

**Legal Gap Analysis Report on the Existing Legal Framework with the
Marshall Islands Marine Resources Authority on the Conservation and
Protection of Coral Reefs and Coastal Marine Resources and Species.**

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I. Background

The Republic of the Marshall Islands (RMI) is made up of 29 coral atolls and five single islands. The Marshall Islands Marine Resources Authority (MIMRA) was created in 1997, by Title 51 of the Marshall Islands Revised Codes Chapter 1, Section 111. MIMRA is the statutory agency responsible for managing the fisheries resources for RMI. Its mandate covers both the inshore coastal resources and the offshore fishery resources in the 200 nautical mile Exclusive Economic Zone (EEZ). MIMRA is the government agency primarily authorized to manage and administer the marine resources within the RMI's EEZ.

II. Acknowledgment

I wish to thank the Marshall Islands Resources Authority for granting an opportunity to carry out this Project. I also thank the National Oceanic and Atmospheric Administration, Fisheries for making this Project possible and guiding me in my research. I personally wish to thank Mr. Laurence E. Edwards II, Dr. Transform Aquarau, my supervisors from MIMRA and Mr. Mike Lameier, NOAA. A special thanks to Professor Denise Antolini for her continued support.

III. Acronyms

Marshall Islands Marine Resources Authority – MIMRA
Republic of the Marshall Islands – RMI
Protected Areas Network Act/Regulations – PAN Act/
Regulations Coast Conservation Act – CCA
Exclusive Economic Zone - EEZ

IV. Project Objective

As RMI continues to face challenges from the impacts of climate change including sea level rise, droughts, agricultural and aqua culture conservation, the Marshall Islands has implemented national policies that aim to prevent and mitigate these impacts. The Marshall Islands 2050 Climate Strategy outlines RMI's pathway "to achieve its objectives for net zero emissions and 100% renewable energy, as well as to facilitate adaptation and climate resilience in a way that ensures the future protection and prosperity of the country and its women, men and youth." To ensure cross-sectoral government implementation of long-term policies addressing the impacts of climate change, the RMI Government departments and agencies should integrate into their mandates, policies and agendas that are geared toward addressing the impacts of climate change.

The Marshall Islands exclusive EEZ is home to various marine life and resources. The Government established by Act, the Marshall Islands Marine Resource Authority (MIMRA) as the agency responsible for the administration and management of marine and

coastal development and conservation. MIMRA is the competent authority that manages and regulates the administration and protection of marine resources. MIMRA is established by Statute and Section 119 stipulates the powers and functions of the authority. According to Section 119, MIMRA has the exclusive powers and functions to, among others:

- (a) Conserve, manage and sustainably develop all resources in the Fishery Waters and seabed and subsoil thereunder, in accordance with the principles and provisions in this Title and in sub-regional, regional and international instruments to which the Republic of the Marshall Islands is party
- (b) Establish management plans and programs to manage the resources in the Fishery Waters
- (k) Participate in the planning and execution of projects, programs or other activities related to fisheries or fishing, or the exploration or exploitation of the nonliving resources of the Fishery Waters, seabed or subsoil thereunder, in which the Government or any agency or instrumentality that has a proprietary interest, direct or indirect, by way of stock ownership, partnership, joint venture or otherwise
- (l) Regulate the processing, marketing and export of fish and fish products

MIMRA is not only guided by law, but also by national strategies including the Reeimanlok Plan that aims at conservation and resource management on marine biodiversity. The Reeimanlok Plan indicates a gap in RMI's legal framework on the protection of species. The Minister of Resources and Development has the power to promulgate such regulations for all species." It is important to note that the Project focus is primarily on coastal management and coral reef conservation.

The MIMRA Strategic Plan 2019 – 2023 sets out internal strategic goals balancing the need to generate revenue for the RMI as well as conservation of all sorts of marine resources for both present and future use. The Strategic Plan identifies key challenges in oceanic fisheries resources and coastal and inshore resources. For example, with regards to coastal resources, the Strategic Plan identifies the need to work with large government agencies, organizations and local governments including the local people, given that land is mostly private land, to better carry out MIMRA's mandate in managing and conserving our marine resources. The Strategic Plan also states that all the needed coastal fishing regulations are not yet fully developed, posing challenges to fisheries management. Determining the gaps in the current legal framework in terms of fisheries management promotes MIMRA's objective under the Reeimanlok Plan to protect is marine resources.

Therefore, the objective of the Project is to assist MIMRA in carrying out a gap analysis on the current legal framework on protecting and conserving coral reefs, coral ecosystems and species. The outcome of the project will be recommendations to strengthen the legal framework through the modification of existing regulations and, or the establishment of additional regulations. Given the complex nature of coral reef ecosystems, which often have and rapidly changing populations and conditions, and the long administrative process required to pass new laws or regulations, adaptive management may be a tool MIMRA should explore.

V. General overview of Legal Framework of RMI's Coastal Management

a. Authorized Authority

i. Legal Framework

The Republic of the Marshall Islands legislature passed the Marshall Islands Marine Resources Authority Act in 1997 creating the Marshall Islands Marine Resources Authority (MIMRA) as the designated Authority responsible for the conservation, management, and administration of RMI's territorial waters including its marine resources, both ocean and coastal resources.¹ Section 119 provides several specific powers and functions of the authority. Some of these provisions are highlighted below and are related to the scope of this project:

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

(c) issue licenses in accordance with this Title;

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

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

ii. Main duties and responsibilities

MIMRA is managed by a seven member Board of Directors (Board).² The members of the Board include (a) The Minister of Natural Resources and Commerce who shall serve as the Chairman of the Board; (b) six other members appointed by the President and the Cabinet; (c) Four of the six members appointed under Section 113 (b) should have knowledge and experience in the fisheries sector of the Republic of the Marshall Islands; (d) the Director, who shall be a member ex officio and shall serve as the Secretary of the Board.³

MIMRA's main duties and responsibilities include:

¹ 51 MIRC Ch. 1 § 111; see also § 119.

² Id. at § 112.

³ Id. at § 113(1).

