimum Terms and Conditions of Access (MTCs) which sets forth a range of conditions to be imposed on all foreign fishing vessels fishing in the exclusive economic zones (EEZs) and fisheries zones of FFA members. The PNA have also implemented a number of tuna conservation measures which the RMI is required to give domestic legislative effect to. The relevant measures are the Third Implementing Arrangement (PNA 3IA) and the Vessel Day Scheme (VDS).

## Review of EU IUU Regulation

Of particular relevance to the RMI comprehensive legislative review is the newly introduced EU Regulation 1005/2008 'Establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing' (the EU IUU Regulation), which came into force on 1 January 2010. The significance of the EU IUU Regulation for RMI lies in the renewed policy interest of the Government to scale down fisheries access agreements and promote more domestic tuna processing. The success of this policy will require direct access to international markets, which the EU offers. Although not formally part of the TOR, at the request of MIMRA, a gaps analysis of RMI legislation has been carried out against the EU IUU Regulation.

The EU IUU Regulation applies to IUU fishing and associated activities carried out within the jurisdiction of EC Member States, in addition to activities carried out by EU and non-EU vessels on the high seas or in waters under the jurisdiction of a third State. This comprehensive Regulation provides for the establishment of:

- port state controls over third country fishing vessels;
- catch certification requirements;
- establishment of an EU IUU vessel list; and
- the establishment of a list of non-cooperating third countries.

Fishing vessels subject to the EU IUU Regulation are broadly defined to include 'any vessel of any size used for or intended for use for the purposes of commercial exploitation of fishery resources, including support ships, fish processing vessels, and vessels engaged in transshipment and carrier vessels equipped for the transportation of fishery products, except container vessels'.

The EU IUU Regulation applies to any products which fall under Chapter 03 and Tariff Headings 1604 and 1605 of the combined nomenclature established by Council Regulation (EEC) No. 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the common customs tariff, with the exception of products listed in Annex 1 of the Regulation. Appendix B of the IUU Regulation paper provides a list of these products and exemptions.

The importance of the EU market as an international seafood importer has resulted in the need for legislative reform in all countries exporting seafood to EU member countries, in order to satisfy the requirements for imports, which in summary are:

- All consignments of fish and fish product will be prohibited from being imported into EU Member States, unless a catch certificate accompanies them. The catch certificate must contain the harvest details of the fish (e.g. vessel and master's name and number, fishing license number, date and location of capture, landing weights, details of processing on board) in addition to export, import and transport details.
- Relevant authorities of each exporting country are to validate catch certificates and, must have the power to provide such validation and attest to the veracity of the catch certificate.
- Exporting countries are required to provide prior notification to the EU certifying their arrangements with respect to conservation and management measures which must be complied with by its fishing vessels. Exporting countries will be required to verify consignments and associated catch certificates where the importing State doubts its legitimacy and will also be required to accept 'on-the-spot audits' of its catch certification and validation process by the EU.



## Analysis of Gaps in RMI Legislation

### *Areas of compliance*

The review shows that Title 51, the principal RMI fisheries, adequately implements the conservation and management obligations under the LOSC, UN Fish Stocks Agreement and the WCPF Convention. Consequently, no new legislative action is required by the RMI to implement these obligation. For example, section 203 of Title 51 (Chapter 2) requires MIMRA to:-

- ensure the long term conservation and sustainable use of the fishery resources, and to this end shall adopt management measures which promote the objective of optimum utilization;
- ensure that such management measures are based on the best scientific evidence available and designed to maintain or restore stocks at levels capable of producing maximum sustainable yield, as qualified by relevant environmental and economic factors, and taking into account fishing patterns, the interdependence of stocks and generally recommended international minimum standards;
- apply the precautionary approach at no less standard than set by criteria in the UN Fish Stock Agreement or any other fisheries management agreement;
- assess the impacts of fishing, other human activities and environmental factors on target stocks and species belonging to the same ecosystem or associated with or dependent upon the target stocks;
- adopt, where necessary, conservation and management measures for species belonging to the same ecosystem or associated with or dependent upon the target stocks, with a view to maintaining or restoring populations of such species above levels at which their reproduction may become seriously threatened;
- minimize pollution, waste, discards, catch by lost or abandoned gear, catch of non-target species and impacts on associated or dependent species, in particular endangered species, through measures including, to the extent practicable, the development and use of selective, environmentally safe and cost effective fishing gear and techniques;
- protect bio-diversity in the marine environment;
- take measures to prevent or eliminate over-fishing and excess fishing capacity and to ensure that levels of fishing effort do not exceed those commensurate with the sustainable use of fishery resources;
- take into account the interests of artisanal and subsistence fishers;
- collect and share, in a timely manner and in accordance with fisheries management agreements and international law, complete and accurate data concerning fishing activities on, inter alia, vessel position, catch of target and non-target species and fishing effort, as well as information from national and international research programs;
- promote and conduct scientific research and develop appropriate technologies in support of fishery conservation and management;
- implement and enforce conservation and management measures through effective monitoring, control and surveillance

Section 205 of Chapter 2 of Title 51 also requires MIMRA to determine the total allowable catch and total level of fishing effort with respect to any stock of fish subject to the provisions of the Title or as provided in a fisheries management agreements. These provisions are consistent with the obligations under the LOSC, UN Fish Stocks Agreement and the WCPF Convention.

Additionally, Chapter 4 of Title 51, dealing with fisheries access agreements, adequately implement Article 62 of LOSC and all the MTCs adopted through the FFA. Licenses issued pursuant to Chapter 4 also comply with the MTCs and agreed measures under the PNA.

Finally, Chapter 5 of Title 51 dealing with fisheries monitoring, control and surveillance also adequately implements Articles 62(4) and 73 of LOSC in terms of enforcement of the fisheries laws and regulations of RMI in its EEZ.

#### *Areas non-compliance*

The review, however, reveals several areas where there are gaps in RMI legislation to implement its international and regional fisheries obligations. These gaps include:

- Flag State duties under the LOSC, FAO Compliance Agreement, UN Fish Stocks Agreement and the WCPF Convention;
- Port State Measures under the WCPF Convention, IPOA-IUU, and the Port State Measures Agreement, 2009
- High Seas Boarding and Inspections procedures under the UN Fish Stocks Agreement and the WCPF Convention and WCPFC Conservation and Management Measure 2006-08;
- Terms and Conditions of Fishing under Annex 3 of WCPF Convention;
- Observer Requirements under the WCPF Convention;
- Protection of Sea Turtles under the WCPFC Conservation and Management Measure 2008-03;
- Protection of Data Buoys under WCPFC Conservation and Management Measure 2009-05;
- Regulation of Transshipment under WCPF Convention Article 29 and WCPFC Conservation and Management Measure 2009-06 and the MTCs;
- Combating IUU fishing under WCPFC Conservation and Management Measure 2010-06;
- Catch certification requirements under the EU IUU Regulation.

**Annex 10** presents a detailed exposition of these gaps. **Annex 10** also outlines the recommended options for RMI to remedy the gaps identified. The options include legislative amendments and implementation as conditions of license.

The important issue to highlight for the purpose of this review is the significance of the obligations on flag State duties/responsibilities for the RMI. As illustrated in **Annex 12** to this Report, RMI is currently the third largest flag State in the world, with responsibilities for a growing number of fishing vessels fishing beyond the RMI Fisheries Waters. The current arrangements for the management of vessels on the RMI Registry are no adequate to ensure effective control of the fishing activities of these vessels. It is therefore imperative that adequate legislation is implemented to enable RMI to discharge its flag State duties under the various international and regional fisheries instruments. Effective exercise of flag State duties/responsibilities will require RMI to, inter alia:-

- promulgate legislation relating to high seas fishing and fishing in waters under the jurisdiction of other States by its flagged vessels;
- issue high seas fishing authorizations for vessels flying its flag;
- establish a national record of fishing vessels authorized to fish on the high seas and in the jurisdiction of other States;
- provide for the marking of fishing vessels and fishing gear in accordance with the FAO Standard Specifications for the Marking and Identification of Fishing Vessels;
- implement a satellite vessel monitoring system for vessels carrying its flag and fishing anywhere in the world;
- take enforcement measures against vessels carrying its flag wherever violations occur;

- ensure that all vessels carrying its flag found to have been engaged in serious violations of conservation and management measures cease high seas fishing until they have complied with sanctions imposed for earlier transgressions;
- impose sanctions which are severe enough to deter future serious violations, including the refusal, withdrawal or suspension of authorization to serve as a master or officer on a fishing vessel.

Equally important is the Implementation of port State measures. Although the Port State Measures Agreement is not yet in force and RMI had not signed or ratified it, the provisions of the Agreement reflect contemporary international measures to combat IUU fishing. Legislative implementation of the port State measures will require RMI to, inter alia:-

- establish rules for entry and exit into its ports so as to make conservation and management measures more effective;
- inspect documents, fishing gear, catch and other fisheries related matters when vessels are in port;
- prohibit landing and transshipment where the vessel has undermined conservation and management measures; and
- provide information on the relevant port States, other States and to regional fisheries management organizations.

### Draft Legislation

Based on the overall legislative gaps identified in **Annex 7** which was subjected to extensive discussion in the stakeholder Workshop 1, draft legislation has been prepared. This draft is presented at **Annex 13** to this Report. The draft was presented to a stakeholder consultation in Workshop 2 and endorsed. The draft has also been sent to the FFA for peer review and their comments have been incorporated. It is expected that the draft Bill will be presented to the August 2011 sitting of Parliament for passage and subsequent implementation.

### Consolidated License Conditions

Many of the obligations under the WCPF Convention and Conservation and Management Measures and the sub-regional Arrangements can be implemented through Conditions of License. This novel approach, which is strongly recommended by FFA, ensures flexibility and avoids yearly amendment of fisheries legislation to keep abreast of new Conservation and Management Measures. **Annex 13** to this Report represents consolidated Conditions of License which have been developed to support the implementation of existing and the draft legislation. These Conditions can easily be amended from time to time and appended to fisheries licenses and authorisations. Breach of these Conditions will constitute breach of the fisheries legislation and will be punished accordingly.

### Template Local Government Ordinances

The key issue that was identified during the national consultations requiring legislative attention is to strengthen coastal fisheries management in RMI through the development of Council Ordinances Template. Accordingly, a draft Template has been prepared, based on an earlier draft prepared by

MIMRA. This draft, which is presented at **Annex 15** to this Report, has already received clearance from the Attorney-General's Department and has been submitted to the Councils for adoption..

### **Project Workshop Report 2**

Project Workshop 2 was a follow-up meeting to Project Workshop 1 in April 2011. Workshop 2 took place on May 16, 2011 as scheduled in the Project Plan. The main purpose of Workshop 2 was to review the draft legislation in response to recommendations at Workshop 1. A report of Workshop 2 is presented as **Annex 16**. KE1 and KE2 presented draft amendments to Title 51, draft Conditions of License and draft Local Government Ordinance. The Workshop endorsed the drafts and recommended them to MIMRA and the Attorney-General's Department for finalization and presentation to the August 2011 meeting of the Parliament.

## **5 CONCLUSION AND RECOMMENDATIONS**

All the Project outcomes identified in the TOR and Project Plan were met and on time. This remarkable result was due largely to the priority given to the Project by MIMRA and the Government of RMI. Stakeholder support for the Project was very high. The Project also received unqualified support from the two regional organisations that provide fisheries technical assistance to Pacific Island countries, namely FFA and SPC.

Given the momentum generated by the project, it is important that the MIMRA works cooperatively with the Attorney-General's Department, other relevant Agencies and stakeholders to ensure an early passage of the legislation. The assurance given by the Acting Minister in his opening Statement at Workshop 1 that the Government places priority on the outcomes of the Project and will ensure a quick passage of the legislation is very promising.

A number of institutional changes will be required by MIMRA to support the implementation of the legislation. These include the establishment a vessel monitoring system to monitor RMI flagged vessels, the establishment and operation of a national Record of Fishing Vessels and Authorization to Fish and establishment of a suitable catch certification system to meet the requirements of the EU IUU Regulation. This is important for RMI to avoid flagging IUU fishing vessels. To provide context to this recommendation, **Annex 12** to the Report describes and assesses the vessel flagging processes in RMI. The analysis identifies which authority is responsible for fishing vessel registration and authorization and identifies the gaps that need to be addressed.

Capacity building among the various agencies and personnel with some responsibility for implementing the new changes is also paramount. It is important, therefore that, between now and the passage of the legislation, MIMRA begins the process of institutional development and capacity building to put itself in a position to implement the new legislation as soon as it comes into effect. In this respect, additional financial and technical assistance may be required to support the successful implementation of the new legislation.

## ANNEX 1: PROJECT TERMS OF REFERENCE

### ANNEX II: TERMS OF REFERENCE

#### BACKGROUND INFORMATION

##### 1.1 Beneficiary country

The direct beneficiary country for the implementation of this contract is the REPUBLIC OF MARSHALL ISLANDS (RMI) in the Pacific region.

##### 1.2 Contracting Authority

###### ACP FISH II Coordination Unit

36/21 Av. de Tervuren

5th Floor

Brussels 1040

Tel: +32 (0)2.7390060

Fax: +32(0)2.7390068

##### 1.3 Relevant country background

The Republic of the Marshall Islands (RMI) is a Micronesian nation of atolls and islands in the middle of the Pacific Ocean, just west of the International Date Line and just north of the Equator. The population is about 62,000. In 1986, independence was attained under a Compact of Free Association with the United States. The islands are located north of Nauru and Kiribati, east of the Federated States of Micronesia, and south of the U.S. territory of Wake Island.

The country consists of 29 atolls and 5 isolated islands. The atolls and islands form two groups: the Ratak Chain and the Ralik Chain (meaning "sunrise" and "sunset" chains). 24 of them are inhabited. The uninhabited atolls and islands are Ailinginae Atoll, Bikar (Bikaar) Atoll, Bikini Atoll, Bokak Atoll, Erikub Atoll, Jemo Island, Nadikdik Atoll, Rongerik Atoll, Toke Atoll, and Ujelang Atoll. A majority of the islands' land mass is at sea level. The Marshall Islands also lays claim to Wake Island. While Wake has long been administered by the United States, the Marshallese government refers to it by the name Enen-kio.

The islands have few natural resources, and imports far exceed exports. Agricultural production is concentrated on small farms. The most-important commercial crops are coconuts, tomatoes, melons and breadfruit. Small-scale industry is limited to handicrafts, fish processing and copra. The tourist industry, now a source of foreign exchange employs less than 10% of the labor force. Over the past decade, GDP growth averaged 1% due to government downsizing, drought, a drop in construction, the decline in tourism and foreign investment due to Asian financial difficulties, and less income from the renewal of fishing-vessel licenses. The 2007 edition of "Doing Business," prepared by the World Bank's private sector development department, declared the Marshall Islands to be the world's "Best Performer" for its ease and low expense in hiring and firing employees. But the study

gave the Marshall Islands extremely low ratings for its protection of investors and contract enforcement.

The United States (US) government assistance is the mainstay of the economy. Under the terms of the Amended Compact of Free Association, the U.S. will provide US\$57.7 million per year to the Marshall Islands (RMI) through 2013, and then US\$62.7 million through 2023, at which time a trust fund made up of U.S. and RMI contributions will begin perpetual annual payouts.

#### **1.4 Current state of affairs in the relevant sector**

Fishing has been critical to the economy of this island nation since its settlement. The fisheries sector is important for the Republic of Marshall Islands since the country is a small island ACP developing state surrounded by sea and with a small landmass it provides employments, enhances food security, and export earnings.

In 1999, a private company built a tuna loining plant with more than 400 employees, mostly women. But the plant closed in 2005, after a failed attempt to convert it to produce tuna steaks, a process that requires half as many employees. Operating costs exceeded revenue, and the plant's owners tried to partner with the government to prevent closure. But government officials personally interested in an economic stake in the plant refused to help. After the plant closed, it was taken over by the government, which had been the guarantor of a \$2 million loan to the business.

An OFCF and MIMRA survey in 2004 estimated a fish supply equivalent to 39.9 kg/person/year for 23,000 people on Majuro. Bob Gillet (2009) in an ADB funded study reported estimates for Per-capita annual fish consumption at 38.9 to 59 kg/year/person for the Republic of Marshall Islands.

##### **1.4.1 Economic Overview**

The RMI is classified by the United Nations as a *Small Island Developing State*. The economy remains relatively small, with an estimated current-dollar Gross Domestic Product of about US\$100 million as of 2003. The economy relies heavily on RMI Government and US military expenditure and employment, but has seen some growth in commercial and small-scale fisheries, mariculture/aquaculture, agriculture, traditional crafts manufacturing (handicrafts), and tourism.

##### **1.4.2 Investing: Commercial Fisheries**

With an Exclusive Economic Zone (EEZ) of about 750,000 square miles, the Republic of the Marshall Islands has great potential for the development of its fishing industry. At present, fishing vessels operating in the Marshall Islands EEZ hail from the United States, Japan, China, Taiwan, Korea, Vanuatu, Kiribati and the Federated States of Micronesia. In the case of the US, the RMI is party to the US Multilateral Tuna Treaty, which allows the US fishing vessels access to certain Pacific island EEZ's. In addition, a Chinese longline fleet has vessels based in Majuro.

The Marshall Islands is a member of a regional arrangement known as the Forum Fisheries Agency (FFA). The FFA Secretariat assists its member countries in managing and conserving its region-wide tuna stock, in cooperation with non-Pacific-island countries fishing in the region. The Secretariat of the Pacific Community (formerly known as the South Pacific Commission), to which the Marshall Islands is also a member, provides necessary scientific and biological information on the marine species within the EEZ.

The capital of the Marshall Islands, Majuro Atoll, possesses much of the necessary infrastructure and facilities for fishing vessel activities. Such facilities include: a floating dry dock, a deep-water harbor with container handling facilities, a fish base complex equipped with a bulk ice facility and a satellite chiller plant at the airport for air shipment, a 10 million liter bulk fuel storage bunker facility, regular international shipping services, and an international airport. In addition, Majuro contains many stores, fully-stocked with supplies and goods, mostly imported from the US. Ebeye, RMI's second largest urban center, is also equipped with fishing facilities such as, a protected harbor and marina and fish base.

The Marshall Islands Marine Resources Authority (MIMRA) operates a National Fisheries and Nautical Training Center, training 75 students per year. Students learn skills that enable them to work on commercial fishing vessels. Several graduates are currently employed on US fishing vessels and reviews from vessel owners and operators regarding these Marshallese fishermen have been positive and encouraging. Vessel owners/operators wishing to base their activities in Majuro, and even vessels which are not based in Majuro would have access to highly trained and skilled seamen to work on their vessels.

MIMRA has recently undergone some major changes in the areas of development policies, legislation, and organizational structure. The recently adopted National Fisheries Development Plan and revised Marine Resources Act are two such national fisheries documents which have now been in operation for over 12 years. With regional requirements in terms of managing the tuna fisheries in the region now increasingly, being placed on all island states, it is timely to review the main legislation and subsidiary legislations to ensure that these legislations are suitable to address these requirements.

The construction of a service centre for fishing vessels has been identified as a feasible investment opportunity for foreign investors. Activities such as repair and construction of boats, provision of fuel, ice, and selling of certain fishing gear, etc., can be undertaken at the centre.

#### **1.4.3 Investing: Mariculture/Aquaculture**

Great potential exists for both black-lip pearl and giant clam farming projects, for they are well suited to the protected lagoon environment many atolls in the Marshall Islands can provide. Currently, both clam and pearl farming projects are underway in Majuro, and several are in the early stages of development in some of the outer islands.

The farming of Trochus shells is another potential area for development. The Trochus is a marine snail with a large, conical shell that is prized by jewelers the world over. The Marshall Islands' waters

have already demonstrated vast potential in this area, and some local businesses have begun to export Trochus shell to the US and Japan.

Other potential areas of mariculture/aquaculture development might include coral farming or small-scale fishing for reef fish.

### **1.5 Related programmes and other donor activities**

Related programmes and other donor activities which contribute to similar or related ACP Fish2 project activities include work or activities by Japanese Trust Fund, OFCF, ACIAR, GEF, DEVFISH and others. Funding by Japanese Trust Fund has gone into funding training workshops for Pacific ACP countries in developing island fisheries officers understanding in fish stock assessment. OFCF funding has gone into developing infrastructure in fisheries training institutions to better train fisheries officers while ACIAR funding has gone mainly into developing sustainable fisheries and aquaculture for food security in the region. DevFish, GEF along with others have similar objectives to the ACP Fish II program and will be consulted in this work to be undertaken in the Marshall Islands.

In the conduct of this assignment, consultants are expected to work closely with the MIMRA and RMI fisheries associated stakeholders and relevant donors and donor funded programmes to gather relevant information and ensure coordination.

## **OBJECTIVE, PURPOSE & EXPECTED RESULTS**

### **2.1 Overall objective**

The overall objective of the project of which this contract will be a part is to contribute to the sustainable and equitable management of fisheries in ACP regions, thus leading to poverty alleviation and improving food security in ACP States.

### **2.2 Purpose**

The objective of this project is to comprehensively review and update the offshore and inshore fisheries legislation and Regulations of the Republic of the Marshall Islands (RMI) so that they are aligned with regional and international best practice and provide the necessary framework towards ensuring that fisheries resources are managed sustainably and in the best long term interests of the Marshallese people. The legislation and Regulations to be reviewed include: the Marine Resources Act of 1997 as amended and the Marshall Islands Fisheries Regulations, 1998.

### **2.3 Results to be achieved by the consultant**

The Consultant will achieve the following results as part of this project:

- The fisheries legislation and regulations are reviewed and updated.



## ASSUMPTIONS & RISKS

### 3.1 Assumptions underlying the project intervention

The need for this intervention was clearly identified in the Regional Needs Assessment workshop with fisheries administrations and representatives of Regional Fisheries Bodies convened in Honiara, Solomon Islands in November 2009. The relevance of this activity was further confirmed by consultations with the Republic of Marshall Islands (RMI) stakeholders comprising Marshall Islands Marine Resources Authority (MIMRA), Chief Fisheries Officers/Director of Fisheries, and the other Ministers responsible for fisheries related issues such as environment, justice, trade, quarantine, customs and health and other fisheries related stakeholders.

Since ACP FISH II is a demand-driven Programme, it is assumed that counterpart institutions (the Marshall Islands Marine Resources Authority and the state of RMI) take all the necessary measures to ensure their fulfillment of obligations and responsibilities as set forth under this project. Failure to meet that requirement is likely to result in the project not achieving the desired results.

### 3.2 Risks

Risks for the implementation of this contract are minimised, since the intervention was identified and endorsed in cooperation with the MIMRA, the RMI government and RMI fisheries associated stakeholders. The assumption is that the MIMRA, RMI government and other RMI fisheries associated stakeholders are well aware of the intervention and are prepared to allocate official hours to its implementation. The participatory planning approach adopted in the development of this intervention will continue through implementation to ensure that risks of overlap and lack of coordination with other initiatives of governments and RFBs will be minimised. Likewise, the chosen methodology is consistent with RMI's ongoing approach.

## SCOPE OF THE WORK

### 4.1 General

#### Project description

The national legislation governing fishing activities by both domestic and foreign fishing fleets is the Marine Resources Act 1997 (Title 51). RMI's fisheries laws were updated in the 1980s in order to bring them into line with the 1982 Law of the Sea Convention. This Convention set out a new legal regime for the oceans through, notably, the extension of coastal states' jurisdiction over marine areas and resources (creation of the concept of exclusive economic zone) and required States to introduce new provisions in national laws reflecting this new regime. The principal Act was further updated in the 1990s to take account of additional international and regional fisheries instruments which were adopted including:

- the FAO Compliance Agreement 1993;
- the UN Fish Stocks Agreement 1995;
- the FAO Code of Conduct for Responsible Fisheries 1995; and
- FFA Minimum Terms and Conditions of Fishing Access (MTCs).

The Marine Resources Act, 1997, establishes the Marshall Islands Marine Resource Authority. The powers and duties of the Authority are comprehensive in relation to management of fisheries and other marine resource matters (for example, under the Act it exercises control over the exploration and exploitation of the non-living resources of the seabed as well as fisheries). They include the establishment of management plans and programs to manage resources in the fishery waters, the negotiation and conclusion of foreign fishing agreements, the issuing of licenses in accordance with the Act and the power to make regulations.

Regulations may be made to carry out the purposes and provisions of the Act including such matters as the conservation, management and protection of fish and other aquatic organisms, and other related activities in the fishery waters. The Act also allows the Authority to take measures for the management and development of local fisheries including those in internal waters and within five miles of the baseline from which the territorial sea of any atoll or island is measured.

Over the last decade the RMI has become party to a number of additional fisheries management and conservation initiatives including the Western and Central Pacific Fisheries Convention (WCPFC), the Apia Policy dealing with coastal fisheries as well as those relating to the Parties to the Nauru Group (PNA) and region-wide coastal State fisheries management matters. These all need to be provided for in legislation as well as management plans and procedures.

Further imperatives for conducting a comprehensive review and development of the legislative framework include the nation's industrial fisheries development agenda relating to offshore fisheries on the one hand and the food security linked community based management relating to inshore resources on the other.

Proper management of fisheries resources is a fundamental requirement for the people of the RMI because fish is the only available resource on which a viable economy can be developed to earn foreign exchange and fish remains the single most important source of protein for the Marshallese people. Establishing a legal framework to enable proper management to occur is fundamental to developing fisheries activities and conservation of stocks. Consultations with all relevant fisheries stakeholders who will be affected by the legislative review will be undertaken through one to one meetings and workshops to ensure revised legislations incorporates as much as possible all appropriate views.

The work will require a scoping study to identify legislative gaps; in-country consultations to obtain clear policy directions; consultations with FFA and SPC to look at the regional and global perspective aspects or requirements of the legislation.

### **Geographical area to be covered**

Without prejudice to the delimitation of maritime boundaries, the geographical area to be covered under this TOR is all waters under RMI's jurisdiction, which extend from the high water mark to the outside limit of the RMI's EEZ.

## Target groups

The target groups for this activity are the Government of the Republic of Marshall Islands, Chief Fisheries Officers/Director of Fisheries, the Marshall Islands Marine Resource Authority, and the private sector representatives (fisher folk organizations, processors, and other NGOs).

## 4.2 Specific activities

This contract will be completed in two phases:

The consultant will carry out the following tasks in Phase 1:

1. Briefing by the ACP Fish II Programme and the MIMRA;
2. Identify, collect and review relevant documentation (legislation, Regulations, policy documents, background information) on the fisheries sector and any other documentation related to activities which have a direct or indirect bearing on fisheries;
3. Review and analyse the Marine Resources Act 1997 and the Marshall Islands Fisheries Regulations 1998 and outline and discuss legal issues to be addressed;
4. Consult with the FFA, SPC, MIMRA, the Attorney General Office and other fisheries stakeholders in the RMI;
5. Organize a workshop to discuss the legal issues outlined by the consultant under item 3 above (one two-day workshop with 30 participants); (Make all the logistical arrangements, including invite participants, arrange travel, book and pay for transportation for participants as necessary, pay per diems or expenses of participants, and venue costs – subcontracting is allowed)
6. Make visits in selected fishing sites in consultation with the MIMRA;
7. Taking account of the findings and recommendations of the workshop, draft amendments to the main fisheries legislation and regulations to be submitted to the MIMRA and other stakeholders for comments;

During the second phase, the Consultant will carry out the following tasks:

8. Organize one multi-disciplinary workshop involving fisheries, foreign affairs and legal expertise from the RMI and from regional fisheries bodies, and private sector representatives (fisher folk organizations and other NGO) to discuss the proposed amendments to RMI's main fisheries legislation and regulations (one two-day workshops with 30 participants). The consultant will be responsible for all organisational and logistical issues, for which subcontracting is allowed.
9. Finalize draft amendments to main fisheries legislation and regulations, taking account of comments and recommendations made by the workshop in close collaboration with the MIMRA (and the Attorney General Office);

In addition to the reporting requirements mentioned in Section 7.1 of these Terms of Reference, the Consultant is required to prepare the following reports in English:

- i. An Interim Technical Report (ITR) within 10 days of arriving in the duty station for the first time. The ITR will be a short report including the proposed methodology, the calendar and programme of activities, places to visit, people to meet and an outline of the final report;
- ii. The Final Technical Report (FTR), taking into account changes and comments from the MIMRA, the RFU and the CU will be submitted within one month of the consultant leaving the country. A draft FTR will be submitted before the Consultant leaves the country on

completion of the drafting of the amendments to the main fisheries legislation and any associated subsidiary legislation. Comments on the draft FTR may be made by the MIMRA, the RFU and the CU within 14 days. If required, a second draft of the FTR will be submitted.

#### **4.3 Project management**

##### **4.3.1 Responsible body**

The Coordination Unit of the ACP Fish II Programme, on behalf of the ACP Secretariat is responsible for managing the implementation of this contract.

##### **4.3.2 Management structure**

The ACP Fish II Programme is implemented through the Co-ordination Unit (CU) in Brussels and six Regional Facilitation Units (RFUs) across the ACP States. The RFU in Honiara, Solomon Islands, covering ACP Member states in the Pacific region will closely support implementation of this intervention; it will monitor the execution of the contract pursuant to these Terms of Reference. All contractual communications should be addressed in original to the CU and copied to the RFU. Day-to-day supervision will be carried out by the RFU. For the purposes of this contract, the ACP Fish II Programme Coordinator will act as the Project Manager.

##### **4.3.3 Facilities to be provided by the Contracting Authority and/or other parties**

Not applicable.

## **5 LOGISTICS AND TIMING**

### **5.1 Location**

The principal working location for the consultant will be the MIMRA in Majuro, Marshall Islands with the consultation workshops to also take place there at an agreed venue. Visit to specific outer Islands and towns will be carried out according to the approved work plan presented by the Consultant.

### **5.2 Commencement date & Period of implementation**

The intended commencement date is 15 January 2011 and the period of implementation of the contract will be 4 months from this date. Please refer to Articles 4 and 5 of the Special Conditions for the actual commencement date and period of implementation.

## **6 REQUIREMENTS**

### **6.1 Personnel**

#### **6.1.1 Key experts**

All experts who have a crucial role in implementing the contract are referred to as key experts. The profiles of the key experts for this contract are as follows:

### **Key expert 1: Team Leader (Fisheries Legislation Specialist)**

#### Qualifications and skills

- A master degree in law (law of the sea, fisheries, marine affairs, natural resources or any other relevant specialization);
- The expert should have a high level of proficiency in spoken and written English;

#### General professional experience

- Minimum 10 years of relevant international experience in fisheries matters;
- Excellent communication, report-writing and project/task management skills

#### Specific professional experience

- Practical experience in the drafting of fisheries legislation (preferably more than 5 assignments but a minimum of 2);
- Practical experience of carrying out assignments for the EU or other international development agencies (preferably more than 8 but a minimum of 3);
- Previous experience in Pacific fisheries both oceanic and inshore.

The maximum number of missions for this expert outside the normal place of posting requiring overnights is 2.

There will be in-country field visits not requiring overnights for this expert.

### **Key expert 2: Legal expert**

#### Qualifications and skills

- A degree in law (law of the sea, fisheries, marine affairs or any other relevant specialization);
- The expert should have a high level of proficiency in spoken and written English and knowledge of local language (Marshallese) is an advantage;

#### General professional experience

- Minimum 5 years of regional experience in fisheries law and policy;
- Excellent communication, report writing and facilitation skills;

#### Specific professional experience

- Proven experience in the drafting or the support in the drafting of fisheries legislation;
- Good understanding of fisheries legal and policy issues and realities in the Pacific region;
- Practical experience of carrying out assignments for the EU or other international development agencies (preferably more than 5 but a minimum of 2);
- Previous experience working in the Pacific region.

The maximum number of missions for this expert outside the normal place of posting requiring overnights is 2.

There will be in-country field visits not requiring overnights for this expert.

Indicative number of working days by expert and task:

Indicative task	Key Expert 1 (days)	Key Expert 2 (days)
Briefing and debriefing with MIMRA and RFU	2	2
Background document review and preparatory work	5	2
Consultation meetings and site visits	8	8
Review and analysis of main fisheries legislation	6	6
Multi-disciplinary workshops (organization, presentation, workshop)	6	6
Legal drafting	20	12
Compilation of reports	10	5
<b>Total</b>	<b>57</b>	<b>41</b>

### 6.1.2 Other experts

Local RMI legal and fisheries experts will be recruited under this contract.

### 6.1.3 Support staff & backstopping

Backstopping and support staff costs must be included in the fee rates of the experts.

### 6.2 Office accommodation

Office accommodation of a reasonable standard and of approximately 10 square metres for each expert working on the contract is to be provided by the MIMRA and RFU when required.

### 6.3 Facilities to be provided by the Consultant

The Consultant shall ensure that experts are adequately supported and equipped. In particular it shall ensure that there is sufficient administrative, secretarial and interpreting provision to enable experts to concentrate on their primary responsibilities. It must also transfer funds as necessary to support its activities under the contract and to ensure that its employees are paid regularly and in a timely fashion.

If the Consultant is a consortium, the arrangements should allow for the maximum flexibility in project implementation. Arrangements offering each consortium member a fixed percentage of the work to be undertaken under the contract should be avoided.

## 6.4 Equipment

No equipment is to be purchased on behalf of the Contracting Authority / beneficiary country as part of this service contract or transferred to the Contracting Authority / beneficiary country at the end of this contract. Any equipment related to this contract which is to be acquired by the beneficiary country must be purchased by means of a separate supply tender procedure.

## 6.5 Incidental expenditure

The Provision for incidental expenditure covers the ancillary and exceptional eligible expenditure incurred under this contract. It cannot be used for costs which should be covered by the Consultant as part of its fee rates, as defined above. Its use is governed by the provisions in the General Conditions and the notes in Annex V of the contract. It covers:

- Travel costs and subsistence allowances for missions, outside the normal place of posting, to be undertaken as part of this contract. If applicable, indicate if the provision includes costs for environmental measures, for example CO2 offsetting.
- Car hire and related costs (e.g. fuel) for organisation of in-country field visits.
- The cost of regional workshop organisation includes travel, accommodation, daily allowance, workshop venue cost.

The Provision for incidental expenditure for this contract is EUR 33,788. This amount must be included without modification in the Budget breakdown.

Any subsistence allowances to be paid for missions undertaken as part of this contract must not exceed the per diem rates published on the Web site:

[http://ec.europa.eu/europeaid/work/procedures/index\\_en.htm](http://ec.europa.eu/europeaid/work/procedures/index_en.htm) at the start of each such mission.

## 6.6 Expenditure verification

The Provision for expenditure verification relates to the fees of the auditor who has been charged with the expenditure verification of this contract in order to proceed with the payment of further pre-financing installments if any and/or interim payments if any.

The Provision for expenditure verification for this contract is EUR 2,900. This amount must be included without modification in the Budget breakdown.

## 7 REPORTS

### 7.1 Reporting requirements

Please refer to Article 26 of the General Conditions. There must be a final report, a final invoice and the financial report accompanied by an expenditure verification report at the end of the period of implementation of the tasks. The draft final report must be submitted at least one month before the end of the period of implementation of the tasks. Note that these interim and final reports are additional to any required in Section 0 of these Terms of Reference.

Each report shall consist of a narrative section and a financial section. The financial section must contain details of the time inputs of the experts, of the incidental expenditure and of the provision for expenditure verification.

## **7.2 Submission & approval of progress reports**

Three copies of the progress reports referred to above must be submitted to the Project Manager identified in the contract. The progress reports must be written in English. The Project Manager is responsible for approving the progress reports.

## **8. MONITORING AND EVALUATION**

### **8.1 Definition of indicators**

The results to be achieved by the consultant are included in section 2.3. Progress to achieving these results will be measured through the following indicators:

1. Quality of consultants fielded and speed of mobilization to the relevant country will indicate a positive start to the assignment;
2. Level of attendance, participation, and issues or problems identified at the multi-disciplinary workshop;
3. Nature of evaluation reports from participants;
4. Number and nature of comments received on the Draft amended fisheries legislation;
5. Acceptance of the proposed legislation by the MIMRA.

The Consultant may suggest additional monitoring tools for the contract duration.

### **8.2 Special requirements**

Not Applicable



## ANNEX 2: INTERIM TECHNICAL REPORT

### ACP FISH II Marshall Islands Comprehensive Legislation Review

Reference: CU/PE1/SI/10/001



*Submitted by*



18, Queen Street, London, W1J 5PN, UK

Tel: +44 (0)20 7255 7755

Fax: +44 (0)20 7499 5388

[www.mrag.co.uk](http://www.mrag.co.uk)

**MARCH 2011**



## Contents

1. BACKGROUND .....	32
2. COMMENTS ON TERMS OF REFERENCE .....	32
3. APPROACH TO THE ASSIGNMENT.....	33
4. SET UP AND MEMBERS OF THE TECHNICAL TEAM .....	33
5. PROPOSED WORK PLAN (INCLUDING TRAVEL PLAN OF EXPERTS) .....	35
6. PROJECT RESULTS TO DATE .....	36
7. KEY ISSUES TO BE ADDRESSED/SOLVED.....	36
8. RECOMMENDATIONS.....	37
ANNEX 1: PROJECT METHODOLOGY .....	38

## 1. Background

The current RMI Marine Resources Act (MRA) was adopted in 1997 and has not been substantively updated since. A number of important developments have occurred since that time including the establishment of the *Convention on the Conservation and Management of High Migratory Fish Stocks in the Western and Central Pacific Ocean*, to which the RMI is a signatory, the adoption of new conservation and management measures under the Parties to Nauru Agreement (PNA) and the adoption of the Apia Policy on coastal fisheries. In addition, there is growing interest in new forms of aquaculture development (e.g. sea cage culture of tropical fish species). The main task of this assignment will be to develop amendments to the MRA to ensure that it provides an effective legal framework to address those issues that have emerged since the development of the current version, and to rectify any weaknesses in the current Act that have come to light since its adoption.

## 2. Comments on Terms of Reference

As outlined in our project proposal, we believe there are two main issues that will determine the successful achievement of the terms of reference and contract objectives. The first is to ensure the proposed amendments are relevant, address all the legal deficiencies and emerging issues that have arisen since the adoption of the current version of the Act in 1997 and have broad based stakeholder support. The second is to ensure uptake of the study recommendations by the RMI Government.

In relation to the first issue, MRAG will aim to ensure broad based stakeholder support for the study outputs by taking an inclusive and participatory approach to the consultation phase of the assignment, as well in the two project workshops. The list of people to be consulted, and those invited to the workshops, will be agreed with MIMRA and other relevant agencies (e.g. RMI Attorney General's Department), and the final project report will reflect the views of each of the major stakeholders expressed during the course of the study.

In relation to the second issue, the degree of uptake will be dependent, firstly, on the degree of stakeholder support for the recommendations, and secondly an intimate knowledge of RMI Government processes and existing relationships with key decision makers. We will take steps to ensure that RMI government and other RMI fisheries associated stakeholders are well aware of the intervention and its implications. Furthermore, our KE2 Mr Filimon Manoni, is immediate past Attorney General of the RMI, and has both the confidence of the RMI administration as well as a successful track record in navigating new legislation through the RMI legislative process. Moreover, Mr Manoni's intimate familiarity with RMI policy and legal processes, as well as the main Government and non-Government sector stakeholders, will ensure that project recommendations are relevant, practical and well-positioned for adoption.

Another important issue will be to ensure that the revised Act provides the necessary legal framework for the RMI to discharge its obligations as an important member of the Western and Central Pacific Fisheries Commission (WCPFC).

The key risk associated with the contract is the absence of effective uptake of the recommendations discussed above. To mitigate this risk, MRAG will use participatory approaches to maximise stakeholder 'buy in' to recommend changes, and has assembled a team of two highly credentialed RMI/Pacific legal experts to further maximise the chances of effective adoption. We also note that

project was identified as a high priority at the Regional Needs Assessment Workshop and already has a strong degree of in-country support.

The main assumption is the availability of key staff in RMI-based and external agencies for the consultation and workshop phases of the assignment.

### 1. Approach to the assignment

Our proposed methodology for the assignment was described in our technical proposal (Annex 1). The main changes to the approach arising since the commencement of the assignment are:

- KE2 will arrive in Majuro earlier (during the week 21<sup>st</sup> March) than previously planned, to maximise time for consultation with stakeholders in country;
- Attendance at the 1<sup>st</sup> Project Workshop will be broadened (while remaining within the overall cap of 30 participants) to include a wider base of interested stakeholders – for example, representatives of Foreign Affairs, the private sector and NGOs – to attempt to capture the full range of possible amendments required to the MRA early in the project;
- Attendance at the 2<sup>nd</sup> Project Workshop will be more focused, concentrating on inviting participants with experience in fisheries law;
- FFA staff involved in reviews of other Pacific Island countries legislation will be invited to both project workshops.
- MRAG will explore whether it is possible to have KE2 attend the 2<sup>nd</sup> Project Workshop.

