



Blue
Prosperity
Micronesia

**FEDERATED STATES OF MICRONESIA
LEGAL & POLICY FRAMEWORK
ASSESSMENT REPORT**

27 August 2021



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Overview

This report surveys the laws, policies, and governmental institutions of the Federated States of Micronesia (FSM) that are relevant to ensure the sustainable management of the FSM's marine waters, the protection of its marine resources and ecosystems, and the development of the FSM's "blue economy." This report will inform discussions for further policy and legal development in the FSM, in support of a legally binding marine spatial plan and full protection for at least thirty percent of the country's marine waters.

Acknowledgments

This report was produced by the Blue Prosperity Coalition as part of the Blue Prosperity Micronesia partnership with the Government of the Federated States of Micronesia; and Rare Inc. (hereafter, Rare) as part of its Fish Forever program in the FSM. The authors are David C. Angyal and Lucas M. Cupps of Ramp & Mida, and Bruce Myers of Animals | Environment PLLC (AELaw). Substantial drafting and editorial contributions were made by Rocky Sanchez Tirona, Vice President of the Philippines and the Pacific Islands at Rare; and Vanessa Dick, Legal Director at the Waitt Institute, with copy editing from Margie Peters-Fawcett.

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The contents of this report, including any errors or omissions, are solely the responsibility of the authors. The authors invite corrections and additions.

About Blue Prosperity Micronesia

Blue Prosperity Micronesia is a multiyear initiative of the FSM Government, the Blue Prosperity Coalition, and local partners to preserve the FSM's marine environment and fisheries resources, and to balance economic development with marine protection.

The work of Blue Prosperity Micronesia arises from a July 2019 Memorandum of Understanding (MoU) signed by the Government of the FSM and the U.S.-based Waitt Institute (on behalf of Blue Prosperity Coalition). The aim of the MoU is to build a "blue economy" in the FSM to achieve the sustainable use of ocean resources for economic growth, improved livelihoods and jobs, and ocean ecosystem health. The MoU envisions an approach—grounded in marine spatial planning and informed by the best available science—that will protect at least thirty percent of the FSM's exclusive economic zone from commercial fishing and extractive industries.

About Rare's Fish Forever Program and Work in the FSM

Fish Forever is Rare's coastal fisheries program, which is being implemented in eight countries. It focuses on helping countries or any of their governmental subunits (e.g., state and municipal) address the issue of coastal overfishing by combining efforts to protect critical habitat with effective co-management for coastal fisheries to ensure food security, support the productive economy, safeguard livelihoods, and contribute to the achievement of national and global sustainable development goals.

In each of the Fish Forever regions, Rare's partners have established or expanded networks of marine reserves, paired with managed access areas that allow appropriate access and resource rights for small-scale fishers. These Managed Access + Reserves are co-managed by fishing communities with support from their local governments. To enable this, legal and regulatory pathways to establish the Managed Access + Reserve and assign or reaffirm rights of specific stakeholders must be identified. This report is an important initial step to inform that process.

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Abbreviations

ADB	Asian Development Bank
APA	FSM Administrative Procedures Act
BPM	Blue Prosperity Micronesia
CBD	Convention on Biological Diversity
CC Policy	Nationwide Integrated Disaster and Climate Change Policy
CLCS	UN Commission on the Limits of the Continental Shelf
CMS	Convention on the Conservation of Migratory Species of Wild Animals
CNMI	Commonwealth of the Northern Mariana Islands
COFA	Compact of Free Association
CPUC	Chuuk Public Utility Corporation
CSPSC	Chuuk State Political Status Commission
CWSSP	Chuuk Water Supply and Sanitation Project
DECEM	Department of Environment, Climate Change & Emergency Management
DoJ	Department of Justice
DR&D	Department of Resources & Development
DTCI	Department of Transportation, Communication & Infrastructure
EEZ	exclusive economic zone
EIA	environmental impact assessment
EIS	environmental impact statement
EPA	Environmental Protection Agency
FAO	Food and Agriculture Organization of the United Nations
FF	Fish Forever
FMD	Fisheries Management Division
FSM	Federated States of Micronesia
FSMNG	FSM National Government
FSMPC	FSM Petroleum Corporation
FSM R&D	FSM (National) Department of Resources & Development
IDP	Infrastructure Development Plan
IMO	International Maritime Organization
INDC	Intended Nationally Determined Contribution
ISA	International Seabed Authority
IUCN	International Union for Conservation of Nature
JCRP	Joint Committee on Compact Review and Planning
JEMCO	Joint Economic Management Committee

JSAP	Joint State Action Plan
KIRMA	Kosrae Island Resource Management Authority
KUA	Kosrae Utilities Authority
LMMA	locally managed marine area
MA + R	Managed Access + Reserves
MCT	Micronesia Conservation Trust
MoU	memorandum of understanding
MUORA	Military Use and Operating Rights Agreement
NACH	Office of National Archives, Culture and Historic Preservation
NBSAP	National Biodiversity Strategy and Action Plan
NFC	National Fisheries Corporation
NGO	non-governmental organization
nm	nautical miles
NORMA	National Oceanic Resource Management Authority
NSLC	National and State Leadership Council
NSRA	National Seabed Resources Authority
OEEM	Office of Environment and Emergency Management
OFA	Office of Fisheries and Aquaculture
PAN	National Protected Areas Network Policy Framework (also known as Policy Framework)
PIF	Pacific Islands Forum
PIMPAC	Pacific Islands Managed & Protected Area Community
PNA	Parties to the Nauru Agreement
PUC	Pohnpei Utilities Corporation
RBA	rights-based approach
RFMO	Regional Fisheries Management Organizations
RMI	Republic of the Marshall Islands
SBSAP	State Biodiversity Strategy and Action Plans
SDG	Sustainable Development Goal
SIDS	Small Island Developing State
SOFA	Secretary of Finance and Administration
SPC	Pacific Community
SPREP	Pacific Regional Environment Programme
STCW	Standards of Training, Certification and Watchkeeping for Seafarers
TTPI	Trust Territory of the Pacific Islands
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea
UNESCO	United Nations Educational, Scientific and Cultural Organization
VDS	Vessel Day Scheme
WCPFC	Western & Central Pacific Fisheries Commission
YSPSC	Yap State Public Service Corporation

EXECUTIVE SUMMARY

The Federated States of Micronesia seeks to build a “blue economy” to achieve the sustainable use of its marine resources for economic growth, improved livelihoods and jobs, and ocean ecosystem health. To attain this goal, the Government is working through the multi-year Blue Prosperity Micronesia collaboration to preserve the FSM’s marine environment and fisheries resources, and to balance economic development with marine protection. The initiative includes protecting at least thirty percent of the FSM’s exclusive economic zone from commercial fishing and extractive industries. Essential to these efforts will be the development and eventual adoption of laws, regulations, and policies that are needed to secure an enforceable, comprehensive marine spatial plan.

As a first step, this assessment report surveys the existing legal foundations for ocean management in the FSM. The report characterizes the FSM with respect to: its system of government, which operates through national, state, local, and traditional dimensions; its legal system; its regional and international engagements; its ocean jurisdiction; its cross-cutting legal frameworks; and its sectoral regulation of activities in the marine environment.

The FSM is an independent, sovereign nation with a unicameral national Congress. Although the FSM Constitution is the supreme law of the land, it often is observed that the FSM comprises “five governments”—the national government and the four governments of the States of Pohnpei, Chuuk, Kosrae, and Yap. The FSM Constitution explicitly recognizes the existence of these governments, as well as those at the local level. Additionally, the important role of customs and traditions is recognized by the national and state constitutions and interwoven throughout the law of the FSM.

The FSM is a member of the United Nations and is actively engaged at the regional and international levels. Especially relevant are the FSM’s Compact of Free Association with the United States, its role in the Micronesia Challenge, and its membership in the Parties to the Nauru Agreement (PNA), which controls the world’s largest sustainable tuna purse seine fishery. The FSM is also party to various maritime, fisheries, and environmental treaties that are essential to effective ocean management. Consistent with the UN Convention on the Law of the Sea, the FSM has made clear claims with respect to its maritime zones.

Marine spatial planning and the development of a blue economy are inherently cross-sectoral activities. Various of the FSM’s “cross-cutting” legal frameworks and issues of focus are relevant to the further development of sustainable ocean management law in the FSM. These frameworks and issues include:

- Land Ownership and Land Use Planning;
- Environmental Impact Assessment;
- Public Finance & Enabling Environment for Blue Economy Planning; and
- Climate Change.

Also important is the state of the FSM’s law in key sectoral areas:

- Conservation (including Protected Areas and Protection of Flora and Fauna);
- Fisheries and Aquaculture;
- Recreation;
- Cultural Heritage;
- Maritime and Shipping;
- Offshore Industry;
- Utilities;
- Pollution Control; and
- Scientific Research and Education.

See Table 1 for a summary of key laws in the FSM, with an emphasis on laws at the national level. (The text of this report covers relevant state legislation in more detail.)

Table 1. Selected Legal Authorities for FSM Ocean Management and Blue Economy

Subject	Selected Law(s)
Governance	Constitution of the FSM
	Constitutions of Pohnpei, Chuuk, Kosrae, and Yap
	FSM Administrative Procedures Act
Ocean Jurisdiction	FSM Code tit. 18 ch. 1 (Territorial Boundaries and Economic Zones)
Environment, Conservation, & Protected Areas	FSM Environmental Protection Act
	FSM Environmental Impact Assessment Regulations
	FSM Climate Change Act
	National Protected Areas Network (PAN) Policy Framework (as “approved and adopted” by Congress)
	Pohnpei Marine Sanctuary and Wildlife Refuge Act of 1999
	Pohnpei Marine Resources Conservation Act of 1981
	Chuuk State Environmental Protection Act; Chuuk Protected Areas Network Act of 2017
	Kosrae Protected Area Act of 2010
	Yap State Environmental Quality Protection Act
	Trust Territory Endangered Species Act of 1975
Fisheries	FSM Marine Resources Act of 2002
	Pohnpei State Fisheries Protection Act of 1995
	Draft Chuuk State Code tit. 25 (Maritime and Marine Resources); Chuuk State Fishery Zone Act of 1983
	Kosrae State Code tit. 19 ch. 3 (Fishing and Marine Wildlife)
	Yap State Fishery Zone Act of 1980
Land Ownership and Land Use Planning	FSM Earth Moving Regulations
	Pohnpei Public Lands Act of 1987
	Pohnpei Code tit. 42 ch. 8 (Marine Areas)
	Pohnpei Land Use Planning and Zoning Act of 1993
Cultural Heritage	FSM Code tit. 26 (Historical Sites and Antiquities)
	Pohnpei Code tit. 22 (Customs, Traditions and Historic Preservation)
	Draft Chuuk State Code tit. 25 ch. 8 (Chuuk Lagoon Monument)
	Yap State Historic Preservation Act of 1989
Recreation	FSM National Maritime Act of 1997
	Pleasure Craft Regulations
Maritime and Shipping	FSM National Maritime Act of 1997
	Pohnpei Port Authority Act of 1991
	Kosrae State Code tit. 14 (The Sea and Transportation)
Offshore Industry	FSM National Seabed Resources Act of 2014

Pollution Control	FSM Environmental Protection Act
	Pohnpei Environmental Protection Act of 1992
	Chuuk State Environmental Protection Act
	Kosrae State Code tit. 19 (Environmental Protection and Management)
	Yap State Environmental Quality Protection Act
Public Finance	FSM Financial Management Act of 1979
	Financial Management Regulations

A wide range of national and state departments, affiliated agencies, and municipal and traditional actors are responsible for administering, implementing, and enforcing the relevant laws and regulations.

This is a moment of potential change in the FSM: the nation is, at present, engaged in its Fourth Constitutional Convention; at the same time, the FSM and the United States are negotiating the expiring provisions of their Compact of Free Association. All the while, the FSM must balance efforts to combat the increasing impacts of climate change and protect its vital marine resources and environment with the pressing need to grow the economy and recover from the effects of the global COVID-19 pandemic.

1 INTRODUCTION

1.1 Purpose of Report

This report surveys the laws, policies, and governmental institutions of the Federated States of Micronesia (FSM) that are relevant to ensure the sustainable management of the FSM's marine waters, the protection of its marine resources and ecosystems, and the development of the FSM's "blue economy." The report is intended to provide the national and state governments, potential FSM investors, stakeholders, and citizens with a reference for understanding the legal foundations in the FSM as of March 31, 2021, necessary to:

- develop an enforceable, comprehensive, and sustainably financed marine spatial plan;
- successfully implement a blue economy plan;
- promote sustainable fisheries; and
- establish and enable community-based co-management systems.

The report will be instrumental to inform discussions for further policy and legal development in the FSM in support of a legally binding marine spatial plan and full protection for at least thirty percent of the FSM's marine waters. Next steps toward the sound management of the FSM's marine waters should build from the existing legal system, account realistically for anticipated technical capacity and funding levels, and provide effective incentives and requirements to ensure compliance and long-term sustainability of ocean resources.

The report is the result of desk research and drafting by a team of lawyers, the content of which has been vetted for accuracy and completeness by a select group of government officials working at the national, state, and municipal levels.¹

1.2 Objectives

Although the report serves as a stand-alone reference, it was conceived as a means to support the work of two ongoing programs in the FSM: Blue Prosperity Micronesia (BPM) and Fish Forever (FF).

1.2.1 Blue Prosperity Micronesia

BPM² is a multiyear initiative of the FSM Government, Blue Prosperity Coalition,³ and local partners to preserve the FSM's marine environment and fisheries resources, and to balance economic development with marine protection.

The work of BPM arises from a July 2019 Memorandum of Understanding (MoU) signed by the Government of the FSM and the U.S.-based Waitt Institute (on behalf of the Blue Prosperity Coalition).⁴ The aim of the MoU is to build a blue economy in the FSM to achieve the sustainable use of ocean resources for economic growth, improved livelihoods and jobs, and ocean ecosystem health. The MoU envisions an approach grounded in marine spatial planning and informed by the best available science that will protect at least thirty percent of the FSM's exclusive economic zone (EEZ) from commercial fishing and extractive industries.

1 From late 2020 to early 2021, under the COVID-19 pandemic, the authors met via video conference with policy, legal, and other representatives of various national and state government departments and entities. The authors also asked for written comments to a draft of the document. The following is a list of who was contacted: Department of Justice, National Oceanic Resource Management Authority, Department of Resources and Development, Department of Environment, Climate Change & Emergency Management, National Police Maritime Surveillance, Office of National Archives, Culture and Historic Preservation, Department of Finance and Administration, Department of Foreign Affairs, Overseas Embassies, Consulates, and Missions, Office of the Legislative Counsel of the Congress, National Fisheries Corporation, and the States of Yap, Pohnpei, Kosrae, and Chuuk.

2 See Blue Prosperity Micronesia online at www.BlueProsperityMicroneisa.org and on Facebook at www.facebook.com/BlueProsperityMicronesia.

3 The Blue Prosperity Coalition consists of non-governmental organizations (NGOs), academic institutions, foundations, and other organizations that work together to assist committed governments in developing and implementing sustainable marine spatial plans to protect their environment while improving the economy. For more information, see www.blueprosperity.org.

4 See Waitt Institute: "Blue Prosperity Micronesia" at www.waittinstitute.org/fsm.

The parties to the MoU recognize the need for further legal analysis and policy development if the goals of the MoU are to be achieved. The MoU thus calls for the development and adoption of such laws, regulations, and policies that may be necessary to secure an enforceable, comprehensive, EEZ-wide marine spatial plan designed to sustain the FSM's marine environment, while also growing its blue economy. The present report sets the stage for this work by characterizing the relevant legal and institutional framework in the FSM.

1.2.2 Fish Forever Program and Relevant Work in the FSM

Fish Forever is Rare's (hereafter, Rare) coastal fisheries program that is being implemented in seven countries. It focuses on helping countries or any of their governmental subunits (e.g., state and municipal) to pursue a rights-based approach to fisheries management. This approach is implemented in various degrees, depending on the existing laws and governance models of each country, including decentralization and devolution by government, emphasis on community-based approaches, consideration of the types of species that are being managed, existing fisheries management approaches, and the capacity of relevant government units/agencies/ministries.

In each of the Fish Forever regions, Rare's partners have established or expanded networks of marine reserves, paired with managed access areas, which allow appropriate access and resource rights for small-scale fishers. These Managed Access + Reserves (MA+R) are co-managed by fishing communities with support from their local governments. To enable this, legal and regulatory pathways to establish the MA+R and assign rights to specific stakeholders must be identified. This report is an important initial step to inform that process.

1.3 Marine Spatial Planning and Ocean Zoning

The FSM has committed to, and is now undertaking, a marine spatial planning initiative.

Marine spatial planning is a "public process of analyzing and allocating the spatial and temporal distribution of human activities in marine areas to achieve ecological, economic, and social objectives that are usually specified through a political process."⁵ It is a planning tool that utilizes information about a particular ocean area, including its natural resources and human uses, to develop a comprehensive ocean management system. Over sixty countries rely on some type of marine spatial planning, and the number is growing.

The principal management measure for implementing a marine spatial plan is ocean zoning. By applying traditional notions of zones and use areas (e.g., shipping lanes, conservation areas, fishery zones, and the like), this approach essentially subdivides a designated ocean space into zones that prescribe allowable uses and restrictions. This also necessitates clarity and certainty in the maritime boundary zones over which the FSM exercises jurisdictional and sovereign rights, with the notion that exclusive rights to assert control and jurisdiction over a given space or resource bring more efficient and effective planning outcomes. As an example, maritime boundary delimitations with respect to overlapping water and seabed zones with neighboring states should be concluded expeditiously. Key principles of marine spatial planning include reliance on the best available science, a participatory process, cross-sector planning, transparent decision-making, and consideration of economic and environmental objectives. To function as a practical matter, marine spatial planning requires sustainable funding and corresponding legal mechanisms to source and direct those funds.

Ultimately, for marine spatial planning to be effective and enforceable in the FSM, it must be incorporated into the country's legislative and institutional framework—with its complex national, state, local, and traditional dimensions. This institutionalizes the process, ensures that all parties are bound by a lawfully adopted plan, and provides for consistency of plan implementation and revision. The determination of *how* and *where* to incorporate marine spatial planning in the law depends on many factors, including the reach of existing legislation. Marine spatial planning is, by definition, cross-cutting: it implicates multiple economic sectors and governmental portfolios. At the same time, marine spatial planning law is typically intended to complement and build on existing legislation and work with existing institutional competencies.

5 Ehler, C., and F. Douvère. 2009. "Marine Spatial Planning: A Step-by-Step Approach toward Ecosystem-Based Management." Intergovernmental Oceanographic Commission Manuals and Guides No. 53. Paris: UNESCO. Available at <https://repository.oceanbestpractices.org/handle/11329/459>.

By identifying the ocean management roles played by the FSM's relevant laws and governmental institutions, the present report will assist the FSM governments and their partners to determine where marine spatial planning best "fits" into the FSM's legal and institutional framework.⁶

1.4 Blue Economy Strategy

The World Bank has defined the blue economy as the "sustainable use of ocean resources for economic growth, improved livelihoods and jobs, and ocean ecosystem health."⁷ Although there is no universally agreed definition of the term blue economy, the hallmark is the sustainable use of oceanic resources. Challenges to developing a blue economy strategy include the sheer number of sectors involved, as well as the fact that building a blue economy requires unprecedented collaboration across nations, as well as the public and private sectors.

The World Bank offers a number of overarching observations that relate to the blue economy:

- The blue economy concept promotes economic growth, social inclusion, and the preservation or improvement of livelihoods while, at the same time, ensuring environmental sustainability of the oceans and coastal areas.
- The blue economy has diverse components, not only including established traditional ocean industries such as fisheries, tourism, and maritime transport, but also new and emerging activities, such as offshore renewable energy, aquaculture, seabed extractive activities, and marine biotechnology and bioprospecting.
- The mix of oceanic activities varies in each country, depending on the unique national circumstances and the national vision of how to conceive a blue economy.
- The blue economy aims to move beyond business as usual and to consider economic development and ocean health as compatible propositions.
- A blue economy approach must fully anticipate and incorporate the impacts of climate change on marine and coastal ecosystems—impacts already observed and anticipated.
- Healthy oceans and seas can greatly contribute to inclusiveness and poverty reduction, and are essential for a more sustainable future for Small Island Developing States (SIDS).
- In spite of its promises, the potential to develop a blue economy is limited by a multitude of challenges.⁸

As far back as 2012, the FSM highlighted on the international stage the importance of a blue economy:

Micronesia is an oceanic state. The oceans bring us together, sustain us, and its resources enrich us. It is part of our homeland. Our people's livelihood, culture, and way of living depend on a blue economy, which means we need an ocean that is healthy and free of climate change impacts, including rising tides and temperatures as well as ocean acidification; we need fish stocks to be sustainably managed without the use of harmful or destructive fishing practices including overfishing, illegal, unreported and unregulated fishing. We also need our local communities to have access to the resources on which they depend and have proper input in their management.⁹

6 This discussion of marine spatial planning and the importance of grounding the process into law is adapted from: Blue Prosperity Coalition. 2020. *Designing Marine Spatial Planning Legislation for Implementation: A Guide for Legal Drafters*. Blue Prosperity Workshop Series. Washington, DC. Available at www.eli.org/research-report/designing-marine-spatial-planning-legislation-implementation-guide-legal-drafters.

7 World Bank. 2017. "What is the Blue Economy?" Infographic. Available at www.worldbank.org/en/news/infographic/2017/06/06/blue-economy.

8 World Bank. 2017. *The Potential of the Blue Economy: Increasing Long-term Benefits of the Sustainable Use of Marine Resources for Small Island Developing States and Coastal Least Developed Countries*. pp vi–x. Washington, DC: World Bank Group. Available at <https://sustainabledevelopment.un.org/content/documents/2446blueeconomy.pdf>.

9 Statement by Mr. Jeem Lippwe, FSM Deputy Permanent Representative to the United Nations, before the 67th UN General Assembly (Agenda Item 75: Oceans and the Law of the Sea) on December 11, 2012. Available at www.fsmgov.org/fsmun/unclos03.htm.

The current FSM administration has reiterated its commitment to building a blue economy for the people of the FSM. Upon the announcement of a commitment—together with the Maldives—to potentially protect over 1 million square kilometers of the world’s oceans, President David Panuelo stated:

We need to recognize that our islands are at risk, and if we do not act now, it will be too late. Our people rely on the ocean for their food, their jobs, and their wellbeing. I am confident that by partnering with the Blue Prosperity Coalition, my country can plan for the future in a way that not only considers the importance of a sustainable economy, but one that values and promotes our most important resource, our ocean.¹⁰

The FSM has committed to aligning its blue economy with the Blue Pacific strategy being developed by the Pacific Islands Forum (PIF; also referred to as the South Pacific Forum). In February 2021, the FSM initiated a process to withdraw from the PIF, which is set to be complete in February 2022. The FSM intends, however, to remain a full member of each individual agency, such as the Secretariat to the Pacific Community and the Pacific Islands Forum Fisheries Agency.¹¹

1.5 Sustainable Small-Scale Fisheries

According to the Food and Agriculture Organization (FAO) of the United Nations (UN), small-scale fisheries contribute over half of the capture fisheries harvest in developing countries.¹² Of the catch from small-scale fisheries, upwards of ninety percent of landings are destined for local human consumption.¹³

The small-scale fisheries sector is critical to food security and nutrition, as well as to alleviating poverty. Fish protein is increasingly important in sustaining a growing global population. Small-scale fishers often directly consume their protein- and nutrient-rich catch and can use fishing profits to purchase other nutritious food while supplying consumers with healthy food. Supplemental income from small-scale fishing and associated activities off the water can provide a safety net for occasional fishers with limited access to means of production. Compared to industrial fishing, small-scale fishing also has fewer barriers to entry and offers more mobility and a more flexible livelihood.

Small-scale fisheries also play an important role in achieving the UN Sustainable Development Goals (SDG), announced in 2015 as part of the UN 2030 Agenda for Sustainable Development. SDG Goal 14 (Life Below Water) aims to conserve and sustainably use the oceans, seas, and marine resources. Target 14.b specifies that small-scale fishers shall be provided access to marine resources and markets.

Small-scale fishing is ubiquitous throughout the FSM. Over half of all households report engaging in fishing activities;¹⁴ however, only 15 percent reported selling any of their catch outside of their subsistence needs to small markets and retail outlets. Fishing also is integral to many traditional and cultural ceremonies.

Ensuring that these small-scale fisheries—found within nearshore coastal zones within 12 nautical miles (nm)—remain productive is critical to food security, nutrition, and culture.

10 See Blue Prosperity Coalition: “More Than One Million km² of New Ocean Protected Areas Committed in Light of New Climate Report” at www.blueprosperity.org/unga.

11 The decision to withdraw came following the Micronesian Presidents’ Summit, at which the FSM, the Republic of the Marshall Islands (RMI), the Republic of Palau (hereafter, Palau), the Republic of Kiribati, and Nauru each stated it would withdraw from the PIF after the candidate put forth by the Micronesian bloc of countries was not elected. See RNZ: “FSM begins process to leave Pacific Islands Forum” at www.rnz.co.nz/international/pacific-news/436683/fsm-begins-process-to-leave-pacific-islands-forum.

12 World Bank. 2012. *Hidden Harvest: The Global Contribution of Capture Fisheries*. Economic and Sector Work Report No. 66469. Washington, DC: World Bank Group.

13 *Id.* at xviii & 23–24.

14 Statistics Division, FSM Department of Resources & Development. Federated States of Micronesia Integrated Agriculture Census. For FSM R&D, see <http://www.fsmrd.fm/>.

2 OVERVIEW OF THE GOVERNMENT OF THE FEDERATED STATES OF MICRONESIA AND GOVERNANCE LANDSCAPE

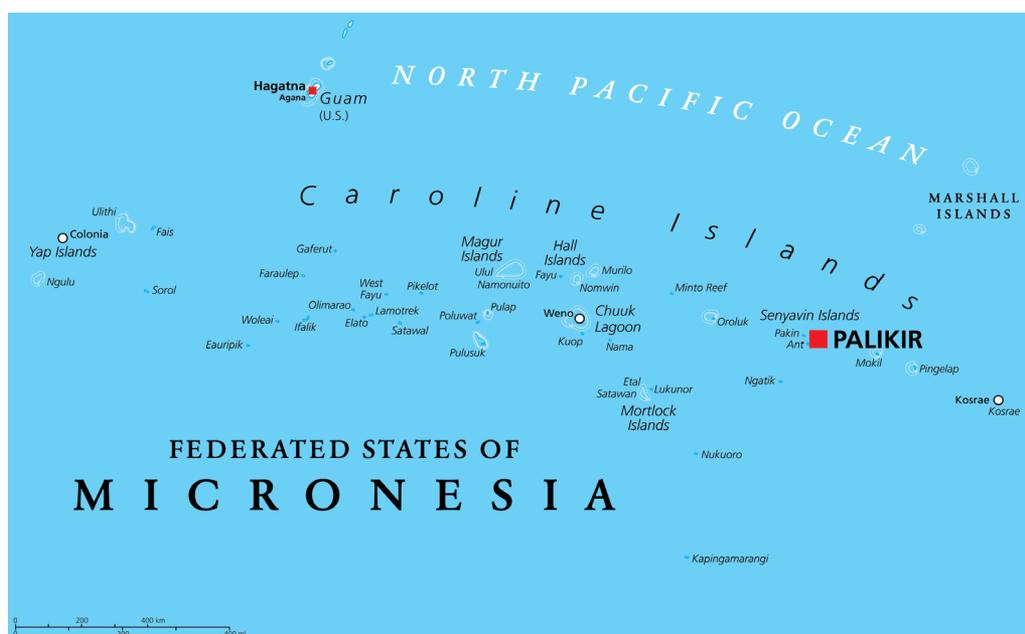
This section introduces the FSM and provides an overview of governmental structures at the national, state, and local levels, as well as the key roles played by customs and traditions.¹⁵ It also includes a discussion of the FSM's relevant international commitments and concludes with an examination of the current political and legal climate in the FSM as pertinent to ocean management.

2.1 Geography and History

The FSM is an independent, sovereign nation that is located in the Western Pacific Ocean, just north of the Equator. Although the total land area of the FSM is small, at only 270 square miles, the FSM occupies more than one million square miles of the Pacific Ocean.

The FSM consists of four States, namely, Pohnpei, Chuuk, Kosrae, and Yap. See Fig. 1. These States physically comprise a group of in excess of 600 small islands. The islands stretch across a span of over 2,000 miles from Kosrae in the East, then west to Pohnpei and Chuuk, before ending with Yap in the west of the FSM. Each State is centered on or around one main high island, with all but Kosrae encompassing numerous outlying atolls, which are often colloquially referred to as the Outer Islands or the neighbor islands of a particular State.

Figure 1. Map of the Federated States of Micronesia.



Pohnpei. Formerly named Ponape, Pohnpei consists of a main island—the biggest island in the FSM—encircled by a reef as well as the outlying island groups of Pingelap, Mokil, Nukuoro, and Kapingamarangi. See Fig. 2. The land area of Pohnpei consists of approximately 133.4 square miles, and Pohnpei is the second most populous State, with approximately 40,000 people.

Pohnpei is home to the FSM national government (FSMNG), situated in Palikir, and hosts the foreign embassies of four countries: Australia, China, Japan, and the United States. Pohnpei's abundant rainfall—reputedly some of the most plentiful on earth—accounts for its lush tropical forests and beautiful waterfalls and rivers. Pohnpei also is home to the ancient ruins of Nan Madol, the first UNESCO World Heritage site in the FSM.

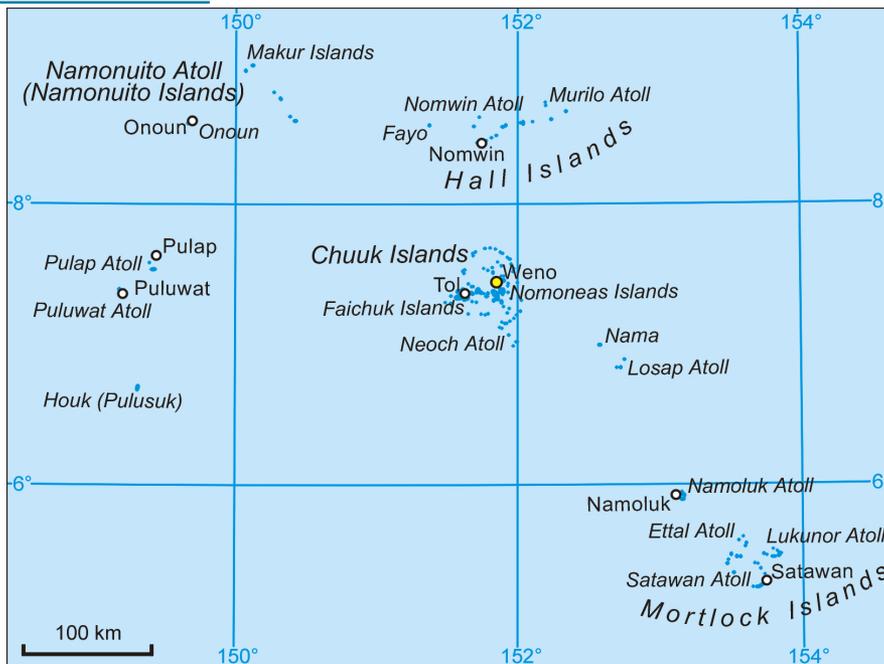
¹⁵ Recognition of and respect for customs and traditions is deeply woven into the constitutional fabric of the FSM, as well as that of the four States.

Figure 2. Map of the State of Pohnpei.



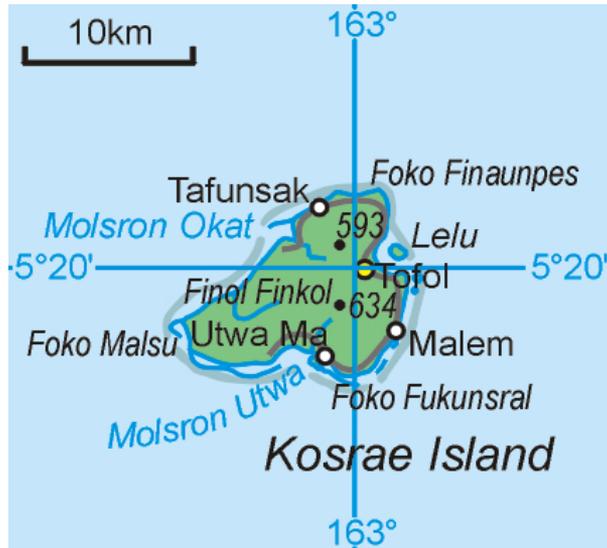
Chuuk. Formerly known as Truk during the Trust Territory period, Chuuk has a land area of about 49.2 square miles and includes seven major island groups. Chuuk is the most populous of the four States, comprising approximately 50,000 people, with the vast majority living on the larger main islands (e.g., Fefan, Tonoas, Uman, and Weno) in the Chuuk lagoon. There are a total of 11 high mangrove-fringed islands in the Chuuk Lagoon, and a series of 14 outlying atolls and low islands surrounding the lagoon. Chuuk Lagoon is renowned worldwide for its wreck diving, owing to the presence of dozens of Japanese warships and aircraft sunk in the lagoon during World War II.

Figure 3. Map of the State of Chuuk.



Kosrae. Formerly known as Kusaie, Kosrae essentially is one high island of 42.3 square miles and constitutes the easternmost of the four States of the FSM, lying approximately 600 kilometers southeast of Pohnpei. Unlike the other three States, Kosrae does not have any outer islands; its entire population of approximately 7,000 resides on the one main island surrounded by a reef. Kosrae is known for its delicious citrus fruit as well as for its lush greenery, mountainous terrain, and white coral sand beaches. Kosrae is referred to as the “Sleeping Lady,” as the topography of the island from many viewpoints appears to reveal the silhouette of a female in repose.

Figure 4. Map of the State of Kosrae.



Yap. Yap is comprised of four relatively large main islands (Gagil, Rumung, Tomil, and Yap), seven small islands, and 134 mostly low-lying atolls, with a total land area of about 45 square miles. Yap State is the westernmost in the FSM, lying midway between Guam and Palau, with a population of approximately 11,000. Yap has a deep cultural tradition and is perhaps best known for its “stone money,” which consists of huge disks of stone. In ancient times, the stone was quarried in Palau’s Rock Islands at great risk due to the dangerous sea voyage. The stone money can measure up to two meters in diameter and weigh up to four tons, making it the world’s largest currency.

Figure 5. Map of the State of Yap.



The FSM has a colonial history. The islands that make up today's FSM were previously ruled by Spain (beginning in 1565), Germany (1800s), and Japan (early 1900s). In 1947, following World War II, these islands became part of the Trust Territory of the Pacific Islands (TTPI), a UN Trust Territory administered by the United States.

The FSM's current constitutional government began on May 10, 1979, when the eastern four island groups of the Trust Territory adopted a constitution and became the Federated States of Micronesia.¹⁶ The FSM achieved full independence on November 3, 1986, with the entry into force of the Compact of Free Association (COFA) with the United States.¹⁷

It often is observed that the FSM comprises “five governments”—the FSMNG and the four governments of the aforementioned States of Pohnpei, Chuuk, Kosrae, and Yap. The FSM Constitution explicitly recognizes the existence of these governments, as well as those at the local level.¹⁸

An overview of each of these five governments, beginning with the FSMNG, is found below.

2.2 National Government

The FSM Constitution establishes three branches of national government: legislative, executive, and judicial. The Constitution also recognizes the role of customs and traditions.

2.2.1 Legislative

The legislative power of the FSMNG is vested in the Congress of the FSM.¹⁹ Congress is a unicameral legislature, consisting of 14 members referred to as senators. Each of the four States elects one member at large who serves a four-year term.²⁰ The remaining ten members serve two-year terms and are elected from congressional districts in each State, apportioned by population.²¹ Legislative proceedings are conducted in English.²²

Pohnpei's delegation consists of four members, Chuuk's has six, while Yap and Kosrae each has two members.²³ Although the FSM Constitution requires that Congress reapportion itself at least every ten years,²⁴ the current composition of Congress has existed for many years. In addition to—and in recognition of—the importance of traditional leadership in the FSM, the Constitution explicitly permits a State to “provide that one of its seats is set aside for a traditional leader who shall be chosen as provided by statute for a two-year term, in lieu of one representative elected on the basis of population.”²⁵

The Constitution expressly delegates certain powers to Congress and provides that several other powers may be exercised concurrently by Congress and the States.²⁶ The express powers wielded by Congress most relevant to ocean management include the power to regulate navigation and shipping (except within

16 At the conclusion of this Trust Territory period, other neighboring island groups also chose to become separate constitutional governments—the Republic of the RMI and Palau—while the Northern Mariana Islands opted to become a U.S. commonwealth, emerging from the Trust Territory period as the Commonwealth of the Northern Mariana Islands (CNMI).

17 The special relationship between the FSM and the United States continues to the present day. See discussion in Section 2.6.1 of this report.

18 FSM Const. art. VII. Although the FSM's governmental structure is complex, the Preamble to the Constitution makes clear that the FSM's diversity is a strength and that the ocean binds the nation's citizens: “To make one nation of many islands, we respect the diversity of our cultures. Our differences enrich us. The seas bring us together, they do not separate us. Our islands sustain us, our island nation enlarges us and makes us stronger.”

19 FSM Const. art. IX § 1.

20 FSM Const. art. IX § 8.

21 *Id.*

22 FSM Const. art. IX § 19. A member who is not fluent in English may use his own language, and Congress must provide translation. *Id.*

23 See 3 FSM Code § 101.

24 FSM Const. art. IX § 10.

25 FSM Const. art. IX § 11.

26 FSM Const. art. IX §§ 2–3.

lagoons, lakes, and rivers); and the power to regulate the ownership, exploration, and exploitation of natural resources within the marine space of the FSM beyond 12 nm from island baselines.²⁷

By statute, Congress holds three regular sessions annually, consisting of 20 days each—in January, May, and September—with the September session often colloquially referred to as the budget session.²⁸ Congress is required to keep and publish a journal of its proceedings²⁹ and may determine its own rules of procedure and choose a presiding officer.³⁰ The presiding officer who, by statute, is responsible for the operation of Congress is referred to as the Speaker.³¹

Under its rules of procedure, Congress has established a standing committee system, while also permitting the creation of special committees. Each of the seven standing committees of Congress considers measures and issues within its jurisdiction, and reports its findings and recommendations to the Speaker in a Standing Committee Report (SCR) for adoption by Congress.³² Of special relevance to ocean management, the Committee on Resources and Development is a permanent, standing committee whose mandate is:

... to consider and report on all bills, resolutions, and other matters referred to it pertaining to the economy of the [FSM] and the resources thereof, including economic planning, priorities, and policies; public or private investments; development loans; foreign investment; business registration and regulations; private savings and indebtedness; bankruptcy and insolvency; secured transactions; usury and banking; insurance regulation; labor and manpower development; agriculture, forestry, and internal fisheries development; exploitation of land-based mineral resources; land management, industries, and public utilities; interstate trade and commerce; intellectual property rights; regulation and management of ownership, exploitation, and exploration of mineral or natural resources within marine space of the [FSM] beyond 12 [nm] from baselines; and other related subjects, including Presidential nominations submitted to the Speaker which require the advice and consent of Congress. It shall be the duty of this committee to consider, investigate, and recommend to the Congress any needed revisions of existing laws or new legislation relating to any subject matter within its jurisdiction.

Special committees are created at the discretion of the Speaker, often at the urging of members as expressed in a congressional resolution. A version of the Special Committee on Climate Change and Environmental Issues has been in existence since its creation during the 19th Congress in 2016. The most recent congressional resolution continuing its existence provided insight into the rationale behind the special committee.³³ Essentially, Congress wished to enable the Committee on Resources and Development to devote more focus to its important fisheries work while also recognizing that “the issues related to climate change and the environment at the national and international levels are both urgent and complex.”³⁴

To become law, a bill must pass two readings on separate days. To pass a first reading, a two-thirds vote of all members is required. On a second reading, each state delegation casts one vote (with the vote cast by the delegation chair), and a two-thirds vote of all the delegations is required.³⁵

A bill passed by Congress must be presented to the president for approval. If the president disapproves of the bill, it shall be returned, with objections stated, to Congress within ten days. If Congress has ten or fewer days remaining in its session, or it has adjourned, the president shall return the bill within 30 days

27 FSM Const. art. IX § 2(h), (m). Net revenue derived from ocean floor mineral resources exploited under § 2(m) must be divided equally between the national government and the appropriate state government. *Id.* § 6. Other express powers include, *inter alia*, those related to national defense, treaties, immigration, taxation, commerce, impeachment, and national crimes.

28 3 FSM Code §§ 201 & 202.

29 FSM Const. art. IX § 19.

30 FSM Const. art. IX § 17(b).

31 3 FSM Code § 102.

32 See generally Congress of the FSM: “Committee Reports” at www.c fsm.gov.fm/index.php/reports.

33 See “Twenty-First Congress of the Federated States of Micronesia,” First Regular Session (2019) at www.c fsm.gov.fm/iframe/21%20congress/RESOLUTIONS/CR_21-03.pdf.

34 *Id.*

35 FSM Const. art. IX § 20. Given the current 14-member structure of Congress, the numerical number of votes necessary to pass a bill on first reading is ten, while on second reading, three of the four State delegations must vote in favor of passage.

after presentation. If the president does not return a bill within the appropriate period, it becomes law as if approved.³⁶

At the FSM Congress, the process of how specific legislative priorities are identified for a particular session of Congress involves a special committee, the Committee to Wait on the President (Committee to Wait). Under Congress's rules of procedure, the first order of business, after convening on the first day of any session, is to appoint the Committee's four members—one from each State—as well as to designate a chairman. Before conducting any other substantive business in the new session, the Committee meets with the president, the vice president and, typically, Cabinet-level officials. The purpose of the meeting is to notify the president that Congress is ready to transact legislative business and to receive the president's specific legislative priorities for the session. Typically, the president presents a detailed list of agenda items for discussion during the meeting. Following the meeting, the Committee has legal staff draft an SCR summarizing the meeting and the president's priorities for presentation to the entire Congress during the next session day.³⁷ During the discussion preceding adoption of the SCR, Committee members will supplement the content of the SCR orally as well as answer any questions other senators may have. Following the adoption of the SCR by a majority voice vote, Congress can then proceed with its substantive legislative work.

Although the president's legislative priorities—as expressed in the SCR—are not legally binding on Congress, it is the collegial nature of the FSMNG to attempt to accommodate them. This collegiality may be attributable to the fact that the FSM president is always, by law, a former member of Congress and, by practice, often is a long-serving member of Congress. Consequently, the main players involved in the legislative process are relatively few, all of whom have longstanding personal and professional relationships.

Congress typically holds public hearings when considering the passage of bills. These public hearings take place in person in Palikir, and usually feature witnesses in the form of executive branch personnel with substantive knowledge of the bill's subject matter. The chair of the relevant Standing Committee runs the public hearing, which is typically informal (and often features sumptuous amounts of food, per Micronesian tradition). For example, although Congress has the statutory power to place witnesses under oath, this rarely if ever is done; no verbatim transcript of proceedings is taken; and senators who are not assigned members of the Committee are permitted to attend and participate. After brief opening statements by the witnesses, the hearing typically consists of the senators posing questions to the witnesses or requesting that additional information be provided. After the hearing, the legal staff writes an SCR, which is then placed on the Order of Business for a subsequent session day of Congress.

If a bill could have a major impact on the four States, or if it involves a novel topic within the FSM, the chair will often announce that public hearings will take place in the other three States.³⁸ An alternative is for the chair to solicit written feedback from state governments rather than holding hearings in each State. The chairs and senators take seriously their obligation to ensure that people from all four States have had an opportunity to express their views on important pieces of legislation.

After a bill has passed Congress, the president can sign the bill, veto it, or do nothing, in which case the bill nevertheless becomes law without signature.³⁹ Congress has the power to override a presidential veto with a second vote by three of the four State delegations, which Congress usually does with relative ease.⁴⁰ During the previous and current administrations, vetoes of any sort rarely have occurred, reflecting a high level of policy agreement between the two branches.⁴¹

Another pathway for the implementation of policy exists by virtue of the FSM National and State Leadership Council (NSLC), an informal body comprised of the president and the governors of the four States. Through NSLC meetings, the FSM develops policy plans and priorities that often lay the preliminary groundwork

36 FSM Const. art. IX § 22.

37 A sample of a typical SCR for the Committee to Wait on the President may be found at www.cfsm.gov.fm/ifile/21%20congress/Special%20Committee/Special_Committee_Rep__21-14.pdf.

38 In some instances where the bill will affect the FSM diaspora (e.g., dual citizenship; special polling places), hearings will be held in Guam, Hawaii, and in locations within the United States where there is a significant population of FSM citizens (e.g., Denver, Kansas City, Los Angeles, Portland, and Seattle).

39 For appropriations bills, the president also wields a line-item veto. FSM Const. art. XII § 2(c).

40 FSM Const. art. IX § 2(q).

41 Previous administrations were marked by more vetoes, reflecting a less collegial and collaborative relationship.

for the eventual proposal and adoption of legislation or regulations. Meetings are typically held several times a year, with the location rotating among each of the four States. The NSLC reflects the deep-seated tradition within the FSM of being collaborative, rather than adversarial, when making decisions and setting priorities. This also reflects the intent of the original drafters of the FSM Constitution to guard against an “all-powerful national government.”

2.2.2 Executive

The executive power of the national government vests in the president, who also serves as the head of state of the FSM.⁴²

The president is elected to a four-year term by a majority vote of the 14 members of Congress from among the four at-large members of Congress.⁴³ The president is limited to serving two consecutive terms.⁴⁴ The vice president is elected in the same manner from the remaining three at-large members of Congress.⁴⁵ Vacancies are then declared for the two relevant at-large seats and special elections are held, typically in the July following the presidential election occurring in May.⁴⁶ The Constitution forbids the vice president from being a resident of the same State as the president.⁴⁷

Chief among the powers expressly delegated to the president is the power to faithfully execute and implement the provisions of the Constitution and all national laws.⁴⁸ The president also possesses the power to conduct foreign affairs,⁴⁹ grant pardons and reprieves,⁵⁰ declare and manage emergencies⁵¹ and, with the advice and consent of Congress, to appoint, *inter alia*, ambassadors, judges of the FSM Supreme Court, and the principal officers of executive departments in national government.⁵² The president is further empowered to make recommendations to Congress⁵³ and, in the legislative process, such recommendations often take the form of “by request bills” (or Executive bills) transmitted by the president to the Speaker with a request that the bill be introduced and acted upon.