- (1) Unless otherwise provided in this Title, the Authority shall have the exclusive powers and functions to:
- (a) conserve, manage and sustainably develop all resources in the Fishery Waters and seabed and subsoil thereunder, in accordance with the principles and provisions in this Title and in sub-regional, regional and international instruments to which the Republic of the Marshall Islands is party;
 - (b) establish management plans and programs to manage the resources in the Fishery Waters;
 - (c) issue licenses in accordance with this Title;
 - (d) issue licenses for the exploration and exploitation of the seabed and subsoil of the Fishery Waters;
 - (e) negotiate and conclude access agreements and fisheries management agreements on behalf of the Government in accordance with Article V, Section 1(d) of the Constitution and Part I of Chapter 4 of this Title;
 - (f) implement by regulation or otherwise as appropriate access agreements or fisheries management agreements to which the Republic of the Marshall Islands is party;
 - (g) act as the Competent Authority for the purpose of implementing the international fisheries and related obligations of the Marshall Islands;
 - (h) coordinate and manage fisheries monitoring, control and surveillance and, in consultation with the Attorney-General, enforcement of this Title;
 - (i) appoint authorized officers and observers in accordance with this Title;
 - (j) cooperate in the conservation and management of highly migratory fish stocks as appropriate with other coastal States in the region and States fishing in the region and high seas area and participate in appropriate sub-regional, regional and international organizations or arrangements relating to fisheries;
 - (k) participate in the planning and execution of projects, programs or other activities related to fisheries or fishing, or the exploration or exploitation of the nonliving resources of the Fishery Waters, seabed or subsoil thereunder, in which the Government or any agency or instrumentality that has a proprietary interest, direct or indirect, by way of stock ownership, partnership, joint venture or otherwise;
 - (l) regulate the processing, marketing and export of fish and fish products;
 - (m) seek technical assistance for the determination of the Fishery Waters zones and boundaries;

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

(o) perform such other duties and functions as may be necessary to carry out the purposes and provisions of this Title.⁴

MIMRA is also authorized to promulgate regulations relating to the conservation and management of all marine resources under its mandate provided by the MIMRA Act.⁵

- b. Relevant Legislation and Regulations pertaining to the conservation of coastal resources including coral reefs, and coastal ecosystems.

Title 51 of the Marshall Islands Revised Code lists all the relevant legislation pertaining to the administration of fisheries and coastal resources. An important definition to note is term “fish.” Fish, “means any means any aquatic plant or animal, whether piscine or not, and included any oyster or other mollusk, crustacean, coral, sponge, holthurian (bech-de-mer), or other echinoderm, turtle and marine mammal, and includes their eggs, spawn, spat and all juveniles stages and any of their parts.”⁶ From this definition, throughout all legislation within Title 51, the definition of ‘fish’ is not limited pelagic species like tuna, shark, and other oceanic resources, but includes coastal resources like coral, crustacean, and bech-de-mer.

Other relevant legislation that relate to the scope of this Project include:

- Protected Areas Network Act of 2015
- Coast Conservation Act of 1988. The CCA is administered by the National EPA, under Title 35, but is listed here because of its potential benefits towards conserving coastal resources and ecosystems including reefs.
- Fisheries Act
- Fisheries Enforcement Act
- Management and Development of Local Fisheries Act

- c. Regulations

There are several relevant Regulations play an integral role in the conservation of coastal reefs, species, and ecosystems. The relevant regulations include:

- Protected Areas Network Regulations 2020
- Aquaculture Regulations 2019
- Aquarium Fishery Regulations 2015
- Fish Harvest Regulations 2020
- Sea cucumber Regulations of 2012.
- Earthmoving regulations 1989 (incorporating 1994 amendments)

⁴ 51 MIRC Ch. 1 § 119(1)(a)-(o).

⁵ Id. at § 120(1)(a)-(l).

⁶ Id. at § 102(26).

- Sustainable Development Regulations 2006.

VI. Reeimanlok Plan

Reeimanlok Looking into the Future: National Conservation Area Plan for the Marshall Islands.

The Reeimanlok Plan (“Plan”) is the overall policy about conserving both oceanic and coastal resources. The Plan envisions improving existing legislation and regulations that further achieves the mandates of MIMRA under the MIMRA Act. A crucial aspect of the Plan is to incorporate local community members into the process of conservation methods, thereby ensuring that community members take lead in managing and conserving marine resources and enforcing designated protected areas that may include coastal ecosystems like reefs and other coastal resources.

The Plan consists of four parts: Part one explains the reason for a national conservation plan that entails sustainable resource management and the preservation of pristine coral reefs in the Islands. The Marshall Islands like other small remote atoll nations, threatens the existence of coastal resources and ecosystems. The Plan not only lays out National Government commitment, but also community and local government commitment in managing community-based conservation areas. The Plan explains, “The aim is to revive the physical and spiritual connection of people to their environment, to ensure the sustainable use of resources and food security, and to conserve the remarkable biodiversity of the Marshall Islands.”⁷

Part two summarizes the background and context of the Marshall Islands including its historical colonial occupation periods. Part two also highlights threats towards marine resources, for example, loss of traditional conservation practices, invasive species, illegal, unreported and unregulated fishing, overfishing, urban development and pollution, and climate change and sea-level rise.⁸

Parts three and four are perhaps the more crucial parts of the Plan. Part three provides a blueprint on implementing “effective conservation.” The Plan defines “effective conservation as, “... management that maintains or improves atoll ecosystems – their biodiversity, health, productivity and integrity, sustains artisanal use of resources, and protects and preserves areas of significant natural and cultural heritage.”⁹ Part three also identifies two types of conservation methods:

Type one – subsistence only, where “this area is managed for subsistence non-commercial use. In international standards this relates to IUCN Category VI – Managed Resource Protected Area. The management area may include some type two – Special Reserve no-take or highly restricted areas as part of the management regime.”¹⁰ Type two – Special Reserve are areas, “... subject to a high level of

⁷ Reeimanlok Looking into the Future, National Conservation Area Plan for the Marshall Islands. Page 6, 2007.

⁸ Id. at 16-17.

⁹ Id. at 21.

¹⁰ Id.

protection, and occasionally a very low level of subsistence or special occasion activities. In international standards, this relates to IUCN Category Ib – Wilderness Area. Examples of this are the atolls of Ailinginae and Bikini that have high levels of protection and restrictions.”

Part three also explains effective conservation from a practical perspective. Page 22 states as follows:

Marine areas under [e]ffective [c]onservation will be actively managed according to their management objectives, based on the needs of the community. If applicable, national agencies or external facilitators would be expected to assist in educating the community about conservation management practices. Generally, this will be interpreted as subsistence-only fishing and harvesting, using nondestructive methods. Subsistence use means that resources harvested in this area cannot be sold, traded, or shipped off-atoll but are to be consumed by the community within the atoll. This applies to food fishes, aquarium fishes and invertebrates, shells for use in handicrafts, to name a few. There may be some exceptions in the instance of a traditionally managed mo which is under the control of an Iroij. Non-destructive methods of extraction refer to the collection of natural resources, such as fish, in ways that do not damage the natural habitat of these organisms significantly. In addition, it is expected that some parts of the marine conservation areas would be designated as no-take zones, which may be done completely, for particular species, seasonally, or for a fixed period of time (e.g., 5 years). Extraction of resources such as limestone will be prohibited in areas under Effective Conservation because of the destructive impact on natural habitats. Terrestrial vegetation adjacent to a marine area will be maintained to ensure stability of the land.