### 2. Set up and members of the Technical Team

MRAG Ltd is the contractor for this assignment. The contract was agreed and signed on 31<sup>st</sup> January 2011.

The members of the Technical Team are:

- **Key Expert 1: Prof. Martin Tsamenyi**

Professor Tsamenyi is Professor of Law and Director of the Australian National Centre for Oceans Resources and Security. He is a world-recognised expert in fisheries law, having served previously as Fisheries Law Adviser to the Pacific Islands Forum Fisheries Agency and currently Legal Adviser to the Western and Central Pacific Fisheries Commission. Professor Tsamenyi also has extensive knowledge of fisheries legislative issues in the Pacific Islands region, including RMI.

- **Key Expert 2: Filimon Manoni**

Filimon Manoni is a Marshallese and was previously Attorney-General of the Marshall Islands. He is currently completing a PhD degree at the Australian National Centre for Oceans Resources and Security. Filimon's familiarity with the local environment in the Marshall Islands and intimate knowledge of the fisheries legislation and legislative process in the Marshall Islands will ensure an effective delivery of the objectives of the project.

The Technical Team will be able to draw upon on MRAG's wide range of in-house expertise for technical and administrative backstopping. Particular support will be provided by:

**Dr David Agnew** (MRAG, London) will provide project oversight and direction. Dr Agnew has considerable experience in the Pacific, having completed missions to FFA (Solomon Islands) and SPC (New Caledonia). He is Fisheries Director of MRAG, and although his expertise lies with fisheries biology, ecology and stock assessment, he is also a world expert on IUU fishing and has advised FFA and WCPFC on policy matters.

**Mr Stephen Hodgson** (MRAG, London) is an international natural resources lawyer with experience with national fisheries law development in developing countries, as well as international law such as UNCLOS. He is currently leading a review of the legal implications, costs and benefits of the implementation of EEZs in the Mediterranean and has worked extensively in Africa and Asia. He is based in Brussels, and will provide international fisheries law support and quality control as well as being ideally placed to communicate with the ACP Fish II office in Brussels, should that be required.

**Mr Duncan Souter** is manager of the MRAG Asia Pacific office, based in Brisbane. He will provide assistance with communications between the Key Experts and MRAG. Furthermore, he has recently completed a very successful project examining MCS needs for FFA countries, including the Republic of the Marshall Islands, and has first hand recent experience of organising workshops in Majuro.

### 3. Proposed work plan (including travel plan of experts)

The assignment will be undertaken according to the work plan below. The work plan has been revised to incorporate more time in country by KE2, and has been discussed and agreed with the CU before contract signing and the RFU during the Inception Meeting. Consistent with the outcomes of the Inception Meeting, MRAG are also currently assessing the possibility of having KE2 attend the 2nd Project Workshop.

TOR days by expert (days)	Total	Indicative task	Proposal days by expert			Week beginning Feb		Week beginning Mar				Week beginning Apr				Week beginning May					Week beginning Jun			Legend
			KE	Days	total	21	28	07	14	21	28	04	11	18	25	02	09	16	23	30	06	13	20	
						KE1	KE2	KE1	KE2	KE1	KE2	KE1	KE2	KE1	KE2	KE1	KE2	KE1	KE2	KE1	KE2	KE1	KE2	
2	4	Briefing with MIMRA, RFU	KE1	1	4	[Yellow]															= Wollongong = Majuro = Honiara			
2			KE2	3		[Grey]																		
5	7	Background document review	KE1	3	7	[Yellow]		[Yellow]																
2			KE2	4		[Yellow]		[Yellow]																
8	16	Consultation meetings and site visits	KE1	2	16			[Blue]																
8			KE2	14				[Blue]																
6	12	Review and analysis of fisheries legislation	KE1	6	12			[Yellow]																
6			KE2	6				[Blue]																
6	12	Multi-disciplinary workshops	KE1	9	12			[Blue]				[Blue]												
6			KE2	3				[Blue]				[Blue]												
20	32	Legal drafting	KE1	14	32			[Yellow]				[Yellow]												
12			KE2	18				[Yellow]				[Yellow]												
10	15	Compilation of reports	KE1	7	15			[Blue]				[Yellow]					[Yellow]							
5			KE2	8				[Blue]				[Yellow]					[Yellow]							
Interim Technical Report						[Red]																		
Final Technical Report												[Red]												
Final Report																	[Red]							
Total days																								
57	KE1		42			1	3	0	0	1	2	3	6	3	3	4	3	6	3	2	1	1	0	
41	KE2		56			3	1	1	2	6	6	6	6	3	3	5	5	2	3	2	1	1	0	
98	Total		98																					

#### 4. Project results to date

To date, the following document collection and analysis have been undertaken.

- Identification and collection of relevant Marshall Islands legislation, including: *Marshall Islands Marine Resources Act; Fisheries Act; Management and Development of Local Fisheries Act; Access to Fishing and Licensing Act; Fisheries Enforcement Act; Maritime Administrations Act and The Documentation and Identification of Vessels Act* (which provides for the registration of fishing vessels); *RMI Ports Authority Act; Fisheries Regulations*.
- Identification and collection of the following regional and sub-regional fisheries instruments: the Pacific Forum Fisheries Agency Convention; the Harmonised Terms and Conditions of Access (MTCs); Parties to the Nauru Agreement (and subsidiary arrangements such as the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> implementing Arrangements); Palau Arrangement (establishing the Vessel Days Scheme); FSM Arrangement; Convention on the Conservation and Management of High Migratory Fish Stocks in the Western and Central Pacific Ocean (and subsidiary material – e.g. conservation and management measures).
- Identification and collection of the following international fisheries instruments: the United Nations Convention on the Law of the Sea; the UN Fish Stocks Agreement; the FAO Compliance Agreement; the FAO Code of Conduct for Responsible Fisheries and relevant FAO Plans of Action- Seabirds, Capacity, Sharks and Illegal, Unreported and Unregulated (IUU) Fishing.
- Development of a benchmark matrix of the regional/subregional and international fisheries instruments to be used to analyse gaps in the national fisheries legislation.

#### 5. Key issues to be addressed/solved

The fundamental issue to be addressed is the modernisation of the fisheries law of the Republic of the Marshall Islands to support the sustainable development and responsible fishing practices, consistent with modern fisheries management principles. This will be achieved by addressing the following issues:

- What are the key obligations and requirements under regional and international fisheries instruments for the sustainable management of the fisheries resources in the fisheries waters of the Marshall islands;
- What are the key obligations and requirements under regional and international fisheries instruments for the sustainable management of the fisheries resources in the fisheries waters of the Marshall islands;
- The extent to which the existing legislation of the Marshall island comply with these requirements;
- Whether the legislative framework for the management of the coastal fisheries resources of the Republic of the Marshall Islands support community-based and participatory fisheries management principles;

What amendments are required in the existing legislation to enable the Marshall Islands meet its regional and international obligations to ensure a sustainable management of its fisheries resources.

A preliminary analysis of the existing legislation against the regional and international fisheries instruments shows that the provisions of the *Marine Resources Act* do not adequately implement Marshall Islands international and regional fisheries obligations. Consequently, new legislative provisions will be required to implement these obligations. In this respect, two legislative options are available to be considered: (a) Amendment to the Marine Resources Act; and (b) promulgation of Regulations pursuant to s.12 of the Act.

## **6. Recommendations**

Given that a detailed analysis of the relevant documents has not been undertaken, recommendations in this respect at this stage will not be warranted.



## **Annex 1: Project Methodology**

Our proposed methodology to address each of the activities in the Terms of Reference was included in our Technical Proposal and is reproduced below:

Our strategy for undertaking the assignment, together with the proposed activities and expected inputs/outputs, is outlined below according to the Specific Activities listed in section 4.3 of the Terms of Reference.

### **1. Briefing by the ACP Fish II Programme and the MIMRA;**

MRAG Key Experts and support staff will be available to attend project briefings in the initial stages of the assignment, and as required thereafter.

Mr Manoni will travel to Honiara to receive an initial project briefing from the Regional Coordination Unit, based at the South Pacific Forum Fisheries Agency, and will also receive an inception briefing from MIMRA at the commencement of the first in-country elements of the study.

Mr Steve Hodgson, MRAG's representative in Brussels, who is also a natural resources lawyer with considerable experience with fisheries law, including UNCLOS and other international instruments, will also be available to receive initial and ongoing project briefings with the ACP Fish II Coordination Unit, as required.

At these briefings, we expect to cover the expectations for the project, as well as any key issues that the Coordination Unit and MIMRA believe are critical to the project's success. We would also expect to agree project details such as communication arrangements, work plans and timing, expected style and content of reports, and proposed lists of main people and agencies to be consulted.

### **2. Identify, collect and review relevant documentation (legislation, Regulations, policy documents, background information) on the fisheries sector and any other documentation related to activities which have a direct or indirect bearing on fisheries;**

Under this element, MRAG and the project team would use two primary means to identify and source relevant background material. First, in the early stages of the project, letters would be sent to relevant persons and agencies raising awareness of the project, requesting their support and seeking their advice on background material relevant to the review. These letters would be followed up with phone calls where possible to make arrangements to acquire necessary documents. Secondly, MRAG and the project team would directly use our strong networks with relevant people and agencies in the RMI and the wider Pacific to identify and source copies of relevant background material.

Note that both our key experts have been very closely involved in the development of fisheries law in the Pacific and particularly with Marshall Islands over a number of years, and will very rapidly be able to acquire all relevant documentation for this project through their first-hand knowledge and through their contacts throughout the western Pacific.

The necessary background material can broadly be grouped into three categories: current legislation, other policy and statutory documents, and previous external reports. Based on our understanding of the assignment, the main relevant documents in each category are listed below:

#### **Current legislation**

- *Marshall Islands Marine Resources Act;*
- *Fisheries Act*
- *Management and Development of Local Fisheries Act*
- *Access to Fishing and Licensing Act*
- *Fisheries Enforcement Act*
- *Maritime Administrations Act and The Documentation and Identification of Vessels Act* (which provides for the registration of fishing vessels)
- *RMI Ports Authority Act*
- *Fisheries Regulations*

#### **Other policy and statutory documentation**

- The Pacific Forum Fisheries Agency Convention
- The Harmonised Terms and Conditions of Access (MTCs)
- Parties to the Nauru Agreement (and subsidiary arrangements – e.g. 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> implementing Arrangements)
- Palau Arrangement (establishing the Vessel Days Scheme)
- FSM Arrangement
- Convention on the Conservation and Management of High Migratory Fish Stocks in the Western and Central Pacific Ocean (and subsidiary material – e.g. conservation and management measures)
- MIMRA Annual Reports

#### **Previous external reports**

- Examples of external reports that are of particular relevance include:
- FFA Legislation Review – this internal review assessed the adequacy of the fisheries legislation of each of the FFA Pacific Island Country (PIC) members.
- MRAG FFA MCS Analytical Projects – A key element of the compliance review for these projects was to assess the adequacy of the existing legislation with respect to implementing domestic and international MCS obligations. The review highlighted some strengths in the existing legislation (e.g. provision for strong port state control measures, many of the FFA Harmonised Minimum Terms and Conditions of Access are reflected), however also a number of significant weaknesses (e.g. the legislation has not been updated to implement key measures agreed through the WCPFC, nor the PNA VDS).

### **3. Review and analyse the Marine Resources Act 1997 and the Marshall Islands Fisheries Regulations 1998 and outline and discuss legal issues to be addressed;**

Under this section of the TOR we will review the Marine Resources Act and Fisheries Regulations. Our lead Key Expert was for 2 years International Legal Advisor at FFA, providing legal advice to all FFA members, including, RMI, is intimately knowledgeable with the RMI 1997 Act and Fisheries Regulations.

The Marshall Islands Marine Resources Act was initially introduced (in Parliament) and enacted as the Marine Resources Act, 1997. In the codification of the Marshall Islands Revised Code, in 1997, the legislation was reformatted and split into its five different chapters under Title 51 of the *Marshall Islands Revised Code*, namely, Marshall Islands Marine Resources Authority Act (51 MIRC Chapter 1), the Fisheries Act (51 MIRC Chapter 2) Management and Development of Local Fisheries Act (51 MIRC Chapter 3) Fishing Access and Licensing Act (51 MIRC Chapter 4) and the Fisheries Enforcement Act (51 MIRC Chapter 5).

The legislation was obviously needed to modernize the Marshall Islands domestic fisheries regime, following the UNCED conference (in which the Marshall Islands participated), and the subsequent adoption of a series of international fisheries measures under the auspices of the FAO, and in particular, following the adoption of the 1995 UNFSA. The Marshall Islands legislation in essence captures a number of key principles of the 1995 UNFSA, such cooperation in conservation and management of highly migratory and straddling fish stocks through regional fisheries bodies, and the ‘precautionary approach.’

Although a number of reviews were conducted over the years, no amendments to the legislation have been effected to allow for the effective implementation and enforcement of measures the Marshall Islands had signed up to, post 1997, in particular the WCPFC and IPOA-IUU conservation and management measures, but also including key recent developments in the PNA (Nauru Group) and regional Coastal State management, particularly relating to the activities of foreign fishing vessels. In its current form, the legislation would only allow for limited implementation and enforcement of the measures developed by these various international and regional instruments.

The issue of coordination between the activities of the TCMI (Ship Registry) and MIMRA also needs to be addressed, as the registration and licensing of fishing vessels are carried out by these entities under different Acts, and through different lenses. TCMI registers fishing vessels under the authority of the Documentation and Identification of Vessels Act, whilst the MIMRA licenses fishing vessels under the fishing access and Licensing Act. Under the Documentation and Identification of Vessels Act, TCMI does not have any obligation to inquire into the background of fishing vessel or owner of the fishing vessel in the context of IUU activities. Given that there is no legislative directive of any sort for TCMI to coordinate the registration of fishing vessels with MIMRA, there is no guarantee that the TCMI will cooperate, given its business objective for more tonnage (thus more revenue).

**4. Consult with the FFA, SPC, MIMRA, the Attorney General Office and other fisheries stakeholders in the RMI;**

MRAG would take a participatory approach to this element, consulting with the agencies listed above as well as other agreed with MIMRA/the Regional Coordination Unit. Based on our initial review, we believe consultation would be required with the following agencies/people:

**RMI-Based Agencies/Entities**

**MIMRA**

Glen Joseph, Director

Sam Lanwi, Deputy Director

**Attorney General's Office**

Fred Canovar (AG)

Jack Jorbon (Asst)

**RMI Port Authority**

Jack Chong Gum (Director)

Joe Tiobech (Deputy)

**RMI Sea Patrol**

**Ministry of Foreign Affairs**

Ms Kino Kabua (Foreign Secretary)

**RMI Ship Registry**

James Myazoe

**MI Environmental Protection Authority**

**RMI Local Government Representatives**

24 Local Government Representative units exist, all but 5 with Offices in Majuro. Under RMI law, Local Governments have management responsibility for fisheries falling within 5nm of the coast. Local government representatives are best placed to speak on behalf of customary and artisanal fisher folk from outer islands.

**Ministry of Resources and Development**

Tommy Kijjner, Secretary

Chair – Parliamentary Committee on Resources and Development

**Relevant fishing companies/stakeholders**

Koo's Fishing Company Ltd (Eugene Muller, General Manager)

Marshall Islands Fishing Venture (MIFV)

Good Fortune Bay RMI Inc

Pacific Food Processors

**Relevant NGOs**

Marshall Islands Conservation Society (MICS)

### External Agencies

#### **FFA**

Dan Su'a, Director General

James Movick, Deputy Director General

Manu Tupou-Roosen, Legal Counsel

Pio Manoa, Legal Counsel

Dr Lara Manarangi-Trott, Coordinator and Policy Adviser – WCPFC

#### **PNA**

Dr Transform Aquorau, Director General

Mr Anton Jimwereiy, VDS Coordinator

#### **SPC**

Mr Mike Batty, FAME Director

Dr John Hampton, OFP Coordinator

Mr Lindsay Chapman, CFP Coordinator

#### **WCPFC**

Prof. Glenn Hurry, Executive Secretary

- 5. Organize a workshop to discuss the legal issues outlined by the consultant under item 3 above (one two-day workshop with 30 participants); (Make all the logistical arrangements, including invite participants, arrange travel, book and pay for transportation for participants as necessary, pay per diems or expenses of participants, and venue costs – subcontracting is allowed)**

The main aim of this workshop will be to discuss the legal issues identified under Activity 3 with a view to developing recommendations for the preparation of amendments to the MRA, and subsidiary legislation. Background material outlining the key issues arising from the literature review above will be developed by the Key Experts and provided to participants well in advance of the workshop. The workshop will also serve to validate that the issues raised by stakeholders under Activity 4 above have been adequately considered.

An important part of the success of the workshop will be ensuring adequate representation from both Government and non-Government stakeholders with an interest in the legislation. We would finalise a list of invitees with MIMRA and the Attorney General's Department prior to issuing invitations. However, we anticipate that this first workshop of the project would involve mostly local (RMI) government representatives, to identify key areas where the Act and Regulations need to be amended. We would expect at least the following groups to be invited:

- MIMRA
- Attorney General's Office
- Ministry of Foreign Affairs
- Sea Patrol
- PNA Office

- RMI Ports Authority
- Ministry of Resources and Development
- A selection of the most appropriate Local Government Representatives (the majority of these are Majuro-based; some may require transport from outer islands)
- Marshall Islands Ship Registry
- RMI Environmental Protection Authority (a key issue here will be to jurisdictional overlap and uncertainty that currently exists between EPA and MIMRA over issues such as marine pollution)
- Chair – Parliamentary Committee on Resources and Development

As discussed in “Project Support” below, MRAG would contract a local provider to assist with the organisation of the workshop. Our preference would be to contract MIMRA, consistent with the approach used successfully by MRAG Asia Pacific during a previous project (FFA MCS Analytical Projects). Under this project, staff from national fisheries agencies were hired as ‘facilitators’ to assist with arranging consultation and workshops in country, as well as follow up information requests and sourcing background material.

#### **6. Make visits in selected fishing sites in consultation with the MIMRA;**

The project team would make site visits as agreed with MIMRA under this element. However, we have assumed that there will not be a requirement to travel outside of Majuro Atoll. Flights to the outer islands are often unreliable, and few commercial boat-based transport options exist, so that any travel outside Majuro would require an overnight stay. This would be contrary to the statement in the Terms of Reference that “There will be in-country field visits not requiring overnights for this expert”.

Notwithstanding that, direct consultation with some representatives of customary sector as well as the main fishing enterprises can be undertaken on Majuro Atoll, as well as with a selection aquaculture companies. Our experience suggests that the more efficient means of canvassing the interests of customary and artisanal fishers in outer islands is to consult directly with their Local Government Representatives, all but 5 (out of 24) of which are based in Majuro. Local Representatives are elected by local communities to speak on their behalf, and through their respective local governments have direct management control over fisheries occurring within 5nm of the coast. We note that consultation with these groups is particularly important given the current absence of effective legal frameworks for fisheries management and enforcement in all but a few of the local government areas.

#### **7. Taking account of the findings and recommendations of the workshop, draft amendments to the main fisheries legislation and regulations to be submitted to the MIMRA and other stakeholders for comments;**

At the end of the workshop the project team will have acquired sufficient information and recommendations to enable it to draft amendments to the fisheries legislation and regulations that will enable RMI to act effectively to implement all recent developments of national, regional and international fisheries and environmental policy.

The actual drafting work will take several weeks. An initial draft will be circulated 1 week before the second workshop (see below) for comments by MIMRA and other stakeholders.

- 8. Organize one multi-disciplinary workshop involving fisheries, foreign affairs and legal expertise from the RMI and from regional fisheries bodies, and private sector representatives (fisher folk organizations and other NGO) to discuss the proposed amendments to RMI's main fisheries legislation and regulations (one two-day workshops with 30 participants). The consultant will be responsible for all organisational and logistical issues, for which subcontracting is allowed.**

We would anticipate similar logistical arrangements would attend the second workshop. However, a wider section of invitees would be appropriate, including as suggested in the TORs private/NGO sector organisations and international/regional fisheries bodies.

- MIMRA
- RFU
- Attorney General's Office
- Ministry of Foreign Affairs
- Sea Patrol
- PNA Office
- RMI Ports Authority
- Ministry of Resources and Development
- A selection of the most appropriate Local Government Representatives (the majority of these are Majuro-based; some may require transport from outer islands)
- Marshall Islands Ship Registry
- RMI Environmental Protection Authority (a key issue here will be to jurisdictional overlap and uncertainty that currently exists between EPA and MIMRA over issues such as marine pollution)
- Chair – Parliamentary Committee on Resources and Development
- Fishing company representatives (e.g. Koo's)
- Relevant NGOs (e.g. Marshall Islands Conservation Society)
- FFA
- SPC
- PNA
- WCPFC

As discussed in "Project Support" below, MRAG would contract a local provider to assist with the organisation of the workshop. Our preference would be to contract MIMRA, consistent with the approach used successfully by MRAG Asia Pacific during a previous project (FFA MCS Analytical Projects). Under this project, staff from national fisheries agencies were hired as 'facilitators' to assist with arranging consultation and workshops in country, as well as follow up information requests and sourcing background material.

- 9. Finalize draft amendments to main fisheries legislation and regulations, taking account of comments and recommendations made by the workshop in close collaboration with the MIMRA (and the Attorney General Office);**

Work on the amendments would be coordinated by MIMRA and the legislative draftsman/office/expert, taking into account the agreed amendments, other provisions of the legislation and provisions of other Acts (to avoid conflicts and over-laps). The draft amendments must be appended with a 'Bill Summary' which in essence an executive summary of the amendments. The Bill Summary must provide a brief background to the amendments, the purposes for the amendments, estimated financial implications in implementing the new provisions. The MIMRA Board is in principle, required to give its approval (formality) before Minister responsible takes the amendments to Cabinet for approval, clearing the way for the Minister to introduce the amendments in bill form, in Parliament. The Cabinet will also at that stage have the benefit of the Attorney-General's confirmation on the legality of the amendments.

Bills are read three times in Parliament. There is no debate after the first reading and the bill is immediately referred to the appropriate Standing Committee (in this case, the Nitijela Standing Committee on Resources and Development (R&D)). This allows the Committee to call for further review and comments and legal opinion. However if consultations have already taken place, it will hasten the process and ensure the smooth transition of the bill through the second and third readings.

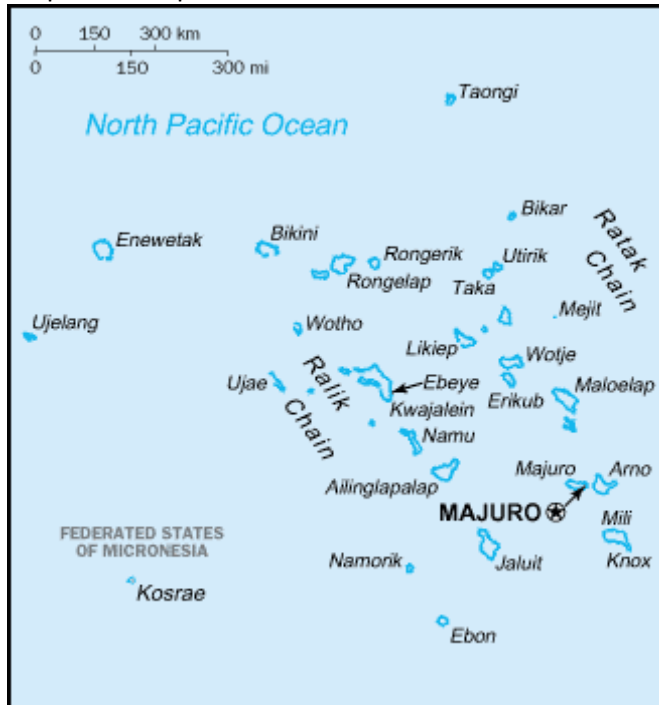
In Parliament, the success of the bill depends on the Minister (Introducer of the Bill) and the Chairman of R&D Committee. The Chairman can decide to sit on a bill and let it die a natural death – as such it is important to bring the Chair on board on the amendments.



## ANNEX 3: MARSHALL ISLANDS COUNTRY INFORMATION AND FISHERIES PROFILE

The Republic of the Marshall Islands (RMI) (see Map 1 below) is a low lying archipelago, consisting of two main chains of islands that run almost parallel, in a North-West to South-Easterly direction. In total, these two chains are made up of 29 atolls, and many more smaller islets, lying approximately between 4' and 14' degrees north and 160' degrees and 173' degrees east, in the mid-north west Pacific. In this position, RMI is the northern-most of the Pacific Island countries, and the eastern-most of the Micronesian group.<sup>4</sup> Whilst the islands and atolls are spread over an area of ocean approximately 750,000 square miles (sqm) of ocean, the total land area is no larger than 70 square miles (sqm), roughly the size of Washington DC.<sup>5</sup> RMI gained independence from the United States of America (U.S) in 1986. RMI is classified as 'developing country' under the World Bank 2009 classification.<sup>6</sup>

Map of the Republic of the Marshall Islands



Source: CIA World Factbook, 2011

The latest population estimates puts the population of RMI at approximately 64,522,<sup>7</sup> and growing at the rate of 2.08 percent per annum.<sup>8</sup> These estimates were largely predicted in the 1988 census figures, when the population was then, estimated only at approximately

<sup>4</sup>CIA, 'The World Fact Book-Marshall Islands' (2010) CIA World Fact Book Website <<https://www.cia.gov/library/publications/the-world-factbook/geos/rm.html>>.

<sup>5</sup>Global Education, 'Marshall Islands' (2009) Global Education Website <<http://www.globaleducation.edna.edu.au/globaled/go/pid/1477>>.

<sup>6</sup>World Bank, 'Country and Lending Groups' (2010) World Bank Website <<http://data.worldbank.org/about/country-classifications/country-and-lending-groups>>.

<sup>7</sup>CIA, 'Marshall Islands' (September 29, 2010) CIA Fact Book Website <<https://www.cia.gov/library/publications/the-world-factbook/geos/rm.html>>.

<sup>8</sup>CIA, 'Marshall Islands' (September 29, 2010) CIA Fact Book Website <<https://www.cia.gov/library/publications/the-world-factbook/geos/rm.html>>.

43,380.<sup>9</sup> Today, the population of RMI is spread across 19 atolls and four islands, with about two thirds of the total population residing on Majuro and Ebeye, the two main centres in the country. Majuro alone accounts for approximately 35% of the population.<sup>10</sup> The establishment of the seat of government on Majuro, and the introduction of commerce, and cash economy on the island, has resulted in the dramatic expansion of the population, as residents of other islands and atolls, move to Majuro in search of jobs and better lives.<sup>11</sup> However, today, RMI's economy continues to stagnate, in the face of difficult global economic conditions. With a weak private sector, the government continues to bear the burden, in terms of the labour workforce, employing approximately 46% of the salaried work force.<sup>12</sup> Fishing, farming, and handicrafts, combined with wholesale and retail, the hospitality industry, banking, fish products exports, and tourism, are all struggling to maintain strong footholds in the economy. In yet another sign of a weakened economy, US federal grants under the Compact of Free Association's economic provisions, make up more than 55% of the total annual budget for the Marshall Islands.<sup>13</sup>

### Marshall Islands Fisheries Profile

As a small island State, with few land-based natural resources to rely upon, RMI's only other viable alternative, is to concentrate on developing its rich marine resources, both oceanic fisheries and coastal marine resources. The national government's mandate to develop the fisheries sector, both oceanic and coastal, is vested in the Marshall Islands Marine Resources Authority (MIMRA), an agency established under Chapter 51 of the Code of the Marshall Islands which codifies the Marine Resources Act, 1997.

The stated mission of MIMRA is to facilitate the sustainable and responsible use of marine resources in RMI, with the objective of improving economic benefits from the fisheries sector within sustainable limits, promoting responsible private sector led fishery developments, and, strengthening institutional capacity to facilitate the responsible management and development of the nations fisheries resources.<sup>14</sup> In fulfilling its mission, MIMRA is empowered to:

- conserve, manage and control the exploration and exploitation of all living and non-living marine resources;
- establish and implement the EEZ management programme;
- issue licenses for the exploration and exploitation of the seabed and subsoil of the fishery waters;
- negotiate and, with the approval of Cabinet, to conclude foreign fishing agreements;
- participate in the planning and execution of programmes relating to fisheries or fishing, or the exploration or exploitation of the non-living resources of the fishery waters, seabed or subsoil;
- improving economic benefits from the fisheries sector within sustainable limits;

<sup>9</sup>Global Education, 'Marshall Islands at a Glance' (February 2009) Global Education Website <<http://www.globaleducation.edna.edu.au/globaled/go/pid/1477>>.

<sup>10</sup>Global Education, 'Marshall Islands at a Glance' (February 2009) Global Education Website <<http://www.globaleducation.edna.edu.au/globaled/go/pid/1477>>.

<sup>11</sup>Global Education, 'Marshall Islands at a Glance' (February 2009) Global Education Website <<http://www.globaleducation.edna.edu.au/globaled/go/pid/1477>>.

<sup>12</sup>US Department of State, 'Background Note: Marshall Islands' (July 14, 2010) US Department of State Website <<http://www.state.gov/r/pa/ei/bgn/26551.htm>>.

<sup>13</sup>See Marshall Islands Annual Budget Instruments since 1988.

<sup>14</sup>See RMI Fisheries Policy.

- promoting responsible private sector led fishery developments;
- strengthening institutional capacity to facilitate the responsible management; and,
- develop the nation's fisheries resources.<sup>15</sup>

Administratively, MIMRA is organized into two major divisions. The Oceanic and Industrial Division is responsible for the oceanic fishery, whilst the Coastal and Community Affairs Division looks after the coastal aspect of fisheries.<sup>16</sup>

### **Oceanic Fisheries**

The oceanic fisheries sector in RMI is still dominated by purse seine fishing by Distant Water Fishing Nations (DWFNs), largely targeting skipjack tuna.<sup>17</sup> The fleet is comprised of foreign flagged purse seines, pole-and-line, and longline vessels, as well as RMI flagged purse seine, and longline vessels.<sup>18</sup> In 2011, ten RMI-flagged Purse Seine vessels are fishing within the RMI EEZ and adjacent PNA waters and on the high seas in the WCPFC area. Four RMI-flagged long Line vessels are currently operating in EEZ out of MIFV fishbase. The remainder of the fishing fleet consists of foreign Purse Seine and Long Line, domestically-based foreign Long Line vessels and, Japanese Pole and Line vessels.

Table A3.1 below presents different fishing vessel activity (by flag) in RMI fisheries waters between 2005-2009. It can be seen from Table A3.1 that Pole and Lining is now the preserve of the Japanese vessels only. Purse seining involves the fleets of a number of countries, including the US, Japan, Korea, Chinese-Taipei and Papua New Guinea.

---

<sup>15</sup> See RMI Fisheries Policy.

<sup>16</sup> Marine Resources Act.

<sup>17</sup> MIMRA Annual Report 2008-09.

<sup>18</sup> MIMRA Annual Report 2008-09.

Table A3.1: Number of PS, LL & PL Vessels Licensed by MIMRA (2005 – 2009)<sup>19</sup>

Country	Purse seine					Longline				
	Year	2005	2006	2007	2008	2009	2005	2006	2007	2008
Belize	0	0	0	0	0	7	0	0	0	0
China	5	8	12	10	4	43	40	36	39	33
FSM	6	1	3	4	4	6	9	6	6	6
Japan	34	33	35	28	30	25	34	21	6	6
Kiribati	1	1	1	1	1	0	0	0	0	0
Korea	27	20	20	27	26	2	1	0	0	0
NZ	3	3	0	1	1	0	0	0	0	0
PNG	17	16	17	15	17	0	0	0	0	0
Ch - Taipei	34	19	13	27	18	5	6	1	2	0
Vanuatu	8	8	7	4	3	0	0	0	0	0
Solomons	3	0	0	0	0	0	0	0	0	0
USA	15	12	22	32	38	0	0	0	0	0
<b>Total</b>	<b>153</b>	<b>121</b>	<b>130</b>	<b>149</b>	<b>142</b>	<b>88</b>	<b>90</b>	<b>64</b>	<b>53</b>	<b>45</b>
	<b>Pole and line</b>									
	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>					
Japan	35	23	22	25	12					
<b>Total</b>	<b>35</b>	<b>23</b>	<b>22</b>	<b>25</b>	<b>12</b>					

A net economic benefit of \$6.2 million from the tuna industry accrued to RMI's economy for the period 2006-2007.<sup>20</sup> Although the overall benefits from the tuna industry were significantly buoyed by the onshore operations<sup>21</sup> in the form of fishing operations, processing, and support services. For fishing operations, MIMRA currently is a partner in a joint fishing venture with a private fishing company and is paid a dividend from profits generated by the venture.<sup>22</sup> An example of onshore-processing activity is the fish loining processing plant operated by the Pan Pacific Foods Inc. Onshore-support services come in the form of the fish base facilities, and other businesses on shore that cater to the needs of the fishing vessels.

The largest contribution to the offshore fisheries sector comes from access agreement. In 2010-2011 MIMRA was managing seven fishing access agreements, both bilateral and multilateral. These agreements comprised the US treaty, the Federated States of Micronesia Arrangement (FSMA), Japan Far Seas Purse Seine Fishing Association, Taiwan Deep Sea Boat Owners and Exporters Association, Amalatal Fishing Co. Ltd, Fong Seong Fisheries Group and the Distant Water Fishing Association of China Fisheries Association.<sup>23</sup> Table A3.2 below presents a list of current access agreements entered into by RMI.

<sup>19</sup> Source: MIMRA

<sup>20</sup> MIMRA Annual Report 2008-09, p.2

<sup>21</sup> MIMRA Annual Report 2008-09, p.3

<sup>22</sup> Amanda, Linda and Berry, p.43

<sup>23</sup> MIMRA Annual Report 2008-09.

Table A3.2: RMI Access Agreements

Party	Type	Administrator	Type
United States of America	Multilateral	FFA	Regional
Federated States of Micronesia Arrangement	Bilateral	FFA	Govt to Govt
Far Seas Purse Seine Fishing Association (KAIMAKI)	Bilateral	MIMRA	Govt to Industry
Federation of Tuna Fisheries Cooperative Association (NIKKATSUREN) / National Offshore Tuna Fisheries Association (KINKATSUKYO)	Bilateral	MIRA	Govt to Industry
Taiwan Deep Seas Boat Owners and Exporters Association	Bilateral	MIRA	Govt to Industry
Fong Seong Fishery Group	Bilateral	MIRA	Govt to Industry
Distant Water Fishing Association of Fisheries Association	Bilateral	MIRA	Govt to Industry

Source: MIMRA Annual Report 2008-09.

All the access agreements, with the exception of the United States of America Multilateral Treaty, are based on a template. As such, except for the fees (for fishing access and transshipment) the key terms and conditions of the agreements are consistent throughout. The agreements fully implement all the requirements of the FFA MTCs. They do so in a logical and easily accessible fashion. Matters addressed include: Common Regional Licence Form; Good Standing on the FFA Vessel Register; Control and Monitoring of Transshipment; Maintenance and Submission of Catch Logs in Zones and on High Seas; Vessel Reporting Requirements; Use of Observers; Appointment of agents; Foreign Fishing Vessels in Transit; Application of MTCs in Port; Flag State or Fishermen's Associations Responsibility; requirements for VMS; Identification of Fish Aggregating Devices; and Pre-Fishing Inspections. Further all the access agreements fully reflect sovereign rights by the coastal State and other aspects of the balance of rights and duties set out under the LOSC. Full use is made of the powers of the coastal State under LOSC Article 62(4) to impose a wide range of terms and conditions on fishing States seeking access to the waters of the Coastal State.

Overall, the oceanic fishery sector is looking at a downward trend in harvest, in terms of metric tons. For instance, for RMI flagged purse seine fleet operating in the WCPO in 2009, the total skipjack haul was measured at 40,517 mts, whilst yellowfin was recorded at 1,577 mt, and big eye tuna at 2,248 mt, over a period of 1,183 fishing and searching days.<sup>24</sup> These figures fall well below the 2006-2007 catch figures. For 1041 fishing days in 2007, the catch figures were 53,916 mts for skip jack tuna, 3,370 mts for yellowfin and 2118 mts for bigeye.<sup>25</sup>

Figure 1 below presents a summary of the total tuna catches in RMI waters between 2000 and 2009. From Figure 1 it appears the number of licensed vessels of all kinds have decreased since 1998/9.

<sup>24</sup> MIMRA Annual Report 2008-09, Table 13, p.21.

<sup>25</sup> MIMRA Annual Report 2008-09, Table 13, p.21.

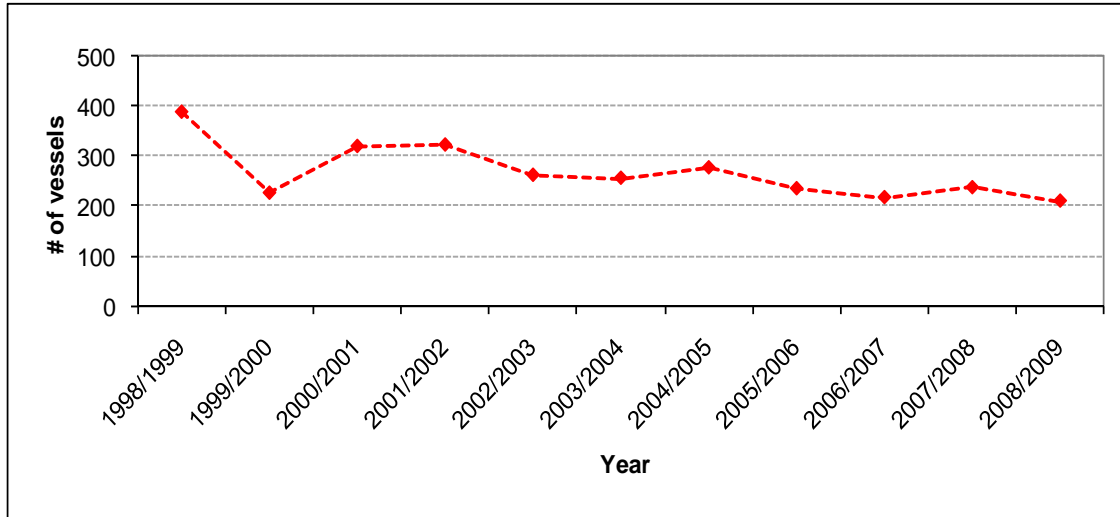


Figure A3.1: The number of Licensed Vessels from 1998/99 to 2008/09

### Transshipment

In addition to fishing operations, MIMRA also regulates transshipment of catch. Title 51 prohibits vessels licensed by MIMRA from transshipping at sea. All transshipment must be undertaken at a time and at a port, designated by the Director of MIMRA. Transshipment operations in Majuro ports are showing favorable returns, economically to the RMI, as well as to MIMRA's efforts to obtain and verify catch records. RMI recorded the highest number of transshipment in the period 2001-02 with 425 transshipments, followed by a sharp decline in 2003, that leveled off in the period between 2003 and 2008 and then a slight increase in 2009. In the period 2006-07, MIMRA recorded 109 transshipments.<sup>26</sup> In 2009, a total 208,706 mts of tuna was transshipped in Majuro ports.

Transshipment benefits the RMI through local purchases, taxes and fees, transshipment fees, agency fees, government officials over-time, and bunker licenses, to name a few.<sup>27</sup> Figure 2<sup>28</sup> reflects transshipment activities in the period 1998 through to 2009. The increase in revenues generated from transshipment activities in 2009 is attributed to the restructuring of transshipment fees.<sup>29</sup>

### Coastal Fisheries

The coastal fisheries resources of the Marshall Islands include a large variety of species groups, of which the finfish are the most important. The important families of finfish are: Lutjanidae, Lethrinidae, Serranidae, Scaridae, Labridae, Siganidae, Acanthuridae, Carangidae, Muligidae, and Holocentridae. Important non-fish coastal resources include giant clams,

<sup>26</sup> MIMRA Annual Report 2008-09

<sup>27</sup> MIMRA Annual Report 2008-09, p.9.

<sup>28</sup> MIMRA Annual Report 2008-09, p.31.

<sup>29</sup> MIMRA Annual Report 2008-09, p.31.

Trochus, octopus, mangrove crabs, lobster, beche de mer, turtles, and seaweeds.<sup>30</sup> There is a growing threat of overfishing in in-shore fisheries. Anecdotal evidence that stocks of the target species of rabbitfish are declining on Arno has prompted a stock assessment of this fish. There has been little assessment to date of the ability of coastal fisheries to support even the relatively small size of catch.