The FSM presently has eight executive departments, which are established by statute.⁵⁴ See Table 2. The president’s Cabinet consists of the heads of these national departments and certain national officers.⁵⁵

Table 2. Executive Departments of the Federated States of Micronesia.

Department of Education	http://national.doe.fm
Department of Environment, Climate Change & Emergency Management	https://decem.gov.fm
Department of Finance & Administration	www.dofa.gov.fm
Department of Foreign Affairs	https://dfa.gov.fm
Department of Health and Social Affairs	https://hsa.gov.fm/
Department of Justice	https://doj.gov.fm/justice/fsm_doj.html
Department of Resources & Development	www.fsmrd.fm
Department of Transportation, Communications & Infrastructure	www.tci.gov.fm

42 FSM Const. art. X §§ 1 & 3(a).

43 FSM Const. art. X §§ 1 & 4.

44 FSM Const. art. X § 1.

45 FSM Const. art. X § 5.

46 *Id.*

47 *Id.*

48 FSM Const. art. X § 2(a).

49 *Id.* § 2(b).

50 *Id.* § 2(c).

51 FSM Const. art. X § 9.

52 FSM Const. art. X § 2(d); see also 2 FSM Code § 207.

53 FSM Const. art. X § 3(b).

54 *Id.* § 8.

55 The administrative head of each department is designated as secretary. The administrative head of each office is designated as director.

Of particular relevance for ocean management are the Department of Environment, Climate Change & Emergency Management (DECEM) and the Department of Resources & Development (FSM R&D).⁵⁶ Other key national agencies with respect to this subject matter are NORMA, NFC, and NACH. For the mandates of these national actors, see Table 3.

Table 3. Mandates of Key Executive Branch Agencies of the Federated States of Micronesia.

Department of Environment, Climate Change & Emergency Management	Recognizing the critical importance of the FSM's natural environment to the health and prosperity of this and future generations of Micronesians, it supports the protection of the nation's environment from natural and man-made threats to ensure the sustainable development of its natural resources.
Department of Resources & Development	Supports and manages the development of the nation's economy and utilization of its natural resources in a sustainable manner, while being in line with applicable provisions of the nation's Strategic Development Plan in relation to economic development, resource management, and conservation.
National Oceanic Resources Management Authority	Responsible for managing the FSM's fisheries resources from the 12 nm territorial sea out to the 200 nm EEZ.
National Fisheries Corporation	A public corporation created by statute to promote the development of pelagic fisheries and related industries within the extended fishery zone for the benefit of the people of the FSM.
National Archives, Culture and Historic Preservation	Strengthens the nation's unity through protection and preservation of the cultural heritage of the FSM; cultivates public participation and democracy through public access; drives participation in the preservation process; and assists in the identification and maintenance of sites and objects of historical significance within the nation.

Additional departments, offices, independent agencies, and temporary agencies may be established by law.⁵⁷

The president has the power to establish, by administrative directive, the respective duties, responsibilities, and functions of each department and office in the executive branch, as well as the power to provide for subdivisions of departments and offices and their duties, responsibilities, and functions.⁵⁸

With respect to implementing national policy, in addition to the primary legislative pathway discussed above in Section 2.2.1 of this report, the FSM Administrative Procedures Act (APA) allows for the making of secondary legislation in the form of regulations by the executive branch.⁵⁹ The APA provides a procedure, including specific timelines for notice and comment, as well as for adopting, amending, and repealing regulations.⁶⁰

The APA allows "any interested person"⁶¹ to petition an agency directly to adopt, amend, or repeal a regulation.⁶² Any interested person also may petition an agency for advisory opinions as to the applicability of any statutory provision or of any regulation or order of the agency.⁶³ The APA further allows any interested person requesting agency action to petition the agency for an order.⁶⁴ Finally, the APA grants the right to any person aggrieved by agency action to a hearing before the highest administrative official of the

56 See 2 FSM Code §§ 203, 204, & 207.

57 2 FSM Code § 205.

58 *Id.* § 206.

59 Often, individual FSM statutes contain a specific grant of authority to promulgate regulations with reference to using the APA process.

60 See generally 17 FSM Code §§ 102–105. The APA defines "regulation" to mean each agency statement of general applicability that establishes policy, implements, interprets, or prescribes law, or describes the organization, procedure, or practice requirements of any agency and which has the force and effect of law. The term includes the amendment or repeal of a prior regulation. 17 FSM Code § 101(9).

61 The definition of "person" extends beyond a natural person to mean an individual, partnership, corporation, association, clan, lineage, state or local government, or public or private organization of any character other than an agency. 17 FSM Code § 101(8).

62 17 FSM Code § 105.

63 *Id.* § 106.

64 *Id.* § 107. The APA defines an order to mean "the whole or part of a final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency in a matter." 17 FSM Code § 101(6).

department or office of which the agency is a part.⁶⁵ The APA contains detailed hearing procedures and further grants the right to a de novo judicial review in the FSM Supreme Court to a person adversely affected or aggrieved by agency action.⁶⁶

Although there is transparency with respect to the making and existence of primary legislation at the national level, this is much less the case with respect to regulations. Regulations in the FSM often are outdated, incomplete, or impossible to locate, despite the fact that the APA requires that copies of regulations be deposited in specified locations in order for regulations to take legal effect.⁶⁷

2.2.3 Judicial

Pursuant to the FSM Constitution, the judicial power of the national government is vested in a Supreme Court and inferior courts established by statute.⁶⁸ Congress has yet to establish any national courts other than the FSM Supreme Court. Justices are appointed by the president, with the approval of two-thirds of Congress.⁶⁹ Justices serve during good behavior,⁷⁰ but they may be impeached by Congress and removed from office for treason, bribery, or conduct involving corruption in office.⁷¹ Although the Constitution envisions a total of six justices (the Chief Justice plus five associate justices), recently the FSM Supreme Court has consisted of only the Chief Justice and two associate justices.⁷² Consequently, the FSM Supreme Court routinely relies on either FSM state court judges or judges from other countries in the region (e.g., Guam and Palau, among others) to serve as temporary justices for specific cases.⁷³

The FSM Constitution specifies when the trial division of the FSM Supreme Court has original and exclusive jurisdiction and when it has concurrent original jurisdiction with the state courts.⁷⁴ Jurisdiction is original and exclusive for:

- cases affecting officials of foreign governments;
- disputes between States;
- admiralty or maritime cases; and
- cases in which the national government is a party, except where an interest in land is at issue.⁷⁵

There is concurrent original jurisdiction for:

- cases arising under the Constitution, national law, or treaties;
- disputes between a State and a citizen of another State;
- disputes between citizens of different States; and
- disputes between a State or a citizen thereof, and a foreign state, citizen, or subject.⁷⁶

The appellate division of the FSM Supreme Court reviews cases from the trial division and cases heard in state or local courts if they require interpretation of the Constitution, national law, or a treaty.⁷⁷ A State's constitution may also grant the appellate division authority to review other cases on appeal from the

65 17 FSM Code § 108(1). "Agency action" is defined to include "the whole or part of an agency regulation, order, decision, license, sanction, relief, or the equivalent or denial thereof, or a failure to act." 17 FSM Code § 101(2).

66 See 17 FSM Code §§ 109 & 111, respectively.

67 See 17 FSM Code § 103. Selected regulations of the FSM are maintained online at <http://fsmllaw.org/fsm/regulations/index.htm>.

68 FSM Const. art. XI §§ 1 & 2.

69 *Id.* § 3.

70 *Id.*

71 FSM Const. art. IX § 7.

72 The last two associate justices confirmed by Congress have failed to take up their appointments for personal reasons, and a third has been unable to come to the FSM due to COVID-19 pandemic travel restrictions.

73 The authority to appoint temporary justices derives from the FSM Constitution, which empowers the Chief Justice to "assign judges among the divisions of a court and give special assignments to retired Supreme Court justices and judges of state and other courts." FSM Const. art. XI § 9(b).

74 FSM Const. art. XI § 6.

75 *Id.* § 6(a).

76 *Id.* § 6(b).

77 *Id.* § 7.

highest state court in which a decision may be had.⁷⁸ A state or local court may certify a question to the appellate division if a case involves a substantial question requiring the interpretation of the Constitution, national law, or a treaty.⁷⁹

Further underscoring the importance of customs and traditions in the FSM, the Constitution's article on the judicial branch includes what is known as the "judicial guidance clause:"

Court decisions shall be consistent with this Constitution, Micronesian customs and traditions, and the social and geographical configuration of Micronesia. In rendering a decision, a court shall consult and apply sources of the [FSM].⁸⁰

The FSM Supreme Court has previously been called upon to resolve conflicts between the FSMNG and the state governments. For example, in a dispute highly relevant to ocean management, the FSM Supreme Court decided a case brought by the four state governments against the national government regarding whether fishing fees derived from commercial fishing contracts for fishing in the EEZ, which are collected by the national government, must be shared with the state governments pursuant to the "national taxes" revenue sharing provision of the FSM Constitution.⁸¹ The FSM Supreme Court held that fishing fees are not taxes and are therefore not subject to mandatory revenue sharing with the state governments.⁸²

2.2.4 Traditional

Traditional rights in the FSM are enshrined in various ways in the national Constitution.

Traditions of the people of the FSM may be protected by statute. If challenged as violating other expressly identified constitutional rights, protection of Micronesian tradition is considered to be a compelling social purpose that warrants governmental action.⁸³ The Constitution neither may be interpreted to take away a role or function of a traditional leader—recognized by custom and tradition—nor may it prevent a traditional leader from being recognized, honored, and given formal or functional roles at any level of government, as may be prescribed by the Constitution or by statute.⁸⁴

Congress may establish, when needed, a Chamber of Chiefs consisting of traditional leaders from each State having such leaders, and of elected representatives from States without traditional leaders. Additionally, the constitution of a State having traditional leaders may provide for an active, functional role for them.⁸⁵

Recognition of tradition in the FSM also affects the exercise by government of certain of its other powers. Congress, for example, in exercising its expressly delegated constitutional power to define national crimes and prescribe penalties, must have "due regard for local custom and tradition."⁸⁶ Furthermore, as noted above in Section 2.2.3 of this report, court decisions must be consistent with Micronesian customs and traditions pursuant to the FSM Constitution's judicial guidance clause.

Trust Territory-era legislation preserved the local customs of FSM citizens and gave "recognized customary law" full legal effect, so long as such law was not in conflict with laws in effect during the Trust Territory period.⁸⁷

78 *Id.*

79 *Id.* § 8.

80 FSM Const. art. XI § 11.

81 The constitutional language at issue provides that national taxes shall be imposed uniformly, with not less than 50 percent of the revenues being paid into the treasury of the State where collected. See FSM Const. art. IX § 5.

82 See generally *Chuuk v. Secretary of Finance*, 8 FSM Intrm. 353 (Pon. 1998); *Chuuk v. Secretary of Finance*, 9 FSM Intrm. 424 (App. 2000). A similar dispute relating to revenue sharing between the national government and the States for revenue derived from "major corporations" is currently in litigation in the FSM Supreme Court.

83 FSM Const. art. V § 2.

84 *Id.* § 1.

85 *Id.* § 3. Moreover, a State may provide that one of its seats is set aside for a traditional leader who shall be chosen, as provided by statute, for a two-year term in lieu of one representative elected on the basis of population. FSM Const. art. IX § 11.

86 FSM Const. art. IX § 2(p).

87 See 1 FSM Code § 202 ("The customs of the inhabitants of the Trust Territory not in conflict with the laws of the Trust Territory or the laws of the United States in effect in the Trust Territory shall be preserved. The recognized customary law of the various parts of the Trust Territory, in matters in which it is applicable, as determined by the courts, shall have the full force and effect of law so far as such customary law is not in conflict with the laws mentioned in section 201 of this chapter.")

There exists in the FSM extensive case law on the issue of when or whether “customs and traditions” (or “customary law”) exist or apply in various situations. Given the challenges relating to codification, specificity, and identity of the right holder,⁸⁸ coupled with the sheer variety of legal situations in which customs and traditions have been raised in courts within the FSM, it is possible to distill only a couple of general observations. First, the idea of customs and traditions as a legally relevant concept is alive and well throughout the FSM, even today.⁸⁹ Second, citizens of the FSM treat their customs and traditions as a serious—and in some contexts even sacred—matter.

Further discussion of customs and traditions appears below in the context of each of the four state governments of the FSM.

2.3 State and Local Government

The FSM Constitution articulates the division of powers between the aforementioned FSMNG and the four state governments, with powers expressly delegated to the national government and such powers of an indisputably national character being reserved for the FSMNG and all other powers being state powers.⁹⁰ Additionally, State and local governments are prohibited from imposing taxes that restrict interstate commerce.⁹¹

As required by the FSM Constitution, each of the four States of the FSM has adopted a democratic constitution.⁹² Each State has a constitutional government that is structurally similar to that of the FSMNG: they all utilize the tripartite structure of three co-equal branches—legislative, executive, and judicial. Like the FSM Constitution, each state constitution also recognizes the existence and importance of local customs and traditions within that State.

In common parlance, the national government is a government of limited, specifically delegated powers, whereas the state governments retain all nondelegated powers. This division of powers was driven in large part by the FSM’s unique geography, as explained by the Committee on Governmental Functions during the original Micronesian Constitutional Convention:

Your Committee views Micronesia as a collection of diverse cultures with diverse ethnic origins, history, problems and interests. Your Committee recognizes that Micronesia is not unique in this respect, that in fact most nations are composed of a multitude of diverse groups. **However, though Micronesia’s cultural diversity may not be unique, its geography is. The states of Micronesia are separated by vast expanses of sea providing a natural obstacle which has hindered the efficient operation of government since a centralized governmental system was first introduced.** Your Committee recognizes the lesson of history that union brings strength, and that diverse groups can be molded into a harmonious viable society. **Your Committee believes that while a homogenous people living in a geographically compact area can perhaps have their aspirations best served by an all powerful national government, nations such as Micronesia which lack the bond of common cultural origin and which lack the advantage of compact geography must permit local autonomy in order to have efficient government and to avoid the destructive consequences, real or imagined, of domination by one group over another.** Your Committee therefore proposes the establishment of a union of autonomous states with state rule constitutionally guaranteed in which the collective government of all the states is responsible for external affairs and for the solution of national problems, and the individual state governments are responsible for all other affairs of government.

88 For an example of how these challenges can play out, see discussion in Section 2.3.1.2 of this report.

89 For example, during the recent 4th FSM Constitutional Convention discussed in Section 2.7.2 of this report, several proposed constitutional amendments relate to customs and traditions. Indeed, one of the Convention’s standing committees was entitled “Committee on Civil Liberties and Traditions.”

90 FSM Const. art. VIII.

91 *Id.*

92 FSM Const. art. VII § 2.

The proposal establishes a federal system of government in which the national government reigns supreme in its very limited and narrowly defined sphere of responsibility and the state governments are supreme in their much broader sphere. The powers of the national government are ‘express powers’ and those of the states, ‘residual.’ That means that the national government has only those powers expressed in the Constitution while the state governments have all other powers of government.⁹³

From the FSM’s very inception, its geography thus has shaped the way legal power is allocated and shared among the five governments of the nation.

The following is a discussion of the government of each State, including an introduction to their respective municipal government structures and the important role of traditional rights and customs.

2.3.1 Pohnpei

The Pohnpei Legislature is a unicameral body comprised of 23 senators who are elected by the voters of the electoral districts of Kapingamarangi, Kitti, Kolonia Town, Madolenihmw, Mwokil, Nett, Ngetik, Nukuoro, Pingelap, Sokehs, and Uh. The Legislature’s power “extends to all rightful subjects of legislation not inconsistent with” the Pohnpei Constitution.⁹⁴

Pohnpei’s Executive Branch is led by the governor and lieutenant governor. Unlike in other States, the governor and lieutenant governor in Pohnpei are elected separately by majority vote, although both serve four-year terms.⁹⁵

Pohnpei’s Department of Resources & Development (DR&D), which is the most relevant department for matters of ocean management, is composed of four divisions: Agriculture, Natural Resources Management, Tourism, and Commerce and Industries.⁹⁶

There also is an Office of Fisheries and Aquaculture (OFA), which is responsible for the oversight and development of fisheries and aquaculture, including the function of marine development.⁹⁷

The judicial branch in Pohnpei State consists of the Pohnpei Supreme Court and such inferior courts as may be established by law.⁹⁸ Similar to the FSM Constitution, Pohnpei’s Constitution contains a judicial guidance clause, although its language is distinctive to Pohnpei: “The decisions of all courts and adjudicatory bodies shall be consistent with this Constitution and the concepts of justice of the people of Pohnpei.”⁹⁹ The Pohnpei Supreme Court has exclusive appellate jurisdiction over any matter relating to the Constitution, Pohnpei law, and customs and traditions.¹⁰⁰

2.3.1.1 Municipal

Pohnpei’s Constitution recognizes the existence in Pohnpei State of local governments—colloquially referred to as municipalities—and identifies the limits of their authority and their boundaries. The local governments comprising the Pohnpei Government are Kapingamarangi, Kitti, Kolonia Town, Madolenihmw, Mwokil, Nett, Ngetik, Nukuoro, Pingelap, Sokehs, and Uh. Each local government may establish its own constitution, which must not be inconsistent with the Pohnpei Constitution or law. The local governments may exercise all authority not prohibited under the state Constitution or Pohnpei law.¹⁰¹

93 Standing Committee Report (SCREP) No. 33, II J. of Micro. Con. Con. 813 (emphases added).

94 Pohnpei Const. art. 8 § 1.

95 See generally Pohnpei Const. art. 9.

96 3 Pohnpei Code § 1-104(6).

97 3 Pohnpei Code § 1-105(3). The Advisory Board overseeing this executive office is discussed in Section 5.3 of this report.

98 Pohnpei Const. art. 10 § 1.

99 *Id.* § 11.

100 *Id.* § 4(5).

101 Pohnpei Const. art. 14.

The six municipalities located on the main island of Pohnpei have adopted their own constitutions.¹⁰² Many of the municipal constitutions, as well as the ordinances potentially relevant to ocean management, are available only in the Pohnpeian language. The constitutions of Kolonia Town and Sokehs, however, are available in English. A review of those two constitutions reveals the following:

- Both constitutions contain articles providing lengthy, detailed descriptions of the territory of the municipality, including references to specific survey data.
- Neither constitution explicitly references a role for the municipality in marine governance.
- Both constitutions contain sections devoted to discussions of land, with the Sokehs Constitution giving the municipal government the power of eminent domain for public purposes.
- The Sokehs Constitution recognizes the concept of “Reserved Public Land (Pahm),” stating “[a]ll reserved public lands (Pahm) shall be under the supervision of Nanmwarki, Chief Magistrate and the Village Chief where the land (Pahm) is located.”
- The Kolonia Town Constitution states that, among other responsibilities, it has the responsibility “to promote the well-being of the people educationally, economically, socially, and politically.”
- The Sokehs Constitution “recognizes the traditional board and culture of Sokehs” and requires all judicial and adjudicators’ decisions to “recognize the culture that would hold respect, peace, and harmony to the people of Sokehs.”

Through direct contact with officials from the six municipalities on the main island of Pohnpei, a small sample of ordinances—potentially relevant to ocean management—have been identified. A number of the ordinances relate to littering or garbage collection; however, in 2016, Sokehs enacted a marine sanctuary act. In 2004, Nett enacted a “marine and wildlife sanctuary” ordinance and a “natural conservation and resource management” ordinance.¹⁰³

Pohnpei State has enacted several statutes designed to support the work of the municipalities. For example, a local government aid fund exists to provide funds to assist in local government operations, facilities, and projects, or for other public purposes.¹⁰⁴ In addition, a statute exists establishing a process for local governments to create their development plans.¹⁰⁵

Pohnpei has a detailed process for drafting, vetting, seeking public comment on, and approving local government development plans, which must address two topics of particular relevance to ocean management: identification and preservation of the history and culture of the local jurisdiction and its inhabitants; and conservation of the natural resources and protection of the environment of the local jurisdiction.¹⁰⁶

2.3.1.2. Traditional

The Pohnpei State Constitution “upholds, respects, and protects the customs and traditions of the traditional kingdoms of Pohnpei.”¹⁰⁷ The Government of Pohnpei is further required to respect and protect the customs and traditions of Pohnpei. State statutes may be enacted to uphold customs or traditions and, if such a statute is challenged as violating rights guaranteed by the State Constitution, it will be upheld on proof of the existence and regular practice of the custom or tradition and the reasonableness of the means established for its protection, as determined by the Pohnpei Supreme Court.¹⁰⁸

The Pohnpei State Code includes the creation of a statutory fund, the Pohnpei Traditional Affairs Fund, “for the purpose of supporting the traditions and culture of this state, and for the support of traditional leaders in affairs of state and government.”¹⁰⁹ In addition, the Division of Historic Preservation within Pohnpei’s Department of Land is responsible for developing “a written history of Pohnpei, compiling and indexing

102 Those six municipalities are Kitti, Kolonia Town, Madolenihmw, Net, Sokehs, and Uh.

103 Ordinances are on file with authors.

104 6 Pohnpei Code § 10-101.

105 *Id.* § 2-101.

106 *Id.* § 2-102(3), (4).

107 Pohnpei Const. art. 5 § 1. Art. 5 of the Pohnpei Constitution is devoted entirely to this subject.

108 Pohnpei Const. art. 5 § 2.

109 22 Pohnpei Code § 10-101. Title 22 of the Pohnpei State Code relates to Customs, Traditions and Historic Preservation. See also Section 5.5 of this report, which addresses cultural heritage law in the FSM.

information on the traditional laws of the state and their underlying principles.”¹¹⁰ This division is further charged with establishing and implementing programs and projects to encourage the continuation of Pohnpeian customs and traditions.¹¹¹

In a recent case involving a dispute over the ongoing harvest and marketing of sea cucumber in Pohnpei State, the FSM Supreme Court recognized the challenge of accurately applying customary law:

Rare is the case [...] where the Court benefits from clear, uncontradicted evidence of custom on point in a given matter presented by knowledgeable authorities. The great difficulty in applying custom is that unlike other sources of law, it is uncodified. Custom is revealed through human practice and oral description, and owing to the diversity of cultures and languages in the FSM[,] the Court must rely almost entirely on witness testimony to elucidate particular customs and traditions.¹¹²

The Court in that case recognized “the customary and traditional rights of municipalities, clans, families, and individuals to control the use of, or material in, marine areas below the ordinary high watermark and otherwise engage in the harvesting of fish and other marine resources from reef areas.”¹¹³

An attempt has been made to codify the contours of those specific customary and traditional rights in the Pohnpei State Code. Even within this attempted codification, however, the problem of a lack of specificity re-emerges. For example, in two specific re-establishments of customary rights—one related to “rights in fish weirs or traps”¹¹⁴ and one to rights of abutting landowners to coconuts and “fishing rights on, and in waters over [shallow] reefs”¹¹⁵—their precise contours are defined as they “were recognized by local customary law at the time the Japanese administration abolished them.”¹¹⁶ In addition, the codification recognizes a further challenge to the use of customary law: establishing the precise identity of the holder of rights bestowed by customary law.¹¹⁷

Thus, while the existence and legal standing in Pohnpei of its customs and traditions are recognized, the challenge lies in identifying the precise content of any claimed particular custom and tradition.

2.3.2 Chuuk

The Chuuk State Legislature consists of two houses, the Senate (ten members led by the body’s president) and the House of Representatives (28 members led by the body’s Speaker).¹¹⁸ The Legislature’s power “extends to all rightful subjects of legislation not inconsistent with” the constitutions of Chuuk or the FSM.¹¹⁹

Chuuk’s Executive Branch is led by the governor and lieutenant governor, who are jointly elected for a four-year term on a single ticket.¹²⁰

Chuuk’s Executive Branch Organization Act of 1990 sets forth the structure of the two departments most relevant to ocean management: the Department of Marine Resources, which consists of three divisions (Fisheries Research & Development, Conservation and Management, and Operation and Technical Support), and the Department of Agriculture, which also consists of three divisions (Plant Industry and

110 Authors were able to obtain two documents, *Wadawad en Pohnpei* and *Pohnpei ni Mwehin Kawa*, which are a compilation of Pohnpei traditions and customs.

111 22 Pohnpei Code § 1-109(1)(l).

112 *Mwoalen Wahu Ileile en Pohnpei v. Peterson*, 20 FSM R. 632, 643 (Pon. 2016), citing *Wito Clan v. United Church of Christ*, 6 FSM R. 129, 132 (App. 1993).

113 *Peterson*, 20 FSM R. 632 at 641 (citing *Pohnpei v. KSVI No. 3*, 10 FSM R. 53, 60 (Pon. 2001)).

114 42 Pohnpei Code § 8-101(1).

115 *Id.* § 8-101(2).

116 *Id.*

117 “Each of the rights described in this section are hereby granted to the person or group of persons who held the right at the time it was abolished by the Japanese administration or is otherwise recognized by this section, or to his or their successor or successors in interest. The extent of such right shall be governed by provisions of this chapter and by the local customary law in effect at the time it was abolished or is otherwise recognized by this section.” 42 Pohnpei Code § 8-101(4).

118 See generally Chuuk Const. art. V.

119 Chuuk Const. art. V § 1.

120 See generally Chuuk Const. art. VI.

Marketing, Forestry and Soil Conservation, and Livestock Industry).¹²¹ The Chuuk Constitution provides that the executive departments of Health, Education, Transportation, Marine Resources, and Agriculture may not be divided, combined, or eliminated.¹²²

The judicial branch in Chuuk State consists of the State Supreme Court, inferior state courts established by statute, and municipal courts.¹²³ The State Supreme Court has concurrent original jurisdiction over land cases and disputes over waters in the State of Chuuk.¹²⁴ Chuuk's Constitution contains a judicial guidance clause providing that court decisions must be consistent with State Constitution, local traditions and customs, and the social and geographical configuration of Chuuk.¹²⁵

2.3.2.1. Municipal

The Chuuk Constitution recognizes the existence and importance of the 39 municipalities in Chuuk State: Eot, Ettal, Fananu, Fanapanges, Fefen, Fono, Houk, Kuttu, Losap, Lukunoch, Makur, Moch, Murilo, Namoluk, Nema, Nomwin, Oneop, Onou, Onoun, Paata, Parem, Piherarh, Piis-emmwar, Pollap, Polle, Polowat, Ramanum, Ruo, Satowan, Siis, Ta, Tamatam, Tol, Tonoas, Udot, Uman, Unanu, Weno, and Wonei.¹²⁶ Each municipality is required to adopt its own democratic constitution within limits prescribed by the State Constitution and by general law, and the municipal constitution may be traditional. The powers and functions of a municipality with respect to its local affairs and government are superior to statutory law.¹²⁷

2.3.2.2. Traditional

The Chuuk Constitution provides that existing Chuukese custom and tradition must be respected, and that the Legislature may prescribe, by statute, for their protection. If challenged as violative of other constitutional rights, the protection of Chuukese custom and tradition must be considered a compelling social purpose warranting such governmental action.¹²⁸ Nothing contained in the State Constitution may be interpreted as taking away the role or function of a traditional leader as recognized by Chuukese custom and tradition, or as preventing a traditional leader from being recognized, honored, and given formal or functional roles in government.¹²⁹

Particularly relevant to ocean management is that traditional rights over all reefs, tidelands, and other submerged lands, including their water columns and successors' rights thereto, are recognized.¹³⁰

A factor unique to the governance landscape of Chuuk is the existence of the Chuuk secession movement. Although the precise goals of the movement are hotly debated, since 2015 a series of referenda asking the citizens of Chuuk whether they wished to secede have been planned and then postponed. The Chuuk State Political Status Commission (CSPSC), created by state statute in 2012, has commissioned a lengthy, detailed legal opinion addressing the constitutionality of secession under the FSM Constitution and international law.¹³¹

121 4 Draft Chuuk State Code §§ 1007 & 1008. Note: Because the Chuuk State Legislature has not approved an official codified version of its state laws, this report of necessity cites the draft version of the Chuuk State Code.

122 Chuuk Const. art. VI § 10.

123 Chuuk Const. art. VII § 1.

124 Chuuk Const. art. VI § 3(b).

125 Chuuk Const. art. VI § 14.

126 Chuuk Const. art. XIII § 2.

127 Chuuk Const. art. XIII § 5. The Chuuk State Government has the power to regulate intermunicipal commerce. *Id.* § 7.

128 Chuuk Const. art. IV § 1. Additionally, the Legislature may appropriate funds annually for a traditional leaders' conference. *Id.* § 3.

129 *Id.* § 2.

130 *Id.* § 4. The Legislature may regulate their reasonable use. *Id.*

131 Materials are on file with the authors. The creation of the CSPSC was linked to the pending expiration of the financial provisions of the Amended COFA in 2023, discussed in Section 2.7.1 of this report.

2.3.3 Kosrae

The Kosrae State Legislature is a unicameral body comprised of 14 senators, elected to four-year terms from the electoral districts of Lelu (5), Malem (3), Tafunsak (4), and Utwe (2).¹³² The Legislature's power extends to "all rightful subjects of legislation not inconsistent with" the Kosrae Constitution.¹³³

Kosrae's executive branch is led by the governor and lieutenant governor, who are elected jointly by a majority of votes cast.¹³⁴ The Department of Resources and Economic Affairs is the most relevant department for ocean management and is composed of the following divisions: Trade and Investment; Agriculture and Land Management; Fisheries and Marine Resources; and Economic Planning.¹³⁵

By statute, the Department of Resources and Economic Affairs is required to manage, conserve, and develop marine resources. The department has other powers and duties pertinent to ocean management, as follows:

- To promote the development and improvement of private sector business and oversee foreign investment.
- To foster production, marketing, and protection of commercial production of land and sea produce.
- To assist private parties in the development of agriculture and forestry in an ecologically sound manner.
- To manage, conserve, and develop marine resources.
- To survey public and private lands and monitor the use of public lands, maintaining a written roster of all parcels of public land.
- To act as Registrar of Lands.
- To coordinate economic planning.¹³⁶

The judicial branch in Kosrae State consists of the State Court and such inferior courts as may be created by law.¹³⁷ The decisions of the highest division of the State Court are appealable to the appellate division of the FSM Supreme Court.¹³⁸ Kosrae's Constitution contains a judicial guidance clause providing that court decisions shall be consistent with the Constitution, State traditions and customs, and the social and geographical configuration of the State.¹³⁹

2.3.3.1 Municipal

Kosrae's Constitution also recognizes the existence and limited powers of the four municipalities in Kosrae State (i.e., Lelu Municipality, Malem Municipality, Tafunsak Municipality, and Utwe Municipality).¹⁴⁰ By state statute, a municipal government may not adopt an ordinance regarding, or regulate or control, an activity or subject that state law regulates or controls.¹⁴¹

2.3.3.2 Traditional

Kosrae's Constitution requires the state government to protect the State's traditions "as may be required by the public interest."¹⁴²

132 Kosrae Const. art. IV §§ 2 & 3.

133 Kosrae Const. art. IV § 1.

134 Kosrae Const. art. V § 2.

135 Kosrae State Code § 5.201.

136 Kosrae State Code § 5.22(5)(a)–(d), (g)–(h), & (j).

137 Kosrae Const. art. VI § 1.

138 *Id.* § 6.

139 *Id.* § 9.

140 Kosrae Const. art. VIII; Kosrae State Code § 8.101.

141 Kosrae State Code § 8.301(1). Nor may a municipal ordinance or regulation impose a penalty of imprisonment exceeding one year or a fine exceeding US\$1,000. *Id.* § 8.301(2)–(3).

142 Kosrae Const. art. II § 2.

2.3.4 Yap

Yap State has its own constitutional government. Unlike the FSM Constitution, however, Yap's Constitution has created a body of traditional leaders, "a Council of Pilung and Council of Tamol which shall perform functions which concern tradition and custom."¹⁴³ The Yap State Legislature is a unicameral body comprised of ten members, elected to four-year terms from the election districts described in Article XI of the Yap Constitution.¹⁴⁴ The Legislature's power extends to all rightful subjects of legislation not inconsistent with the Yap Constitution.¹⁴⁵

Unique among the four States, the Yap Constitution enshrines a specific legislative role for its body of traditional leaders with respect to custom and tradition. Each bill passed by the Legislature is to be presented to the Council of Pilung and the Council of Tamol for consideration. The Councils have the power to disapprove a bill that adversely affects tradition and custom or the role or function of a traditional leader, as recognized by tradition and custom. A disapproved bill may be amended to meet the Councils' objections and, if amended and passed, it is then presented again to the Councils.¹⁴⁶

Yap's Executive Branch is led by the governor and lieutenant governor, who are elected jointly by garnering at least 45 percent of the votes cast.¹⁴⁷ Each joint ticket must include one person who is a resident of Yap Islands Proper and one who is a resident of the Outer Islands.¹⁴⁸

Of particular relevance to ocean management, the Yap DR&D promotes economic development and the conservation and development of agriculture, minerals, forests, water, land, and other natural resources. The department is composed of the divisions of Agriculture and Forestry, Marine Resource Management, Commerce and Industries, Workforce Enrichment, and Land Resources. The Division of Land Resources, in turn, consists of the subdivisions of Public Land and Property, Land Registration, and Survey and Mapping.¹⁴⁹

The judicial branch in Yap State consists of the State Court and other courts as may be created by law.¹⁵⁰ Yap's Constitution contains a judicial guidance clause providing that court decisions must be consistent with the State Constitution, state traditions and customs, and the social and geographical configuration of the State.¹⁵¹

2.3.4.1. Municipal

The Yap Constitution recognizes the right of citizens to organize and operate local governments.¹⁵² Pursuant to implementing legislation, the 28 extant municipalities of Yap State are identified, and it is noted that their respective geographical boundaries are "according to custom."¹⁵³ These municipalities are: Asor, Dalipebinaw, Eaurapik, Elato, Fais, Falalap (Ulithi Atoll), Falalus, Fanif, Faraulep, Fassarai, Gagil, Gilman, Ifalik, Kanifay, Lamotrek, Lothou, Map, Mogmog, Ngulu, Rull, Rumung, Satawal, Sileap, Sorol, Tomil, Weloy, Woleai Islands (Falalop, Mariyang, Paliau, Tahoilap), and Woteggai.¹⁵⁴

State law further bestows on certain "chartered municipalities" a variety of powers and responsibilities, including the powers to: "promote and enhance the municipality's natural beauty, objects and places of historic and cultural interest, sightlines and physical good order;" "promote the public welfare of the inhabitants of the municipality;" and "promote and preserve traditions and customs in a manner consistent

143 Yap Const. art. III § 2.

144 See generally Yap Const. art. V.

145 Yap Const. art. V § 1.

146 Yap Const. art. V §§ 16 & 17.

147 Yap Const. art. VI § 1.

148 Yap Const. art. VI § 2.

149 3 Yap State Code § 125 (Executive Branch Reorganization Act). Further detail on divisions was provided to the authors by government officials.

150 Yap Const. art. VII § 1.

151 Yap Const. art. VII § 7.

152 Yap Const. art. VIII § 1.

153 6 Yap State Code § 103 (Municipal Government Act of 1979).

154 *Id.*

with the State Constitution and state laws.”¹⁵⁵ Nothing contained in Yap municipal government law, however, takes away a role or function of a traditional leader, as recognized by custom or tradition, nor does it prevent a traditional leader from being recognized, honored, and given formal or functional roles in a municipality.¹⁵⁶

2.3.4.2. Traditional

As already noted above, traditional considerations are deeply interwoven in Yap State law. Additionally, the State Constitution provides that “due recognition” must be given to the Dalip pi Nguchol, as well as to traditions and customs in providing a system of law.¹⁵⁷ Nothing in the State Constitution may be construed to limit or invalidate any recognized tradition or custom.¹⁵⁸ Overall, Yap’s Constitution contains the most extensive recognition of customs and traditions among the States of the FSM.¹⁵⁹

Yap State has enacted two statutes specifically relating to customs and traditions. The first creates the position of “culture teachers,” whose function in elementary schools in the Yap Proper Islands is to instruct students in various aspects of Yapese heritage and culture.¹⁶⁰ The second relates to operationalizing the function of the two Councils of Traditional Leaders, specifically recognized in the Yap Constitution.¹⁶¹ This statute lays out additional functions for the councils concerning customs and traditions: advising and making recommendations to state government;¹⁶² resolving problems concerning municipalities and islands;¹⁶³ and promoting and preserving Yapese customs and traditions.¹⁶⁴

2.4 Legal System

The FSM has a common law legal system largely modeled after and influenced by the U.S. legal system. Judicial review of legislative acts is available. Sources of law in the FSM include the national and state constitutions, legislation (national, state, and local), treaties, traditions of the people, common law, decisional law of the Micronesian courts, and certain statutes of the TTPI. Additionally, FSM law specifically recognizes traditions and customs and allows for their protection by law.

The FSM Constitution does not define the term “law,” although it provides that “Court decisions shall be consistent with this Constitution, Micronesian customs and traditions, and the social and geographical configuration of Micronesia. In rendering a decision, a court shall consult and apply sources of the Federated States of Micronesia.”¹⁶⁵ The provisions of the FSM Code are to be “construed according to the fair construction of their terms, with a view to effect its object and to promote justice.”¹⁶⁶ At independence, the FSM did not receive the common law of the United States or the TTPI, with the intention being, rather, “to fashion a uniquely Micronesian common law.”¹⁶⁷ However, although the court must first consult FSM sources of law rather than start with a review of other courts’ cases, when the court has not previously

155 6 Yap State Code § 104(a), (b), & (f), respectively. By contrast, under the Municipal Government Act, an “unchartered municipality” is governed “according to custom and tradition.” *Id.* § 105.

156 6 Yap State Code § 111.

157 Yap Const. art. III §§ 1 & 3.

158 Yap Const. art. III § 3.

159 For example, the Legislature may provide for the codification of traditional laws of the State of Yap. Yap Const. art. XV § 1. And art. XII recognizes the traditional practice of medicine in Yap as well as provides that traditions and customs of the people of the State “shall” be taught in public schools, as provided by law.

160 16 Yap State Code § 101.

161 See generally 5 Yap State Code § 101 et seq.

162 5 Yap State Code § 102(a), (b).

163 *Id.* § 102(c).

164 *Id.* § 102(d).

165 FSM Const. art. XI § 11. As discussed in Section 2.2 and Section 2.3 of this report, each of the five FSM constitutions (national and state) contains a version of this “judicial guidance clause.” Additionally, statutes of the former TTPI continued in effect under the national Constitution except to the extent they were inconsistent, or were amended or repealed. FSM Const. art. XV § 1.

166 1 FSM Code § 211.

167 Hughes, B., and P. Tagini. 2002. “Federated States of Micronesia.” In *Legal Systems of the World: A Political, Social, and Cultural Encyclopedia* (Vol. III: M-R): 1024, 1026–27.

construed certain aspects of an FSM law that is identical or similar to a U.S. counterpart, the court may consult U.S. sources for guidance.¹⁶⁸

English is the official language in the FSM, and the English language version prevails when interpreting laws, regulations, ordinances, and other legal instruments translated to a local language.¹⁶⁹ Eight major indigenous languages are spoken in the FSM: Chuukese, Kapingamarangi, Kosraean, Nukuoro, Pohnpeian, Ulithian, Woleaian, and Yapese,¹⁷⁰ with various other languages spoken on smaller neighboring islands.¹⁷¹ State constitutions are rendered in English and a local language.

The legal systems found at the national and state levels in the FSM are operationally similar.

2.5 Law Enforcement

Law enforcement in the FSM at the national level is conducted by the FSM National Police—later renamed as Division of Investigation and Protective Services—a division of the Department of Justice (DoJ), and the DoJ’s Litigation Division. DoJ attorneys in the Litigation Division exercise their discretion to file appropriate criminal cases in the FSM Supreme Court.¹⁷²

The Division of Border Control and Maritime Surveillance is expressly mandated to enforce fisheries laws, the Controlled Substance Act, and the Weapons Control Act. The Division of Border Control and Maritime Surveillance also conducts search and rescue operations (often in conjunction with the U.S. Coast Guard), protect senior national government officials and visiting diplomats, and investigate “national crimes,” which include crimes that either are inherently national in character and defined in the criminal title of the FSM Code or “otherwise a crime against the [FSM].”¹⁷³

Among the factors that make a crime “inherently national in character,” several relate directly to ocean management: the crime is committed in the FSM’s EEZ; the crime is committed on a water-going vessel flagged and registered by the FSM, regardless of the vessel’s location; or the crime is committed on a water-going vessel of the FSMNG, regardless of the vessel’s location.¹⁷⁴

The Division of Investigation and Protective Services operates from the FSM capital at Palikir, although the Division of Border Control and Maritime Surveillance operates from the dock in Dekehtik, Pohnpei.

Under the Marine Resources Act of 2002, the DoJ has primary responsibility for fisheries enforcement.¹⁷⁵ Officers of the Division of Border Control and Maritime Surveillance are authorized to enforce the Act. Additionally, the Secretary of Justice is empowered to appoint any person as an “authorized officer” to enforce the Act.¹⁷⁶ Authorized officers may conduct a warrantless arrest, provided the officer has reasonable grounds to believe that the person has violated the Act.¹⁷⁷ In addition to making arrests, an authorized officer may seize “any vessel (including its fishing gear, equipment, stores, and cargo), vehicle, fishing gear, nets or other fishing appliances or aircraft that he has reasonable grounds to believe has been or is being used in the commission of an offense or in respect of which the offense has been committed.”¹⁷⁸ The Act also grants an authorized officer certain limited extraterritorial powers with respect to “foreign fishing vessels,”¹⁷⁹ including,

168 *Helgenberger v. Mai Xiong Pacific Int’l, Inc.*, 17 FSM R. 326, 330 n.2 (Pon. 2011).

169 1 FSM Code § 209.

170 See, e.g., <https://www.pacificrisa.org/places/federated-states-of-micronesia/>.

171 E.g., Mokilese, Namonuito, Ngatikese, Ngatikese Creole, Nguluwan, Pááfang, Pingelapese, Puluwatese, and Satawalese.

172 Each State and many local governments have their own police force. Law enforcement at these levels of government operates in a similar manner to that of the national government.

173 11 FSM Code § 104(7)(a). The FSM Constitution grants to Congress the express power to define national crimes and prescribe penalties, “having due regard for local custom and tradition.” FSM Const. art. IX § 2(p). Title 11 of the FSM Code specifies in detail various crimes and penalties. Title 12 of the FSM Code governs criminal procedure.

174 11 FSM Code § 104(7)(b)(i), (iv), & (v).

175 24 FSM Code § 601. Ch. 6 of the Act details the enforcement processes.

176 *Id.* § 602(1).

177 *Id.* § 603(2)(f).

178 *Id.* § 603(2)(e)(i).

179 Foreign fishing vessel means “any fishing vessel other than a local fishing vessel.” 24 FSM Code § 102(37). A local fishing vessel essentially consists of any fishing vessel wholly owned or controlled by any FSM government or subdivision; by any FSM citizen; by any FSM corporation; or by any combination of those persons or entities.

after hot pursuit of a foreign fishing vessel undertaken in accordance with international law and commenced within the fishery waters, [the power to] stop, board and search outside the fishery waters any fishing vessel that he has reasonable grounds to believe has been used in the commission of an offense, exercise any powers conferred by this subtitle in accordance with international law, and bring such vessel and all persons and things on board within the fishery waters.¹⁸⁰

Additional enforcement provisions of the Act pertain to seized vessels,¹⁸¹ authorized officers and authorized observers,¹⁸² and requirements for transponder use.¹⁸³

According to discussions with government officials, most monitoring of the FSM's EEZ at present is done electronically (with information passed on from satellites), given the vast ocean area and limited number of patrol boats. Most of the deployment of marine enforcement and monitoring resources in the FSM is directed to fisheries and conservation purposes.¹⁸⁴

2.6 Regional and International Engagement

From its founding as a state in 1979, the FSM has actively and robustly engaged with other states, regionally and globally. This penchant for collaboration and embrace within a community is deeply rooted in Micronesian culture. Indeed, even today on the floor of the FSM Congress and in the speeches of the executive branch, one often will hear the speaker's reference to "brothers" and "sisters" as fellow Micronesians from the CNMI, Guam, Palau, and the RMI.

The FSM extends this fellowship to the global community through its participation in numerous regional and international agreements, fora, and organizations. Appendix 1 to this report identifies key treaties and arrangements, including important maritime and fisheries conventions and multilateral environmental agreements, to which the FSM is party and that are most relevant to ocean management and the blue economy.

The FSM, until recently, was a full member of the PIF; it left the regional intergovernmental body in early 2021.¹⁸⁵ The FSM is a member of the Pacific Regional Environment Programme (SPREP) and the Pacific Community (SPC). The FSM is one of eight signatories of the Nauru Agreement Concerning Cooperation in the Management of Fisheries of Common Stocks (or, simply, The Nauru Agreement). The FSM also is a member of the Western & Central Pacific Fisheries Commission (WCPFC) and hosts its headquarters; and it also is a member of the Micronesia Challenge (MC), a regional intergovernmental initiative in the Western Pacific region that aims to facilitate more effective conservation of marine and forest resources in Micronesia.

The FSM became a member of the UN in 1991; however, it is one of only a handful of UN coastal states that is not a member of the International Maritime Organization (IMO).¹⁸⁶ Table 4 summarizes certain key memberships of the FSM with respect to UN agencies and other prominent international development organizations and entities.

180 24 FSM Code § 603(2)(d).

181 *Id.* §§ 604–05.

182 *Id.* §§ 605–09.

183 24 FSM Code § 611. The Authority may require, as a condition of fishing in the EEZ, that the operator of any vessel: (a) install on such vessel, at its own expense, a transponder approved by the Authority; (b) maintain such transponder in good working order at all times while in the fishery waters or such other area as may be agreed or designated; and (c) ensure that any information or data required by the Authority to be transmitted by the transponder is transmitted continuously, accurately, and effectively to the designated receiver. *Id.* § 611(1).

184 Interview notes on file with the authors.

185 See, e.g., Anne Wen, "Micronesia countries pulling out of Pacific Islands Forum disrupt region," Pacific Daily News, March 14, 2021, at <https://www.guampdn.com/story/news/local/2021/03/13/micronesia-pulling-out-pacific-islands-forum-disrupts-region/4499253001/>.