Part three provide three conservation targets namely, Coarse-scale Conservation Targets/Environmental Units, Fine-Scale Conservation Targets/Special Features, and Species Conservation Targets. Some of the relevant targeted areas highlighted in the Plan are relevant to this Project gap analysis. These include, for Coarse-scale Conservation Targets, ocean leeward reef, ocean reef, ocean windward reef, reef flat. For Fine-Scale Conservation Targets/Special Features, the relevant coastal resources include, clam site, point with extended ocean reef, reef hole, and sea grass meadow. For the third category, Species Conservation Targets, these include giant clams, rare coral species, and sea cucumber.

An important issue raised in Part three pertains to how much to conserve and setting conservation goals. Part three states that the process of setting conservation goals can be uncertain because of the lack of data and a limited understanding of the area that needs to be protected to maintain habitats and species, and to ensure the persistence of ecological processes. Moreover, there is no consensus between conservationists on how much is enough, but the RMI will at least commit to the Micronesia Challenge to effectively conserve 30% of nearshore marine resources and 20% of terrestrial resources by 2020. Setting conservation goals includes not just national level conservation goals, but atoll-level conservation goals. The latter aims to conserve at least 30% of nearshore marine resources on every atoll.

Part three, Table four – Gap Assessment: Coarse-scale targets sets out the areas of coarse-scale targets that are now under conservation or management.¹¹ Table four sets out success at meeting conservation goals for Fine-Scale Conservation Targets.¹² Table six summarizes the current status of management for atolls with conservation areas.¹³

Another important aspect of Part three is the Design Principles. Design Principles, “are guidelines for the selection, design, establishment and management of conservation areas.”¹⁴ The principles are applied both at a national and local government scale. At the national level, the design principles call for achieving conservation areas by including principles of, comprehensiveness, balance, adequacy, representativeness, efficiency, and key sites. Refer to page 32 for more detailed explanation of these principles. At the local level, “the design principles provide guidance on the facilitator and the community on how to select the most appropriate sites within the atoll.”¹⁵ The principles include both biophysical and socio-economic considerations in achieving conservation goals. These principles include, comprehensiveness and balance, protecting key sites, adequacy, existing protections, integrity, risk spending, representativeness, and effectiveness. Refer to page 34 for more detailed explanation for each guiding principle.

Part three also identifies the limitations of the planning process and data gaps. For instance, there were geographical data gaps because of the vast expanse of ocean and the little scientific study of the Marshall Islands.¹⁶ There was also data gaps on terrestrial coarse scale targets, open ocean and wetlands.

Part four of the Plan describes the key strategies and actions for achieving goals for conservation areas. The Plan states, “the primary strategy for the establishment and management of conservation areas is through community-based fisheries and resource management planning on individual atolls.”¹⁷ There are eight key strategies to implement a community-based approach. These steps are:

1. Establishing community-based fisheries and resource management
2. Managing information
3. Strengthening the legal framework
4. Strengthening coordination mechanisms
5. Securing sustainable financing
6. Building capacity
7. Education and awareness

Under establishing community-based fisheries and resource management, there are three related plans i.e., community-based fisheries management, conservation management plans, and coastal management plans. These plans should be combined in order to create a overall

¹¹ Id. at 30, table 4.

¹² Id. at 30, Table 5.

¹³ Id. at 31 Table 6.

¹⁴ Id. at 32.

¹⁵ Id. at 33.

¹⁶ Id. at 36.

¹⁷ Id. at 39.

management plan. The management plan is prepared based on the specific needs of the community combined with good ecosystem-based design principles. The Plan provides for an 8-step process for community-based fisheries and resource management planning.

An important subpart of Part four of the Plan aims to strengthen the legal framework. The Plan indicates certain key legislation (Goals) that should be implemented for an effective legislation framework for marine protected areas. Some of the key aspects of the legislation framework are highlighted below:

1. The form and content of legislation should be consistent with the legal, institutional and social practices and values of the peoples governed by the legislation.
2. Legislation and policy must take into account any international, regional, or other multi-lateral treaties of which the country is or will likely be a member. [There] Should also be protection for migratory species of fish and birds.
3. Legislation should establish specific responsibility, accountability and capacity for the management of conservation areas, and provide a general responsibility to ensure that government agencies work with local government, traditional owners, communities bodies and individual citizens
4. Legislation provides for control of activities which occur outside a conservation area and which may adversely affect features, natural resources or activities within the conservation area.
5. Legislation on conservation areas should require that management plans be prepared for each site and should specify the constituent elements of the plan. [There] Should require periodic revision of zoning and management plans and research and monitoring.
6. Local users of the marine environment must be involved in establishing, maintaining, monitoring and implementing management of conservation areas, and it is desirable that this is anchored in legislation
7. The legislation should provide for surveillance of use in order to determine the extent to which users adhere to the provisions of management; monitor the condition of the managed ecosystem and its resources; and measure any changes in user demands.
8. Financial arrangements for the management of marine areas should be identified in legislation.
9. Legislation must provide for making regulations to control or, if necessary, prohibit activities Enforcement, Incentives and Penalties: To be effective, legislation must be capable of being enforced.

This Project aims to review each of the Goals provided above and determine the extent of the current legal framework on the protection of coastal reefs, coastal resources, and ecosystem. The next part (Part VII) of this Project dives deeper into the each of the listed Goals.

VII. Discussion and analysis of current laws and regulations

- A. The form and content of legislation should be consistent with the legal, institutional and social practices and values of peoples governed by the legislation.

The objective here, is to ensure draft legislation on the protection of marine resources including, for the purposes of this report, coastal marine resources, and species, incorporates existing legal, institutional, and social practices and values in the RMI.¹⁸

The MIMRA Act of 1997, establishes MIMRA as the designated Authority, responsible for the overall management and administration of the RMI's marine resources within its Exclusive Economic Zone and its territorial waters including marine resources within the seabed and subsoil of the RMI.¹⁹ Furthermore, in carrying out its duties and responsibilities provided under the MIMRA Act, MIMRA is authorized to promulgate rules and regulations.²⁰ Specifically, when promulgating rules and regulations, MIMRA is required to comply with the Administrative Procedures Act of 1994.²¹ Generally, the Administrative Procedures Act require contain important provisions that may have an effect on the applicability of a rule if such rule did not comply with the Act. Such provisions include, but are not limited to, public information on the adoption rules, availability of proposed rules to the public, and notice procedures for the adoption of rules, as well as, standing for contested cases.²²

The MIMRA Act creates an autonomous administrative agency (MIMRA), that allows certain authority to promulgate rules that ensure the conservation, management, and administration of all marine resources within RMI waters. The Act creates a general framework, allowing MIMRA ample room to promulgate rules that are consistent with existing legal, institutional, and social practices. For example, Section 119(2), the Act requires MIMRA, "in exercising its powers and functions, cooperate with other agencies of the Government with competence, given under authority of law, in any related area."²³ Other relevant agencies of the RMI Government, that share a similar role in protecting RMI's environment, is the National Environmental Protection Agency, which may have specific legislative roles, the may overlap with MIMRA, creating a shared responsibility partnership in achieving common goals. Another example is Section 120(2) of the MIMRA Act, which requires adherence to the Administrative Procedures Act, this provision ensures that any proposed rules by MIMRA, are consistent with existing legal frameworks from other government institutions. The MIMRA Act appears to be enacted in broad language, as far as incorporating existing legal institutions concerned, and generally complies with the first goal.