Coastal fisheries development is handled by the Coastal and Community Affairs Division, MIMRA. The Division works closely with the Local Governments to ensure that any measures undertaken by Local Governments are consistent with the law and MIMRA policy on coastal fisheries.

A major aspect of the task of the Coastal and Community Affairs Division is to assist communities around the RMI with community based fisheries projects, in aquaculture, mariculture, and generally fisheries management.<sup>31</sup> A number of community based fisheries projects and similar fishery activities also receive the support and assistance from MIMRA. The opening of fish markets in Majuro and Kwajalein, mean that local fisherman can sell their catch directly to the fish markets. MIMRA also operates fish farms in Majuro, and giant clam hatchers in Likiep, and recently in Arno. The clam farms supply local communities, re-stocks reef areas, or basically sells the product to other businesses. The Marshall Islands Mariculture Farm, a private entity also manages a clam farm. There is also the trade in aquarium products, such as live fish, clams, coral live rock, by local companies.<sup>32</sup> The opening of the fish market in Majuro and Kwajalein is also benefitting fisherman from the outer island communities, who sell directly to the fish base. In 2009 the Majuro fish base purchased a total of 65,681.6 lbs of fish from Arno, Jaluit, Maloelap and Aur, at a price of \$64,542.15

---

<sup>30</sup> Information on Fisheries Management In the Republic of the Marshall Islands (April 2002)<  
<http://www.fao.org/fi/oldsite/FCP/en/MHL/body.htm>

<sup>31</sup> MIMRA Annual Report 2008-09.

<sup>32</sup> MIMRA Annual Report 2008-09.

## ANNEX 4: SUMMARY OF FISHERIES AND RELATED LEGISLATION OF RMI

This Annex provides a summary of the principal fisheries legislation of RMI- Title 51 and associated legislation.

### ***The Marshall Islands Marine Resources Act (MIMRA Act)***

The *MIMRA Act* establishes the Marshall Islands Marine Resources Authority (MIMRA) whose primary function is to, ‘...conserve, manage and sustainably develop all resources in the Fishery Waters and seabed and subsoil there-under, in accordance with the principles and provisions in this Title and in sub-regional, regional and international instruments to which the Republic of the Marshall Islands is party.’<sup>33</sup> The relevant international fisheries commitments of RMI have already been summarized in Annex 5 and Annex 6 of this report. The Act vests in MIMRA, the powers to, establish fisheries management plans, issue fishing licenses, negotiate and conclude fishing access agreements, coordinate fisheries monitoring and control, appoint observers, and regulate the processing and marketing of fish. The Act also empowers MIMRA to regulate fishing activities such as, catching, loading, landing, handling, transporting, possession, inspection, disposal and export of fish, the operation of vessels in the Fishery Waters, the use and protection of fishing gear and equipment, licensing, fisheries monitoring control and surveillance, marine pollution, the powers of MIMRA employees, the fishing activities of nationals, and fishing activities of vessels on the high seas, and in areas managed by RFMOs.<sup>34</sup>

MIMRA is governed by a Board of Directors consisting of seven members, of which, the Minister for Resources and Development, the Attorney-General (or his/her designee) and the Secretary of Foreign Affairs, are members.<sup>35</sup> The Chair of the Board is the Minister for Resources and Development, currently the Hon. Mr. Matlan Zachkras. The Board is required to meet least, four times a year.<sup>36</sup> The day-to-day administration of the Authority is vested in the Executive Director of MIMRA, currently Mr. Glenn Joseph.

### ***Fisheries Act***

The Fisheries Act establishes the duties obligations, powers, and functions of MIMRA in regards to the conservation and management of fisheries within RMI’s fishery waters. The Act imposes upon MIMRA, the duty to ensure the long-term conservation and management of such fisheries, undertaken through a number of measures. MIMRA is required to implement measures to maintain or to restore stock levels to levels that would produce maximum sustainable yields, based on the best available scientific evidence, and apply the precautionary approach.<sup>37</sup>

In addition, MIMRA is empowered under the Act to determine total levels of fishing, and allocation of fishing rights, participatory rights, including allocation of allowable catch. MIMRA may allocate participatory rights with certain conditions relating to issues such as

---

<sup>33</sup>The Marine Resources Act, §.119.

<sup>34</sup>The MIMRA Act §.120.

<sup>35</sup>The MIMRA Act, §.113.

<sup>36</sup>The MIMRA Act, §.115.

<sup>37</sup>The Fisheries Act §. 203



vessel type, gear type, open fishing seasons and areas and zones of fishing.<sup>38</sup> To date, MIMRA has not allocated any fishing and participatory rights. MIMRA may also inquire into issues such as the history of vessels in complying with Marshall Islands fisheries laws, and the need for investment in RMI.<sup>39</sup>

Furthermore, the Act authorizes MIMRA to take further measures such as, closing off certain fishing areas, prohibiting fishing and the taking of fish of a certain size, prohibiting the landing, sale, display or offering for sale, transporting, receiving or possession of fish, designating marine parks and reserves, designation of Fisheries Exclusion Zones, and to cooperate with other States in the management of highly migratory stocks.<sup>40</sup>

### ***Fishing Access and Licensing Act***

The Fishing Access and Licensing Act, vests in MIMRA, the powers to regulate fishing activities of both foreign and domestic fishing vessels in the fishery waters of RMI. The geographical scope of the Act is limited to the RMI fishery waters and does not extend beyond in respect of RMI flagged vessels. This issue is discussed in Annex 6 in relation to the gaps in the existing legislation in terms of RMI's international obligations.

The Fishing Access and Licensing Act imposes a general prohibition on vessels entering and remaining within the fishery waters of the Marshall Islands without the permission of MIMRA (unless such vessels are on an innocent passage, or under duress, from a force majeure). This raises broader questions about consistency with international law, but these questions are beyond the scope of this report. All RMI flagged and fishing foreign fishing vessels are prohibited from engaging in fishing activities within the fishery waters of RMI, unless such fishing activities are being carried out under the authority of a license, an access agreement and the necessary statutory licenses have been issued to such fishing vessels.<sup>41</sup> Licensing requirements under the Act extend to all fishing activities, inclusive of transshipment, mariculture, aquaculture, the marketing of fish taken from the fishery waters, fish processing, commercial pilot fishing, marine scientific research and the exploration of non-living resources.<sup>42</sup>

All fishing licenses must incorporate the minimum terms set out under the Act, which include acknowledging the sovereign rights of RMI in its fishery waters, compliance with the terms of each agreement, allowing and facilitating on-board observers, displaying of license numbers, on the vessel's hulls, installation of VMS capability, and compliance with vessel and gear marking specifications. Additionally MIMRA may require periodic reporting from vessels in the fishery waters, on type of gear used, the positions of the vessel at given times, or the species of fish being targeted.<sup>43</sup> Where a fishing vessel is found to have violated the terms of the access agreement or its license, MIMRA may revoke such license, suspend such license, or impose additional conditions on the license. All licenses issued under the Act remain valid for a period of 12 months.<sup>44</sup>

---

<sup>38</sup> The Fisheries Act §.206.

<sup>39</sup> The Fisheries Act, Part I.

<sup>40</sup> The Fisheries Act §.208

<sup>41</sup> The Fishing Access and Licensing Act, §.403.

<sup>42</sup> The Fishing Access and Licensing Act, §.411.

<sup>43</sup> The Fishing Access and Licensing Act, §420.

<sup>44</sup> The Fishing Access and Licensing Act, §.416.

### ***Fisheries Enforcement Act***

The Fisheries Enforcement Act vests responsibility for the enforcement of RMI fisheries laws in MIMRA. The Act consists of three main parts that deal with, the monitoring, control, and surveillance powers of MIMRA and authorized officers,<sup>45</sup> the jurisdiction of the High Court of RMI to enforce fisheries laws,<sup>46</sup> and the forfeiture and disposition of seized or confiscated property.<sup>47</sup>

The Act allows for the appointment of ‘authorized officers,’ to assist the Executive Director and MIMRA carry out enforcement activities in the fishery waters of RMI. In addition to authorized officers appointed by MIMRA, officers serving in the Department of Public Safety are, by virtue of their employment, deemed for the purposes of the Act to be authorized officers.<sup>48</sup> However, no specific training is provided to these “authorized officers” to ensure that they are familiar with the requirements under the Act.

The powers and functions of MIMRA, and authorized officers under the Act, are quite extensive, and include the powers to stop, board and inspect fishing vessels within the fishery waters of RMI, and to stop, board, and inspect fishing vessels flying the RMI flag on the high seas. The Act also vests in authorized officers, the powers to request certain information from vessels in the fishery waters of RMI, to inspect the necessary licenses, logbooks and any other records, to examine the gear, and to arrest any persons obstructing such enforcement procedures.<sup>49</sup> Where a vessel is seized, MIMRA and any authorized officer are authorized to remove parts from the fishing vessel in order to immobilize such fishing vessel.<sup>50</sup>

Furthermore, the Act requires that all fishing vessels licensed to fish in the fishery waters of RMI must allow and assist authorized observers in the performance of their functions, including boarding for compliance monitoring, grant such observers full access to the bridge, navigation charts, fish and processing areas, and full access to the ships records, including log-books, and grant such observers full access to the gear, and navigation equipment. Observers are authorized under the Act to take samples from fishing vessels, and to take photographs of fishing operations, gear, equipment, charts, records, and to send and receive messages via the communication equipment on board the fishing vessels. In this respect, the master and crew of fishing vessels are under a legal duty to cooperate and comply with the instructions of authorized officers and observers.

The obstruction of an observer, assault of an observer, resistance or refusal by a master, and a member of the crew to assist or cooperate, is an offence under the Act, punishable by a maximum term of imprisonment of not more than six months, and a fine not exceeding \$100,000, or both.<sup>51</sup> This provision is consistent with the general approach taken by all FFA countries. However, the provision raises an issue about consistency with the LOSC as Article 73(3) of the LOSC prohibits the imposition of imprisonment terms on foreign fishing vessels for the violation of coastal fisheries laws and regulations in the EEZ. The Act also requires fishing vessels not authorized to fish in a particular area within the Marshall Islands fishery

---

<sup>45</sup> Fisheries Enforcement Act Part I.

<sup>46</sup> Fisheries Enforcement Act Part II.

<sup>47</sup> Fisheries Enforcement Act Part III.

<sup>48</sup> Fisheries Enforcement Act, §503.

<sup>49</sup> Fisheries Enforcement Act, §.504.

<sup>50</sup> Fisheries Enforcement Act, §.506.

<sup>51</sup> The Fisheries Enforcement Act, §.509.

waters, to stow their gear, when passing through the area.<sup>52</sup> The penalty for violating this provision is \$100,000.

### ***The Maritime Administrations Act***

The Maritime Administrations Act<sup>53</sup> was enacted to provide RMI the necessary legal framework to discharge flag State duties. The Act establishes the office of the 'Maritime Administrator' and confers upon Cabinet the authority to appoint the 'Maritime Administrator.' Consistent with the functions of a flag administrator, the Act vests in the Maritime Administrator, certain powers and functions to allow the Maritime Administrator to effectively carry out the flag State duties of RMI. t. The Maritime Administrator is empowered under the Act to:

*...administer all matters pertaining to vessels of the Republic that are subject to the provisions of this Title; promulgate Rules and Regulations to carry out the provisions of this Title; and ensure the seaworthiness and proper manning conditions of such ships, yachts and fishing vessels registered under the laws of the Republic.*<sup>54</sup>

The Act also provides for the appointment of Commissioners of Maritime Affairs, and Special Agents,<sup>55</sup> to assist the Maritime Administrator, in the discharge of their flag State functions. Commissioners' and 'special agents' are vested with the powers to administer oaths,<sup>56</sup> to issue licenses, certificates and related documents for officers and ship personnel, as regulated by the STCW 1978, on behalf of the Maritime Administrator. The Maritime Administrator retains the authority to suspend, or revoke licenses, certificates, and any other document issued under the Act, where the circumstances warrant such action.<sup>57</sup>

Part I requires the Maritime Administrator to maintain a register of documents relating to ships that fly the flag of the RMI. The Act calls for such records to be maintained in the Central Offices of the Maritime Administrator, located in the United States of America.

Part III of the Act requires all vessels that are entitled to fly the flag of the RMI to undergo periodic inspections, and to carry on board the necessary certificates<sup>58</sup> whilst Part IV, incorporates the provisions of the Convention on International Regulations For Preventing Collision at Sea.<sup>59</sup>

### ***Documentation and Identification of Vessels Act***

Another relevant law, is the *Documentation and Identification of Vessels Act*,<sup>60</sup> Part I, which regulates, the registration of vessels, deals with critical technical issues such as the

---

<sup>52</sup>The Fisheries Enforcement Act, §.522

<sup>53</sup>47 MIRC Chapter I, Maritime Administrations Act.

<sup>54</sup>47 MIRC Chapter 1, Maritime Administrations Act, §103.

<sup>55</sup>47 MIRC Chapter 1, Maritime Administrations Act, §.106.

<sup>56</sup>47 MIRC Chapter 1, Maritime Administrations Act, §.108.

<sup>57</sup>47 MIRC Chapter 1, Maritime Administrations Act, §.110.

<sup>58</sup>47 MIRC Chapter 1, Maritime Administrations Act, §.140.

<sup>59</sup>47 MIRC Chapter 1, Maritime Administrations Act §.150.

<sup>60</sup>47 MIRC Chapter 2, Documentation and Identification of Vessels Act , §§202, 203 and 204.

conditions which would qualify a ship for registration under the RMI,<sup>61</sup> the registration fees and tonnage taxes,<sup>62</sup> Permanent and Provisional Certificates of Registry, and the conditions for the issuance of such certificates,<sup>63</sup> the surrender and cancellation of registry documents,<sup>64</sup> and the names, numbers and marking of vessels.<sup>65</sup> Part I also authorizes the Maritime Administrator, to engage Classification Societies to assist in the maintenance of safety standards.<sup>66</sup>

The Act also authorizes the Maritime Administrator to register seagoing vessels engaged in foreign trade, and commercial yachts, and private yachts that are 12 meters or more in length. Commercial vessels that are older than 20 years may be refused registration under the Act, unless proof is submitted to show that the vessel is 'in class.' Furthermore, Vessels of 15 years of age or more, are required under the Act to submit copies of the Status Report of the vessel's Statutory Survey and Certification, and the vessels latest Special Survey Report, along with its application for registration.<sup>67</sup> Part II of the Act prohibits the registration of a vessel in the RMI, unless such vessel has been duly measured by the Maritime Administrator, or a person duly appointed by the Maritime Administrator, in accordance with the Act. Section 251 requires the measurements to specify, the building of the vessel, the number of decks and masts, the length, breadth, depth, tonnage or tonnages, and such other particulars usually descriptive of the identity of a vessel, and further, to certify that the markings required by the Act, have been complied with. Such certificate shall also indicate the ship's net and gross tonnage.

Parts III and IV of the Act, regulate the registration of bare-boat charters, whilst Parts V and VI, regulate the registration of yachts, and fishing vessels, respectively. Of particular interest in the current review, are the provisions of Section 279 of Part VI of the Act which governs the registration of fishing vessels.

Under the Documentation and Identification of Fishing Vessels Act, a fishing vessel is eligible to be registered by the Maritime Administrator (Ship Registry) if :(a) it is owned, to the prescribed extent, by a citizen or national of the Republic, or a foreign maritime entity qualified in the Republic; (b) such other conditions are satisfied as are prescribed under Part I and Part II of this Chapter; (c) a certificate of survey, statement of compliance or similar documentation, is received from the owner; and (d) an application for fishing vessel registration is duly made.

The Act goes on further to prescribe that fishing vessels are to be documented in the same way as merchant vessels, subject to the laws and regulations established by the Maritime Administrator (Ship Registry) -and the laws and treaty obligations of the RMI. There is no reference to the RMI Fisheries laws and no acknowledgement of the role of MIMRA or the obligations of RMI under international fisheries instruments. There is also no reference whatsoever in the Documentation and Identification of Fishing Vessels Act to the background of the fishing vessel/owner or the IUU record of the vessel.

---

<sup>61</sup> 47 MIRC Chapter 2, Documentation and Identification of Vessels Act , §§202, 203 and 204.

<sup>62</sup> 47 MIRC Chapter 2, Documentation and Identification of Vessels Act , §§205 and 206.

<sup>63</sup> 47 MIRC Chapter 2, Documentation and Identification of Vessels Act, §§208 and 214.

<sup>64</sup> 47 MIRC Chapter 2, Documentation and Identification of Vessels Act, §§215, 223 and 224.

<sup>65</sup> 47 MIRC Chapter 2, Documentation and Identification of Vessels Act, §§. 230, 231, 232.

<sup>66</sup> 47 MIRC Chapter 2, Documentation and Identification of Vessels Act, §237.

<sup>67</sup> Marshall Islands Maritime Regulations Chapter 1.

Furthermore, neither the Documentation and Identification Act nor the MIMRA Act provide for a 'legislative direction' to the Ship Registry and MIMRA to coordinate the registration of fishing vessels so that the RMI honours its international fisheries obligations. In other words, the Ship Registry has no obligation to check the IUU fishing background of fishing vessels/owners. At the moment (as was stated in the Workshops) such coordination is carried out on ad-hoc basis, merely by way of a 'gentleman's agreement'. This disconnect has always been a bone of contention between MIMRA and the Ship Registry.

Finally under the Documentation and Identification of Vessels Act, the registration of a fishing vessel may be refused where in the opinion of the Registry - it is inappropriate to do so. Registration may be terminated where: (a) having given regard to matters relating to subsection (1) above, it would be detrimental to the interests of the Republic or of international shipping for a registered fishing vessel to continue to be registered; (b) a penalty imposed on the owner of a registered fishing vessel in respect of a contravention of this Title, or of any instrument in force under this Title, has remained unpaid for a period of more than three (3) months; (c) the annual tonnage tax has remained unpaid for a period of more than one (1) year; or (d) the vessel becomes a total or constructive total loss. The language above is rather general and again with no specific references to RMI fisheries obligations.

### ***RMI Ports Authority Act, 2003***

The RMI Ports Authority Act, 2003 establishes the RMI Ports Authority, whose main functions are, to establish, maintain and operate port facilities at its ports, to provide facilities and services at its ports, to operate or assist in operating landing facilities in the outer islands, to provide navigational aids and to regulate the movement of aircraft and ships in and around the ports, to provide security at its ports, to provide services and facilities to ships and/or aircrafts using its ports, to support the overall government strategic development of civil aviation and shipping plans within the Republic, to perform other functions related to the use of its ports.<sup>68</sup> The Act directs the Authority to implement policy that is sound, and one that is in conformance with the goals and priorities of the national government. The Act provides for the appointment of a Director as head of the Authority and the employment of necessary staff to assist the Director in carrying out the functions of the Authority.

Part VIII Division 1 of the Act vests in the Director, certain enforcement powers. Part VIII also provides for criminal penalties for violations under the Act, such as unlawful entry into port area, failure to comply with directions, infringement notices, refusing to provide information, and discharge of toxic material, amongst others.<sup>69</sup>

### ***Ports of Entry Act***

The Ports of Entry Act regulates the entry of vessels into the Republic. The Act designates official ports of entry and prohibits vessels from entering the Republic without first gaining clearance at the official ports of entry. The Act designates the following ports as official ports of entry. In Kwajalein, the Act designates, Kwajalein Anchorage, Kwajalein Airstrip, and Ebeye Anchorage. For Majuro, the Act designates Darrit Anchorage and the Majuro

---

<sup>68</sup> RMI Ports Authority Act, 2003, §106.

<sup>69</sup> RMI Ports Authority Act, 2003, §154, 155, 156, 157 and 158.

International Airport. The Act also designates Jabor Island and Jaluit Atoll as official ports of entry. Entry permits are issued by the Secretary, Ministry of Transport and Communications. Section 205 of the Act provides that: 'All vessels and aircraft entering and departing a port of entry shall be subject to immigration inspection, customs inspection, agricultural inspection and quarantines, public health inspection and quarantines, and other administrative inspections authorized by law. If any vessel or aircraft not being in distress enters or attempts to enter a port in violation of the provisions of this Section, such information shall be communicated by the fastest available means to the Marshall Islands Police or the Secretary of Transportation and Communications.'

## ANNEX 5: SUMMARY OF KEY INTERNATIONAL FISHERIES INSTRUMENTS APPLICABLE TO RMI

This Annex summarises the provisions of the key binding international fisheries instruments which RMI is party to and the the “soft law” instruments which provide policy guidance for the implementation of the binding international instruments.

### **United Nations Convention on the Law of the Sea (1982)<sup>70</sup>**

The United Nations Law of the Sea Convention (LOSC) is the most comprehensive ocean treaty upon which most legal instruments on fisheries build on. The LOSC was a product of multilateral negotiations from 1973 through 1982 during the third United Nations Conference on the Law of the Sea (UNCLOS III). The LOSC was opened for signature on 10 December 1982 and came into force on 16 November 1994. The LOSC provides the basic legal framework that regulates all marine sector activities, including the utilisation of the resources of the sea, the preservation of the marine environment and relations among States in so far as marine sector activities are concerned.

The most important aspects of the LOSC with regard to fisheries relate to the establishment of the exclusive economic zone (EEZ), imposition of conservation and management measures for fish stocks in the EEZ, requirements for cooperation among States to manage fish stocks and provisions on the conservation, management and utilisation of high seas fisheries such as the implementation of flag State duties, as well as the duty to cooperate among States to manage high seas fisheries. The LOSC establishes varying degrees of rights and duties of States with respect to the conservation and management of fisheries resources in accordance with the maritime zone where such resources are located (internal waters, archipelagic waters, and territorial seas, exclusive economic zones, continental shelf areas and high seas) as well as on the type of fish stocks (straddling stocks, highly migratory species, marine mammals, anadromous stocks and catadromous species) that occur in them. The LOSC provides for the determination of the allowable catch and the establish conservation measures on the basis of best scientific evidence available which maintains or restores populations of harvested species at levels which can produce the maximum sustainable yield, as qualified by relevant environmental and economic factors. This determination should take into account the special requirements of developing States, fishing patterns and generally recommended international minimum standards.

### **FAO Compliance Agreement (1993)<sup>71</sup>**

The *Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas* (FAO Compliance Agreement) was unanimously approved, subject to acceptance, at the 27th Session of the Conference of the FAO in November 1993 and entered into force on 24 April 2003. The FAO Compliance Agreement was developed in order to address concerns over the practice of reflagging of vessels in order to avoid high seas conservation and management measures determined by regional fisheries organizations. The Compliance Agreement strengthens ‘flag-state responsibility’ by improving the regulation of fishing vessels on the high seas. This is done through the obligation of parties to the Agreement to maintain an authorisation and

---

<sup>70</sup> RMI acceded to the LOSC on 9<sup>th</sup> August 1991.

<sup>71</sup> RMI has not ratified the Compliance Agreement

recording system for high seas fishing vessels and to ensure that vessels registered under their flags do not undermine international conservation and management measures.

The Compliance Agreement applies to vessels used or intended for fishing on the high seas. However, a party may exempt fishing vessels less than 24 metres in length, unless the exemption undermines the effectiveness of international conservation and management measures. The Agreement requires a State Party to maintain a record of fishing vessels entitled to fly its flag and authorized for use on the high seas, and to take such measures as are necessary to ensure that all such vessels are entered on that record. It also provided for international cooperation, specifically exchange of information, port state cooperation, and for parties to enter into cooperative agreements or arrangements of mutual assistance on a global, regional, subregional or bilateral basis in order to achieve the objectives of the Agreement.

### **UN Fish Stocks Agreement (1995)<sup>72</sup>**

*The Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks* (UN Fish Stocks Agreement) was adopted on 4 August 1995 by the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks and opened for signature on 4 December 1995 and entered into force on 11 November 2001. The UN Fish Stocks Agreement elaborates upon provisions of LOSC and aims to improve the international management of fishing on the high seas. The UN Fish Stocks Agreement seeks to ensure the long-term conservation and sustainable use of straddling and highly migratory fish stocks by strengthening the legal regime for their conservation and management through global, regional and sub-regional fisheries management organisations (RFMOs). The Agreement provides that conservation and management of straddling and highly migratory fish stocks must be based on the precautionary approach and the best available scientific information. Further, the measures in areas under national jurisdiction and in the adjacent high seas must be compatible and coherent, recognise the special requirements of developing States, and there are effective mechanisms for compliance and enforcement of those measures on the high seas.

### **The FAO Compliance Agreement**

*The Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas* (the FAO Compliance Agreement) was adopted by the Twenty-seventh Session of the FAO Conference in 1993 but is not yet in force. The purpose of the FAO Compliance Agreement is to promote Flag State responsibility and reinforce the effectiveness of international fisheries conservation and management measures. It does this by redefining and reinforcing Flag State responsibility in a number of specific ways intended to control the vessel re-flagging problem. It also provides a framework for States to exchange information about all high seas operations and to eventually create a global register of information about high seas fishing vessels. The FAO Compliance Agreement complements the UN Fish Stocks Agreement and is closely linked to the non-binding FAO Code of Conduct. There are areas of difference and emphasis between the Fish Stocks Agreement and the Code. However these should not be over-emphasised. Due to the UN Fish Stocks Agreement being in force and more widely accepted, the

---

<sup>72</sup> RMI ratified the UN Fish Stocks Agreement on 23 May 1997



approach taken to particular issues by the Fish Stocks Agreement is probably to be preferred to those set out in the FAO Compliance Agreement.

The FAO Compliance Agreement applies to fishing vessels that are used or intended to be used for fishing on the high seas (Article II(1)). Generally, a State can exempt a vessel less than 24m long unless the exemption would undermine the purposes and objectives of the Agreement (Article II). However, even if a State has exempted a vessel of less than 24m, it must still take effective measures if the vessel undermines conservation and management measures (Article III).

The most significant provision in the FAO Compliance Agreement is that of Flag State responsibility (Article III). Each State is obliged to 'take such measures as may be necessary to ensure that fishing vessels entitled to fly its Flag do not engage in any activity that undermines the effectiveness of international conservation and management measures' (Article III(1)(a)). A vessel can only fish on the high seas if it is authorized to do so by the Flag State and fishing must occur in accordance with the conditions of that authorization. A State must take enforcement measures against vessels contravening the agreement.

Parties to the FAO Compliance Agreement are to encourage non-parties to accept the Compliance Agreement and to adopt national laws consistent with it (Article VIII). Parties are to co-operate to ensure that vessels of non-party Flag States do not engage in activities to undermine conservation and management measures.

Other provisions in the FAO Compliance Agreement require States to keep records of vessels (Article IV), to make certain information available to the FAO (Article VI) and to assist developing countries to implement the Compliance Agreement (Article VII). Provision is also made to encourage international cooperation (Article V). States must co-operate to implement the Agreement and exchange information so as to assist other States to monitor their vessels when engaged in activities that undermine conservation and management measures. When a foreign vessel is in port, the Port State should notify the Flag State. States are to make cooperative agreements and arrangements to achieve the objectives of the Agreement.

### **FAO Port State Measures Agreement (2009)<sup>73</sup>**

The *Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing* (FAO Port State Measures Agreement) was approved by the FAO Conference at its Thirty-sixth Session on 22 November 2009. The objective of the Agreement is to prevent, deter and eliminate IUU fishing through the implementation of effective port State measures, and thereby to ensure the long-term conservation and sustainable use of living marine resources and marine ecosystems. The Port State Measures Agreement respects the sovereignty of Parties over their internal, archipelagic and territorial waters or their sovereign rights over their continental shelf and in their EEZs and allows Parties the exercise of their sovereignty over ports in their territory in accordance with international law, including their right to deny entry thereto as well as to adopt more stringent port State measures than those provided for in the Agreement.

The position of RMI with respect to the ratification of the FAO Port State Measures Agreement is not clear. It should be mentioned however, that the WCPFC has commenced discussion of a draft Conservation and Management Measure on Port State Measures,

---

<sup>73</sup> RMI has neither signed nor ratified the Port State Measures Agreement.

introduced by the European Union 2010. The provisions of the under consideration by the WCPFC mirror the requirements of the FAO Port State Measures Agreement. It is expected that this draft will be adopted in the December 2011 Annual Meeting of the WCPFC.

#### **FAO Code of Conduct (1995)<sup>74</sup>**

The Code of Conduct for Responsible Fisheries was initiated in 1991 by the FAO Committee on Fisheries and unanimously adopted on 31 October 1995. While the Code is voluntary in nature, parts of it were based on relevant rules of international law, including those in the LOSC, AO Compliance Agreement, and the UN Fish Stocks Agreement. It is global in scope, and is directed toward both members and non-members of FAO, fishing entities, sub regional, regional and global organizations, whether governmental or non-governmental, and all persons concerned with the conservation of fishery resources and management and development of fisheries, such as fishers, those engaged in processing and marketing of fish and fishery products and other users of the aquatic environment in relation to fisheries. The Code provides principles and standards applicable to the conservation, management and development of all fisheries. It also covers the capture, processing and trade of fish and fishery products, fishing operations, aquaculture, fisheries research and the integration of fisheries into coastal area management.

Within the framework of the Code of Conduct for Responsible Fisheries four international plans of action (IPOAs) have been developed to date. The IPOAs were adopted at the twenty-third Session of the FAO Committee on Fisheries in February 1999 and endorsed by the FAO Council on November 2000. The four IPOAs are voluntary instruments which apply to all States and entities and to all fishers.

#### **IPOA IUU (2001)<sup>75</sup>**

The *International Plan of Action to Prevent, Deter, and Eliminate Illegal, Unreported and Unregulated Fishing* (IPOA-IUU) was adopted by consensus at the Twenty-fourth Session of COFI on 2 March 2001 and endorsed by the Hundred and Twentieth Session of the FAO Council on 23 June 2001. The objective of the IPOA-IUU is to prevent, deter and eliminate IUU fishing by providing all States with comprehensive, effective and transparent measures by which to act, including through appropriate regional fisheries management organizations established in accordance with international law. The IPOA-IUU gives due consideration to the special requirements of developing countries in accordance with Article 5 of the FAO Code of Conduct.

The IPOA-IUU considers it an obligation of all States to give full effect to relevant norms of international law, in particular as reflected in the LOSC, in order to prevent, deter and eliminate IUU fishing. It encourages all States, as a matter of priority, to ratify, accept or accede to the LOSC, the UN Fish Stocks Agreement and the FAO Compliance Agreement and for those States that have not ratified, accepted or acceded to these relevant international instruments to not act in a manner inconsistent with these instruments. The IPOA-IUU provides that States should develop and implement, as soon as possible but not later than three years after the adoption of the IPOA, national plans of action to further achieve the objectives of the IPOA and give full effect to its provisions as an integral part of their

---

<sup>74</sup> RMI has provided biennial reports on the implementation of the Code of Conduct to FAO

<sup>75</sup> RMI has developed a draft IUU National Plan.

fisheries management programmes and budgets. These plans should also include, as appropriate, actions to implement initiatives adopted by relevant regional fisheries management organizations to prevent, deter and eliminate IUU fishing.

The IPOA-IUU provides for cooperation between States through direct cooperation or coordination of their activities or through the relevant regional fisheries management organizations, in preventing, deterring and eliminating IUU fishing. This can be done through the exchange data or information, preferably in standardized format, from records of vessels authorized by them to fish, in a manner consistent with any applicable confidentiality requirements; cooperation in respect of MCS and enforcement in the investigation of IUU fishing, cooperation in the transfer of expertise and technology; cooperation to make policies and measures compatible; cooperate in monitoring, control and surveillance, including through international agreements. The IPOA-IUU contains specific provisions for flag State, coastal State and port State responsibilities and measures in order to prevent, deter and eliminate IUU fishing.

### **IPOA-Capacity (1999)<sup>76</sup>**

The *International Plan of Action for the Management of Fishing Capacity* (IPOA-Capacity) addresses the issue of excess fishing capacity in world fisheries as a problem that contributes substantially to overfishing, the degradation of marine fisheries resources, the decline of food production potential, and significant economic waste. The immediate objective of the IPOA-Capacity is for States and regional fisheries organizations, to achieve an efficient, equitable and transparent management of fishing capacity. In order to achieve this end, the IPOA-Capacity encourages States and regional fisheries organizations with an overcapacity problem to endeavour initially to limit at present level and progressively reduce the fishing capacity applied to affected fisheries. The above objective may be achieved through a series of actions related to four major strategies: (1) the conduct of national, regional and global assessments of capacity and improvement of the capability for monitoring fishing capacity; (2) the preparation and implementation of national plans to effectively manage fishing capacity and of immediate actions for coastal fisheries requiring urgent measures; (3) the strengthening of regional fisheries organizations and related mechanisms for improved management of fishing capacity at regional and global levels; and (4) immediate actions for major trans-boundary, straddling, highly migratory and high seas fisheries requiring urgent measures.

### **IPOA -Seabirds (1999)**

The *International Plan of Action for Reducing Incidental Catch of Seabirds in Longline Fisheries* (IPOA-Seabirds) arose out of concerns over the impacts of the incidental catch of seabirds in various commercial longline fisheries in the world. The key longline fisheries in which incidental catch of seabirds are known to occur are: tuna, swordfish and billfish in some particular parts of oceans; Patagonian toothfish in the Southern Ocean, and halibut, black cod, Pacific cod, Greenland halibut, cod, haddock, tusk and ling in the northern oceans (Pacific and Atlantic). The species of seabirds most frequently taken are albatrosses and petrels in the Southern Ocean, northern fulmars in the North Atlantic and albatrosses, gulls and fulmars in the North Pacific fisheries.

---

<sup>76</sup> RMI has yet to develop a National Plan of Action to implement the IPOA-Capacity

The objective of the IPOA-Seabirds is to reduce the incidental catch of seabirds in longline fisheries where this occurs. Thus, the IPOA- Seabirds applies to States in the waters of which longline fisheries are being conducted by their own or foreign vessels and to States that conduct longline fisheries on the high seas and in the exclusive economic zones (EEZ) of other States. The IPOA-Seabirds provides that States implementing the IPOA should carry out a set of activities in conjunction with relevant international organizations based on an assessment of the incidental catch of seabirds in longline fisheries. The States with longline fisheries should conduct an assessment of these fisheries to determine if a problem exists with respect to incidental catch of seabirds and adopt a National Plan of Action (NPOA) for reducing the incidental catch of seabirds in longline fisheries, if such a problem exists. On the other hand, States which determine that an NPOA is not necessary should review that decision on a regular basis, particularly taking into account changes in their fisheries, such as the expansion of existing fisheries and/or the development of new longline fisheries. The IPOA-Seabirds encourages States to cooperate through regional and subregional fisheries organizations or arrangements, and other forms of cooperation, to reduce the incidental catch of seabirds in longline fisheries, including through bilateral and multilateral arrangements in research, training and the production of information and promotional material.

#### **IPOA- Sharks (1999)<sup>77</sup>**

The *International Plan of Action for the Conservation and Management of Sharks* (IPOA-Sharks) arose out of concerns over the increase of shark catches and its consequences for the populations of some shark species in several areas of the world's oceans. The objective of the IPOA-Sharks is to ensure the conservation and management of sharks and their long-term sustainable use. THE IPOA-Sharks encompasses both target and non-target catches and defines a shark as including all species of sharks, skates, rays and chimaeras (Class Chondrichthyes), and the term "shark catch" is taken to include directed, bycatch, commercial, recreational and other forms of taking sharks. The IPOA-Sharks applies to States in the waters of which sharks are caught by their own or foreign vessels and to States the vessels of which catch sharks on the high seas. The IPOA-Sharks provides that States should adopt a national plan of action (Shark Plan) taking into account the experience of subregional and regional fisheries management organizations for the conservation and management of shark stocks if their vessels conduct directed fisheries for sharks or if their vessels regularly catch sharks in non-directed fisheries. The IPOA-Sharks provides that States should carry out a regular assessment of the status of shark stocks subject to fishing so as to determine if there is a need for development of a shark plan. It provides that States which implement the *Shark-plan* should regularly assess its implementation at least every four years for the purpose of identifying cost-effective strategies for increasing its effectiveness; while States which determine that a *Shark-plan* is not necessary should review that decision on a regular basis taking into account changes in their fisheries, but as a minimum, data on catches, landings and trade should be collected.

---

<sup>77</sup> RMI has developed a draft National Plan for Sharks Management

## **ANNEX 6: GAPS ANALYSIS OF RMI LEGISLATION AGAINST OBLIGATIONS UNDER INTERNATIONAL FISHERIES INSTRUMENTS**

This Annex presents the gaps in RMI Fisheries Legislation against the binding international fisheries instruments described in **Annex 5**. The instruments considered are: LOSC; the FAO Compliance Agreement; the UN Fish Stocks Agreement and the FAO Port State Measures Agreement (2009)

**THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA 1982 (LOSC)**

LOSC	Summary	Method of Implementation	Gaps in RMI Legislation
<p>Article 61- Conservation of the living resources in the EEZ</p>	<p>Determine the allowable catch of the living resources in the EEZ</p> <p>Taking into account the best scientific evidence available, ensure through proper conservation and management measures that the maintenance of the living resources in the EEZ is not endangered by over-exploitation.</p> <p>International and regional cooperation, as appropriate, to achieve conservation outcomes;</p> <p>Take measures to maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield, as qualified by relevant environmental and economic factors;</p> <p>Take into consideration the effects on species associated with or dependent upon harvested species with a view to maintaining or restoring populations of such associated or dependent species above levels at which their reproduction may become seriously threatened</p>	<p>Act</p>	<p>Title 51, Chapter 2, Sections 203-204 adequately gives effect to this provision. Section 203 deals with conservation, management and sustainable use of the fishery resources and Section 204 species the objectives and purposes for fisheries management and development. These provisions reflect Article 61 of the LOSC</p>
<p>Article 62- Promote the objectives of optimum utilization</p>	<p>Determine capacity to harvest the living resources of the exclusive economic zone and where capacity to harvest the entire allowable catch does not exist,</p>	<p>Act</p>	<p>This requirement is adequately covered by Sections 205-206 of Title 51 Chapter 2. MIMRA is to determine the total allowable level of fishing with</p>

LOSC	Summary	Method of Implementation	Gaps in RMI Legislation
	grant access to the surplus of the allowable catch through agreements or other arrangements and pursuant to the terms, conditions, laws and regulations;		respect to any stock of fish subject to the provisions of the Title, taking into account the requirements of Sections 203 and 204. Section 206 specifies the factors that may be taken into account in determining the allowable catch and its allocation. These factors are consistent with the provisions of LOSC Article 62.
Article 63- Cooperate to manage trans-boundary and straddling stocks	Cooperate to manage the same stock or stocks of associated species occur within the exclusive economic zones of two or more coastal States  Cooperate to manage stocks that occur in the EEZ and in the adjacent high sea.	Act	This requirement is adequately reflected in Section 212 and Section 213 of Title 51, Chapter 2. MIMIRA is required to cooperate with other States and regional fisheries management organisations in respect of the management of highly migratory species and straddling fish stocks.
Article 64- Cooperation to manage highly migratory species	Cooperate directly or through appropriate international organizations with States whose nationals fish in the region for the highly migratory species with a view to ensuring conservation and promoting the objective of optimum utilization of such species throughout the region, both within and beyond the EEZ	Act	This requirement is adequately reflected in Section 212 and Section 213 of Title 51, Chapter 2. MIMIRA is required to cooperate with other States and regional fisheries management organisations in respect of the management of highly migratory species and straddling fish stocks.
Article s 62(4) & 73- Monitoring, control and surveillance (MCS) measures	Coastal State is to implement effective MCS measures to ensure compliance with its fisheries laws and regulations  Arrested vessels and their crew to be promptly released upon the posting of reasonable bond or other security	Act	Title 51 Chapter 5, deals with “Fisheries Enforcement.” The title is adequate in terms of general MCS, but does not adequately implement Article 73 of the LOSC. There are no provisions on (a) prompt release of foreign vessels and their crew; and (b) imposition of bond. Chapter 5 also includes provisions for the imprisonment of foreign nationals that assault

LOSC	Summary	Method of Implementation	Gaps in RMI Legislation
	Coastal State penalties for violation of its fisheries laws and regulations in the EEZ by foreign nationals not to include imprisonment or corporal punishment, unless there is agreement with the flag State.		or wound a fisheries officer. These provisions are arguably inconsistent with LOSC Article 73(3).
Article 117 – 119 Duty to adopt conservation and management measures for nationals on the high seas	Take, or to cooperate with other States in taking, such measures for their respective nationals for the conservation of the living resources of the high seas.	Act	Sections 212-213 of Title 51 (Chapter 2) partially give effect to Articles 117-119 of the LOSC. Sections 212 and 213 require RMI to cooperate with other States and regional fisheries management organisations to manage high seas fisheries.  What is missing is provision dealing with the control of RMI nationals fishing on the high seas.