186 The FSM is party to only two IMO conventions, as set forth in Appendix 1 to this report.

Table 4. Other Selected International and Regional Memberships of the Federated States of Micronesia.

United Nations Agencies
Food and Agriculture Organization (FAO)
UN Educational, Scientific, and Cultural Organization (UNESCO)
International Fund for Agricultural Development (IFAD)
World Health Organization (WHO)
UN Conference on Trade and Development (UNCTAD)
World Meteorological Organization (WMO)
World Bank Group
Multilateral Investment Guarantee Agency (MIGA)
International Bank for Reconstruction and Development (IBRD)
International Development Association (IDA)
International Finance Corporation (IFC)
Other Entities and Memberships
Alliance of Small Island States (AOSIS)
African, Caribbean, and Pacific Group of States (ACP Group)
Asian Development Bank (ADB)
South Pacific Regional Trade and Economic Co-operation Agreement (SPARTECA)
Group of 77 (G-77)
International Monetary Fund (IMF)

The following sections of this report consider in further detail three key international arrangements to which the FSM is party: the COFA and the Amended COFA; the Parties to the Nauru Agreement (PNA); and the WCPFC.

2.6.1 Compact of Free Association

The COFA, as amended, between the FSM and the United States, provides for: U.S. economic assistance (including eligibility for certain U.S. federal programs); the defense of the FSM; and other benefits in exchange for U.S. defense. It also offers certain other operating rights in the FSM—as well as denial of access to FSM territory by other nations.

After the United States ended the Japanese occupation of the Micronesia region following World War II, the United States administered the region under a UN Trusteeship, the TTPI, which included the islands that now comprise the FSM. The four States of the FSM voted in a 1978 referendum to become an independent nation. Under the trusteeship agreement, however, the newly formed FSM remained under U.S. authority until 1986. In 1986, following a period of negotiations, the United States entered into a compact arrangement with the FSM that provided for economic assistance to the country, secured U.S. defense rights, and allowed FSM citizens to migrate to the United States.

The COFA provided a framework for the two countries to work toward achieving their shared goals of establishing self-governance for the FSM, ensuring national security rights for both countries, and assisting the FSM on the road to economic self-sufficiency. The primary mechanism for this final goal was through U.S. direct financial assistance to the FSM, which was subject to significantly little oversight. Under the original Compact from 1986 to 2003, the FSM concentrated much of its spending on government operations at the national and state levels.

In 2003, following a period of mandatory negotiations envisioned in the original Compact, the United States approved an Amended Compact with the FSM that became effective in 2004 and which varied in three significant ways from the original Compact. First, the Amended Compact authorizes and appropriates direct financial assistance to the FSM in fiscal years 2004 through 2023, with the base amounts of direct

financial assistance decreasing in most years. The annual decrements in assistance are then added to the amounts deposited in the trust fund established under the Amended Compact for the future benefit of the FSM. The existence of the trust fund is the second significant difference. The third difference is the degree of funding oversight: funding was to be allocated to specific “sectors” in the form of “compact sector grants” that would be managed by the U.S. Department of the Interior and overseen by the Joint Economic Management Committee (JEMCO).¹⁸⁷

Earnings from the trust fund are intended to provide the FSM with an annual source of revenue after the scheduled end of compact sector grants at the end of fiscal year 2023. Due to a variety of factors, it is expected that the annual investment earnings from the Amended Compact’s Trust Fund for the FSM will fall well short of replacing the current compact sector grants, leaving the FSM with significant annual operating deficits after the expiry of the compact sector grants in 2023.¹⁸⁸

For purposes of ocean management, it is sufficient to highlight a few key sections of Amended Compact documents that closely relate to environmental protection and to the use of the marine space by the U.S. military.¹⁸⁹

In the most relevant portion of the enabling legislation of the Amended Compact, the parties lay out their joint policy “to promote efforts to prevent or eliminate damage to the environment and biosphere and to enrich understanding of the natural resources of the [FSM].”¹⁹⁰ In essence, both parties agree to develop and be bound by standards for environmental protection “substantively similar” to those required within the United States, although there is some flexibility on the part of the FSM to take into account its particular environment.¹⁹¹

A key subsidiary agreement to the Amended Compact, the Fiscal Procedures Agreement, describes the sector grant relating to the environment, which is available to the FSM through fiscal year 2023. It reads as follows:

The environment Sector Grant [supports] the efforts of the [FSMNG] to protect the Nation’s land and marine environment and to conserve and achieve sustainable use of its natural resources. These efforts include the ongoing development, adoption and enforcement of policies, laws and regulation in pursuit of the above stated goals; the reduction and prevention of environmental degradation and all forms of environmental pollution; adaptation to climate change; the protection of biological diversity, including the assurance of adequate legal and international treaty safeguards relating to the protection of botanical and other agro-ecological property belonging to the [FSM]; the establishment and management of conservation (sustainable use) areas; environmental infrastructure planning, design construction, and operation; interaction and cooperation with non-governmental organizations; the promotion of increased environmental awareness in governmental and private sectors; and the promotion of increased involvement of citizens and traditional leaders of the [FSM] in the process of conserving their country’s natural resources.¹⁹²

187 The six core sectors to be supported in the FSM are education, health, infrastructure, environment, private sector development, and public sector capacity building—with the education and health sectors having priority. These grants are described in § 211(a) of the Amended Compact and are sometimes referred to as compact sector grants or 211(a) grants.

188 The FSM has sought to mitigate the impact of this anticipated budget shortfall by creating the FSM Trust Fund (55 FSM Code § 1201 et seq), which is funded entirely from FSM “local revenues,” mostly from substantially increased fishing fees and corporate income tax receipts from the FSM’s highly successful “major corporations” program targeting Japanese corporations to incorporate subsidiaries in the FSM.

A recent FSM press release touted the greening of the FSM Trust Fund, including its recent amendment “to recognize the existential threat of climate change, and mandate that its investments follow a sustainable development policy.” See FSM Press Release, “Compact Trust Fund Nearing One Billion Dollars; ‘In 2022, We Can Expect our FSM-US Trust Fund to Reach One Billion Dollars’ President Panuelo Says,” June 11, 2021, at <https://gov.fm/index.php/fsm-publicinfo/announcements/35-pio-articles/news-and-updates/482-compact-trust-fund-nearing-one-billion-dollars-in-2022-we-can-expect-our-fsm-us-trust-fund-to-reach-one-billion-dollars-president-panuelo-says>.

189 The documents comprising the Amended Compact, its related subsidiary agreements (e.g., Fiscal Procedures Agreement; and Military Use and Operating Rights Agreement (MUORA), among others), and the U.S. implementing legislation for the Amended Compact run into the hundreds of pages.

190 U.S. Public Law 108-188, Dec. 17, 2003, § 161 (tit. I (Governmental Relations) art. VI (Environmental Protection)).

191 See *id.* § 161(a), (b).

192 Fiscal Procedures Agreement art. II § 1(e), at <https://jcrp.gov.fm/fiscal-procedures-agreement>.

The key portion of the Military Use and Operating Right Agreement (MUORA) grants to the United States, under Article IV, free access to and unrestricted control of defense sites,¹⁹³ including the right to control entry to and exit from any or all defense sites and the right to take necessary measures for their establishment, use, and operation. The United States may take—within the defense sites and within the seabeds, water areas, and air space adjacent to or in the vicinity of the defense sites—such measures as are necessary for their use, security, and defense. These measures include the right to: (i) improve and deepen harbors, channels, entrances, and anchorages; (ii) dredge, fill, and, generally, to fit the premises to their intended use; (iii) control anchorages and moorings, the movements of ships and waterborne craft, aircraft operations, and land movements; and (iv) install, maintain, use, and operate defense-related oceanographic, aeronautical, space communications, and other military or scientific systems and equipment.

In conducting the above-identified activities, the United States is obligated to use best efforts to avoid interference with commercial activities in the FSM; avoid interference with access by fishermen to shoreline areas; avoid interference with navigation, aviation, communication, and land or water travel in the FSM; avoid impeding access to recreational areas, particularly beach areas, by residents of and visitors to the FSM; minimize damage to the terrain and to reef areas; avoid harm to the environment, including water areas; avoid activities that would adversely affect the well-being of the residents of the FSM; and notify the FSMNG of nonroutine activities so that the Government may take steps to assist the United States in executing its responsibilities to minimize any adverse impact of such activities.¹⁹⁴

2.6.2 Parties to the Nauru Agreement

The FSM is a party to the Nauru Agreement Concerning Cooperation in the Management of Fisheries of Common Interest (Nauru Agreement, or PNA). The PNA is a subregional agreement on the terms and conditions for tuna purse seine fishing licenses in the region of Micronesia. Other parties to the Nauru Agreement are the Republic of Kiribati, the RMI, Nauru, Palau, Papua New Guinea, Solomon Islands, and Tuvalu. The parties control twenty-five to thirty percent of the world's tuna supply and approximately sixty percent of the tuna supply in the western and central Pacific Ocean.

From 1982 to 2010, implementation of the PNA was coordinated by the PIF Fisheries Agency, but in 2010 a PNA Office was opened in the RMI. Over the years, a range of fishery management instruments have been adopted by the parties, all with the aim to conserve fishery stocks while permitting party countries to benefit economically. These instruments include the Federated States of Micronesia Arrangement, the Palau Arrangement, and the Implementing Arrangements of the Nauru Agreement.

The most recent specific rules for fishing in party countries are laid out in the Third Arrangement Implementing the Nauru Agreement.¹⁹⁵ The Third Arrangement requires that all future “foreign fishing agreements and licensing requirements for vessels fishing the common stocks of fish within the Fisheries Zones” comply with certain minimum terms and conditions. Those terms and conditions relate to a variety of areas including catch retention, fish aggregating device closure, closure of areas with high seas, and monitoring. The Third Arrangement also requires the parties to review annually the effectiveness of these terms and conditions, taking into account the following: effectiveness of the measures in reducing fishing mortality, especially on juvenile bigeye and yellowfin tuna; and the extent to which compatible measures are being applied on the high seas and in the waters of other WCPFC members.

PNA members actively manage this prized resource, making the law in this area highly dynamic. For the FSM, its status as a member is extremely important, as the fishing fees the country receives from the PNA's Vessel Day Scheme (VDS) has become one of the major sources of annual domestic revenue in the FSM.¹⁹⁶ Pursuant to the VDS, vessel owners can purchase and trade fishing days in areas governed by the Nauru

193 Although the Article uses the term “defense sites,” this is a general term used to describe the Humanitarian Assistance - FSM (HAFSM) Project Team Base Camp, which is essentially the base location used by the U.S. military when undertaking civic and humanitarian projects requested by the FSM within the jurisdiction of the FSM.

194 See art. IV, “Agreement Regarding the Military Use and Operating Rights of the Government of the United States in the Federated States of Micronesia Concluded Pursuant to Sections 211(b), 321 and 323 of The Compact of Free Association, as amended.”

195 See “A Third Arrangement Implementing the Nauru Agreement Setting Forth Additional Terms and Conditions of Access to the Fisheries Zones of the Parties,” Attachment D, at www.ffa.int/system/files/3rd%20Arrangement%20PNA.pdf.

196 In recent years, these fishing fee revenues have been on the order of US\$50 million to US\$60 million, which comprises well over half of the FSM's annual domestic revenue.

Agreement. The purpose is to constrain and reduce catches of target tuna species, while increasing the rate of return from fishing activities through access fees paid by Distant Water Fishing Nations (DWFN). The total allocation of fishing days is set and apportioned among Pacific Island Members for one-year periods, fixed up to three years in advance.¹⁹⁷

2.6.3 Western & Central Pacific Fisheries Commission

The FSM also is a member of the WCPFC, which is the central decision-making body for management of tuna fishing in the region. Referred to colloquially in the FSM as “the Tuna Commission,” the WCPFC’s headquarters are in Kolonia Town, Pohnpei. The WCPFC was established by the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPF Convention), which entered into force in 2004.

The WCPF Convention draws on many of the provisions of the UN Fish Stocks Agreement (UNFSA). The WCPFC Convention seeks to address problems in the management of high seas fisheries resulting from unregulated fishing, overcapitalization, excessive fleet capacity, vessel reflagging to escape controls, insufficient selective gear, unreliable databases, and insufficient multilateral cooperation in respect to conservation and management of highly migratory fish stocks. The “unique geo-political environment in which the Commission operates” is reflected in: (i) the existence of a framework for the participation of fishing entities in the Commission, which legally binds fishing entities to the provisions of the Convention; (ii) participation by territories and possessions in the work of the Commission; (iii) recognition of special requirements of developing states; and (iv) cooperation with other Regional Fisheries Management Organizations (RFMOs), whose respective areas of competence overlap with those of the WCPFC.¹⁹⁸ As a member of the WCPFC, the FSM is legally bound by the various conservation and management measures adopted by the WCPFC.¹⁹⁹

2.7 Current Context

The current context within the FSM is highly favorable with respect to strengthening ocean management, due primarily to two factors: a highly motivated and engaged presidential administration; and a pair of ongoing law revision processes at the national level.

With respect to the first factor, since the beginning of his administration in May 2019, President Panuelo has emphasized the need to protect the FSM’s environment and natural resources, often employing a term he coined—“the paradise in our backyard”—as a shorthand for this key priority. In his inaugural address to the FSM, he made this commitment prominent and explicit, as follows:

My vision is for the FSM to become an even more eco-friendly Nation, with our pristine environment an embodiment of our common heritage. You arrived into our State of Pohnpei, and I believe you’ve experienced how green our islands are.

Through cooperation with our development partners and powerhouse philanthropic organizations, we can protect and promote our more than one million square miles of ocean and stunning terrestrial forests into a global sanctuary or preserve.

We are fortunate that we live in paradise. We are blessed with clean water and air, fertile soil and healthy reefs, majestic mountains and captivating sunrises and sunsets. We can’t take these for granted, because they are a gift from above.²⁰⁰

The administration has continued to demonstrate its commitment to this project by taking concrete steps to achieve this vision. On August 21, 2020, President Panuelo signed a presidential order establishing a National Task Force to guide all activities relating to the planning and implementation of the Blue

197 See Pacific Island Forum Fisheries Agency: “Introduction” at www.ffa.int/vds.

198 See WCPFC: “About WCPFC” at www.wcpfc.int/about-wcpfc.

199 See Western & Central Pacific Fisheries Commission: “Conservation and Management Measures” at www.wcpfc.int/conservation-and-management-measures.

200 See inaugural address of President Panuelo at www.yapstategov.org/uploads/2/9/6/5/29657975/h_e_david_w_panuelo_inaugural_address.pdf.

Prosperity Micronesia program.²⁰¹ In the press release announcing the order, President Panuelo again invoked “paradise in our backyards,” while also articulating a specific, numerical marine conservation goal:

Despite the challenges presented to our Nation by the COVID-19 Pandemic, the FSM National Government and the Panuelo-George administration remain committed to protecting our natural environment. The Blue Prosperity Micronesia Task Force shall help to ensure that these commitments bear fruit, and that this Paradise in Our Backyards is as pristine and productive for generations tomorrow as it is today.

Over the next five years, Blue Prosperity Micronesia’s work will include the development of a Marine Spatial Plan and a Blue Economy Plan, the conducting of scientific assessments, ocean use and stakeholder consultations, and the creation of proposed legislation for the FSM Congress’ review. This work will build upon existing FSM conservation and sustainable development commitments and goals to effectively manage at least 30% of the Nation’s waters and plan for a prosperous future.

As recently as September 2020, the current administration reiterated this specific conservation goal—“to protect 30 percent of the FSM’s total EEZ by 2030”—in President Panuelo’s address to the 2020 Virtual Island Summit, which was attended by the leaders of Fiji, Guam, and Tuvalu, among other participants.²⁰²

2.7.1 Post-Compact Planning

In advance of the expiration of the financial provisions of the Amended Compact (discussed above) in 2023, the FSM has undertaken a variety of planning processes to address the imminent “fiscal cliff” in funding for government operations, especially at the state level. In March 2012, the 2023 Planning Committee was established by Executive Order No. 40, which laid out the Committee’s primary mandates:

- (1) Undertake assessment of the nature and magnitude of the financial situation of the FSM Governments in 2024 onwards and identify the expected budgetary shortfalls;
- (2) Explore different alternative and funding scenarios for addressing the projected budgetary shortfall;
- (3) Develop and present to the leadership a realistic and credible action plan for addressing the looming financial shortfall in 2024 and beyond;
- and (4) Others as may be necessary to complete its task.

The Committee undertook a process to assess and articulate the FSM’s national priorities, at least with respect to the “productive sectors” of the FSM economy. One such sector was the fishing industry, which the executive summary of the Committee’s “FSM 2023 Action Plan,” dated February 2015, described as follows:

The fishing industry is the only sector which has shown solid growth over the last 10 years but this industry is fragile and the right balance needs to be maintained between seeking offshore fishing license fees, which have little effect on domestic economic activity, and protecting the domestic fishing industry which contributes significantly to exports. In addition, fisheries infrastructure investment in onshore facilities for transshipment, vessel servicing and value-added activities will be established to generate income and employment opportunities[.]

The Action Plan’s Matrix listed nine action items under “Fishing” to be accomplished between 2015 and 2017, as follows:

- 4.1 Develop a comprehensive national overarching plan covering inshore fisheries

201 See FSM Press Release, “President Panuelo Establishes a National Task Force for Blue Prosperity Micronesia to Guide Protection of the Paradise in Our Backyards,” September 30, 2020 at <https://gov.fm/index.php/component/content/article/35-pio-articles/news-and-updates/352-president-panuelo-establishes-a-national-task-force-for-blue-prosperity-micronesia-to-guide-protection-of-the-paradise-in-our-backyards?Itemid=177>.

202 See FSM Press Release, “President Panuelo Promotes Micronesia Challenge and Blue Prosperity Micronesia During Address at the Virtual Island Summit,” September 10, 2020 at <https://gov.fm/index.php/component/content/article/35-pio-articles/news-and-updates/356-president-panuelo-promotes-micronesia-challenge-and-blue-prosperity-micronesia-during-address-at-the-virtual-island-summit?Itemid=177>.

- 4.2 Competent Authority established to facilitate EU fish exports
- 4.3 Establish National Over-arching Aquaculture Development Framework
- 4.4 Promote small-scale community managed aquaculture projects
- 4.5 Undertake training for packaging, storage, and marketing fisheries products
- 4.6 Complete management plan for key inshore resources (commercial marine invertebrates: trochus, clams and sea cucumber)
- 4.7 Establish National coastal fisheries monitoring teams
- 4.8 Deployment of FADs
- 4.9 Develop National Aquatic Animal Health Strategy

In addition to the 2023 Planning Committee, the FSM Congress created the Joint Committee on Compact Review and Planning (JCRP) in June 2016 “for the purpose of coordinating the Nation’s preparation efforts towards effective and smooth post Compact government upon expiration of the Compact in 2023.”²⁰³ The JCRP’s mandate requires it, inter alia, to “set goals and objectives in anticipation of the termination of the financial provisions and for negotiations of the Amended Compact of Free Association; to “[c]onduct a thorough analysis of all factors relating [to] the future of the Nation; and to “[d]evelop all necessary strategies and approaches to enable the [FSM] to explore alternatives for the future of the Nation.” Consequently, although the JCRP’s practical work focuses on the ongoing negotiations with the United States relating to the Amended Compact, the JCRP’s mandate is sufficiently broad to support any national-level law revision process that focuses on a better future for the FSM.

2.7.2 Possible Constitutional Amendments

At present, the FSM is engaged in its Fourth Constitutional Convention,²⁰⁴ which is one of three ways the FSM Constitution can be amended.²⁰⁵ The legislation creating the Fourth Constitutional Convention instructed that the Convention shall propose amendments to the Constitution to be placed on a ballot for a referendum, which was to be held in March 2021.²⁰⁶

The enabling legislation contains no limitations on which portions of the Constitution may be the subject of a proposed amendment. As such, the Convention enjoys *carte blanche* in proposing changes, which means the Convention constitutes an almost unparalleled opportunity to propose fundamental legal change within the FSM. Any proposed amendment to emerge from the Convention, however, is subject to a popular referendum vote. Moreover, the FSM Constitution sets a significantly high voting threshold for success; that is, the proposed amendment must receive at least 75 percent of the votes cast in each of three of the FSM’s four States.²⁰⁷

During its first 26 “session days” (of a total of 45), the delegates to the Fourth Constitutional Convention introduced 67 proposals to amend the FSM Constitution. A number of these proposals relate to two categories relevant to ocean management: that is, the environment, as well as revenues derived from fishing fees or from ocean floor mineral resources. Due to the COVID-19 global pandemic, however, the Fourth Constitutional Convention has yet to complete its work.²⁰⁸ Consequently, it remains uncertain when, or even if, the Convention will reconvene.

203 See Public Law No. 19-85, at <https://jcrp.gov.fm/wp-content/uploads/2019/06/PL-19-85.pdf> (as amended).

204 See 4th Constitutional Convention of the Federated States of Micronesia, at <https://constitution.gov.fm>.

205 An amendment to the FSM Constitution may be proposed by a constitutional convention, popular initiative, or Congress in a manner provided by law.” FSM Const. art. XIV § 1. Congress has, on several occasions, proposed amendments to the Constitution through passage of a congressional bill; however, to the best of the knowledge of the authors of this report, the popular initiative process to amend the Constitution never has been used.

206 See Public Law No. 21-19 at http://cfsm.gov.fm/iframe/21%20congress/LAWS/PUBLIC_LAW_NO__21-19.pdf (subsequently amended). However, as explained *infra*, the Convention currently stands in recess.

207 FSM Constitution art. XIV § 1. Historically, most proposed amendments have failed in the popular referendum due to this high voting threshold. To potentially address this issue, the first amendment approved by the Convention was a proposal to lower the voting threshold for amending the Constitution. Committee Proposal 4-04 would reduce the voting threshold to two-thirds of the votes cast in each of three of the four States.

208 On March 13, 2020, the Convention passed a resolution to stand in recess due to the COVID-19 global pandemic.

3 OCEAN JURISDICTION

The Constitution of the FSM defines the nation's territory, including its marine space, as follows:

The territory of the [FSM] is comprised of the Districts of the Micronesian archipelago that ratify this Constitution. Unless limited by international treaty obligations assumed by the [FSM], or by its own act, the waters connecting the islands of the archipelago are internal waters regardless of dimensions, and jurisdiction extends to a marine space of 200 miles measured outward from appropriate baselines, the seabed, subsoil, water column, insular or continental shelves, airspace over land and water, and any other territory or waters belonging to Micronesia by historic right, custom, or legal title.²⁰⁹

The Constitution vests in Congress the power to regulate the ownership, exploration, and exploitation of natural resources within the marine space of the FSM beyond 12 nm from island baselines (i.e., the area beyond the territorial sea).²¹⁰

3.1 Baselines and Maritime Zones of the Federated States of Micronesia

Jurisdiction over a nation's marine waters is subject to international law, and in particular to the UN Convention on the Law of the Sea (UNCLOS). The FSM is a state party to UNCLOS²¹¹ and, as such, the FSM's jurisdictional claims—as articulated in domestic legislation and presented internationally—are aligned with the Convention. Title 18 of the FSM Code, as amended in 2017, governs national maritime jurisdiction in the FSM.²¹²

The baseline of an island in the FSM is typically fixed at the low-water line. The baseline of an atoll or island having a barrier reef, fringing reef, or other reef system is a line following the contour of the seaward edge of the reef system, which line connects those outermost elevations of the reef that are above water at low water.²¹³ Waters landward of the baseline, including the lagoons of atolls or islands, are internal waters of the FSM.²¹⁴ Although FSM law defines archipelagic waters and provides that archipelagic baselines may be declared in accordance with international law,²¹⁵ the FSM has not to date done so.²¹⁶

3.1.1 Territorial Sea, Exclusive Economic Zone, and Contiguous Zone

The FSM claims a territorial sea of 12 nm.²¹⁷ The sovereignty of the FSM extends to its internal waters and territorial sea, including sovereign rights over the living and nonliving resources in the territorial sea and internal waters and in the airspace above the territorial sea and internal waters—as well as the seabed and subsoil.²¹⁸

209 FSM Const. art. I § 1.

210 FSM Const. art. IX § 2(m). In the exercise of this constitutionally delegated power, the FSM Congress passed the Marine Resources Act of 2002, and several subsequent amendments. The main purpose of the Act, as codified in Title 24 of the FSM Code and discussed in Section 5.2 of this report, is to ensure sustainable development, conservation, and use of the marine resources in the EEZ. See 24 FSM Code § 101(1).

211 The FSM acceded to the Convention on April 29, 1991. UNCLOS entered into force on November 16, 1994.

212 See generally 18 FSM Code §§ 101–108, as amended by P.L. 19-172 (2017). Certain key terms are defined at § 108.

213 18 FSM Code § 101(1)(a), (b), as amended by P.L. 19-172 (2017).

214 18 FSM Code § 102(2), as amended by P.L. 19-172 (2017).

215 18 FSM Code §§ 102A & 101(2), as added by P.L. 19-172 (2017).

216 See, e.g., FSM Press Release, “FSM Deposits its Ocean Baselines and Maritime Boundaries with the UN,” October 28, 2019, at <https://gov.fm/index.php/component/content/article/35-pio-articles/news-and-updates/194-fsm-deposits-its-ocean-baselines-and-maritime-boundary-with-the-united-nations>.

217 18 FSM Code § 102(1), as amended by P.L. 19-172 (2017).

218 18 FSM Code § 103, as amended by P.L. 19-172 (2017). The same claims of sovereignty and sovereign rights also would extend to any archipelagic waters, if declared. *Id.*

The FSM claims an EEZ that extends to 200 nm from baselines.²¹⁹ Within its EEZ, the FSM claims sovereign rights for the purpose of (i) exploring and exploiting, conserving, and managing the natural resources—whether living or nonliving—of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone; (ii) jurisdiction with regard to the establishment and use of artificial islands, installations, and structures, marine scientific research, and the protection and preservation of the marine environment; and (as a catch-all) (iii) other rights and duties provided for in international law.²²⁰

The FSM has established a contiguous zone from 12 nm to 24 nm from baselines.²²¹ Coterminous with the contiguous zone (i.e., located from 12 to 24 nm from baselines) is a fishery exclusion zone established in 2017.²²² Within this closed area, fishing and exploitation of natural resources is prohibited. Violators, including operators, agents, and representatives of a fishing vessel, are liable for a civil penalty of US\$15,000 to US\$50,000. NORMA, in its discretion, may exclude any vessel involved in a violation from a future license or from fishing access negotiation. NORMA, however, may exercise a discretionary exemption from the prohibition for the benefit of a locally owned fishing company.

3.1.2 Continental Shelf and Claims for Extended Continental Shelf

The FSM claims a continental shelf, with a proviso that whenever the continental margin extends beyond 200 nm from the baselines, the outer limits of the continental shelf are to be established in accordance with UNCLOS.²²³ The FSM claims several areas of extended continental shelf in accordance with article 76 of UNCLOS and the Scientific and Technical Guidelines of the Commission on the Limits of the Continental Shelf (CLCS).

In 2009, the FSM made a joint submission with Solomon Islands and Papua New Guinea (PNG) to the CLCS seeking recognition of sovereign rights over the so-called Ontong Java Plateau (OJP) located in the high sea pocket bounded by FSM, Nauru, PNG and Solomon Islands. The OJP is the large igneous province (LIP) in this high sea area covering a total seabed of approximately 2.0 million square kilometers. The joint claim lodged before the CLCS pertained to approximately 600,000 square kilometers of the LIP. The CLCS conducted its technical examination in 2014 and 2015 with the cooperation of the submitting states; thereafter, the CLCS issued a favorable recommendation in 2016 agreeing to the entitlement of the joint claim and recommended that: (i) the countries proceed with delineation of the outer limits of the continental shelf relating to one of the regions, and (ii) that a new or revised submission be made for two of the other regions.²²⁴

219 18 FSM Code § 104, as amended by P.L. 19-172 (2017).

220 18 FSM Code § 105.

221 18 FSM Code § 105A, as added by P.L. 19-172 (2017).

222 24 FSM Code § 505, as added by P.L. 19-167 (2017). This closed area was created primarily to conserve natural resources, and especially highly migratory species. The FSM was concerned that the WCPFC had not taken action to combat high levels of juvenile tuna mortality; the closed area would provide a “buffer” until the WCPFC could arrive at appropriate conservation and management measures for the FSM’s declining fish stocks. Standing Comm. Rpt. no. 19-222, re C.B. no. 19-194/Comm. on Resources and Dev’t, April 1, 2017.

223 18 FSM Code §§ 105B, 105C, & 105D, as added by P.L. 19-172 (2017). Note that claims with respect to the continental shelf pertain to the seabed and its resources and not, as is the case with other types of maritime zones, to the water column above.

224 “Summary of Recommendations of the Commission on the Limits of the Continental Shelf in Regard to the Joint Submission Made by the Federated States of Micronesia, Papua New Guinea and Solomon Islands Concerning the Ontong Java Plateau,” on May 5, 2009, at 28. As a next step, the FSM should consider establishing the limits of its extended continental shelf “on the basis of [the CLCS] recommendations [, and such] shall be final and binding.” UNCLOS art. 76(8). In light of the overlapping claims jointly made, FSM personnel have emphasized the need for the ongoing work on the continental shelf project to produce clear, stable, and permanent boundary lines reflecting the FSM’s entitlement to an extended continental shelf.

The FSM has lodged a single but coordinated submission claiming an extended continental shelf on the Eauripik Rise,²²⁵ which covers approximately 140,000 square kilometers of total area.²²⁶ This submission is awaiting establishment by the CLCS of a subcommission to conduct the required technical examination. PNG and Indonesia also have an interest in this area.

The FSM has also informed the CLCS through a Preliminary Information on its interest on the Mussau Ridge,²²⁷ which is located between the boundary of the FSM and PNG. Further data and supporting evidence are required before the CLCS will consider the Mussau Ridge.

Lastly, the FSM is expected to soon lodge another claim on the North of Yap Area covering approximately 180,000 square kilometers of extended continental shelf, which is also being claimed by Palau.²²⁸

3.1.3 Proclamation of Maritime Boundaries

The FSM president is authorized by law to issue regulations, to establish baselines, and to fix the boundaries of the FSM's internal waters, archipelagic waters, territorial sea, contiguous zone, EEZ, and continental shelf.²²⁹ In 2019, the president promulgated a permanent regulation for this purpose.²³⁰ The regulation contains two official charts that reflect the FSM's maritime zones and boundaries, which were both filed with the UN. See Figures 6 and 7. In its submission to the UN, the FSM declared its understanding that it is not obliged to keep under review the maritime zones reflected in its official deposit, delineated in accordance with UNCLOS, and that the FSM intends to maintain these maritime zones in line with that understanding, notwithstanding climate change-induced sea-level rise.²³¹

225 See https://www.un.org/Depts/los/clcs_new/submissions_files/submission_fsm_67_2013.htm (submission regarding the Eauripik Rise).

226 See Standing Comm. Rpt. no. 19-226, re C.B. no. 19-257/Comm. on Resources and Dev't, April 4, 2017. See also:

- "Joint Submission to the Commission on the Limits of the Continental Shelf concerning the Ontong Java Plateau by the FSM, Papua New Guinea, and the Solomon Islands" (Addendum to Exec Summ'y), July 2014, at www.un.org/Depts/los/clcs_new/submissions_files/submission_fmpgsb_32_2009.htm;
- "Preliminary Information Indicative of the Outer Limits of the Continental Shelf Beyond 200 nm for the Eauripik Rise and Mussau Ridge Areas," submitted by the FSM, at https://www.un.org/Depts/los/clcs_new/submissions_files/preliminary_fsm_preliminaryinfo.pdf;
- "Submission by the FSM concerning the Eauripik Rise" (Exec. Summary), Sept. 2011; and
- UNCLOS CLCS/66, April 20, 2010; UNCLOS CLCS/83, March 31, 2014; & UNCLOS CLCS/98, April 17, 2017.

As noted, certain of the FSM's continental shelf claims implicate additional countries, including Indonesia and Nauru.

227 See Preliminary Information, *supra* note 226, *passim*.

228 Under CLCS rules, an overlapping claim is permitted on the understanding that the provisions of UNCLOS art. 76 are "without prejudice to the question of delimitation of the continental shelf between States with opposite or adjacent coasts." See UNCLOS art. 76(10).

229 18 FSM Code § 107, as amended by P.L. 19-172 (2017). The president may prepare charts depicting such baselines and zones. Such charts, when certified, constitute prima facie evidence of their contents. *Id.* § 107A.

230 Permanent Regulation on Maritime Boundaries and Maritime Zones of the FSM 2019, with Annex and official charts, contained in *UN Law of the Sea Bulletin* no. 102, at 13–21 (2020). In making its deposit with the UN of geographical coordinates for baselines and maritime zones, the FSM filed written observations stating its intent not to keep these zones under review and to maintain them as submitted—notwithstanding the consequences of sea-level rise induced by climate change in a nation of islands and atolls, many of them low-lying. Note verbale no. 002/2020, dated January 15, 2020 from the Permanent Mission of the FSM to the UN (see Maritime Zone Notification M.Z.N.151.2020.LOS of January 20, 2020).

231 See https://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/mzn_s/M.Z.N.151.2020.pdf (describing the FSM's submittal on December 24, 2019, as subsequently revised on January 15, 2020).

Figure 6. Maritime Boundaries of the Federated States of Micronesia.²³²

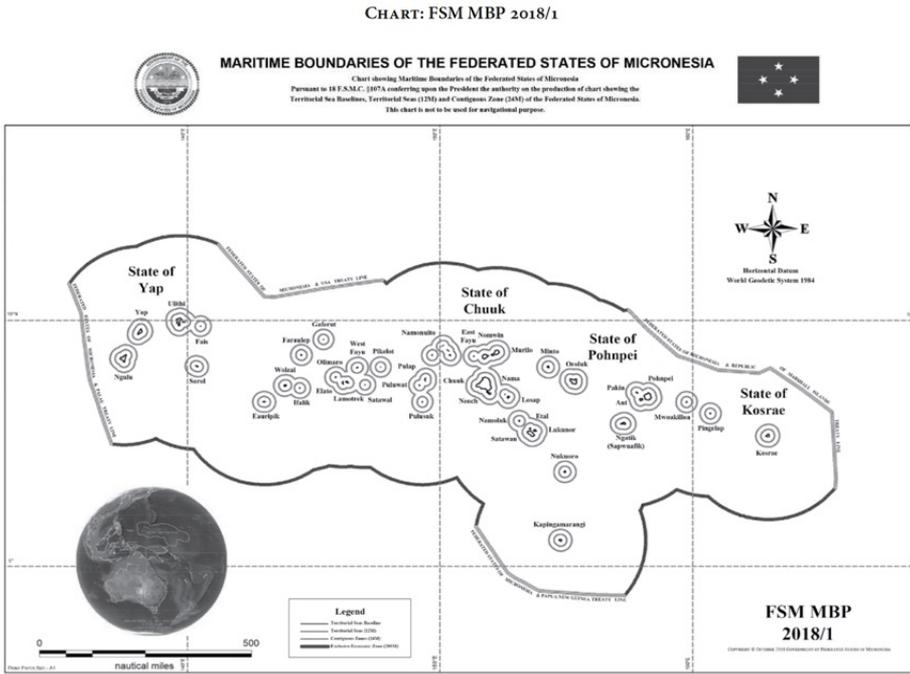
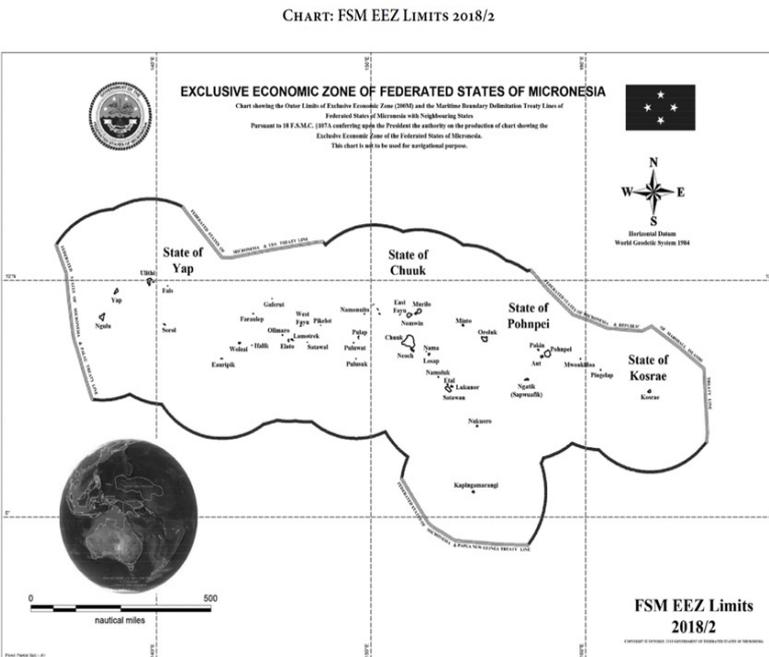


Figure 7. Exclusive Economic Zone of the Federated States of Micronesia.²³³



²³² See *id.*, Chart FSM MBP 2018/1.

²³³ See *id.*, Chart FSM EEZ Limits 2018/2.

Pursuant to the Marine Resources Act, the term “fishery waters” when used at the national level means the EEZ, the territorial sea, and internal waters, as well as any other waters over which the FSM claims sovereignty or sovereign rights.²³⁴

3.2 State and Traditional Jurisdiction

The FSM Constitution further provides that each State in the FSM comprises the islands in each district, and a marine boundary between adjacent States is determined by law, applying the principle of equidistance.²³⁵

The FSM Constitution expressly delegates to Congress the power to regulate the ownership, exploration, and exploitation of natural resources within the marine space of the FSM beyond 12 nm from island baselines²³⁶ Because any power not expressly delegated by the Constitution to the FSMNG—or prohibited to the States—is considered a state power,²³⁷ States in the FSM have authority over the marine space within 12 nm of island baselines. This legal dividing line between state and federal authority at 12 nm from baselines is evident throughout the body of FSM law and policy pronouncements.²³⁸

And, indeed, the States of the FSM define their respective territories broadly—sometimes more broadly than the limits of the territorial sea. For example, Pohnpei and Chuuk each constitutionally defines its waters out to 200 nm from baselines, including the water column, seabed, subsoil, continental shelves, and air space.²³⁹ These State claims are limited by the federal assertion of jurisdiction.²⁴⁰ In Yap, the State may provide for the conservation and sustainable development of natural resources within the marine space of the State from the high water mark up to 12 nm from baselines.²⁴¹ Kosrae provides, by legislation, that its marine space extends seaward 12 nm from baselines defined by national law.²⁴²

State jurisdiction over nearshore waters can implicate municipal government authority and traditional rights and ownership. For example, in Kosrae, the constitution provides that any use of the waters, land, and other natural resources within the marine space of the municipality by the State government is subject to prior consultation between the state government and the municipality where the marine space is situated.²⁴³ In Chuuk, the jurisdiction of a municipal government extends to the sea area within the surrounding reefs of the islands that are included within the municipality.²⁴⁴ And, in Yap, the constitution recognizes traditional

234 24 FSM Code § 102(31), as amended by P.L. 19-169 (2017). For a detailed discussion of FSM fisheries law, see Section 5.2 of this report.

235 FSM Const. art. I § 2.

236 FSM Const. art. IX § 2(m).

237 FSM Const. art. VIII § 2.

238 See, e.g., FSM, National Biodiversity Strategy and Action Plan 14 (March 2002) (“All waters located within twelve nautical miles (22.2 kilometers) of land, [fall] under the jurisdiction of the respective State governments, and wherein all forms of foreign commercial fishing are excluded. These inshore resources are managed, conserved and developed by the respective State governments in association with resource owners. This includes all coral reefs and associated lagoonal and coastal ecosystems (territorial sea).”).

239 Pohnpei Const. art. 1 §§ 1–2 (“The territory of Pohnpei comprises the islands and reefs of Pohnpei, a marine space of [200 nm] measured outward from appropriate baselines, the seabed, subsoil, water column, insular and continental shelves, and any other territory and water belonging to any island of Pohnpei by historical right, custom, or legal title. ... Unless limited by obligations assumed by Pohnpei, or by its unilateral act, the waters connecting the islands and reefs of Pohnpei are internal waters, regardless of dimension, and the jurisdiction of Pohnpei extends to the entire territory of Pohnpei including its marine space, the seabed, subsoil, water column, insular and continental shelves, and the airspace over lands and waters.”); Chuuk Const. art. I § 1 (The territory of ... Chuuk includes the islands, reefs, shoals, banks, sands, oceans, and other natural landmarks bearing names or identities known in any of the dialects of the State, and any other territory or water belonging to the State by history right, custom, or legal title. Unless limited by law, this territory shall also include a marine space of 200 [nm] measured outward from appropriate baselines, as well as related seabed, subsoil, and water column, insular and continental shelves, and airspace over land and water.”).

240 The national Constitution is the supreme law of the land. FSM Const. art. II § 1.

241 Yap Const. art. XIII § 5.

242 Kosrae State Code § 14.1301. Kosrae defines “State waters” as those lying within the baselines defined by national law; “territorial waters” are those bordering the outermost extent of State waters as provided by national law. *Id.* § 1.201(69), (71).

243 Kosrae Const. art. XI § 4; Kosrae State Code § 14.1302.

244 Chuuk Const. art. XIII § 4.

rights and ownership of natural resources and areas within the marine space of the State from the high water mark “up to and beyond” 12 nm from baselines.²⁴⁵

Some States also define their fishery waters or fishery zones. In Kosrae, the term means any waters over which the State has jurisdiction, including the state fishery zone and inland waters.²⁴⁶ Similarly, in Chuuk and Yap, the state fishery zone extends outward 12 nm from baselines.²⁴⁷

Additionally, under national law, “traditionally recognized fishing rights” in submerged reef areas, “wherever located within the fishery zones” of the FSM “shall be preserved and respected.”²⁴⁸ State law in Chuuk and Yap, as well, provides that traditionally recognized fishing rights over submerged reefs, wherever located within the State fishery zone and internal waters, shall be preserved and respected.²⁴⁹

3.3 Maritime Boundary Delimitation

Approximately half of the FSM’s EEZ borders on the high seas. The remainder of the FSM’s EEZ borders the maritime boundaries of four other nations: Palau, Papua New Guinea, the RMI, and the United States (with respect to the U.S. Territory of Guam). The FSM, by treaty, has established maritime boundaries with each of these nations.²⁵⁰ The FSM’s boundary treaties with Palau and the RMI, respectively, commit the parties to cooperate and coordinate with respect to the management, conservation, and utilization of living resources, as well as with respect to protection of the marine environment and the conduct of marine research.

245 Yap Const. art. XIII § 5. No action may be taken to impair these traditional rights and ownership, except, as noted *supra*, that the State may provide for the conservation and sustainable development of natural resources from the high water mark up to 12 nm from baselines. *Id.*

246 Kosrae State Code § 19.101(11). “Inland waters” means the waters of the State landward from baselines, as defined by national law, including harbors, tide lands, rivers, and streams. “State fishery zone” means the waters of the State extending seaward 12 nm from baselines, as defined by national law. *Id.* § 19.101(16), (24).

247 25 Draft Chuuk State Code § 1006; 18 Yap State Code § 206. Each State also provides its own definition of baselines. 25 Draft Chuuk State Code § 1005; 18 Yap State Code § 205. Also in each State, waters landward of baselines, including the lagoons of atolls or islands, are internal waters. 25 Draft Chuuk State Code § 1006; 18 Yap State Code § 206.

248 18 FSM Code § 106, as amended by P.L. 19-172 (2017).

249 25 Draft Chuuk State Code § 1007; 18 Yap State Code § 207.

250 See Treaty between the Federated States of Micronesia and Papua New Guinea Concerning Maritime Boundaries and Cooperation on Related Matters, July 29, 1991 (as amended September 7, 2015); Treaty between the Federated States of Micronesia and the Republic of Palau Concerning Maritime Boundaries and Cooperation on Related Matters, July 16, 2006; Treaty between the United States and the Federated States of Micronesia on the Delimitation of a Maritime Boundary, August 1, 2014; & Treaty between the Federated States of Micronesia and the Republic of Marshall Islands Concerning Maritime Boundaries and Cooperation on Related Matters, July 5, 2006.

4 CROSS-CUTTING LEGAL FRAMEWORKS AND ISSUES AFFECTING THE MARINE ENVIRONMENT

4.1 Land Ownership and Land Use Planning

Following is a discussion of land ownership and land use planning in the FSM, with an emphasis on where this body of law does, or could, cover marine waters and resources. Unlike many countries, the FSM has no nationwide land use planning legislation.²⁵¹ Rather, land use planning is generally the province of state and local government.²⁵²

Legal mechanisms governing terrestrial land ownership and planning potentially implicate marine spatial planning, marine protected areas, and the development of a blue economy in a few ways. First, certain land laws either directly apply, or could be interpreted to apply, to nearshore waters and marine resources. Second, some countries undertake marine spatial planning by drawing from, or building directly upon, their existing legal framework for terrestrial planning and zoning.

4.1.1 Land Ownership

4.1.1.1 Private Lands

The FSM Constitution prohibits foreign ownership of land. Title to land or waters in the FSM may not be acquired by a noncitizen, or by a corporation not wholly owned by citizens.²⁵³ Similarly, it is prohibited to enter into a lease agreement providing for the use of land for an indefinite term by a noncitizen, a corporation not wholly owned by citizens, or any government.²⁵⁴

The issue of land tenure (i.e., the system for owning and holding rights in land) is of critical importance in the FSM. National law touching on the subject dates to the Trust Territory era and takes a largely hands-off approach, providing simply that “[t]he law concerning ownership, use, inheritance, and transfer of land in effect in any part of the Trust Territory on December 1, 1941, shall remain in full force and effect to the extent that it has been or may hereafter be changed by express written enactment made under authority of the Trust Territory.”²⁵⁵

In practice, land in the FSM may be part of informal family trusts that pass down land use rights (surface and subsurface) from one generation to the next within the extended matrilineal family system. Clans hold many parcels in Yap and Chuuk. This often has resulted in fractional ownership and uncertain boundaries and titles, in turn leading to state efforts to clarify boundaries and title.²⁵⁶

Pohnpei: In Pohnpei, the acquisition of a permanent interest in real property is restricted to Pohnpeian citizens who also are *pwilidak* of Pohnpei.²⁵⁷ No land may be sold, except as authorized by statute.²⁵⁸ No lease of land, except from the government or as otherwise provided by the Legislature, may exceed 25 years.²⁵⁹ An agreement that grants the user of land the unilateral authority to continue use for an indefinite term is prohibited.²⁶⁰

251 Bill Jaynes, “President Panuelo begins developing an FSM Building Code,” *Kaselehlie Press*, March 31, 2021, at www.kpress.info/index.php?option=com_content&view=article&id=1437:president-panuelo-begins-developing-an-fsm-building-code&catid=8&Itemid=103.