A crucial part of the protection of coastal marine ecosystems and species, as indicated in the Reeimanlok Plan goal above, is to ensure consistency of existing legislation with social

¹⁸ Reeimanlok *supra* note 7 at 54.

¹⁹ Marshall Islands Marine Resources Act, 51 MIRC § 119(1)(a)-(n) and (2) (1997).

²⁰ *Id.* at § 120(1).

²¹ *Id.* at § 120(2).

²² Marshall Islands Administrative Procedures Act, 6 MIRC, §§ 101-119 (1979).

²³ 51 MIRC § 119(2).

practices and values of the Marshallese people.²⁴ Generally, this objective takes account of custom and traditional values including practices like *mo* on the protection of marine resources and coastal species. (*Mo* is a customary practice prohibiting certain fishing activities in a designated area). Custom and traditional practice cannot be ignored because the RMI Constitution under Article X Section 1, highly recognizes customary law, or traditional practice concerning land tenure or any related matter in the RMI.²⁵

The MIMRA Act does not specifically provide for the incorporation of social practices and values of Marshallese people into its administrative duties under section 119 of the Act. Although existing legislation have determined that the rights to marine resources and protection of all areas below the high-water mark belong to the RMI Government,²⁶ and by virtue of the MIMRA Act administered by MIMRA, the Constitution specifically bars construing anything in Article II (Bill of Rights) to invalidate customary law and traditional practice concerning land tenure and any related matter.²⁷ Moreover, although the Public Lands and Resources Act under Section 103(1) states that all rights under the highwater mark belong to the Government, that section reestablishes customary rights pertaining to fishing methods that may involve coastal areas, species and fishes.²⁸ Section 103(1) establishes the Governments rights under the highwater mark (these are coastal areas), but the Act does not aim to diminish any recognized customary practices.

Despite the lack of language in the MIMRA Act securing the incorporation of customary practices, MIMRA does ensure that customary practice involve local communities. This is evident by the Reeimanlok Plan. The Plan acknowledges customary practices including recognizing land tenure.²⁹ Furthermore, MIMRA's Strategic Plan 2019-2023 acknowledges the needs to "hire, train and manage local people in all locations...."³⁰ The increase in population in both Majuro and Ebeye (urban centers) results in coastal degradation and overfishing, heavy metal and chemical waste, coral bleaching, and others.³¹ Both the Reeimanlok Plan and MIMRA's strategic plan aim to incorporate local communities to educate on coastal marine impacts and practice marine resource conservation. The Reeimanlok Plan and the Strategic Plan are both considered "soft" law, in the sense these documents are not legally binding, compared to the MIMRA Act or any other legislation.³² These documents are plans, subject to revision and amendment and are not publicly scrutinized through the Administrative Procedures Act. These documents are significant steps towards protecting customary practices. The lack of having language in the MIMRA Act securing social practices does not mean the Act does not fully comply with the above objective, and the aim should not be to incorporate such language into the Act, as some details are best left to the agency's expertise in the area. However, considering that MIMRA's objective under the Act is not strictly to conserve marine resources, but instead to

²⁴ Reeimanlok Plan *supra* note. 7.

²⁵ CONSTITUTION OF THE REPUBLIC OF THE MARSHALL ISLANDS, May 1, 1979, art. X, § 1(1).

²⁶ Public Lands and Resources Act, 9 MIRC §§ 101-105 (TTC, 1966).

²⁷ CONSTITUTION OF THE REPUBLIC OF THE MARSHALL ISLANDS, May 1, 1979, art. X, § 1(1).

²⁸ *See* 9 MIRC § 103(1)(a)-(f).

²⁹ *See* Reeimanlok Plan *supra* note. 16.

³⁰ Marshall Islands Marine Resources Authority Strategic Plan 2019-2023.

³¹ *Id.* at 18-19.

³² *See* Strategic Plan page 4, explaining that the Plan had undergone revision with no required public notice or comment.

administer and foster economic growth through marine and coastal resources, strategic plans and policies may be susceptible to change in the ongoing balancing between conservation objectives and economic development.

Apart from the MIMRA Act, the PAN Act allows communities to be involved in the designation of a protected area which may include coastal ecosystems, reefs, and resources. Communities are defined as, "... a group of RMI citizens who live in the same area (such as a village or *weto*)."³³ The definition of communities is important with regards to this particular goal, because individuals involved in with the designation of protected areas are individuals closely tied to the specific area nominated to be protected. Both village individuals, which encompasses a wider group of people, and individuals living or has close traditional ties like land rights or fishing privileges in a *weto* or a particular parcel of land where the protected area is located, are involved in the designation process along with government officials. Communities are involved by being part of the Local Resources Committees (LRC).³⁴ Sections 511 and 512 set out the functions, powers, and duties of the LRC which include,

- (a) With the assistance of the PAN Office, the Lead Technical Agency and the Coastal Management Advisory Council (CMAC), initiate and establish processes that lead to the formulation and approval of a management plan and local government ordinances related to compliance and enforcement of the management plan.
- (b) With assistance from Lead Technical Agency, determine conditions and fees for any licenses required under the management plan.
- (c) Report the progress on the development of a Protected Area Management Plan to the community and the local government council from time to time or when required.
- (d) Develop an annual work plan to guide the yearly implementation of the plan's activities and the achievement of its objectives.
- (e) Make sure that the responsibilities of the community under the plan are properly detailed and completed in a timely manner.
- (f) Work closely with the Lead Technical Agency and follow up the Lead Technical Agency's obligations under its responsibilities so that they are carried out in a timely manner.
- (g) Arrange and organize community workshops and gatherings as required under the plan.
- (h) Provide reports to the PAN Office as set out under relevant guidelines.

³³ Protected Areas Network (PAN) Act 2015, 35 MIRC § 502(6).

³⁴ *Id.* at § 511(2) "The Local Resources Committee is to consist of at least 4 members approved by the community. The LRC shall elect a Chairperson, Vice-Chairperson and Secretary."