**THE FAO COMPLIANCE AGREEMENT**

COMPLIANCE AGREEMENT	Summary	Method of Implementation	Gaps in RMI Legislation
Article III- Flag State Responsibility	States are take such measures as may be necessary to ensure that fishing vessels entitled to fly their flags do not engage in any activity that undermines the effectiveness of international conservation and management measures. The specific actions that may be taken to include - not to authorize such fishing vessels to be used for fishing on the high seas unless the flag State is satisfied that it is able to exercise effectively its responsibilities in respect of that fishing vessel; - cancellation of authorizations to fish on the high	Act	No provisions in existing legislation. This is a significant omission in RMI legislation and is addressed in the draft legislation.



COMPLIANCE AGREEMENT	Summary	Method of Implementation	Gaps in RMI Legislation
	<p>seas in respect of fishing vessels that cease to be entitled to fly the flag of the State that issued the authorisation to fish;</p> <ul style="list-style-type: none"> <li>- not to authorize any fishing vessel previously registered in the territory of another State that has undermined the effectiveness of international conservation and management measures to be used for fishing on the high seas, unless it is satisfied that:(i) any period of suspension by another Party of an authorization for such fishing vessel to be used for fishing on the high seas has expired; and (ii) no authorization for such fishing vessel to be used for fishing on the high seas has been withdrawn by another flag State within the last three years.</li> <li>- The flag State shall ensure that: <ul style="list-style-type: none"> <li>• all fishing vessels entitled to fly its flag is entered on the High Seas Vessel Record retained by the FAO</li> <li>• the vessels are marked in such a way that they can be readily identified in accordance with generally accepted standards, such as the FAO Standard Specifications for the Marking and Identification of Fishing Vessels.</li> <li>• each fishing vessel entitled to fly its flag shall provide it with such information on its operations as may be necessary, including in particular information pertaining to the area of its fishing operations and to its catches and</li> </ul> </li> </ul>		

COMPLIANCE AGREEMENT	Summary	Method of Implementation	Gaps in RMI Legislation
	<p>landings.</p> <ul style="list-style-type: none"> <li>(d) take enforcement measures in respect of fishing vessels entitled to fly its flag which act in contravention of the provisions of the Agreement, including, where appropriate, making the contravention of such provisions an offence under national legislation. Sanctions applicable in respect of such contraventions shall be of sufficient gravity as to be effective in securing compliance with the requirements of the Agreement and to deprive offenders of the benefits accruing from their illegal activities. Such sanctions shall, for serious offences, include refusal, suspension or withdrawal of the authorization to fish on the high seas</li> </ul>		
Article IV- Record of Fishing Vessels	Requirement to maintain a record of fishing vessels entitled to fly its flag and authorized to be used for fishing on the high seas. All necessary measures are to be taken to ensure that all such fishing vessels are entered in that record.	Act	No provisions in existing legislation

COMPLIANCE AGREEMENT	Summary	Method of Implementation	Gaps in RMI Legislation
Article V- International Cooperation	Requirement for international cooperation as appropriate in the implementation of the Agreement, and shall, in particular, exchange information, including evidentiary material, relating to activities of fishing vessels in order to assist the flag State in identifying those fishing vessels flying its flag reported to have engaged in activities undermining international conservation and management measures. As appropriate, enter into cooperative agreements or arrangements of mutual assistance on a global, regional, subregional or bilateral basis so as to promote the achievement of the objectives of the Agreement.	Act	Existing legislation adequately gives effect to this provision. Section 212 and Section 213 of Title 51, Chapter 2. MIMIRA is required to cooperate with other States and regional fisheries management organisations in respect of the management of highly migratory species and straddling fish stocks
Article VI- Exchange of Information	States are to make readily available to FAO a range of information with respect to each fishing vessel on their national record; including: name of fishing vessel, registration number, previous names (if known), and port of registry; previous flag (if any); International Radio Call Sign (if any); name and address of owner or owners; where and when built; type of vessel length.  Other information that may be provided to the FAO include: name and address of operator (manager) or operators (managers) (if any); type of fishing method or methods; moulded depth; beam; (e) gross register tonnage; power of main engine or engines; any additions to or deletion from the record.	Act/Administrative Action	No provisions in existing legislation.

THE UNITED NATIONS FISH STOCKS AGREEMENT

UN FISH STOCKS AGREEMENT	Summary	Method of Implementation	Gaps in RMI Legislation
Articles 5-6: Broad principles of conservation	<ul style="list-style-type: none"> <li>• States must adopt measures to support long-term sustainability of straddling fish stocks and highly migratory species and promote optimum utilization;</li> <li>• States must ensure that measures adopted are based on the best scientific evidence available and will help maintain or restore stocks at levels capable of producing maximum sustainable yield as qualified by relevant listed factors;</li> <li>• States shall apply the precautionary approach in accordance with Article 6;</li> <li>• States must assess the impacts of fishing, other human activities and environmental factors on target species, and the rest of the eco-system;</li> <li>• States must apply conservation and management measures to the entire eco-system so as to protect both target species and non-target species;</li> <li>• States must minimize pollution, discards, waste, abandoned or lost gear etc. through various measures, including the development</li> </ul>	Act	Title 51, Chapter 2, Sections 203-204 adequately gives effect to this provision. Section 203 deals with conservation, management and sustainable use of the fishery resources and Section 204 species the objectives and purposes for fisheries management and development. These provisions reflect Articles 5-6 of the UN Fish Stocks Agreement.

UN FISH STOCKS AGREEMENT	Summary	Method of Implementation	Gaps in RMI Legislation
	<p>and use of selective fishing gear and techniques - in particular, endangered species must be protected;</p> <ul style="list-style-type: none"> <li>• States must protect marine bio-diversity;</li> <li>• States must prevent or eliminate over-fishing and excess fishing capacity.</li> </ul>		
Article 7-8: Duty to Cooperate	<ul style="list-style-type: none"> <li>• Co-operate with other States directly or through international arrangements to conserve and manage highly migratory fish stocks and straddling fish stocks both the high seas and in the EEZs;</li> <li>• Refrain from fishing on the high seas subject to conservation measures if a State is not a member of a regional international organization or arrangement to manage highly migratory species and straddling stocks</li> <li>• Apply measures promulgated by a regional fisheries organization and co-operate with such organization even if the flag State is not a member of that organization;</li> <li>• Exchange information with other States on vessels that undermine conservation and management measures</li> <li>• Take measures against vessels carrying its flag which undermine agreed conservation and management measures.</li> </ul>	Act	This requirement is adequately reflected in Section 212 and Section 213 of Title 51, Chapter 2. MIMIRA is required to cooperate with other States and regional fisheries management organisations in respect of the management of highly migratory species and straddling fish stocks
Articles 18-22: Flag State Measures	<ul style="list-style-type: none"> <li>• Conservation and management measures for straddling stocks and highly migratory species</li> </ul>	Act	No provisions in existing legislation.

UN FISH STOCKS AGREEMENT	Summary	Method of Implementation	Gaps in RMI Legislation
	<p>at the regional and sub-regional level;</p> <ul style="list-style-type: none"> <li>• Flag States must ensure that vessels flying their flag do not engage in any activities which undermine the effectiveness of such measures;</li> <li>• Flag States must ensure that vessels flying their flag are only authorized to fish when the Flag State is certain that it is able to effectively exercise its responsibilities in respect of such vessels.</li> <li>• Each flag State also agrees to the following more specific obligations under;               <ul style="list-style-type: none"> <li>• to control its flagged vessels through licences or authorizations, the terms of which must reflect agreed global, regional or sub-regional measures;</li> <li>• to promulgate regulations to enforce authorizations or permits on the high seas and in the EEZs of other States;</li> <li>• to establish a national record or register of fishing vessels authorised to fish on the High Seas;</li> <li>• to establish arrangements for sharing national register information with directly affected States at their request, whilst respecting confidentiality requirements;</li> </ul> </li> </ul>		

UN FISH STOCKS AGREEMENT	Summary	Method of Implementation	Gaps in RMI Legislation
	<ul style="list-style-type: none"> <li>• to ensure that flagged vessels undertake the proper marking of fishing vessels and fishing gear;</li> <li>• to ensure that flagged vessels undertake timely, accurate and effective reporting of vessel position, target and non-target catches, catch landed, catch transshipped, fishing effort and other relevant fisheries data;</li> <li>• to ensure that catch is properly verified through “best practice” procedures like observer programmes, inspection schemes and cross-matching of different types of data</li> <li>• to regulate high seas transshipment so that effectiveness of conservation and management measures is not undermined;</li> <li>• to require the use of VMS on flagged vessels whilst taking into account any sub-regional, regional and global VMS schemes amongst concerned States.</li> </ul>		
Article 23: Port State Measures	<ul style="list-style-type: none"> <li>• A Port State has the right and the duty to take measures, in accordance with international law, to promote the effectiveness of sub-regional, regional and global conservation and management measures. When taking such measures a port State shall not discriminate in</li> </ul>	Act	No provisions in existing legislation

UN FISH STOCKS AGREEMENT	Summary	Method of Implementation	Gaps in RMI Legislation
	<p>form or in fact against the vessels of any State.</p> <ul style="list-style-type: none"> <li>• A Port State may, inter alia, inspect documents, fishing gear and catch on board fishing vessels, when such vessels are voluntarily in its ports or at its offshore terminals.</li> <li>• States may adopt regulations empowering the relevant national authorities to prohibit landings and transshipments where it has been established that the catch has been taken in a manner which undermines the effectiveness of sub-regional, regional or global conservation and management measures on the high seas.</li> </ul>		

**FAO PORT STATE MEASURES AGREEMENT 2009<sup>78</sup>**

PORT STATE MEASURES AGREEMENT	Summary	Method of Implementation	Gaps in RMI Legislation
Article 3-Scope	Agreement applies foreign flagged fishing vessels seeking access to the ports or in the ports of another State.	Act	No provisions in existing legislation (In addition to the fisheries legislation, the following legislation were also reviewed: Port of Entries Act and Control of Shipping Act and the RMI Ports Authority Act).

<sup>78</sup> Not yet in force and the RMI has not signed/ratified Agreement. However, this Agreement is a crucial component of the global fight against IUU fishing, it is therefore important for RMI to consider ratifying it and also incorporating its requirements into national legislation.



PORT STATE MEASURES AGREEMENT	Summary	Method of Implementation	Gaps in RMI Legislation
	<p>Agreement does not apply to foreign fishing vessels (a) of a neighbouring State that are engaged in artisanal fishing for subsistence, provided that the port State and the flag State cooperate to ensure that such vessels do not engage in IUU fishing or fishing related activities in support of such fishing ; and (b) container vessels that are not carrying fish or, if carrying fish, only fish that have been previously landed, provided that there are no clear grounds for suspecting that such vessels have engaged in fishing related activities in support of IUU fishing.</p> <p>A port State may also decide not to apply the Agreement to vessels chartered by its nationals exclusively for fishing in areas under its national jurisdiction and operating under its authority. However, such vessels shall be subject to measures by the Party which are as effective as measures applied in relation to vessels entitled to fly its flag.</p>		
Article 5- Integration and coordination at national level	<p>Requirement for port States to:</p> <ul style="list-style-type: none"> <li>- (a) integrate or coordinate fisheries related port State measures with the broader system of port State controls;</li> <li>- (b) integrate port State measures with other measures to prevent, deter and eliminate IUU fishing and fishing related activities in support of</li> </ul>	Policy	Not applicable

PORT STATE MEASURES AGREEMENT	Summary	Method of Implementation	Gaps in RMI Legislation
	such fishing, and - (c) take measures to exchange information among relevant national agencies and to coordinate the activities of such agencies in the implementation of the Agreement.		
Article 6- Cooperation and exchange of information	Port States required to cooperate and exchange information with relevant States, FAO, other international organizations and regional fisheries management organizations, including on the measures adopted by such regional fisheries management organizations.	Act  Administrative Action to exchange irrelevant information	No provisions in existing legislation
Article 7- Designation of ports	Port States are to designate and publicize the ports to which vessels may request entry and provide a list of its designated ports to FAO  Port States (to the greatest extent) ensure that every port designated and publicized has sufficient capacity to conduct inspections pursuant to the Agreement.	Act/Regulations    Administrative Action	The Ports Entry Act designates the following ports as official ports of entry: Kwajalein Anchorage, Majuro port, Ebeye Anchorage, Darrit Anchorage, Jabor Island and Jaluit Atoll
Article 8- Advance information Request for port entry	Requirement for port States to require, as a minimum standard, the following information to be provided by foreign fishing vessels sufficiently in advance to allow adequate time for the port State to examine such information. Before granting entry to a foreign fishing vessel to its port: - Intended port of call		No provisions in existing legislation

PORT STATE MEASURES AGREEMENT	Summary	Method of Implementation	Gaps in RMI Legislation
	<ul style="list-style-type: none"> <li>- Port State</li> <li>- Estimated date and time of arrival</li> <li>- Purpose(s)</li> <li>- Port and date of last port call</li> <li>- Name of the vessel</li> <li>- Flag State</li> <li>- Type of vessel</li> <li>- International Radio Call Sign</li> <li>- Vessel contact information</li> <li>- Vessel owner(s)</li> <li>- Certificate of registry ID</li> <li>- IMO ship ID, if available</li> <li>- External ID, if available</li> <li>- RFMO ID, if applicable</li> <li>- VMS information</li> <li>- Vessel dimensions (Length Beam Draft)</li> <li>- Vessel master name and nationality</li> <li>- Relevant fishing authorization</li> <li>- Transshipment authorization(s) (<i>Identifier Issued by, Validity, Identifier Issued by, Validity</i>)</li> <li>- Transshipment information concerning donor vessels (<i>Date Location Name Flag State ID number, Species Product form, Catch, area, Quantity</i>)</li> <li>- Total catch onboard 23. Catch to be offloaded (<i>Species Product form Catch,</i></li> </ul>		

PORT STATE MEASURES AGREEMENT	Summary	Method of Implementation	Gaps in RMI Legislation
	<p><i>area, quantity</i></p> <ul style="list-style-type: none"> <li>- Catch to be offloaded (quantity)</li> </ul>		
Article 9_ Power to deny entry	When a port State has sufficient proof that a vessel seeking entry into its port has engaged in IUU fishing or fishing related activities in support of such fishing, in particular the inclusion of a vessel on a list of vessels having engaged in such fishing or fishing related activities adopted by a relevant regional fisheries management organization, the port State shall deny that vessel entry into its ports.	Act/Regulations	No provisions in existing legislation
Article 10- Force majeure or distress	Vessels seeking port access for reasons of force majeure or distress to be permitting entry into port exclusively for the purpose of rendering assistance to persons, ships or aircraft in danger or distress.	Act/Regulations	No provisions in existing legislation
Article 11- Use of Ports	<p>Power to deny foreign fishing vessels access to their ports for a variety of reasons to combat IUU fishing including where:</p> <ul style="list-style-type: none"> <li>- the vessel does not have a valid and applicable authorization to engage in fishing or fishing related activities required by its flag State;</li> <li>- the port State finds that the vessel does not have a valid and applicable authorization to engage in fishing or fishing related activities required by a coastal State in respect of areas under the national</li> </ul>	Act/Regulations	No provisions in existing legislation. In this context, it should be noted that port States exercise full sovereignty over their ports and, consequently, they can deny access to their ports to any vessel in accordance with international law.

PORT STATE MEASURES AGREEMENT	Summary	Method of Implementation	Gaps in RMI Legislation
	<p>jurisdiction of that State;</p> <ul style="list-style-type: none"> <li>- the port State receives clear evidence that the fish on board was taken in contravention of applicable requirements of a coastal State in respect of areas under the national jurisdiction of that State;</li> <li>- the flag State does not confirm within a reasonable period of time, on the request of the port State, that the fish on board was taken in accordance with applicable requirements of a relevant regional fisheries management organization;</li> <li>- the port State has reasonable grounds to believe that the vessel was otherwise engaged in IUU fishing or fishing related activities in support of such fishing.</li> </ul>		
Article 18- Follow up Action	<p>Following inspections, port States are to:</p> <ul style="list-style-type: none"> <li>- promptly notify the flag State and, as appropriate, relevant coastal States, regional fisheries management organizations and other international organizations, and the State of which the vessel's master is a national of its findings; and</li> <li>- deny the vessel the use of its port for landing, transshipping, packaging and processing of fish that have not been</li> </ul>	Act/Regulations	No provisions in existing legislation

PORT STATE MEASURES AGREEMENT	Summary	Method of Implementation	Gaps in RMI Legislation
	previously landed and for other port services, including, <i>inter alia</i> , refuelling and resupplying, maintenance and dry-docking.		
Article 20- Flag State duties	<p>A flag States is required to:-</p> <ul style="list-style-type: none"> <li>- require the vessels entitled to fly its flag to cooperate with the port State in inspections.</li> <li>- Where it has clear grounds to believe that a vessel entitled to fly its flag has engaged in IUU fishing or fishing related activities in support of such fishing and is seeking entry to or is in the port of another State, it shall, as appropriate, request that State to inspect the vessel or to take other measures consistent with the Port State Agreement.</li> <li>- encourage vessels entitled to fly its flag to land, transship, package and process fish, and use other port services, in ports of States that are acting in accordance with, or in a manner consistent with the Port States Agreement;</li> <li>- where, following port State inspection, it receives an inspection report indicating that there are clear grounds to believe that a vessel entitled to fly its flag has engaged in IUU fishing or fishing related activities in</li> </ul>	Act/Regulations	No provisions in existing legislation

PORT STATE MEASURES AGREEMENT	Summary	Method of Implementation	Gaps in RMI Legislation
	<p>support of such fishing, it shall immediately and fully investigate the matter and shall, upon sufficient evidence, take enforcement action without delay in accordance with its laws and regulations</p> <ul style="list-style-type: none"> <li>- report to other Parties, relevant port States and, as appropriate, other relevant States, regional fisheries management organizations and FAO on actions it has taken in respect of vessels entitled to fly its flag that, as a result of port State measures taken pursuant to the Port State Agreement, have been determined to have engaged in IUU fishing or fishing related activities in support of such fishing;</li> <li>- apply sanctions to vessels entitled to fly its flag that are at least as effective in preventing, deterring, and eliminating IUU fishing and fishing related activities in support of such fishing as measures applied to IUU vessels entering other ports.</li> </ul>		

**FAO CODE OF CONDUCT 1995**

CODE OF CONDUCT	Summary	Method of Implementation	Gaps in RMI Legislation
	<p>Core requirements under the Code of Conduct that must be considered in national legislation and policy are:</p> <ul style="list-style-type: none"> <li>• to manage fisheries for the future, not just by targeting specific species but through management of whole ecosystems (Article 6.2);</li> <li>• adopting a precautionary approach to fisheries management (Article 7.5);</li> <li>• ensuring a level of fishing commensurate with the State of fisheries resources (Article 7.6.1).</li> <li>• preventing over fishing and over-capacity (Article 6.3)</li> <li>• controlling fishing gear and practices (Article 6.6);</li> <li>• reduction of impacts on target and non-target stocks (Articles 6.2; 12.10);</li> <li>• assessing impacts on non-fishing activities (Article 12.5);</li> <li>• conservation of biodiversity and population structure (Articles 6.6 &amp; 7.2.2);</li> <li>• improvement of gear selectivity (Articles</li> </ul>	<p>Act/Policy/Management Plan</p>	<p>The broad requirements of the Code of Conduct for Responsible Fisheries are reflected in Title 51, Chapter 2,</p> <p>Sections 203-204. Section 203 deals with conservation, management and sustainable use of the fishery resources and Section 204 specifies the objectives and purposes for fisheries management and development. Further Sections 214 – 221 place limitations on the harvesting of certain endangered and protected species and the use of poisons or explosives.</p>



CODE OF CONDUCT	Summary	Method of Implementation	Gaps in RMI Legislation
	8.5.3 & 12.10); <ul style="list-style-type: none"> <li>• protection of endangered species (Article 7.2.2);</li> <li>• adopting measures to maintain or restore stocks at levels capable of producing the maximum sustainable yield (Article 7.2.1)</li> </ul>		

**FAO INTERNATIONAL PLANS OF ACTION (IPOA)**

	Summary	Method of Implementation	Gaps in RMI Legislation
IPOA-SHARKS	The principal voluntary measures that States are encouraged to consider and implement under the IPOA-Sharks are: <ul style="list-style-type: none"> <li>• to assess the status of shark stocks to determine whether a national plan of action is required;</li> <li>• to adopt and implement a national plan of action (Shark-plan) where significant threats to sharks are found;</li> <li>• produce a periodic shark assessment report in for dissemination to FAO and the international community.</li> </ul>	Act  Development of National Plan of Action on Sharks (Shark Plan)  Reporting to FAO	Adequate legislative basis exists for the development and implementation of a Shark Plan in accordance with the IPOA- Sharks. Title 51 (Chapter 2, Section 207) requires MIMRA to develop fishery management and development plans for fisheries that are important to the national interest and require management and development measures for effective conservation and optimum utilisation.  <b>NOTE:</b> No Shark Plan has been developed by MIMRA.
IPOA- CAPACITY	The IPOA-Capacity requires assessments, plans to reduce capacity and the strengthening of national and regional organizations to better manage capacity issues.	Act  Fisheries Management Plan	Adequate legislative basis exists for capacity management by the RMI. Title 51 (Chapter 2, Section 203(4)(e) requires MIMRA to “take measures to prevent or eliminate over-fishing and excess fishing capacity and to ensure that levels of fishing

	Summary	Method of Implementation	Gaps in RMI Legislation
			effort do not exceed those commensurate with the sustainable use of fishery resources.” However, to-date no Fishing Capacity Plan has been developed by MIMRA
IPOA-SEABIRDS	<p>All States whose fishermen engage in longline fishing are expected to take a number of actions to reduce the incidental bycatch of seabirds. The actions include:</p> <ul style="list-style-type: none"> <li>• assessment of whether a problem exists with respect to the incidental catch of seabirds in the longline fishery;</li> <li>• developing a National Plan of Action for reducing the incidental catch of seabirds in longline fisheries;</li> <li>• undertaking national reviews</li> <li>• reporting requirements to FAO.</li> </ul>	<p>Management Plan- Development of National Plan of Action</p> <p>Reporting to FAO</p>	<p>Adequate legislative basis exists for RMI to implement the IPOA-Seabirds. Title 51 (Chapter 2, Section 203(4)(a), (b) &amp; (c) require MIMRA to:</p> <ul style="list-style-type: none"> <li>- assess the impacts of fishing, other human activities and environmental factors on target stocks and species belonging to the same ecosystem or associated with or dependent upon the target stocks;</li> <li>- adopt, where necessary, conservation and management measures for species belonging to the same ecosystem or associated with or dependent upon target stocks;</li> <li>- minimize catch of non-target species, through measures such as the development and use of selective, environmentally safe and cost effective fishing gear and techniques.</li> </ul> <p><b>NOTE:</b> No National Plan has yet been developed by the RMI to implement the IPOA-Seabirds.</p>
IPOA-IUU	The IPOA-IUU, <i>inter alia</i> , requires the development of national legislation to address all aspects of IUU fishing, including evidentiary standards and	Act	The gaps in RMI legislation to give full effect to the IPOA-IUU relate to the application some measures to RMI flagged vessels on the high seas and in the

	Summary	Method of Implementation	Gaps in RMI Legislation
	<p>admissibility including, as appropriate, the use of electronic evidence and new technologies; the taking of measures or cooperation to ensure that nationals subject to the jurisdiction of States do not support or engage in IUU fishing; cooperation with respect to data exchange; co-operative investigation of IUU fishing violations and monitoring, control and surveillance in general.</p> <p>The IPOA-IUU also requires the development of National Plans of Action t as soon as possible but no later than three years after the approval of the IPOA-IUU to achieve the objectives of the IPOA-IUU to full effect.</p>		<p>fisheries waters of other States (See analysis on “Flag State Responsibilities” under UN Fish Stocks Agreement and WCPF Convention).</p> <p><b>NOTE:</b> A draft National Plan on IUU has been officially adopted but not yet implemented.</p>

## **ANNEX 7: REGIONAL INSTRUMENTS GAPS ANALYSIS**

This Annex presents the gaps in RMI Fisheries Legislation against the WCPF Convention and Conservation and Management Measures adopted by the WCPFC.

**PART 1**

**GAPS ANALYSIS of RMI FISHERIES LEGISLATION AGAINST WCPF CONVENTION OBLIGATIONS**

WCPF Convention Article	Summary	Method of Implementation	Gaps in RMI Legislation
Articles 5 to 7	Adoption of conservation and management principles, precautionary approach and ecosystem approach for the conservation and management of highly migratory fish stocks in the Convention Area	Act	<p>Adequate provisions in legislation:</p> <p>The Marine Resources Act 1997 provides for the exclusive power and function of the Marshall Islands Marine Resources Authority to conserve, manage and sustainably develop all resources in its fishery waters in accordance with the principles and provisions of the Act and subregional, regional and international instruments to which the Marshall Islands is a party (s.119(1)(a) of the Marine Resources Act).</p> <p>One of the principles of the conservation, management, and sustainable use of fishery resources in the Marshall Islands is the application of precautionary approach at no less standards than set by criteria under the UN Agreement and other fisheries management agreement (Fisheries Act, ss203(3), 25(4)(e)(ii), and 26(1)).</p> <p>The provisions in (s11(1)(a)) of the Marine Resources Act giving the Marshall Islands Marine Resources Authority power to conserve, manage and sustainably develop all resources in its fishery waters in accordance with the principles and provisions of the Act and subregional, regional and international instruments to which the Marshall Islands is a party is adequate to implement this requirement.</p>

WCPF Convention Article	Summary	Method of Implementation	Gaps in RMI Legislation
			<p>The provisions in (s 11(1)(a)) of the Marine Resources Act 1997 give the Marshall Islands Marine Resources Authority power to conserve, manage and sustainably develop all resources in its fishery waters in accordance with the principles and provisions of the Act and subregional, regional and international instruments to which the Marshall Islands is a party is adequate to implement this requirement.</p>
Article 23 (1)	<p>Obligation of members of the Commission to promptly implement the Convention and any conservation, management and other measures agreed pursuant to the Convention from time to time</p>	<p>Act- Also requires a framework for national implementation of WCPFC measures</p>	<p>The Ability to discharge this obligation will be determined by the overall adequacy of legislative provisions to implement the obligations under the WCPF Convention. However, the Fishing Access and Licensing Act provides for the implementation of multilateral access agreements and other fisheries management agreements (ss403 and 407). But may require specific legislative framework to implement WCPFC measures.</p>
Article 23 (5)	<p>Control of nationals by taking measures to ensure that its nationals, and fishing vessels owned or controlled by its nationals, fishing in the Convention Area, comply with the provisions of the WCPF Convention, and at the request of any other member, and when provided with the relevant</p>	<p>Act/ Regulation</p>	<p>The Marine Resources Authority has the power to make regulations with respect to the compliance by its citizens and fishing vessels that engage in fishing outside the fishery waters of the Marshall Islands with applicable laws of other States or regional fisheries management organizations and arrangements, and applicable access agreements or fisheries management agreements (s 12(i)).</p> <p>Secondly there are no specific provisions in existing legislation that speaks to the issue of a request for investigation received from another Commission member. However, the Marine Resources Act 1997 provides the obligation of the Minister to consult and</p>

WCPF Convention Article	Summary	Method of Implementation	Gaps in RMI Legislation
	information, investigate any alleged violation by its nationals, or fishing vessels owned or controlled by its nationals, of the provisions of the Convention or any conservation and management measures adopted by the Commission.		cooperate with foreign governments in establishing arrangements regarding fishing rights with other States and other mechanism such as monitoring, control, and surveillance (s 31).
Article 24	Flag State duties on members of the Commission that have fishing vessels flying their flag and fishing in the Convention area	Act/Regulation	The Marine Resources Authority has the power to make regulations with respect to the compliance by its citizens and fishing vessels that engage in fishing outside the fishery waters of the Marshall Islands with applicable laws of other States or regional fisheries management organizations and arrangements, and applicable access agreements or fisheries management agreements (s 12(i)).
Article 24(1)	Take such measures as may be necessary to ensure that fishing vessels flying their flag comply with, and do not undermine, the provisions of the Convention and the conservation and management measures adopted pursuant to the Convention and do not	Act	The Marine Resources Authority has the power to make regulations with respect to the compliance by its citizens and fishing vessels that engage in fishing outside the fishery waters of the Marshall Islands with applicable laws of other States or regional fisheries management organizations and arrangements, and applicable access agreements or fisheries management agreements (s 12(i)).

WCPF Convention Article	Summary	Method of Implementation	Gaps in RMI Legislation
	conduct unauthorized fishing in areas under the national jurisdiction of any other member of the Commission		
Article 24 (2)	Not to allow their vessels to fish on the high seas in the Convention Area unless they are authorized to do so.	Act	No legislative provisions.
Article 24 (3)	To impose as a condition on of every authorization issued that: where its authorized fishing vessel conducts fishing within areas under the national jurisdiction of other States, it shall only do so if the vessel holds any licence, permit or authorization by such States; and where the authorized vessel of a flag State operates on the high seas, it does so in accordance with the requirements of Annex III of the WCPF Convention.	Conditions of License	There is provision in the Marine Resources Act that authorizes the Director to deny a license where there is a breach of an access or fisheries management agreement by the operator of a fishing vessel.
Article 24(4)	Flag State members of the Commission are required to maintain a record of fishing	Act	No legislative provisions.



WCPF Convention Article	Summary	Method of Implementation	Gaps in RMI Legislation
	vessels entitled to fly their flag and authorized to fish in the Convention Area beyond its area of national jurisdiction and shall ensure that all such fishing vessels are entered on that record.		
Article 24(8)	Each member of the Commission is obliged to require its vessels that fish for highly migratory stocks on the high seas in the Convention Area to use near real-time satellite position-fixing transmitters while in such areas	Act	No legislative provisions requiring all RMI flagged vessels to be equipped with VMS, although in practice, it is understood that most of the vessels have VMS and report to the RMI ship registry and not MIMRA.
Article 25	Compliance and enforcement measures		
Article 25(3)	Members can detain vessels and institute proceedings where they are satisfied that there is sufficient evidence concerning an alleged violation	Effective MCS framework	Authorized Officers under the Marine Resources Act 1997, are empowered to seize vessels and arrest of persons when the officers have reasonable grounds to believe that an offence has been committed under the Act (s 82(3)).
Article 25(4)	Vessels of Flag States that are found to have committed serious violations of Convention provisions	Effective MCS framework	

WCPF Convention Article	Summary	Method of Implementation	Gaps in RMI Legislation
	must cease to operate until all outstanding sanctions have been complied with		
Article 26	Boarding and inspection		
Article 26 (3)	Members shall ensure fishing vessels flying its flag accept boarding by duly authorized inspectors in accordance with boarding and inspection procedures established by the Commission	Act	No legislative provisions.
Article 27	Port State enforcement responsibilities	Act	<p>Transshipment at port requires 72 hours notice prior to arrival of vessel (Marine Resources Act 1997, s 63).</p> <p>For domestic based fishing vessels, the advance notice of entry required is 24 hours (Marine Resources Act 1997, s 74). The submission of the following information is required prior to the transshipment of fish:</p> <ul style="list-style-type: none"> <li>• name of the vessel;</li> <li>• international radio call sign,</li> <li>• position, the catch on board by species, the time and port where such transshipment is requested to occur (Marine Resources Act 1997, s 63).</li> </ul> <p>The following information are required to be submitted by domestic based fishing vessels prior to entry into port:</p> <ul style="list-style-type: none"> <li>• the gear type used;</li> </ul>

WCPF Convention Article	Summary	Method of Implementation	Gaps in RMI Legislation
			<ul style="list-style-type: none"> <li>• the noon position of the vessel and, where applicable, the set position and time or the number of hooks and sea surface temperature;</li> <li>• the species of fish taken and the size and quantity of each species by weight or number as may be specified in the form;</li> <li>• the species of fish returned from the vessel to the sea, the reason for discard, the quantity of each species by weight or number as may be specified in the form;</li> <li>• other information as the Authority may require or prescribe by regulation, or as may be required by an applicable access agreement or fisheries management agreement (Marine Resources Act 1997, s 74).</li> </ul> <p>Furthermore, all vessels entering and departing a port of entry shall be subject to immigration inspection, customs inspection, agricultural inspection and quarantines, public health inspection and quarantines, and other administrative inspections authorized by law (Title 43, s205).</p>
Article 28	Regional observer programme	Act	No legislative provisions.
Article 29	Transshipment	Act/Conditions of License	<p>The Marine Resources Act prohibits operators of a fishing vessel from transshipping at sea under any circumstances.</p> <p>The Act requires operators to transship only in a port, and at a time designated by the Director, and further, to submit to the Director, a full and complete report of the transshipment. To do so, an operator must provide 72 hours notice to the Authority, and shall provide the name of the vessel, its international radio call sign, its</p>

WCPF Convention Article	Summary	Method of Implementation	Gaps in RMI Legislation
			position, the catch on board by species, the time and port where such transshipment is requested to occur and an undertaking to pay all fees required under the laws of the Republic of the Marshall Islands.

Annex III Article	Summary	Method of Implementation	Gaps in RMI Legislation
Article 1	Operator of every fishing vessel authorized to be used for fishing in the Convention Area shall comply with the terms and conditions of Annex III at all times when the vessel is in the Convention Area in addition to any terms and conditions which may apply to the vessel in areas under the national jurisdiction of a member of the Commission by reason of a licence issued by such member or pursuant to a bilateral or multilateral fisheries agreement	Condition of License	Not currently included as a condition of License.

<p>Article 2</p>	<p><i>Compliance with national laws</i></p> <p>The operator of the vessel must comply with the applicable national laws of each coastal State Party in whose jurisdiction it enters and shall be responsible for the compliance by the vessel and its crew with such laws and the vessel shall be operated in accordance with such laws</p>	<p>Act/Condition of License</p>	<p>No legislative provisions.</p>
<p>Article 3</p>	<p><i>Obligations of the operator in respect of observers</i></p>		
<p>Article 3 (1)(a)(c)(d)</p>	<p>The operator and each member of the crew shall allow and assist any person identified as an observer under the regional observer programme to embark at a place and time agreed to, remove samples; disembark at an agreed place and time; and carry out all duties safely.</p>	<p>Act</p>	<p>Section 508 of the Fisheries Enforcement Act requires the operator and each member of the crew to assist authorized observers carry out their duties, boarding, access to facilities, access to records, and to take samples. Also a condition of license under MIMRA access agreements.</p>

<p>Article 3 (1)(b)</p>	<p>The operator shall allow and assist any person authorized by the Commission or by the member of the Commission in whose designated port or area a transshipment takes place to have full access to and use of facilities and equipment which such authorized person may determine is necessary to carry out his or her duties, including full access to the bridge, fish on board and areas which may be used to hold, process, weigh and store fish, and full access to the vessel's records, including its log and documentation for the purpose of inspection and photocopying.</p>	<p>Act</p>	<p>There are no specific provisions on the powers of authorized officers regarding transshipment. However Section 504 of the Fisheries Enforcement Act empowers authorized officers to:</p> <p>search any fishing vessels he/she believes is transporting fish, examine the master/crew about the cargo or contents of the hold, takes samples of fish, examine and take copies of license, logbook, record, examine the fish and fishing gear etc.</p>
<p>Article 3 (2)</p>	<p>The operator or any crew member shall not assault, obstruct, resist, delay, refuse boarding to, intimidate or interfere with observers in the performance of their duties</p>	<p>Act</p>	<p>Section 509 of the Fisheries Enforcement Act makes it an offense for any person to assault, obstruct, resist, delay, refuse, intimidate or interfere with authorized observers in the performance of their duties.</p>

Article 3(3)	The operator shall provide the observer, while on board the vessel, at no expense to the observer or the observer’s government, with food, accommodation and medical facilities of a reasonable standard equivalent to those normally available to an officer on board the vessel	Condition of License	This is currently a condition of License
Article 4	<i>Regulation of transshipment</i>	Act	Section 409 of the Fishing Access and Licensing Act: (a) prohibits transshipment at sea; (b) requires 72 hour notice; (c) allows for transshipment only at a port and time designated by the Director (d) requires fishing vessel to submit full reports; (e) requires the vessel to comply with environmental protection laws.
Article 4 (1)	The operator shall comply with any procedures established by the Commission to verify the quantity and species transhipped, and any additional procedures and measures established by the Commission with respect to transshipment in the Convention Area	Act	No legislative provisions.

<p>Article 4 (2)</p>	<p>The operator shall also allow and assist any such authorized person to remove samples and gather any other information required to fully monitor the activity. The operator or any member of the crew shall not assault, obstruct, resist, delay, refuse boarding to, intimidate or interfere with any such authorized person in the performance of such person’s duties. Every effort should be made to ensure that any disruption to fishing operations is minimized during inspections of transshipments.</p>	<p>Condition of License</p>	<p>Currently a condition of License.</p> <p>[Section 509 of the Fisheries Enforcement Act makes it an offense for anyone on the vessel to assault, obstruct, resist, delay, refuse, intimidate, or interferes with the work of the authorized officers.]</p>
<p>Article 5</p>	<p><i>Reporting</i></p> <p>The operator shall record and report vessel position, catch of target and non-target species, fishing effort and other relevant fisheries data in accordance with the standards for collection of such data set out in Annex 1 of the Agreement.</p>	<p>Act</p>	<p>Section 420 of the Fishing Access and Licensing Act provides for such a reporting requirement.</p> <p>The reporting requirement is also a condition of license.</p>



Article 6	<i>Enforcement</i>		
Article 6 (1)	The authorization issued by the flag State of the vessel and, if applicable, any licence issued by a coastal State Party to this Convention, or a duly certified copy, facsimile or telex confirmation thereof, shall be carried on board the vessel at all times and produced at the request of an authorized enforcement official of any member of the Commission.	Condition of License	Currently a condition of License under MIMRA access agreements.

<p>Article 6 (2)</p>	<p>The master and each member of the crew of the vessel shall immediately comply with every instruction and direction given by an authorized and identified officer of a member of the Commission, including to stop, to move to a safe location, and to facilitate safe boarding and inspection of the vessel, its licence, gear, equipment, records, facilities, fish and fish products.</p> <p>Such boarding and inspection shall be conducted as much as possible in a manner so as not to interfere unduly with the lawful operation of the vessel. The operator and each member of the crew shall facilitate and assist in any action by an authorized officer and shall not assault, obstruct, resist, delay, refuse boarding to, intimidate or interfere with an authorized officer in the performance of his or her duties.</p>	<p>Act/Condition of license</p>	<p>Section 509 of Fisheries Enforcement Act requires the master and crew of vessels to comply with the instructions and or directions of an authorized officer.</p>
----------------------	--	---------------------------------	---

Article 6 (3)	The vessel shall be marked and identified in accordance with the FAO Standard Specifications for the Marking and Identification of Fishing Vessels or such alternative standard as may be adopted by the Commission. At all times when the vessel is in the Convention Area, all parts of such markings shall be clear, distinct and uncovered.	Condition of License	No legislative provisions.  However, this is currently a condition of License. The Authorized Vessels shall display identification marks (in English) in accordance with the WCPFC Vessel Marking Requirements.
Article 6 (4)	The operator shall ensure the continuous monitoring of the international distress and calling frequency 2182 khz (HF) or the international safety and calling frequency 156.8 Mhz (channel 16, VHF-FM) to facilitate communication with the fisheries management, surveillance and enforcement authorities of the members of the Commission.	Condition of License	The Authorized Vessels shall continuously monitor the international distress radio frequency 2182 KHz (HF) or the international safety and calling frequency 156.8 Mhz (Channel 16, VHF-FM) for the purpose of facilitating communication between such vessels and air and sea authorities of the RMI. The Authorized Vessel operators shall ensure that a recent and up to date copy of the International Code of Signals (“INTERCO”) is on board and accessible at all times. The Authorized Vessel should ensure that it is seaworthy and contains adequate life safety equipment and survival gear for each passenger and member of the crew.