252 See 41 Pohnpei Code § 1-101 et seq; 20 Yap State Code § 201 et seq; Draft Chuuk State Code, tit. 24 generally; and Kosrae State Code, tit. 11 generally.

253 FSM Const. art. XIII § 4.

254 *Id.* § 5.

255 1 FSM Code § 205 (“Land law not affected”).

256 See discussion at FSM Infrastructure Development Plan FY2016-FY2025 at 1.

257 Pohnpei Const. art. 12 § 2. See also 4 Pohnpei Code § 4-101 (only citizens of Pohnpei, or corporations wholly owned by citizens, may hold title to land in Pohnpei).

258 Pohnpei Const. art. 12 § 5.

259 *Id.* §§ 1 & 4.

260 *Id.* § 3.

The Court of Land Tenure was established in 1995 to hear and determine claims of ownership, heirship, interest, right, and boundary to land, and to inquire into and determine whether any transfer in an interest in land conforms with the constitution.²⁶¹ The Court's mandate is to register lands within a designated land registration area, then move to the next area.²⁶² The law provides a process by which the Court is to inquire into and register claims and interests in land.²⁶³

Chuuk: The Chuuk Constitution recognizes traditional rights over all reefs, tidelands, and other submerged lands, including their water columns. The Legislature may, however, regulate their reasonable use.²⁶⁴

Kosrae: In Kosrae, only a person who is a citizen of the FSM and is Kosraen by descent, or a corporation wholly owned by such persons, may acquire title to land. Acquisition or utilization of interests in real property may be restricted or regulated by law.²⁶⁵

In Kosrae, the Land Court was established under the Land Court Act of 2000 as a subordinate court within the state court system for the purposes of title investigation, title determination, and the registration of interests in land, and to provide a single system of filing all recorded interests in land.²⁶⁶ Each Land Court justice was given responsibility for determining boundaries, title, and registration of the parcels located within an assigned registration area.²⁶⁷

Yap: Title to land in Yap may be acquired only in a manner consistent with traditions and customs.²⁶⁸ An agreement for the use of land where a party is not a citizen of the FSM or a corporation not wholly owned by such citizens may not exceed a term of 100 years. The Legislature may prescribe a lesser term.²⁶⁹ The Legislature has enacted a statute that limits such term to 50 years.²⁷⁰

When the Subdivision of Land Registration (of the DR&D) identifies a land dispute, that dispute is remanded to the appropriate municipal court for resolution. Decisions of the municipal courts are appealable to the Yap State Court Trial Division on a trial de-novo basis.²⁷¹

The State recognizes traditional rights and ownership of natural resources and areas within the marine space of the State from the high water mark up to and beyond 12 nm from island baselines. No action may be taken to impair these traditional rights and ownership, except insofar as the State government may provide for the conservation and sustainable development of natural resources within this marine space.²⁷²

4.1.1.2 Public Lands

Each State of the FSM has adopted, by way of its constitution or legislative enactment, various requirements with respect to the ownership, transfer, and use of public lands.

The power of eminent domain may be lawfully exercised by the FSMNG, as well as by the governments of each of the four States.²⁷³

261 4 Pohnpei Code § 6-103(1)-(2).

262 4 Pohnpei Code § 6-105(1).

263 See Pohnpei Code tit. 2 ch. 6.

264 Chuuk Const. art. IV § 4.

265 Kosrae Const. art. XI § 7.

266 Kosrae State Code § 11.603(1).

267 Kosrae State Code § 11.612(2). Each justice must institute diligent inquiries regarding each claim of interest within his area and set each well-founded claim for hearing once all claims are recorded. *Id.* § 11.612(3).

268 Yap Const. art. XIII § 3.

269 Yap Const. art. XIII § 2.

270 Yap State Law No. 9-64.

271 3 Yap State Code § 125 (Executive Branch Reorganization Act).

272 Yap Const. art. XIII § 5.

273 56 FSM Code ch. 1; Pohnpei Const. art. 12 § 6; 43 Pohnpei Code ch. 2 & ch. 1; Chuuk Const. art. XI § 2; 24 Draft Chuuk State Code § 1506 & ch. 11 subch. B; Kosrae Const. art. XI § 5; Kosrae State Code tit. 6 ch. 36 & § 11.103; Yap Const. art. II § 11; 9 Yap State Code ch. 1. During the Trust Territory era, the power of eminent domain lay exclusively with the central government. See, e.g., 24 Draft Chuuk State Code § 1507(1).

Relatedly, in Chuuk, pursuant to the Public Projects Act, the owner of a tree destroyed by a public project is entitled to compensation under a special scheme designed for this purpose. 24 Draft Chuuk State Code ch. 9 & § 1404.

Pohnpei: Pohnpei has greater responsibilities over land than the other States in the FSM due to the extensive areas of public lands that were designated during the colonial era.²⁷⁴

Pursuant to the Public Lands Act of 1987, Pohnpei established within the Department of Land the Division of Public Land, into which was transferred the Pohnpei Public Lands Trust (the Trust).²⁷⁵ Public lands are any lands (and any right, title, or interest therein) capable of being held by the Trust, in trust, for the people or Pohnpei as authorized by Pohnpei law or resolution.²⁷⁶

The Board of Trustees of the Trust (the Board) acts as trustee to all rights, title, and interest to public lands in Pohnpei for the benefit of the people of Pohnpei, subject to the obligations and restrictions of the State Constitution and laws.²⁷⁷ The Board possesses various express powers with respect to public lands, including the power to receive and hold title to public lands and the power to administer, manage, and regulate the use of such lands and any income they produce.²⁷⁸ Specifically, the Board is authorized to execute leases and other use agreements with respect to public lands.²⁷⁹ There is a Pohnpei Public Lands Trust Fund into which all revenue generated from the administration, management, and disposition of public lands is to be deposited.²⁸⁰

Pohnpei has legislated on the nature of rights in areas below high water mark.²⁸¹ The general rule is that all marine areas below ordinary high water mark belong to the government, and that such lands are part of the Pohnpei Public Lands Trust, subject to the following exceptions:²⁸²

- Such rights in fish weirs or traps as were recognized by local customary law at the time the Japanese administration abolished them have been reestablished—provided that no weirs or traps or other obstruction may be erected so as to interfere with established or future routes of water travel, marine sanctuaries, or wildlife refuges.²⁸³
- The right of the owner of abutting land to claim ownership of all materials, “coconuts,” and other small objects deposited on the shore or beach by action of the water, or falling from trees located on the abutting land, and such fishing rights on, and in, waters over reefs where the general depth of water does not exceed four feet at mean low water, as were recognized by local customary law at the time the Japanese administration abolished them have been reestablished—where such rights are not in conflict with state law or the inherent rights of the Pohnpei Public Lands Trust as the owner of all marine areas below the ordinary high water mark. This does not apply to any vessel wrecked or stranded on Pohnpei’s reefs or shores.²⁸⁴

274 Connell, J. and John P. Lea. 1998. “Island Towns: Managing Urbanization in Micronesia.” Occasional Paper 40. Honolulu: University of Hawai’i at Manoa; and Sydney: University of Sydney: 143.

275 42 Pohnpei Code §§ 1-102, 1-104, 1-105, & 1-112. Among the duties of the Division is to liaise through the governor with the Legislature, the administration, traditional leaders, and others concerned with the objectives and programs of the Division. *Id.* § 1-112(2). Traditional leaders include paramount traditional leaders of the Nahnwarki and Nahnken rank, or their equivalent, in local custom and tradition. *Id.* § 1-103(10).

276 42 Pohnpei Code § 1-103(9). Public lands also include lands as defined by U.S. Secretarial Order 2969 of 1974 (transferring Trust Territory public lands to district control). *Id.*

277 42 Pohnpei Code § 1-105. The Board of Trustees is successor to the Public Lands Authority. *Id.* § 1-120(2).

278 42 Pohnpei Code § 1-111(2)–(3).

279 42 Pohnpei Code § 2-101. Lease and use agreements for public lands are governed by Pohnpei Code tit. 42 ch. 2. Generally, the Board may enter into lease and use agreements—upon approval of the governor following consultation with the local government or the jurisdiction where the subject land is located, and after a determination of interests in the land by the Court of Land Tenure—where such land is held in trust and designated as available for lease or use by Pohnpei law to citizens of the FSM (and corporations wholly owned by citizens) and to corporations and businesses holding valid foreign investment permits in accordance with state law. *Id.* § 2-101. Pursuant to the Residential Shoreline Leasehold Act of 2009, submerged public trust lands extending to a distance of up to 150 feet seaward from a residential shoreline that have been filled for the purpose of construction of a residence prior to December 31, 2008, are designated as available for residential lease to citizens, subject to certain conditions. *Id.* § 2-112.

280 42 Pohnpei Code § 1-116. In turn, all monies received by the Trust Fund are to be appropriated by the Legislature for public purposes relative to the administration, management, development, and disposition of public lands. *Id.*

281 See generally Pohnpei Code tit. 42 ch. 8 (Marine Areas).

282 42 Pohnpei Code § 8-101.

283 *Id.* § 8-101(1).

284 *Id.* § 8-101(2).

- The owner of land abutting the ocean or a lagoon has the right to develop a reasonable area of the water and submerged land extending directly seaward from his abutting land, and also has ownership, control, and usage of such development, provided it does not interfere with navigation and is not within a marine sanctuary or wildlife refuge. Further specified conditions apply for development that will permanently alter the topography of the marine area or that will entail the dredging or filling of any of the submerged land.²⁸⁵

Each of these rights is granted to the person or group who held the right at the time it was abolished by the Japanese administration or is otherwise recognized by law, or to their successors in interest. The extent of each right is governed by provisions of this law and by the local customary law in effect at the time it was abolished or is otherwise recognized by law.²⁸⁶ Nothing in the law governing areas below high water mark withdraws or disturbs the traditional and customary right of the individual land owner, clan, family, or local government to control the use of, or material in, marine areas below the ordinary high water mark, subject only to, and limited by, the inherent rights of the Pohnpei Public Lands Trust as the owner of such marine areas. There is no right in the general public to misuse, abuse, destroy, or carry away mangrove trees or the land abutting the ocean or a lagoon, or to commit any act causing damage to such trees or land.²⁸⁷ Written notice of a legal interest or title with respect to areas below high water mark must be filed with the Court of Land Tenure, which determines the validity of the claimed interest or title.²⁸⁸

The Pohnpei Land Use Planning and Zoning Commission (discussed in Section 4.1.2 of this report) is charged with preparing and presenting to the Legislature a comprehensive Master Plan and specific zoning legislation with respect to the zoning of submerged lands in the State, which plans and zoning recommendations are to contain detailed descriptions of areas of submerged lands suitable for specific types of development.²⁸⁹ Pending such action by the Commission, the Legislature, by statute, has zoned a number of designated parcels of submerged land, subject to specified terms and conditions.²⁹⁰

Pohnpei ensures public access to the sea and to tidal areas by providing for the establishment of necessary public roads and paths across public lands that abut the sea and tidal areas.²⁹¹

The Legislature has enacted a wide range of land use designations (including for submerged public lands), typically specifying in detail the necessary action to be taken by the Public Lands Trust Board of Trustees.²⁹²

Chuuk: The governor in Chuuk has exclusive competence to represent the State with respect to all public lands, except that the governor may not dispose of any public land without the advice and consent of the Legislature.²⁹³ The governor holds title to public lands in trust for the people, and is authorized to administer, manage, and regulate the use of such lands.²⁹⁴ A Claims Board is authorized to adjudicate and resolve claims and disputes as to title and rights in land transferred to the State and eminent domain proceedings.²⁹⁵

285 *Id.* §§ 8-101(3) & 8-301 to 8-310.

286 *Id.* § 8-101(4).

287 *Id.* § 8-101(5). Any legal interest or title in marine areas below the ordinary high water mark specifically granted to an individual or group of individuals by the Pohnpei Government, the Trust Territory Government, or any previous administering authority, or recognized as a legal right, is unaffected by these legal provisions. *Id.* § 8-101(6).

288 *Id.* § 8-102.

289 *Id.* § 8-201. The authors have identified that several working drafts of a master plan have been developed, but it does not appear that an official Master Plan has been adopted.

290 42 Pohnpei Code §§ 8-202 & 8-202.1 to 8-202.12.

291 42 Pohnpei Code § 7-102.

292 Pohnpei Code tit. 42 ch. 10.

293 24 Draft Chuuk State Code § 1502.

294 *Id.* § 1503(1)–(2).

295 *Id.* § 1503(4).

Kosrae: The waters, land, and other natural resources within the marine space of Kosrae are public property, the use of which the state government regulates by law in the public interest, subject to the right of the owner of land abutting the marine space to fill in and construct on or over the marine space.²⁹⁶ Rivers and streams designated by law are public property, the use of which the state government regulates by law in the public interest.²⁹⁷ The governor is authorized to transfer title to, or interest in, public land on the State's or the government's behalf, following approval by the Legislature.²⁹⁸

Yap: The State of Yap holds title to public lands in trust for the people and is authorized to administer, manage, and regulate the use of such lands.²⁹⁹ Any sale, grant, exchange, or lease of public lands, the terms of which exceed five years in total, requires the consent of the Legislature.³⁰⁰ Any lease agreement for public lands entered into by the governor and a prospective lessee must contain a certification by the governor that the lease is consistent with the State's official plans. Agreements for the conveyance of public lands are signed by the governor and the other party to the lease prior to their submission to the Legislature.³⁰¹ An agreement for the conveyance of vacant public land for development must be accompanied by an environmental impact assessment study, conducted by an independent entity prior to the submission of the lease agreement to the Legislature.³⁰²

4.1.2 Land Use Planning and Regulation

Although comprehensive land use planning is not implemented on a nationwide basis, the FSM has addressed certain issues of erosion and sedimentation control, as well as infrastructure development, at a national scale.

Earthmoving activities. All earthmoving activities³⁰³ in the FSM must be conducted so as to prevent accelerated erosion and accelerated sedimentation. Persons engaging in earthmoving activities must design, implement, and maintain erosion and sedimentation control measures, setting them forth in a plan.³⁰⁴ Engaging in earthmoving activities requires a permit from the appropriate State Environmental Protection Agency, and the permit application must be accompanied by the erosion and sedimentation control plan.³⁰⁵ Various required control measures and control facilities are detailed in regulation.³⁰⁶ All earthmoving activities must be planned so as to minimize the area of disturbed land, reef, or lagoon.³⁰⁷ Post-completion restoration of the site is required.³⁰⁸ Violators are subject to imposition of a civil penalty

296 Kosrae Const. art. XI § 4. The right of the landowner may be limited by other provisions of this article, and any use of the waters, land, and other natural resources within the marine space of the municipality by the state government is subject to prior consultation between the state government and the municipality where the marine space is situated. Consultation procedures are to be provided by statute. *Id.*

297 Kosrae Const. art. XI § 6.

298 Kosrae State Code § 11.101.

299 9 Yap State Code §§ 101 & 102(a), (b).

300 *Id.* § 103(a).

301 *Id.* § 103(b).

302 *Id.* § 103(c).

303 Earthmoving means any construction or other activity that disturbs or alters the surface of the land, a coral reef, or the bottom of a lagoon, including, but not limited to, excavations, dredging, embankments, land reclamation in a lagoon, land development, subdivision development, mineral extraction, ocean disposal, and the moving, depositing, or storing of soil, rock, coral, or earth. Earth Moving Reg. 1.3(f).

304 Earth Moving Reg. 2.1. Requirements of an erosion and sedimentation control plan are set forth in Reg. 2.2. Among other factors to be considered are the types, depth, slope, and area of the soils, coral, and/or reef; the original state of the area as to plant and animal life; and whether any coral reef which may be affected by the earthmoving is alive or dead. If the project involves an earthmoving activity in a lagoon, reef, or body of water, the plan should show existing marine life populations as well as minimum and maximum turbidities. *Id.* at Reg. 2.2(b)–(c).

305 Earth Moving Regs. 3.1 & 3.2(b). The regulations provide that the permit is to be issued by the Secretary of the FSM Department of Human Resources, to which DECEM is the successor. Nevertheless, the authors understand that permitting authority now lies with the respective State EPAs.

306 Earth Moving Reg. 2.3(a)–(c).

307 Earth Moving Reg. 2.3(b)(1).

308 Earth Moving Reg. 2.4.

of between US\$100 and US\$10,000 per day, as well as civil damages, and to issuance of an injunction.³⁰⁹ The State EPA also may issue a cease and desist order and direct remedial or preventative action.³¹⁰

In response to recent criticism of dredging and other earthmoving activities occurring in violation of EPA permits and clearances, President David Panuelo issued new regulations seeking to harmonize FSMNG contracts with conservation and preservation efforts.³¹¹ The practical effect is that, for the purpose of any construction or procurement contracts, EPA permits and licenses will always be required if the contract involves earthmoving activities.³¹² A “Notice to Proceed” shall not be issued for any construction or procurement contract falling under these regulations if the contractor does not have the appropriate EPA permit or clearance.³¹³ All bid documents, invitations to bid, and solicitations of interest shall state this new requirement.³¹⁴ Any contractor with a prior record of violating and/or breaching EPA rules and regulations shall be disqualified from joining a bidding.³¹⁵

Infrastructure planning. Infrastructure planning is coordinated at the national level. National-scale infrastructure projects, including Amended Compact projects, are delivered by the Department of Transportation, Communication & Infrastructure (DTCI), with similar departments delivering infrastructure at the state level.³¹⁶ According to the FSMNG, the absence of an FSM Building Code hampers infrastructure development at all levels.³¹⁷

An overview of land use planning provisions at the state level is provided below.

Pohnpei: Among the four States of the FSM, Pohnpei has the most comprehensive set of laws pertaining to land use planning and regulation.

The Pohnpei Land Use Planning and Zoning Act of 1993 was enacted to encourage the most appropriate use of land, public as well as private, to provide adequate open spaces around buildings for light and air, prevent undue concentrations of population, protect the health and welfare of Pohnpei residents,

309 Earth Moving Regs. 5.1 & 5.2.

310 Earth Moving Reg. 5.4.

311 FSM Press Release, “President Panuelo Issues New Regulations to Protect the Environment; Any Construction or Procurement Contractor Found Violating or Breaching Environmental Protection Agency Permits & Clearances to be Blacklisted,” July 13, 2021, at <https://gov.fm/index.php/component/content/article/35-pio-articles/news-and-updates/502-president-panuelo-issues-new-regulations-to-protect-the-environment-any-construction-or-procurement-contractor-found-violating-or-breaching-environmental-protection-agency-permits-clearances-to-be-blacklisted?Itemid=177>.

312 Emergency Regulations Governing the Procurement and Construction Contracts of the National Government Requiring Environmental Compliance.

313 *Id.* Reg. III(b).

314 *Id.* Reg. III(c).

315 *Id.* Reg. III(d).

316 The FSM follows an Infrastructure Development Plan (IDP) prepared by the DTCI in consultation with the States. The current IDP covers infrastructure in ten sectors: electric power, water/wastewater systems, solid waste management, road and pedestrian facilities, maritime transportation, air transportation, telecommunications, education, health, and government administrative buildings (FSM Infrastructure Development Plan FY2016-FY2025). States have autonomy in planning and implementing their programs under the IDP. *Id.* at 32.

With respect to maritime transportation, the FSM’s goal is to provide infrastructure that: (i) enables market opportunities to be realized for all areas of the country, including labor market opportunities, and to enhance the level of integration of state economies and the national economy; (ii) provides improved dock facilities to meet both fisheries and commercial shipping needs; (iii) facilitates modern, safe, and efficient interstate and inter-island passenger and cargo vessels; and (iv) coordinates and facilitates the improvement of aids to navigation. *Id.* at 17.

317 Efforts to develop an FSM Building Code are underway. See, e.g., “President Panuelo Begins Developing an FSM Building Code,” at www.kpress.info/index.php?option=com_content&view=article&id=1437:president-panuelo-begins-developing-an-fsm-building-code&catid=8&Itemid=103; & FSM Press Release, “State Governments Requested to Nominate Representatives to Form Working Group By January 29th, 2021,” January 22, 2021, at <https://gov.fm/index.php/fsm-publicinfo/announcements/35-pio-articles/news-and-updates/417-president-panuelo-begins-developing-an-fsm-building-code-state-governments-requested-to-nominate-representatives-to-form-working-group-by-january-29th-2021>.

Currently, projects are designed in accordance with international codes, standards, and guidelines, with only limited account taken of the FSM’s specific circumstances. IDP at 49.

Legislation at the state level provides for the design and implementation of state building codes or adopts foreign codes by reference. See 31 Pohnpei Code ch. 6; CSL 191-11 (Chuuk) (adopting Council of American Building Officials Code); Kosrae State Code tit. 11 ch. 21; & Yap State Code tit. 20 ch. 4.

promote responsible and balanced development, preserve and enhance cultural and traditional values, conserve and protect the natural environment, and assure adequate provision for community facilities and requirements. There is to be an overall Pohnpei land use Master Plan for the use of land in the State, as well as a comprehensive set of zoning and land use laws.³¹⁸ Primary responsibility for zoning rests with local communities, and local governments are to play a vital role in the development of standards controlling land use.³¹⁹

The Pohnpei Land Use Planning and Zoning Commission (the Commission) is charged with preparing and recommending for enactment by the Legislature: a proposed master land use plan;³²⁰ any subsidiary plans and development programs as may be desirable for the implementation of the Master Plan; and any zoning and land use control laws necessary and proper for implementation of the Master Plan.³²¹ The Commission may adopt implementing regulations under the authority of the APA.³²² The Commission is supported by appropriations but may also receive grants and assistance from other sources.³²³

The Master Plan is prepared through a process and ultimately enacted by statute.³²⁴ The Act includes a detailed list of a dozen elements to be contained in the Master Plan. Among them are the following:

- A *conservation element* that provides for the conservation, development, utilization, and protection of natural resources, including forests, soils, rivers, streams, aquatic resources, estuaries, tidal lands, fisheries, marine resources, wildlife, minerals, and other natural resources. The conservation element also may cover reclamation of land and waters; permissible areas for dredging of sand and coral; flood control; prevention and control of pollution of streams and other waters; prevention, control, and correction of the erosion of soils, beaches, and shores; protection of coral and other marine growth; and protection of watersheds.
- A *culture and tradition element* that shows the location of historical and present day areas and sites important to the preservation, reverence, and enhancement of cultural and traditional values of the peoples of the State.
- A *recreation element* showing the location and proposed development of recreational sites such as natural preserves, parks, artificial and natural beaches, playgrounds, vistas, waterfalls, nature walks, mangrove channels, and other areas of scenic importance.³²⁵

The Legislature is to enact zoning and land use control laws for the implementation of the Master Plan. Zoning laws divide the master plan area into zones. Such laws are enacted for a variety of purposes, including achievement of the arrangement of land uses depicted in the Master Plan.³²⁶

318 41 Pohnpei Code §1-102. Land for purposes of the Act include areas above and below the high water mark. *Id.* § 1-105(3).

319 41 Pohnpei Code §1-104. The Act also contemplates that local land use planning and zoning commissions may be established in the future. *Id.* § 1-105(5).

320 The Master Plan consists of a general body of texts, maps, and descriptive material that constitutes an overall plan for the development of land, physical resources, and facilities within the State. 41 Pohnpei Code § 1-105(6). The Master Plan must account for, among other factors, environmental needs and cultural considerations. *Id.* § 1-109.

321 41 Pohnpei Code §§ 1-106(1), 1-107(1)-(3), & 1-112. A “land use control law” refers to a zoning, subdivision, building, housing, “official map,” or other law that controls the use of land and improvements on the land. *Id.* § 1-107(4). A “zoning act, law, or ordinance” refers to a duly enacted land use control statute or ordinance that adopts a zoning plan or any amendments to it. *Id.* § 1-107(11). A “zoning plan” is the proposal of the appropriate land use planning and zoning commission prepared in accordance with the Act and setting out a system of zoning for the covered land. *Id.* § 1-107(12).

322 41 Pohnpei Code § 1-121.

323 *Id.* § 1-120.

324 *Id.* § 1-108.

325 *Id.* § 1-110(3)-(5).

326 *Id.* § 1-111.

The Act sets forth a detailed list of use zones.³²⁷ Among the zones listed are several that are environmentally oriented: conservation (CON),³²⁸ watershed forest reserves (WFS),³²⁹ important watershed areas (IWA),³³⁰ and mangrove forests (MF).³³¹

The Commission, the attorney general, or any aggrieved person may bring suit for injunctive relief or any other civil remedy against a violator of the Act, any master plan, zoning law, land use control law, or zoning or land use regulation.³³² A violator who acts willfully and knowingly is guilty of a misdemeanor, carrying a fine of US\$500 and a one-month of imprisonment for each day of a continuing violation.³³³

Pohnpei, by legislation, has established a system of plane coordinates—the 1970 Pohnpei Island Coordinate System—for designating positions within the State.³³⁴

Pohnpei has established a Soil and Water Conservation District co-extensive with the boundaries of the State. The district is administered and managed by the DR&D, as the primary soil and water conservation agency in Pohnpei.³³⁵ The Soil and Water Conservation Board serves as an advisory body, assisting the State in the development of soil and water conservation plans and policies for private and public lands.³³⁶

In Pohnpei, mining and dredging activities carried out on certain listed public trust lands are authorized and regulated exclusively by the Pohnpei Public Lands Trust Board of Trustees.³³⁷ Such activities on any other public trust lands are prohibited.³³⁸ Many of the public trust land sites listed in the statute include detailed, location-specific provisos—often environmental in nature—clarifying how the mining or dredging activity at the site will be carried out.³³⁹

It is unlawful to mine or dredge on public lands without a site permit from the Board of Trustees, by application through the Division of Public Lands of the Department of Land.³⁴⁰ Following mining or dredging activities, the permittee must return the site to “an aesthetically and environmentally acceptable condition.”³⁴¹ The Board and the Division must jointly inspect and approve the reclamation work.³⁴² Where inspections reveal noncompliance, reports must be submitted to the attorney general for legal proceedings.³⁴³

Violations of the mining and dredging provisions of the law are subject to a fine of US\$2,500 and thirty days in prison. Each day that a violation occurs is a separate offense.³⁴⁴ Material removed in violation of the law is subject to confiscation, and where such material is not reasonably capable of confiscation, the person responsible must pay compensation subject to a wrongful removal penalty charge calculated by

327 *Id.* § 1-114.

328 *Id.* § 1-114(13). This zone includes public open spaces and recreational areas, wilderness and tidal areas, marine and aquatic preserves, land reserved for control of flooding and soil erosion, and other uses not detrimental to a multiple use conservation concept. *Id.*

329 41 Pohnpei Code § 1-114(14). This zone corresponds to areas prescribed by 26 Pohnpei Code § 4-105.

330 41 Pohnpei Code § 1-114(15). This zone corresponds to areas prescribed by 26 Pohnpei Code § 4-106.

331 41 Pohnpei Code § 1-114(16). This zone corresponds to areas prescribed by 26 Pohnpei Code § 4-107.

332 41 Pohnpei Code § 1-119(1).

333 *Id.* § 1-119(2).

334 Pohnpei Code tit. 41 ch. 2.

335 26 Pohnpei Code §§ 3-102(3), 3-104, & 3-107.

336 *Id.* §§ 3-102(3) & 3-108 to 3-112. Soil and water conservation activities in Pohnpei appear to be primarily terrestrial, with a focus on agricultural, watershed, and conservation areas. *Id.* § 3-111.

337 42 Pohnpei Code § 9-101.

338 *Id.*

339 *Id.*

340 42 Pohnpei Code § 9-102(1)-(2). In addition, any person or entity performing such activities must hold a contractor’s license from the Board of Trustees, by application through the Division of Public Lands of the Department of Land. *Id.* § 9-102A.

341 42 Pohnpei Code § 9-102(15). Section 102 spells out various other conditions for mining and dredging on public lands, mostly with respect to payment of fees and reporting. The Pohnpei Code also details how monetary receipts from fees, interest, and penalties under the mining and dredging law are to be allocated by the State. *Id.* § 9-105.

342 42 Pohnpei Code § 9-102(15)-(16). Rocks and other materials used as dikes or berms, or otherwise unacceptable for removal, must be returned to the site as fill, so as not to be visible above the waterline and at an acceptable depth (including acceptability for safety standards for saltwater transportation, where relevant). *Id.* § 9-102(15).

343 *Id.* § 9-102(16).

344 *Id.* § 9-103(1).

the court.³⁴⁵ Failure to carry out proper reclamation subjects the violator to three times the estimated cost of restoration and a “civil fine” of US\$2,500, which is doubled for each subsequent offense during a ten-year period (not to exceed US\$100,000 per offense).³⁴⁶ In addition to these penalties, a court may disbar a violator from mining and dredging activities for up to five years.³⁴⁷

Chuuk: The Chuuk State Planning Commission is charged with the following responsibilities and powers: to recommend to the Legislature zoning, building, and construction codes that, when enacted, “shall have the effect of law;” to adopt, amend, supplement, change, or repeal plans and other planning matters; and to conduct hearings on code disputes and zoning variances.³⁴⁸ The planning director is authorized to perform a range of duties, including preparing and recommending to the State Planning Commission plans and codes.³⁴⁹

Chuuk, by legislation, has established a system of plane coordinates for designating positions within the Chuuk and Neoch Lagoons.³⁵⁰

State law governs the procedure by which persons may fill, borrow, and excavate tidelands.³⁵¹ Tideland is land below the ordinary high water mark.³⁵² Applications are made to the magistrate of the municipality in which the tideland is located. The magistrate must consult with the chief who has traditionally administered the tideland’s use. The magistrate submits the applicant’s request, with a sketch map of the area concerned, accompanied by the traditional chief’s and his own recommendation, to the Chuuk State chief of the Division of Land Management and Historic Preservation. Upon reviewing the composite application and being satisfied that the applicant has title to the land adjacent to where the filling, borrowing, or excavating of the tideland is to take place, the chief of the Division must consult with the State Director of Public Works. The chief of the Division then makes a recommendation to the governor, who renders a decision.³⁵³ No such tideland activity is permitted where there is a question concerning the title to the adjacent land, or where the activity would be done to the detriment of navigable waters.³⁵⁴

Kosrae: The law in Kosrae charged the governor with—within one year of the COFA taking effect—proposing legislation to regulate the use of land and other forms of real property.³⁵⁵ Under Kosrae law, it is prohibited to damage a reef by dredging, mining, removing coral or rocks, running a vessel aground, or by any other means.³⁵⁶

Yap: State law established the Yap Islands Planning Commission for the purpose of preparing, reviewing, and implementing a Master Plan and land use requirements for the Yap Islands Proper.³⁵⁷ The Outer Islands Planning Commission was similarly established to perform these functions with respect to the atolls and islands of the Outer Islands of Yap State.³⁵⁸

345 *Id.* § 9-103(2).

346 *Id.* § 9-103(3).

347 *Id.* § 9-104.

348 10 Draft Chuuk State Code § 1206. The functions of the Commission are carried out under the general supervision of the governor. *Id.* § 1208.

349 *Id.* § 1207. These duties include preparing and maintaining comprehensive district conservation plans. *Id.* § 1207(1). The director also must make recommendations on all administrative actions that in any manner affect the Comprehensive State Conservation Plan. *Id.* § 1207(7)(b).

350 Draft Chuuk State Code tit. 24 ch. 3.

351 24 Draft Chuuk State Code § 1001.

352 *Nena v. Walter*, 6 FSM Intrm. 233, 236 (Chk. S. Ct. Tr. 1993). Tidelands traditionally are those lands from the dry land to the deep water at the edge of the reef; they must be shallow enough for Chuukese women to engage in traditional methods of fishing. *Sellem v. Maras*, 7 FSM Intrm. 1, 4 (Chk. S. Ct. Tr. 1995).

353 24 Draft Chuuk State Code § 1002.

354 *Id.* § 1004.

355 Kosrae State Code § 11.201. The State constitution provides that use of real property in Kosrae shall in the public interest be regulated by law to assure public health, community well-being, the orderly and economical use of land, preservation of places of cultural or historic value, and island beauty. Kosrae Const. art. XI § 3.

356 Kosrae State Code § 19.325.

357 20 Yap State Code § 101.

358 *Id.* § 121.

Most excavation or filling for structures, as well as the carrying out of structural work, within the Yap Islands Proper Master Plan Area requires a building permit from the Yap Islands Planning Commission.³⁵⁹

Yap, by legislation, has established a system of plane coordinates for designating positions within the State.³⁶⁰

The specified land use control requirements identified in Yap's legislation are minimal and not reflective of a systematized approach that is likely to inform marine spatial planning.³⁶¹

4.2 Environmental Impact Assessment

The FSM Environmental Protection Act's public policy states that the FSMNG is to use all practicable means to improve and coordinate governmental plans, functions, programs, and resources so that FSM inhabitants may: (i) fulfill the responsibilities for each generation as trustee of the environment; (ii) enjoy safe, healthful, productive, and aesthetical and culturally pleasing surroundings; (iii) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable or unintended consequences; (iv) preserve important historic, cultural, and natural aspects of Micronesian heritage, and maintain wherever possible, an environment that supports diversity and variety of individual choice; and (v) remain responsible members of the global community by complying with international legal obligations. Additionally, the Act instructs that the effort to protect and preserve the environment will be carried forward in close consultation with the States.³⁶²

Of particular note in this overarching policy statement is the recognition that environmental protection must be considered within the context of other competing national priorities. Also, the policy acknowledges that environmental protection cannot be pursued by the FSMNG alone, but in consultation with the four States as well as by complying with international environmental obligations assumed by the FSM. Finally, the policy includes a strong recognition of a pervasive, individual mandate relating to environmental protection: "each person has a responsibility to contribute to the preservation and enhancement of the environment."³⁶³

The FSM Environmental Protection Act establishes the statutory obligations with respect to environmental impact statements (EISs) at the national government level, as follows:

- (1) Any person, prior to taking any action that may significantly affect the quality of the environment within the [EEZ] of the [FSM], or within the boundaries of the National Capital Complex at Palikir, must submit an environmental impact statement to the Director, in accordance with regulations established by the Director.
- (2) The environmental impact statements required by subsection (1) of this section are public documents, and must include a detailed statement on:
 - (a) the environmental impact of the proposed action;
 - (b) any adverse environmental effects which cannot be avoided, should the proposal be implemented;
 - (c) the alternatives to the proposed action;
 - (d) the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity; and

359 Yap State Code tit. 20 ch. 3.

360 Yap State Code tit. 20 ch. 5.

361 See Yap State Code tit. 20 ch. 2.

362 25 FSM Code § 102.

363 *Id.* § 102(3). The term "person" as used in the Act means the FSM, a state, municipality, political subdivision, a public or private institution, corporation, partnership, joint venture, association, firm, or company organized or existing under the laws of the FSM or any state or country, lessee or other occupant of property, or individual, acting singly or as a group. *Id.* § 103(4).

(e) any irreversible and irretrievable commitments of resources which would be involved in the proposed action, should it be implemented.³⁶⁴

The obligation to complete an EIS for the national government is limited in two ways. First, the action must occur within the national government's physical jurisdiction, which is limited as described above.³⁶⁵ Second, the action must have the potential to "significantly affect the quality of the environment." There does not appear to be any statutory definition of the key phrase "significantly affect."

Although the FSMNG has promulgated detailed Environmental Impact Assessment (EIA) Regulations, these regulations are over thirty years old—having been promulgated in 1989 under a previous version of the FSM Environmental Protection Act. Consequently, these regulations are dated—and in some respects confusing, as they contain reference to now defunct FSMNG departments and positions (e.g., Secretary of the Department of Human Resources).

As recognized by the FSM Environmental Protection Act, the four FSM States play an important role in protecting the environment. The environmental protection legislation of three of the four States—the exception is Kosrae—begins with a sweeping public policy commitment to the protection of the environment, the language of which is remarkably consistent across the three States.³⁶⁶

For example, Yap State articulates its public policy section as follows:

The Yap State Government, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth and redistribution, cultural change, resource exploitation, and technological advances, and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the State of Yap, in cooperation with the [FSMNG], municipal governments, and other concerned public and private organizations, to use all practical means and measures, including financial and technical assistance, to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of the State of Yap.³⁶⁷

Each state statute also contains a section more specifically focused on EIAs, although the precise terminology varies.

Pohnpei: The State of Pohnpei's statute requires that its EPA, within one year of the appointment of its leadership, develop EIA regulations.³⁶⁸ Similarly to Chuuk, the Pohnpei environmental statute relies heavily on regulations to flesh out the specific requirements for environmental assessments:

The Board shall establish standard procedures, through regulation, as administered by the executive officer, for the preparation of an environmental impact assessment statement prior to issuing permits for any public or private project that may significantly affect the quality of the environment to include land, water, and air. Regulations shall set forth

364 *Id.* § 302.

365 *Id.* § 302(1). The meaning and extent of the EEZ in the FSM is discussed in Section 3.1 of this report.

366 The slightly less soaring language in the opening section of Kosrae's environmental protection legislation would appear to result from the fact that Kosrae's statute is a more recently enacted, modern statute, which identifies more specific and concrete goals. For example, Kosrae's statute specifically mentions climate change, whereas the corresponding public policy language of the other three States does not.

367 18 Yap State Code § 1502(a); see also 27 Pohnpei Code § 1-102 & 22 Draft Chuuk State Code § 1002. The Yap and Pohnpei public policy sections, alike, articulate additional goals for their citizens. For example, Yap's statute references fulfilling "the responsibilities of each generation as trustee of the environment for succeeding generations;" assuring "safe, healthful, productive and aesthetically and culturally pleasing surroundings;" attaining "the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable or unintended consequences;" and preserving "important historic, cultural, and natural aspects of Yapese heritage, and maintain[ing], wherever possible, an environment which supports diversity and variety of individual choice." 18 Yap State Code § 1502(b). Pohnpei's statute requires "taking into account considerations of economic development, budgetary limitations, and traditional cultural relations" in pursuit of objectives similar to those of Yap as well as preventing "injury to plant and animal life." 27 Pohnpei Code § 1-102(2). Pohnpei's statute also goes further to impose an individual mandate on each Pohnpeian: "The state of Pohnpei recognizes that each person has a responsibility to contribute to the preservation and enhancement of the environment." *Id.* § 1-102(4).

368 27 Pohnpei Code § 1-109(1)(c).

criteria for the development of environmental impact statements and the payment for the preparation of such statements.³⁶⁹

Unlike in Chuuk, however, the Pohnpei statute does provide a definition of an EIS. An EIS is “a thorough study and intensive consideration of possible effects of a developmental action before it is undertaken.”³⁷⁰

Chuuk: The statute in the State of Chuuk recognizes that such assessments are necessary, while leaving the details to regulations; that is, a person shall submit an EIS to the Chuuk State Environment Protection Agency, in accordance with regulations established by the Agency, prior to taking “any major action which may substantially affect the quality of the environment.”³⁷¹

Yap: The statute in Yap State requires that an EIA study be conducted and that an EIS be submitted. The statute requires certain specific information be included in the EIS, including an environmental impact assessment study in accordance with the provisions of the law and the regulations established by the Agency.³⁷²

Kosrae: The Kosrae State statute employs language similar to Yap’s statute with respect to environmental impact studies and statements while being more specific about when development action will trigger such requirements—specifically, all actions that “may significantly affect, directly or indirectly, natural or historic resources, significantly alter the landscape or be incompatible with surrounding air, land or water uses.”³⁷³

4.3 Public Finance and Enabling Environment for Blue Economy Planning

The FSM’s national public finance system is established in the Financial Management Act of 1979 and its regulations, the most recent version of which were promulgated in 2019.³⁷⁴ The Secretary of Finance and Administration (SOFA) is generally responsible for implementing the financial management policy of the FSM, and also acts as the Treasurer to oversee and safeguard the National Treasury of the FSM, although the SOFA may delegate these responsibilities.³⁷⁵

The public auditor, whose existence, duties, and independence are specified in the FSM Constitution,³⁷⁶ is responsible for conducting the audits of every branch, department, office, agency, board, commission, bureau, and statutory authority of the FSMNG and of other public legal entities including, but not limited to, the States, their subdivisions, and nonprofit organizations receiving public funds from the FSMNG.³⁷⁷

In addition to a General Fund, the Act creates several types of funds for the deposit and maintenance of public reserves, all of which are subject to requirements on budgeting, expenditures, auditing, reporting, and other matters.

369 *Id.* § 1-109(2)(b).

370 *Id.* § 1-103(3).

371 22 Draft Chuuk State Code § 1006. Chuuk’s statute seems to be unique in its use of the term “substantially” as opposed to “significantly” when it comes to describing the type of activity that triggers the environmental assessment requirement. The statutes for the FSM and the three other States all use the term “significantly.”

372 18 Yap State Code § 1509.

373 Kosrae State Code §§ 19.201 & 19.202. Interestingly, Kosrae’s statute specifically mentions an impact—direct or indirect—on historic resources as triggering environmental impact reporting requirements.

374 Title 55 of the FSM Code is titled Government Finance and Contracts, with separate chapters devoted to budget procedures, financial management, government contracts, public auditor, revolving funds, the FSM trust fund, and the implementation of COFA funding.

375 55 FSM Code § 207.

376 FSM Const. art. XII.

377 55 FSM Code § 505. Section 502 provides a key definition detailing the broad scope of the public auditor’s reach by defining public funds from the FSMNG to mean “funds or reimbursements from the National Government arising from the National tax revenues, including National tax revenue shared with the states pursuant to article IX, section 5 of the Constitution of the [FSM], and all grants, subsidies, or contributions in the form of money, goods, or services from any source which are received from the [FSMNG] by appropriation law, or otherwise.” 55 FSM Code § 502.

Some funds particularly relevant to ocean management are created by other chapters of Title 55 of the FSM Code. Four of the myriad revolving funds are relevant:³⁷⁸ the Maritime Operations Revolving Fund,³⁷⁹ Fisheries Observer Revolving Fund,³⁸⁰ Aquaculture Revolving Fund,³⁸¹ and Maritime Surveillance Revolving Fund.³⁸² These four funds operate in similar fashion, differing mostly in their “purpose” section. Each fund specifically allows for the receipt and disbursement of funds, with the FSM president held responsible for their administration and annual reporting to the FSM Congress on their status.

The Act is implemented through Financial Management Regulations. Although the Financial Management Regulations of February 2019 exceed 80 pages, they contain only regulations specific to one of the four revolving funds—the Maritime Operations Revolving Fund relating to ocean management. These brief regulations designate a Maritime Fund Custodian to administer the fund,³⁸³ outline the Custodian’s duties,³⁸⁴ require creation of a Maritime Fund Account,³⁸⁵ identify what constitute authorized expenses,³⁸⁶ and specify the reporting requirements for the fund.³⁸⁷

Another consideration for blue economy planning is the systems that regulate foreign investment at the national and state levels. Section 2 of Title 32 of the FSM Code aims to “encourag[e] foreign investment within the territory of the FSM in a manner that serves the economic, social, and cultural interests of its citizens.”³⁸⁸ Title 32 requires that a noncitizen of the FSM must hold a valid Foreign Investment Permit, authorizing the noncitizen to engage in business in the FSM.³⁸⁹ Title 32 further sets out the categories of economic sectors that are of “national significance” and, therefore, fall within the jurisdiction of the FSMNG.³⁹⁰ See Table 5.

Table 5. Economic Sectors of National Significance.

Categories of Economic Sectors	Economic Sectors
Category A (National Red List): The set of economic sectors that are closed to foreign investment anywhere in the FSM.	(i) Arms manufacture. (ii) Minting of coins or printing of notes for use as currency. (iii) Business activities relating to nuclear power or radioactivity. (iv) Such other economic sectors as the Secretary of the FSM R&D may, after consultation with FSM States, designate in the FSM Foreign Investment Regulations as being on the National Red List. ³⁹¹

378 55 FSM Code § 601 et seq.

379 *Id.* §§ 613–617.

380 *Id.* §§ 630–634.

381 *Id.* §§ 655–659.

382 *Id.* §§ 679–682.

383 Financial Management Reg. 8.4.1 (Feb. 2019).

384 *Id.* Reg. 8.4.2.

385 *Id.* Reg. 8.4.3.

386 *Id.* Reg. 8.4.4.

387 *Id.* Reg. 8.4.5.

388 32 FSM Code § 202.

389 *Id.* § 204.

390 *Id.* § 205.

391 The most recent version of the FSM Foreign Investment Regulations has the following designations by the Secretary of the FSM R&D as being in Category A: “Business activities relating to manufacture or distribution of biological and chemical warfare components.” FSM Foreign Investment Reg. 2.1(1)(b)(i).

<p>Category B (National Amber List): The set of economic sectors that are subject to national government regulation, to which certain criteria, specified in the FSM Foreign Investment Regulations, must be met before a Foreign Investment Permit may be issued.</p>	<ul style="list-style-type: none"> (i) Banking, other than as defined in Title 29 of the FSM Code. (ii) Insurance. (iii) Such other economic sectors as the Secretary of the FSM R&D, following consultation with FSM States, may designate in the FSM Foreign Investment Regulations as being on the National Amber List.³⁹²
<p>Category C (National Green List): The set of economic sectors that are subject to national government regulation, to which there is no special criteria, but which need to be met before a Foreign Investment Permit is to be issued.</p>	<ul style="list-style-type: none"> (i) Banking, as defined in Title 29 of the FSM Code. (ii) Telecommunications. (iii) Fishing in the FSM's EEZ. (iv) International and interstate air transport. (v) International shipping. (vi) Such other economic sectors as the Secretary of the FSM R&D, following consultation with FSM States, may designate in the FSM Foreign Investment Regulations as being on the National Green List.³⁹³

Economic sectors not of special national significance are delegated to the jurisdiction of the state governments in respect of foreign investment regulation. These categories are to be established separately by each State by means of their respective State Foreign Investment Regulations.³⁹⁴

4.4 Climate Change

In the FSM, climate change and its impacts present an existential challenge. As a developing island nation, the FSM is highly vulnerable to the impacts of climate change in the form of environmental, social, and economic losses. The impacts of climate change already have arrived by way of saltwater intrusion from rising sea levels that inundate taro patches and foul freshwater supplies, as well as through the increase in extreme weather events, such as storm surges.