These provisions ensure that local community members take part in developing the management plan for the proposed protected area. Section 512, allows the LRC to, “nominate areas within the local jurisdiction that have been designated sanctuaries, protected areas, or conservation areas under local or national law for inclusion in the Protected Areas Network.”³⁵ Nomination of areas may also be initiated by traditional landowners.³⁶ Moreover, LRC’s are responsible to “manage areas within the Protected Areas Network.”³⁷ These provisions not only ensure local community members are involved in the process of designating a protected area, and manage the area, but more importantly, these provisions allow community members to instill traditional or customary practices into the designation process. For example, a traditional landowner may nominate an area to be protected under the PAN Act, because the area is traditionally considered *mo*.³⁸ Overall, the PAN Act does ensure consistency of social practices and traditional Marshallese values.

Turning to the Coast Conservation Act of 1988, this Act regulates coastal development activities which may have an impact on the coastal environment. This Act is relevant here because the broad application of the Coast Conservation Act (CCA) includes coastal areas like reefs, and other coastal marine resources that may be impacted due to development activities. The CCA, to some extent, in section 328 ensures local governments rights to regulate its five-mile water territory under Article IX, section 1(2) of the RMI Constitution.³⁹ Therefore, the CCA appears to comply with part of the goal here ensuring legislation is consistent with existing legal and institutional practice, particularly with the local government. The CCA does not however, provide provisions for protecting existing social practices in conserving or protecting coastal areas when one applies for a development permit. In other words, in granting a development permit, the Director (EPA) is not required to consider any traditional or customary inputs on the area proposed for development. Even if all areas below the highwater mark are under the protection of the national government pursuant to the Public Lands and Resources Act, as stated above, the Public Lands and Resources Act still allows for certain fishing rights within those areas for those who own land abutting areas below the highwater mark.⁴⁰ The CCA does not appear to fully address any social practices including traditional or customary practices in the consideration of a development permit. The CCA regulations (otherwise known as the Sustainable Development Regulations 2006), requires a public hearing for the purpose of

³⁵ *Id.* at § 512(1).

³⁶ *Id.* at § 512(2).

³⁷ *Id.* at § 512(5).

³⁸ *Id.* at § 502(10). “*Mo* means traditional system of designating parts of land, a whole island, or a reef area as a restricted, and/or reserved site, in accordance with Article X, Section 1 of the Constitution of the Republic of the Marshall Islands.”

³⁹ CONSTITUTION OF THE REPUBLIC OF THE MARSHALL ISLANDS, Article IX, § 1(2), “The system of local government shall in each case extend to the sea and the seabed of the internal waters of the atoll or island and to the surrounding sea and seabed to a distance of 5 miles from the baselines from which the territorial sea of that atoll or island is measured;” see also 31 MIRC § 328. Nothing in this Chapter shall be read and construed as derogating from, the powers or rights of the Republic, in or over, the Coastal Zone or soil of the Coastal Zone or the area of sea declared, under the Marine Zones (Declaration) Act 1984, to be the territorial sea of the Republic of the Marshall Islands or, the powers or rights of the local government in the exercise of its jurisdiction within its territorial limits. (emphasis added).

⁴⁰ Public Lands and Resources Act, 9 MIRC § 103(1)(a)-(f).

determining the facts on which to base its decision to grant a permit.⁴¹ It may be possible through this section that community members and other government agencies may bring to the attention of the Director of existing traditional practices or protected areas to which the Director will take into account in deciding whether to grant a permit. However, this does not guarantee the general public may receive notice of the hearing or the notice for a hearing may be received later by the public.

Recommendations:

1. Revisit the MIMRA Act and determine whether inclusion of general language to incorporate social practices in conservation, management, and sustainably develop all resources under its jurisdiction which include coral reefs and coastal ecosystems and species. The italicized and bold language below is only a suggestion and MIMRA should finalize and decide whether or not to include such language:

Section 119(1) reads:

(1) conserve, manage and sustainably develop all resources in the Fishery Waters and seabed and subsoil thereunder, in accordance with the principles and provisions in this Title and in sub-regional, regional and international instruments to which the Republic of the Marshall Islands is party. ***The Authority may also consider existing traditional or customary practices in conserving, managing and sustaining all resources in its Fisher Waters and seabed and subsoil thereunder.***

2. Revisit the Coast Conservation Act 1988 and insert language allowing the Director to consider customary values in the permit application process. It is important to note that the CCA is not administered by MIMRA and therefore any amendments or revision to the Act should be the responsibility of the National EPA. However, MIMRA may, bring to EPA's attention, in evaluating a permit application, to also consider whether the proposed area for development has any impact on any existing protected area including the surroundings of the protected area. MIMRA's interest in ensuring that other government agencies including EPA take account of existing legal systems and institution is a core objective of the goal above.

- B. Legislation and policy must take into account any international, regional, or other multi-lateral treaties of which the country is or will likely be a member. [There] Should also be protection for migratory species of fish and birds.

First, it is important to note that while legislation should aim to protect migratory species of fish and birds, this project focuses on conservation of coastal marine species and resources. Therefore, the analysis here concentrates on coastal resources and ecosystems. The second goal is to enact and implement legislation and policies that take account of international, regional, or other multi-lateral treaties that the RMI currently is a member state of or will likely, in the future, become a member.⁴²

⁴¹ Sustainable Development Regulations Nov. 2006, Section 14.

⁴² Reemanlok *supra* note. 7

Section 119A of the MIMRA Act gives affect to international conservation and management measures and international agreements. Specifically, it states,

The Authority may, for the purpose of giving effect to decisions of a regional fisheries management organization or arrangement to which the Marshall Islands is a member, make such regulations or attach such conditions to a permit, license or authorization to fish as the Authority may consider necessary or expedient for this purpose.⁴³

This Section allows MIMRA to consider and implement international measures that regulate fisheries. Fisheries is defined as “one or more stock of fish or any fishing operation based on such stocks which can be treated as a unit for purposes of conservation and management, taking into account geographical, scientific, technical, recreational, economic and other relevant characteristics.”⁴⁴ Fish, under the Act, “means any means any aquatic plant or animal, whether piscine or not, and included any oyster or other mollusk, crustacean, coral, sponge, holthurian (bech-de-mer), or other echinoderm, turtle and marine mammal, and includes their eggs, spawn, spat and all juveniles stages and any of their parts.”⁴⁵(emphasis added). It is important to note that “fish” under the Act has a broad meaning and includes coastal marine resources and species as indicated in the definition above and is not limited to pelagic species. Therefore, under Section 119A, international agreements related to fisheries management, can also include agreements that regulate the conservation of coastal reefs and marine species and ecosystems.