Article 6 (5)	The operator shall ensure that a recent and up to date copy of the International Code of Signals (INTERCO) is on board and accessible at all times.	Condition of License	The Authorized Vessel operators shall ensure that a recent and up to date copy of the International Code of Signals (“INTERCO”) is on board and accessible at all times. The Authorized Vessel should ensure that it is seaworthy and contains adequate life safety equipment and survival gear for each passenger and member of the crew.
Article 6 (6)	At all times when the vessel is navigating through an area under the national jurisdiction of a member of the Commission in which it does not have a licence to fish, and at all times when the vessel is navigating on the high seas in the Convention Area and has not been authorized by its flag State to fish on the high seas, all fishing equipment on board the vessel shall be stowed or secured in such a manner that it is not readily available to be used for fishing.	Effective MCS measures/ Condition of license	The requirement to stow gear under Section 522 of the Fisheries Enforcement Act applies only to vessels navigating through RMI Fisheries Waters. There is currently no legislative provisions requiring stowage of gear whilst on the high seas.

**PART 2**

**GAPS ANALYSIS of RMI FISHERIES LEGISLATION AGAINST WCPFC CONSERVATION AND MANAGEMENT MEASURES (CMM)**

CMM	Para	Description	Method of Implementation	Gaps in RMI Legislation
2004-03 Vessel marking	2.1.1	Marking of vessels with International Radio Call Sign	Act/ Condition of license	One of the conditions for an access agreement include the requirement for the operator of the vessel to ensure that the vessel is marked and identified in accordance with the FAO Standards (Marine Resources Act, s 60(2)(e)).
2006-08 HSB&I		Ensure inspection officers have necessary powers to board and inspect on the high seas	Act	<p>An authorized officer has the power to:</p> <ul style="list-style-type: none"> <li>• stop, board, remain on board and search any vessel in the fishery waters he or she reasonably believes is a fishing vessel, and any fishing vessel registered under the laws of the Marshall Islands outside the fishery waters, and stop and search any vessel, vehicle or aircraft he or she reasonably believes may be transporting fish or engaged in other activities related to fishing;</li> <li>• required the master or any crew member to inform him the name, call sign and country of registration of the vessel and the name of the master, owner, charterer and crew members;</li> <li>• examine the master or any crew member or other person aboard about the cargo, contents of holds and storage spaces,</li> </ul>

CMM	Para	Description	Method of Implementation	Gaps in RMI Legislation
				<p>voyage and activities of the vessel;</p> <ul style="list-style-type: none"> <li>• require to be produced, examine and take copies of any license, logbook, record or other document concerning the operation of any vessel, vehicle or aircraft;</li> <li>• require to be produced and examine any fish, fishing gear or appliance or explosive, poison or other noxious substance (Marine Resources Act 1997, s 82(1); Title 504(1); Marine Resources Authority Act, s 51(1)).</li> </ul> <p>Where an authorized officer has reasonable grounds to believe an offence against the Marine Resources Act has been committed, he or she may without warrant:</p> <ul style="list-style-type: none"> <li>• enter, inspect and search any premises with respect to where fish is allegedly being stored;</li> <li>• stop, enter and search and stay in or on any vehicle or aircraft which he or she reasonably suspects of transporting fish or fish products;</li> <li>• take samples of any fish in any vessel or vehicle inspected;</li> <li>• seize any vessel, including its fishing gear, equipment, stores and cargo), vehicle, fishing gear, nets or other fishing appliances or aircraft, any fish or fish</li> </ul>

CMM	Para	Description	Method of Implementation	Gaps in RMI Legislation
				<p>products, or any logs, charts and documents;</p> <ul style="list-style-type: none"> <li>• arrest any person whom he or she has reasonable grounds to believe has committed an offence under the Act (Marine Resources Act 1997, s 82(2); Title 504(2); Marine Resources Authority Act, s 51(2)).</li> </ul>
	7	Ensure high seas vessels accept boarding	Condition of License	License Condition
2007-01 Regional Observer Program	7	Ensure vessels accept ROP observers if operate in high seas, and/or in more than one EEZ (not exclusively in one EEZ)	Act/Condition of license	<p>No legislative provisions.</p> <p>The CMM can be implemented either through legislative amendment, by way of Regulations or as conditions of license.</p>
		5% coverage by June 2012 for all vessels except those fishing in territorial seas/archipelagic waters, small vessels, fresh fish vessels N of 20N.		
2007-02 VMS	4,9	Ensure vessels have ALC on in high seas	Act/ Condition of license	The gaps in national legislation are similar to those identified under CMM 2006-06 above.
	17	PNA – implement 3IA and VDS	Act/ Condition of license	Measure is provided for under the Fishing License (Third Implementation Arrangement) Regulations, 2009. It is also condition of license

CMM	Para	Description	Method of Implementation	Gaps in RMI Legislation
				under MIMRA access agreements.
	19	Implement high seas FAD closure	Condition of license	
	22	Implement high seas pocket closure	Condition of license	<p>The authorized vessel, its master and operators of vessel agreed not to fish and carry out any fishing related activities in the following High Seas areas:</p> <p>(1). The High Sea area bounded by the exclusive economic zones of the Federated States of Micronesia, Indonesia, Palau and Papua New Guinea,</p> <p>(2). the High Sea area bounded by the exclusive economic zones of the Federated States of Micronesia, Fiji, Kiribati, Marshall Islands, Nauru, Papua New Guinea, Solomon Islands and Tuvalu, and</p> <p>(3). any additional high seas areas located within 10°N and 20°S latitude and 170°E and 150°W longitude.</p>
	27	Implement 100% catch retention	Condition of license	Not currently a license condition
	28	Implement 100% observer coverage	Condition of license	License Condition stipulates only a 20% observer coverage of all fishing trips by foreign fishing vessels in the zone of a licensing member.



CMM	Para	Description	Method of Implementation	Gaps in RMI Legislation
	4	Require vessels to bring comatose turtles on board and attempt resuscitation	Condition of license	Not currently a condition of License
	4	Ensure fishers implement proper mitigation and handling techniques and equipment as per WCPFC Guidelines	Condition of license	It is a condition of license that Authorized Vessel, its master and operator shall conduct all fishing activities in a manner which will not disrupt traditional, local-based fisheries, and shall release all turtles, marine mammals and reef fish in a manner which will provide this miscellaneous catch with the greatest chance of survival.
	5a	Ensure purse seine operators follow specific procedures to avoid/release turtles	Condition of license	It is a condition of license that Authorized Vessel, its master and operator shall conduct all fishing activities in a manner which will not disrupt traditional, local-based fisheries, and shall release all turtles, marine mammals and reef fish in a manner which will provide this miscellaneous catch with the greatest chance of survival.
	5b,c	Ensure purse seine operators report all interactions and provide reports to WCPFC	Condition of license	No legislative provisions.
	6	Ensure long-line vessels carry and use de-hookers, line cutters and dip-nets as per WCPFC Guidelines	Condition of license	Not currently a condition of license
	7a-c	Implement one of four options for swordfish vessels	Condition of license	Not currently a Condition of License
	7d,e	Ensure swordfish operators report all interactions and provide reports to WCPFC	Condition of license	Not currently a Condition of License

CMM	Para	Description	Method of Implementation	Gaps in RMI Legislation
2008-04 Driftnets	2	Prohibit vessels from using large driftnets on the high seas	Act/license condition	Section 224 of the Fisheries Act prohibits all Vessels licensed by MIMRA from engaging in drift net fishing activities in any place inside, or outside of the Fishery Waters.
2009-01 Record of fishing	1f	Not authorise a known IUU vessel unless ownership has changed	Act	No legislative provisions
	1h	Consider previous violations when deciding whether to authorise a vessel	Act	No legislative provisions
	2	Only tranship and bunker to/from CCM vessels (plus exceptions allowed in the measure)	Condition of License	
	3	Prevent vessels fishing outside home EEZ without authorisation	Act	No legislative provisions.
	4	Authorisations to include specific conditions (species, areas, seasons, permitted activities, prohibition on fishing in other EEZs without authority).	Condition of license	
	5	Maintain national record of vessels authorised to fish outside home EEZ	Act	No legislative provisions.
	17	Prohibit landing and transhipment to/from vessels not on WCPFC Record and WCPFC Register	Act(See Port State Measures)	No legislative provisions.
2009-02 FAD Closure and Catch Retention	2	Take measures to ensure vessels comply with specific rules	Condition of license	Provided for under the Fishing License (Third Implementation Arrangement ) Regulations 2009.

CMM	Para	Description	Method of Implementation	Gaps in RMI Legislation
2009-05 Data Buoys	1	Prohibit fishing within 1nm of, or interacting with, data buoys on the high seas (includes tying up to) noting exception for scientific research programs from fishing within 1nm	Condition of license	Not currently a condition of license
	3	Prohibit retrieval of data buoys	Condition of license	Not currently a condition of license
	4	Encourage avoidance	Condition of license	
	5	Require removal of entangled gear in a way that minimises damage to data buoys	Condition of license	
	10	Require offloading and receiving vessels to submit transshipment declarations.	Condition of license	Not currently a condition of license
	13	Ensure vessels comply with observer coverage requirements	Condition of license	Currently a condition of License
	20	No transshipment to or from Non-CCM vessels (unless otherwise allowed under 2009-01)	Condition of license	Not currently a license condition
	25	No purse seine transshipment (except PNG, Philippines and NZ domestic)	Condition of license	Not currently a condition of License
	32	Prohibit transshipment by purse seine vessels on the high seas	Condition of license	Currently a condition of License
	35iii	Prior notice for each high seas transshipment	Condition of license	Currently a Condition of License (48 Hour Notice)
2010-02 Eastern High seas Pocket Special Management Area	2	Flag States shall require their vessels to submit reports, directly, or through such organisations designated by the flag state to the Commission at least 6 hours prior to entry and no later than 6 hours prior to exiting the Eastern High Seas Pocket. Such reports shall also contain estimated catch (kilograms) on board. This information shall immediately be transmitted	Conditions of License	Not currently a condition of license

CMM	Para	Description	Method of Implementation	Gaps in RMI Legislation
		by the Commission Secretariat to the adjacent coastal states/territories, and shall be considered non-public domain data.		
	22(b)	ensure that vessels on the WCPFC IUU Vessel List that enter ports voluntarily are not authorized to land, tranship, refuel or re-supply therein but are inspected upon entry;	Act	No legislative provisions/ regulations exist.
	22(e)	prohibit commercial transactions, imports, landings and/or transshipment of species covered by the WCPFC Convention from vessels on the WCPFC IUU Vessel List	Act	No legislative Provisions.

## ANNEX 8: SUB-REGIONAL GAPS ANALYSIS

RMI is a member of two sub-regional fisheries management organizations/arrangements: the Pacific Islands Forum Fisheries Agency (FFA) and the Parties to the Nauru Agreement (PNA). Through these Organizations/Arrangements, a number of measures have been developed which require domestic implementation.

At the FFA level, the key instrument which the Republic of Marshall Islands is required to give effect to at the domestic level is the Harmonised Minimum Terms and Conditions of Access (MTCs) which sets forth a range of conditions to be imposed on all foreign fishing vessels fishing in the exclusive economic zones and fisheries zones of FFA members.

The PNA have also implemented a number of tuna conservation measures which RMI required to give domestic legislative effect to. The relevant measures are (a) the Third Implementing Arrangement (PNA 3IA) and the Vessel Day Scheme (VDS).

**DRAFT TEMPLATE OF LEGISLATIVE IMPLEMENTATION OF SUB-REGIONAL MEASURES (FFA)**

Instrument	Summary	Method of Implementation	Gaps in RMI Legislation
MTCS			
<b>2. Common Regional Licensing Form</b>	Foreign fishing vessels are not to be permitted to fish in the zone of any FFA member unless they are licensed to fish in the form contained in Annex 1 and such licence or a duly certified. Licenses must be carried on board the fishing vessels at all times	Condition of License	<p>Section 412 of the Fishing Access and Licensing Act prohibits both domestic based and foreign fishing vessels from conducting fishing activities within RMI Fishery Waters without a valid license.</p> <p>The requirement that the License or a copy thereof be carried on board an authorized fishing vessel at all times, is a condition of license, a standard term in all MIMRA access agreements.</p>
<b>3 Good Standing on the FFA Vessel Register</b>	FFA members shall not issue a foreign fishing vessel a license to fish their EEZs unless: (a) that vessel and its operator have good standing on the FFA Vessel Register; and (b) that vessel is registered on the Western and Central Pacific Fisheries Commission Record of Fishing Vessels.	Act	Current requirements for the issuance of fishing licenses do not incorporate the requirements on “Good Standing”.
<b>3. Control and Monitoring of Transshipment</b>	The operator of a foreign fishing vessel shall: (i) not transship at sea under any circumstances except for the transfer of catch by a licensed group seiner to its licensed carrier vessel which is in good standing on the FFA Vessel Register; (ii) provide 72 hours notice to a licensing member of a request to transship any or all of the fish on board and shall provide: -the name of the vessel,	Act/ Condition of license	<p>Section 409 of the Fishing Access and Licensing Act prohibits transshipment at sea.</p> <p>This measure is currently a condition of license, under MIMRA access agreements.</p>

Instrument	Summary	Method of Implementation	Gaps in RMI Legislation
MTCS	<ul style="list-style-type: none"> <li>- its international radio call sign,</li> <li>- its position,</li> <li>- the catch on board by species,</li> <li>- the time and port where such transshipment is requested to occur, and</li> <li>- an undertaking to pay all fees required under the laws of the licensing member;</li> </ul> <p>(iii) only transship at the time, port, and approved designated areas authorised for transshipment by the licensing country;</p> <p>(iv) submit full reports on transshipping on the prescribed forms;</p> <p>(v) allow and assist any person identified as an officer of the licensing member full access to and use of facilities and equipment which the officer may determine is necessary to carry out his or her duties; have full access to the bridge, fish on board and areas which may be used to hold, process, weigh and store fish; remove samples; have full access to the vessel's records, including its log and documentation for the purpose of inspection and photocopying; and gather any other information required to fully monitor the activity;</p> <p>(vi) shall not assault, obstruct, resist, delay, refuse boarding to, intimidate or interfere with any such officer in the performance of his or her duties; and</p> <p>(vii) shall pay all fees required under the laws of the licensing member.</p>		

Instrument	Summary	Method of Implementation	Gaps in RMI Legislation
MTCS			
<b>4. Maintenance and Submission of Catch Logs in Zones and on High Seas</b>	<p>The operator of a foreign fishing vessel shall:</p> <p>(a) duly complete in the English language, daily reports in the prescribed form of .all catch; and by-catch by species taken in the fishery waters of the licensing member including the high seas and shall certify that such information is true, complete and accurate.</p> <p>(b) ensure that accurate records are maintained and submitted to the licensing member of all catch discarded at sea and all by-catch transhipped or unloaded offshore.</p> <p>(c) provide to the licensing member or its representative on the prescribed forms: a preliminary report within 14 days of the completion of a trip; and a final report within 45 days of the completion of a trip.</p>	Condition of license	<p>This measure is currently a condition of license under MIMRA access agreements. However the requirement for a preliminary report 14 days after the completion of a trip is not reflected as a term of the access agreements.</p>
<b>6. Vessel Reporting Requirements</b>	<p>The operator of a foreign fishing vessel shall provide to the licensing member or its representative information relating to the position of, and catch on board, the vessel as follows:</p> <p>(i) each Wednesday;</p> <p>(ii) within a reasonable time of entry into and departure from the zone of any licensing member as determined by the licensing member;</p> <p>(ii) within a reasonable time prior to the estimated time of entry into any port of a licensing member as determined by the licensing member; and</p> <p>(b) The operator of a foreign fishing vessel shall also provide, after each fishing trip, landing and out-turn</p>	Condition of license	<p>Not adequately reflected as a condition of license under MIMRA access agreements.</p>



Instrument	Summary	Method of Implementation	Gaps in RMI Legislation
MTCS			
	documentation, and landing and dock receipts to the licensing member or its representative.		
<b>7. Observers</b>	<p>The operator and each member of the crew of a vessel shall allow and assist any person identified by an FFA member as an observer to:</p> <ul style="list-style-type: none"> <li>(i) board the vessel for scientific, compliance, monitoring and other functions;</li> <li>(ii) embark at a place and time agreed to;</li> <li>(iii) have full access to and use of all facilities and equipment on board which the observer may determine is necessary to carry out his or her duties (including: full access to the bridge, fish on board, and areas which may be used to hold, process, weigh and store fish; remove samples; full access to the vessel's records including its logs and documentation for the purpose of records inspection and copying; reasonable access to navigation equipment, charts, and radios; other information relating to fishing;</li> <li>(iv) disembark at an agreed place and time; and</li> <li>(v) carry out all duties safely.</li> </ul> <p>The operator or any crew member of the vessel shall not assault, obstruct, resist, delay, refuse boarding to, intimidate or interfere with an observer in the performance of his or her duties.</p> <p>(c) The operator shall provide the observer, while on board the vessel, at no expense to the licensing member, with officer level accommodation, food and</p>	Condition of license	This requirement is currently a condition of license, and is adequately reflected as such under MIMRA access agreements.

Instrument	Summary	Method of Implementation	Gaps in RMI Legislation
MTCS			
	<p>medical facilities.</p> <p>(d) The following costs of the observer shall be met by the operator:</p> <p>(i) full travel costs from the licensing member to and from the vessel;</p> <p>(ii) salary;</p> <p>(iii) full insurance coverage for the observer, and</p> <p>(iv) all other costs associated with observers performing his duties as an observer</p>		
<b>9. Appointment of Agents</b>	<p>Requirement for the flag State government and/or fishermen's association and/or vessel operator to nominate, appoint and maintain an agent who shall be resident in a licensing member and who shall have authority to receive and respond to any legal process and shall notify the licensing member of the name and address of such agent.</p>	Condition of license	<p>Although not adequately reflected as a condition of license under MIMRA access agreements, this requirement is provided for under Section 406(4) of the Fishing Access and Licensing Act.</p>
<b>10. Transiting foreign fishing vessels</b>	<p>Foreign fishing vessels transiting the fisheries zones of FFA member countries shall be required to have all fishing equipment on board stowed or secured in such a manner that it is not readily available to use for fishing.</p>	Act	<p>This requirement is adequately reflected in the fisheries legislation of RMI.</p>
<b>11. Application of MTCs in Ports</b>	<p>FFA members to exercise powers of port State over fishing vessels in their ports, whether or not they are authorised to fish in those members' EEZs. Such measures shall include the power to board fishing vessels and inspect their documentation, and carry out such other measures necessary for the conservation and management of fish stocks.</p>	Act (on Port State Measures)	<p>No legislative provisions specifying the conditions of entry into RMI ports by foreign fishing vessels; although it should be mentioned that Port States exercise full sovereignty over their ports.</p>

Instrument	Summary	Method of Implementation	Gaps in RMI Legislation
MTCS			
<b>12. Enforcement</b>	<p>A vessel operator and each member of the crew shall be required to:</p> <ul style="list-style-type: none"> <li>• while in any zone of an FFA member, immediately comply with every instruction and direction given by an authorised and identified officer including to stop, move to a specified location and to facilitate safe boarding and inspection of the vessel, its licence, gear, equipment, records, facilities, fish and fish products;</li> <li>• facilitate and assist in any action by an authorised officer of a member and shall not assault, obstruct, resist, delay, refuse boarding to, intimidate or interfere with an authorised officer in the performance of his or her duties; ensure the continuous monitoring of the international distress and calling frequency 2182 khz (HF), and the international safety and calling frequency 156.8 Mhz (channel 16, VHF-FM) to facilitate communication with the fisheries management, surveillance and enforcement authorities of a member;</li> <li>• a vessel operator shall ensure that a recent and up to date copy of the International Code of Signals (INTERCO) is on board and accessible at all times;</li> <li>• for fisheries surveillance and marine safety</li> </ul>	Condition of license	These requirements are adequately reflected in MIMRA access agreements as conditions of license.

Instrument	Summary	Method of Implementation	Gaps in RMI Legislation
MTCS			
	<p>purposes, every vessel shall be marked and identified in accordance with the FAO approved Standard Specifications for the Marking and Identification of Fishing Vessels</p>		
<p><b>13. Flag State or Fishermen's Associations Responsibility</b></p>	<p>Flag States or, in the absence of access arrangements with flag States, the appropriate Fishermen's Associations, be required in agreements to take measures to ensure compliance by their fishing vessels with coastal State laws</p>	<p>Access Agreements</p>	<p>Not adequately reflected as a condition of license under MIMRA access agreements.</p>
<p><b>14. VMS</b></p>	<p>The operator of a foreign fishing vessel shall apply for registration of the ALC on the prescribed form for each year and pay the prescribed fee; install and operate a registered ALC on board the vessel; and maintain the ALC in good working order.</p> <p>The operator of a foreign fishing vessel shall not interfere with, tamper with, alter, damage or disable the ALC; move or remove the ALC from the agreed installed position without the prior permission of the licensing member; or impede the operation of the ALC.</p> <p>(d) The operator of a foreign fishing vessel shall ensure that the ALC is switched on and is operating properly at all times during the period of validity of the licence.</p> <p>(e) The operator of a foreign fishing vessel or his or her authorized agent, upon notification by the [insert name of licensing member, appropriate authority] that the vessel's ALC has failed to transmit, shall ensure that position reports are communicated to the licensing</p>	<p>Act/ Condition of license</p>	<p>This is adequately reflected as a condition of license under MIMRA access agreements.</p>

Instrument	Summary	Method of Implementation	Gaps in RMI Legislation
<b>MTCS</b>			
	authority in the manner specified in Annex 1 to the MTCS; If it is not possible to make position reports in the manner specified by the licensing authority, the master of the vessel must immediately stow the fishing gear and take the vessel directly to a port		
<b>15. Identification of FADs</b>	The operator of a foreign fishing vessel shall ensure that any fish aggregating device or devices (FAD) used by its vessel are clearly marked and identified, and that information about such marking and identification mark(s), and the area where the FAD is deployed is provided to the licensing member	Condition of license	Not adequately provided as a condition of license under MIMRA access agreements.

**DRAFT TEMPLATE OF LEGISLATIVE IMPLEMENTATION OF SUB-REGIONAL MEASURES (PNA)**

Instrument	Summary	Method of Implementation	Gaps in RMI Legislation
<b>PNA 3IA</b>			
<b>1. Catch Retention</b>	Adopt appropriate procedures to ensure that all bigeye, skipjack and yellowfin tuna taken by a purse seine vessel shall be retained on board and then landed or transhipped, except for: (a) fish clearly and demonstrably unfit for human consumption; and (b) the final set of a trip when there may be insufficient well space to accommodate all fish caught in that set.	Act/Condition of License	This measure is provided for under the Fishing License (Third Implementation Arrangement) Regulations of 2009.
<b>1. FAD Closure</b>	No deployment or servicing of Fish Aggregating Devices	Act/Condition of License	This measure is provided for under the

Instrument	Summary	Method of Implementation	Gaps in RMI Legislation
PNA 3IA			
	<p>and associated electronic equipment, or fishing by purse seine vessels on floating objects, between 0001 hours GMT on 1 July and 2359 hours GMT on 30 September each year,</p> <p><b>Note:</b> A party may            (a) exclude all or part of its Fisheries Zone from the closure if it determines that it has suffered a disproportionate burden from application of the closure and advises the depositary accordingly;            (b) apply appropriate arrangements set out in a Management Plan to meet the requirements of domestic vessels that are highly dependent on fishing on floating objects within the Fisheries Zone.</p>		Fishing License (Third Implementation Arrangement) Regulations of 2009.
1. <b>Closure of High Seas Areas</b>	<p>Prohibition on fishing in the following high seas areas during the period of validity of a license issued by a Party to the Nauru Agreement            (a) the area of high seas bounded by the national waters of the Federated States of Micronesia, Indonesia, Palau and Papua New Guinea; and            (b) the area of high seas bounded by the national waters of the Federated States of Micronesia, Fiji, Kiribati, Marshall Islands, Nauru, Papua New Guinea, Solomon Islands and Tuvalu.</p>	Act/Condition of License	This measure is provided for under the Fishing License (Third Implementation Arrangement) Regulations of 2009.
2. <b>Monitoring</b>	All foreign purse seine vessels shall carry (a) at all times an observer from either the national observer programme of a Party or an existing sub-regional	Act/Condition of License	This measure is provide for under the Fishing License (Third Implementation Arrangement) Regulations of 2009.

Instrument	Summary	Method of Implementation	Gaps in RMI Legislation
PNA 3IA			
	<p>observer programme; and (b) The owner, charterer, operator, master or any other person responsible for the operation of a licensed vessel shall ensure that the Automatic Location Communicator<sup>1</sup> of the vessel is switched on and is operating properly at all times during the period of validity of a licence issued by a Party.</p>		
PNA VDS (May 2009 Revision)			
10.1 Monitoring	<p>Purse seine vessels are to have an ALC/MTU reporting normally and automatically at all times of a Management Period during which it is registered on the VDS Register and within the Vessel Day Scheme Management Area, and must ensure that the ALC/MTU provides location transmissions at intervals of at least every hour.</p>	Condition of License	No such Conditions have been imposed by the RMI.
10.3	<p>If a purse seine vessel becomes unable to transmit by ALC for any reason, the operator of the vessel shall, as soon as practicable, submit a transmission failure report, in the form set out in Schedule 5, to the Administrator and to any Party in whose waters the vessel is undertaking fishing activities. The first transmission failure report shall account for the period from the time of notification by the Administrator to the time of submission of the report. Subsequent transmission failure reports shall be submitted at</p>	Condition of License	No such Conditions have been imposed by the RMI.

Instrument	Summary	Method of Implementation	Gaps in RMI Legislation
PNA 3IA			
	intervals of 4 hours.		
10.4	If at any time a purse seine vessel is unable to comply with the requirements of this Article, the master of that vessel must immediately stow the vessel's fishing gear and take the vessel directly to the nearest port, or such other port as the Administrator directs, and immediately report to the Administrator of actions taken to comply with directive.	Conditions of License	No such Conditions have been imposed by the RMI.



## ANNEX 9: TEMPLATE LEGISLATIVE PROVISIONS FOR THE IMPLEMENTATION OF THE EU IUU REGULATION

### Introduction

Of particular relevance to the RMI comprehensive legislative review is the newly introduced European Commission (EC) Regulation 1005/2008 'establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing' (the EU IUU Regulation), which came into force on 1 January 2010.

The EC Regulation 1005/2005, applies to IUU fishing and associated activities carried out within the jurisdiction of EC Member States, in addition to activities carried out by Community and non-Community vessels on the high seas or in waters under the jurisdiction of a third State. This comprehensive Regulation provides for the establishment of:

- port state controls over third country fishing vessels;
- catch certification requirements;
- establishment of an EC IUU vessel list; and
- the establishment of a list of non-cooperating third countries.

Fishing vessels subject to the EU IUU Regulation are broadly defined to include 'any vessel of any size used for or intended for use for the purposes of commercial exploitation of fishery resources, including support ships, fish processing vessels, and vessels engaged in transshipment and carrier vessels equipped for the transportation of fishery products, except container vessels'.

The EU IUU Regulation applies to any products which fall under Chapter 03 and Tariff Headings 1604 and 1605 of the combined nomenclature established by Council Regulation (EEC) No. 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the common customs tariff, with the exception of products listed in Annex 1 of the Regulation. Appendix B of the IUU Regulation paper provides a list of these products and exemptions.

The importance of the EC market as an international seafood importer has resulted in the need for legislative reform in all countries exporting seafood to EC member countries, in order to satisfy the requirements for imports, which in summary are:

- a. All consignments of fish and fish product will be prohibited from being imported into EC Member States, unless a catch certificate accompanies them. The catch certificate must contain the harvest details of the fish (e.g. vessel and master's name and number, fishing licence number, date and location of capture, landing weights, details of processing on board) in addition to export, import and transport details.
- b. Relevant authorities of each exporting country are to validate catch certificates and, must have the power to provide such validation and attest to the veracity of the catch certificate.
- c. Exporting countries are required to provide prior notification to the EC certifying their arrangements with respect to conservation and management measures which must be complied with by its fishing vessels.
- d. Exporting countries will be required to verify consignments and associated catch certificates where the importing State doubts its legitimacy and will also be required to accept 'on-the-spot audits' of its catch certification and validation process by the EC.

Subject Matter	Summary	Method of Implementation	Gaps in RMI Legislation
<p><b>Catch certification requirements</b></p>	<p>Chapter III of the IUU Regulation starts with the premise that the importation into the EC of fishery products obtained from IUU fishing shall be prohibited. In general, the importation of fishery products into the EC is only allowed when it is accompanied by a catch certificate, completed by the master of the fishing vessel and validated by the flag State of the vessel. To be valid, the catch certificate must contain all information specified in the template documents shown in Annex II of the IUU Regulation, including:</p> <ul style="list-style-type: none"> <li>• Basic information such as the name of the fishing vessel, home port and registration number, call sign, licence number, Inmarsat number and IMO number (if issued);</li> <li>• Information on the product (the type of species, catch areas and dates, estimated live weight and verified weight landed, as well as the applicable conservation and management measures and any transshipment at sea);</li> <li>• Information and declaration on export and import of the fisheries product (including the vessel name and flag, flight number, airway bill number, truck nationality and registration number, other transport documents and container number).</li> <li>• The Regulation allows catch documents and any related documents that are validated in conformity with catch documentation schemes adopted by Regional Fisheries Management Organisation</li> </ul>	<p>Act-provision requiring (a) catch certification containing necessary information</p>	<p>No existing applicable legislation</p>

Subject Matter	Summary	Method of Implementation	Gaps in RMI Legislation
	<p>(RFMO), and recognised by the EC as complying with the requirements of the IUU Regulation, will be accepted as catch certificates in respect of the products from species to which such catch documentation schemes apply.</p>		
<p><b>Flag State Notifications and Cooperation with Third Countries</b></p>	<p>Article 20 states that the acceptance of catch certificates validated by a given flag State for the purposes of the Regulation shall be subject to the condition that the Commission has received a notification from the Flag State concerned certifying that:</p> <p>(1) it has in place national arrangements for the implementation, control and enforcement of laws, regulations and conservation and management measures which must be complied with by its fishing vessels; and</p> <p>(2) its public authorities are empowered to attest the veracity of the information contained in catch certificates and to carry out verifications of such certificates on request from the Member States.</p> <p>The notification shall also include the necessary information to identify those authorities including the names, addresses and official seal prints of the public authorities situated in their territories which are empowered to:</p> <ul style="list-style-type: none"> <li>• register fishing vessels under their flag;</li> </ul>	<p>Act implementing flag State controls, legislation identifying a competent authority to attest to information contained in the catch certificate</p>	<p>No appropriate legislation in place</p>

Subject Matter	Summary	Method of Implementation	Gaps in RMI Legislation
	<ul style="list-style-type: none"> <li>• grant, suspend and withdraw fishing licences to their fishing vessels;</li> <li>• attest the veracity of information provided in the catch certificates referred to in Article 13 and validate such certificates;</li> <li>• implement, control and enforce laws, regulations and conservation and management measures which must be complied with by their fishing vessels;</li> <li>• carry out verifications of such catch certificates to assist the competent authorities of the Member States through the administrative cooperation referred to in Article 20(4);</li> <li>• communicate sample forms of their catch certificate in accordance with the specimen in Annex II; and</li> <li>• update such notifications.</li> </ul> <p>The notification shall also include sample forms of the catch certificate to be used by the State concerned, in accordance with the specimen in Annex II of the Regulation (Appendix C). The forms actually used during export/import transactions will have to be will have to be identical to the model communicated in the notification.</p> <p>The article also provides for the EC to conduct ‘on-the-spot’ audits to verify the effective implementation of cooperative arrangements around this Regulation.</p>		

## ANNEX 10: CONSOLIDATED LEGISLATIVE GAPS

SUBJECT MATTER	GAPS IDENTIFIED	LEGISLATIVE OPTIONS
<p>1. Flag State duties (Article 116 -119 of the LOSC, Article 3 FAO Compliance Agreement, Articles 18-22 UNFSA, Article 24 WCPF Convention, CMM 2009-01).</p>	<p>Marshall Islands is a major flag State with a number of flagged fishing vessels operating in different oceans. Marshall Islands is under obligation under these conventions to assume a number of obligations with respect to its flagged fishing vessels. These include establishment of national record of fishing vessels, imposition of penalties for violating international fisheries conservation measures, and the fisheries laws of other States and the use of VMS and more importantly, the issuance of authorization to fish outside waters under RMI jurisdiction.</p>	<p>Options to give effect to this requirement include: (a) Regulations under Title 51, Chapter 2. or (b) amendment to Title 51 Chapter 5.</p>
<p>2. Port State Measures (Article 23 UNFSA, Article 27 WCPF Convention, IPOA-IUU, and Port State Measures Agreement, 2009)</p>	<p>The use of port state measures is now universally accepted as an effective tool to combat IUU fishing. A number of international instruments require the implementation of enhanced port state measures and the exchange of port inspection information with other States, FAO, and RFMOs.</p> <p>Actions required include, notice of intention to enter port by foreign fishing vessels, requirement for certain information to be provided, as a condition of entry, mandatory inspection of foreign fishing vessels in port, the right to deny entry, imposition of sanctions for providing false information, collection, storage</p>	<p>Options to give effect to this requirement include: (a) Regulations under Title 51, Chapter 2. or (b) amendment to Title 51 Chapter 5</p>

SUBJECT MATTER	GAPS IDENTIFIED	LEGISLATIVE OPTIONS
	<p>and exchange of port inspection information.</p> <p>As noted in Appendix 4, the Port Entry Act focuses on designation of ports of entry and customs and immigration and does not address IUU fishing related issues.</p>	
<p>3. High Seas Boarding and Inspections (Article 21 UNFSA, Article 26 WCPF Convention, WCPFC CMM 2006-08).</p>	<p>These instruments provide power to RMI inspection vessels and officers to undertake boarding of foreign fishing vessels on the high seas of the WCPF Convention Area. They also require RMI as a flag State to instruct its vessels to accept high seas boarding, and inspections in accordance with the procedures established under these instruments.</p> <p>Current RMI legislation only specifies powers of authorized officers within the RMI fishery zone and does not extent to RMI fishing vessels on the high seas. The powers of enforcement officers under Title 51 Chapter 5 also relate only to the RMI fishery waters. To comply with the WCPFC high seas boarding procedures, it is necessary to grant extra-territorial powers to RMI enforcement officers and vessels.</p>	<p>Options to give effect to this requirement include:</p> <ul style="list-style-type: none"> <li>(a) Regulations under Title 51, Chapter 2, or</li> <li>(b) Amendment to Title 51 Chapter 5.</li> <li>(c) Condition of License for RMI flagged vessels.</li> </ul>
<p>4. Terms and Conditions of Fishing (Annex III WCPF Convention) and the MTCs.</p>	<p>Annex III of the WCPF Convention specifies a number of terms and conditions that should be imposed by all members on vessels fishing in their fishery zone and in respect of vessels entitled to fly their flags operating in the WCPF Convention Area.</p>	<ul style="list-style-type: none"> <li>(a) Conditions of License to fish in RMI waters; and</li> <li>(b) Condition of high sea authorization to fish by RMI flagged vessels.</li> </ul>

SUBJECT MATTER	GAPS IDENTIFIED	LEGISLATIVE OPTIONS
	<p>The terms and conditions which are not currently reflected in RMI laws or conditions of access, include:</p> <p>(a) Annex III Article 1 - Requirement for operators to comply with Annex III;            (b) Article II - Compliance With National Laws;            (c) Article IV(1) - Compliance With procedures established by the WCPFC;            (d) Article VI (3) - requirement for the vessel to be marked in accordance with FAO standards and specifications            (e) requirement for RMI vessels to comply with Article III , carriage of observers.</p>	
<p>5. Observer Requirements (Article III of Annex III of the WCPF Convention, CMM 2007-01).</p>	<p>WCPFC requirements for the regional observer programme require RMI observers to undertake observer duties outside RMI fishery waters. The current powers of authorized observers under Title 51 Chapter 5 relates only to RMI fishery waters. It will be necessary to grant RMI authorized observers extra-territorial powers to be able to perform their functions and be protected, under the regional observer programme of the WCPFC</p>	<p>Amendment to Title 51, Chapter 5.</p>
<p>6. Protection of Sea Turtles (CMM 2008-03)</p>	<p>A number of requirements of this measure, are currently not reflected in RMI legislation. This include:</p>	<p>Condition of License, or condition of Access Agreement and Regulations</p>

SUBJECT MATTER	GAPS IDENTIFIED	LEGISLATIVE OPTIONS
	<p>(a) the requirement to bring comatose turtles on board and attempt resuscitation;</p> <p>(b) requirement for purse seine vessels to report all interactions with sea turtles;</p> <p>(c) requirement to ensure long line vessels carry and use de-hookers, line cutters and deep knots, and</p> <p>(d) recommend for swordfish operators to report sea turtle interaction.</p>	
7. Protection of Data Buoys (CMM 2009-05)	<p>These CMM prohibits fishing I NM of, or interacting with, data buoys on the high seas. It also prohibits the retrieval of data buoys and requires removal of entangled gear in a way that minimizes damage to the data buoy.</p>	<p>Condition of License, or condition of Access Agreements and Regulations</p>
8. Transshipment (WCPF Convention Article 29, CMM 2009-06, MTCs)	<p>These instruments specify the requirement for transshipment in the fishery waters of FFA members and in the WCPF Convention Area. The key aspects of these measures not currently reflected in RMI legislation and process include:</p> <p>(a) requirement for RMI flagged vessels to comply with the transshipment provisions;</p> <p>(b) requirement for RMI flagged vessels to comply with the observer coverage requirements for transshipment;</p> <p>(c) prohibition on RMI flagged vessels to transship with non-member vessels; prohibition on RMI purse seine vessels to transship on the high seas;</p> <p>(c) requirement for prior notice for each high</p>	<p>Condition of authorization to fish by RMI flagged vessels in the convention area beyond RMI fishery waters.</p>



SUBJECT MATTER	GAPS IDENTIFIED	LEGISLATIVE OPTIONS
	sea transshipment of RMI flagged vessels.	
9. Eastern High Seas Pockets Special Management Area (CMM-2010-02)	The CMM puts in place special reporting requirements for the eastern high seas pocket located between Kiribati, Cook Islands, and French Polynesia. The issues for RMI, relate to control of its flag vessels that may operate in this area. Under this CMM vessels are required to submit reports, directly, or through such organizations designated by the flag State to the Commission at least 6 hours prior to entry, and no later than 6 hours prior to exiting the Eastern High Seas Pocket. Such reports shall also contain estimated catch (kilograms) on board. This information shall immediately be transmitted by the Commission Secretariat to the adjacent coastal states/territories, and shall be considered non-public domain data.	Condition of Authorization to Fish
10. Combating IUU (CMM 2010-06)	This CMM specifies the procedures to follow in listing and submitting vessels for IUU listing on the WCPFC IUU vessel list. The aspect of the measure which need to be reflected in RMI legislation are: (a) requirements to ensure that fishing vessels, support vessels, mother ships, or cargo vessels flying the flag of RMI, do not participate in any transshipment or joint fishing operations with, support or re-supply vessels on the WCPFC IUU list;	Conditions in (a) can be implemented as a condition for authorization for RMI flag vessels to fish.  Requirement in (b) can be implemented through legislative provisions on port state measures.  Requirement in (c), except transshipment can be implemented through legislative provisions on port state measures. Requirement in (c) relating

SUBJECT MATTER	GAPS IDENTIFIED	LEGISLATIVE OPTIONS
	<p>(b) requirements for RMI to ensure that vessels on the WCPFC IUU list that enter its ports voluntarily, are not authorized to land transship, refuel, re-supply and are inspected upon entry.</p> <p>(c) requirement for RMI to prohibit the commercial transactions, imports, landings, transshipment of species covered by the WCPFC Conventions of the vessels on the WCPFC IUU list.</p>	<p>to transshipment can be implemented either as a condition of license or a condition of authorization for RMI flag vessels to fish.</p>
<p>11. EUIUU Regulation</p>	<p>The EUIUU Regulation specify a number of requirements that are to be met by States exporting fisheries products into the EU market in order to combat IUU fishing.</p>	<p>Amendments to Chapter 1 and Chapter of Title 51.</p>
<p>12. Coastal Fisheries Management (Title 51 Chapter 3)</p>	<p>The major gap in existing legislation is the absence of local government ordinances to conserve, manage and utilize coastal fisheries resources.</p>	<p>Development of Local Government Ordinance Template for adoption by Local Governments.</p>

## ANNEX 11: WORKSHOP I REPORT

**April 14 – 15 2011, Melele Room, Marshall Islands Resort, Majuro, Republic of the Marshall Islands**

### Introduction

MRAG Ltd. has been contracted by the EU under its ACP Fish II Program, to undertake a comprehensive review of Marshall Islands fisheries laws and to draft the necessary legislation to support Marshall Islands' implementation of its international and regional fisheries obligations. The existing fisheries legislation was enacted in 1997 following the adoption of the 1995 United Nations Fish Stocks Agreement, and has since not been modified to reflect recent developments in international, regional and sub-regional fisheries laws. As part of the review process, MRAG, through its key experts are required to convene two Workshops. Workshop I, the subject of this report, took place from 14-15 April 2011. The Workshop was attended by a number of people, drawn from key government institutions, regional organizations, the private sector and civil society. The Pacific Islands Forum Fisheries Agency (FFA) was represented by Dr. Manu Tupou-Roosen (Legal Counsel) and the Secretariat of the Pacific Community (SPC) was represented by Mr. Ian Bertram (Coastal Fisheries Management Adviser). The Workshop was facilitated by Professor Martin Tsamenyi, MRAG consultant. The Workshop Programme is attached to this Report as **Attachment I** and the full participant list is attached as **Attachment II**.