The FSM was among the first twenty countries in the world to formally ratify the 2015 Paris Agreement. On August 2, 2016, the FSM Congress adopted Congressional Resolution No. CR 19-237, ratifying as a treaty “the Paris Agreement concerning the need for an effective and progressive response to the urgent threat of climate change.”³⁹⁵ This marked the culmination of many years’ work by the FSM to make addressing climate change a priority for the country. The FSM had previously adopted a brief “Nationwide Climate Change Policy 2009,” which lays out a succinct policy statement:

The focus of this Policy is to mitigate climate change especially at the international level and adaptation at the national, state and community levels to reduce the FSM’s vulnerability to climate change adverse impacts. In this context, FSM reaffirms its social and cultural identity and its people’s rights and desire to continue to live sustainably on their islands.

³⁹² The most recent version of the FSM Foreign Investment Regulations has no designations by the Secretary of the FSM R&D as being in Category B. FSM Foreign Investment Reg. 2.2(1)(a).

³⁹³ The most recent version of the FSM Foreign Investment Regulations has the following designations by the Secretary of FSM R&D as being in Category C:

“(i) Exploitation of any resources (other than fishing) within the Exclusive Economic Zone and in or beneath the seabed and the continental shelf beyond the territorial sea; and

ii) Any business entity insofar as it is supplying goods or services pursuant to a contract with the National Government or under an international aid project approved by the National Government, except that no FSM Foreign Investment Permit shall be required or such activity in any State where the business entity holds an applicable State Foreign Investment Permit.” FSM Foreign Investment Reg. 2.3(b)

³⁹⁴ 32 FSM Code § 205(2).

³⁹⁵ See C. Res. 19-237, 19th FSM Cong. (2016).

In 2013, the FSM adopted a policy for nationwide integrated disaster risk management and climate change. That policy called for strong horizontal and vertical coordination between sectors and national, state, and community levels, using an “all-of-government,” “all-of-country” coordinated approach that emphasizes partnerships between the public and private sectors and civil society.

Also in 2013, the FSM Congress passed the FSM Climate Change Act. The brief Act was intended to further the provisions on climate change of the FSM’s Nationwide Integrated Disaster and Climate Change Policy (CC Policy) by introducing certain legal obligations for departments and agencies of the national government. The Act and the CC Policy were to provide the overarching framework for further detailed legislation on climate change.³⁹⁶ The Act states that by October 1, 2014, certain departments must prepare plans and policies on climate change; the DECEM is responsible for overall implementation; and the president is required to report to Congress annually on the progress of the implementation of the CC Policy, and recommend additional legislation where applicable and necessary. Although no subsequent climate change legislation has been recommended for passage by the FSM president, as discussed in Section 2.2.1 of this report, the FSM Congress, since 2015, has maintained a Special Committee on Climate Change and Environmental Issues to focus on the subject.

At the state level, in 2015 each of the four States adopted a Joint State Action Plan (JSAP) for Disaster Risk Management and Climate Change; each JSAP includes an action matrix for subsequent action.

For the FSM, like for many island nations, the impacts of climate change are very real and already are occurring. Thus, adaptation is a high priority. In submitting its First Intended Nationally Determined Contribution (INDC) under the Paris Agreement, the FSM observed:

As for all SIDS, adaptation constitutes a priority for FSM. It is therefore important that the Paris Agreement deals effectively with the adaptation needs in a post 2020 world. FSM does not see this INDC as the vehicle to address its adaptation needs in the post 2020 context, even if these need careful consideration and assessment. Such assessments are being made in the context of the Nation Wide Integrated Disaster Risk Management and Climate Change Policy 2013 and the FSM Climate Change Act 2014, as well as the joint state action plans for disaster risk management and climate change adaptation. All necessary efforts are being made to engage the country in the formulation and implementation of transformational adaptation investment plans to protect the country against climate change, through various sources of funding including from the UNFCCC [United Nations Framework Convention on Climate Change] financial mechanisms, the Green Climate Fund in particular.³⁹⁷

396 See FSM P.L. No. 18-34.

397 See “Federated States of Micronesia Intended Nationally Determined Contribution,” at www4.unfccc.int/sites/ndcstaging/PublishedDocuments/Micronesia%20First/Micronesia%20First%20NDC.pdf.

5 SECTORAL REGULATION OF ACTIVITIES IN THE MARINE ENVIRONMENT

5.1 Conservation

Section 5.1 considers the extent to which FSM law provides for marine conservation, with a dual focus on area-based protection and protection afforded to particular species.

The FSM Constitution contains no express conservation provisions. The state constitutions are more explicit in this regard. The **Pohnpei** Constitution provides that the governor will establish and faithfully execute comprehensive plans for the conservation of natural resources and the protection of the environment.³⁹⁸ The **Chuuk** Constitution charges the Legislature with providing, by law, for the development and enforcement of standards of environmental quality.³⁹⁹ The **Kosrae** Constitution recognizes a right to a healthful, clean, and stable environment, and the State, by law, must protect its environment, ecology, and natural resources from impairment in the public interest.⁴⁰⁰ Finally, the **Yap** Constitution allows that the State may provide for the protection, conservation, and sustainable development of agricultural, marine, mineral, forest, water, land, and other natural resources.⁴⁰¹

While legal protections for conservation exist at all levels of government, the FSM has traditionally emphasized the primacy of the States over the national government in adopting safeguards for biodiversity.⁴⁰² There has been increased activity at the national level in recent years, including through the issuance of national policy commitments.

In 2002, the FSM released a National Biodiversity Strategy and Action Plan (NBSAP), which continues to provide the foundation for FSM conservation policy.⁴⁰³ Pursuant to that document, the nation's four guiding principles for biodiversity conservation are:

- sovereign rights (the people of the FSM hold the sovereign rights over their biological diversity)
- a community-based approach (the community is the basic management unit for biodiversity in the FSM, and communities have the right and responsibility to manage and sustainably develop their biodiversity resources for their benefit and that of future generations);
- traditional heritage (the people of the FSM will build upon and utilize the rich traditional knowledge and experience of their ancestors to devise and implement strategies for the sustainable stewardship of the FSM's rich natural resources); and
- ecological integrity (the people of the FSM will strive to maintain and improve the diversity and quality of their ecosystems, conserving biodiversity *in-situ* while enhancing ecosystems' capacity to adapt to change).⁴⁰⁴

398 Pohnpei Const. art. 7 § 1.

399 Chuuk Const. art. XI § 1.

400 Kosrae Const. art. XI § 1. The waters, land, and other natural resources within the marine space of the State are public property, the use of which the state government is required to regulate by law in the public interest. *Id.* § 4.

401 Yap Const. art. XIII § 1.

402 It is "a prerogative of each State to enact [its] own legislation in line with [its] powers as mentioned in the FSM Constitution to address all issues relating to the conservation of biodiversity." FSM, National Biodiversity Strategy and Action Plan (NBSAP) 9, March 2002. Still, the line between national and state protections has not always been clear, leading to gaps and overlap. "The responsibility for environmental issues is shared between the FSM National Government and the individual FSM State governments. This sharing of responsibility has at times resulted in legislation that appears duplicated at the State and National levels. It has also resulted in gaps in legislation and areas in which the location of responsibility between the State and National Governments has been less than clear. The States take the lead role in ensuring that development is avoided in vulnerable areas and ensuring that critical natural systems are protected. Each State has made efforts to control development and manage natural resources through the creation of land use plans, coastal zone plans, legislation and regulations. The National Government provides guidance and technical assistance to the States when needed and requested on matters related to planning, economic development, natural resources, fisheries, and the environment []." NBSAP at 9.

403 The NBSAP was intended to be the FSM's primary step in satisfying its obligations under the Convention on Biological Diversity (CBD). NBSAP at 10–11.

404 NBSAP at 19.

The national plan goes on to articulate two key strategic goals with respect to ecosystem management: ensuring that a full representation of the FSM's marine, freshwater, and terrestrial ecosystems are protected, conserved, and sustainably managed, including selected areas designated for total protection;⁴⁰⁵ and ensuring that the FSM's native, endemic, threatened, and traditionally important species are protected and used sustainably for the benefit of the people of the FSM and the global community.⁴⁰⁶

Additionally, the FSM has committed to achieving UN SDG 14 (conserve and sustainably use the oceans, seas, and marine resources);⁴⁰⁷ and, pursuant to the MC—a regional initiative launched in 2006 by the governments of the FSM, Palau, and the RMI—to effectively conserve thirty percent of nearshore marine resources and twenty percent of terrestrial resources across Micronesia.⁴⁰⁸ The FSM also is a party to the Convention on Biological Diversity (CBD).

Finally, each of the four FSM States has developed its own State Biodiversity Strategy & Action Plans (SBSAPs), which, together with the NBSAP, are intended to provide the framework for biodiversity conservation, resource, waste, pollution and energy management in each respective State: Pohnpei,⁴⁰⁹ Chuuk,⁴¹⁰ Kosrae,⁴¹¹ and Yap.⁴¹²

5.1.1 Protected Areas/Marine Protected Areas

The FSM has no protected area legislation at the national level. Instead, the FSM relies on a recently adopted nationwide policy framework for protected areas that, in turn, aggregates and supports state and local protected area mechanisms.

To date, a large number of marine and terrestrial areas have been designated throughout the FSM, across all four States and pursuant to various legal authorities. A complete, current listing of all such areas is not presently available. However, FSM DR&D, working through the PAN process and the Micronesia Challenge, is conducting a comprehensive review and verification of the FSM's protected areas, with results anticipated by early 2022.⁴¹³

405 NBSAP at 21–23.

406 NBSAP at 24–26. Similarly, the FSM's current Strategic Development Plan includes among its strategic goals for improving the environment: to manage and protect natural resources/protect, conserve, and sustainably manage a full and functional representation of the FSM's marine, freshwater, and terrestrial ecosystems (Strategic Goal 5); and to improve environmental awareness and education and increase involvement of citizenry of the FSM in conserving their country's natural resources (Strategic Goal 6). FSM, Strategic Development Plan: 2004–2023, at 305–14. For further information, see <https://fsm-data.sprep.org/dataset/fsm-strategic-development-plan-2004-2023>.

407 Specifically, the FSM has prioritized SDG Target 14.5 (conserve at least ten percent of coastal and marine areas, consistent with national and international law and based on the best available scientific information); SDG Target 14.6 (prohibit certain forms of fisheries subsidies that contribute to overfishing, and eliminate subsidies that contribute to IUU [illegal, unreported and unregulated] fishing); SDG Target 14.b (provide access for small-scale artisanal fishers to marine resources and markets); and SDG Target 14.c (enhance the conservation and sustainable use of oceans and their resources by implementing international law as reflected in UNCLOS). FSM. 2020. First Voluntary National Review on the 2030 Agenda for Sustainable Development. p 103. Palikir, Pohnpei: SDG Working Group, Department of Resource & Development, Government of FSM.

408 See UN Sustainable Development Goals, “Micronesia Challenge,” at <https://sustainabledevelopment.un.org/partnership/?p=2502>.

409 See Pohnpei State: Strategic Action Plan (2004), at www.cbd.int/doc/nbsap/sbsap/fm-sbsap-pohnpei-en.pdf.

410 See Chuuk State Biodiversity Strategy and Action Plan (2004), at www.cbd.int/doc/nbsap/sbsap/fm-sbsap-chuuk-en.pdf.

411 See Kosrae State Biodiversity Strategy and Action Plan (2004), at www.cbd.int/doc/nbsap/sbsap/fm-sbsap-kosrae-en.pdf.

412 See Yap State Biodiversity Strategy and Action Plan (2004), at www.cbd.int/doc/nbsap/sbsap/fm-sbsap-yap-en.pdf.

413 See also FSM, “Sixth National Report to the Convention on Biological Diversity” (February 2020), at 51 (characterizing the PAN and its present reach).

5.1.1.1 National Protected Areas Network (PAN) Policy Framework

In 2018, Congress passed a resolution “approving and adopting” the 2015 National Protected Areas Network (PAN) Policy Framework.⁴¹⁴ The framework is intended to establish a transparent, fair, and efficient system to govern a nationwide protected areas network.⁴¹⁵ The authority for the policy derives from executive order⁴¹⁶ and from a number of the FSM’s international commitments.⁴¹⁷

The PAN Policy Framework reflects national and state collaboration. The PAN is the aggregate of protected areas, reserves, and refuges that have been designated by the FSM R&D as such, in accordance with the PAN Policy Framework.⁴¹⁸ A “protected area” under the framework is an area “designated by a state in accordance with its procedures and/or legislation to be protected.”⁴¹⁹ The authority of state governments over the territorial sea is reaffirmed,⁴²⁰ and the framework envisions the FSMNG assisting state and local governments in area-based protection efforts:

State, municipal and/or community designated terrestrial, freshwater, and marine areas that support unique communities of natural plants, animals, and other types of organisms, areas of high biodiversity, significant geological sites, as well as other important habitats suitable for preservation must be encouraged, recognized, and supported by the national government. A nationwide Protected Areas Network will allow the national government to assist states and communities in the protection of significant areas of biodiversity, key habitats, and other valuable resources that are important to the future stability and health of the FSM. It will also assist the national government, states and other partners to leverage and secure technical and funding partnerships from regional and international entities.⁴²¹

The PAN Policy Framework is to be administered by the FSM R&D, in conjunction with state focal points, the Micronesia Conservation Trust (MCT), and the Technical Committee.⁴²² The FSM R&D administers and implements the PAN at the national level.⁴²³ The secretary of the department is the head official for the PAN;⁴²⁴ in addition, there is a national PAN coordinator.⁴²⁵

States, in turn, are “encouraged” to participate in the PAN. Participating States select a state focal point, one who operates in accordance with all applicable state legislation, regulations, and policies regarding protected areas set within the State.⁴²⁶

414 C.R. 20-87 (2018).

415 Before the Policy Framework can take effect, the FSM R&D and any state in which the Policy Framework is to be applied must indicate their consent. Similarly, any amendments are subject to consent before they are effective. PAN Policy Framework at 26–27. The authors understand that each State has accepted a PAN coordinator who is helping States and communities to nominate protected area sites to the national PAN. These issues are discussed *infra*.

416 E.O. 1 (establishing roles and responsibility of the FSM R&D).

417 These include the FSM’s commitments under the CBD, UNFCCC, and UN Convention to Combat Desertification (UNCCD), as well as pursuant to the MC Initiative. See PAN Policy Framework § 1. According to a contemporaneous legislative committee report, the FSM is further committed to achieving three main targets: (1) to establish a system of protected area networks; (2) to effectively conserve at least thirty percent of nearshore marine resources and twenty percent of terrestrial resources across Micronesia by 2020; and (3) to raise US\$29 million for the FSM’s MC Endowment Fund to sustain these efforts in perpetuity. Standing Comm. Rpt. 20-85, re C.R. 20-87/Comm. on Resources and Dev’t, Sept. 26, 2018. Subsequently, during the 24th Micronesia Island Forum in 2019, leaders endorsed new MC goals of effectively managing fifty percent of marine resources, including the EEZ, and thirty percent of terrestrial resources by 2030. For further information, see <http://themicronesiachallenge.blogspot.com/p/about.html>.

418 PAN Policy Framework § 3.

419 *Id.* § 3 (emphasis added).

420 “As the governors of all living and non-living resources from land to twelve nautical miles seaward from the traditional baseline, state governments bear the principal responsibility for the management, protection, and development of all resources within their respective boundaries. States, therefore, must be encouraged and supported by the national government in their efforts to protect biodiversity in the FSM through the creation of protected areas. This process must also involve non-governmental organizations (NGOs), municipalities, traditional leaders, communities and individual resource owners in order to be successful.” *Id.* § 2.2.

421 *Id.* § 2.2.

422 *Id.* § 4.

423 *Id.* § 4.1.

424 *Id.* § 4.1.a.

425 *Id.* § 4.1.b.

426 *Id.* § 4.2.

A Management Unit is the group of people responsible for developing and implementing the management plan for a particular protected area. Management Units, depending on the resource tenure of the site, may include state government representatives, NGOs, community members, municipal officials, and private resource owners.⁴²⁷

A Technical Committee, whose members are nominated by the States and are confirmed by the secretary, evaluates applications for Network membership as well as requests for funding.⁴²⁸

In the event of disputes among key PAN participants, a mediation-based dispute resolution process is provided by the PAN Policy Framework.⁴²⁹

A site may become part of the Network in one of two ways: by automatic inclusion or through an application process, as follows:

- When a site has been recognized legally by a State as a refuge, protected area, or preserve, and it has a management plan that complies with the PAN Policy Framework, the site automatically acquires PAN site status upon the request of the governor of that State to the secretary.⁴³⁰
- In all other instances, a State, NGO, municipality, community, or combination thereof may apply to the national PAN coordinator to have an area included in the Network.⁴³¹ The PAN Policy Framework establishes an application process.⁴³² Among the information to be provided by an applicant is a statement as to why the site should be included in the PAN, including supporting documentation that the site is recognized as a protected area, either by the State in which it is located through a municipal ordinance, by community declaration, or through traditional practice.⁴³³ The Technical Committee reviews applications and makes recommendations to the secretary, who is charged with granting or denying the application by written order, to include findings of fact.⁴³⁴ Applications are evaluated based on a detailed set of criteria: key sites (i.e., features of the site); comprehensiveness (i.e., fit with the PAN and with national and state policies); balance; adequacy; representativeness; resiliency; efficiency; feasibility; sustainability; and socioeconomic criteria.⁴³⁵

Each PAN site remains part of the Network in perpetuity, unless a withdrawal procedure is undertaken by either the secretary or the Management Unit.⁴³⁶

Pursuant to the PAN Policy Framework, management purposes and use categories are to be used for classifying protected areas in the Network. A Management Unit must identify in its management plan for a PAN site the appropriate management and use categories, relying on the lists and explanations contained in Appendix 1 of the Policy Framework.⁴³⁷ Management Units are to use, at a minimum, standard regional monitoring guidelines and protocols developed through the MC.⁴³⁸

Management Units must develop or revise management plans for each protected area incorporated into the PAN within 12 months after designation; the PAN Policy Framework provides a set of minimum criteria for a management plan. Management Units must submit initial and revised management plans to the state focal point for review and approval.⁴³⁹

427 *Id.* §§ 3 & 4.3. Any type of site, regardless of ownership status, may apply to join the PAN. *Id.* § 4.3.

428 *Id.* § 4.4.

429 *Id.* § 9.4.

430 *Id.* § 5.

431 *Id.* §§ 3 & 5.1

432 *Id.* §§ 5.1 to 5.6.

433 *Id.* § 5.1.

434 *Id.* §§ 5.3 & 5.4. An applicant may seek reconsideration by the secretary of an order of denial. *Id.* § 5.5.

435 *Id.* § 5.6.

436 *Id.* §§ 9.1 to 9.3.

437 *Id.* § 6.1. The use categories listed in Appendix 1 are intended to reflect the traditional, local, and state uses of a protected area, and are grouped as follows: restricted nonextractive uses, nonextractive uses, and sustainable uses. *Id.* at Appendix 1 § 1.1. The management categories listed in the Appendix track the International Union for Conservation of Nature's (IUCN) management categories for protected areas (I–VI). *Id.* at Appendix 1 § 1.2.

438 PAN Policy Framework § 6.2.

439 *Id.* § 6.3.

The Policy Framework envisions that funding for the PAN could come from a wide range of potential sources (governmental and non-governmental, domestic and foreign). The key source of funding, however, is the FSM's MC Endowment Fund, which is administered by MCT.⁴⁴⁰

Membership in the PAN affords Management Units with the opportunity to submit annual requests for funding site operations.⁴⁴¹ Additionally, the Technical Committee may make available a competitive grant pool for projects that support the wider Network.⁴⁴²

The FSM R&D collects information and is responsible for recordkeeping requirements,⁴⁴³ reporting requirements,⁴⁴⁴ and monitoring and evaluation requirements⁴⁴⁵ that relate to the performance of the PAN.

5.1.1.2 State protected area laws

Prior to the FSM Congress's adoption of the National PAN Policy Framework, the States of Pohnpei, Chuuk, and Kosrae had already adopted protected area legislation—with the recent 2017 Chuuk legislation linked directly to the new nationwide PAN framework. In addition, Pohnpei has recently introduced PAN-specific legislation. These state protected area laws are discussed below.⁴⁴⁶

Pohnpei: Legislation has been recently introduced (but not yet enacted) in Pohnpei that would establish the Pohnpei Protected Areas Network.⁴⁴⁷ This legislation would create a PAN Office administration within the State's Department of Resources and Development.⁴⁴⁸ Furthermore, the legislation would create two categories of protected areas: subsistence only and high level protection.⁴⁴⁹ The proposed legislation would allow for the Director of the Department of Resources and Development to receive applications from private individuals, local governments, non-profit organizations and other entities for the inclusion of new protected areas.⁴⁵⁰ The law would require the PAN Office to be advised by a Technical Advisory Committee, which would consist of the Chairperson for the Pohnpei EPA Board, Administrator of OFA, Chief of the Divisions of Fish and Wildlife of the Department of Public Safety, Chief of the Division of Public Lands and the Department of Land, and three additional persons chosen by the Government from the

440 PAN Policy Framework § 7.1. Other potential funds sourced for the PAN may be deposited directly into the FSM's existing MC Endowment Fund, or those other funds could be deposited into an FSM PAN Fund that includes funding streams in addition to the FSM's MC Endowment Fund. *Id.*

MCT, as the administrator of the FSM's MC Endowment Fund, is responsible for issuing and managing agreements, grants, or contracts, as applicable, to all organizations that receive Endowment funds. *Id.* § 7.9. The authors understand that an FSM PAN Fund, if established, would be controlled by the Government.

441 PAN Policy Framework § 7. The funding request process, from the application to the evaluation stage, is described in the Policy Framework. The Technical Committee seeks consensus-based decisions and makes final recommendations to the secretary. *Id.* § 7.2. The secretary must issue orders to include findings of fact that reflect the Technical Committee's funding decisions. *Id.* § 7.7. Orders may be contested. *Id.* § 7.8.

442 PAN Policy Framework § 7. Any such projects must support the growth, consolidation, and effectiveness of the PAN as a whole. *Id.* § 7.3. The PAN Policy Framework establishes an overall process to govern competitive solicitation, applications, and awards. *Id.* §§ 7.3 to 7.6. The Technical Committee seeks consensus-based decisions and makes final recommendations to the secretary. *Id.* § 7.4. The secretary must issue orders to include findings of fact that reflect the Technical Committee's funding decisions. *Id.* § 7.7. Orders may be contested. *Id.* § 7.8.

443 PAN Policy Framework §§ 8, 8.1. The FSM R&D maintains national-level records relating to the PAN. Each Management Unit is responsible for recordkeeping concerning its designated site and must, at least annually, provide a copy of these records to the state focal point. *Id.* § 8.1.

444 The FSM R&D is charged with issuing an annual summary report on PAN implementation. *Id.* § 8.4.

445 PAN Policy Framework §§ 8, 8.2. The secretary or a designee keeps records of and monitors the finances of the PAN. MCT, as the administrator of the FSM MC Endowment Fund, undergoes annual audits, as described in the FSM Country Program Strategy. *Id.* § 8.2.

All entities receiving PAN funding must satisfy monitoring and evaluation requirements. *Id.* § 8.3.

446 Yap State has not enacted protected area legislation. Although the Governor promulgated new PAN regulations in 2019, pursuant to 3 Yap State Code § 177, the authors understand that those regulations have not been placed on file with the Legislature and have not been given effect. Certain community initiated and endorsed managed/protected areas are in place in Yap State through traditional authority approval.

447 See Pohnpei Protected Areas Network Act of 2020, L.B. no 28-20 (proposing to amend tit. 26 of the Pohnpei Code by adding a new ch. 1) (introduced in the 10th Pohnpei Leg., 1st Reg. Sess. 2020).

448 *Id.* § 1-202.

449 *Id.* § 1-203.

450 *Id.* § 1-205.

private sector, including academicians and prominent persons from NGOs, who possess deep knowledge and interest in the conservation of natural resources.⁴⁵¹ The law also would create a special revenue and expenditure fund titled the “Pohnpei Protected Area Network Fund,” which would be separate from all other Treasury funds.⁴⁵²

Pohnpei already currently has on the books protected areas legislation: the State’s Marine Sanctuary and Wildlife Refuge Act of 1999 provides for the identification and designation of ecologically significant areas of the terrestrial and marine environment as state marine sanctuaries and wildlife refuges, and further provides authority for their comprehensive and coordinated conservation and management.⁴⁵³ The Act was amended as recently as 2017 to add protected areas.

The Act establishes the Pohnpei State Marine Sanctuary and Wildlife Refuge System (hereafter, System). The System is administered by the director of the DR&D.⁴⁵⁴ Areas included in the System are designated by law and remain within the System until otherwise specified by law.⁴⁵⁵ Within sixty days of an area being designated for inclusion in the System, the director is required to issue regulations as necessary to administer the area. In so doing, the director must consult with the traditional leaders and the leaders of the local municipal government for the area in which the designated area is located.⁴⁵⁶ The Act does not spell out a specific process for designating an area for inclusion in the System.

No state property within the System, including mangrove areas, may be disturbed or injured,⁴⁵⁷ and mining and dredging are prohibited.⁴⁵⁸ Commercial exploitation of resources within the boundaries of the System is prohibited.⁴⁵⁹ Various other activities (including fishing and taking wildlife) are prohibited within the boundaries of an area designated as part of the System, unless otherwise permitted by regulation.⁴⁶⁰

Nondestructive scientific investigation may be conducted by qualified institutions and individuals within the System, subject to prior written approval from the director, pursuant to regulations issued under the Act.⁴⁶¹ More generally, the director, by regulation, may permit the use of areas within the System for noncommercial recreational hunting and fishing, subsistence fishing, public recreation, and scientific research, where such uses are compatible with the purposes for which the areas were established.⁴⁶²

Following designation of an area, the director of the System is required to prepare an inventory of the area’s scenic, natural, and cultural features.⁴⁶³ The director must also prepare a general plan for the area (essentially a management plan).⁴⁶⁴

The Act provides that funds may be appropriated annually to support the System.⁴⁶⁵

Violations of the Act are subject to imposition of a civil penalty of US\$20,000 per violation.⁴⁶⁶ Criminal penalties for knowingly violating the Act, its regulations, or a permit include a fine of US\$50,000 and imprisonment of one year.⁴⁶⁷ The attorney general may bring an action to enjoin an imminent or continuing

451 *Id.* § 1-401.

452 *Id.* § 1-601.

453 26 Pohnpei Code § 5-102. The Act is supported by legislative findings and intended to achieve a range of beneficial purposes. *Id.* §§ 5-101 to 5-102.

454 *Id.* § 5-105. In administering the System, the director may enter into contracts for management of areas, accept funds to support the System, and acquire lands, waters, or interests therein. *Id.* § 5-106(1).

455 *Id.* § 5-105(1). For public lands located upland (above mean high tide mark), the Pohnpei Public Lands Trust Board of Trustees is authorized to vest control and use rights in the State, through the DR&D. *Id.* § 5-105(2).

456 *Id.* § 5-106(2).

457 *Id.* § 5-107(1)(a).

458 *Id.* § 5-107(1)(d).

459 *Id.* § 5-107(2).

460 *Id.* § 5-107(1)(b), (c), (e), (f).

461 *Id.* § 5-107(2).

462 *Id.* § 5-108(1).

463 *Id.* § 5-109.

464 *Id.* § 5-110.

465 *Id.* § 5-111.

466 *Id.* § 5-112.

467 *Id.* § 5-113.

violation.⁴⁶⁸ A vessel used in the commission of a violation is liable in rem.⁴⁶⁹ The Act contains a citizen suit provision pursuant to which “any person” may seek to enjoin, on his own behalf, a violation of the Act’s prohibition provisions.⁴⁷⁰

The Act, by its terms, establishes numerous named marine sanctuaries, a marine park, a marine protected area, two stingray sanctuaries, and a mangrove forest reserve.⁴⁷¹ The general legal structuring of each area is similar: establishing the area; identifying its specific purposes; delineating the boundaries of the area; and authorizing the director to promulgate regulations to provide specific types of protection within each area.⁴⁷²

Pursuant to the Pohnpei Marine Resources Conservation Act of 1981, the director of DR&D is required to identify specific marine areas that are known to be congregation sites of sea turtles to be sea turtle conservation zones, from which no sea turtles may be taken, injured, or killed—or their parts taken.⁴⁷³ The statute establishes a process by which such areas were to be proposed in legislative form by 2020.⁴⁷⁴ Further provision is made for defining, publicizing, and marking these zones.⁴⁷⁵ All sea turtle conservation zones are to be recorded in a sea turtle conservation zone registry maintained at the headquarters of DR&D and the OFA.⁴⁷⁶

Chuuk: The Chuuk Protected Areas Network Act of 2017 establishes a statewide network of protected areas to be managed systematically and links directly to the nationwide PAN framework.⁴⁷⁷ Although sites that join the PAN are administered by the State with the cooperation of key stakeholders, the intent of the Act is to encourage the traditional conservation practices of “mechen” and “pwaaw,” to recognize continued traditional ownership and use rights for clans, lineages, and individuals, and to ensure the greatest possible level of community input and support.⁴⁷⁸ Community and traditional consultation are integral to the Act; e.g., the Act requires the prior informed consent of traditional owners for including a site in the State PAN.⁴⁷⁹

The Director of the Department of Marine Resources is charged with designating areas under a set of uniform categories that encompass a range of management purposes and uses.⁴⁸⁰ All existing marine parks in Chuuk were made part of the Chuuk PAN by the Act.⁴⁸¹ Future marine and terrestrial areas are to be designated pursuant to a procedure established under the Act; the procedure involves local communities working through the traditional system, the Department of Marine Resources, and review and approval by both the Governor and the Legislature.⁴⁸² The Department is also assigned extensive responsibilities with respect to the PAN and the administration of *marine protected areas*, including: enforcement (concurrently with the Department of Public Safety, traditional owners and leaders, and municipal governments); the promulgation of rules; and the development of a system-wide management plan as well as individual site

468 *Id.* § 5-115. Each day of a continuing violation constitutes a separate offense with respect to civil and criminal penalties. *Id.* § 5-114.

469 *Id.* § 5-116.

470 *Id.* § 5-117.

471 *Id.* §§ 5-118 to 5-132. Interestingly, Pohnpei state forestry legislation separately contemplates the designation of Pohnpei mangrove forest reserves. See 6 Pohnpei Code § 4-107(1). Pohnpei state law also allows for the setting aside of government lands as forest reserves, 26 Pohnpei Code § 4-114, and the setting aside of certain areas of public land as watershed reserves, 26 Pohnpei Code § 4-115. These later area-based protections appear to be entirely terrestrial in nature.

472 Four specified areas—Oroluk Marine Sanctuary, Minto Reef Marine Sanctuary, Senpehn/Lehdau Mangrove Forest Reserve, and Nanwap Marine Protection Area—are required to be granted “the highest level of protection available within the System.” 26 Pohnpei Code §§ 5-118(5) (Oroluk), 5-119(4) (Minto Reef); 5-130(5) (Senpehn/Lehdau), & 5-131(4) (Nanwap).

473 26 Pohnpei Code § 6-203(1).

474 *Id.*

475 *Id.* § 6-203(2), (3), (4).

476 *Id.* § 6-203(5). The registry must be made publicly available in print and online. *Id.* § 6-203(6).

477 Chuuk State Law No. 14-17-05 §§ 1 & 4.

478 *Id.* § 1.

479 See, e.g., *id.* § 6(2)(b).

480 *Id.* § 5. The Director also administers the Chuuk State PAN. *Id.* § 8.

481 *Id.* § 6(1).

482 *Id.* § 6(2).

management plans.⁴⁸³ Each protected area is regulated and administered by a local management unit, whose responsibilities are further defined by the Act.⁴⁸⁴

The Act establishes a range of prohibitions within the Chuuk PAN, including the harvesting of any natural resource; the take of any animal (including fish) or its eggs; fishing and hunting; and dredging and mining.⁴⁸⁵ Commercial exploitation of natural resources within the boundaries of the PAN is prohibited, subject to exceptions for scientific investigation and traditional ownership and use rights.⁴⁸⁶ Enforcement is conducted jointly by the Department of Marine Resources, the Department of Agriculture, and the Department of Public Safety—though the Act provides that other persons may be deputized on a volunteer basis.⁴⁸⁷ The Act provides for injunctive relief and civil and criminal penalties.⁴⁸⁸ A vessel used to violate the Act is liable in rem.⁴⁸⁹

Kosrae: Here, a network of protected areas—terrestrial as well as marine—was created by the Protected Area Act of 2010.⁴⁹⁰ Kosrae legislation is structured similar to that of the Pohnpei statute in that it provides for the establishment, operation, funding, and policing of protected areas.⁴⁹¹ The Act also contains several preliminary sections that relate to the protection of “Mangrove Forests,”⁴⁹² “Watershed Forests,”⁴⁹³ and “Wetland Forests,”⁴⁹⁴ as well as “Harvesting from State Owned Forests.”⁴⁹⁵

The Act establishes the Utwe Biosphere Reserve, the main objective of which is to preserve and to prohibit any human activities (particularly the harvesting of natural resources) within the core areas of the reserve.⁴⁹⁶ The reserve is a marine protected area, administered by the Kosrae Island Resource Management Authority (KIRMA).⁴⁹⁷

5.1.2 Protection of Flora and Fauna

At the national level, the FSM’s endangered species legislation, like much of its marine protection legislation, dates to the Trust Territory era. Recent shark protections were legislated at the national level as amendments to the fisheries law. The FSM has no national level wildlife law or forestry law, but substantial legislation relating to the protection of flora and fauna can be found at the state level.

5.1.1.1 Endangered species

Pursuant to the Trust Territory Endangered Species Act of 1975, the then-Congress of Micronesia found that certain species of plants and animals were threatened with extinction, or were in danger of becoming extinct, in the Trust Territory. As such, the Congress stated the policy of the government to foster the well-

483 *Id.* § 9. The Department of Agriculture is granted similar authority with respect to *terrestrial protected areas*. *Id.* § 10. Management planning for the Chuuk PAN is governed by §§ 15 (systemic management and management planning) & 16 (individual site management and management planning).

484 *Id.* §§ 11–12. A local management unit consists of at least five members, and a majority of the members must represent land, reef, or property owners (unless the protected area is entirely state-owned). Remaining members must be approved by the community. *Id.* § 11. The exercise of traditional ownership and use rights is subject to permit, issued by the Director as directed by local management units. *Id.* § 12(1).

485 *Id.* § 13(1).

486 *Id.* § 13(2).

487 *Id.* § 17.

488 *Id.* §§ 18–22. The Director may also require a violator to perform corrective or restorative action to restore a subject site to its original condition as nearly as possible. *Id.* § 18(2).

489 *Id.* § 23.

490 Kosrae State Code § 19.801 et seq.

491 *Id.* §§ 19.810 to 19.823

492 *Id.* § 19.806.

493 *Id.* § 19.807.

494 *Id.* § 19.808.

495 *Id.* § 19.809.

496 *Id.* § 19.824(2).

497 *Id.* § 19.824(1).

being of these plants and animals by whatever means necessary to prevent the extinction of any species or subspecies from the Territory's islands or surrounding waters.⁴⁹⁸

Subject to certain exceptions, it is prohibited for any person to take, engage in commercial activity with, possess, or export any threatened or endangered species of plant or animal, or its parts, as listed in the Act or by regulation.⁴⁹⁹ Exceptions to the blanket prohibition include scientific use under permit;⁵⁰⁰ cases of public nuisance or public safety;⁵⁰¹ animals lawfully taken and propagated under controlled conditions (such as mariculture);⁵⁰² subsistence use;⁵⁰³ innocent possession;⁵⁰⁴ and possession prior to enactment of the law (nonliving species or parts only).⁵⁰⁵ All exceptions, other than the subsistence use exception, are to be applied in accordance with regulations.

The Act prohibits the import of any threatened or endangered species of plant or animal, or its parts, as listed under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).⁵⁰⁶ It is further prohibited to import other "exotic" (presumably meaning non-native) plants and animals not already established in the then-Trust Territory, except under permit by the director as defined in the regulations.⁵⁰⁷

The Act is administered by the director of FSM R&D, through the office of the chief conservationist within the agency.⁵⁰⁸ The director has the authority to issue implementing regulations under the Act—including a list of threatened and endangered species.⁵⁰⁹

The FSM R&D director may set up conservation programs that include, when necessary, the acquisition of land or aquatic habitat, or an interest therein, for the conservation of resident endangered or threatened species.⁵¹⁰ The director also may establish conservation programs aimed at conserving endangered and threatened species, including research programs to define which species are, in fact, endangered or threatened.⁵¹¹

Penalties for violating any provision of the Act include a US\$10,000 fine and one year of imprisonment.⁵¹² Additionally, the government may confiscate any plant or animal, or any part, as well as personal property (including weapons, nets and traps, and vehicles) possessed or used in violation of the Act. The government must dispose of such articles in accordance with regulations.⁵¹³

Endangered species legislation also has been enacted at the state level. The Pohnpei Endangered Species Act of 1975⁵¹⁴ substantially tracks in its language and operation the national (Trust Territory era) endangered species law. The Act is administered by the director of FSM R&D through its Division of Natural Resource Management.⁵¹⁵ The take prohibition does not apply where the director has determined that the taking from certain islands of certain species of threatened or endangered plants or animals for "subsistence

498 23 FSM Code §§ 302 & 303. The Act broadly defines "animal," "plant," and "species," and it expressly includes, without limitation, marine species such as corals. *Id.* § 305(1), (9), (11).

499 *Id.* § 306. An "endangered" species is one that is in danger of extinction throughout all or a significant portion of its range. A "threatened" species is one that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. *Id.* § 305(4), (13).

500 *Id.* § 306.

501 *Id.* § 307.

502 *Id.* § 308.

503 *Id.* § 309.

504 *Id.* § 310.

505 *Id.* § 311.

506 *Id.* § 314.

507 *Id.* § 315. Beneficial insects and biological control microorganisms may be imported in accordance with plant and animal quarantine laws. *Id.*

508 *Id.* § 304.

509 *Id.* § 313.

510 *Id.* § 312.

511 *Id.* § 304.

512 *Id.* § 317.

513 *Id.* § 316.

514 Pohnpei Code tit. 26 ch. 2.

515 26 Pohnpei Code § 2-104.

food” or for “old traditional uses” does not further endanger the species involved, provided that the species or its parts are neither subjected to commercial activity nor exported, and that the exception covers only bona fide indigenous inhabitants of the islands excepted by the director.⁵¹⁶ The director has the authority to issue implementing regulations under the Act, subject to approval by the governor—including a list of threatened and endangered species for Pohnpei.⁵¹⁷

Kosrae law provides simply that, by regulation, the Development Review Commission “states an endangered species and provides for its protection.”⁵¹⁸

5.1.2.2 Marine species and other wildlife

Legislation from the Trust Territory era provides national level protection, much of it qualified, for various marine species.⁵¹⁹ States also provide a range of local protections within their respective jurisdictions. Sharks receive more robust protection in the FSM than most species and are separately addressed in Section 5.1.2.3 of this report.

Subject to narrow exception,⁵²⁰ it is prohibited in the waters of the former Trust Territory to knowingly catch fish or any other marine life by means of explosives, poisons, chemicals, or other substances that kill fish or marine life; to knowingly possess or sell fish or marine life so caught; or to knowingly place such articles or substances.⁵²¹ A violator of these prohibitions is subject to, upon conviction, a fine of between US\$100 and US\$2,000, and imprisonment of between six months and two years.⁵²²

Various marine species receive targeted protections under FSM law.

Marine mammals. No marine mammal may be taken or killed by a commercial fishing party or for commercial purposes, but they may be killed for traditional purposes. This commercial prohibition covers, but is not limited to, porpoises, whales, seals, and dugongs.⁵²³

Sea turtles. Except as specifically authorized by the president, for scientific purposes, it is prohibited to take or intentionally kill a hawksbill turtle or sea turtle while it is on shore, or to take her eggs. It is unlawful to take or kill a hawksbill turtle whose shell measures less than 27 inches (when measured over the top of the carapace shell, lengthwise) or a green turtle whose shell measures less than 34 inches. No sea turtle of any size may be taken during the closed season: June 1 to August 31, and December 1 to January 31.⁵²⁴

Sponges. No sponges that have been artificially planted or cultivated may be taken or molested, except by permission of the president.⁵²⁵

Black-lip mother-of-pearl oyster shell. No black-lip mother-of-pearl oyster shell, *Pinctada margaritifera*, may be taken during the closed season: August 1 to December 31. No such shell may be taken at any time if it is less than six inches in minimum diameter, measured by the longest dimension across the outside of the shell. Such shells of any size, however, may be taken at any time for scientific purposes when specifically authorized by the president.⁵²⁶

516 *Id.* § 2-107(4).

517 *Id.* § 2-108.

518 Kosrae State Code § 11.1601.

519 See generally FSM Code tit. 23 ch. 1. Title 23 is the Code’s resource conservation title.

520 The state governor (as successor to the district administrator under former Trust Territory law) may grant written permission to use an otherwise prohibited means of fishing, where the purpose is to avoid waste or loss and where consumption or sale of the fish or other marine life is not harmful or hazardous to health and human life. 23 FSM Code § 102.

521 23 FSM Code § 101(1), (2). The legislation gives a broad, open-ended definition to “poisons,” “chemicals,” and “substances.” *Id.* § 101(3). The prohibition is inapplicable, however, to the use of local roots, nuts, or plants that have the effect of stupefying—but not killing—fish or other marine life. *Id.* § 103.

Also note that the waters of the TTPI were defined more narrowly than the FSM’s waters are defined today. See 32 C.F.R. 761.5(i) (1). This could raise a question as to the modern geographical scope of Trust Territory-era species protections.

522 23 FSM Code § 104.

523 *Id.* § 115.

524 *Id.* § 105. This very dated portion of the FSM Code actually references the high commissioner, whose functions under the former TTPI have been transferred to the president of the FSM. See 8 FSM Code § 206(2) (Transfer of administrative authority). Additional references in Section 5.1.2.2 of this report to presidential authority pursuant to tit. 23 are made on the same basis.

525 23 FSM Code § 106.

526 *Id.* § 107.

Sea snails. Except as otherwise provided by law, it is prohibited to harvest or intentionally interfere with the growth of *Trochus niloticus* in the water of the then-Trust Territory.⁵²⁷ Each state governor may, with the advice and consent of the president, designate and vary from year to year, an open season during May through September for the harvesting of *trochus*, and may designate certain reefs or sections as closed for the harvesting of *trochus*, notwithstanding an open season. The open season may vary in different areas or islands within each State.⁵²⁸ No *trochus* may be taken whose shell is less than three inches in diameter at the base.⁵²⁹ If a state governor determines that underwater operations that will interfere with an existing *trochus* bed are in the public interest, he may issue a written permit for the removal and replanting of the bed at the expense of the operator.⁵³⁰

Except where the law provides a different penalty, a person violating any of the provisions set forth above (i.e., provisions contained in the FSM Code's resource conservation title) is, upon conviction, subject to a fine of US\$100 and imprisonment of six months.⁵³¹

Laws at the state level also provide various protections certain flora and fauna.

527 *Id.* §§ 108–09.

528 *Id.* § 110. During an open season, any citizen of the then-Trust Territory may dive for and harvest *trochus* in the district (i.e., State) to which the season applies, within those areas in which he has the right to fish under established local custom. *Id.* § 111. The harvesting of *trochus* also may be prohibited entirely. *Id.* § 113.

529 *Id.* § 112.

530 *Id.* § 114(1). A state governor, at any time, may authorize the removal and transport of *trochus* for the purpose of introduction to other reefs, islands, or atolls. *Id.* § 114(2).

531 *Id.* § 116.

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- Revenues realized through the administration of the Marine Resources Conservation Act of 1981, though deposited in the general fund of Pohnpei, may be appropriated by the Legislature for “conservation measures relative to the marine life of [the] state.”⁵³²
- Except with written authorization for scientific purposes, it is prohibited to take or kill a Hawksbill turtle whose shell measures less than 27 inches (when measured over the top of the carapace shell lengthwise) or a Green turtle whose shell measures less than 34 inches. No sea turtle of any size may be taken during the closed season: June 1 to August 31, and December 1 to January 31. No sea turtle may be killed or disturbed while on shore or in immediately adjacent waters to a depth of six feet, inclusive of breeding, feeding, or seeking shelter to lay eggs. It is prohibited to take, disturb, molest, harass, transfer, or sell sea turtle nests, eggs, or hatchlings.⁵³³ The director of the Department of Resources and Development is authorized to issue implementing regulations.⁵³⁴ A willful violator is subject to a fine of between US\$500 and US\$1,000 and one year in prison.⁵³⁵ The Division of Fish and Wildlife is responsible for enforcement.⁵³⁶
- Subject to a narrow exception,⁵³⁷ it is prohibited to knowingly catch fish or any other marine life by means of explosives, poisons, chemicals, or other substances that kill fish or marine life; to knowingly possess or sell fish or marine life so caught; or to knowingly place such articles or substances with the intent to kill.⁵³⁸ A violator of these prohibitions is subject to, upon conviction, a fine of between US\$100 and US\$2,000, and imprisonment of between six months and two years.⁵³⁹
- It is prohibited to harvest black coral without a permit, or to take or tamper with black coral for personal accumulation or use, or to sell or transfer it.⁵⁴⁰ The director of the DR&D may issue processing licenses and commercial harvesting permits.⁵⁴¹ The director may designate closed seasons and may designate certain reefs or sections to be closed.⁵⁴² A violator is subject to a US\$1,000 fine and one year in prison.⁵⁴³ A civil penalty may be imposed at three times the current market value of the affected black coral; unlawfully harvested or possessed black coral is subject to forfeiture.⁵⁴⁴
- It is prohibited to take, sell, or possess for sale bumphead parrotfish.⁵⁴⁵ A violator is subject to a US\$1,000 fine and one year in prison.⁵⁴⁶ A civil penalty may be imposed at five times the current market value of the bumphead parrotfish, with the fish to be forfeited.⁵⁴⁷
- It is prohibited to take or possess a mangrove crab carrying eggs, except for licensed and permitted cultured mangrove crab producers.⁵⁴⁸ A violator is subject to a US\$1,000 fine and one year in

532 26 Pohnpei Code § 6-103.