MIMRA appears to have successfully cultivated international and regional relations that assist in conserving coastal reefs and resources like giant clams for instance. For example, RMI is part of the Micronesia Association for Sustainable Development (MASA) sharing knowledge, technical assistance on aquaculture development projects.⁴⁶ The objective of this collaboration is to innovate productivity gains from certain marine resources sustainably.⁴⁷ Under this partnership, the Marshall Islands identified as a key activity to “assess the economic viability, market potential and environmental sustainability of expanding commercial production of priority species, such as giant clams, corals, sponges and Moi and Pacific threadfin, and provide guidance on facilitating access to capital, research and development and finance streams.” This international/regional partnership with the Federated States of Micronesia, Nauru, and Palau, is one example of the kind of partnership RMI is allowed to participate in. There are other partnerships RMI has acceded to like the Overseas Fisheries Cooperation Foundation (OFCF), but the objective of these partnership focusses primarily on pelagic species.

There are other international organizations that may assist MIMRA in achieving conservation on coastal reefs and resources like the International Coral Reef Initiative (ICRI).⁴⁸ However, MIMRA should carry out further assessment of the objectives of ICRI and determine

⁴³ 51 MIRC § 119A.

⁴⁴ Id. at § 102(30).

⁴⁵ Id. at § 102(26).

⁴⁶ Marshall Islands Marine Resources Authority Annual Report 2019, page 7.

⁴⁷ See <http://www.fao.org/3/cb1363en/CB1363EN.pdf> page 1.

⁴⁸ See <https://www.icriforum.org/about/>.

whether its objectives are aligned with RMI's objectives in conserving its coastal resources. The ICRI is an informal partnership between Nations and organizations which strives to preserve coral reefs and related ecosystems around the world.⁴⁹ Decisions of the ICRI and its members are not binding and its Framework for Action involves four cornerstones of identified mechanisms to be implemented at global, regional, and local levels. These four cornerstones are integrated management, capacity building, science and monitoring and review.⁵⁰

Recommendations:

1. Review the International Coral Reef Initiative and determine whether the objectives and goals under this international institution are aligned with the objectives of conserving and protecting coastal reefs in the RMI.
- C. Legislation should establish specific responsibility, accountability and capacity for the management of conservation areas, and provide a general responsibility to ensure that government agencies work with local government, traditional owners, community bodies and individual citizens.

The objective of this goal is to ensure accountability for MIMRA's actions on conservation methods in certain areas including fostering partnership with local governments, traditional leaders, community bodies, and individual citizens.⁵¹ As explained above, a crucial aspect of the Reeimanlok Plan is to strengthen relationships with local communities and governments noting that government owns a significantly small amount of land except for the land under the highwater mark.⁵²

There are multiple legislation that provide for accountability and capacity for the management of conservation areas. The list below states the relevant legislation and the provision that achieves the first part of this goal.

MIMRA Act:

Section 119(1)(a): "conserve, manage and sustainably develop all resources in the Fishery Waters and seabed and subsoil thereunder, in accordance with the principles and provisions in this Title and in sub-regional, regional and international instruments to which the Republic of the Marshall Islands is party"⁵³

PAN Act:

Section 503: "There shall be a nationwide Protected Areas Network of the Republic of the Marshall Islands which shall consist of areas in the Republic that have been designated by the Ministry of Resources and Development in the manner hereinafter provided. Each area included

⁴⁹ Id. (last accessed Aug 15, 2021).

⁵⁰ Id. at https://www.icriforum.org/wp-content/uploads/2019/12/ICRI_Framework_EN.pdf

⁵¹ Reeimanlok Plan *supra* note. 7.

⁵² Id.

⁵³ 51 MIRC § 119(1)(a).

in the Protected Areas Network will be eligible for assistance and support under this Act. The Protected Areas Network shall be administered by the Ministry of Resources and Development and managed by Local Resources Committees.”⁵⁴

Section 505: Designation of Areas: “The Ministry of Resources and Development in consultation with the LRC and local government officials may designate areas as Protected Areas. A notice on the designated area or areas shall be published on the National Government’s website. The notice shall be read on the radio broadcasting from Majuro and copies of the notice shall be distributed or made available to the persons of the area or atoll designated as protected area.”⁵⁵

Section 508: Establishment of the PAN Board.⁵⁶

Section 509: Establishment of Coastal Management Advisory Council (CMAC).⁵⁷

Coast Conservation Act

Section 303: Administration: “The administration, control, custody and management of the Coastal Zone, and the general administration and implementation of the provisions of this Chapter are hereby vested in the National Environmental Protection Authority established under the National Environmental Protection Act 1984. Accordingly the provisions of this Chapter shall apply, mutatis mutandis, with respect to the objects, powers, functions and duties of the Authority and shall be deemed to form part of its objects, powers, functions and duties.”⁵⁸

Section 306(1): Survey of Coastal Zone. “As soon as practical, the Director shall cause a survey to be made of the Coastal Zone and shall prepare a report based on the results of such survey.”⁵⁹

Section 307(1): Coastal Zone Management Plan: “The Director shall, not later than three (3) years from the date of operation of this Act, submit to the Council a comprehensive Coastal Zone Management Plan (hereinafter “the Plan”), based on the results of the survey made pursuant to Section 306 of this Chapter.”⁶⁰

Section 309(1): Issue of Permits: “Notwithstanding the provisions of any other law, no person shall engage in any development activity other than a prescribed development activity within the Coastal Zone except under the authority of a permit issued in that behalf by the Director.”⁶¹

Fisheries Act

⁵⁴ 35 MIRC § 503.

⁵⁵ *Id.* at § 505.

⁵⁶ *Id.* at § 508.

⁵⁷ *Id.* at § 509.

⁵⁸ Coast Conservation Act 1988, 35 MIRC § 303.

⁵⁹ *Id.* at § 306(1).

⁶⁰ *Id.* at § 307(1).

⁶¹ *Id.* at § 309(1).

Section 203(1): Conservation, Management and Sustainable use of fishery resources: “The Authority shall ensure the long-term conservation and sustainable use of the fishery resources, and to this end shall adopt management measures which promote the objective of optimum utilization.”⁶²

Section 203(3): “The Authority shall apply the precautionary approach at no less standard than set by criteria in the United Nations Agreement or any other fisheries management agreement.”⁶³

Fisheries Enforcement Act:

Section 502(1): Enforcement Responsibility: “The Authority shall have primary responsibility for fisheries enforcement, including:

- (a) monitoring, control and surveillance of all fishing operations within the Fishery Waters;
- (b) the enforcement of this Title;
- (c) the inspection, audit and control of processing and export operations; and
- (d) the implementation of regional and international obligations with regard to monitoring, control and surveillance measures to combat illegal, unreported and unregulated fishing within and outside the Fishery Waters of Marshall Islands.”⁶⁴

Management and Development of Local Fisheries Act:

Section 302: “(1) The Authority may take measures for the management and development of local fisheries including in internal waters and within five miles of the baseline from which the territorial sea of any atoll or island is measured.