### DAY 1

#### Opening of the Workshop

Workshop I was formally opened by the Hon. Brenson Wase, Minister for Justice and Acting Minister for Resources and Development. In his opening remarks, the Minister highlighted the importance of the fisheries sector, not only to the economic aspirations of the people of the Marshall Islands, but also food security needs of the people of the Marshall Islands. He called upon all sectors of the community, inclusive of government, private sector industry, non-governmental organizations, and the community at large, to work together to conserve and sustainably develop the fisheries sector. He thanked regional and international partners, and in particular, the EU, for assistance to the Marshall Islands through the ACP Fish II Programme. He assured the workshop that Cabinet will play its part in expediting implementation of the recommendations coming from the project. The Minister also acknowledged the participation by FFA and SPC in the Workshop. The Minister's Opening Statement is attached to this Report as **Attachment III**.

#### Presentation 1- Background to the Project

Professor Martin Tsamenyi (MRAG consultant), presented a summary of the project and highlighted the various activities and time-lines under the project.

#### Presentation I – The State of Oceanic Fisheries in the RMI



The first presentation on Day 1 was given by Mr. Sam Lanwi Jr. (MIMRA Deputy Director) on the state of the oceanic fisheries in the RMI. The presentation provided the workshop with a general overview of the state of RMI oceanic fisheries sector, and highlighted the key risks and threats, and the needs and priorities for MIMRA and the RMI in this sector. The key aspects of the presentation can be summarized as follows:

- RMI oceanic fisheries continue to be dominated by purse seine fishing, of which over 90% of the catch is skipjack tuna.
- The RMI currently has 10 purse seine vessels fishing within its EEZ, and adjacent PNA waters, and the WCPF convention area.
- The RMI fleet is also complemented by domestically based foreign purse seine and long line vessels, and Japanese pole-and-line vessels.
- The increase rise in the number of domestic fishing companies, (i.e. Koo's Fishing Co., Marshall Is. Fishing Co., Marshall Islands Fishing Venture, Pan Pacific Foods (RMI), Inc.) was attributed to the policy shift, focusing more on the development of domestic fishing capacity as opposed to access agreements. Consequently, the number of vessels licensed by the RMI under access agreements decreased steadily in the period between 1988/89 and 2008/009.
- The presentation also highlighted MIMRA's plans to phase out distant water fishing fleets in the future, to allow for more domestic-based fishing ventures.
- In the period 2006-07, the net contribution by fisheries to the national economy was estimated at about \$6m.
- That overall, MIMRA was doing its best within its means, to develop in a sustainable way, RMI's oceanic fishery.

## **Presentation 2 – The State of Coastal Fisheries in the RMI**

The second presentation on Day 1, focusing on the coastal fisheries sector, was delivered by Ms Florence Edwards (MIMRA Coastal Fisheries Manager). The presentation highlighted that:

- MIMRA has been involved with communities around the Marshall Islands in finding ways to best develop local fisheries.
- Fish farming projects, aquaculture projects, marine ornament trade, live reef fish trade, and sea cucumber harvesting, are common coastal fishery activities in the Marshall Islands.
- In line with its mandate under the Marshall Islands Marine Resources Act, MIMRA has been actively involved in assisting local communities in their fisheries development, and the development of fisheries management plans.
- A number of aquaculture projects farming giant clams, seaweed and black pearl oyster, are being trialed, in a number of outer island communities, and MIMRA has satellite farms in Likiep, Namu, Ailinglaplap, Maloelap, Ebon, Ailuk, Aur and Arno.
- The greatest challenge facing MIMRA and the local communities, is the absence of Ordinances and Management Plans to regulate and to address coastal fisheries issues.

- In addition issues such as institutional capacity, transportation, communication, implementation, enforcement and land tenure issues, continue to add to the challenge and undermine any enforcement efforts at the local government level.

Mr. Ian Bertram (SPC) highlighted the range of support services SPC can provide to the RMI in addressing coastal fisheries management issues, including the drafting of management plans for specific coastal fisheries species.

### **Presentation 3. FFA legislative support and Template of WCPFC legal Measures implementation options**

The third presentation on Day 1 was delivered by Dr. Manu Tupou-Roosen (FFA Legal Counsel). The presentation outlined FFA's legislative programme to assist its members. The presentation stressed the importance of a sound supporting legal framework for the fisheries sectors that is responsive to the RMIs international, regional and sub-regional obligations. One of the key challenges to many States in the region is that the timely implementation of the decisions of the Western and Central Pacific Fisheries Commission.

### **Summary and Discussion**

Professor Martin Tsamenyi summarized the various presentations at the end of the 3 presentations and opened the floor for discussion. An active discussion followed and participants raised a number of issues for clarification and made suggestions on how to improve the effectiveness of the fisheries legislation.

- In relation to the offshore fisheries sector, the key issues discussed relate to the long term sustainability of the fisheries resources, how to increase the contribution of fisheries to the GDP, data gaps and the effectiveness of current legal framework.
- In relation to coastal fisheries, most of the commentators agreed that the primary legal framework for coastal fisheries management in the RMI is adequate; however, this legal framework needs to be supplemented by Local Council Ordinances and Management Plans There were two points of view on how best to approach the issue of a comprehensive regime for coastal fisheries management. Some participants advocated the 'top-down approach,' whilst others preferred empowering Local Governments to manage their own local fisheries.

## **DAY 2**

### **Presentation 1 – WCPFC Challenges and Opportunities**

Day 2 of the Workshop began with a presentation by Professor Martin Tsamenyi (MRAG Consultant) on the WCPFC Challenges and Opportunities. The presentation reviewed the key international, regional and sub-regional fisheries instruments and explained the importance of these instruments to the Marshall Islands and how these instruments all link together to provide the legal framework necessary to allow parties and member States to implement sound conservation and management measures. These instruments include the 1982 LOSC, the FAO Compliance Agreement, the 1995 UN Fish Stocks Agreement, the Port State Measures Agreement (although not yet in force) the WCPF Convention and its conservation

and management measures and the various PNA Implementing Agreements, all of which the RMI has accepted.

### **Presentation 2: - EU IUU Regulation and implications for the RMI**

As a result of popular request, Professor Tsamenyi made a presentation on the EU IUU Regulation and its implications for the RMI, particularly in view of the new policy to promote domestic processing which will require access to international markets. The presentation highlighted the four key aspects of the EU IUU Regulations, namely: Port State control over third country fishing vessels intending to enter EC member States; Catch Certification Requirements; and Establishment of EC IUU Vessels List; and the Establishment of a List of Non-Cooperating States.

The discussion that followed the presentation revealed a lot of interest in the EU IUU Regulation. Most speakers requested that the revised legislation address requirements of the EU Regulation.

### **Presentation 3 – Gaps in the RMI Off-shore fisheries legislation**

The third presentation on Day 2 was given by Professor Tsamenyi. The presentation focused on the major gaps in the RMI fisheries legislative framework and options to resolve fill in these legislative gaps. A major gap identified concerns RMI's flag state duties in regards to fishing vessels flying its flag. That the existing fisheries laws focus exclusively on coastal State issues and fail to recognize that the RMI is a flag State, with significant and growing obligations.

### **Presentation 4 - Gaps in the RMI Coastal Fisheries Legislation - and Draft Template for Local Government Ordinances and Fisheries Management Plans**

The final presentation for the day was led by Mr. Ian Bertram (SPC) and focused on the coastal fisheries sector, this time looking at potential draft template that MIMRA and Local Governments can use to develop Ordinances and fisheries Management Plans. It was recognized that more work was required on further development of the Templates. An understanding was reached that the drafts will be further reviewed presented to Workshop 2 for endorsement.

### **Close of Workshop**

The Workshop closed at approximately 5.00 pm o Friday April 15, 2011 with a prayer by Mr. Devine Waiti (Legislative Counsel).

**ATTACHMENT I**

**ACP FISH II**

**MARSHALL ISLANDS COMPREHENSIVE LEGISLATIVE REVIEW**

**WORK SHOP 1 PROGRAM**

**Tuesday April 14, 2011**

- 10.00 am:** Opening – Keynote Address by the Minister for Resources and Development.
- 10:30 am:** Background to, and Objectives of the Project.
- 11.30 am:** Morning Tea
- 12:00 noon:** MIMRA presentation:
- (a) – ‘State of Off-shore Fisheries and Key Issues for RMI’
- (b)- ‘State of RMI Coastal Fisheries and Key Issues for RMI’
- 1:00 pm:** **LUNCH**
- 2:00pm:** WCPFC Opportunities and Challenges
- 3.00 pm** FFA legislative support and Template of WCPFC legal Measures implementation options
- 4:00pm:** General Discussions.

**Friday April 15, 2011**

- 9:30 am - 11:00 am:** Presentation on Gaps in the RMI Off-Shore Fisheries Legislation
- 11:00am -12:00 noon:** Gaps in the RMI Coastal Fisheries Legislation
- 12:00 noon:** **LUNCH**
- 1:30pm – 4:00pm:** General Discussion of Gaps Identified and Identification of Key Issues for Legislative Changes.
- 4.00pm:** Close of Workshop

**ATTACHMENT II WORKSHOP 1 PARTICIPANT LIST**

<b>NAME</b>	<b>POSITION</b>	<b>ORGANIZATION</b>
Jack Jorbon	Asst. Attorney General	Attorney Generals Office
Lowell Alik	Deputy General Manager	RMI EPA
Capt. Joe Tiobech	Deputy Director	RMI Ports Authority
Daniel Timothy	Chief of Customs	RMI Customs Office
Josepha Maddison	Chief	Historic Preservation Office
Mary Jane Wright	Anthropologist	Historic Preservation Office
Tommy Kijiner	Secretary	Ministry of Resources and Development
Rebecca Lorrenij	Asst. Secretary	Ministry of Resources and Development
Lisa Muller	Chief of Local Government Affairs	Ministry of Internal Affairs
Senator Fred Muller	Member	Nitijela Standing Committee on Resources and Development
Senator Gerald Zackios	Chairman	Nitijela Standing Committee on Foreign Affairs
Minister Brenson Wase	Minister for Justice/Acting for R&D and Vice Chair	Cabinet/Nitijela Standing Committee for Judiciary and Governmental Relations
Doreen Debrum	Food Security Program	Ministry of Resources and Development
Albon Ishoda	Director	Marshall Islands Conservation Society (MICS)
Isaac Lanwi	Chief of Police	Majuro Atoll Local Government
Divine Waiti	Legislative Counsel	Nitijela of the Marshall Islands
James Myazoe	Vice President	Trust Company of the Marshall Islands (RMI Ship Registry)
Sam Lanwi Jr.	Deputy Director	MIMRA
Florence Edwards	Coastal Fisheries Manager	MIMRA



### ATTACHMENT III

#### OPENING REMARKS

By:

Hon. Brenson S. Wase

(Acting Minister for Resources and Development)

ACP FISH II - RMI Comprehensive Legislative Review Workshop I.

April 14-15, 2011

Yokwe Aolep.

On behalf of Cabinet and President, I take this opportunity to welcome all of you to these very important deliberations. To our friends who traveled here from other parts of the region, I offer you a warm welcome, and wish you a pleasant stay in Majuro.

Sustainable development of the fishery sector is critical to the Marshall Islands as a small Islands State. With limited land based natural resources we have no choice, but to concentrate maximum effort in developing our fisheries sector. Our fishery is our future, the future of our children, and of generations to come. If we do not take the steps to put in place the necessary foundation, to ensure long term sustainability of both our oceanic fishery, and coastal fishery, we will be remiss. We will have failed in our duty to future generations, as custodians, on their behalf.

Like many similarly situated nations, sustainable development of our fisheries sector is critical, both from an economic standpoint, as well as from a subsistence one. As such, each and every one of us, inclusive of government, industry, and communities, all have an important role to play. We recognize the importance of our fishery sector, that is why we signed up to the 1982 UN Law of the Sea Convention, and the 1995 UN Fish Stocks Agreement. We are actively involved in, and maintain membership in, a number of important regional organizations, such as the FFA, the PNA, and the Tuna Commission. These instruments impose upon parties important obligations in so far as the conservation, management and the sustainable use of fishery resource is concerned. And as a party to these instruments, the Marshall Islands has agreed to take upon itself, such key fisheries conservation and management obligations. We have an obligation to honor these commitments under international law. By the same token, we acknowledge there are challenges as to how much we can do, as a nation. And to this end, I take this opportunity to extend to all our friends in the region, and on the international scene, for their continued

support of Marshall Islands efforts in the fishery sector. In particular, insofar as this project is concerned, a special mention to the EU, under the ACP Fish II Programme.

This review could not have come any sooner. Since the passage of our fisheries law in 1997, no legislative action has been undertaken to modernize our fisheries laws, even in light of key developments, particularly in the region, and our sub-region. The only way we can effectively discharge our international obligations at the national level and thereby manage our fishery in a sustainable manner, is if we have a robust legal framework, at the national level. I am confident, that the workshop will deliver positive results, and that sooner, rather than later, the Cabinet and the Nitijela, will likewise do their part to modernize our fisheries laws.

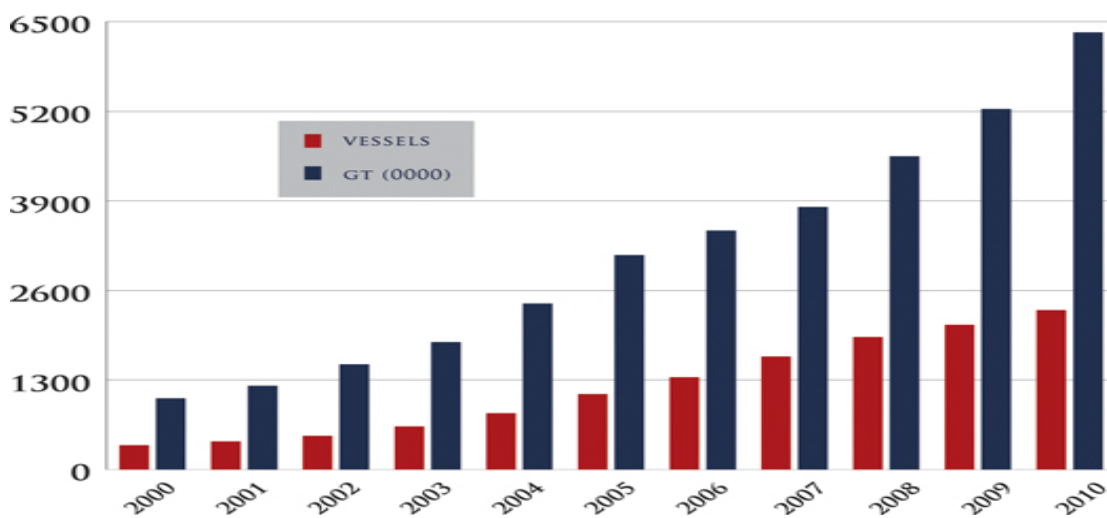
You all have Cabinet's support in this very important work, and we will stand by to assist wherever we can. The Cabinet looks forward to the final product of this review, and hopefully expedite the legislative process.

I wish you success in your two day deliberations.

Kommol tata

## ANNEX 12: RMI SHIP REGISTRY

The RMI Registry enjoyed extra-ordinarily steady growth, from about 1996. Data on the performance of the ship registry in the period between 1988 and 1996, has been difficult to obtain, but in the ten year period between 1996 and 2006, tonnage grew steadily from less than 5,000,000 GT in 1996, to just under 35 million GT in 2006.<sup>79</sup> The number of vessels on the registry in the corresponding period also grew from a mere 200 vessels in 1996, to over 1,000 vessels in 2006.<sup>80</sup> These same trends are also evident in the ten year period between 2000 and 2010, reflected in [Figure A12.1](#) below. In 2000, the total GT on the registry was less than 13,000,000 and the total number of vessels on the Registry, less than 600. By September 30, 2010, total GT had risen to just over 63,000,000 tons and the number of vessels, superseding the 2,000 mark.



**Figure A12.1. Fleet growth through September 30, 2010.** Source: IRI, 'Fleet Highlights' (2010) IRI Website <<http://www.register-iri.com/index.cfm?action=page&page=110>>.

### Tonnage Type

The tonnage on the Registry consists largely of Bulk Carriers, Container Ships, Gas Carriers, General Cargo Ships, Mobile off-shore Drilling Units (MODUs), Mobile off-shore Units (MOUs), Off-shore Supply Vessels (OSVs), Passenger Vessels, Tankers, Fishing Vessels<sup>81</sup> and Yachts.<sup>82</sup> Tankers make up the majority of the tonnage, with 593 Tank Vessels totaling 26,979,719 GT, followed by Bulk Carriers with 441 vessels totaling 17,074,947 GT. This is

<sup>79</sup>Bill Gallagher, 'Marshall Islands Registry' (Paper Presented at Maritime Transportation of Energy: Identifying the Priority Policy Issues, Mare Forum, New York, USA, November 8-9, 2006)1. [http://www.mareforum.com/ENERGY\\_TRANSPORTATION\\_USA\\_2006\\_PRESENTATIONS\\_files/GALLAGHER.pdf](http://www.mareforum.com/ENERGY_TRANSPORTATION_USA_2006_PRESENTATIONS_files/GALLAGHER.pdf).

<sup>80</sup>Bill Gallagher, 'Marshall Islands Registry' (Paper Presented at Maritime Transportation of Energy: Identifying the Priority Policy Issues, Mare Forum, New York, USA, November 8-9, 2006)1. [http://www.mareforum.com/ENERGY\\_TRANSPORTATION\\_USA\\_2006\\_PRESENTATIONS\\_files/GALLAGHER.pdf](http://www.mareforum.com/ENERGY_TRANSPORTATION_USA_2006_PRESENTATIONS_files/GALLAGHER.pdf)

<sup>81</sup>Fishing vessels are included under the category "Miscellaneous"

<sup>82</sup>See [Figure 2](#) below.

followed by Gas Carriers with 89 vessels totaling 7,576,595 GT, and Container Vessels with 224 vessels totaling 5,905,358 GT. Fishing vessels form a minute percentage of the tonnage, and are covered in the Miscellaneous category in [Figure A12.2](#) below. From the records of the Western and Central Pacific Fisheries Commission (WCPFC), the Marshall Islands has registered a total of 28 vessels, the majority of which are fish carriers, as reflected in Figure 4 herein below.

VESSEL TYPE	NO. OF VESSELS	% OF FLEET	GROSS TONS	% OF FLEET GROSS TONS
BULK CARRIER	441	19%	17,074,947	27%
CONTAINER	224	10%	5,905,358	9%
GAS CARRIER	89	4%	7,576,595	12%
GENERAL CARGO	80	3%	1,097,913	2%
MISCELLANEOUS	57	2%	599,775	1%
MODU	121	5%	2,277,372	4%
MOU	22	1%	1,447,353	2%
OSV	133	6%	247,226	0.39%
PASSENGER	7	0.30%	161,448	0.25%
TANKER	593	26%	26,979,719	43%
YACHT	548	24%	92,286	0.15%
<b>TOTAL FLEET</b>	<b>2315</b>		<b>63,459,992</b>	

**Figure A12.2 - Fleet Type Through September 30, 2010.** Source: IRI, 'Fleet Highlights' (2010) IRI Website <http://www.register-iri.com/index.cfm?action=page&page=110>.

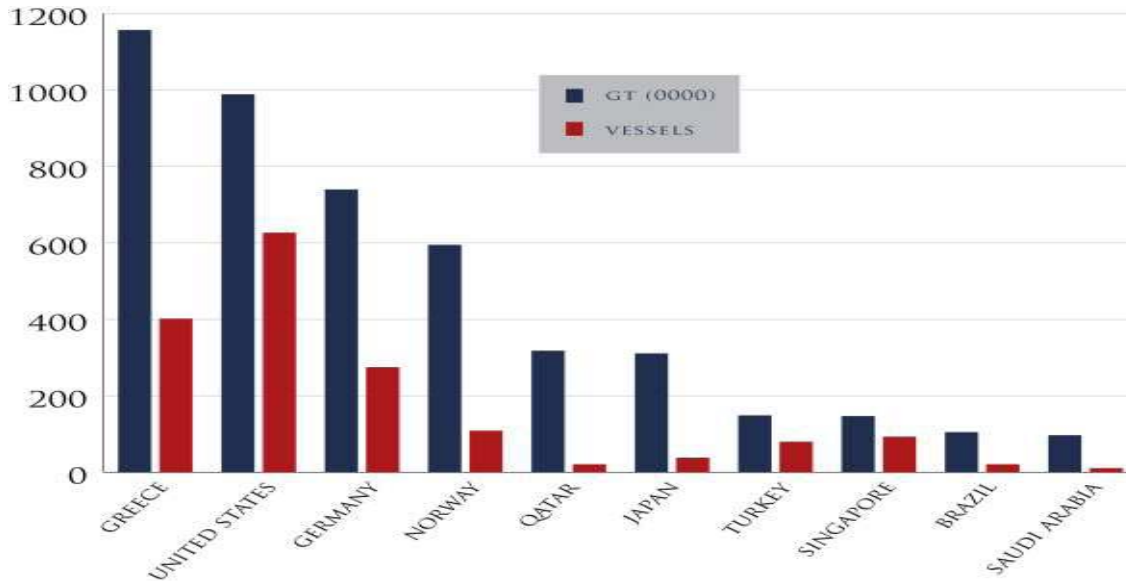
### Tonnage Registration by Nationality

Research into the nationalities of the owners of these tonnage show that tonnage enter the flag predominantly from the United States, Greece, Germany, Norway, Italy, Turkey, Japan and other countries in Asia.<sup>83</sup> According to the United Nations Conference on Trade and Development (UNCTAD) as of January 1, 2009, the top ten nationalities of ownership of vessels on the RMI Registry were, Greece with 282 vessels, Germany with 233 vessels, United States with 170 vessels, Norway with 86 vessels, Turkey recording 57 vessels, Cyprus with 42 vessels, Japan with 43 vessels, Singapore with 20 vessels, and the United Kingdom and the United Arab Emirates both with 16 vessels.<sup>84</sup> The remainder of the fleet is distributed amongst China, Hong Kong, Denmark, Taiwan, Italy, Russia, India, Saudi Arabia, Belgium, Malaysia, Netherlands, Sweden, Brazil, Spain, Switzerland, Croatia, and Bermuda.<sup>85</sup> These figures are captured in [Figure A12.3](#) below. To date however, the total number of vessels on the RMI registry has increased to 2315, but information on the distribution of the nationalities of the additional tonnage is not yet accessible.

<sup>83</sup>[http://www.lowtax.net/lowtax/html/marshall\\_islands/jmrobs.html](http://www.lowtax.net/lowtax/html/marshall_islands/jmrobs.html)

<sup>84</sup>UNCTAD, 'Review of Maritime Transport 2009' (Report to the United Nations 2009, Table 15) 58.

<sup>85</sup>UNCTAD, 'Review of Maritime Transport 2009' (Report to the United Nations 2009, Table 15) 58.

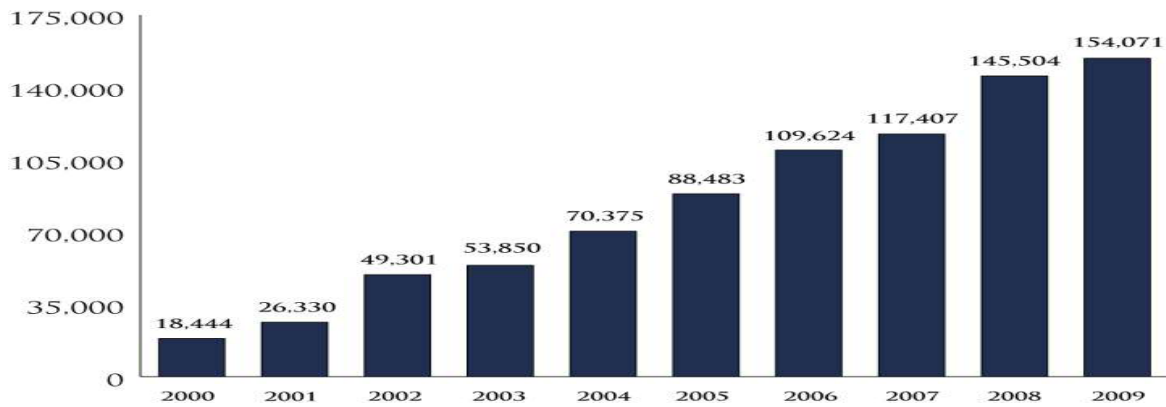


**Figure A12.3. Registrations by Nationality.** Source: IRI, The Marshall Islands Registry' Presentation at the Maritime Labour Convention, 2006 Round-Table Discussion, Houston, Texas, February 18, 2010) Slide 5.

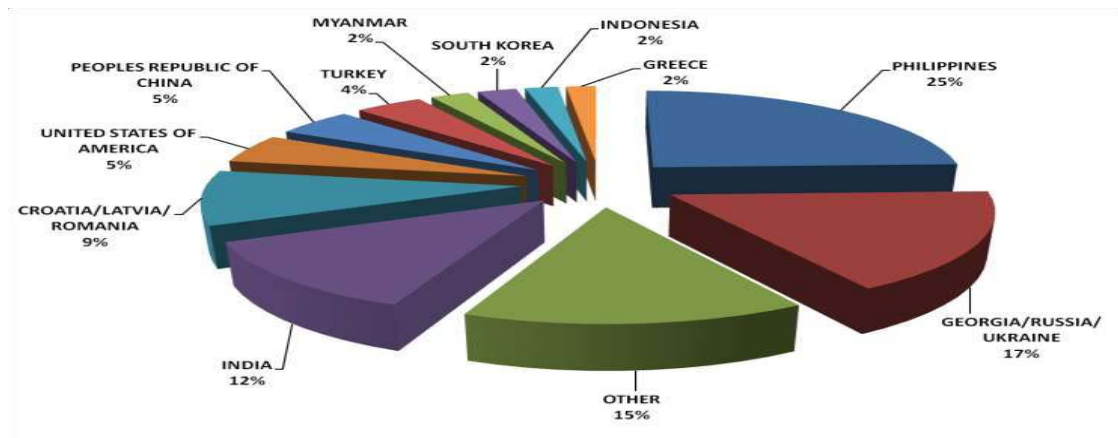
### Seafarer Documentation By Nationality

With the increase in the vessel and tonnage registration, the seafarer documentation likewise grew in parallel to the increase in the number of vessels and tonnage on the Registry. As indicated in [Figure A12.4](#) below, from the period between 2000 and 2009, seafarer documentation issued by the Registry increased from 18,444 to 154,071. [Figure A12.5](#) below shows that through to December 31, 2009, that a quarter of the 154,071 seafarer documentation were issued to Philippine nationals, 17% to Georgia, Russian and Ukrainian nationals, 12% to Indian nationals, and 9% to Croatian, Latvian and Romanian nationals.<sup>86</sup>

<sup>86</sup> See Figure 6.



**Figure A12.4 - Seafarer Growth.** Source: IRI, The Marshall Islands Registry' (Presentation at the Maritime Labour Convention, 2006 Round-Table Discussion, Houston, Texas, February 18, 2010) Slide 9.



**Figure A12.5. Seafarer Documentation by Nationality.** Source: IRI, The Marshall Islands Registry' (Presentation at the Maritime Labour Convention, 2006 Round-Table Discussion, Houston, Texas, February 18, 2010) Slide 10.

### Management of the Registry

The RMI Ship Registry (the Registry) is currently managed by the International Registries Inc. (IRI), a company based in Reston, Virginia, United States of America, who took over management, and majority interests in the venture, in 1990. The IRI is managing the RMI Registry. The IRI also provides expert administrative services such as, the issuance certificates of registry, seafarers' licensing and documentation, issuance of manning certificates, conducting safety inspections, engaging recognized classification societies to monitor its vessels' compliance with all international and national standards, providing technical assistance, issuing radio station licenses, providing investigative services, and providing information on maritime regulations and port activities, to name a few.<sup>87</sup>

<sup>87</sup> IRI, 'History' (2010) IRI Website <<http://www.register-iri.com/index.cfm?action=page&page=158>>

The control and management of the RMI Registry is organized pursuant to a joint venture agreement, entered into in accordance with the Maritime Administrations Act of 1990.<sup>88</sup> Under these arrangements, the control and management of the Marshall Islands Ship Registry is wholly vested in the IRI, in essence, delegating the administration of the Marshall Islands flag State duties, to the IRI. Such delegation appears not only to be the case in the legal sense, but in addition, the actual physical management and the operations of the Registry, have also departed the jurisdiction of RMI and are conducted exclusively from the head offices of the IRI in Reston, Virginia, USA.<sup>89</sup> Section 107 of the Maritime Administrations Act,<sup>90</sup> Section 262 of the Documentation and Identification of Vessels Act,<sup>91</sup> and Section 302 of the Preferred Ship Mortgage and Maritime Liens Act, all prescribe that the records of ships registered under the laws of RMI be maintained in the head Offices of the IRI, in the USA. RMI plays no active role in the day to day management of the registry, nor is consulted on the business management aspect of the Registry.

The Maritime Administrations Act lays down the legal framework for the institutions and offices required to carry out the functions of the Registry and the manner in which such functions are to be carried out. The Act establishes the offices of the Maritime Administrator, Commissioners of Maritime Affairs, Deputy Commissioners of Maritime Affairs, and Special Agents.<sup>92</sup> The Documentation and Identification of Vessels Act also anticipates the appointment of Classification Societies.

### ***Maritime Administrator***

The key institution in operations of the ship registry is the Maritime Administrator who is appointed by Cabinet and vested with all powers under the Act, to administer all matters pertaining to RMI vessels. The authority of the Maritime Administrator includes the authority to promulgate the necessary Rules and Regulations to ensure the proper implementation of international standards.<sup>93</sup> Furthermore, the Act grants the Minister for Transport and Communications the discretion to delegate all or certain of his or her ministerial functions to the Maritime Administrator,<sup>94</sup> and such delegation has been a standard practice since 1990. The TCMI, an affiliate of the IRI was appointed the Maritime Administrator on September 14, 1990. The appointment is a standing appointment and the TCMI, (on behalf of the IRI) continues to hold such office to date.<sup>95</sup>

### ***Powers of the Maritime Administrator***

---

<sup>88</sup> 47 MIRC Ch.1, Maritime Administrations Act. See Annex '1' below.

<sup>89</sup> IRI, RI, 'History' (2010) IRI Website <<http://www.register-iri.com/index.cfm?action=page&page=158>>

<sup>90</sup> See Annex '1' below, §107.

<sup>91</sup> 47 MIRC Chapter 2. See Annex '3' below.

<sup>92</sup> 47 MIRC Chapter 1, Administrations Act, §§104, 105 and d106.

<sup>93</sup> See Annex '1' below, §103.

<sup>94</sup> See Annex '1' below, §103.

<sup>95</sup> See Annex '2' below, 'Memorandum by Minister Kedi date June 19, 2009 to William Gallagher titled 'Authority of the of the Trust Company of the Marshall Islands.'

As the Maritime Administrator, the TCMI is accorded wide-ranging powers under the Maritime Administrations Act to ‘...administer all matters pertaining to vessels of the Republic that are subject to the provisions of this Title; promulgate Rules and Regulations to carry out the provisions of this Title; and ensure the seaworthiness and proper manning conditions of such ships, yachts and fishing vessels registered under the laws of the Republic.’<sup>96</sup> The TCMI has the power and authority to promulgate the necessary rules and regulations,<sup>97</sup> set the applicable fees,<sup>98</sup> regulate the issuance of ship radio licenses,<sup>99</sup> promulgate the rules in regards to licensing, and the certification of officers and personnel,<sup>100</sup> and to set the rules and regulations for the efficient, and appropriate inspection of vessels.<sup>101</sup> The TCMI has the power to suspend or revoke all licenses, certificates, permits or any documentation, issued under the laws of RMI.<sup>102</sup> In addition, the TCMI as the Maritime Administrator, is designated under the Act, as the sole provider of Point of Service Activation for all Inmarsat maritime mobile stations therefore. The TCMI as such, is also the appointing authority, in the case of the appointment of Commissioners of Maritime Affairs, and the Special Agents under the Act.<sup>103</sup>

### **Services offered by the RMI Registry**

Services available under the RMI registry include the registration of vessels, the recordation of mortgages, the issuance of ship licenses, the issuance of certificates, technical maritime safety assistance, and technical support. More critically, the TCMI as the Maritime Administrator, is responsible for investigating all maritime incidents involving vessels on the registry and ensuring that investigation reports are compiled. In the case of serious maritime casualties involving RMI vessels, the TCMI is obligated to hold inquiries into such casualties, or to cooperate with States that are conducting such inquiries. The Registry also provides yacht services, and seafarer documentation services.<sup>104</sup>

### **Fishing Vessel Registration**

The Maritime Administrator is also authorized to register fishing vessels, under the Documentation and Identification of Vessels Act, §.279.<sup>105</sup> Pursuant to that section, the Maritime Administrator may consider an application for the registration of a fishing vessel, provided that the fishing vessel is owned by a citizen or entity in tRMI, or a qualified foreign

<sup>96</sup> 47 MIRC Chapter 1, Maritime Administrations Act, §103.

<sup>97</sup> 47 MIRC Chapter 1, Maritime Administrations Act, §§.103, 131,141, 150.

<sup>98</sup> 47 MIRC Chapter 1, Maritime Administrations Act, §111

<sup>99</sup> 47 MIRC Chapter 1, Maritime Administrations Act, §131.

<sup>100</sup> 47 MIRC Chapter 1, Maritime Administrations Act, §109.

<sup>101</sup> 47 MIRC Chapter 1, Maritime Administrations Act, §141.

<sup>102</sup> 47 MIRC Chapter 1, Maritime Administrations Act, §110.

<sup>103</sup> 47 MIRC Chapter 1, Maritime Administrations Act, §§.104, 105, and 106.

<sup>104</sup> IRI, ‘Maritime Services’ (2010) IRI Website<

<http://www.registeriri.com/index.cfm?action=page&page=53>.

<sup>105</sup> 47 MIRC Chapter 2, Documentation and Identification of Vessels Act, §.279.



entity, that the vessel is seaworthy, and that the vessel name and vessel numbers, are marked in accordance with internationally agreed specifications. In addition, that the owner has paid up the prescribed registration fees, the applicable tonnage taxes, and that the tonnage measurements have been certified and approved in accordance with the regulations. The owner also required to provide proof of ownership of the vessel.<sup>106</sup>

The Maritime Administrator may on the other hand, refuse to register a fishing vessel, or may terminate the registration of a fishing vessel where, it is detrimental to the interests of RMI, where the owner has failed to satisfy any penalty imposed under the laws of the RMI for a period of three months, where the owner has failed to pay the annual tonnage taxes for a period of one (1) year, or where the fishing vessel has become a total, or constructive total loss.<sup>107</sup>

It must be noted that there are no provisions requiring the Maritime Administrator to address its mind to the history of fishing vessels, in the context of the RMI's international obligations. As such, the TCMI is under no legislative direction to turn its mind to fisheries issues when considering an application for the registration of fishing vessels. The failure of the law to require such consideration could potentially undermine the efforts of MIMRA in meeting RMI's international fisheries obligations.

---

<sup>106</sup> 47 MIRC Chapter 2, Documentation and Identification of Vessels Act, §§.279 and 208.

<sup>107</sup> 47 MIRC Chapter 2, Documentation and Identification of Vessels Act, §§.279.

## ANNEX 13: DRAFT BILL

NITIJELA OF THE MARSHALL ISLANDS

32<sup>ND</sup> CONSTITUTIONAL REGULAR SESSION, 2011

BILL NO: \_\_\_\_\_

---

---

A

BILL FOR AN

ACT<sup>108</sup>

to amend certain provisions in certain Acts under Title 51 of the Marshall Islands Revised Code, namely the Marshall Islands Marine Resources Act 1997 (51 MIRC Ch.1), the Fisheries Act (51 MIRC Ch.2) and the Fisheries Enforcement Act (51 MIRC Ch.5), in order to address certain gaps, and to modernize such laws in light of recent development in international, regional, and sub-regional fisheries law.

**BE IT ENACTED BY THE NITIJELA OF THE MARSHALL ISLANDS:**

Section 1.      **Short Title.**

This Act may be cited as the 'Title 51 (Fisheries) Amendment Act, of 2011.'

**Section 2.** Amendments to the Marshall Islands Marine Resources Act, 1997 (51 MIRC Ch.1)

1. Section 102 of the Marshall Islands Marine Resources Act, 1997 is hereby amended by:

- (a) Inserting the words 'In this Title, Section to provide for the context in which the definitions in Section 102 are to be read;
- (b) Inserting a new definition immediately following Section 102 (16) to read as follows:

'Areas beyond the Fishery Waters' means areas of high seas and any other waters under the jurisdiction of another coastal State.

'Competent Authority' means the Authority exercising the functions in accordance with §119(1)(g) of this Title;

'Historic preservation site' has the same meaning as in the Historic Preservation Act 1991;

---

<sup>108</sup> The suggested draft amendments are underlined.

‘International conservation and management measures’ mean a measure to conserve and manage one or more species of living marine resources that is adopted and applied, in accordance with the relevant rules of international law;

“Illegal, unreported and unregulated fishing” refers to the activities set out in paragraph 3 of the 2001 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, hereinafter referred to as ‘IUU fishing’<sup>109</sup>,

**DRAFTING NOTE:**

**[Alternative Formulation below for each of the components of IUU Fishing]<sup>110</sup>**

‘Illegal fishing’ means fishing activities: (a) conducted by national or foreign vessels in waters under the jurisdiction of a State, without the permission of that State, or in contravention of its laws and regulations; or (b) conducted by vessels flying the flag of States that are parties to a relevant regional fisheries management organization but operate in contravention of the conservation and management measures adopted by that organization and by which the States are bound, or relevant provisions of the applicable international law; or (c) in violation of national laws or international obligations, including those undertaken by cooperating States to a relevant regional fisheries management organization;

‘Marshall Islands Record of Fishing Vessels’ means The Record established under §503 of this Title;

‘Mobile Transmitting Device’ means a device approved by the Authority and placed on a fishing vessel that transmits, either in conjunction with another device or devices or independently, information concerning the position, fishing and such other activities of the vessel as may be required;

‘unreported fishing’ means fishing activities which have not been reported, or have been misreported, to the relevant national authority, in contravention of national laws and regulations; or undertaken in the area of competence of a relevant regional fisheries management organization which have not been reported or have been misreported, in contravention of the reporting procedures of that organization;

‘unregulated fishing’ means fishing activities (a) in the area of application of a relevant regional fisheries management organization that are conducted by vessels without nationality, or by those flying the flag of a State not party to that organization, or by a fishing entity, in a manner that is not consistent with or

<sup>109</sup> This is the definition recognized by the IPOA-IUU and the Port State Measures Agreement..

<sup>110</sup> This is the formulation adopted by the EU in the IUU regulations as mentioned above.

contravenes the conservation and management measures of that organization; or  
(b) in areas or for fish stocks in relation to which there are no applicable  
conservation or management measures and where such fishing activities are  
conducted in a manner inconsistent with State responsibilities for the conservation  
of living marine resources under international law;

'vessel monitoring system information' means all data and information generated,  
obtained or collected in respect to the operation of the vessel monitoring system as  
required under this Title.