533 *Id.* §§ 6-202 & 6-204. “Sea turtle” is defined to include the following species: Green, Loggerhead, Kemp’s Ridley, Olive Ridley, Hawksbill, Flatback, and Leatherback. *Id.* § 6-201.

534 *Id.* § 6-207.

535 *Id.* § 6-206.

536 *Id.*

537 The governor may grant written permission to use an otherwise prohibited means where the purpose is to avoid waste or loss and where consumption or sale of the fish or other marine life is not harmful or hazardous to health and human life. *Id.* § 6-221(3).

538 *Id.* § 6-221(1), (2). The law gives a broad, open-ended definition to “poisons,” “chemicals,” and “substances.” *Id.* § 6-221(1). However, the prohibition is inapplicable to the use of local roots, nuts, or plants that have the effect of stupefying—but not killing—fish or other marine life. *Id.* § 6-221(4). There is a similar set of provisions prohibiting the use of poisons, chemicals, and substances to catch freshwater shrimp. *Id.* §§ 6-181 to 6-182.

539 *Id.* § 6-221(5).

540 *Id.* § 6-113. Black coral is *Antipathes ulex* or any other *Antipatharia* species. *Id.* § 6-111(1).

541 *Id.* §§ 6-114 to 6-115.

542 *Id.* § 6-116.

543 *Id.* § 6-120.

544 *Id.* § 6-121.

545 *Id.* § 6-132. Bumphead parrotfish refers to *Bolibometopan muraticus*, or “kemeik.” *Id.* § 6-131.

546 *Id.* § 6-133.

547 *Id.* § 6-134.

548 *Id.* § 6-142. Mangrove crab refers to *Seylla serrata*, or “eliming.” *Id.* § 6-141. The FSM R&D is to promulgate regulations governing mangrove crab farming.

prison.⁵⁴⁹ A civil penalty may be imposed at ten times the current market value of the crabs carrying eggs, with the crabs to be forfeited—and, where possible, returned to their natural environment and released.⁵⁵⁰

- The director of the DR&D has expansive authority with respect to the harvesting of *Trochus niloticus* (e.g., fixing open and closed seasons, designating harvest locations, fixing size restrictions and catch limits, etc.) and is charged with balancing its exploitation as an economic resource with its preservation as a renewable resource.⁵⁵¹ A marketing license is required to commercially purchase or handle *trochus*.⁵⁵² A violator is subject to a US\$1,000 fine and one year in prison.⁵⁵³ A civil penalty may be imposed at three times the current market value of the affected *trochus*; unlawfully harvested or possessed *trochus* is subject to forfeiture.⁵⁵⁴
- Except for scientific purposes as authorized by the governor, it is prohibited to take black-lip mother-of-pearl oyster shell (*Pinctada margaritifera*) during the closed season: August 1 to December 31. No such shell may be taken at any time if it is less than six inches in minimum diameter, measured by the longest dimension across the outside of the shell.⁵⁵⁵ A violator is subject to a fine of US\$100 and six months in prison.⁵⁵⁶
- No sponges that have been artificially planted or cultivated may be taken or molested, except by permission of the governor.⁵⁵⁷ A violator is subject to a fine of US\$100 and six months in prison.⁵⁵⁸
- Except pursuant to permit, the export of mangrove crabs, coconut crabs, and lobsters from Pohnpei is prohibited.⁵⁵⁹ A violator is subject to a US\$1,000 fine and two years in prison.⁵⁶⁰
- The Pohnpei Watershed Forest Reserve and Mangrove Protection Act of 1987 affords multiple protections to mangrove forests:⁵⁶¹ all cutting is prohibited, except as permitted by the director of the DR&D, through the chief of the Division of Natural Resource Management; dredging, road-building, and other major land-disturbing activities affecting mangrove forests are subject to environmental review and a permit from the director; limitations are placed on new homes and other construction; and the use of chemical pesticides and herbicides, as well as the dumping of solid waste or polluting liquids, is prohibited in mangrove forests, except as may be permitted by the director after environmental review.⁵⁶² The director may promulgate implementing regulations with respect to mangrove forests.⁵⁶³ The Act requires the director to engage in public education, including through the university and grade schools, with respect to forestry issues (including conservation of mangroves).⁵⁶⁴ Areas subject to these forestry provisions are patrolled by the Department of Public Safety—Division of Fish and Wildlife—although all Pohnpei law enforcement agencies may enforce that law.⁵⁶⁵ Violation of a mangrove forest protection provision subjects the violator to a fine of US\$1,000 and one year in prison, as well as liability for restoration of the site to as near its original condition as possible—with the caveat that cutting mangroves carries a fine of US\$1,000 per tree cut.⁵⁶⁶ Though all rights, title, and interest in mangrove and upland forests in

549 *Id.* § 6-143.

550 *Id.* § 6-144.

551 *Id.* § 6-163. The term *trochus* means *Trochus niloticus* and includes *Trochus maximus*, *tectus niliticus* [sic], and *tectos maximus*. *Id.* § 6-161.

552 *Id.* § 6-164.

553 *Id.* § 6-168.

554 *Id.* § 6-169.

555 *Id.* § 6-171.

556 *Id.* § 6-172.

557 *Id.* § 6-191.

558 *Id.* § 6-192.

559 *Id.* § 6-211.

560 *Id.* § 6-212.

561 A “mangrove forest” is a salt-tolerant tidal fringe ecosystem of trees, other plants, and animals. *Id.* § 4-104(6).

562 *Id.* § 4-107(2).

563 *Id.* § 4-108(1).

564 *Id.* § 4-108(3).

565 *Id.* § 4-108(4).

566 *Id.* § 4-108(5).

the public domain remain in the Pohnpei Government, immediate supervision and control of these forests in each local jurisdiction is delegated to the chief executive of the local government.⁵⁶⁷

- As previously noted, Pohnpei's Marine Sanctuary and Wildlife Refuge Act of 1999 resulted in the designation of protected areas benefiting specific fauna and flora, including stingrays and mangroves.⁵⁶⁸
- To prevent the introduction and further dissemination of injurious insects, pests, and diseases in Pohnpei, state law grants to the director of the DR&D, with approval of the governor, authority to issue plant and animal quarantines and regulations.⁵⁶⁹ All plants and animals, and their parts, entering or transported within the State are subject to inspection and may be refused entry or movement.⁵⁷⁰

Chuuk

- The Chuuk Maritime Authority is charged with adopting regulations for the conservation, management, and exploitation of all living resources in the state fishery zone and internal waters.⁵⁷¹

Kosrae

- The director of the Department of Agriculture, Land and Fisheries, by regulation, may provide for the time, place, and method of *trochus* harvesting by a permit system to assure responsible and environmentally sound harvesting; minimum and maximum shell size; and other limitations on harvesting.⁵⁷²
- It is prohibited to commercially harvest, commercially process, or commercially export sea cucumbers without a valid permit issued by the Development Review Commission. Nor may any person possess more than five sea cucumbers without a valid permit from the Commission. In consultation with the director, the Commission is authorized to adopt implementing regulations.⁵⁷³ The director shall monitor sea cucumber populations to determine whether the commercial harvesting, commercial processing, and commercial exportation of sea cucumbers remains within sustainable levels.⁵⁷⁴
- It is prohibited to bring into Kosrae a bird of the *psittacine* family, including a parrot, parakeet, or love bird, without specific period approval by the Department of Health Services.⁵⁷⁵
- Any person seeking to bring into the State a species of animal or form of plant life not at that time in the state must apply for permission to the Department of Agriculture, Land and Fisheries.⁵⁷⁶

567 *Id.* § 4-120. Local councils may enact ordinances for the regulation, control, and taxation of these forests, subject to veto by the governor. *Id.* § 4-121.

568 *See, e.g., id.* §§ 5-123, 5-124, & 5-130.

569 *See* Pohnpei Code tit. 28 ch. 1.

570 28 Pohnpei Code § 1-105.

571 25 Draft Chuuk State Code § 1008(1).

572 Kosrae State Code § 11.1101.

573 *Id.* § 11.1102. Detailed requirements for such regulations are provided, including a requirement of an absolute ban of the commercial harvesting, commercial processing, or commercial exportation of any species of sea cucumber that has been determined by the director of the Department of Agriculture, Land and Fisheries to require such protection. *Id.* § 11.1102(3).

574 *Id.* § 11.1102(4).

575 *Id.* § 11.1602.

576 *Id.* § 14.204.

Yap

- State law prohibits, through provisions that track the language contained in national law, the catching of fish or any other marine life by means of explosives, poisons, chemicals, or other substances.⁵⁷⁷
- The Yap Fishing Authority is charged with adopting regulations for the conservation, management, and exploitation of all living resources in the State fishery zone and internal waters.⁵⁷⁸
- The governor may, on convincing evidence that the population of a species, subspecies, or class of marine life is in imminent danger of dropping below a minimum desirable maintenance level, declare a temporary moratorium prohibiting its taking or harvesting. The Declaration of Moratorium must state any and all restrictions imposed, including size limitations and areas affected. Public notice must be given. No person may violate the Declaration of Moratorium.⁵⁷⁹
- It is prohibited to commercially sell turtle meat or turtle eggs in any wholesale or retail store licensed to do business in the state.⁵⁸⁰
- It is prohibited to take or kill coconut crab, *Birgus latre* (or “ayuy”), whose shell is less than three inches in diameter measured at the base, nor may coconut crabs be taken or killed during their breeding season (June 1 to September 30). It is further prohibited to commercially sell coconut crabs in any wholesale or retail store licensed to do business in the State. A violator is guilty of a misdemeanor and, upon conviction, subject to a fine of US\$100 and one month of imprisonment.⁵⁸¹
- The harvest or intentional interference with the growth of *trochus* in the waters of the State of Yap is prohibited except as provided by law; the state provisions in this regard track the language contained in national law.⁵⁸²
- The governor is authorized to declare a harvesting season and to set a size limit for the taking or harvesting of clams. It is prohibited to commercially sell clam meat in any wholesale or retail store licensed to do business in the State.⁵⁸³
- It is prohibited to knowingly take or harvest any species seeded or planted by the State of Yap, except where the governor has given express written permission authorizing such taking or harvesting.⁵⁸⁴

5.1.2.2 Sharks and rays

In 2015, the Marine Resources Act of 2002⁵⁸⁵ was amended to add certain measures for the protection of sharks. The Act defines a shark as any fish of the taxon *Elasmobranchii*, and a shark fin refers to any fin of a shark, including the caudal fin.⁵⁸⁶

577 See 18 Yap State Code § 1008.

578 18 Yap State Code § 208.

579 *Id.* § 1011.

580 *Id.* § 1005.

581 *Id.* § 1004.

582 *Id.* § 1009.

583 *Id.* § 1006.

584 *Id.* § 1010. Unless the law otherwise provides, a violator of any of Yap’s wildlife conservation provisions is guilty of a misdemeanor and, upon conviction, subject to a fine of US\$500 and sixty days of imprisonment. *Id.* § 1007.

585 A stated purpose of the FSM’s national fisheries legislation is the conservation of marine resources found in the EEZ. 24 FSM Code § 101(1). NORMA, among its other mandates, is charged with conducting fisheries management so as to protect biodiversity in the marine environment. *Id.* § 502(4)(d).

586 24 FSM Code § 102(59)–(60), as amended by P.L. 18-108 (2015). For further discussion of the history of this legislation, see Standing Comm. Rpt. 18-275, re C.B. 18-134/Comm. on Resources and Dev’t, Feb. 2, 2015.

Except as provided below, it is prohibited to remove shark fins from sharks on board fishing vessels, and to retain on board, transship, or land sharks or shark fins.⁵⁸⁷ When a fishing vessel catches a shark (as by-catch), the following apply:

- If the shark is alive, it must be immediately released back into the ocean. Fishing vessels must ensure that sharks are released whole, and that sharks are not unnecessarily harmed during the release process.
- If the shark is dead, it may either be landed at a transshipment port in the FSM or recorded in the daily catch report form for the vessel and discarded. Fishing vessels must ensure that sharks are landed whole, with all shark fins attached to the carcass.⁵⁸⁸

Any person holding a license or permit from NORMA to conduct scientific research on sharks, and who does so in accordance with the license or permit, is exempt from the shark protection provisions.⁵⁸⁹

It is unlawful to purchase, offer for sale, or sell sharks or shark parts, including shark fins that have been removed on board a vessel, transshipped, or landed in contravention of these provisions.⁵⁹⁰ It also is prohibited for fishing vessels to possess wire leaders, steel trace, or wire trace.⁵⁹¹

Any person who intentionally and knowingly violates a prohibition pertaining to sharks is subject to a civil penalty of between US\$50,000 and US\$250,000.⁵⁹² There is a rebuttable presumption that any sharks caught, or shark fins possessed, by a fishing vessel in the EEZ of the FSM originated from the EEZ of the FSM.⁵⁹³ All sharks and shark fins seized and forfeited must be destroyed by incineration.⁵⁹⁴

The national law is predated by Pohnpei State legislation that prohibits shark finning.⁵⁹⁵ Pohnpei prohibits the possession, sale, offer for sale, trade, or distribution of shark fins.⁵⁹⁶ A violator is subject to a civil penalty of US\$5,000 per fin, plus an administrative fine beginning at US\$50,000 for a first offense, a fine of US\$50,000 to US\$100,000 for a second offense, and for a third or subsequent offense, a fine of US\$100,000 to US\$250,000 and one year of imprisonment. Shark fins, as well as commercial marine vessels, fishing equipment, and other property involved in a violation are subject to seizure and forfeiture.⁵⁹⁷ The following activities are exempt: shark research carried out under a valid license or permit; possession resulting from allowable subsistence fishing; and possession of live sharks for display to the public, with attendant scientific research and academic marine biology pursuits.⁵⁹⁸ The OFA is to promulgate, with approval of the governor, implementing regulations.⁵⁹⁹

5.2 Fisheries

Fishing is a major focus for each of the five governments in the FSM. This is due to the fact that fishing is a key part of the everyday lives of FSM citizens, whether for subsistence, recreation, or employment. As discussed above, customs and traditions relating to fishing rights in certain areas—mostly nearshore, around submerged reefs and tidelands—are deeply rooted in Micronesian culture and explicitly recognized in the FSM and state constitutions. Annual fishing fees constitute an increasingly large share of annual local

587 24 FSM Code § 913(2), as amended by P.L. 18-108 (2015).

588 24 FSM Code § 913(4), as amended by P.L. 18-108 (2015) & P.L. 19-36 (2015). A corresponding amendment to the by-catch provisions of the Marine Resources Act of 2002 clarifies that “[i]f sharks are caught alive they are to be released.” The catch must be recorded. 24 FSM Code § 503(1), as amended by P.L. 19-36 (2015).

589 24 FSM Code § 913(6), as amended by P.L. 18-108 (2015).

590 24 FSM Code § 913(5), as amended by P.L. 18-108 (2015).

591 24 FSM Code § 913(3), as amended by P.L. 18-108 (2015).

592 24 FSM Code § 913(7), as amended by P.L. 18-108 (2015) & P.L. 19-36 (2015).

593 24 FSM Code § 913(8), as amended by P.L. 18-108 (2015) & P.L. 19-36 (2015). The 2015 amendments to the Marine Resources Act of 2002 also add sharks and shark fins to the provisions concerning destruction of evidence. 24 FSM Code § 914(1).

594 24 FSM Code § 913(9), as amended by P.L. 18-108 (2015).

595 Pohnpei Code tit. 29 ch. 4.

596 29 Pohnpei Code § 4-103(1).

597 *Id.* § 4-103(2).

598 *Id.* § 4-104.

599 *Id.* § 4-105.

revenues for the FSMNG, which heightens its focus on this area and has led, in the past, to conflicts with the state governments over distribution of the substantial revenues.

As with most policy areas in the FSM, governance of fishing within the FSM is split between the national government—primarily focused on regulating fishing in the EEZ—and the four state governments—primarily focused on the area within 12 nm of baselines. The FSMNG primarily regulates commercial fishing, while the state governments seek to safeguard subsistence fishing, although there is overlap in these areas. This arrangement also reflects the geographic and spatial realities that most commercial fishing occurs within the EEZ, while most subsistence fishing (as well as small-scale fishing) occurs within the 12 nm of state marine jurisdiction and internal waters.

5.2.1 Small-Scale Fishing

The legal regime in the FSM does not employ the term small-scale fishing.⁶⁰⁰ However, the legal regime often does use the term subsistence fishing to capture a similar idea and, as previously discussed, traditional fishing rights of FSM citizens are constitutionally recognized at the state level. The legal regime also often implicitly recognizes the existence of small-scale fishing within the FSM in the ways in which statutes seek to define commercial fishing or domestic fishing. The definitions at times use length of vessel and nationality of ownership of vessels to distinguish between foreign fishing and domestic fishing.

At the national level, subsistence fishing is defined and recognized, but the primary focus at the national level is regulating commercial fishing, and even then with a focus primarily on foreign fishing. The FSM Code defines “subsistence fishing” and fishing by a citizen or resident substantially for personal consumption, and does not include any fishing resulting or intended for sale.⁶⁰¹ In contrast, the Code defines “commercial fishing” as any fishing resulting or intending to result in the sale or trade of fish, with the presumption that use of a vessel measuring 27 feet or more in length or use of more than one vessel for fishing constitutes “commercial fishing.”⁶⁰²

Implied within the inclusion of the 27-foot-vessel minimum is the recognition that commercial small-scale fishing, indeed, does take place in the FSM within the EEZ. The national government statute then distinguishes in this area between domestic fishing and foreign fishing, both of which are discussed in greater detail in Section 5.2.2 of this report. The FSM Code further defines “domestic fishing” as any fishing by a local fishing vessel longer than 27 feet in overall length, but not including commercial pilot fishing.⁶⁰³ A “local fishing vessel” means any fishing vessel wholly owned and controlled by: the FSMNG or any state government; one or more FSM citizens; or any group of people incorporated or established under the laws of the FSMNG or of any state, and which is wholly owned and controlled by an FSM citizen or company.⁶⁰⁴ The type of fishing involved—as specified by these statutory definitions—matters primarily in determining whether a permit or license will be required.⁶⁰⁵

Finally, NORMA—the agency charged with regulating fishing at the national level—is explicitly required to take into account the interests of artisanal and subsistence fishers within the FSM.⁶⁰⁶

Given its greater likelihood to occur closer to shore, small-scale fishing is protected more explicitly by the States, which have authority nearshore and in their internal waters.

Pohnpei: The Pohnpei State Fisheries Protection Act of 1995 governs small-scale fishing. Unlike in Chuuk and Yap, Pohnpei does define subsistence fishing. It means fishing undertaken by citizens of Pohnpei to ensure the livelihood of the immediate or extended family as may be further defined by regulation.⁶⁰⁷ In

600 According to the glossary of the FAO, artisanal (or small-scale) fisheries are traditional fisheries involving fishing households (as opposed to commercial companies), using relatively small amount of capital and energy, relatively small fishing vessels (if any), making short fishing trips close to shore, and mainly for local consumption. They can be subsistence or commercial fisheries. See FAO, “Family Farming Knowledge Platform: Artisanal Fisheries,” at www.fao.org/family-farming/detail/en/c/335263.

601 24 FSM Code § 102(60).

602 *Id.* § 102(15).

603 *Id.* § 102(18).

604 *Id.* § 102(43).

605 See 24 FSM Code § 103.

606 24 FSM Code § 502(4)(f).

607 29 Pohnpei Code § 1-103(29). Compare with 26 Pohnpei Code § 5-104(3) (same definition of subsistence fishing contained in the Pohnpei Marine Sanctuary and Wildlife Refuge Act of 1999).

contrast to the definition of the term in the FSM national statute, Pohnpei State's definition is phrased in terms of livelihood and does not specifically bar the sale or trading of fish. Furthermore, the Act's purpose section recognizes that protection of small-scale fishing by Pohnpeians is paramount.⁶⁰⁸

The Pohnpei Act, like those in Chuuk and Yap, explicitly recognizes the small-scale fishing rights of Pohnpeians over submerged reefs in Pohnpei's jurisdiction.⁶⁰⁹

Again, the precise language and geographic scope of these rights differ among the three statutes; as discussed previously, they also differ in the precise contours of each State's "traditional rights." Pohnpei's statute defines state waters in a substantially similar way to the statutes in Chuuk and Yap.⁶¹⁰ Pohnpei's statute explicitly prohibits "foreign fishing for sharks, shellfish, reef fish, bill fish, marine mammals or any other type of marine life."⁶¹¹ The statute also permits the OFA to determine the total allowable harvest or catch level of subsistence and recreational fishing with respect to any stock of fish, subject to the Act.⁶¹²

Chuuk: The State Fishery Zone Act of 1983 is substantially similar in structure and content to that of Yap.⁶¹³ The primary relevant difference between the two statutes is that the Chuuk statute more narrowly defines traditional fishing rights: "[t]raditionally recognized fishing rights over submerged reef wherever located within the State Fishery Zone and internal waters shall be preserved and respected."⁶¹⁴ Inclusion of the language "over submerged reef" places a tighter geographic limit on traditional fishing rights in Chuuk. Interestingly, this statutory language is much narrower than the rights recognized by the Chuuk Constitution, which provides that "[t]raditional rights over all reefs, tidelands, and other submerged lands, including their water columns, and successors rights thereto, are recognized," and the Legislature may regulate their reasonable use.⁶¹⁵

Chuuk has another statute dating from the Trust Territory era, the Inshore-Nearshore Fishing Program. Ostensibly designed to support small-scale fishing in Chuuk State, the law includes assisting Chuuk residents with procuring fishing vessels from the Truk Boat Building Program, instructing on the proper use of the vessels for inshore and nearshore fishing, and assisting with lease-purchase agreements of vessels for successful graduates of the instruction course.⁶¹⁶

Kosrae: There is no statute in the State of Kosrae that specifically defines subsistence fishing or protects traditional fishing rights in Kosrae's waters. Any person engaging in subsistence fishing, however, is exempt from any regulation requiring a fishing permit for any fishing other than fishing from a foreign fishing vessel and transshipment.⁶¹⁷ The KIRMA administrator may require permits for other types of fishing—such as small-scale commercial fishing or fishing by "local fishing vessel"⁶¹⁸—but the administrator also may provide additional exemptions from such permit requirements. Finally, as do the other States, Kosrae prohibits any person from engaging in commercial fishing from a foreign fishing vessel in inland waters.⁶¹⁹

608 29 Pohnpei Code § 1-102 ("In recognition of the fact that the marine resources of these [state] waters are a finite and renewable part of the physical heritage of our people, we choose to limit the use of such resources to the people of Pohnpei. For this reason, the commercial harvesting of these resources is prohibited to commercial foreign and domestic enterprises within state waters.").

609 *Id.* § 1-105.

610 See 29 Pohnpei Code § 1-103(19), (26), & (31).

611 29 Pohnpei Code § 1-109. The statute defines "foreign fishing" to mean "any commercial fishing or commercial recreational fishing by a foreign fishing vessel." *Id.* § 1-103(17). "Foreign fishing vessel" is defined to mean "any foreign-owned or foreign-operated fishing vessel that conducts commercial fishing or commercial recreational fishing as defined by this chapter." *Id.* § 1-103(18). Finally, "commercial fishing" is defined to mean "any fishing undertaken for other than recreational, sport, or subsistence purposes. For the purposes of this chapter, fishing by a vessel measuring 27 feet or more in overall length and fishing by more than one vessel owned by a single person for the primary purpose of selling the fish in the commercial market shall be presumed to be commercial fishing." *Id.* § 1-103(7).

612 *Id.* § 1-111(1). See Section 5.2.3 of this report for details on the factors to be considered in setting these levels.

613 See 25 Draft Chuuk State Code § 1001 et seq.

614 25 Draft Chuuk State Code § 1007.

615 Chuuk Const. art. IV § 4.

616 25 Draft Chuuk State Code § 1501.

617 Kosrae State Code § 19.306(2).

618 *Id.* § 19.306(1).

619 *Id.* § 19.316.

Yap: In Yap, small-scale fishing is governed by the State Fishery Zone Act of 1980.⁶²⁰ Although the Act does not define subsistence fishing, it does contain explicit recognition of small-scale fishing rights of Yapese within Yap: traditionally recognized fishing rights, wherever located within the State Fishery Zone and internal waters, are “preserved and respected.”⁶²¹ This statutory provision codifies the constitutional protection given to the broader range of “traditional rights and ownership of natural resources and areas within the marine space” of Yap contained in the Yap Constitution.⁶²² Additionally, the Yap Constitution provides that a foreign fishing, research, or exploration vessel cannot take natural resources from any area within the marine space of the State, except as may be permitted by the appropriate persons who exercise traditional rights and ownership and by statute.⁶²³

The Act regulates foreign fishing⁶²⁴ in the State Fishery Zone, mostly through a permit system—but explicitly prohibits any foreign fishing in Yap’s internal waters.⁶²⁵ The Act provides further protection for small-scale fishing in Yap’s waters by reserving a certain portion of each fishery for the Yapese: “[t]he total allowable level of foreign fishing, with respect to any fishery subject to the provisions of this chapter, shall be that portion of the maximum sustainable yield of such fishery which will not be harvested by vessels of Yap.”⁶²⁶

These various national and state level small-scale fisheries rights are summarized in Table 6.

Table 6. Table Small-Scale Fisheries Rights at the National and State Levels.

Government	Small-Scale Fisheries Rights
FSM National Government	<ul style="list-style-type: none"> • FSM Code recognizes subsistence fishing and distinguishes from commercial fishing. • NORMA is required to take into account the interests of artisanal and subsistence fishers in carrying out its regulation of FSM fisheries.
Pohnpei State	<ul style="list-style-type: none"> • Pohnpei State Fisheries Protection Act of 1995 governs small-scale fishing, emphasizing livelihood and not specifically barring the sale or trading of fish. • The Act explicitly recognizes small-scale fishing rights of Pohnpeians over submerged reefs in Pohnpei’s jurisdiction. • The Act permits OFA to determine the total allowable harvest or catch level of subsistence and recreational fishing with respect to any stock of fish subject to the Act.
Chuuk State	<ul style="list-style-type: none"> • State Fishery Zone Act of 1983 requires that “[t]raditionally recognized fishing rights over submerged reef wherever located within the State Fishery Zone and internal waters shall be preserved and respected.” • Chuuk Constitution provides that “[t]raditional rights over all reefs, tidelands, and other submerged lands, including their water columns, and successors rights thereto, are recognized,” and the Legislature may regulate their reasonable use. • Chuuk Code created the Inshore-Nearshore Fishing Program, designed to support small-scale fishing in Chuuk State, including assisting Chuuk residents with procuring fishing vessels from the Chuuk Boat Building Program, instructing on the proper use of the vessels for inshore and nearshore fishing, and assisting with lease-purchase agreements of vessels for successful graduates of the instruction course.

620 18 Yap State Code § 201 et seq.

621 *Id.* § 207.

622 See Yap Const. art. XIII § 5 & discussion at Section 3.2 of this report.

623 Yap Const. art. XIII § 6.

624 “Foreign fishing” is defined to mean fishing by vessels that are (i) not registered in Yap; (ii) not wholly owned by citizens of Micronesia; (iii) not wholly controlled by citizens of Micronesia; or (iv) of foreign registry chartered by citizens of Micronesia. 18 Yap State Code § 203(h).

625 *Id.* § 209.

626 *Id.* § 210(c).

Kosrae State	<ul style="list-style-type: none"> • No specific statute defining subsistence fishing or protecting traditional fishing rights. • Any person engaging in subsistence fishing is exempt from any regulation requiring a fishing permit for any fishing other than fishing from a foreign fishing vessel and transshipment. • Law prohibits any person from engaging in commercial fishing from a foreign fishing vessel in inland waters. • KIRMA administrator may require permits for small-scale commercial fishing or fishing by “local fishing vessel,” but may also provide additional exemptions from such permit requirements.
Yap State	<ul style="list-style-type: none"> • State Fishery Zone Act of 1980 states that traditionally recognized fishing rights, wherever located within the State Fishery Zone and internal waters, are “preserved and respected.” • The Act regulates foreign fishing in the State Fishery Zone and explicitly prohibits any foreign fishing in Yap’s internal waters. • The Act provides protection for small-scale fishing in Yap’s waters by reserving a certain portion of each fishery for the Yapese. • Yap Constitution protects “traditional rights and ownership of natural resources and areas within the marine space.” • Constitution provides that a foreign fishing, research, or exploration vessel cannot take natural resources from any area within the marine space of the State, except as may be permitted by the appropriate persons who exercise traditional rights and ownership and by statute.

5.2.1.1 Locally managed marine areas

A locally managed marine area (LMMA) is an area of nearshore waters and its associated coastal and marine resources that are managed at the local level by communities, land-owning groups, partner organizations, or collaborative governments that reside or are based in the immediate area.⁶²⁷ A locally managed area can vary widely in purpose and design, but two aspects remain consistent among them: a well-defined or designated area, and involvement of communities and/or local governments in decision-making and implementation. An LMMA differs from a conventional marine protected area in that LMMAs are characterized by local ownership, use and/or control and, in some areas, follow the traditional tenure and management practices of the region.⁶²⁸

The individual States of the FSM have explored and implemented LMMAs to varying degrees.⁶²⁹ Pohnpei is a member of the LMMA Network,⁶³⁰ which provides information and resources on LMMAs and community-based adaptive management (CBAM), as well as training in project design, monitoring, data management and analysis, fundraising, communications, and more.⁶³¹ Additionally, all four States and the FSMNG participate in the Pacific Islands Managed & Protected Area Community (PIMPAC), which aims to provide continuous opportunities for the sharing of information, expertise, practice, and experience to develop and strengthen site-based and ecosystem-based management capacity throughout the Pacific Islands region.⁶³²

627 See The Locally-Managed Marine Area (LMMA) Network: “What is an LLMA?” at <https://lmmanetwork.org/what-we-do/why-use-an-lmma>.

628 See Reef Resilient Network: “LMMAs” at <https://reefresilience.org/management-strategies/marine-protected-areas/lmmas>.

629 See The State of Coral Reef Ecosystems of the Federated States of Micronesia, at www.sprep.org/att/IRC/eCOPIES/Countries/FSM/53.pdf.

630 See The Locally-Managed Marine Area (LMMA) Network: “LMMA Pohnpei,” at <https://lmmanetwork.org/who-we-are/country-networks/pohnpei>.

631 See The Locally-Managed Marine Area (LMMA) Network: “What We Do,” at <https://lmmanetwork.org/what-we-do/the-lmma-approach>.

632 See Pacific Islands Managed & Protected Area Community: “PIMPAC Scope,” at www.pimpac.org/aboutus.php.

5.2.2 Commercial Fishing

The regulation of commercial fishing—especially by “foreign fishing vessels”—in FSM’s EEZ is an area of intense focus and ongoing legal activity, given the significant portion of annual domestic revenues derived from fishing access fees imposed and collected by the FSMNG.

Commercial fishing is a primary subject of the Marine Resources Act of 2002, which comprises the entirety of Title 24 of the FSM Code.⁶³³ The Act provides a comprehensive permitting and enforcement regime for controlling commercial fishing, primarily by foreign fishing vessels, in order to maximize economic contributions from the FSM’s fisheries while seeking to preserve this national resource for future generations. The purpose of the Act “is to ensure the sustainable development, conservation and use of the marine resources in the [EEZ] by promoting development of, and investment in, fishing and related activities in the context of effective stewardship and to regulate fishing and related activities of vessels entitled to fly the flag of the [FSM] beyond the fishery waters.”⁶³⁴ The Act is implemented by the National Oceanic Resource Management Authority (NORMA), which oversees the FSM’s EEZ and is responsible for managing the FSM’s fisheries resources from 12 nm to 200 nm.⁶³⁵

Chapter 1 of the Act defines key terms (including access agreement;⁶³⁶ commercial fishing; domestic fishing; fisheries management agreement; fishery; fishing; foreign fishing; local fishing vessel; and permit) and establishes that commercial fishing in the EEZ of the FSM requires a permit⁶³⁷ as well as an access agreement.⁶³⁸ Section 106 grants to NORMA the authority to enter into fisheries management agreements for cooperation in or coordination of fisheries management measures in all or part of the region or for the implementation of a multilateral access agreement.⁶³⁹ This allows NORMA to work to meet the FSM’s obligations under the PNA, as discussed in Section 2.6.2 of this report. The remainder of Chapter 1 of the Act relates to the mechanics of permitting: the application process;⁶⁴⁰ scope of permits;⁶⁴¹ management of permits, including conditions and duration;⁶⁴² fees;⁶⁴³ and required reporting of permit-holding vessels.⁶⁴⁴

Chapter 2 of the Act establishes NORMA, comprised of a five-member Board, managed by an executive director, and charged with oversight responsibility for the EEZ.⁶⁴⁵ NORMA has the authority to enact regulations on a broad range of commercial fishing subjects (e.g., the sustainable use of fisheries resources; fisheries monitoring and control; implementing access agreements; research; and observer and port

633 The Act’s definition of “commercial fishing” is set forth in Section 5.2.1 of this report.

634 24 FSM Code § 101(1).

635 See *id.* §§ 201(1) & 204–205; see also NORMA’s website at <https://www.norma.fm>.

636 An access agreement is a treaty, agreement, or arrangement entered into by the Authority pursuant to the Act in relation to access to the EEZ for fishing by foreign fishing vessels; and includes bilateral and multilateral instruments applicable at the national, subregional, regional, or international level. 24 FSM Code § 102(1).

637 No domestic fishing, commercial pilot fishing, foreign fishing, or such other fishing or related activity as may be prescribed shall be allowed in the EEZ unless it is in accordance with: (i) a valid and applicable permit issued under authority conferred by the Act or its regulations; or (ii) a valid and applicable license issued by an administrator pursuant to a multilateral access agreement. *Id.* § 103.

638 No foreign fishing vessel shall be issued a permit to fish in the EEZ unless an applicable access agreement is in force. The Authority is authorized to negotiate and enter into access agreements on behalf of the FSMNG. See 24 FSM Code § 105.

639 *Id.* § 106. A fisheries management agreement means any agreement, arrangement, or treaty in force to which the FSM is a party, not including any access agreement, which has as its primary purpose cooperation in or coordination of fisheries management measures in all or part of the region, or implementation of a multilateral access agreement including, but not limited to, fisheries monitoring, control and surveillance, and establishing criteria or requirements for fishing and fisheries access. *Id.* § 102(29). A multilateral access agreement means an access agreement between a foreign party and one or more regional parties to which the FSM is a party. *Id.* § 102(45).

640 *Id.* §§ 107–09.

641 *Id.* § 110. Section 110 contains provisions that arguably enhance protection of traditional fishing rights of FSM citizens within state jurisdiction: no permit can authorize “fishing by foreign fishing vessels on, over or within one nautical mile of the edge of a coral reef that is wholly submerged at mean high tide within the exclusive economic zone;” *id.* § 110(2)(a); and any marine scientific research taking place within that area is subject to consent by the leadership of the “customary inhabitants [who] have been traditionally ascribed the authority to control the fishing over such reef.” *Id.* § 110(3)(c), (d).

642 *Id.* §§ 111–12.

643 *Id.* §§ 113–14.

644 *Id.* § 115.

645 *Id.* §§ 201 & 206.

sampling programs)⁶⁴⁶ and possesses an array of duties and functions (e.g., providing technical assistance to delimit the EEZ; negotiating access agreements; issuing fishing permits; and engaging in international and regional cooperation relating to fisheries).⁶⁴⁷

Another duty of NORMA is to convene and chair a Fisheries Management and Surveillance Working Group.⁶⁴⁸ The Working Group consists of representatives from NORMA and the DoJ. Representatives from other departments and divisions of the national and state governments, engaged in activities concerning surveillance, may be invited to participate. The recommendations of the working group regarding surveillance planning and strategy must be consistent with the objectives and general principles of conservation, management, and sustainable use of fishery resources set forth in the Act, and with the provisions of any national tuna management plan adopted pursuant to the Act.⁶⁴⁹

Chapter 4 governs the process for negotiating the access agreements, including minimum terms and fees, that provide the right of foreign fishing vessels to engage in commercial fishing within the FSM's EEZ.⁶⁵⁰ Section 407 specifically addresses transshipment. Chapter 5 requires NORMA to adopt various management measures designed to conserve, manage, and sustainably use the FSM's fishery resources.⁶⁵¹ NORMA is also required to perform a variety of conservation tasks, such as to assess the impact of fishing on other species; minimize pollution from fishing gear; protect marine biodiversity; prevent overfishing; determine and allocate participatory rights in the fishery; and the like.⁶⁵² The Act specifies how NORMA should make such allocations for domestic fishing vessels and foreign fishing vessels.⁶⁵³ In 2017, Congress amended the Act to establish a "closed area" coterminous with the FSM's contiguous zone.⁶⁵⁴

Chapter 6 of the Act, as previously discussed in Section 2.5 of this report, provides for enforcement in the fisheries sector. Chapter 7 of the Act lays out the judicial process that applies to any case arising under the Marine Resources Act:⁶⁵⁵ jurisdiction is in the Supreme Court of the FSM;⁶⁵⁶ standing to sue is broad;⁶⁵⁷ citations and administrative penalties may be imposed;⁶⁵⁸ fishing is prohibited pending payment of administrative penalties;⁶⁵⁹ and specific refutable presumptions and burdens of proof are established.⁶⁶⁰ Chapter 8 provides the procedure for the forfeiture, disposition, holding, and release of certain property (i.e., fishing vessels; fishing gear; perishable fish or fish products; and any vessel, vehicle, aircraft or other item) in relation to violations of the Act.

Chapter 9 establishes the civil and criminal penalties to be imposed on any person who has committed a prohibited act,⁶⁶¹ as well as the civil liability to be imposed for loss or damage and on operators and fishing company officers.⁶⁶² Sections 906 to 919 specify general "prohibited acts"⁶⁶³ as well as specific prohibited acts (and the corresponding penalties), such as the following: fishing without a valid permit;⁶⁶⁴ violation of

646 *Id.* § 204.

647 *Id.* § 205.

648 *Id.* § 205(9).

649 *Id.* § 207.

650 *Id.* § 402 et seq.

651 *Id.* § 501 et seq.

652 *Id.* § 502.

653 *Id.* §§ 503–04.

654 See P.L. 19-167, at www.c fsm.gov.fm/iframe/19th%20Congress/LAWS/PUBLIC_LAW_19-167.pdf; and accompanying Standing Committee Report, at www.c fsm.gov.fm/iframe/19th%20Congress/REPORTS/SCR_No__19-222.pdf. The new closed area is discussed in Section 3.1.1 of this report.

655 24 FSM Code § 701 et seq.

656 *Id.* § 701.

657 See *id.* § 702.

658 *Id.* § 703.

659 *Id.* § 704.

660 *Id.* §§ 706–07.

661 *Id.* §§ 901–02.

662 *Id.* §§ 903–05.

663 *Id.* § 906.

664 *Id.* § 907.

marine space;⁶⁶⁵ fishing on or near submerged reefs or fish aggregating devices;⁶⁶⁶ or contamination of the EEZ.⁶⁶⁷ The Act establishes a maximum civil penalty of US\$100,000 for violations for which no specific civil penalty is prescribed; however, some civil penalties can extend up to US\$500,000 for a single violation.⁶⁶⁸

Chapter 10 contains provision relating to how a State may “establish by law an entity to promote, develop, and support commercial utilization of living marine resources within its jurisdiction.”⁶⁶⁹ Other provisions of Chapter 10 relate to the initial funding of such entities as well as their reporting requirements.⁶⁷⁰ Finally, Chapter 11 of Title 24 relates to the creation and operation of the National Fisheries Corporation of the FSM, colloquially referred to as NFC, as a public corporation.⁶⁷¹ NFC’s purpose is to promote the development of pelagic fisheries and related industries within the extended fishery zone, for the benefit of the people of the FSM.⁶⁷² While NFC’s corporate structure and governance are comparable to that of other public corporations established in the FSM, NFC is explicitly granted significant statutory authority and flexibility with respect to fishing and the fisheries industry.⁶⁷³

As for commercial fishing in the States—with the exception of Pohnpei—commercial “foreign fishing” is permitted within state waters subject to a permitting and enforcement system that roughly parallels that employed by NORMA at the national level.⁶⁷⁴ With the creation in 2017, however, of the aforementioned 12 nm closed area contiguous to the 12 nm of waters governed by the States (i.e., the territorial sea), it remains to be seen whether commercial fishing—at least by foreign fishing vessels—in state waters will decline given a lack of continuity in fishing area.⁶⁷⁵

5.2.3 Recreational Fishing

Recreational fishing in the FSM—under national and state statutes—is a fairly tightly proscribed activity, at least with respect to foreigners.

At the national level, “recreational fishing” means “fishing for sport or leisure.”⁶⁷⁶ Foreign recreational fishing in the EEZ is prohibited except in accordance with a valid and applicable permit issued by NORMA on such terms and conditions as it shall require.⁶⁷⁷ Foreign recreational fishing is defined as fishing using a foreign fishing vessel for recreational or sport purposes.⁶⁷⁸ The fact the prohibition applies only to such “foreign” recreational fishing implies that local fishing vessels may engage in recreational fishing in the EEZ without a permit.

Pohnpei: This is the only State in which the law specifically addresses recreational fishing in a robust, substantive manner. The purpose of the Pohnpei State Fisheries Protection Act of 1995 is to:

enforce the general prohibition against non-recreational commercial fishing by establishing a fine structure that will effectively limit the economic feasibility of illegally fishing within state waters, to regulate allowable non-commercial and commercial recreational fishing in

665 *Id.* § 911. It is unlawful to use a vessel for entering or remaining within the EEZ in violation of any provision of the Act. *Id.* § 911(1).

666 *Id.* § 912.

667 *Id.* § 918.

668 *Id.* § 920.

669 *Id.* § 1001.

670 *Id.* §§ 1004–1006.

671 *Id.* § 1103.

672 *Id.* § 1102.

673 See 24 FSM Code § 1106(2)(a), (d), & (f) through (h).

674 See generally 25 Draft Chuuk State Code § 1001 et seq; Kosrae State Code § 19.301 et seq; & 18 Yap State Code § 201 et seq.

675 The recent amendment to the Marine Resources Act does permit an exception from the prohibition for a “locally owned fishing company.” 24 FSM Code § 504. Though this term is not defined in the statute, “local fishing vessel” is defined as previously discussed. Discussions with government officials confirm that, to date, NORMA has taken no action under this exception in the absence of a definition. Interview notes on file with the authors.

676 *Id.* § 102(52).

677 *Id.* § 104.

678 *Id.* § 102(39).

state waters by establishing the necessary permit system for such fishing, and to finance both the enforcement and regulatory effort.⁶⁷⁹

Essentially, Pohnpei’s recreational and sport fishing statute permits recreational fishing by non-FSM citizens subject to a strict limit: “the total catch, inclusive of the catch of species of bill fish prohibited to foreign fishing vessels ..., attributable to any one such person in any one day shall not exceed 150 pounds or three fish, whichever is greater.”⁶⁸⁰ Persons fishing as part of a registered and approved sport fishing contest are exempt from this limit, so long as the contest restricts the methods of fishing that can be used in the contest to handlines and rods and reels.⁶⁸¹ The statute also directs the State to “seek the cooperation of the operators of sport fishing vessels and the members of sport fishing clubs to preserve populations of marine life and promote their use in recreational fishing.”⁶⁸²

Finally, the statute permits the state to “determine the total allowable harvest or catch level of subsistence and recreational fishing with respect to any stock of fish subject to this chapter.”⁶⁸³ The level is to be set for optimum sustainable yield and development as determined by the best scientific evidence available, including statistical and other information concerning such stocks of fish; and conservation, management, and sustainable development measures contained in management plans relating to such stocks of fish.⁶⁸⁴

In setting these levels, the State may place restrictions on vessel type, gear type, seasons of operations, areas in which the fishing can take place, or any other restriction relevant to conservation, management, and sustainable development.⁶⁸⁵

Chuuk and Yap: Both States parallel this approach to restricting recreational fishing within their jurisdictions. Pursuant to the relevant legal provision in each State, the regulatory authority may provide for the issuance of permits, on reasonable conditions, to foreign vessels or parties for research, survey, recreational, or noncommercial fishing within the State Fishery Zone and internal waters.⁶⁸⁶

Kosrae: The Kosrae State Code mentions recreational fishing only in the context of marine protected areas (discussed above), which sets up a system of permitting within the areas for noncommercial recreational fishing, subsistence fishing, public recreation and accommodations, and scientific research.⁶⁸⁷

5.3 Aquaculture

The FSM 2023 Action Plan articulates two action items specifically relating to aquaculture: establishing a national overarching aquaculture development framework and promoting small-scale community managed aquaculture projects.

In 2019, with the assistance of the SPC, the FSM published the *Federated States of Micronesia Aquaculture Management and Development Plan*.⁶⁸⁸ The detailed report was developed with collaboration among the FSMNG, the four state governments, and stakeholders representing fisheries governance, the private sector, NGOs, and civil society. For each of the five governments—the FSM and the four States—the report employs a similar structure for laying out a government-specific “aquaculture development plan.” The report identifies key government agencies involved in aquaculture development and regulation; individually discusses each “priority commodity;” and analyzes challenges as well as strategies for success.⁶⁸⁹

679 29 Pohnpei Code § 1-102. Commercial recreational fishing is defined to mean the hiring out of a fishing vessel or the services thereof for recreational purposes, and includes sport fishing. *Id.* § 1-103(7).

680 *Id.* § 1-108(1).

681 *Id.* § 1-108(2).

682 *Id.* § 1-108(3).

683 *Id.* Code § 1-111(1).

684 *Id.*

685 *Id.* § 1-111(2).

686 25 Draft Chuuk State Code § 1011(10); 18 Yap State Code § 211(j).

687 Kosrae State Code § 19.813. Pohnpei has a similar provision with respect to its protected area network. 26 Pohnpei Code § 5-108.

688 For details, see www.spc.int/DigitalLibrary/Doc/FAME/Manuals/Federated_States_of_Micronesia_Aquaculture_Management_and_Development_Plan.pdf.

689 The challenges are captioned as follows: capacity building and technical skills; governance and policy; economic viability; markets and trade; environment and climate change; and infrastructure.