(2) A Local Government Council may take measures for the management and development of local fisheries in its internal waters and within its waters up to five miles seaward of the baseline from which the territorial sea is measured, in accordance with this Title.”⁶⁵

The second part of this goal is to ensure legislation provide a general responsibility to ensure that government agencies work with local government, traditional owners, community bodies and individual citizens. The MIMRA Act does not specifically have language that bridges cooperation with local government in achieving conservation efforts of coastal reefs and resources like giant clams, but there are other legislations that make up for the lack of such language in the MIMRA Act.

The PAN Act is an important piece of legislation providing for the designation of protected areas which decisions come from local communities and governments as well. The Protected Areas Network Act (PAN) Act 2015, entered into force on October 19, 2015. According to Section 503, the Act allows for the creation within the RMI protected areas that the Ministry of Resources and Development designate. The Acts sets out various institutional key players in the administration, management, initiation of management plans, and enforcement of the Act and management plans. Part III of the Act establishes the PAN Office, whose main role

⁶² Fisheries Act, 51 MIRC § 203(1).

⁶³ Id. at § 203(3).

⁶⁴ Id. at § 502(1).

⁶⁵ Management and Development of Local Fisheries Act, 51 MIRC § 302(1)(2).

is to receive, manage and disburse funds the same in accordance with the recommendations of the Board. Section 507A sets out the specific powers and duties of the PAN Office.

Apart from the PAN Office, the Act also provides for the establishment of the Coastal Management Advisory Council (CMAC). CMAC, “provides the advisory role to the PAN Office and technical assistance to the LRC in communities, and other conservation areas.” Part IV establishes the Local Resources Committees (LRC). Section 511 sets out various functions of the LRC including, initiating and establishing processes that lead to the formulation and approval of a management plan and local government ordinances related to compliance and enforcement of the management plan, reporting progress made on the development of a protected area management plan, and developing an annual work plan to guide the yearly implementation of the plan’s activities and the achievement of its objectives.

Section 504 sets out different categories of protected areas namely,

- (a) Type I – Subsistence only
- (b) Type II – Special Reserved
- (c) Type III – Restricted and protected area
- (d) Type IV – Traditional Mo.

Section 505 provides for the designation of areas. Specifically, Section 505 states:

The Ministry of Resources and Development in consultation with the LRC and local government officials may designate areas as Protected Areas. A notice on the designated area or areas shall be published on the National Government’s website. The notice shall be read on the radio broadcasting from Majuro and copies of the notice shall be distributed or made available to the persons of the area or atoll designated as protected area.

It is important to note that while the Act requires the LRC to “initiate and establish processes” leading to the creation of a management plan, this Section reflects the policy objective of having multiple stakeholders involved in the process of designating a protected area and developing the necessary management plans for the proposed protected areas. This feature was a major component under the Reeimnalok Plan. The objective is to ensure that local governments and communities take initiative in upholding and protecting the designated areas.

Members of the LRC are members approved by the local community.⁶⁶ This means that individuals like traditional landowners, or other title holders to land may be involved in the designation process.⁶⁷ Local community members are involved in drafting the management plan for the protected area as well as monitoring and reporting on the progress on protecting the designated area.⁶⁸ The PAN Act appears to have achieved the second part of Goal C above by

⁶⁶ 35 MIRC § 510(2).

⁶⁷ See Id. at § 512(2). Powers and Duties of Local Resources Committee Each LRC shall have the following powers and duties: (2) Nominate, at the request of and with the written consent of a landowner or title holder, lands for inclusion in the Protected Areas Network.

⁶⁸ Id. at § 511(1)(c) and (e).

ensuring the local community members are involved in the designation of protected areas that may include coastal areas like reefs, and other coastal species and resources.

Part VI of the Act is important because it establishes PAN fund and management. Section 516 creates a PAN Fund and requires all funding sources including revenues from the Marshall Islands Challenge Endowment Fund and any appropriate from the Nitijela and or contributions from the RMI Government, and any other sources of funding to be administered by the PAN and the MIMRA Board. Section 516(4) specifically states, “Funds received through all sources of funding as described under subsection (2) and (3) above shall be administered by the PAN Office and disbursed for the management of the PAN sites and other conservation efforts, through the PAN Office according the rules and regulations established and in consultation with the MIMRA Board.” This language is important because as suggested by the Kelleher Guidelines, there is a need for protected areas to be more financially self-sustaining, by generating their own income and not relying on government budgets as their only source of funding. This depends on governments allowing MPA managers to retain the income they have generated for management, a practice which finance departments sometimes oppose.” Here, the legislation requires that funding sources are used primarily for managing PAN sites and other conservation efforts.

The Fisheries Act contains language involving local government participation. For example, Section 207 provides for fisheries management and development plans and each plans shall determine conservation and management measures taking into account the advice of any Local Government Council....”⁶⁹ Section 207(5) requires consultation with local governments and persons affected by the fishery plan.⁷⁰ Recall, that the term “fish” is not limited to pelagic species, but incorporates coastal resources like mollusks, crustacean, coral, sponge, holthurian (bech-de-mer), or other echinoderm.⁷¹ Coral reefs are not specifically defined in the Act and it remains to be determined whether coral reefs should be defined and also part of the Fisheries Act. The lack of reference or inclusion of coral reefs into the definition of "fish" may not affect the overall objective and purpose of the Act, especially ensuring the involvement of local government as suggested by this Goal, because other statutes like the PAN Act have the potential to protect and conserve coral reefs with the involvement of local community members and local government.

The Fisheries Act does contain some language that may suggest working with traditional owners or local community members and individuals. For example, Section 207(1) provides for designation of fisheries, and states,

The Authority may authorize a fishery as a designated fishery where, having regard to scientific, economic, cultural, environmental and other relevant considerations, it is determined that the fishery: (a) is important to the national interest; and (b) requires management and development measures for effective conservation and optimum utilization.⁷² (emphasis added).

⁶⁹ 51 MIRC § 207(4)(e).

⁷⁰ *Id.* at § 207(5).

⁷¹ 51 MIRC § 102(26). “Fish means any means any aquatic plant or animal, whether piscine or not, and included any oyster or other mollusk, crustacean, coral, sponge, holthurian (bech-de-mer), or other echinoderm, turtle and marine mammal, and includes their eggs, spawn, spat and all juveniles stages and any of their parts.”

⁷² 51 MIRC § 207(1).

The word “cultural” may entail customary or traditional values or practices that are considered in designating fisheries. Moreover, Section 207(4)(l) provides that in creating a fishery plan, the plan must take account of relevant traditional fishing methods or principles.⁷³ Both these provisions appear to achieve the second part of Goal C by ensuring that community members and traditional principles are taken into account in activities related to the Fisheries Act.