Section 119 of the Marshall Islands Marine Resources Act, 1997 is hereby amended to read  
as follows:

**§119. Powers and Functions of the Authority.**

(1) Unless otherwise provided in this Title, the Authority shall have the exclusive powers  
and

functions to:

(a) conserve, manage and sustainably develop all resources in the Fishery Waters and  
seabed and subsoil there-under, in accordance with the principles and provisions in this  
Title and in sub-regional, regional and international instruments to which the Republic of  
the Marshall Islands is party;

(b) establish management plans and programs to manage the resources in the Fishery  
Waters;

(c) issue licenses in accordance with this Title;

(d) issue licenses for the exploration and exploitation of the seabed and subsoil of the  
Fishery Waters;

(e) negotiate and conclude access agreements and fisheries management agreements  
on behalf of the Government in accordance with Article V, Section 1(d) of the  
Constitution and Part I of Chapter 4 of this Title;

(f) implement by regulation or otherwise as appropriate access agreements or fisheries  
management agreements to which the Republic of the Marshall Islands is party;

(g) act as the Competent Authority for the purpose of implementing the international  
fisheries and related obligations of the Marshall Islands;

~~(g)~~ (h) coordinate and manage fisheries monitoring, control and surveillance and, in  
consultation with the Attorney-General, enforcement of this Title;

~~(h)~~ (i) appoint authorized officers and observers in accordance with this Title;

~~(i)~~ (j) cooperate in the conservation and management of highly migratory fish stocks as

appropriate with other coastal States in the region and States fishing in the region and high seas area and participate in appropriate sub-regional, regional and international organizations

or arrangements relating to fisheries;

~~(j)~~ (k) participate in the planning and execution of projects, programs or other activities related to fisheries or fishing, or the exploration or exploitation of the nonliving resources of the Fishery Waters, seabed or subsoil there under, in which the Government or any agency or instrumentality that has a proprietary interest, direct or indirect, by way of stock ownership, partnership, joint venture or otherwise;

~~(k)~~ (l) regulate the processing, marketing and export of fish and fish products;

~~(l)~~ (m) seek technical assistance for the determination of the Fishery Waters zones and boundaries;

~~(m)~~ (n) submit the budget and a report regarding the expenditure of its funds to the Nitijela on an annual basis; and

~~(n)~~ (o) perform such other duties and functions as may be necessary to carry out the purposes and provisions of this Title.

(2) The Authority shall, in exercising its powers and functions, cooperate with other agencies of the Government with competence, given under authority of law, in any related area.

3. The Marshall Islands Marine Resources Act, 1997 is further amended by inserting new provisions immediately following Section 119, to read as follows:

**§119A. Giving effect to international conservation and management measures and international agreements.**

(1)The Authority may, for the purpose of giving effect to decisions of a regional fisheries management organization or arrangement to which the Marshall Islands is a member, make such regulations or attach such conditions to a permit, license or authorization to fish as the Authority may consider necessary or expedient for this purpose.

4.Section 120 of the Marshall Islands Marine Resources Act is hereby amended as follows:

**§120. Power to make regulations.**

(1) Subject to the provisions of this Title, the Authority may make regulations to carry out the purposes and provisions of this Title, and in particular but without restricting the generality of the foregoing, may adopt regulations in relation to:

- (a) the conservation, management and sustainable development of fish in the Fishery Waters, including but without restricting the generality of the foregoing the catching, loading, landing, handling, transporting, possession, inspection, disposal and export of fish;
- (b) related activities in the Fishery Waters;
- (c) the operation of fishing vessels or any other vessel which may enter the Fishery Waters for any purpose which falls within this Title;
- (d) the use and protection of fishing gear and equipment, including fish aggregating devices and artificial reefs;
- (e) licensing for fishing and other activities falling within this Title;
- (f) pollution or the environmental quality of the Fishery Waters;
- (g) fisheries monitoring, control and surveillance;
- (h) prescribing the powers and duties of persons engaged in the administration or enforcement of this Title and providing for the carrying out of those powers and duties;
- (i) compliance by citizens and fishing vessels entitled to fly the flag of the Marshall Islands which engage in fishing outside the Fishery Waters with applicable laws of other States or regional fisheries management organizations or arrangements, and applicable access agreements or fisheries management agreements;
- (j) prescribing any other matter to carry out the purposes and provisions of this Title.

(2) In promulgating regulations in accordance with Subsection (1), the Authority shall comply, mutatis mutandis, with the procedures Cabinet is required to take in promulgating regulations under the Administrative Procedures Act, 1994.

~~(3) Subject to Subsection (2), the requirements of the Administrative Procedures Act, 1994 for promulgation of regulations shall not be applicable to regulations promulgated by the Authority, which shall have full force and effect as if they had been promulgated by Cabinet.~~

~~(4)~~ (3) Any regulation promulgated by the Authority in accordance with this Title shall have the full force and effect of law, and shall form an integral part of this Title.

### **Section 3. Amendments to the Fisheries Act (51 MIRC Ch.2)**

1. The Fisheries Act is hereby amended by inserting new provisions immediately following Section 227 to read as follows:

#### **PART IV: FISHING ACTIVITIES AFFECTING AREAS DESIGNATED AS HISTORIC SITES.**

§228. Prohibition Against Fishing Activities in Areas Designated As Historic Preservation Sites.

(1). No person shall engage in any fishing activity within 500 metres of any marine area designated under the *Historic Preservation Act, 1991*, as a 'historic site', or adversely

interfere with a 'Landmark' or 'cultural historic property' within the meaning of the *Historic Preservation Act, 1991*, that may be located on, or within any fishing grounds.

(2) A person who contravenes Sub-section (1) of this Section, shall be guilty of an offence and upon conviction shall be liable to a fine not exceeding [xxx] or a term of [xxxxxx-months] imprisonment, or both.

The Fisheries Act is hereby amended by inserting new provisions immediately following Section 227 to read as follows:

#### **§229 Limitations on taking Sharks**

(1) Any person who, within the Fishery Waters:-

- (a) removes any of the fins of a shark (including the tail) at sea;
- (b) Has in custody, control, or possession of any such fin aboard a fishing vessel unless it is naturally attached to the corresponding carcass;
- (c) transfers any such fin from one vessel to another vessel at sea, or to receive any such fin in such transfer, without the fin naturally attached to the corresponding carcass; or
- (d) lands in the Marshall Islands any such fin that is not naturally attached to the corresponding carcass, or lands in the Marshall Islands any shark carcass without such fins naturally attached; commits an offence, punishable by a fine not less than [XXX] and not exceeding [XXX]

(2) For purposes of subparagraph (1), there shall be a rebuttable presumption that if any shark fin (including the tail) is found aboard a vessel, other than a fishing vessel, without being naturally attached to the corresponding carcass, such fin was transferred in violation of subparagraph (b) or that if, after landing, the total weight of shark fins (including the tail) landed from any vessel exceeds five percent of the total weight of shark carcasses landed, such fins were taken, held, or landed in violation of subparagraph (b). In such subparagraph, the term 'naturally attached', with respect to a shark fin, means attached to the corresponding shark carcass through some portion of uncut skin.

#### **Section 4. Amendments to the Fisheries Enforcement Act (51 MIRC Ch.5).**

1. Part I of the Fisheries Enforcement Act is hereby re-styled as follows:

**PART I- MONITORING, CONTROL AND SURVEILLANCE MEASURES TO COMBAT ILEGAL, UNREPORTED AND UNREGULATED FISHING.**

2. Section 502 of the Act is hereby amended to read as follows:

**§502. Enforcement Responsibility.**

- (1) The Authority shall have primary responsibility for fisheries enforcement, including:
  - (a) monitoring, control and surveillance of all fishing operations within and beyond the Fishery Waters in accordance with international law;
  - (b) the enforcement of this Title; and
  - (c) the implementation of regional and international obligations with regard to monitoring, control and surveillance measures to combat illegal, unreported and unregulated fishing within and outside the Fishery Waters of Marshall Islands.
- (2) The Authority shall, as appropriate, involve participation by relevant Government departments or offices in fisheries enforcement.
- (3) The Authority may authorize other agencies, officials or persons in the Marshall Islands, foreign government agencies or persons to perform fisheries enforcement functions in collaboration with or on behalf of the Marshall Islands under terms and conditions in bilateral or multilateral agreements or arrangements.

3. New Sections 503, 504, 505, 506, 507, 508, 509, and 510 are hereby inserted as follows:

**§503. Marshall Islands Record of Fishing Vessels.**

- (1) The Authority shall maintain a record of all fishing vessels entitled to fly the flag of the Marshall Islands that are authorized to fish pursuant to this Title in areas beyond the Fishery Waters. The record of fishing vessels shall be called the Marshall Islands Record of Fishing Vessels.
- (2) Subject to subsection (3), the record under subsection (1) shall contain the information as set out in Schedule 1 to this Chapter.
- (3) Despite subsection (2), the Director may require further information to be provided if such information is necessary in order to comply with relevant measures adopted by any regional or sub-regional fisheries management organization or arrangement of which the Marshall Islands is a member.
- (4) For the avoidance of doubt, the Marshall Islands Record of Fishing Vessels shall be in addition to any requirements for registration of vessels entitled to fly the flag of the Marshall Islands under the Maritime Administration Act (47MIRC Ch1).
- (5) All fishing vessels entitled to fly the flag of the Marshall Islands and intending to fish in areas beyond the Fishery Waters of the Marshall Islands shall apply in writing to the Authority through the Director, accompanied by the information required in



Schedule 1 to this Chapter, to be recorded on the Marshall Islands Record of Fishing Vessels. Applications for recording shall be made by the owner, or operator, or charterer, or lessee of the fishing vessel.

(6) If the Authority is satisfied that the fishing vessel complies with the requirements for recording of a vessel on the Marshall Islands Record of Fishing Vessels as set out in this Chapter, the Authority shall record the vessel on the Record of Fishing Vessels.

(7) The Authority shall process every application submitted pursuant to subsection 5 of this section within 14 days of receipt of the application.

(8) Applications for recording on the Marshall Islands Record of Fishing Vessels shall not be valid unless the vessel is marked in accordance with the Food and Agricultural Organisation of the United Nations' "Specifications for the Marking and Identification of Fishing Vessels," as modified, in Schedule 2 to this Chapter. The Authority may require the vessel to be inspected to ensure the vessel is marked in accordance with the requirements in Schedule 2 to this Chapter. The Authority's power to inspect a vessel under this sub-section may be delegated to other organizations or agencies

(9) The Authority may cause to be provided to any foreign government, international, regional or sub-regional fisheries management organization such information on the Marshall Islands Record of Fishing Vessels, additions to the Record, deletions from the Record, the withdrawal of any authorization to fish, information that a vessel is no longer entitled to fly the flag of the Marshall Islands, if such information is required to fulfill any international obligations of the Marshall Islands.

(10) The owner, operator, charterer, or lessee of any fishing vessel entitled to fly the flag of the Marshall Islands who knowingly provides false information required in Schedule 1 of this Chapter, shall be guilty of an offence and upon conviction shall be liable to a fine not exceeding [XXXX]

(11) The owner, operator, charterer, or lessee of any fishing vessel entitled to fly the flag of the Marshall Islands who engages in fishing outside the Fishery Waters of the Marshall Islands without providing the information required in Schedules 1 and 2 of this Chapter, shall be guilty of an offence and upon conviction shall be liable to a fine not exceeding [XXXX].

(12) In addition to any penalty that the courts may impose, the Authority may cancel the Authorisation of a fishing vessel fish where the vessel has been found guilty of contravening the requirements under this section.

**§504. Authorization to Fish in areas beyond the Fishery Waters.**

(1) An Authorization to a vessel to fish in areas beyond the Fishery Waters of the Marshall Islands is required for the owner, operator, charterer, or lessee of any fishing vessel entitled to fly the flag of the Marshall Islands to fish:

(a) in any area subject to the jurisdiction of a foreign State except in accordance with the laws, license and any conditions, of that foreign State;

(b) in an area subject to a treaty or multilateral access agreement except in accordance with that treaty or agreement;

(c) on the high seas except in accordance with a license issued in accordance with section 503 of this Chapter;

(d) in an area subject to international conservation and management measures except in accordance with those measures.

(2) Applications for authorization to fish in areas beyond the Fishery Waters of the Marshall Islands shall be made in writing to the Authority in the form prescribed in Schedule 4 to this Chapter.

(3) The Authority shall process every application submitted pursuant to subsection 2 of this section within 14 days of receipt of the application.

(4) The Authority shall not issue an Authorization to a Marshall Islands fishing vessel to fish in areas beyond the Fishery Waters of the Marshall Islands unless such vessel is on the Marshall Islands Record of Fishing Vessels and is on the Record of Fishing Vessel maintained by any relevant sub-regional, regional or international fishery management organizations or arrangements to which the Marshall Islands is a member or a cooperating non-member.

(5) In issuing an Authorization to Fish under this section, the Authority shall have regard to the record of compliance of the vessel, its owners and operators with conservation and management measures of the Marshall Islands and other States and with those established by sub-regional and regional fisheries management organizations or arrangements.

(6) An authorization to fish beyond the Fishery Waters may be issued subject to such conditions as the Authority considers appropriate. Such conditions may relate inter alia to: -

- (a) the areas where fishing is authorized;
- (b) the season, times, and voyages during which the fishing is authorized;
- (c) the species, size, age, quantities of fish that may be taken;
- (d) the method by which the fish may be taken;
- (e) the types, size and amount of fishing gear that may be used;
- (f) the transshipment of the fish;
- (g) the installation and maintenance of any vessel monitoring devices or other equipment;
- (h) the provision of catch and effort data and other information necessary to manage and control the fishery;
- (i) measures to give effect to sub-regional, regional and international fisheries conservation and management measures; an
- (j) compliance with the fisheries laws and regulations of other States.

(7) The operator, master, charterer, or lessee, or agent of a fishing vessel which has been issued with an Authorization to Fish beyond the Fishery Waters of the Marshall Islands shall ensure that the vessel carries the Authorization at all times. The Authorization must be clearly displayed in the wheel room where it can be visible to inspectors.

(8) The holder of an authorization to fish beyond the fishery waters must duly notify the Authority within 7 working days of the change of ownership of the vessel or operator of the vessel.

(9) The Authority may cancel an Authorization issued where the holder of the Authorization was found guilty of an offence against this Title or has a record of IUU fishing subsequent to the issuance of the Authorization.

(10) Where any vessel is used in contravention of this section or a condition of authorization imposed under this section, the owner, operator, charterer, or lessee and master of such vessel each commits an offence and upon conviction shall be liable to a fine not less than [XXX] .and not exceeding [XXX].

**§505. Use of Vessels of other Flags by Marshall Islands nationals beyond the Fishery Waters.**

(1) The Authority may make regulations governing the citizens of the Marshall Islands and body corporate incorporated in the Marshall Islands operating on vessels of other flags beyond the Fishery Waters.. Regulations made under this Section may cover, inter alia, authorisation to operate such vessels an conditions of authorisation and compliance with the laws and regulation of other States

**§506. Port State Measures.**

(1) For the purpose of promoting the effectiveness of international conservation and management measures adopted by sub regional, regional or global fisheries management organizations, treaties or arrangements and combating IUU fishing, the Authority may, in consultation with the relevant agencies involved in port management in the Marshall Islands, prohibit from entering a port of the Marshall Islands a foreign fishing vessel which has been reasonably suspected of having engaged in or supporting fishing in contravention of the conservation and management measures of a regional or sub regional fisheries management organization, unless it can be established that the catch on board has been taken in a manner consistent with the relevant conservation and management measures. Such a prohibition may apply to an individual vessel or to a fleet of vessels.

(2) The Authority may make regulations concerning the following matters:

- (a) the designation and publication of ports in the Marshall Islands to which foreign fishing vessels may be permitted access;
- (b) the designation of port inspectors;
- (c) the training and qualifications of port inspectors;
- (d) establishing the procedures, the contents of and the results to be obtained from an inspection regime, including the adoption of port measures adopted by a sub regional, regional or global fisheries organization, treaty or arrangement;.
- (e) prescribing the powers of inspectors, the mode of conducting an inspection, including the power to inspect any area of the fishing vessel, the catch (whether processed or not), any fishing gear, equipment or other gear and document

- which the inspector deems necessary to verify compliance with relevant conservation and management measures;
- (f) requiring the provision of such assistance or information as may be needed in order to undertake inspections;
  - (g) requiring, prior to allowing port access to a foreign fishing vessel, that such vessel provides such notice as may be promulgated by regulation made by the Minister prior to entering its port or its exclusive economic zone for the purpose of port access, including vessel identification, any authorization to fish, information on its fishing trip and vessel monitoring systems, quantities of fish on board and such other documentation or information as may promulgated by regulation made by the Minister;
  - (h) regulating or prohibiting the landing, transshipment, packaging or processing of fish, or re-fuelling or resupplying a vessel, including the prohibition of port access of a vessel which has been identified or reported as having been engaged in or supporting fishing activities in contravention with sub regional, regional or global conservation measures, or where there are reasonable grounds for presuming that a vessel has been engaged in such activity;
  - (i) regulating or prohibiting the port access of a vessel that has been included on the list of vessels maintained by sub-regional, regional or global fisheries organizations that are believed to have engaged in illegal, unregulated or unreported fishing;
  - (j) regulating or prohibiting the landing, transshipment, packaging or processing of fish, or re-fuelling or resupplying a vessel, including the prohibition of port access of a vessel which has been identified or reported as having been engaged in or supporting fishing activities in areas under national jurisdiction in contravention of the laws of a particular country, or fishing on the high seas without an authorization to do so from its flag state or where there are reasonable grounds for presuming that a vessel has been engaged in such activity;
  - (k) authorizing the cooperation and exchange of information, including inspection results with other States and sub regional, regional or global fisheries organizations;
  - (l) providing for a system of appeal against decisions taken in respect of fishing vessels under this section;

- (m) providing for any other measures that may be agreed to by sub-regional regional or global fisheries organizations, treaty or arrangement.
- (3) References to ports in this section include offshore terminals and other installations for landing, transshipping, re-fuelling or resupplying vessels.
- (4) Any person who fails to comply with the provisions of this section or with any regulations made pursuant to this section commits an offence and upon conviction shall be shall be liable to a fine not less than [XXX] .and not exceeding [XXX].

**§507. Mobile Transmitting Device Requirements.**

(1) The owner or operator of every fishing vessel permitted to fish in the Fishery Waters of the Marshall Islands pursuant to this Title, shall install, maintain and operate a registered mobile transmitting device at all times while in the Fishery Waters or such other area as may be agreed or designated, and in accordance with -

- (a) the manufacturer's specifications and operating instructions;  
and
- (b) such standards as may be required by anybody or organization of which the Marshall Islands is a member; and
- (c) such other conditions as may be imposed by the Authority.

(2) The requirements in sub-section (1) of this section shall, while in areas beyond the Fishery Waters, apply to every fishing vessel entitled to fly the flag of the Marshall Islands and included on the Marshall Islands Record of Fishing Vessel and authorized to fish beyond the Fishery Waters.

(3) The operator of each vessel referred to in subsections (1) and (2) shall ensure that -

- (a) no person tampers or interferes with the mobile transmitting device and that the mobile transmitting device is not altered, damaged, disabled or otherwise interfered with;
- (b) the mobile transmitting device is not moved from the required or agreed installed position or removed without the prior written permission of the Director of the Bureau;

- (c) the mobile transmitting device is switched on and is operational at all times during the period of validity of the license or authorization; even when the fishing vessel is in its own port.
- (d) upon notification by the Authority that the vessel's mobile transmitting device has failed to transmit, the directives of the Authority are complied with until such time that the vessel's mobile transmitting device is functioning properly;
- (e) the mobile transmitting device is registered as the Authority may direct or as may be prescribed, at the operator's expense.

(4) The operator of each vessel referred to in subsections (1) and (2) or his or her authorized agent, upon notification by the Authority that the vessel's mobile transmitting device has failed to report, shall ensure that reports containing the vessel's name, call sign, position (expressed in latitude and longitude to minutes of arc), and date and time for the report, are communicated to the Authority at intervals of 8 hours or such shorter period as specified by the Authority, commencing from the time of notification of the failure of the mobile transmitting device. Such reports must continue until such time as the mobile transmitting device is confirmed operational by the Authority.

(5) If it is not possible to make any one or more of the further position reports described in sub-section (3), or when the Authority so directs, the master of the vessel must immediately stow the fishing gear and take the vessel directly to a port identified by the Authority, and as soon as possible, report to the Authority that the vessel is being, or has been, taken to port with gear stowed.

(6) Any operator, including the master, owner and charterer, who does not comply with subsections (1), (2), (3) or (4) commits an offence and shall be liable on conviction to a fine not less than [XXXX ] and not exceeding [XXX], and in addition the applicable license or authorization shall be cancelled.

(7) The Authority shall implement the necessary administrative and technical measures necessary to monitor the activities of fishing vessels fishing in the Fishery Waters and vessels entitled to fly the flag of the Marshall Islands that are authorized to fish beyond the Fishery Waters. The Authority may enter into arrangements with other States or regional fisheries management organizations and arrangements to this effect.

**§508. Vessel Monitoring System – Information.**

(1) Ownership of all vessel monitoring system information generated by a mobile transmitting device required and operating under this Title is vested in the Marshall of Islands.

(2) All vessel monitoring information shall be classified as confidential information, and shall be subject to such procedures as may be prescribed by regulation.

(3) Any person who divulges information from a vessel monitoring system, to any person or persons not authorized to receive such information commits an offence and shall be liable on conviction to a fine not less than [XXXX] and not exceeding [XXX].

**§509. Mobile Transmitting Device – Evidence.**

(1) All information or data obtained or ascertained by the use of a mobile transmitting device shall be presumed, unless the contrary is proved, to -

- (a) come from the vessel so identified;
- (b) be accurately relayed or transferred;
- (c) be given by the master, owner and charterer of the vessel; and
- (a) evidence may be given of information and data so obtained or ascertained whether from a printout or visual display unit.

(2) The presumption in subsection (1) shall apply whether or not the information was stored before or after any transmission or transfer.

(3) A mobile transmitting device installed and operated in accordance with this Title shall be judicially recognized as notoriously accurate.

(4) The presumption set out in subsection (3) shall apply whether or not the information was stored before or after any transmission or transfer.

(5) Any person may give a certificate stating –

- (a) his or her name, address and official position;
- (b) he or she is competent to read the printout or visual display unit of any machine capable of obtaining or ascertaining information from a mobile transmitting device;
- (c) the date and time the information was obtained or ascertained from the MTU and the details of the information obtained;



- (d) the name and call sign of the vessel on which the mobile transmitting device is or was located as known to him or her, or as ascertained from any official register, record or other document; and
- (e) a declaration that there appeared to be no malfunction in the mobile transmitting device, its transmissions, or other machines used in obtaining or ascertaining the information.

**§510. Catch Certification.**

(1) In order to support global efforts to combat IUU fishing, the Authority shall develop and implement a system of catch certification which shall accompany all exported wild caught seafood products by fishing vessels entitled to fly the flag of the Marshall Islands

(2) The certificate implemented under sub-section (1) of this section shall contain:

(a) basic information to identify the vessel, such as the name of the fishing vessel, home port and registration number, call sign, license number, Inmarsat number and IMO number (if issued);

(b) information on the product (the type of species, catch areas and dates, estimated live weight and verified weight landed, as well as the applicable conservation and management measures and any transshipment at sea;

(c) information and declaration on export and import of the fisheries product (including the vessel name and flag, flight number, airway bill number, truck nationality and registration number, other transport documents and container number.

(3) The master of every fishing vessel entitled to fly the flag of the Marshall Islands shall complete the catch certificate referred to in sub-section (1) of this section.

(4) The Authority shall validate each catch certificate, attesting to the veracity of the details of such certificate required in sub-section (2) of this section.

(5) All seafood products imported into the Marshall Islands for reprocessing for the purpose of re-export shall be accompanied by a valid certificate similar to the one in subsection 1 of this section.

(6) A catch certification system developed and implemented by a regional fisheries management organization or arrangement to which the Marshall Islands is a member or a cooperating non-member may be accepted as a valid catch certificate pursuant to this section.

4. The original Sections 503 and 504 are hereby re-numbered and amended as follows:

**§503. 511 Appointment of Authorized Officers.**

(1) The Authority may, after consultation with the Attorney-General, appoint in writing any person or class of persons as authorized officer for the purposes of enforcing this Title and such persons shall exercise all powers and privileges accorded by this Title.

(2) For all monitoring, control and surveillance duties and obligations provided under this Title and all other duties provided under this Title, except any duties arising from the licensing and reporting requirements of this Title, police officers of the Department of Public Safety are deemed to be authorized officers.

(3) Any person or class of persons appointed as authorized officer in accordance with an access agreement, a fisheries management agreement or similar cooperative arrangement to which the Republic of the Marshall Islands is party, who is not a citizen or has not been appointed in accordance with Subsection (1), shall have such rights and privileges of a citizen as may be necessary for the performance of his or her duties, and all provisions of this Title relating to authorized officers shall be applicable to such persons.

(4) Any person or class of persons appointed as authorized officers pursuant to Subsection (2) may perform duties which include:

(a) for an authorized officer of the Republic of the Marshall Islands, to perform fisheries surveillance and law enforcement functions on behalf of the Republic of the Marshall Islands while on board a vessel or aircraft of another party; and

(b) for an authorized officer of another party to any agreement referred to in subsection 3 of this section agreement, to perform fisheries surveillance and law enforcement functions on behalf of the Republic of the Marshall Islands while on board the vessel or aircraft of that other party, and all provisions of this Title relating to authorized officers shall be applicable to such persons carrying out their duties in the areas of national jurisdiction of the Republic of the Marshall Islands.

**§504 512. Powers of Authorized Officers within the Fishery Waters.**

(1) For the purposes of enforcing this Title, any authorized officer may:

- (a) stop, board, remain on board and search any vessel in the Fishery Waters he or she reasonably believes is a fishing vessel, and any fishing vessel registered under the laws of the Republic of the Marshall Islands outside the Fishery Waters, and stop and search any vessel, vehicle or aircraft he or she reasonably believes may be transporting fish or engaging in other activities relating to fishing;
- (b) require the master or any crew member or other person aboard to inform him of the name, call sign and country of registration of the vessel and the name of the master, owner, charterer and crew members;
- (c) examine the master or any crew member or other person aboard about the cargo, contents of holds and storage spaces, voyage and activities of the vessel;
- (d) make such examination and inquiry as may appear necessary to him concerning any vessel, vehicle or aircraft in relation to which any of the powers conferred by this Subsection have been or may be exercised and take samples of any fish or fish product found therein;
- (e) require to be produced, examine and take copies of any license, logbook, record or other document required under this Title or concerning the operation of any vessel, vehicle or aircraft;
- (f) make an entry dated and signed by him or her in the logbook of such vessel, vehicle or aircraft;
- (g) require to be produced and examine any fish, fishing gear or appliance or explosive, poison or other noxious substance;
- (h) give directions to the master and any crew member of any vessel, vehicle or aircraft stopped, boarded or searched as may be necessary or reasonably expedient for any purpose specified in this Title or to provide for the compliance of the vessel, vehicle or aircraft, or master or any crew member with the conditions of any license;
- (i) endorse any license; and
- (j) arrest any person who assaults him or her in the exercise of his or her duties under this Title.

(2) Where ~~an authorized officer has reasonable grounds~~ there is probable cause to believe that an offense against this Title is being, or has been committed, an authorized officer may, ~~without a warrant~~ may:

(a). where there is ample opportunity to obtain a Search Warrant, he or she 'shall' obtain such a warrant for the purposes of entering, inspecting and searching any premises, other than premises used exclusively as a dwelling house, in which he or she has reasonable grounds probable cause to believe that an offense has been, or is being committed, or fish taken illegally are being stored. Where the authorized officer has probable cause to believe that evidence of an offense under this Title is in imminent danger of being concealed, transferred, sold, destroyed, or disposed off in any other manner whatsoever, and further, that no ample opportunity exists to obtain a search warrant, the authorized officer may conduct a search of such premises without a Warrant;

(b) stop, enter and search and stay in or on any vehicle or aircraft which he or she reasonably suspects of transporting fish or fish products;

(c) take samples of any fish found in any vessel or vehicle inspected or any premises searched under this Title;

(d) following hot pursuit in accordance with international law and commenced within the Fishery Waters, stop, board and search outside the Fishery Waters any fishing vessel which he or she has reasonable grounds to believe has been used in the commission of such offense, exercise any powers conferred by this Title in accordance with international law, and bring such vessel and all persons and things on board within the Fishery Waters; hang

(e) seize:

(i) any vessel (including its fishing gear, equipment, stores and cargo), vehicle, fishing gear, nets or other fishing appliances or aircraft which he or she has reasonable grounds to believe has been or is being used in the commission of such offense or in respect of which the offense has been committed;

(ii) any fish or fish products which he has reasonable grounds to believe have been caught in the commission of an offense or are possessed in contravention of this Title;

(iii) any logs, charts or other documents required to be maintained by this Title or under the terms of any license or other authorization or which he or she has reasonable grounds to believe show or tend to show, with or without other evidence, the commission of an offense against this Title; and

(vi) anything which he or she has reasonable grounds to believe might be used as evidence in any proceedings under this Title;

(f) arrest any person whom he or she has reasonable grounds to believe has committed an offense against this Title.

(4) An authorized officer may, in arresting, any person or fishing vessel which he or she has reasonable grounds to believe has done any act in contravention of this Title:

(a) use such force as is reasonably necessary in the circumstances to effect the arrest;

(b) call upon such person or persons as may be necessary to render assistance in enforcement activities for such time as he may require, and duties owed to authorized officers under this Title shall be owed to such person or persons while acting at the request and under the instructions of such authorized officer.

(5) A written receipt shall be given for any article or thing seized under this Section and the grounds for such seizure shall be stated in such receipt.

(6) Any person arrested without a warrant under this Section shall be taken to a police station and dealt with in accordance with law.

(7) An authorized officer may, for the purposes of enforcing this Title, with or without a warrant or other process:

(a) execute any warrant or other process issued by any court of competent jurisdiction; and

(b) exercise any other lawful authority.

5. New provisions are hereby inserted immediately following Section 512, to read as follows:

**§513. Powers of Authorized Officers beyond the Fisheries Waters.**

(1) An authorized officer may exercise any of the powers under this Title beyond the Fisheries Waters of the Marshall Islands in respect of any fishing vessel or any person on board any such vessel and relating to fisheries inspection, compliance or enforcement provided that the exercise of those powers is authorized by a treaty or agreement to which the Marshall Islands is a party or authorized under a conservation and management measure of a regional fisheries management organization or arrangement to which the Marshall Islands is a member.

- (2) In exercising his or her powers beyond the Fishery Waters, an authorized officer shall comply with the procedures and requirements under such bilateral or multilateral treaties or agreements or conservation and management measures implemented by a regional fisheries management organization or arrangement.
- (3) The Authority may make regulations providing for additional measures and powers for authorized officers beyond the Fishery Waters of the Marshall Islands.

#### **6. Re-numbering of provisions.**

- (a) The original Section 505 (Requirements for seized vessels, etc) is re-numbered as Section 514.
- (b) The original Section 506 (Removal of parts from seized vessels, etc.) is re-numbered as Section 515.
- (c) The original Section 507 (Appointment of Authorized Observers) is re-numbered as Section 516.
- (d) The original Section 508 (Duties to Authorized Observers) is re-numbered as Section 517, with new subsection (1) that reads:
  - (1) An authorized observer shall exercise scientific, compliance, monitoring and other functions.
- (e) The original Section 509 (Duties to Authorized Officers and Authorized Observers) is hereby re-numbered as 518.

The original Section 510 (Identification of Authorized Officers) is hereby re-numbered as Section 519.

- (f) The Original Section 510 (Transponder) is repealed in its entirety.

- (g) Section 520 is *Reserved*.

#### **Section 6. Effective Date.**

These amendments shall take effect on the date of certification in accordance with the provisions of Article IV Section 21 of the Constitution of the Republic of the Marshall Islands, and the Rules of Procedures of the Nitijela.



REPUBLIC OF THE MARSHALL ISLANDS COMPREHENSIVE  
FISHERIES LEGISLATION REVIEW

Dated \_\_\_\_\_  
by: \_\_\_\_\_

Introduced



**Schedule 1:**

**(Section 502(2))**

**Marshall Islands Record of Fishing Vessels**

**INFORMATION TO BE PROVIDED IN AN APPLICATION FOR RECORDING A VESSEL ON THE  
RECORD OF FISHING VESSELS TO FISH IN AREAS BEYOND THE FISHERY WATERS OF THE  
MARSHALL ISLANDS**

<b>Name of the Fishing Vessel</b>	
WCPFC Identification Number (WIN)	
Previous names (if any)	
Port of registry	
Name and address of the owner or owners	
Name and nationality of the master	
Previous flag (if any)	
International Radio Call sign	
Vessel communication types and numbers (Inmarsat A, B and C numbers and satellite telephone number)	
Colour photograph of the vessel	
Where and when the vessel was built	
Type of vessel	
Normal crew complement	
Type of fishing method or methods	
Length	
Moulded depth	
Beam	
Gross registered tonnage	
Power of main engine or engines	
Carrying capacity, including freezer type, capacity and number, and fish hold capacity	
Areas intending to fish	
Details of licenses issued by other coastal States (if applicable).	

Signed

Date



## Schedule 2

### (Section 503(8))

#### Vessel Marking Specifications and Standards

1.1.1 These specifications are intended to implement the FAO Standard Specifications for the Marking and Identification of Fishing Vessels

1.1.2 These specifications shall apply to the operation of all fishing vessels entitled to fly the flag of the Marshall Islands and authorized to fish beyond the Fishery waters of the Marshall Islands.

#### 2.1 General requirements

2.1.1 The owner, or operator, or charterer, or lessee submitting an application for recording a fishing vessel on the Marshall Islands Record of Fishing Vessels shall ensure that:

- (a) the vessel is marked for identification with its International Telecommunication Union Radio Call Signs (IRCS);
- (b) the vessels to which an IRCS has not been assigned, is marked either with the characters allocated by the International Telecommunication Union (ITU) to the Marshall Islands or such other characters of national identification as may be required under any bilateral fishery agreements entered into by the Marshall Islands and followed by, as appropriate, the fishing authorization or vessel registration number assigned to the vessel by any regional fisheries management organization to which the Marshall Islands is a member or cooperating non-member. In such cases, a hyphen shall be placed between the nationality identification characters and the licence or registration number identifying the vessel.
- (a) Whichever system is used from 2.1.1. (a) or (b) above, that identifier shall, for the purpose of the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (hereafter WCPFC), be called the WCPFC Identification Number (WIN)

2.1.2 Apart from the vessel's name or identification mark and the port of registry as may be required by international practice or national legislation, the WIN as specified shall be the only other vessel identification mark consisting of letters and numbers to be painted on the hull or superstructure;

#### 2.2. Markings and other technical specifications

2.2.1 The WIN in the English language shall be displayed prominently at all times:

- (a) on the vessel's hull or superstructure, port and starboard. Operators may place fixtures that are inclined at an angle to the vessel's side or superstructure provided that the angle of inclination would not prevent sighting of the sign from another vessel or from the air;
- (b) on a deck, except as provided for in paragraph 2.2.4 below. Should an awning or other temporary cover be placed so as to obscure the mark on a deck, the awning or cover shall also be marked. These marks should be placed athwart ships with the top of the numbers or letters towards the bow.

2.2.2 The WIN shall be placed:

- (a) as high as possible above the waterline on both sides of the vessel and that such parts of the hull as the flare of the bow and the stern are avoided;

- (b) in a manner that does not allow the marks to be obscured by the fishing gear whether it is stowed or in use;
- (c) so that they are clear of flow from scuppers or overboard discharges including areas which might be prone to damage or discolouration from the catch of certain types of species; and,
- (d) so that they do not extend below the waterline.

2.2.3 Undecked vessels shall not be required to display the WIN on a horizontal surface. However, where practical, the WIN may be fitted on a board so that it may be clearly seen from the air.

2.2.4 Boats, skiffs and craft carried by the vessel for fishing operations shall bear the same WIN as the vessel concerned.

2.2.5 The operators of vessels shall comply with the following in placing the WIN on the vessel:

- (a) that block lettering and numbering is used throughout;
- (b) that the width of the letters and numbers is in proportion to the height;
- (c) the height (h) of the letters and numbers is in proportion to the size of the vessel shall be in accordance with the following:
  - (i) for the WIN to be placed on the hull, superstructure and/or inclined surfaces:

<u>Length of vessel overall (LOA) in metres (m)</u>	<u>Height of letters and numbers in metres (m) is not less than:</u>
25 m and over	1.0 m
20 m but less than 25 m	0.8 m
15 m but less than 20 m	0.6 m
12 m but less than 15 m	0.4 m
5 m but less than 12 m	0.3 m
Under 5 m	0.1 m

- (ii) for the WIN to be placed on deck: the height is not less than 0.3 m for all classes of vessels of 5 m and over;
- (d) the length of the hyphen is half the height of the letters and numbers;
- (e) the width of the stroke for all letters, numbers and the hyphen is  $h/6$ ;
- (f) the space between letters and/or numbers does not exceed  $h/4$  nor be less than  $h/6$ ;
- (g) the space between adjacent letters having sloping sides does not exceed  $h/8$  nor be less than  $h/10$  ; for example A V.

- (h) the WIN is white on a black background, or black on a white background;
- (i) the background shall extend to provide a border around the WIN of not less than  $h/6$ ;
- (j) good quality marine paint is used throughout;
- (k) the WIN meets the requirements of these Specifications where retro-reflective or heat generating substances are used; and,
- (l) the WIN and the background are maintained in good condition at all times.

## ANNEX 14: DRAFT CONDITIONS OF LICENSE

### MARSHALL ISLANDS MARINE RESOURCES AUTHORITY STANDARD CONDITIONS TO BE IMPOSED ON FISHING VESSELS ENTITLED TO FLY THE FLAG OF THE MARSHALL ISLANDS AND AUTHORIZED TO FISH ON THE HIGH SEAS AND IN WATERS UNDER THE JURISDICTION OF OTHER STATES IN THE WESTERN AND CENTRAL PACIFIC OCEAN UNDER THE JURISDICTION OF OTHER STATES IN THE WESTERN AND CENTRAL PACIFIC OCEAN<sup>111,112</sup>

#### Introduction

The Convention for the Conservation of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean and conservation and management measures adopted by the Western and Central Pacific Fisheries Commission (WCPFC) impose several obligations on the Marshall Islands as a flag State to take the necessary measures to ensure that fishing vessels entitled to fly its flag and fishing in the WCPF Convention area do not undermine the effectiveness of conservation and management measures adopted by the WCPFC. Some of these obligations are reflected in substantive provisions of the fisheries legislation of the Marshall Islands. This document lists the obligations which are to be implemented as conditions of Authorization pursuant to the power given to the Marshall Islands Marine Resources Authority (MIMRA).

**It is a Condition of this Authorization that the vessel owner, operator, charterer, as the case may be, shall:-**

1. Ensure that where the fishing vessel in respect of which the authorization is issued conducts fishing within areas under the national jurisdiction of another State, the fishing vessel holds a licence, permit or authorization required by such other State (*WCPF Convention, Article 24(3)(a), CMM 2009-01, paragraph 1(d)*).
2. Ensure that where the fishing vessel in respect of which the authorization is issued is operated on the high seas in the Convention Area, it is operated in accordance with the requirements of Annex III to the WCPF Convention (*WCPF Convention Article 24(3)(b)*) (See Extract in ATTACHMENT 1).
3. Ensure that where the fishing vessel in respect of which the authorization is issued is operated on the high seas in the Convention Area, the master accepts high seas boarding and inspection by authorized inspection vessels and authorized inspectors of other members of the WCPFC (*WCPF Convention Article 26(3); CMM 2006-08*).
4. Comply with paragraphs 4-7 of CMM 2008-03 with regard to the conservation of sea turtles (*CMM 2008-03*). (See Extract in ATTACHMENT 2).

---

<sup>111</sup> These Conditions of License are specific to the WCPFC. If RMI registered fishing vessels fish in areas within the jurisdiction of other RFMOs, it will be necessary to develop additional Conditions to address the requirements of these RFMOs.

<sup>112</sup> These conditions apply only to fishing RMI flagged vessels in the Western and Central Pacific Ocean. If any vessel entitled to fly the flag of RMI intends to fish in other oceans, additional conditions will need to be developed, consistent with the rules of RFMOs having competence for those oceans.

5. Not transship to or provide bunkering services to a vessel which is not on the WCPFC Record of Fishing Vessels or registered on the Interim Register of Carriers and Bunkers (*CMM 2009-1, paragraph 2*).
6. Comply with paragraphs 3-7 of CMM 2009-02 with regard to FAD closure on the high seas (*CMM 2009-02, paragraphs 3-7*) (**See Extract in ATTACHMENT 3**).
7. Comply with paragraphs 8-13 of CMM 2009-02 with regard to catch retention (*CMM 2009-02 paragraphs 8-13*) (**See Extract in ATTACHMENT 4**).
8. Comply with paragraphs 1-5 of CMM 2009-05 with regard to the protection of data buoys (*CMM 2009-05*). (**See Extract in ATTACHMENT 5**).
9. Comply with paragraphs 10, 13, 16, 20, 21 and 34 of CMM 2009-06 with regard to transshipment (**See Extract ATTACHMENT 6**).
10. Ensure that when fishing in the high seas pockets bounded by the exclusive economic zones of Cook Islands to the west, French Polynesia to the east and Kiribati to the north, hereafter referred to as Eastern High Seas Pocket or E-HSP (specify coordinates) reports are submitted directly to the WCPFC Secretariat and the Authority at least 6 hours prior to entry and no later than 6 hours prior to exiting the E-HSP. Such reports shall also contain estimated catch (kilograms) on board. The report shall be in the following format:  
*VID/Entry/Exit:Date/Time:Lat/Long;YFT/BET/ALB/SKJ/SWO/SHK/OTH/TOT(kgs)*  
*/TRANSHIPMENT (Y/N)*

**NOTE:** A breach of these conditions of Authorization would constitute a violation of relevant provisions of the fisheries legislation and result in appropriate penalties being imposed.