Pohnpei: The State of Pohnpei has enacted two pieces of legislation relating to aquaculture. In 2008, the Advisory Board on Fisheries and Aquaculture was established within Pohnpei's OFA. The duties of the Board are to consider matters regarding fisheries and aquaculture in Pohnpei, formulate policy recommendations for all appropriate government agencies, review all financial reports and the annual budget of the OFA, and recommend legislation for improvement of Pohnpei's fisheries and aquaculture.⁶⁹⁰

In 2014, Pohnpei passed S.L. No. 8L-58-14, which was codified as "Commercialization of Sea Cucumbers."⁶⁹¹ In support of the statute, the Legislature found that the harvesting of sea cucumbers from their natural marine habitat and the aquaculture farming of sea cucumbers are commercially viable ventures which, when properly controlled in a sustainable environment, can result in economic development for the State and meaningful employment for Pohnpeian citizens.⁶⁹² Aquaculture is defined to mean the cultivation, propagation, or farming of aquatic organisms, including fish, mollusks, crustaceans, invertebrates, and any aquatic plants and animals, whether from eggs, spawn, spat, seed, or other means, or by veering aquatic organisms taken from the wild or imported, or by similar processes.⁶⁹³

The statute establishes the Pohnpei Sea Cucumber Commission to administer and supervise the commercialization of sea cucumbers; the Commission's membership includes an expert in low-impact aquaculture projects, "preferably an officer or employee of the Marine and Environmental Institute of Pohnpei."⁶⁹⁴ Finally, the statute requires that a feasibility study be conducted and filed with the Pohnpei Legislature not later than January 1, 2016; the study was to focus on "the sustainability and profitability of operating aquaculture farms for the seeding, raising, and marketing of sea cucumbers from the lagoons of Pohnpei Island and the outer islands of the s[t]ate."⁶⁹⁵ The statute also required that any proposed legislation be attached to the study, if appropriate, to fulfill the recommendation of the report.⁶⁹⁶

Kosrae: The Environmental Protection and Management provisions of the Kosrae State Code indicate that nothing in these provisions may be interpreted as prohibiting or authorizing the harvesting, processing, sale, or export of fish cultivated in an aquaculture center operated or approved by the FSMNG or the State Government of Kosrae.⁶⁹⁷ Aquaculture means any activity designed to cultivate or farm fish, and includes mariculture.⁶⁹⁸ Finally, aquaculture in Kosrae may require a permit to first be issued by the KIRMA administrator.⁶⁹⁹

5.4 Recreation

The FSMNG regulates recreational boating through the National Maritime Act of 1997.⁷⁰⁰ The secretary of DTCI is authorized to promulgate regulations necessary to provide for the safety and control of foreign and domestic small craft, including those used for fishing.⁷⁰¹

690 39 Pohnpei Code § 3-101 et seq.

691 26 Pohnpei Code § 7-101 et seq.

692 *Id.* § 7-101.

693 *Id.* § 7-102(1).

694 *Id.* § 7-106(2)(b).

695 *Id.* § 7-401. The authors are not aware that this study has been produced.

696 *Id.*

697 Kosrae State Code § 19.304.

698 *Id.* § 19.103(3).

699 *Id.* § 19.306(1)(c).

700 19 FSM Code § 101 et seq.

701 *Id.* § 403. Small craft means vessels of less than 12 meters in length of any kind or type used or capable of being used as a means of transportation on water, vessels of any length used exclusively for private, noncommercial recreation and pleasure, and traditional canoes of any length, but not including: (a) craft belonging to the defense force of any nation; and (b) fishing vessels. *Id.* § 106(35).

In 2002, the secretary of the DTCL promulgated Pleasure Craft Regulations.⁷⁰² The regulations apply to all noncommercial vessels not trading for hire or reward, used for pleasure or recreation, owned by persons resident in the FSM, and all pleasure craft in the inland [sic] waters, territorial seas, or EEZ.⁷⁰³ The regulations contain seven substantive parts, primarily focused on ensuring that pleasure craft are appropriately registered, properly maintained and supplied with safety equipment, and safely operated by competent individuals.⁷⁰⁴

Pohnpei: Pohnpei also regulates recreational boating. Code provisions on water traffic controls are intended to construct and maintain a system of standardized reef markers in Pohnpei State.⁷⁰⁵ The law establishes standards for reef markers relating to shape, color, and height above the high-water mark—all of which work to provide boaters with information concerning safety and navigability near reefs.⁷⁰⁶ Additionally, it is unlawful to remove, change, destroy, or moor a boat, canoe, or any object to any reef marker or other aid-to-navigation deployed by the U.S. Coast Guard, the FSM, Pohnpei State, or local governments.⁷⁰⁷

The “watercraft” provisions of the Pohnpei State Code⁷⁰⁸ ensure that watercraft operate safely near culverts, bridges, and tunnels; when entering or passing through channels; when operating in narrow channels of sixty feet or less in width; and when passing other watercraft.⁷⁰⁹ In particular, it is unlawful to tie, moor, or anchor a boat, canoe, or other craft or logs in the middle of any channel of Pohnpei State. It is unlawful to put up or cause to be put up branches of trees, nets, rocks, or any other obstacle in the channel or leave such obstacles as are no longer in use in waterways of Pohnpei State that interfere with free and safe passage.⁷¹⁰

Chuuk: Divers seeking to access the Chuuk Lagoon State Monument (discussed below in Section 5.5 of this report) must first obtain a permit from a duly licensed dive shop.⁷¹¹ It does not appear as though any of the other three States, or the FSM, has legislated in the area of diving and snorkeling.

Kosrae: Kosrae State accomplishes a similar objective to that of Pohnpei State relating to the free and safe passage of waterways by criminalizing any public nuisance that “obstructs the free passage or use, in the customary manner, of any navigable lake, river, bay, stream, canal, or basin.”⁷¹²

5.5 Cultural Heritage

Pursuant to FSM law governing historical sites and antiquities, it is the policy of the FSM to protect and preserve the diverse cultural heritage of the peoples of Micronesia and, in furtherance of that policy, to assist in the identification and maintenance of those areas, sites, and objects of historical significance within the FSM.⁷¹³

702 See Pleasure Craft Regulations, at <https://tci.gov.fm/documents/transportation/marine/regulations/pleasure-craft-regulations.pdf>.

703 Although Reg. 1.3 uses the term “inland waters,” it appears that this may be an error, as other formulations referencing geographic scope use the term “internal waters.” For example, 19 FSM Code § 106(41) defines the waters of the FSM as “the internal waters, Territorial Sea, and Exclusive Economic Zone, as defined in title 18 of this Code.” Title 18 also uses the term “internal waters” rather than “inland waters.”

704 The titles of the substantive parts are as follows: Part 2 Identification of Vessel, Marking and Recording; Part 3 Inspection of Vessels; Part 4 Safety Equipment; Part 5 Operational Requirements; Part 6 Exemptions; Part 7 Offenses; & Part 8 Fees.

705 32 Pohnpei Code § 6-101 et seq.

706 *Id.* § 6-104.

707 *Id.* § 6-105.

708 *Id.* § 7-101 et seq.

709 See, respectively, *id.* §§ 7-101, 7-102, 7-103, & § 7-106.

710 *Id.* § 7-104.

711 25 Draft Chuuk State Code § 1705. This section of the Truk District era statute was subsequently amended by Chuuk State Law No. 5-99-19, which was signed into law in February 2000. Consequently, the language of this section has substituted “Chuuk” for “Truk” and “State” for “District” where appropriate.

712 Kosrae State Code § 13.509.

713 26 FSM Code § 101. Section 102 contains the three key definitions for tit. 26: “(1) ‘Cultural attribute’ means all aspects of local culture, tradition, arts, crafts, all social institutions, forms of expression, and modes of social interaction. (2) ‘Historic property’ means sites, structures, buildings, objects, and areas of significance in local history, archeology, or culture. (3) ‘Historical artifact’ means an object produced by human beings 30 or more years previously.”

The Institute for Micronesian History and Culture, established by statute, is imbued with a variety of powers, including, inter alia, assisting the historical and cultural preservation programs in the States;⁷¹⁴ providing guidance in historic and cultural affairs to all levels of government, as well as to foreign governments and private businesses operating in Micronesia;⁷¹⁵ establishing and maintaining a National Archives of the FSM;⁷¹⁶ and monitoring any activities that could have an impact on historic properties or cultural attributes.⁷¹⁷

Certain historic preservation procedures are applicable to any undertaking by specified parties (i.e., the FSM government or other parties, public or private, foreign or domestic, operating with the financial assistance or permission of the FSMNG).⁷¹⁸ The FSMNG must determine the nature and magnitude of the impact of any activities on a historic property or cultural attribute;⁷¹⁹ must engage in robust consultations with stakeholders—including the public—if “significant effects” are likely;⁷²⁰ and must resolve any “irresoluble conflict” that results from such consultations.⁷²¹ Prior to resolving such a conflict, the FSM president must review written reports submitted by the parties, balance economic and general development against the value of the historic property or cultural attribute involved, and then issue a public announcement setting forth the decision and its bases.⁷²²

It is prohibited to transport historical artifacts in interstate or foreign commerce without the express written permission of the executive as well as the legislative branches of the applicable State.⁷²³ It is prohibited to destroy any historic property under the jurisdiction of the FSMNG without express written permission from the president and the speaker of the FSM Congress.⁷²⁴ All reasonable efforts must be made to repatriate any historical artifacts that had been previously exported from the FSM.⁷²⁵ Monetary penalties are provided for violations of these prohibitions.⁷²⁶

Additionally, the Seabed Resources Act of 2014, discussed in depth below, provides that anyone prospecting or mining for seabed minerals who finds an object of an archaeological or historical nature in a location within the jurisdiction or control of the FSM must report that find to the National Seabed Resources Authority (NSRA), treat the object in accordance with the NSRA’s instructions, and safeguard the object pending receipt of those instructions.⁷²⁷

Pohnpei: Title 22 of the Pohnpei State Code is entitled “Customs, Traditions and Historic Preservation” and addresses historical and cultural preservation; historical monuments; the Pohnpei Language Commission; and traditional affairs finances.⁷²⁸

The Historic and Cultural Preservation Act of 2002 acknowledges that Pohnpei “contains a wealth of historic, archaeological, and cultural properties” that are “important to the maintenance and development of the identity, pride, and integrity of the people of Pohnpei, and to the world’s understanding of Micronesian history and culture.” The guiding principle to be used in the implementation of the Act is to

714 *Id.* § 202(1).

715 *Id.* § 202(2).

716 *Id.* § 202(7).

717 *Id.* § 202(8).

718 *Id.* § 301 et seq.

719 *Id.* § 302.

720 *Id.* § 303(1).

721 *Id.* § 304.

722 *Id.* § 305. “The president, in reaching a decision, must take into account the value of the undertaking in question to the economic and general development of the FSM or to its defense and the value of the historic property or cultural attribute involved to the maintenance of Micronesia’s cultural integrity and to the scientific and humanistic understanding of Micronesia’s cultures and history.” *Id.* § 305(2).

723 *Id.* § 401(1).

724 *Id.* § 401(2).

725 *Id.* § 401(3).

726 *Id.* § 402.

727 24 FSM Code § 1012(1), as added by P.L. 20-102 (2018). The NSRA’s instructions must take into account arts. 149 & 303 of UNCLOS. *Id.* § 1012(2). For a discussion of the regulation of seabed mining in the FSM, see Section 5.7.1 of this report.

728 See chs. 1, 3, 4, & 10, respectively, of tit. 22 of the Pohnpei State Code. Chapter 4 relates to the establishment and operation of the Pohnpei Language Commission, which wields a variety of powers geared toward the teaching, preserving, and improving of the Pohnpeian languages, including with respect to “honorific language.” See 22 Pohnpei Code § 4-103.

foster conditions under which modern society and historic, archaeological, and cultural resources in the state can co-exist in harmony and fulfill the social, economic, and other requirements of present and future generations.⁷²⁹

The Act establishes the Pohnpei Historic and Cultural Preservation Review Board to advise the state government and to exercise a variety of powers concerning historic preservation, including supporting related educational endeavors;⁷³⁰ establishes the Division of Historic Preservation within the Pohnpei Department of Land to “be responsible for the comprehensive historic preservation program,” including the administration of the State Registry of Historical Properties;⁷³¹ requires individuals in some circumstances to obtain a historic preservation clearance or permit prior to undertaking projects involving real property;⁷³² and prohibits and criminalizes injury to historic property as well as forgeries and illegal sales of historic property.⁷³³

Pursuant to a statute from the Pohnpei District era relating to historical monuments, the remains of all works of the people of pre-foreign times are designated as historical monuments and are declared to be the property of the people of Pohnpei as a whole.⁷³⁴ The statute empowers the governor to specify by written notice other works of ancient people on public or private lands as of sufficient importance to be preserved as historical monuments;⁷³⁵ makes it the joint responsibility of state and local government to guard and preserve monuments;⁷³⁶ requires private landowners to “act as a trustee of the monument [occurring on their land] for the people of Pohnpei;”⁷³⁷ places limits on archaeological investigations of historical monuments;⁷³⁸ and imposes criminal penalties on persons who “deface, destroy or remove without proper authorization any ancient human work found in a historical monument.”⁷³⁹

The statute also contains a section specifically relating to Nan Madol, revoking all private interests in the ruins,⁷⁴⁰ and establishing the responsibilities and rights of the local government of Madolenihmw with respect to maintaining the Nan Madol ruins and for authorizing an appropriation from Pohnpei State to help repair, preserve, and maintain the ruins.⁷⁴¹

Finally, Pohnpei has established a statutory fund, the Pohnpei Traditional Affairs Fund, to support the traditions and culture of the State, and for the support of traditional leaders in affairs of state and government.⁷⁴²

Chuuk: The Chuuk Legislature has declared the policy to forever preserve historic landmarks, structures, and other sites and objects of state and national significance alike for the inspiration and benefit of the people of the FSM.⁷⁴³ Specifically, the Legislature established the Truk Lagoon District Monument,⁷⁴⁴ which includes all ships, vessels, and aircraft—and any and all parts thereof—and all other objects, including nonmilitary items that formerly belonged to or were part of the armed forces of Japan and were sunk or otherwise deposited in the Truk Lagoon prior to December 31, 1945.⁷⁴⁵

729 22 Pohnpei Code § 1-102. Definitions for key terms such as “historic property” or “historic resource,” and “preservation” or “historic preservation,” are contained at *id.* § 1-104(3) & (6), respectively.

730 *Id.* §§ 1-105 & 1-107.

731 *Id.* §§ 1-108 & 1-109.

732 *Id.* § 1-110.

733 *Id.* § 1-116.

734 *Id.* § 3-101.

735 *Id.* § 3-102.

736 *Id.* § 3-103.

737 *Id.*

738 *Id.* § 3-104.

739 *Id.* § 3-105.

740 *Id.* § 3-106(1).

741 *Id.* § 3-106(2), (3), & (4).

742 *Id.* § 10-101. The bulk of the statute relates to articulating and establishing the operational processes of the Fund.

743 25 Draft Chuuk State Code § 1701.

744 The statute establishing this marine monument dates from the District era in FSM history, during which Chuuk State was Truk District. Consequently, the statute using the legal terms of that era; that is, “Truk” rather than “Chuuk” and “District” rather than “State.”

745 25 Draft Chuuk State Code § 1702. Technically, the individual vessels and artifacts are designated as monuments that, collectively, form the entire monument. *Id.*

As discussed above in Section 5.4 of this report, divers within this legally protected, geographically defined marine monument are required to obtain permits prior to their dives.⁷⁴⁶ In addition, the statute not only empowers Chuuk to promulgate rules and regulations to carry out the purposes of the statute, but also establishes criminal penalties for violations of the statute.⁷⁴⁷ The penalties provision seems to recognize that the governor has the authority to provide written permission to individuals to remove or otherwise interact with these “monuments.”⁷⁴⁸

Kosrae: Tampering with antiquities in Kosrae constitutes a category one misdemeanor. Tampering includes disturbing, removing, damaging, or selling matter belonging to antiquities, unless the user has authorization pursuant to regulations or the user owns the matter.⁷⁴⁹ Thus, antiquities come in two varieties: those belonging to the public and those privately owned. Kosrae’s Code mandates that KIRMA consider the impact of any proposed action on antiquities and traditional culture, and must report its findings to the governor and Legislature before the government begins to undertake, assist, participate in, or license action that might affect the land or state waters.⁷⁵⁰ KIRMA also is responsible for promulgating regulations that state the classes of structures, artifacts, or other objects that constitute state antiquities.⁷⁵¹

Yap: Yap’s State Historic Preservation Act of 1989 recognizes the importance of Yap’s cultural heritage, and that Yap’s traditions, arts, crafts, stories, and songs of historic and cultural significance are in danger of being lost as previous generations pass away.⁷⁵²

The Act declares that it is the policy of Yap State to exercise its constitutional powers to preserve Yap’s cultural heritage for the benefit of present and future generations.⁷⁵³ The Act establishes the Yap Historic Preservation Program,⁷⁵⁴ which requires that the impact of any state governmental activity on historic preservation or traditional culture be assessed;⁷⁵⁵ mandates that consultation be undertaken if it is likely that any activity will have “significant effect;”⁷⁵⁶ and requires that any decision to resolve consultation conflicts consider the value of the activity to the economic and social development of the State and the value of the concerned history property or traditional culture.⁷⁵⁷

The Act envisions a special role for the Council of Pilung and the Council of Tamol to advise the government on matters and activities that concern historic properties and traditional culture.⁷⁵⁸ Finally, the Act prohibits harming or removing historic property⁷⁵⁹ and provides for criminal penalties, the severity of which escalates based upon the monetary value of the historic property at issue.⁷⁶⁰

746 *Id.* § 1705.

747 *Id.* § 1707.

748 The relevant exception language is as follows: “[a]ny person who, without the written permission of the Governor, removes, appropriates, damages, or destroys the aforesaid ships, other vessels or aircraft, or any or all parts thereof ...” *Id.*

749 Kosrae State Code § 13.512.

750 *Id.* § 19.402.

751 *Id.* § 19.403.

752 5 Yap State Code § 402. Historic property under the Act means any site, structure, building, object, or area of significance in the history, archaeology, or culture of the people of the State of Yap. Traditional culture means any tradition, art, craft, song, story, or technology indigenous to the people of the State of Yap. *Id.* § 404(c), (d).

753 *Id.* § 403.

754 *Id.* § 405(a).

755 *Id.* § 405(b).

756 *Id.* § 405(c).

757 *Id.* § 405(h).

758 *Id.* § 407(a).

759 Specifically, no person shall willfully remove, or cause to be removed, history property from the State or the public domain, or willfully deface, disfigure, disturb, damage, or destroy such property. *Id.* § 408.

760 *Id.* § 409.

5.6 Maritime and Shipping

Governance of the maritime and shipping sector is divided between the national government and the four state governments. As indicated above in Section 2.2.1 of this report, the FSM Constitution expressly delegates to the FSM Congress the power to regulate navigation and shipping, except within lagoons, lakes, and rivers⁷⁶¹—where regulatory authority lies with the States.

At the national level, the Marine Division of the DTCL is responsible for oversight. DTCL manages the development and enforcement of legislation and regulations, coordinates among comparable state and external agencies, and operates the two national vessels providing interstate shipping and transport within the FSM, especially to the outer islands of the States. The FSM maintains a closed ship registry.

National maritime and shipping activities are governed by the provisions of the comprehensive National Maritime Act of 1997, which is codified at Title 19 of the FSM Code. It has been observed that the FSM patterned its maritime legislation after the established maritime law of nations as opposed to simply following the statutory precedent from jurisdictions in the United States. Key aspects of the FSM's maritime legislation include the following:

- The Act defines important terms such as fishing vessel; government vessel; passenger vessel; registered vessel; small craft; vessel; “waters of the FSM;” and wreck.⁷⁶²
- The Act makes it a crime—a “national offense”—to falsely fly the FSM flag, punishable by a fine up to US\$100,000, imprisonment of up to one year, and forfeiture of the vessel.⁷⁶³
- The Act defines an “unsafe vessel as a “vessel that is unfit to go to sea without danger to the vessel, human life, property or the environment;”⁷⁶⁴ prohibits an unsafe vessel from being taken to sea or from operating within the waters of the FSM;⁷⁶⁵ and allows for unsafe vessels to be detained.⁷⁶⁶
- The Act requires mandatory reporting whenever, inter alia, a vessel “is involved in an accident, marine incident, or casualty resulting in damage of any kind to the vessel, property or the environment, or any personal injury or loss of life;”⁷⁶⁷ or “fouls or does damage to a pipeline, submarine cable or marine aid to navigation.”⁷⁶⁸
- The Act designates each state’s Port Authority to “be the pilotage authority for that state, responsible for the provision of pilotage services within that state,” and to regulate all pilotage services.⁷⁶⁹
- The Act requires a designated individual—the Aids to Navigation Officer—to “inspect marine aids to navigation on a regular basis to ensure that they remain unobstructed and in good condition.”⁷⁷⁰ This individual has the right to enter any public or private property to carry out this duty, and any hindrance or obstruction of his duties is a civil offense, punishable by a fine not exceeding US\$200,000.⁷⁷¹ In addition, this individual must “coordinate with the states in regard to the establishment, maintenance, operation, alteration or removal of marine aids to navigation in conformity with international standards to maintain uniform national standards as needed for the safe navigation of vessels in the waters of the [FSM].”⁷⁷²
- The Act makes a vessel owner and master “liable for the wrecked vessel and all damages to persons, property and the environment accruing from the wreck, its removal and any environmental clean-up operations.”⁷⁷³

761 FSM Const. art. XI § 2(h).

762 19 FSM Code § 106(7), (9), (19), (28), (35), (40), (41), & (42), respectively.

763 *Id.* § 202.

764 *Id.* § 422(1).

765 *Id.* § 422(2).

766 *Id.* § 422(3).

767 *Id.* § 427(1).

768 *Id.* § 427(4).

769 *Id.* § 701.

770 *Id.* §§ 801 & 803(1).

771 *Id.* § 803(2), (3).

772 *Id.* § 804.

773 *Id.* § 905.

In addition to the National Maritime Act of 1997, the DTCl Marine Division also has available, online, 14 sets of lengthy maritime and shipping related regulations, covering topics ranging from tariffs to pilotage to tonnage to marine inquiry.⁷⁷⁴

Pohnpei: The Pohnpei Port Authority Act of 1991 was enacted to establish a State-owned entity that owns and maintains basic terminal infrastructure and regulates port activities, but leases cargo handling and terminal operations out to a private operator.⁷⁷⁵ The Pohnpei Port Authority has the power to adopt and enforce regulations “as to piers and other water obstructions in harbors and sea-lanes for seaports owned or operated by the Authority.”⁷⁷⁶

Chuuk and Yap: Ports in Chuuk are overseen by the Chuuk State Department of Transportation and Infrastructure, whereas in Yap they are overseen by the Yap State Department of Public Works and Transportation. In both States, the ports are operated by private operators.

Kosrae: At the state level, Kosrae has the most extensive statute relating to maritime and shipping within its jurisdiction. Title 14 of the Kosrae State Code is titled “The Sea and Transportation” and includes chapters on “Ports of Entry,” “Inspection,” “State and Territorial Waters,” “Seizure,” and “The Marine Space.”⁷⁷⁷ Perhaps most relevant to Marine Spatial Planning is Chapter 13, relating to “The Marine Space,” which defines Kosrae’s marine space to extend “seaward twelve miles from the State’s baseline as defined by national law.”⁷⁷⁸ The Chapter also provides a consultation procedure to be used by the Kosrae State Government when it wishes to use “the waters, land, and other natural resources within the marine space of a municipality.”⁷⁷⁹

Chapter 11, “State and Territorial Waters,” recognizes the existence of “a written understanding with national government” to ensure that Kosrae State can effectively control its waters without impinging upon the national government’s exclusive jurisdiction in some waters.⁷⁸⁰ Generally, Kosrae requires a vessel to have permission to enter territorial waters or state waters,⁷⁸¹ but without affecting the right of innocent passage through territorial waters.⁷⁸² Kosrae’s statute also allows for seizure of a vessel upon “reasonable cause to believe that a vessel is subject to seizure for violation of law;” in the alternative, a court-ordered arrest of a vessel can be made.⁷⁸³

With respect to its ports of entry, in Kosrae a “vessel enters State waters at Okat or Lelu harbors,” and the governor may deny entry, order departure, or condition a vessel’s stay if he finds that a vessel endangers public health, safety, or welfare.⁷⁸⁴ The governor, via regulation, may provide for the “State waters in which a vessel may not operate without a State licensed ship pilot.”⁷⁸⁵ The statute also sets and imposes a variety of port and dock fees, including a transshipment fee of US\$1.25 per revenue ton of fish or other cargoes off-loaded or transferred onto a carrier vessel at the port or in the territorial waters of Kosrae State.⁷⁸⁶ There is an exemption from any port or dock fee for locally based noncommercial fishing vessels and outrigger vessels; vessels wholly owned by the Government, by Kosrae domiciliaries, or by the Government and Kosrae domiciliaries jointly; and military and law enforcement vessels.

774 See FSM DTCl: “Maritime Division,” at <https://tci.gov.fm/transportation-marine.html>. The regulations include: FSM Pilotage Regulations, FSM Fishing Vessel Safety Regulations, Prevention of Collisions at Sea Regulations, FSM Small Vessel Regulations, FSM Pleasure Craft Regulations, Preliminary Investigation Regulations, Proposed Ship Tariff Regulations, Seafarer Employment Regulations, FSM Standards of Training, Certification & Watch-keeping (Standards of Training, Certification and Watchkeeping for Seafarers, or STCW) Regulations and related schedules, Marine Inquiry Regulations, Seafarer Welfare Regulations, Tonnage Measurement Regulations, and Vessel Registration Regulations.

775 See generally 32 Pohnpei Code § 1-101 et seq. Kosrae’s Port Authority is structured and operates similarly. See generally Kosrae State Code § 7.601 et seq.

776 32 Pohnpei Code § 1-121.

777 See generally Kosrae State Code § 14.101 et seq.

778 Kosrae State Code § 14.1301.

779 *Id.* § 14.1302.

780 *Id.* § 14.1101.

781 *Id.* § 14.1102.

782 *Id.* § 14.1103. Passage is not innocent when a vessel makes use of territorial waters to do an act prejudicial to the security, public policy, or economic interests of the State or the FSM.

783 *Id.* § 14.1201.

784 *Id.* § 14.101.

785 *Id.* § 14.103(1).

786 *Id.* § 14.104(5).

5.7 Offshore Industry

The FSM has not enacted laws governing offshore energy production (from either renewables or hydrocarbons). The FSM has, however, adopted a new legislative framework to regulate mining in its jurisdictional waters. Given the comprehensive nature of this recent legislation, which applies throughout the FSM's marine waters and has many implications for ocean management, it is covered here in detail.

5.7.1 Seabed Mining

The principal legal authority with respect to mining in the FSM's marine waters is the National Seabed Resources Act of 2014,⁷⁸⁷ which entered into force in 2018.⁷⁸⁸ This recent legislation establishes a comprehensive legal framework for the management and development of seabed minerals.⁷⁸⁹ The legislation is complex, and implementing regulations yet have to be promulgated.⁷⁹⁰ As such, the following discussion emphasizes elements of the Act that are most relevant to environmental protection, marine protected areas, and marine spatial planning.

Overview, scope, and key definitions. The Act, by its terms:

- creates a regulatory system and designates a responsible authority to license, monitor, and manage the FSM's involvement with seabed mineral activities;
- establishes a system granting titles (i.e., permits, licenses, and certificates of sponsorship) pursuant to which title holders may engage in such activities;
- creates a register of titles and provides for the registration of dealings and interests in titles;
- creates offenses in respect of actions carried out in breach of the Act;
- provides for the protection of the environment during the conduct of seabed mineral activities, including through the application of the provisions of the FSM's existing environmental legislation;
- provides for the payment of royalties, fees, and taxes to the FSM;
- provides for the FSM to receive payments for its sponsorship of seabed mineral activities in the seabed and subsoil located beyond the limits of national jurisdiction (known under UNCLOS as "the Area"); and
- establishes a special fund on the revenue derived from seabed mineral activities to be invested for the long-term benefit of the people of the FSM.⁷⁹¹

Additionally, the Act governs marine scientific research conducted in the FSM's EEZ and on the continental shelf.

The Act reaffirms the national government's sovereign rights to the seabed resources located in the EEZ and on the continental shelf beyond the EEZ.⁷⁹² The Act disavows any intent to deprive the States of their sovereignty over the seabed resources located in their respective territorial and internal waters—or of the States' authority to delegate to the national government responsibility with respect to these resources.⁷⁹³

787 FSM Code tit. 24 subtit. II, as added by P.L. 20-102 (2018).

788 President Panuelo signed the Act into law in 2018.

789 24 FSM Code § 103(a)–(b), as added by P.L. 20-102 (2018). The Act does not apply to petroleum exploration or extraction. *Id.* § 106(b).

790 As of late 2020, Congress had allocated funding to hire a consultant to develop regulations and a framework for operations to implement the Act. See Statement by H.E. Ambassador Jane J. Chigiyal, Permanent Representative of the Federated States of Micronesia to the United Nations, Head of Delegation of the Federated States of Micronesia to the 25th Session of the Assembly of the International Seabed Authority, Agenda item 9: Annual Report of the Secretary-General.

791 24 FSM Code § 104(a)–(h), as added by P.L. 20-102 (2018). For a section-by-section review of the Act, see Standing Comm. Rpt. no. 20-57, re C.B. no. 20-41/Comm. on Resources and Dev't, May 14, 2018.

792 24 FSM Code § 105(1), as added by P.L. 20-102 (2018). The Act uses the term EEZ as it is defined in FSM Code tit. 18. The term continental shelf means the FSM's seabed and subsoil, as the term is used in UNCLOS art. 76. FSM Code § 102, as added by P.L. 20-102 (2018). See Chapter 3 of this report for further discussion of the FSM's ocean jurisdiction.

793 24 FSM Code § 105(2), as added by P.L. 20-102 (2018). The Act uses the terms territorial sea and internal waters as they are defined in FSM Code tit. 18. 24 FSM Code § 102, as added by P.L. 20-102 (2018).

The Act is to be administered and interpreted consistently with the FSM's obligations under UNCLOS and the nation's duties to protect and preserve the marine environment and rare or fragile ecosystems and habitats; prevent, reduce, and control pollution from seabed mineral activities, or caused by ships or by dumping of waste and other matter at sea; prevent transboundary harm; conserve biodiversity; apply the precautionary approach; employ best environmental practices; conduct prior environmental and social impact assessment of activities likely to cause serious harm to the environment; and take measures for ensuring safety at sea.⁷⁹⁴

The Act governs "seabed mineral activities," a term that covers authorized prospecting for, exploration for, and mining of seabed minerals in waters under FSM jurisdiction, as well as exploration for and mining of seabed minerals in the Area under contract with or sponsorship by the FSM.⁷⁹⁵ It is prohibited to engage in any seabed mineral activities, except as authorized under a "title."⁷⁹⁶ Violators are subjected to a fine of US\$500,000 and five years in prison, as well as forfeiture of any seabed minerals, products, or proceeds obtained as a result of the violation.⁷⁹⁷

The Act defines the term "environment" broadly.⁷⁹⁸ The marine environment, specifically, means the environment of the sea, and it includes the physical, chemical, geological, biological and genetic components, conditions, and factors that interact and determine the productivity, state, condition, and quality of the marine ecosystem, the waters of the seas and oceans and the airspace above those waters, as well as the seabed and ocean floor and subsoil.⁷⁹⁹ The framework of the Act is intended to avoid or mitigate "serious harm" to the marine environment. Serious harm means any effect that compromises ecosystem structure or function in a manner that impairs the ability of affected populations to replace themselves, degrades the long-term natural productivity of habitats, or causes, on more than a temporary basis, significant loss of species richness, habitat, or community types.⁸⁰⁰

The NSRA. The Act is administered by the NSRA, a five-member board that is chaired by the secretary of the FSM R&D and includes representation from each State.⁸⁰¹ The NSRA has four stated objectives: (i) to maintain effective control of seabed mineral activities under the Act; (ii) to maximize economic and development benefits from these activities; (iii) to ensure that these activities are undertaken with due regard to protecting and preserving the marine environment and the well-being of individuals and communities impacted or employed by the industry; and (iv) to provide a stable, transparent, predictable, and accountable regime for the permitting, licensing and sponsorship, and regulation by the FSM of these activities.⁸⁰² An executive director oversees the NSRA's day-to-day operations.⁸⁰³

The NSRA is assigned a range of functions that support its mandate to regulate and monitor the development of the FSM's seabed minerals sector.⁸⁰⁴ These functions include cooperating with the Office of Environment and Emergency Management (OEEM) in the conduct and review of environmental and social impact assessments for seabed mineral activities and liaising with the International Seabed Authority (ISA).⁸⁰⁵

794 24 FSM Code § 102(2), as added by P.L. 20-102 (2018). The Act defines precautionary approach as follows: where there is a threat of serious harm or irreversible damage to the environment, or threat to human health in the FSM, precautionary measures should be taken, even if a lack of scientific knowledge means that some cause-and-effect relationships are not fully understood. *Id.* § 102(1).

795 24 FSM Code § 102, as added by P.L. 20-102 (2018).

796 24 FSM Code § 401(1), as added by P.L. 20-102 (2018). The term title here refers to the rights conferred and the obligations imposed by a prospecting permit, a license, or a sponsorship certificate issued under the Act. *Id.*

797 24 FSM Code § 401(2)-(3), as added by P.L. 20-102 (2018).

798 It includes all natural, physical, and social resources and ecosystems, including land, rock, seabed, soil, minerals, water, air, climate, material assets, cultural heritage, landscape, plants, animals, human beings, and their habitats, and the interaction between any of these factors. 24 FSM Code § 102(1), as added by P.L. 20-102 (2018).

799 *Id.*

800 *Id.*

801 24 FSM Code § 201, as added by P.L. 20-102 (2018). Except for the secretary, members serve two-year terms. Members who are not part of the FSM government are compensated; all members have their expenses paid. *Id.* §§ 219 & 220. As of April 2021, the Board had not been constituted.

802 24 FSM Code § 202, as added by P.L. 20-102 (2018).

803 24 FSM Code § 222, as added by P.L. 20-102 (2018).

804 24 FSM Code § 203, as added by P.L. 20-102 (2018). One such function is to maintain a cadastral survey map and registry of titles, which are open to public inspection. *Id.* §§ 203(b) & 306–307.

805 24 FSM Code § 203(d) & (i), as added by P.L. 20-102 (2018).

The NSRA is empowered to promote and encourage foreign investment in seabed mining in the FSM (or under the FSM's sponsorship in the Area), to encourage growth of related industries, and to promote the sustainable, scientific, and environmentally sound utilization of resources under the Act, applying the precautionary approach.⁸⁰⁶ The NSRA is further empowered to regulate prospecting, exploration, and mining; to ensure monitoring and compliance; and to seek assistance and expert advice within and outside of government.⁸⁰⁷ It is notable that the NSRA both *promotes* and *regulates* seabed mining.

The NSRA must keep a written record of its decisions (and the grounds for them) taken under the Act.⁸⁰⁸ The NSRA must file an annual report on its activities, which is to be made publicly available.⁸⁰⁹

Regulation of prospecting, exploration, and mining. All areas of seabed and subsoil are divided into blocks, which are then further divided into cells.⁸¹⁰ The NSRA, by reference to these blocks and cells, may designate or “release” an area of the EEZ or the continental shelf (or of the territorial sea and internal waters, where such responsibility has been delegated by a State) for the purpose of conducting seabed mineral activities.⁸¹¹

Prospecting permit. Prospecting requires a valid prospecting permit from the NSRA.⁸¹² An application for a prospecting permit must include a preliminary assessment of likely impact on the environment of the proposed prospecting.⁸¹³ Among the grounds on which the NSRA will deny a prospecting permit application are where the terms of the permit are likely to lead to the contravention by any person of conditions or restrictions placed on any marine reserve or a protected area or cause serious harm to the environment, or to human health or safety.⁸¹⁴ Prospecting must cease upon written notice of the NSRA where a declaration of a marine reserve or protected area has been or is about to be issued for that area, or where the prospector has caused, is causing, or poses a threat of serious harm to the environment or human life.⁸¹⁵

Exploration license and mining license. Exploration and mining each require a valid license from the NSRA.⁸¹⁶ Among other requirements, an application for an exploration license or a mining license must include a preliminary assessment of the possible impact on the environment of the proposed seabed mineral activities; a proposal for oceanographic and environmental baseline studies; an environmental management plan; and an undertaking that the applicant has sufficient financial and technical resources and capability to respond to any incident or activity that causes serious harm to the marine environment, including having sufficient funding or insurance to cover the costs of any potential liability arising from accidents or pollution.⁸¹⁷ Applicants for a mining license must further demonstrate that their mineral recovery can be efficient and economical, with due regard for conservation and protection of the marine environment.⁸¹⁸

806 24 FSM Code § 205(a), as added by P.L. 20-102 (2018).

807 24 FSM Code § 205(b)–(e). The NSRA must consult with stakeholders and give due consideration to their views prior to the effective date of any regulation. *Id.* § 205(b)(1)(b).

808 24 FSM Code § 210, as added by P.L. 20-102 (2018).

809 24 FSM Code § 223, as added by P.L. 20-102 (2018).

810 24 FSM Code §§ 301–302, as added by P.L. 20-102 (2018).

811 24 FSM Code § 303, as added by P.L. 20-102 (2018). The NSRA, by regulation, may prescribe maximum areas to be held under a license or by a person. *Id.* § 308.

812 24 FSM Code § 501, as added by P.L. 20-102 (2018). Prospecting within the FSM's national jurisdiction, and the permitting process, are governed by tit. 24 subtit. II ch. 5.

813 24 FSM Code § 503(h), as added by P.L. 20-102 (2018). This preliminary assessment must include an indication of the nature and quantity of substances to be released into the marine environment; whether drilling will be carried out; and whether explosives will be used. *Id.*

814 24 FSM Code § 505(d), as added by P.L. 20-102 (2018).

815 24 FSM Code § 508(e)(i) & (iii), as added by P.L. 20-102 (2018). Prospecting entails no right to drill into the continental shelf, use explosives, or introduce harmful substances into the marine environment. *Id.* § 508(f).

816 24 FSM Code § 601, as added by P.L. 20-102 (2018). Exploration and mining within the FSM's national jurisdiction, and the licensing process, are governed by tit. 24 subtit. II ch. 6.

817 24 FSM Code § 604(7)–(9) & (24)(c)(ii), as added by P.L. 20-102 (2018). The environmental management plan must cover risk assessment and mitigation strategies for the protection of the environment and prevention of pollution; measures for the protection and conservation of biological diversity; measures to avoid or minimize air emissions that could contribute to climate change; measures to minimize the dumping of waste or other materials into the marine environment; and any decommissioning or site rehabilitation plans. *Id.* § 604(9).

818 24 FSM Code § 604(19)(a), as added by P.L. 20-102 (2018).

In evaluating an application for an exploration license or a mining license, the NSRA must take into account whether the applicant has previously been found, on reasonable evidence, to have breached a term or condition of an approval to conduct seabed mineral activities that relates to the protection or rehabilitation of the environment.⁸¹⁹ Among the grounds on which the NSRA will deny a license application are where the license would likely lead to the contravention by any person of a declaration of a “marine area” or a protected area.⁸²⁰ The NSRA must undertake a public consultation prior to deciding on an application for a mining license.⁸²¹ Where not otherwise required by the Act or FSM law, a license may require that an environmental and social impact assessment be conducted before seabed mineral activities can begin.⁸²²

Among the conditions precedent for a licensee to commence seabed mineral activities is providing the NSRA with evidence of written notice from DECEM of its endorsement of the environmental management and impact mitigation plan, and its approval to commence.⁸²³ Additionally, a licensee also may be required, as a term of the license, to provide financial security under the Act to guarantee its compliance with its environmental management and mitigation plan and other environmental and social obligations, as a condition for commencing mining.⁸²⁴

A licensee is liable for the actual amount of compensation for damage arising out of its failure to comply with the Act in the conduct of licensed activities, including that arising from injury to coastal or marine users, damage to the environment, and any related economic loss or compensation.⁸²⁵

The NSRA may vary, suspend, or revoke a license for various reasons—including where doing so is necessary to prevent serious risk to the environment⁸²⁶ or where there has been a serious, persistent, or willful breach by the licensee of conditions imposed under FSM environmental law.⁸²⁷ In lieu of a variation, suspension, or revocation, the NSRA may take administrative action (described below) or impose monetary penalties proportionate to the seriousness of the violation and not exceeding US\$10,000, excluding compensation payable for damage or harm.⁸²⁸

The NSRA, by notice, also may establish safety zones for the purpose of protecting seabed mining activities. In a safety zone, entry is prohibited to all vessels or specified classes of vessels without written consent of the NSRA, on pain of a US\$5,000 fine.⁸²⁹

Environmental requirements. Among the requirements to which prospectors and licensees must adhere are the FSM Environmental Protection Act and its regulations,⁸³⁰ as well as any environmental conditions arising from an environmental and social impact assessment.⁸³¹ All title holders are further subject to numerous duties, which are broken out by category: social and environmental management; training;

819 24 FSM Code §§ 605(1)(a) & 606(2)(a), as added by P.L. 20-102 (2018). The NSRA also must consider the applicant’s environmental management plan and capability of carrying out the plan. *Id.* § 606(2)(e).

820 24 FSM Code § 607(b), as added by P.L. 20-102 (2018). Note that “marine area” in the statutory text should probably be “marine reserve.”

821 24 FSM Code § 610, as added by P.L. 20-102 (2018).

822 24 FSM Code § 615(e), as added by P.L. 20-102 (2018).

823 24 FSM Code § 620(1)(a), as added by P.L. 20-102 (2018).

824 24 FSM Code § 620(2), as added by P.L. 20-102 (2018).

825 24 FSM Code § 624(2), as added by P.L. 20-102 (2018).

826 24 FSM Code § 628(1)(c)(i)(b), as added by P.L. 20-102 (2018).

827 24 FSM Code § 628(1)(j)(iii), as added by P.L. 20-102 (2018).

828 24 FSM Code § 628(5), as added by P.L. 20-102 (2018).

829 24 FSM Code § 1014, as added by P.L. 20-102 (2018).

830 See FSM Code tit. 25. See also 24 FSM Code § 102, as added by P.L. 20-102 (2018).

831 24 FSM Code § 402(1), as added by P.L. 20-102 (2018).

financial; legal; and reporting.⁸³² With respect to social and environmental management, each title holder must:

- apply the precautionary approach and employ best environmental practice in accordance with prevailing international standards to avoid, remedy, or mitigate the adverse effects of seabed mineral activities on the environment;
- take necessary steps to prevent, reduce, and control pollution and other hazards to the marine environment, including waste material, arising from seabed mineral activities and ancillary operations;
- as required by FSM law—or, for seabed mineral activities in the Area, the rules of the ISA—before commencing work, conduct an environmental and social impact assessment, and not proceed with licensed activities unless and until the appropriate approval has been obtained;
- if marine or coastal users—likely to be directly adversely affected by the seabed mineral activities—are identified by the NSRA, or the title holder, then obtain free, prior, and informed consent, including by way of compensation, from those persons prior to commencing the activities;
- not proceed with or continue seabed mineral activities without obtaining prior written consent from the NSRA if evidence arises that proceeding is likely to cause serious harm to:
 - the environment (that was not anticipated in any environmental and social impact assessment previously conducted),
 - the safety, health, or welfare of any person, or
 - other existing or planned legitimate sea uses including, but not limited to, marine scientific research;
- not dump mineral materials or waste, or any other substance, from a vessel except in accordance with international law and the directions of the NSRA (or pursuant to ISA rules); and
- at the end of the title term or upon earlier suspension, revocation, or surrender of the title, remove all installations, equipment, and materials in the title area to ensure that the area constitutes no danger to persons, shipping, or the marine environment; and provide a final report, including information on the area's rehabilitation.⁸³³

Environmental and social impact assessment. An environmental and social impact assessment is required for any licensed mining and also for any other aspect of seabed mineral activities or ancillary operations where it appears to the licensee, the NSRA, or the OEEM that the nature or degree of that activity, or the particular sensitivity of the site, is such that it is likely to result in serious harm to the environment.⁸³⁴ The Act specifies a number of technical activities for which a prospector or licensee need not conduct an environmental and social impact assessment, unless the NSRA advises otherwise.⁸³⁵ No seabed mineral activities requiring an environmental and social impact assessment may be commenced until the assessment and any subsequent amendments to the environmental management and impact mitigation plan, work plan, or license terms have been completed to the satisfaction of DECEM, as evidenced by written notice from the department.⁸³⁶

832 24 FSM Code § 403, as added by P.L. 20-102 (2018).

833 24 FSM Code § 403(a)–(g), as added by P.L. 20-102 (2018). Additionally, if another nation objects to the FSM that an FSM title holder's activities are causing serious harm to the environment, the NSRA must undertake a process to assess the objection and, as necessary, take steps to stop the harm. *Id.* § 1011.

834 24 FSM Code § 623(1)(b)–(c), as added by P.L. 20-102 (2018).

835 24 FSM Code § 623(1)(a), as added by P.L. 20-102 (2018). For any activity not otherwise covered by the Act, no assessment is required where the licensee obtains written notice from the OEEM that it is satisfied on the information before it that the activity may proceed without an assessment. *Id.* § 623(1)(d).

836 24 FSM Code § 623(3), as added by P.L. 20-102 (2018). Also, a mining license renewal requires prior written approval from the Department. *Id.* § 626(5).

An environmental and social impact assessment and report required for seabed mineral activities under the Act—or under any other FSM law—must at a minimum include content contained in Schedule 1 to the Act.⁸³⁷ The assessment report must address the following elements, each supported by detailed informational requirements:

- Executive summary (for nontechnical readers)
- Introduction
- Policy, legal, and administrative framework
- Stakeholder consultation
- Description of proposed activity
- Description of existing environment
- Environmental impacts on the seabed site, the regional site, and the coastal and onshore environment, and mitigation and management measures
- Environmental management, monitoring, and reporting.⁸³⁸

Further procedures and requirements for an environmental and social impact assessment for seabed mineral activities may be prescribed.⁸³⁹

The terms of any environmental conditions arising from an environmental and social impact assessment (whether conducted under the Act or another FSM law) become part of the terms and conditions of any title issued under the Act.⁸⁴⁰

When any environmental and social impact assessment is completed after the issuance date for a license, the NSRA must conduct a review of the license work plan, annual expenditure, and time schedule.⁸⁴¹

Marine protected areas. The Act introduces the concept of “reserved areas,” which are areas in which the NSRA may not tender or grant a title over any block. If there is no title over a particular area of the FSM’s EEZ or continental shelf, the NSRA may declare the area to be a reserved area. The NSRA may declare reserved areas for purposes of, inter alia, marine spatial management, environmental protection, or setting aside an area for future tender for seabed mineral activities.⁸⁴²

Any area declared to be a marine reserve or protected area is deemed under the Act to be “automatically” declared a reserved area.⁸⁴³ The Act defines a marine reserve as any conservation area, marine park, or reserve—or similar protective measures for the marine environment or biology declared under the laws of the FSM—that prohibits the conduct of seabed mineral activities.⁸⁴⁴ A protected area under the Act is, specifically, a protected area established within the meaning of the CBD.⁸⁴⁵

If part of a seabed mineral license area includes an area that comprises or is within a protected area or a marine reserve, the license remains valid—but does not authorize seabed mineral activities to be carried out within that part “until further consultations and conditions are met.”⁸⁴⁶

837 24 FSM Code § 623(2), as added by P.L. 20-102 (2018). The wording in this provision of the Act is ambiguous with respect to whether *all* environmental and social impact assessments required under FSM law must now satisfy the detailed impact assessment provisions contained in the Act, or whether these provisions are intended to apply *only* with respect to seabed mineral activities.

838 24 FSM Code § 1024 (Sched. I: Environmental and Social Impact Assessment Contents), as added by P.L. 20-102 (2018). The report also must identify the assessment team, include various front matter, and list references. All supporting studies must be included in an appendix. *Id.*

839 24 FSM Code § 623(4), as added by P.L. 20-102 (2018).

840 24 FSM Code § 1003, as added by P.L. 20-102 (2018).

841 24 FSM Code § 627(1)(a), as added by P.L. 20-102 (2018). The Act characterizes this, without explanation, as a “joint” review. Before consenting to the variation of a term of a mining license in a material particular, the NSRA may consult with the OEEM. *Id.* § 627(5).

842 Thus, not every “reserved area” is necessarily being declared and set aside for protection purposes.

843 24 FSM Code §§ 304–05, as added by P.L. 20-102 (2018).

844 24 FSM Code § 102(1), as added by P.L. 20-102 (2018).

845 *Id.*

846 24 FSM Code § 625, as added by P.L. 20-102 (2018). This provision is ambiguous with respect to what consultations and conditions could properly result in seabed mineral activities taking place in a protected area or marine reserve. A licensed area means part of the FSM’s seabed in respect of which there is in force an exploration or mining license. 24 FSM Code § 102(1), as added by P.L. 20-102 (2018).

Contract with the ISA; sponsorship certificate. The NSRA, on behalf of the FSM, may pursue seabed mineral activities in the Area (as defined by UNCLOS) in two ways:⁸⁴⁷ by entering into contracts with the ISA to conduct plans of work, as well as entering into subcontracts with third parties to deliver services under those contracts;⁸⁴⁸ and by sponsoring a third party, by way of a sponsorship certificate, to conduct such activities under contract with the ISA.⁸⁴⁹

Among other requirements, an application to the NSRA for sponsorship must include copies or summaries of any studies conducted by the applicant, or other data, relating to the potential impact of the seabed mineral activities on the environment;⁸⁵⁰ and an indication of the applicant's proposed insurance or contingency funding to cover damage that may be caused by the seabed mineral activities or the costs of responding to an incident.⁸⁵¹ The applicant also must satisfy various sponsorship qualification criteria,⁸⁵² including that: the applicant will have sufficient financial and technical resources and capability to cover damage that may be caused by the proposed seabed mineral activities or the costs of responding to an incident; the proposed seabed mineral activities are consistent with ISA rules in relation to environmental management; the proposed seabed mineral activities are compatible with applicable national and international laws, including those relating to safety at sea and the protection and preservation of the marine environment; and the proposed seabed mineral activities will not unduly affect the rights of other legitimate sea users or the protection and preservation of the marine environment.⁸⁵³

A sponsored party is responsible for the performance of all seabed mineral activities carried out within the contract area, and its compliance with the ISA, and is liable for the actual amount of any compensation or damage or penalties arising out of a failure to comply.⁸⁵⁴ For its part, the FSM, when sponsoring a party, agrees, inter alia, to promote the application of the precautionary approach and the employment of best environmental practices.⁸⁵⁵

Other penalty provisions; administrative actions; information and inspection; dispute resolution. In addition to penalty provisions noted above, a title holder may not, on penalty of a US\$5,000 fine, interfere "unreasonably" with the activities of other sea users. Such other lawful uses include, without limitation, navigation, fishing, submarine cabling, marine scientific research, and conservation of the resources of the sea or the seabed. Unreasonable interference is that which is greater than necessary for the reasonable exercise of the rights or performance of the title holder's duties.⁸⁵⁶

Where an offense under the Act is committed by a corporate body, a director or officer of that body, under defined circumstances, also may be found guilty. If the court finds that the person committed the offense willfully, recklessly, corruptly, or for personal gain, the officer is liable to imprisonment of two years (although the corporate punishment is limited to a fine).⁸⁵⁷

847 The FSM's sponsorship of seabed mineral activities in the Area is governed by FSM Code tit. 24 subtit. II ch. 7.

848 24 FSM Code § 701, as added by P.L. 20-102 (2018).

849 *Id.* The NSRA may issue a sponsorship certificate for exploration or for mining. *Id.* § 702(4)(a).

850 24 FSM Code § 704(1)(b)(iii), as added by P.L. 20-102 (2018).

851 24 FSM Code § 704(1)(b)(iv)(c), as added by P.L. 20-102 (2018).

852 24 FSM Code §§ 703(1) & 704(1)(a), as added by P.L. 20-102 (2018).

853 24 FSM Code § 704(2)(a)(ii)(B), (2)(b), (2)(c), & (2)(d)(A)–(B), as added by P.L. 20-102 (2018).

854 24 FSM Code § 707(1)(a), as added by P.L. 20-102 (2018).

855 24 FSM Code § 708(e), as added by P.L. 20-102 (2018).

856 24 FSM Code § 1010, as added by P.L. 20-102 (2018).

857 24 FSM Code § 1020, as added by P.L. 20-102 (2018).

The NSRA may pursue a range of administrative actions when a prospector, licensee, or sponsored party has materially breached a condition of its title or a requirement of the Act or its regulations.⁸⁵⁸ The NSRA may:

- issue written warnings;
- enter into a written agreement providing for the party to undertake a program of remedial action and to mitigate the risk of reoccurrence;
- issue an enforcement order;
- impose an administrative penalty of US\$10,000 per diem;
- impose temporary restrictions on the party's seabed mineral activities; or
- commence a process to vary, suspend, or revoke title, including a variation to impose additional conditions.⁸⁵⁹

Prospectors, licensees, and sponsored parties operating under the Act must report certain incidents to the NSRA.⁸⁶⁰ The term incident is defined to include research, activities, or operations that result in unanticipated serious harm to the environment, or in pollution of the marine environment in breach of the FSM's obligations under international law.⁸⁶¹ The NSRA may conduct inquiries into such incidents, or into any other matter under the Act.⁸⁶²

In support of its duties, the NSRA enjoys broad power to collect, retain, and publish information pertaining to seabed mineral activities.⁸⁶³ The NSRA maintains an inspectorate to assist with its monitoring and compliance function. Inspectors hold narrowly prescribed powers under the Act.⁸⁶⁴ The NSRA and its authorized officers may issue enforcement orders requiring persons to take corrective action or cease taking harmful action.⁸⁶⁵ If such persons fail to comply, the NSRA itself may take corrective action and recover, in a court of competent jurisdiction, its reasonable costs and expenses.⁸⁶⁶

Disputes between the FSM and another state in connection with seabed mineral activities are to be resolved pursuant to the provisions of UNCLOS. Disputes between the FSM and a title holder, if not resolved through mutual agreement or mediation, are referred to the courts of the FSM—or, by agreement of the parties, addressed by internationally conducted arbitration.⁸⁶⁷

Marine scientific research. The Act governs marine scientific research carried out within the EEZ and continental shelf of the FSM.⁸⁶⁸ It is prohibited for any person to undertake marine scientific research unless the person has applied to the NSRA for a permit under the Act; applied to NORMA for a permit pursuant to FSM Code tit. 24 § 104; and either received a consent to both applications or not received a denial

858 24 FSM Code § 218, as added by P.L. 20-102 (2018).

859 24 FSM Code § 218(2), as added by P.L. 20-102 (2018). If the title holder objects, a hearing or review of the decision may be conducted pursuant to FSM law. *Id.* § 218(4).

860 24 FSM Code § 212, as added by P.L. 20-102 (2018).

861 24 FSM Code §§ 102 & 212, as added by P.L. 20-102 (2018).

862 24 FSM Code § 212(4).

863 24 FSM Code § 206, as added by P.L. 20-102 (2018). The NSRA may order that any person furnish information under the Act. Failure to do so, absent a reasonable justification, is an offense carrying a US\$50,000 fine, as is providing false or misleading information. *Id.* §§ 206 & 208. The Act also regulates the NSRA's handling and use of such information. *Id.* § 207.

864 24 FSM Code §§ 213–214, as added by P.L. 20-102 (2018). Obstructing or failing to comply with an inspector is an offense, carrying a US\$5,000 fine. *Id.* § 214.

865 24 FSM Code § 215, as added by P.L. 20-102 (2018). Failure to comply is an offense, carrying a fine of US\$100,000. *Id.*

866 24 FSM Code §§ 216–17, as added by P.L. 20-102 (2018).

867 24 FSM Code § 1022, as added by P.L. 20-102 (2018).

868 24 FSM Code § 801, as added by P.L. 20-102 (2018). The Act also covers scientific research carried out in the territorial sea and internal waters, where a State has delegated such responsibility to the NSRA. *Id.* Marine scientific research here is defined to mean any study, research, or other related scientific activity—whether fundamental or applied—intended to increase knowledge about the marine environment for the benefit of all mankind, and not undertaken directly for industrial or economic purposes that fall within the permitting provisions of subtit. I of tit. 24 (i.e., the Marine Resources Act).

within six months.⁸⁶⁹ Applications must be filed six months before research is to begin and must contain various details, as outlined in the Act.⁸⁷⁰ Absent reasonable grounds to deny the permit, the NSRA must provide its consent as soon as reasonably practicable—and no later than six months after receipt of the application.⁸⁷¹ Persons conducting scientific research must satisfy statutorily identified duties.⁸⁷²

5.7.2 Energy Production

In 2011, a joint venture was entered into between the Kosrae Utility Authority (KUA) and a private company, Ocean Energy Industries, to build a 1.5 megawatt wave power converter based on WaveSurfer technology developed by Ocean Energy Industries.⁸⁷³ More recently, in the 2018 Energy Master Plans for the FSM, it was determined that ocean/wave energy is possible but likely not a well suited or commercially viable alternative energy source for the FSM.⁸⁷⁴

Additionally, in 2018, a power purchase agreement was executed between Pohnpei Utilities Corporation (PUC) and a private company, Kepirohi Solar Energy Limited (KSEL), an affiliate of a commercial fishing company, CityPro, whereby KSEL would build, own, and operate a 3 megawatt solar photovoltaic electric generating facility and sell the generated power to PUC. The power purchase agreement was unique in that it stemmed from CityPro’s FSM commercial fishing license being conditioned upon execution of the agreement. This is an example of the FSMNG increasingly placing conditions on fishing licenses to foreign companies that require those companies to undertake direct investment projects that benefit the residents of the FSM.

5.8 Utilities

Utilities within the FSM consist of a state utility company in each of the four States (typically providing electricity, water, and sewage services)⁸⁷⁵ plus two national government-established public corporations—one providing energy services and one providing telecommunications services nationwide. See Table 7.

Table 7. State Utilities of the Federated States of Micronesia.

	Pohnpei	Chuuk	Kosrae	Yap
Entity name(s)	Pohnpei Utilities Corporation (PUC)	Chuuk Public Utility Corporation (CPUC)	Kosrae Utilities Authority (KUA)	Yap State Public Service Corporation (YSPSC); Gagil-Tomil Water Authority (GTWA); Southern Yap Water Authority (SYWA)

869 24 FSM Code § 801, as added by P.L. 20-102 (2018). The marine scientific research provisions contained in the Seabed Resources Act are in addition to the previously existing marine scientific research requirements contained in FSM law and discussed in Section 5.10 of this report—and new § 801 does not appear limited to marine scientific research conducted only in a seabed mining context. Discussions with FSM government officials suggest that an effort will be made to determine how best to harmonize these scientific research permitting requirements. Interview notes on file with the authors.

870 24 FSM Code § 802, as added by P.L. 20-102 (2018).

871 24 FSM Code § 803, as added by P.L. 20-102 (2018). The Act identifies various grounds on which consent will be denied by the NSRA. *Id.* § 804.

872 24 FSM Code § 806, as added by P.L. 20-102 (2018).

873 See Renewable Energy Magazine: “Micronesia to boast first island to be 100% renewable powered,” at www.renewableenergymagazine.com/ocean_energy/micronesia-to-boast-first-island-to-be. The authors understand from KUA that this joint venture was subsequently dissolved.

874 See Castalia Limited: “Energy Master Plans for the Federated States of Micronesia: Final Report to the Department of Resources and Development,” at https://islands.irena.org/-/media/Files/IRENA/Sids/fsm_energy_master_plans_final_report_-_april_2018a.ashx.

875 In Yap, in addition to the main state utility company, Yap State Public Service Corporation, the Yap State Legislature has created two water authorities: Gagil-Tomil Water Authority (18 Yap State Code § 601 et seq) and Southern Yap Water Authority (18 Yap State Code § 701 et seq).

Legal authority	34 Pohnpei Code § 1-102(9)	Chuuk State Law 8-14 § 1	Kosrae State Code § 7.1202(7)	Yap State Code, Title 14, § 1; Title 18, § 6; & Title 18, § 7
Services	Provide electrical power, piped and bottled water, and sewage services	Provide, maintain, and improve the water, electric, and sewerage systems	Provide public electric power	YSPSC: Supervise the construction, maintenance, operations, and regulation of . . . power, sewage, refuse collection and disposal, and water GTWA: Establish, develop, maintain, operate, and manage the Gagil-Tomil Water System SYWA: Establish, develop, maintain, operate ,and manage the Southern Yap Water System

The PUC, CPUC, and KUA each possesses explicit statutory authority to enter on private or public land on which utilities have been, are, or will be supplied in order to carry out activities that relate to the provision of public utilities services.⁸⁷⁶ Consequently, in these three States residents are accustomed to governmental entities accessing their property in the service of the public good. It is not uncommon, however, for litigation to arise as a result of state utilities accessing and allegedly causing harm on private land.

Several of the state utilities have demonstrated, either through amendments to their enabling legislation, or through their partnerships with NGOs, an orientation to provide utility services in an environmentally sensitive manner, as follows:

- PUC: substantial legislative amendments in 2012 address a severe power generation crisis by permitting power purchase agreements with large-scale generators of power; permitting joint ventures and other creative financing arrangements; and providing for feed-in tariffs for small-scale renewable energy generators.⁸⁷⁷
- CPUC: The Asian Development Bank (ADB) currently funds the Chuuk Water Supply and Sanitation Project (CWSSP), which aims to improve CPUC’s utility operation and customer management; expand and rehabilitate CPUC’s sewage system and water supply services; reduce nonrevenue water; and increase revenue from water supply and sewerage services. The project also intends to raise Chuuk’s community awareness on good sanitation and hygiene practices to prevent diseases, as well as foster water conservation.
- Yap State Public Service Corporation (YSPSC): the ADB recently funded the Yap Renewable Energy Development Project, with the goal of supporting development of the power system in the State of Yap so as to reduce dependency on imported diesel through the expansion of renewable power generation and improve the supply-side efficiencies of power delivery.
- KUA: the ADB is in the process of funding in Kosrae a project similar to the Yap Renewable Energy Development Project.

An orientation to provide public services in an environmentally sensitive manner is exemplified by the FSM’s national energy company, FSM Petroleum Corporation (FSMPC). In June 2014, the FSM Congress transitioned to the FSMPC the responsibilities and functions of the now dissolved FSM Coconut Development

876 See 34 Pohnpei Code § 1-102(9); Chuuk State Law 8-14 § 1; & Kosrae State Code § 7.1202(7).

877 S.L. No. 8L-09-12, amending Pohnpei Code tit. 34.

Authority. The transition was necessary in “order to enhance the capacity for the manufacturing, processing, and distribution of biofuel from the coconut tree as a supplemental source of fuel” in the FSM.⁸⁷⁸

Additionally, to reflect its ambition to transition from a petroleum company to an “energy company”—and to better position itself to qualify for funding from the Green Climate Fund—FSMPC has engaged with the FSM executive to submit a “transformation bill” to the FSM Congress.⁸⁷⁹ The bill would require FSMPC “to create and execute strategic plans to transition into an energy company, to expand its business activities into renewable sources of energy, and to provide for changing the Corporation’s name to reflect its expanded business activities.”

5.9 Pollution Control

The FSM Constitution contains a provision that addresses the need to combat pollution, albeit of a particular, extremely harmful variety: “[r]adioactive, toxic chemical, or other harmful substances may not be tested, stored, used, or disposed of within the jurisdiction of the [FSM] without the express approval of the national government”⁸⁸⁰

At the national level, pollutants in the water are regulated by the DECEM.⁸⁸¹ DECEM is charged with a wide-ranging general mandate that encompasses the power to combat pollution. The Department has:

the power and duty to protect the environment, human health, welfare, and safety and to abate, control, and prohibit pollution or contamination of air, land, and water ... including measures undertaken to prohibit or regulate the testing, storage, use, disposal, import and export of radioactive, toxic chemical, or other harmful substances. The [Department] shall balance the needs of economic and social development with those of environmental quality and shall adopt regulations and pursue policies which, to the maximum extent possible, promote both these needs and the policies [as identified in the environmental protection title of the FSM Code].⁸⁸²

DECEM also is required to submit an annual environmental quality report to the FSM president and Congress that covers “the status and conditions of the environment” of the FSM as well as “a review of the programs and activities of the National Government, state governments, municipal governments and nongovernmental entities, with particular reference to their effect on the environment” of the FSM.⁸⁸³

To achieve its statutory objectives relating to pollution, DECEM has the authority to enter into written cooperative agreements with the States or state agencies and to enter into similar agreements with other national government departments or agencies.⁸⁸⁴ To effectively implement and enforce the provisions of the FSM Environmental Protection Act, DECEM has the right of entry into any establishment or upon any property, as well as to seize items that are reasonably suspected to have been involved in a breach of the Act.⁸⁸⁵ Finally, DECEM has a variety of means for enforcement action in response to any violations of the Act:

878 P.L. 18-68 § 3, at <http://cfsm.gov.fm/iframe/18th%20Congress/Public%20Laws/PUBLIC%20LAW%2018-68.pdf>.

879 See Twenty-First Congress of the Federated States of Micronesia, First Regular Session, 2019 (A Bill for an Act) at http://cfsm.gov.fm/iframe/21%20congress/BILLS/CB_21-06.pdf.

880 FSM Const. art. XIII § 2. Two state constitutions also address such highly toxic substances. The Pohnpei Constitution states, in part, “Nuclear, chemical, gas, and biological weapons, nuclear power plants, and waste materials therefrom, including high-level and low-level radioactive waste, shall not be introduced, stored, used, tested, or disposed of within any part of the jurisdiction of Pohnpei, except if such action is specifically and expressly permitted by a majority of votes cast in a referendum by the people of Pohnpei.” Pohnpei Const. art. 13 § 2(1). The Yap Constitution states, “Radioactive and nuclear substances shall not be tested, stored, used or disposed within the State.” Yap Const. art. XIII § 4.

881 See 25 FSM Code § 103(3). DECEM was previously an “Office” rather than a department-level entity.

882 25 FSM Code § 209. Neither pollution nor contamination is defined in the law, although the term *pollutant* is defined as follows: “a pollutant means one or more substances or forms of energy which, when present in the air, land, or water, are or may be harmful or injurious to human health, welfare, or safety, to animal or plant life, or to property, or which unreasonably interfere with the enjoyment by the people of life or property.” *Id.* § 103(5). Within the recently adopted Seabed Resources Act of 2014 (discussed in Section 5.7.1 of this report), there are seven discrete references to pollution—although, once again, the term remains undefined.

883 25 FSM Code § 208.

884 *Id.* § 301.

885 *Id.* § 303(1), (2).

cease and desist orders;⁸⁸⁶ clean up or abatement orders;⁸⁸⁷ imposition of a civil penalty up to US\$100,000 for each day of the violation;⁸⁸⁸ a civil action to enjoin the violation;⁸⁸⁹ a civil action for damages;⁸⁹⁰ and felony criminal penalties for false statements or for falsifying monitoring devices or methods.⁸⁹¹

In 2020, the FSM enacted a statute that added a new chapter to the FSM Environmental Protection Act to specifically prohibit the importation of one-time-use disposable Styrofoam, plastic food service items, and plastic shopping bags. Public Law No. 21-76 was signed into law on February 7, 2020, but certain provisions did not become effective until July 1, 2020.⁸⁹² In addition to the general prohibition, the statute does permit continued importation of “reusable or recycled” items (although those terms are not defined in the statute), but it also empowers FSM immigration or customs officers to “at all reasonable times and based on reasonable suspicion seize and destroy” the prohibited items. Although when passing the law Congress did not adopt an SCR to memorialize its intentions, the floor debate prior to passage made clear that one goal was to reduce visual blight and pollution caused by the prohibited items in the FSM. Limiting the importation of these items in the first instance also served to support the States in their efforts to limit pollution.

At the state level, Pohnpei,⁸⁹³ Chuuk,⁸⁹⁴ and Yap⁸⁹⁵ each has established an Environmental Protection Agency (EPA) to regulate the discharge of pollutants, whereas Kosrae assigns this responsibility to KIRMA.⁸⁹⁶

Pohnpei: The EPA in Pohnpei has the general power and duty “to protect the environment, human health, welfare, and safety and to abate, control, and prohibit pollution or contamination of air, land, and water,” while also “balancing the needs of economic and social development against those of environmental quality.”⁸⁹⁷ The EPA is required to promulgate rules and regulations relating to water pollution, including those that concern water supply systems, pesticides, sewage, solid waste, marine and fresh water quality, and ground water.⁸⁹⁸ Furthermore, the EPA is required to establish and administer a permit system for the discharge of a pollutant into the air, land, or water, or “for any person to conduct any activity that results or may result in the discharge of any pollutant into the air, land or water such as the operation, construction, expansion or alteration of any facility.”⁸⁹⁹

Finally, the EPA is required to do the following:

- Intervene on behalf of the State and public in any suit in any court in which the quality of the air, land, or water of Pohnpei is in question.⁹⁰⁰
- Adopt and administer programs for the prevention, control, and abatement of pollution of the air, land, and water of Pohnpei.⁹⁰¹

The EPA has the right of entry into establishments and upon property to carry out its assigned duties,⁹⁰² and it has the authority to cooperate with appropriate FSM agencies for the protection of the Pohnpei environment.⁹⁰³ Finally, the EPA has a variety of means for enforcement action in response to any violations

886 25 FSM Code § 304(1).

887 *Id.* § 304(2).

888 *Id.* § 304(3).

889 *Id.* § 304(4).

890 *Id.* § 304(5).

891 *Id.* § 307.

892 See P.L. 21-76, at http://cfsm.gov.fm/iframe/21%20congress/LAWS/PUBLIC_LAW_NO__21-76.pdf.

893 27 Pohnpei Code § 1-101 et seq.

894 22 Draft Chuuk State Code § 1001 et seq.

895 18 Yap State Code § 1501 et seq.

896 Kosrae State Code § 19.101.

897 27 Pohnpei Code § 1-109.

898 *Id.* § 1-109(1)(d), (e), (f), (g), (h), & (j).

899 *Id.* § 1-109(2). A pollutant is one or more substances or forms of energy that, when present in the air, land, or water, are or may be harmful or injurious to the health, welfare, or safety of humans, animals, plants, or property, or that unreasonably interfere with the enjoyment of the lives and properties of the people. *Id.* § 1-103(6).

900 *Id.* § 1-109(8).

901 *Id.* § 1-109(10).

902 *Id.* § 1-110.

903 *Id.* § 1-116.

of the Pohnpei Environmental Protection Act of 1992: issuing cease and desist orders;⁹⁰⁴ issuing an order to prevent, remedy, repair, clean up, or abate the effects of any pollutant;⁹⁰⁵ imposing a civil penalty of not less than US\$100 a day for each day of a violation;⁹⁰⁶ commencing a civil action to enjoin the violation or for monetary damages;⁹⁰⁷ and pursuing criminal penalties for false statements or for falsifying monitoring systems.⁹⁰⁸

In addition to its overarching environmental protection act, Pohnpei has enacted statutes that specifically relate to the following: litter abatement; recycling of beverage containers; control of plastic wastes; and sanitary landfills.⁹⁰⁹

Pohnpei's litter abatement statute begins with a sweeping statement of policy and intent, with the Legislature declaring that it is the public policy of the State to preserve the pristine beauty of the natural environment and to protect, maintain, and improve the aesthetic attributes of the State for the promotion of public health and welfare of the people and for the enhancement of recreational and tourist facilities, as well as for agricultural and other legitimate beneficial uses.⁹¹⁰

The litter abatement statute includes two proactive, education-based approaches to minimize pollution. The EPA is required to develop and maintain a continuous and vigorous program of public education for children and adults alike as to their responsibilities in keeping Pohnpei clean.⁹¹¹ Recognizing that "the best defense against a dirty environment is an offense for clean and healthy lifestyles,"⁹¹² the EPA also is required to implement environmental awareness programs, including the "institution of community award programs designed to honor communities that, by example, show the highest commitment to litter abatement and solid waste control."⁹¹³ The existence of such a community award program may explain the fact that at least four municipalities on Pohnpei have enacted litter ordinances.⁹¹⁴

A portion of the litter abatement statute specifically prohibits polluting public waters. It is unlawful for any person to throw, discard, scatter, or abandon any waste materials, rubbish, garbage, or other debris in any form or substance upon any public road, street, easement, land, stream, river, or body of water accessible to the general public, other than a public dumping ground maintained by the Government of Pohnpei or any of the local governments.⁹¹⁵

In 2011, Pohnpei enacted a statute designed to address a common blight on the natural beauty of Pohnpei: beverage containers.⁹¹⁶ That same year, Pohnpei enacted a statute focused on eliminating plastic bags from the State.⁹¹⁷ The statute contains a precise definition of "plastic bag;" specifically prohibits wholesalers or retailers from offering plastic bags to their customers; fixes monetary penalties for violations; and articulates limited, specific exceptions to the prohibition (e.g., original packaging, biodegradable bags, durable and reusable plastic bags, and the like).⁹¹⁸

904 *Id.* § 1-112(a).

905 *Id.* § 1-112(b).

906 *Id.* § 1-112(c).

907 *Id.* § 1-112(d), (e).

908 *Id.* § 1-114.

909 See chs. 2, 3, 4, & 5, respectively, of tit. 27 of the Pohnpei Code.

910 27 Pohnpei Code § 2-101. Section 2-102 contains separate definitions for garbage, litter, and rubbish. *Id.* § 2-102(5), (6), & (10), respectively.

911 *Id.* § 2-104.

912 *Id.* § 2-105.

913 *Id.* § 2-105(1).

914 See SC4-45-97 Littering (Sokehs Municipality); DL No. 03-86 Littering (Nett Municipality); KTO-No.-4C-003-97 Littering (Kolonia Town); and KTO-No.-8C-013-15 Sanitary Act of 2015 (Kolonia Town). At present, the ordinances from Sokehs and Nett are available only in the Pohnpeian language.

915 27 Pohnpei Code § 2-106.

916 *Id.* § 3-101.

917 *Id.* § 4-101.

918 *Id.* §§ 4-102, 4-103, & 4-104.

Finally, Pohnpei has a statute governing “the collection, transportation, and disposition of garbage, ashes, rubbish, industrial refuse, and other refuse,” as well as a requirement that inhabited dwellings in Pohnpei be equipped with regulation latrines or toilets.⁹¹⁹

Chuuk: The EPA in Chuuk State, pursuant to the Chuuk State Environmental Protection Act, has the general power and duty “to control and prohibit pollution of air, land, and water.”⁹²⁰ Specifically, the EPA has the power to do the following:

- Adopt and administer a statewide program for the prevention, control, and abatement of pollution of the air, land, and water of Chuuk State.⁹²¹
- Establish criteria for classifying air, land, and water in accordance with their present and future uses.⁹²²
- Regulate the import and application of restricted use and experimental pesticides.⁹²³
- Establish and administer a permit system before the discharge of any pollutant in the air, land, or water, or for the conduct by any person of any activity including, but not limited to, the operation, construction, expansion, or alteration of any installation.⁹²⁴

In Chuuk, “pollutant” is defined broadly to mean one or more matters or forms of energy that, when present in the air, land, and water are or may be harmful or injurious to the health, welfare, or safety of humans, animals, plants, or property, or which unreasonably interfere(s) with the enjoyment by the people of life or property.⁹²⁵

It is unlawful in Chuuk to litter, including in a body of water.⁹²⁶ The littering statute also requires the Chuuk EPA to establish a sanitary public dump site after undertaking an environmental impact study on the site “to ensure that only minimal damage may be caused to the environment in Chuuk State.”⁹²⁷ Enforcement of the littering statute may include use of a citation system⁹²⁸ and the use of alternative sentencing by the court in the form of clean-up programs and other public government activities in lieu of fines.⁹²⁹

The Chuuk EPA has the authority to enter into cooperative arrangements with the FSMNG, municipalities, and other agencies for the protection of Chuuk State environment.⁹³⁰ To effectively implement and enforce the provisions of the Chuuk State Environmental Protection Act, the EPA possesses the subpoena power and “quasi-judicial powers of contempt.”⁹³¹ It also has the right of entry into any establishment or upon any property to make inspection or to do other acts to carry out the purposes of the Act.⁹³² Finally, the EPA has a variety of means for enforcement action in response to violations of the Act: imposition of a civil penalty up to US\$100,000 for each day of the violation;⁹³³ a civil action to enjoin the violation;⁹³⁴ a civil action for damages (with the damages to be apportioned among any private landowners or property owners actually

919 17 Pohnpei Code §§ 9-101 to 9-106. Section 9-105 also includes the following prohibition: depositions of human intestinal excreta in the vicinity of a dwelling or in or within 500 yards of any village in a place other than an approved latrine or toilet.

920 22 Draft Chuuk State Code § 1005(1).

921 *Id.* § 1005(1)(c).

922 *Id.* § 1005(1)(d).

923 *Id.* § 1005(1)(e).

924 *Id.* § 1005(1)(f).

925 *Id.* § 1003(6).

926 *Id.* § 1301. Littering means dumping, throwing, placing, depositing, leaving, or causing to be dumped, thrown, deposited, or left any refuse of any kind or any object or substance which tends to pollute, mar, or deface into or upon or about: (i) any public street, highway, alley, road, stream, watercourse, or by other body of water; or (ii) any private property without the consent of the owner or occupant of such property. Littering also means any unpermitted writing, drawing, painting, engraving on any wall, structure, building, vessel, vehicle or boat. *Id.* § 1302.

927 *Id.* § 1304.

928 *Id.* § 1305(3).

929 *Id.* § 1306.

930 *Id.* § 1005(2).

931 *Id.* § 1005(3).

932 *Id.* § 1007.

933 *Id.* § 1008(1).

934 *Id.* § 1008(2).

affected by the violation);⁹³⁵ and criminal penalties for any intentional, knowing, or reckless violation.⁹³⁶ The Act also contains a private right of action; that is, a person who is affected by any violation of the Act retains the right to seek civil remedies in the appropriate court, irrespective of whether any claim or suit has been instituted.⁹³⁷

Korae: KIRMA's purpose in Kosrae is to protect the environment, human health, welfare, and safety; to abate, control, and prohibit pollution or contamination of air, land, and water, while also balancing the needs of economic and social development against those of environmental quality; and to adopt regulations and pursue policies that, to the maximum extent possible, ensure that economic and social development is environmentally sustainable.⁹³⁸ KIRMA also possesses extensive powers and duties, which include similar powers and duties to those contained in the statutes of the other three states, as well as many more.⁹³⁹ Three such powers and duties unique to Kosrae include:

- To oversee and enforce those provisions pertaining to the preservation and conservation of marine resources—including oversight of marine surveillance.
- To adopt climate risk reduction and climate change adaptation measures based upon existing weather and climate extremes and projected climate changes, and to provide consultation on application of climate change impacts and adaptation measures to the location, design, and construction of public projects and other development projects.
- To provide an environmental education and awareness program to increase public awareness and knowledge on the environment and threats thereto, and to expand and promote environmental ethics.⁹⁴⁰

In Kosrae, it is prohibited to directly or indirectly contaminate the fishery waters, including without limitation, by discharging nonbiodegradable trash or debris, poison, oil, petroleum, solvents, metals, sewage, or other noxious substances; or by taking any action likely to damage or degrade the quality of the fishery waters or fish.⁹⁴¹

In Kosrae, polluting is a category one misdemeanor.⁹⁴² Although the Kosrae State Code criminalizes “discharging pollutants,” the Code does not contain a specific definition of the term “pollutants.” Like Pohnpei and Chuuk, however, Kosrae has enacted a detailed littering statute as well, which also encompasses prohibitions on dumping.⁹⁴³

Additionally, in Kosrae, the “fouling” of public rivers and public water supply is a category one misdemeanor.⁹⁴⁴

Like the EPA in the other three States, KIRMA possesses a similar array of powers to enforce compliance to prevent pollution: the right of entry into an establishment or public or private property in order to carry out its assigned duties;⁹⁴⁵ the authority to prevent discharges of waste;⁹⁴⁶ and the power to issue a cease and desist order, imposition of civil penalty up to US\$10,000 for each day of violation, or commencement of a civil action to enjoin the violation.⁹⁴⁷

935 *Id.* § 1008(3).

936 *Id.* § 1008(4).

937 *Id.* § 1008(5). The Act provides an expansive definition of who constitutes a person, defining the term to mean a natural person, Chuuk State, the FSM, a municipality, a political subdivision, a public or private institution, firm or company, lessee or other occupant of property, acting singly or as a group organized or existing under the laws of Chuuk State or any state or country. *Id.* § 1003(5).

938 Kosrae State Code § 19.101. In Kosrae, no hazardous waste or other hazardous substance may be disposed of except as expressly authorized by state law. Kosrae Const. art. XI § 2.

939 See Kosrae State Code § 19.102(1) to 19.102(20).

940 *Id.* § 19.102(15), (18), & (20).

941 *Id.* § 19.324. This same statutory language also appears at § 19.505.

942 *Id.* § 13.530. Section 19.504 repeats this language almost verbatim.

943 Kosrae State Code § 19.502.

944 *Id.* § 13.514. Fouling of public rivers and the public water supply is introducing impurities into a stream, river, or public water supply, except for the introduction of impurities in a stream or river in connection with the washing of clothes or a person. *Id.*

945 *Id.* § 19.701.

946 *Id.* § 19.702(2), (3).

947 *Id.* § 19.702(1).

In addition, Kosrae has established a recycling program by statute “whereby the State of Kosrae shall from time to time appoint a recycling agent to collect such waste materials as are designated by regulation and to the extent possible dispose of such material by sale and shipment from Kosrae.”⁹⁴⁸

Yap: The EPA in Yap State, pursuant to the Yap State Environmental Quality Protection Act, has the general power and duty to control and prohibit pollution of air, land, and water.⁹⁴⁹ Specifically, the EPA has the powers to:

- adopt and administer a statewide program for the prevention, control, and abatement of pollution of the air, land, and water of Yap State;⁹⁵⁰
- establish criteria for classifying air, land, and water in accordance with their present and future uses;⁹⁵¹
- regulate the import and application of restricted use and experimental pesticides;⁹⁵² and
- establish and administer a permit system for burning structures or personal property for the discharge of any pollutant in the air, land, or water, or for the conduct by any person of any activity including, but not limited to, the operation, construction, expansion, or alteration of any installation that results or may result in the discharge of any pollutant in the air, land, or water.⁹⁵³

The EPA has the right of entry into establishments and upon property to carry out its assigned duties,⁹⁵⁴ and it has the authority to cooperate with appropriate FSM agencies for the protection and management of the environment.⁹⁵⁵ Finally, the EPA has the authority to prevent discharges of waste;⁹⁵⁶ to require clean up or abatement of unpermitted discharges of pollutants;⁹⁵⁷ and to seek civil penalties, declaratory and equitable relief, and civil action damages for violations of Yap’s Environmental Quality Protection Act.⁹⁵⁸

5.10 Scientific Research and Education

The Marine Resources Act of 2002 governs marine scientific research within the FSM’s EEZ.⁹⁵⁹ Specifically, no marine scientific research, training, or foreign recreational fishing is allowed in the EEZ, unless it is in accordance with a valid and applicable permit issued by NORMA on such terms and conditions as the Authority shall require.⁹⁶⁰

948 *Id.* § 19.601 et seq.

949 18 Yap State Code § 1507. The statute defines pollution to mean any direct or indirect alteration of the physical, thermal, chemical, biological, or radioactive properties of any part of the environment by the discharge, emission, or deposit of wastes so as to affect any beneficial use adversely or to cause a condition that is hazardous or potentially hazardous to public health, safety, or welfare, or to animals, birds, wildlife, aquatic life, or to plants of every description. *Id.* § 1503(g).

950 *Id.* § 1507(c).

951 *Id.* § 1507(d).

952 *Id.* § 1507(e).

953 *Id.* § 1507(f).

954 *Id.* § 1508.

955 *Id.* § 1511(a).

956 Waste is defined under Yap law to include “any matter prescribed by regulation to be waste, and any matter whether liquid, solid, gaseous, or radioactive which is discharged, emitted or deposited in the environment in such volume, component or manner as to cause an alteration of the environment.” 18 Yap State Code § 1504(j). Environment is defined as “the physical factors of the surroundings of human beings and includes the land, soil, water, atmosphere, climate, sound, odors, tastes, and the biological factors of animals and plants of every description situated within the territorial limits of the State of Yap including the State Fishery Zone.” *Id.* § 1504(d).

957 Although the term pollutants is not defined by the statute, Yap law defines pollution as “any direct or indirect alteration of the physical, thermal, chemical, biological or radioactive properties of any part of the environment by the discharge, emission or deposit of wastes so as to affect any beneficial use adversely or to cause a condition which is hazardous or potentially hazardous to public health, safety or welfare, or to animals, birds, wildlife, aquatic life or to plants of every description.” 18 Yap State Code § 1504(g).

958 *Id.* § 1512. Additionally, it is unlawful for any vessel with living quarters that are also used while the vessel is in port to enter the State Fishery Zone or internal waters without a waste holding tank of at least two weeks’ capacity. The attorney general, or his designee, and the EPA and environmental health representatives are required to inspect entering vessels to ensure strict compliance. *Id.* § 212(c).

959 *But see* discussion at Section 5.7.1 of this report, describing how the recently enacted National Seabed Resources Act imposes new and additional permitting requirements for marine scientific research conducted in the EEZ.

960 24 FSM Code § 104.

With respect to marine scientific research, the Marine Resources Act contains an exemption from the general prohibition of fishing by foreign fishing vessels near submerged coral reefs.⁹⁶¹ The exemption specifically envisions a role for the customary inhabitants who traditionally control such submerged reefs in determining whether marine scientific research involving fishing should occur near the reefs. This provision implies that such customary inhabitants possess the right to withhold their consent to the issuance of a permit authorizing such activity.

NORMA has discretion in determining the permit fee to be charged with respect to marine scientific research. In exercising that discretion, the Authority takes into account the research plan submitted by the applicant, as well as the long-term value of such research to the management and development of any fishery in the EEZ.⁹⁶²

At present, NORMA's Fisheries Management Division (FMD) employs an online licensing system for issuing permits with respect to marine scientific research. Prior to applying for such a permit online, NORMA requires the applicant to obtain a nationality certificate and outline the details of its voyage, including the following information: area of operation; itinerary; purpose; specific objective; and method of research, training, or other (specific purpose). The research permit application form also requires general information about the vessel to be used as well as the identity of the chief investigator, chief instructor, number of the scientific party, capacity of the vessel to accommodate the scientific party, and operation cost.⁹⁶³

At the state level, Yap has enacted the State Researcher's Registration Act.⁹⁶⁴ The Act requires researchers to register with Yap State "to ensure that the State may assist the researchers whenever possible and to provide a mechanism whereby a researcher's data may be confirmed, verified, and cross-checked so as to prevent the dissemination of misinformation, and to ensure that Yap State receives a royalty payment on each final work product sold."⁹⁶⁵ In its legislative findings, the Yap Legislature included a nonexclusive list of the type of researchers who have been and continue to be welcome in Yap: anthropologists, archaeologists, marine specialists, historians, lawyers, and other social scientists.⁹⁶⁶

Although the list of researchers includes marine specialists, the Act's definition of "research" or "study" seems to imply a focus more on Yapese culture, rather than on marine activities. These terms mean:

the active and direct pursuit of information or data concerning any aspect of Yap's history, culture, customs, or traditional songs, myths, chants or dances by generally accepted methods of eliciting such information or data, including, but not limited to, interviewing State residents, distributing questionnaires among State residents, taking photographs or making audio/visual recordings, digging or excavating and/or examining any area of land or historic property [...] on such land.⁹⁶⁷

Nonetheless, the Act would still apply to any scientific research being conducted in Yap with respect to customary fishing techniques or customary management of marine resources. The Act specifically requires that Yap State provide notice to "the traditional leader of the municipality or island where the researcher will be working of the researcher's purpose and scope of study, intended method(s) of research and intended duration of stay in Yap."⁹⁶⁸ In addition, to ensure accuracy of information, the researcher must consult with Yap State "and the members of the Council[] of Pilung and [the Council of] Tamol to verify, confirm, cross-check and clarify any data derived in the course of their research in the State."⁹⁶⁹ The Act imposes civil penalties for providing false information or failing to obtain the required research permit.⁹⁷⁰

961 *Id.* § 110(3).

962 *Id.* § 113(3).

963 The research permit application form is available at www.norma.fm/research-permit-application-form_2006.

964 5 Yap State Code § 601 et seq.

965 *Id.* § 603.

966 *Id.* § 602. Section 604(c) contains the specific legal definition of "Researcher."

967 *Id.* § 604(d).

968 *Id.* § 605(c).

969 *Id.* § 605(e).

970 *Id.* § 608.

APPENDIX 1: KEY TREATIES AND INTERNATIONAL ARRANGEMENTS TO WHICH THE FEDERATED STATES OF MICRONESIA IS PARTY⁹⁷¹

Instrument	Ratification
Maritime & Fisheries	
UN Convention on the Law of the Sea (UNCLOS)	1991
Agreement Relating to the Implementation of Part XI of UNCLOS	1995
Agreement for the Implementation of the Provisions of UNCLOS Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (UN Fish Stocks Agreement, or UNFSA)	1997
International Convention on Standards of Training, Certification, and Watchkeeping for Seafarers 1978 (STCW)	1998
Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation 1988 (SUA Convention)	2002
Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific (Wellington Convention)	1990
Nauru Agreement Concerning Cooperation in the Management of Fisheries of Common Stocks [together with various subsidiary arrangements, agreements, and declarations]	1983
Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPF Convention)	2002
Niue Treaty on Cooperation in Fisheries Surveillance and Law Enforcement in the South Pacific Region	1993
Treaty on Fisheries between the Governments of Certain Pacific Islands States and the Government of the United States	1987
Agreement among the Governments of Certain Pacific Islands States Concerning the Implementation and Administration of the Treaty on Fisheries between the Governments of Certain Pacific Islands States and the Government of the United States	1987
Partnership Agreement between the European Community and the FSM on fishing in the FSM	2006
Protocol Setting Out the Fishing Opportunities and Financial Contribution Provided for in the Fisheries Partnership Agreement between the European Community and the FSM on Fishing in the FSM [Note: no protocol in force since 2010; the new protocol is in the ratification phase and is not being applied provisionally]	
Multilateral Environmental Agreements (MEA)⁹⁷²	
Convention on Biological Diversity (CBD)	1994
Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization	2013
United Nations Framework Convention on Climate Change (UNFCCC)	1993
Kyoto Protocol	1999
Doha Amendment	2014
Paris Agreement	2016
Convention for the Protection of Natural Resources and Environment of the South Pacific Region (Noumea or SPREP Convention)	1988
Protocol for the Prevention of Pollution of the South Pacific Region by Dumping	1988

971 The year provided is that of ratification (or other equivalent action indicating consent to be bound). This Appendix does not include boundary treaties; they are identified in Section 3 of this Report.

972 The FSM is party to neither the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) nor the Convention on the Conservation of Migratory Species of Wild Animals (CMS or Bonn Convention). The FSM is, however, a 2006 signatory to the Pacific Islands Cetaceans Memorandum of Understanding, a CMS instrument.

Protocol Concerning Co-operation in Combating Pollution Emergencies in the South Pacific Region	1988
Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal	1995
Waigani Convention to Ban the Importation into Forum Island Countries of Hazardous and Radioactive Wastes within the South Pacific Region	1996
UN Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (UNCCD)	1996
Stockholm Convention on Persistent Organic Pollutants	2005
Vienna Convention for the Protection of the Ozone Layer	1994
Montreal Protocol on Substances that Deplete the Ozone Layer	1995
London Amendment to the Montreal Protocol	2001
Copenhagen Amendment to the Montreal Protocol	2001
Montreal Amendment to the Montreal Protocol	2001
Beijing Amendment to the Montreal Protocol	2001
Kigali Amendment to the Montreal Protocol	2017
Other Agreements⁹⁷³	
Compact of Free Association	1986
Amended Compact of Free Association	2003
International Plant Protection Convention (IPPC)	2007
Convention concerning the Protection of the World Cultural and Natural Heritage (World Heritage Convention)	2002
Convention on the Protection of the Underwater Cultural Heritage	2018
Convention for the Safeguarding of the Intangible Cultural Heritage	2012
Convention on the Settlement of Investment Disputes between States and Nationals of Other States	1993
United Nations Convention Against Corruption (UNCAC)	2007
Soil and Water Conservation—Agreement Between the United States of America and Micronesia	1990

973 The FSM's many relevant memberships in international and regional bodies are identified in Section 2.6 of this report; the underlying agreements for those memberships, for the most part, are not included in this Appendix.