**ATTACHMENT 1**  
**ANNEX III. TERMS AND CONDITIONS FOR FISHING (WCPF Convention)**

*Article 1*

*Introductory*

The operator of every fishing vessel authorized to be used for fishing in the Convention Area shall comply with the following terms and conditions at all times when the vessel is in the Convention Area. Such terms and conditions shall apply in addition to any terms and conditions which may apply to the vessel in areas under the national jurisdiction of a member of the Commission by reason of a licence issued by such member or pursuant to a bilateral or multilateral fisheries agreement. For the purposes of this Annex, “operator” means any person who is in charge of, directs or controls a fishing vessel, including the owner, master or charterer.

*Article 2*

*Compliance with national laws*

The operator of the vessel shall comply with the applicable national laws of each coastal State Party to this Convention in whose jurisdiction it enters and shall be responsible for the compliance by the vessel and its crew with such laws and the vessel shall be operated in accordance with such laws.

*Article 3*

*Obligations of the operator in respect of observers*

1. The operator and each member of the crew shall allow and assist any person identified as an observer under the regional observer programme to:

- (a) embark at a place and time agreed to;
- (b) have full access to and use of all facilities and equipment on board which the observer may determine is necessary to carry out his or her duties, including full access to the bridge, fish on board, and areas which may be used to hold, process, weigh and store fish, and full access to the vessel’s records including its logs and documentation for the purpose of records inspection and copying, reasonable access to navigational equipment, charts and radios, and reasonable access to other information relating to fishing;
- (c) remove samples;
- (d) disembark at an agreed place and time; and
- (e) carry out all duties safely.

2. The operator or any crew member shall not assault, obstruct, resist, delay, refuse boarding to, intimidate or interfere with observers in the performance of their duties.

3. The operator shall provide the observer, while on board the vessel, at no expense to the observer or the observer’s government, with food, accommodation and medical facilities of a reasonable standard equivalent to those normally available to an officer on board the vessel.

*Article 4*

*Regulation of transshipment*

1. The operator shall comply with any procedures established by the Commission to verify the quantity and species transhipped, and any additional procedures and measures established by the Commission with respect to transhipment in the Convention Area.

2. The operator shall allow and assist any person authorized by the Commission or by the member of the Commission in whose designated port or area a transhipment takes place to have full access to and use of facilities and equipment which such authorized person may determine is necessary to carry out his or her duties, including full access to the bridge, fish on board and areas which may be used to hold, process, weigh and store fish, and full access to the vessel's records, including its log and documentation for the purpose of inspection and photocopying. The operator shall also allow and assist any such authorized person to remove samples and gather any other information required to fully monitor the activity. The operator or any member of the crew shall not assault, obstruct, resist, delay, refuse boarding to, intimidate or interfere with any such authorized person in the performance of such person's duties. Every effort should be made to ensure that any disruption to fishing operations is minimized during inspections of transhipments.

#### *Article 5*

##### *Reporting*

The operator shall record and report vessel position, catch of target and non-target species, fishing effort and other relevant fisheries data in accordance with the standards for collection of such data set out in Annex I of the Agreement.

#### *Article 6*

##### *Enforcement*

1. The authorization issued by the flag State of the vessel and, if applicable, any licence issued by a coastal State Party to this Convention, or a duly certified copy, facsimile or telex confirmation thereof, shall be carried on board the vessel at all times and produced at the request of an authorized enforcement official of any member of the Commission.

2. The master and each member of the crew of the vessel shall immediately comply with every instruction and direction given by an authorized and identified officer of a member of the Commission, including to stop, to move to a safe location, and to facilitate safe boarding and inspection of the vessel, its licence, gear, equipment, records, facilities, fish and fish products. Such boarding and inspection shall be conducted as much as possible in a manner so as not to interfere unduly with the lawful operation of the vessel. The operator and each member of the crew shall facilitate and assist in any action by an authorized officer and shall not assault, obstruct, resist, delay, refuse boarding to, intimidate or interfere with an authorized officer in the performance of his or her duties.

3. The vessel shall be marked and identified in accordance with the FAO Standard Specifications for the Marking and Identification of Fishing Vessels or such alternative standard as may be adopted by the Commission. At all times when the vessel is in the Convention Area, all parts of such markings shall be clear, distinct and uncovered.

4. The operator shall ensure the continuous monitoring of the international distress and calling frequency 2182 khz (HF) or the international safety and calling frequency 156.8 Mhz (channel 16, VHF-FM) to facilitate communication with the fisheries management, surveillance and enforcement authorities of the members of the Commission.

5. The operator shall ensure that a recent and up to date copy of the International Code of Signals (INTERCO) is on board and accessible at all times.

6. At all times when the vessel is navigating through an area under the national jurisdiction of a member of the Commission in which it does not have a licence to fish, and at all times when the vessel is navigating on the high seas in the Convention Area and has not been authorized by its flag State to fish on the high seas, all fishing equipment on board the vessel shall be stowed or secured in such a manner that it is not readily available to be used for fishing.



## ATTACHMENT 2

### Paragraphs 4-7 of CMM 2008-03 with regard to the conservation of sea turtles

4. CCMs shall require fishermen on vessels targeting species covered by the Convention to bring aboard, if practicable, any captured hard-shell sea turtle that is comatose or inactive as soon as possible and foster its recovery, including giving it resuscitation, before returning it to the water. CCMs shall ensure that fishermen are aware of and use proper mitigation and handling techniques, as described in WCPFC guidelines to be developed and provided to all CCMs by the Secretariat.

5. CCMs with purse seine vessels that fish for species covered by the Convention shall:

a. Ensure that operators of such vessels, while fishing in the Convention Area:

- i. To the extent practicable, avoid encirclement of sea turtles, and if a sea turtle is encircled or entangled, take practicable measures to safely release the turtle.
- ii. To the extent practicable, release all sea turtles observed entangled in fish aggregating devices (FADs) or other fishing gear.
- iii. If a sea turtle is entangled in the net, stop net roll as soon as the turtle comes out of the water; disentangle the turtle without injuring it before resuming the net roll; and to the extent practicable, assist the recovery of the turtle before returning it to the water.
- iv. Carry and employ dip nets, when appropriate, to handle turtles.

b. Require that operators of such vessels record all incidents involving sea turtles during fishing operations and report such incidents to the appropriate authorities of the CCM.

c. Provide the results of the reporting under paragraph 5(b) to the Commission as part of the reporting requirement of paragraph 2.

d. Provide to the Commission the results of any research related to the development of modified FAD designs to reduce sea turtle entanglement and take measures to encourage the use of designs found to be successful at such reduction.

6. CCMs with longline vessels that fish for species covered by the Convention shall ensure that the operators of all such longline vessels carry and use line cutters and de-hookers to handle and promptly release sea turtles caught or entangled, and that they do so in accordance with WCPFC guidelines that are to be developed and provided to all CCMs by the Secretariat. CCMs shall also ensure that operators of such vessels are, where appropriate, required to carry and use dip-nets in accordance with these WCPFC guidelines.

7. Starting on 1 January 2010, CCMs with longline vessels that fish for swordfish in a shallowest manner shall:

a. Ensure that the operators of such vessels, while in the Convention Area, are required to employ or implement at least one of the following three methods to mitigate the capture of sea turtles:

- i. Use only large circle hooks, which are fishing hooks that are generally circular or oval in shape and originally designed and manufactured so that

the point is turned perpendicularly back to the shank. These hooks shall have an offset not to exceed 10 degrees.

- ii. Use only whole finfish for bait.
- iii. Use any other measure, mitigation plan<sup>2</sup> or activity that has been reviewed by the Scientific Committee (SC) and the Technical and Compliance Committee (TCC) <sup>4</sup> and approved by the Commission to be capable of reducing the interaction rate (observed numbers per hooks fished) of turtles in swordfish shallow-set longline fisheries.

b. The requirements of paragraph 7(a) need not be applied to those shallow-set swordfish longline fisheries determined by the SC, based on information provided by the relevant CCM, to have minimal<sup>3</sup> observed interaction rates of sea turtles over a three-year period and a level of observer coverage of at least 10% during each of those three years.

c. For the purpose of implementing this paragraph (7), establish and enforce their own operational definitions of shallow-set swordfish longline fisheries, large circle hooks, and any measures under 7(a)(iii) or adopted by the Commission under paragraph 12, ensuring that they are as enforceable as possible, and report these definitions to the Commission in Part 2 of their annual reports.

d. Provide for their longline vessels to record all incidents involving sea turtles during fishing operations and report such incidents to the appropriate authorities of the CCM.

e. Provide the results of the reporting under paragraph 7(d) to the Commission as part of the reporting requirement of paragraph 2.

### ATTACHMENT 3

#### Paragraphs 8-13 of CMM 2009-02 with regard to FAD Closure

##### Rules for FAD Closure

3. The definition of a FAD in footnote 1 to CMM 2008-01 shall be interpreted as including:

*“any object or group of objects, of any size, that has or has not been deployed, that is living or non-living, including but not limited to buoys, floats, netting, webbing, plastics, bamboo, logs and whale sharks floating on or near the surface of the water that fish may associate with”*

4. During the FAD closure period specified in CMM 2008-01, no purse seine vessel shall conduct any part of a set within one nautical mile of a FAD. That is, at no time may the vessel or any of its fishing gear or tenders be located within one nautical mile of a FAD while a set is being conducted.

5. The operator of a vessel shall not allow the vessel to be used to aggregate fish, or to move aggregated fish including using underwater lights and chumming.

6. A FAD and/or associated electronic equipment shall not be retrieved by a vessel during the period of a FAD closure unless:

- a. the FAD and/or associated electronic equipment are retrieved and kept on board the vessel until landed or until the end of the closure; and
- b. the vessel does not conduct any set either for a period of seven (7) days after retrieval or within a fifty (50) mile radius of the point of retrieval of any FAD.

7. In addition to paragraph 6, vessels shall not be used to operate in cooperation with each other in order to catch aggregated fish. No vessel shall conduct any set during the prohibition period within one nautical mile of a point where a FAD has been retrieved by another vessel within twenty four (24) hours immediately preceding the set.

#### ATTACHMENT 4

#### Paragraphs 8-13 of CMM 2009-02 with regard to catch retention

##### Rules for Catch Retention

8. Where the operator of a vessel determines that fish should not be retained on board for reasons related to the size, marketability, or species composition, the fish shall only be released before the net is fully pursed and one half of the net has been retrieved.

9. Where the operator of a vessel determines that fish should not be retained on board because they are “unfit for human consumption”, the following definitions shall be applied:

a. “unfit for human consumption” includes, but is not limited to fish that:

- i. is meshed or crushed in the purse seine net; or
- ii. is damaged due to shark or whale depredation; or
- iii. has died and spoiled in the net where a gear failure has prevented both the normal retrieval of the net and catch and efforts to release the fish alive; and

b. “unfit for human consumption” does not include fish that:

- i. is considered undesirable in terms of size, marketability, or species composition; or
- ii. is spoiled or contaminated as the result of an act or omission of the crew of the fishing vessel.

10. Where the operator of a vessel determines that fish should not be retained on board because it was caught during the final set of a trip when there is insufficient well space to accommodate all fish caught in that set, the fish may only be discarded if:

- a. the vessel master and crew attempt to release the fish alive as soon as possible;
- b. no further fishing is undertaken after the discard until the fish on board the vessel has been landed or transshipped.

11. Fish shall not be discarded from the vessel until after an observer has estimated the species composition of the fish to be discarded.

12. The operator of the vessel shall submit[ to the Executive Director a report that includes the following information within forty-eight 48 hours after any discard:

- a. Name, flag and WCPFC Identification Number of the vessel;
- b. Name and nationality of master;
- c. Licence number;
- d. Name of observer on board;
- e. Date, time and location (latitude/longitude) that discarding occurred;
- f. Date, time, location (latitude/longitude) and type (drifting FAD, anchored FAD, free school etc) of the shot;
- g. Reason that fish were discarded (including statement of retrieval status if fish were discarded in accordance with paragraph 6);
- h. Estimated tonnage and species composition of discarded fish;
- i. Estimated tonnage and species composition of retained fish from that set;
- j. If fish were discarded in accordance with paragraph 10, a statement that no further fishing will be undertaken until the catch on board has been unloaded; and
- k. Any other information deemed relevant by the vessel master.

13. The operator of the vessel shall also provide a hard copy of the information described in para 12 to the WCPFC Observer on board.

**ATTACHMENT 5****Paragraphs 1-5 of CMM 2009-05 with regard to the protection of data buoys**

1. CCMs shall prohibit their fishing vessels from fishing within one nautical mile of or interacting with a data buoy in the high seas of the Convention Area, which includes, but is not limited to, encircling the buoy with fishing gear; tying up to or attaching the vessel, or any fishing gear, part or portion of the vessel, to a data buoy or its mooring; or cutting a data buoy anchor line.
2. For the purposes of this measure, data buoys are defined as floating devices, either drifting or anchored, that are deployed by governmental or recognized scientific organizations or entities for the purpose of electronically collecting and measuring environmental data, and not for the purpose of fishing activities.
3. CCMs shall prohibit their fishing vessels from taking on board a data buoy unless specifically authorized or requested to do so by the Member or owner responsible for that buoy.
4. CCMs shall encourage their fishing vessels operating in the Convention Area to keep watch for moored data buoys at sea and to take all reasonable measures to avoid fishing gear entanglement or directly interacting in any way with those data buoys.
5. CCMs shall require their fishing vessels that become entangled with a data buoy to remove the entangled fishing gear with as little damage to the data buoy as possible. CCMs are encouraged to require their fishing vessels to report to them all entanglements and provide the date, location and nature of the entanglement, along with any identifying information contained on the data buoy. CCMs shall notify the Secretariat of all such reports.

## ATTACHMENT 6

### Paragraphs 10, 13, 16, 20, 21 and 34 of CMM 2009-06 with regard to transshipment

10. A WCPFC Transshipment Declaration, including the information set out in Annex I shall be completed by both the offloading and receiving vessel for each transshipment in the Convention Area, and each transshipment of catch taken in the Convention Area. Where required in this Measure the Transshipment Declaration shall be sent to the Executive Director.

13. Each CCM shall ensure that vessels they are responsible for carry observers from the WCPFC Regional Observer Programme (ROP) to observe transshipments at sea as follows:

- a. for transshipments to receiving vessels less than or equal to 33 meters in length, and not involving purse seine caught fish or frozen longline caught fish, 100% observer coverage starting on the effective date of this Measure, with the observer(s) deployed on either the offloading vessel or receiving vessel;
- b. for transshipments other than those covered by subparagraph (a) and involving only troll-caught or pole-and-line-caught fish, 100% observer coverage starting 1 January 2013, with the observer(s) deployed on the receiving vessel.
- c. for transshipments other than those covered by subparagraphs (a) and (b), 100% observer coverage starting on the effective date of this Measure, with the observer(s) deployed on the receiving vessel.

16. Receiving vessels shall only receive product from one unloading vessel at a time for each observer that is available to monitor the transshipment.

20. CCMs shall take measures to ensure that vessels do not tranship to or from a vessel flagged to a non-CCM unless that vessel is authorized by a decision of the Commission, such as:

- a. a non-CCM carrier vessel that is on the WCPFC Interim Register of non-CCM Carrier and Bunker Vessels established under CMM 2009-01; or
- b. a non-CCM fishing vessel that is licensed to fish in the EEZ of a CCM in accordance with a decision of the Commission.

21. To retain any authorisation from the Commission relevant to paragraph 20, a non-CCM vessel shall not tranship to or from a non-authorized non-CCM vessel.

34. There shall be no transshipment on the high seas except where a CCM has determined, in accordance with the guidelines described in paragraph 37 below, that it is impracticable for certain vessels that it is responsible for to operate without being able to tranship on the high seas, and has advised the Commission of such.

## STANDARD CONDITIONS OF LICENCES FOR PURSE SEINE VESSELS FISHING IN THE FISHERY WATERS OF THE REPUBLIC OF THE MARSHALL ISLANDS

### Conditions Relating to the Vessel Day Scheme

1. The operator shall comply with the requirements of the *Palau Arrangement for the Management of the Western Pacific Purse Seine Fishery – Management Scheme* (Vessel Day Scheme or VDS), as in force from time to time.
2. The vessel shall be registered on the VDS Register and in good standing on the FFA Vessel Register.

### Conditions Relating to the Vessel Day Scheme

3. The operator shall comply with the requirements of the *Palau Arrangement for the Management of the Western Pacific Purse Seine Fishery – Management Scheme* (Vessel Day Scheme or VDS), as in force from time to time.
4. The vessel shall be registered on the VDS Register and in good standing on the FFA Vessel Register.
5. The operator shall not undertake any fishing activity pursuant to this licence during any period when the vessel is not registered on the VDS Register or on the FFA Vessel Register.

### Conditions Relation to Mobile Transmitting Devices (MTD)

6. The operator shall ensure that the MTD is operating at all times when it is within the Vessel Day Scheme Management Area. As defined in the Vessel Day Scheme, this Area refers to the waters of the Pacific Ocean bounded as follows:
  - (a) In the north by the 20° parallel of north latitude;
  - (b) In the south by the 20° parallel of south latitude; and
  - (c) In the east by a line due north along the 130° meridian of west longitude to its intersection with the 4° parallel of south latitude; thence due west along the 4° parallel of south latitude to its intersection with the 150° meridian of west longitude; thence due north along the 150° meridian of west longitude.
7. The operator shall ensure that the MTD provides location transmissions at intervals of at least every 4 hours to the Administrator when it is within the Vessel Day Scheme Management Area.
8. Upon notification by the Administrator that the MTD has failed to transmit, the operator shall, as soon as practicable, submit a transmission failure report in accordance with **Form A** (Appendix 1) to the Administrator and to any Party in whose waters the vessel is undertaking fishing activities. The first transmission failure report shall account for the period from the time of the MTD transmission failure to the time of submission of the report. Subsequent transmission failure reports shall be submitted at intervals of 4 hours.
9. If the vessel is unable to provide MTD reports or transmission failure reports, the vessel master shall immediately stow the vessel's fishing gear and take the vessel directly to the nearest port, or such other port as the Administrator directs, and immediately report to the Administrator of its actions.

### Conditions Relating to the Palau Arrangement

10. The operator shall comply with the requirements of the *Palau Arrangement for the Management of the Western Pacific Purse Seine Fishery – Management Scheme* (Vessel Day Scheme or DVS), as in force from time to time.

11. The vessel shall be registered on the VDS Register and in good standing on the FFA Vessel Register.
12. The operator shall not undertake any fishing activity pursuant to this licence during any period when the vessel is not registered on the VDS Register or on the FFA Vessel Register.
13. Upon notification to the operator that the vessel has been deleted from the FFA Vessel Register or the VDS Register, the license shall be deemed to be cancelled.

**NOTE:** A breach of these conditions of Authorization would constitute a violation of relevant provisions of the fisheries legislation and result in appropriate penalties being imposed.

**FORM A**  
**APPENDIX 1**

*INFORMATION FOR INCLUSION IN A TRANSMISSION FAILURE REPORT*

**THE FOLLOWING INFORMATION MUST BE INCLUDED IN ANY TRANSMISSION FAILURE REPORT:**

Date (dd/mm/yyyy):

Vessel Name:

Call Sign:

MTD Make and model:

MTD Serial Number:

Position of last MTD transmission (at four -hour intervals):

Position of last manual transmission:

Operator/Captain Name:

Observer's Name (if applicable):



## ANNEX 15: DRAFT LOCAL GOVERNMENT ORDINANCE TEMPLATE

### AILUK LOCAL GOVERNMENT FISHERIES MANAGEMENT ORDINANCE

The Ailuk Atoll Local Government, in exercise of the powers conferred upon it under Section 2 of Article IX of the Constitution of the Republic of the Marshall Islands, and Section 308 of the Fisheries Act (51 MIRC 2), hereby enacts the following Ordinance, to provide for the proper conservation and management, sustainable development, and use, of the marine resources found within its area of jurisdiction.

#### 1. Short Title

This Ordinance may be cited as the Ailuk Atoll Local Government Fisheries Management Ordinance 2011.

#### 2. Interpretation

Unless the context otherwise requires, the terms used in this Ordinance shall have the same meaning as defined in the Marshall Islands Marine Resources Act 1997, unless otherwise specified;

"Act" as used herein, refers to the Acts under Title 51 of the Marshall Islands Revised Code.

"Area of Jurisdiction or Local Government area" refers to the area of each Local Government described in Article IX, Section 1(2) and (3) of the Constitution of the Republic of the Marshall Islands;

"Artisanal fisheries" or "artisanal fishing" means in-shore fishing by citizens using vessels powered by outboard engines, and which could include commercial fishing;

"Closed season" means a period of time during which fishing is prohibited,

"Commercial fishing" means any fishing resulting or intending or appearing to result in selling or trading any fish which may be taken during the fishing operation, and does not include subsistence fishing.

"Director" means the Executive Director of the Marshall Islands Marine Resources Authority.

"fish" means any living marine resource;

"Fisheries Management Area" means an area which extends to the sea and seabed of the internal waters of Ailuk Atoll and to the surrounding sea and seabed, to a distance of 5 miles from the baseline from which the territorial sea is measured;

"Fisheries Management Ordinance" refers to this Ordinance;

"Ailuk Atoll Local Government Fishery Management Plan" means the fishery management plan adopted by the Ailuk Atoll Local Government appended herein as Schedule xxx;

"fish product" means any edible human food product in which fish is a characterizing ingredient.

"license" means a license issued in accordance with this Ordinance or Act;

"Local Fishery" means one or more stock of fish or any fishing operation based on such stocks which can be treated as a unit for purposes of conservation and management, taking into account geographical, scientific, technical, recreational, economic and other relevant characteristics;

"Marine Protected Area" means an area of land and/or sea which is declared as such by the Ailuk Atoll Local Government within its local fisheries management area and clearly marked, where fishing and other activities are regulated,

"Mayor" means the Mayor or head of The Ailuk Atoll Local government;

"Person" means a natural person, a company;"Subsistence Fishing" means fishing by a citizen substantially for personal consumption, and does not include any fishing resulting or intending or appearing to result, directly or indirectly in selling or trading for profit of any fish which may be taken during the fishing operation.

### **3. Purpose and Scope.**

The purpose of this Ordinance shall be to promote the protection, conservation, management, development and sustainable use of the fishery and marine resources within the Fisheries Management area of the Ailuk Atoll Local Government.

### **4. License Required and Procedure.**

- (1) A license shall be required in the Ailuk Atoll Local Government Fisheries Management Area, for the following fishing activities:
  - (a) commercial fishing;
  - (b) fishing for a species for which a license is required by the Local Government by a resolution;
  - (c) sport fishing,
  - (d) diving,
  - (e) fish cultivation, and
  - (f) any other activities that the Local Government Council may, by resolution, requires.
- (2) Any license issued in regards to any one of the activities in subsection (1) prior -the effective date of this Ordinance, shall remain in effect until the 60<sup>th</sup> day, after the effective date of this Ordinance.
- (3) All licenses issued after the effective date of this Ordinance shall be issued in accordance with the requirements of this Ordinance.

### **5. License approval and issuance.**

- (1) The Ailuk Atoll Local government shall, in consultation with the Director, be responsible for approving guidelines governing the issuance of the license.
- (2) The Mayor, or his designee shall be responsible for the issuance of all licenses under this Ordinance.
- (3) The Mayor or his designee shall review each application submitted in accordance with this Ordinance, and may seek advice from the Executive Director of MIMRA, and other relevant bodies.

- (4) Applications for licenses shall be submitted in such form as the Local Government Council may authorize. A license may be issued after application is made in accordance with this Ordinance, and the required fee is paid.
- (5) The Mayor or his designee shall in consultation with the Director, attach terms and conditions to the license, which terms and conditions, may include, but not limited to:
  - (a) License period;
  - (b) License restrictions;
  - (c) Gear types;
  - (d) Reporting requirements.
- (6) The Ailuk Atoll Local Government Council shall, by resolution, and in consultation with the Executive Director of MIMRA, prescribe:
  - (a) Forms and procedures for the application for a license;
  - (b) Any conditions which may be attached to a license;
  - (c) Period of validity of license;
  - (d) Criteria for renewal, refusal, suspension or cancellation of a license;
- (7) All license fees received shall be deposited into the Fisheries Management Fund established under Section 18 of this Ordinance.
- (8) If a person contravenes the terms and condition of a license issued pursuant to this Ordinance, he or she commits an offence, and upon conviction, he or she shall be liable to pay a fine of \$5,000.00. Any thing used or obtained, in the commission of this offence, may be seized and forfeited to the Ailuk Atoll Local Government.

## 6 License Denial.

- (1) If the application is denied, the Mayor or his designee shall notify the applicant in writing within 20 working days of reasons for denying the application.
- (2) In any case, an application shall be denied where:
  - (a) It is not submitted in accordance with Title 51 of MIRC, and this Ordinance;
  - (b) The Mayor or his designee is satisfied that the information provided by the applicant is false, incomplete or misleading;
  - (c) The applicant is the subject of pending court proceedings in relation to fisheries violations;
  - (d) The Mayor, after consultation with the Director, determines that the issuance of a license would not be in the best interest of the Ailuk Atoll Local Government;
  - (e) There has been failure to satisfy any judgment for violation of the Act and this Ordinance;
  - (f) the Mayor, in consultation with the Director, determines that the issuance of the license would be inconsistent with the management measures implemented in accordance with the Act or this Ordinance; or,
  - (g) the required fees have not been paid.

### **Powers of the Mayor to Suspend or Revoke a License, or to Impose Additional Conditions on a License.**

Where a licensee under this Ordinance commits an act prohibited by law this Ordinance, or breaches any term or condition of license issued in accordance with this Ordinance, or if any fee or penalty imposed under the Act or this Ordinance has not been paid within 30 days of the due date, the Mayor may:

1. Revoke such license
2. Suspend such license for a period of time it may deem appropriate; or
3. Impose additional conditions or restrictions on any such license.

#### **8. Designation of Marine Protected Areas.**

- (1) The Local Government Council may by resolution, after consultation with the Director, establish Marine Protected Areas on any part of the reef within their fisheries management area. Such areas shall be clearly marked and identified as a marine protected areas. Such marine protected areas may be marked in the form of geographical coordinates, the posting of notices and poles/buoys.
- (2) The following activities shall be prohibited within the Marine Protected Area except as otherwise provided in the Act and this Ordinance:
  - (a) Fishing of any nature;
  - (b) Anchorage, except at established mooring;
  - (c) Disposal of any hazardous chemicals or material and other waste materials included but not limited to plastic and Styrofoam
  - (d) Collection and/or removal of sand, shells, rocks, coral, vegetations, seaweed and artifacts;
  - (e) Collection or removal of any historical objects.
  - (f) Any other activities that the Council may, by resolution, prohibit.
- (3) A person who contravenes subsection (2) commits an offense and upon conviction shall be liable to pay a fine of five thousand dollars (\$5,000.00), and the catch, fishing gear or equipments and other things used or obtained in the commission of the offense shall be seized and forfeited to the Local Government,
- (4) The local government council, after consultation with the Director may from time to time allow fishing and other authorized activities to be conducted in the Marine Protected Area

#### **9 Prohibited Fishing Methods**

- (1) No person shall use or cause to be used any destructive fishing methods of any kind within the fisheries management area, which includes but is not limited to the following:
  - (a) Dynamite/explosives;
  - (b) Cyanide/chemicals;
  - (c) Gillnets or driftnets;
  - (d) Spear fishing using scuba gear;
  - (e) Breaking of coral to catch fish.
- (2) A person who contravenes subsection (1) commits an offense and upon conviction shall be liable to a fine of five thousand dollars (\$5,000.00 ) and the catch, fishing gear or equipments and other things used or obtained in the commission of the offense shall be seized and forfeited to the Local Government

## 10. Fish Size Restrictions

- (1) The Ailuk Atoll Local Government council may by resolution, after consultation with the Director, prohibit the harvest of certain fish species of certain specified sizes. The Ailuk Atoll Local Government Council shall, before imposing the size restriction on the harvest of certain fish species, widely publish the list of fish and specified sizes 60 days before the effective date.
- (2) A person who harvests fish of a size restricted by the Ailuk Atoll Local Government Council, commits an offence and upon conviction, shall be liable to pay a fine of four hundred dollars (\$400.00) and the catch, fishing gear or equipments and other things used or obtained in the commission of the offense shall be seized and forfeited to the Ailuk Atoll Local Government.

## 11. Season Closure and Prohibitions.

- (1) The Ailuk Atoll Local Government Council may by resolution, and after consultation with the Director, declare a closed or open season within the fisheries management area for a period of time or all times for:
  - (a) Any fish, and/or
  - (b) Specified areas.
- (2) A declaration by the Ailuk Atoll Local Government Council in subsection (1) shall be widely published in Marshallese and English Language. A specified area declared closed shall be clearly marked by using geographical coordinates and including but not limited to other forms of markings such as erection of notice, poles and buoys.
- (3) A person commits an offence by harvesting a specified fish specified in the declaration during the closed season for that fish species, or fish within the specified area during the closed season for such area, and upon conviction shall be liable to pay a fine of one thousand dollars (**\$1,000.00**) in addition to an amount equivalent to the current retail value of the fish or marine resources for which it is destined, and the catch, fishing gears or equipments and other things used or obtained in the commission of the offense shall be seized and forfeited to the Local Government

## 12. Minimum Mesh Size for Net

- (1) The Ailuk Atoll Local Government Council may by resolution, after consultation with the Director, specify the minimum mesh size for cast net and traps to be used in the fisheries management area. The specified minimum mesh size for cast net and traps shall be prohibited to be used in the fisheries management area. The restriction for mesh size for cast net and traps shall be widely publish 60 days before it effective date.
- (2) A person who uses or causes to be used a specified minimum mesh size of a cast net or a trap in subsection (1) commits an offence and upon conviction shall be liable to a fine of four hundred dollars (**\$400.00**), and the catch, fishing gear or equipments and other things used or obtained in the commission of the offense shall be seized and forfeited to the Local Government.

## 13. Existing Fisheries Regulations



All other fishery or fisheries regulations and schedules adopted and made effective pursuant to the Act shall apply to the local fisheries management area of Ailuk Atoll Local Government.

#### **14. Additional Prohibited and Restricted Activities and Pollutants**

- (1) No person shall cause to be dumped or discharged any garbage, pollutant and any material within the fisheries management area, including any other material of any kind that will have a negative impact on the environment of the fisheries management area. All schedules and regulations adopted and promulgated pursuant to the National Environmental Protection Act 1984 and the Act and other relevant laws shall apply to the fisheries management area of Ailuk Atoll Local Government.
- (2) A person who contravenes subsection (1) commits an offense and upon conviction shall be liable to a fine of five thousand dollars (\$5,000.00 ) and the catch, fishing gear or equipments and other things used or obtained in the commission of the offense shall be seized and forfeited to the Ailuk Atoll Local Government.

#### **15. Registration of Fishing Activities**

- (1) In addition to other requirements, a company or a fisherman who carries out fishing for commercial purposes shall be required to register its fishing boats and type of fishing gears with the Ailuk Atoll Local Government Council and pay a prescribed fee to the Ailuk Atoll Local Government Council. The Ailuk Atoll Local government Council shall maintain a registry of all fishing vessels that are engaged in fishing activities within the Ailuk Atoll Fishery Management Area.
- (2) The Ailuk Atoll Local Government Council shall require the registration of a company, or a fisherman for the purpose of operating aquaculture in the fisheries management area.
- (3) The Ailuk Atoll Local government council shall require the registration of fishing boats with outboard and inboard engines for the purpose of fishing in the fisheries management area of Ailuk Local Government.
- (4) The Ailuk Local Government Council shall impose registration fees and shall keep and maintain the registry.

#### **16 Monitoring, Control and Surveillance**

Monitoring, control and surveillance of the local fisheries management area of Ailuk Atoll Local Government shall be governed by an Ordinance relating to harvesting of fish and marine resources, and in accordance with the Act.

#### **17. Resolutions**

Any resolutions made by the Ailuk Atoll Local Government Council pursuant to this Ordinance shall be considered part of this Ordinance and incorporated herein.

## 18 Offences and Penalties

- (1) A person who contravenes any provision of this Ordinance commits an offence, and if there is no specific penalty provided for contravention of such provision, shall be liable upon conviction to pay a fine of one thousand dollars (\$1,000.00) in addition to an amount equivalent to the current retail value of the fish or marine resources for which it is destined, and the catch, fishing gear or equipments and other things used or obtained in the commission of the offense shall be seized and forfeited to the Local Government.
- (2) Any proceeds received from any fine and penalty under the Ordinance shall be deposited into the Fisheries Management Fund established under Section 18.

## 19. Fisheries Management Fund

- (1) There is hereby established a Ailuk Atoll Fisheries Management Fund.
- (2) The fund shall be a fund other than the general fund of the Local Government.
- (3) There shall be deposited into the Fund:
  - (a) All monies appropriated by the Local Government council;
  - (b) All monies received by the Local Government Council for the intended purpose of the conservation and management of the fisheries management area;
  - (c) All fines or penalties and proceeds of forfeitures or settlements collected by the Local Government pursuant to violations of or offenses committed against this Ordinance;
  - (d) The proceeds of sales of fish seized and equipments and gears forfeited pursuant to violations of this ordinance
- (4) Payment may be made out of the Fund only to carry out the purposes of this Ordinance and matters associated with the proper implementation and management of the fisheries management area.
- (5) The Fund shall be administered by the Mayor, who shall make quarterly financial reports to the Ailuk Atoll Local Government Council.
- (6) The Mayor shall maintain proper accounts and records of the Fund and the disposition of monies paid into or out of the Fund.
- (7) The accounts and records of the Fund shall be audited annually by such auditors as the Local Government shall appoint.

## 20. Effective Date

This Ordinance shall become effective after it has been passed by the Local Government Council and upon certification and attestation of the Mayor and Clerk.

## ANNEX 16: PROJECT WORKSHOP 2 REPORT

May 16, 2011 Melele Room Marshall Islands Resort

### Introduction

Workshop 2 is a follow up meeting to the first, two-day Workshop, facilitated by MRAG in April 2011. These workshops are envisaged in the MRAG work plan, and form part of the review process in which its Key Experts (KE) would rely upon in finalizing the review of Marshall Islands fisheries laws. The purpose of Workshop I was in general, to gauge the views of not only the pertinent government entities, but also the private sector industry, as well as NGOs, on the subject of Marshall Islands fisheries laws. It was agreed in that Workshop that the follow up workshop will look at specific drafts once the review process was complete. The main purpose of Workshop 2 therefore, was to review the drafts. Unlike Workshop 1, this Workshop was more a focussed-group one, based on participants with legal and policy knowledge to contribute to the draft legislation. A full list of participants is in Attachment 1.

### Opening of the Workshop

Workshop 2 opened on Monday May 16, 2011 at the Melele Room, MIR Hotel, Majuro Republic of the Marshall Islands. The full list of participants is in Appendix 1. Following the welcoming and acknowledgement of participants, opening remarks were offered by the Director for MIMRA, who acknowledged the challenges that small Island States such as the Marshall Islands face in their daily efforts to ensure that Marshall Islands coastal and oceanic fisheries are being harvested sustainably, and indeed, the challenges faced by the Marshall Islands in controlling its own vessels and nationals, as called for under international fisheries law. The Director acknowledged the support from international, regional and sub-regional partners, and particularly thanked the EU for extending assistance to the RMI under the ACP Fish II Program.

### Presentation of the Draft Amendments

Following the opening formalities, the workshop then reviewed the draft legislative amendments. The majority of the proposals to close the gaps and strengthen weaknesses identified in the review were proposed as amendments under Title 51, Chapter 5 – Fisheries Enforcement Act, whilst a number of consequential amendments had to be effected in a number of other Chapters (Chapter 1 and Chapter 2). Other shortcomings, it was proposed that could be easily taken care of and given effect as license conditions in licenses issued by MIMRA.

### 1.Chapter 1 – Marshall Islands Marine Resources Act, 1997 – Amendments

The Amendments proposed under Chapter 1 could be described as consequential, given the matters proposed under Chapter 5. In general, the amendments designate MIMRA the Competent Authority, and as a consequence new provisions on new powers is inserted to take into account the designation of MIMRA as such. There were no objections to the proposed amendments.



## **2. Chapter 2 – Fisheries Act Amendments**

The amendments proposed under Chapter 2 was to insert new provisions under Chapter 2 to prohibit coastal fisherman from violating, damaging, or interfering with sites or landmarks that are designated under the HPO Act as ‘historic sites and landmarks.’ There was a lively debate, which indicated some deep-seated disagreement. Taking this into account, the draft will be re-visited.

## **3. Chapter 5 – Fisheries Enforcement Act Amendments**

The amendments proposed under Chapter 5 constitute some of the most important and key pieces of legislation that would allow the Marshall Islands to manage its fisheries in accordance with international law, and thereby contribute meaningfully to the conservation and management of

fish stocks. Key amendments include, the insertion of new provisions to provide for effective flag State control by the Marshall Islands, such as provisions requiring a *Record of Fishing Vessel*, the *issuance of authorization to fish*, *control of nationals*, *use of vessels by other flags*, and similar flag State control mechanisms. Provisions were also inserted to provide of *port State measures*, *VMS*, *Mobile Transmitting Units*, and *Catch Certification*, which are critical to RMI compliance with EU –IUU regulations.

The discussions that followed the presentation of the draft amendments to Chapter 5 were fruitful. A number of participants sought clarification, suggested alternative drafts and a few points were debated. However, on the whole, the participants accepted the amendments to Chapter 5, save some suggested improvements.

## **4. Measures to be Implemented as License Conditions**

No objections to the proposal to have certain measures implemented as conditions of license. The discussion herein only tool up the issue of the adequacy of penalties for a violation of a condition of license.

### **Conclusion**

In general, the draft amendments were very well received and the robust discussion that transpired at the workshop centred mainly on how to improve the draft. The workshop also agreed that a number of issues that arose during the discussions could be deferred and addressed in Regulations at the appropriate times.

The workshop closed at 5.30 pm, Monday, May 16, 2011.

**ATTACHMENT 1**

**PARTICIPANT LIST-WORKSHOP II**

<b>NAME</b>	<b>POSITION</b>	<b>ORGANIZATION</b>
Glen Joseph	Director	MIMRA
Florence Edwards	Chief Fisheries Officer (Coastal)	MIMRA
Berry Muller	Chief Fisheries Officer (Oceanic)	MIMRA
Tion Nabau	Legal Counsel	MIMRA
Divine Waiti	Legislative Counsel	Nitijela/Parliament
Jisham Kaisher	Sheriff	MALGOV
Paul Tonyokwe	Director	Dept. of Immigration
Phil Philippo	Secretary	Ministry of Transport & Communication
Steve Fitial	Rep.	Historic & Preservation Office
James Myazoe	Vice President	TCMI / Marshall Islands ship registry.
Joe Bigler	Rep.	TCMI / Marshall Islands ship registry.
Charles Abraham Jr.	Rep.	TCMI / Marshall Islands ship registry.
Capt. Joe Tiobech	Deputy Director	RMI Ports Authority
Norah Zhang	Admin	Pan Pacific Foods
Sen. Kaiboke J. Kabua	Chair	Nitijela Standing Committee on Resources and Development
Sen. Fred Muller	Member	Nitijela Standing Committee on Resources and Development
Dr. Mary Jane Wright	Anthropologist	Historic Preservation Office
Candice Guavis	Fisheries Officer	MIMRA
Darren Nagata	Fisheries Officer	MIMRA
Tommy Kijiner JR.	Secretary	Ministry of Resources and Development
Ian Bertram	Coastal Fisheries Science and Management Advisor	SPC
Maria Sapatu	Reef Fisheries Scientist	SPC
Prof. Martin Tsamenyi	KE 1	MRAG
Filimon Manoni	KE 2	MRAG