The Fisheries Act is also relevant here because it provides for the control of sponges, pinctadamargaritfera (black-lip mother of pearl oyster shell), and prohibiting harvesting trochus, all of which are coastal resources.⁷⁴

The Fisheries Enforcement Act places responsibilities of enforcing, combating illegal, unregulated, and unreported fishing with MIMRA. The Act defines the type of enforcement MIMRA is required to carry out including, monitoring, controlling and surveillance of all fishing operations within the Fishery Waters.⁷⁵ There is little language in the Act that incorporates local government enforcement, and this may be partly because MIMRA is the designated authority to administer and manage all fishery waters in the RMI. However, local government involvement can assist in investigating illegal fishing including any impacts of activity like development or overfishing in local areas, that have an impact on coral reefs and other coastal resources. Such language is absent in the Fisheries Enforcement Act. Moreover, part of the goal above about conservation efforts is to involve traditional leaders and individual citizens. The Fisheries Enforcement Act does not contain any language about how MIMRA may integrate traditional leaders and individual citizens to further its objective in conserving coastal resources. Also, although the definition of “fish” under the MIMRA Act includes coastal resources, it does not specifically state any enforcement against destruction of coral reefs.

The Management and Development of Local Fisheries Act, on the other hand, contains language involving local government participation in managing and developing local fisheries in its internal waters.⁷⁶ Section 304 defines the powers of local government in implementing this Act. Section 304 provides

A Local Government Council shall have the following powers in respect of its waters, and shall exercise them consistently with fisheries management and development measures or policy adopted by the Authority, and in accordance with this Title and relevant laws:

- (a) fisheries management, development and sustainable use, including the establishment of marine protected areas;
- (b) recommend to the Authority the declaration of a designated local fishery in accordance with Section 306;
- (c) adopt Ordinances for fisheries management and development in accordance with Sections 308 and 309;

⁷³ Id. at § 207(4)(l).

⁷⁴ Id. at § 216-18.

⁷⁵ 51 MIRC § 501(1)(a).

⁷⁶ 51 MIRC § 302.

(d) issue fishing licenses for species which may also be licensed by the Authority in accordance with Section 308.⁷⁷

Again, this Act does not contain specific language that allows for traditional leaders and citizens to participate in these proceedings. This does not suggest however that such language is crucial to be inserted into the Act, given that local government officials are elected leaders of the community and through their elected seats, represent the communities. Local governments may develop soft law policies that encourages traditional leaders and citizens to take part managing fisheries development.

Overall, existing legislation does establish responsibility, accountability, and capacity for the management of conservation areas, and provide a general responsibility to ensure that government agencies work with local government, traditional owners, community bodies and individual citizens as evidenced by the legislation above. There is language in each of the legislation incorporating local government into various roles and responsibilities along with MIMRA, but not all these statutes contain language encourages traditional leaders and individualized citizens to be part of a particular process. This finding should not mean that there must be language incorporating traditional leaders and individualized citizens in these statutes, but some language, in policy for example, may encourage a tradition of involving important members of the Marshallese communities into these existing legal frameworks.

Recommendations:

1. Revisit the MIMRA Act and determine whether specific language should be incorporated that bridges cooperation with local government, traditional leaders and community members in achieving conservation efforts of coastal reefs and other resources.
 2. Revisit the Fisheries Enforcement Act and determine whether that Act should contain language about how MIMRA may integrate traditional leaders and individual citizens to further its objective in conserving coastal resources.
 3. The Management and Development of Local Fisheries Act and determine whether specific language that allows for traditional leaders and citizens to participate in these proceedings is necessary.
- D. Legislation provides for control of activities which occur outside a conservation area and which may adversely affect features, natural resources or activities within the conservation area.

The PAN Act is the principal source of legislation that allows the designation of certain areas as protected from any activities depending on the type of protection designated.⁷⁸ Section 504 lists four categories of protected areas, that may also include coastal resources and ecosystems.⁷⁹

⁷⁷ Id. at § 304(1)(a)-(d).

⁷⁸ 35 MIRC § 503.

⁷⁹ Id. at § 504(a)-(d).

- Type I – Subsistence only: This type of area is managed for subsistence use. In international standards, this relates to IUCN Category VI-Managed Resource Protected Area.
- Type II – Special Reserved: This area is subject to a high level of protection, and occasionally a very low level of subsistence or special occasion activities. In International standards, this relates to IUCN Category IB-Wilderness Area. Examples of this are the atolls of Ailinginae and Bikini that have high levels of protection and restrictions on human activities.
- Type III – Restricted and protected area: Restricted and protected area. This area has total restrictions subject to no activities, either within a large protected area or in an identified protected area.
- Type IV – Traditional Mo: This area includes either parts of land, a whole island, or a reef area that is managed through practices of Mo.

Currently there are sixteen designated protected areas spread across the RMI.⁸⁰ The intent of this goal is to control activities occurring outside a conservation area that may affect features, natural resources, or activities within the conservation area. Activities may include but are limited to human overfishing, construction or land reclamation. Pursuant to the PAN Act, activities that disturb the conservation area may face criminal penalties under Section 519 which include imprisonment up to a year and a fine of not less than \$500 (US) dollars for first time offenders. Second offenders face a higher penalty of two years imprisonment and a fine of not less than \$2,500 dollars. Subsequent repeated offenders may face imprisonment five years imprisonment and up to \$10,000 fines.⁸¹ The PAN Act does not contain language regulating activities outside the designated area therefore, referring to other existing legislation helps analyze whether this goal is met.

The Coast Conservation Act of 1988 was created to designate the National Environmental Authority (through the Director) (EPA) to carry out a survey reporting on current activities, normally construction, found throughout the country, and then develop a Coastal Zone Management Plan that determine the suitability of certain activities that may disrupt the integrity of coastal zone areas.⁸² The Act also governs a permit process which requires no development activity other than those prescribed within the coastal zone with first obtaining a permit.⁸³ However subsection two provides an exception from seeking a development permit.⁸⁴ Section 311 provides for an environmental impact assessment may be submitted with a permit application. That Section states, “upon receipt of an application for a permit to engage in a

⁸⁰ See SPREP PROE, Pacific Islands Protected Area Portal, <https://pipap.sprep.org/country/mh> (last visited Aug. 15, 2021).

⁸¹ 35 MIRC § 519(1).

⁸² 35 MIRC §§ 301-330.

⁸³ *Id.* at § 309(1). “Notwithstanding the provisions of any other law, no person shall engage in any development activity other than a prescribed development activity within the Coastal Zone except under the authority of a permit issued in that behalf by the Director.”

⁸⁴ *Id.* at § 309(2). “The Authority may, having regard to the effect of those development activities on the long term stability, productivity and environmental quality of the Coastal Zone, prescribe the categories of development activity which may be engaged in within the Coastal Zone without a permit issued under Subsection (1) of this Section.”

development activity within the Coastal Zone, the Director may require the applicant to furnish an environmental impact assessment relating to such development activity and it shall be the duty of the applicant to comply with such requirement. Every environmental impact assessment furnished under this Section shall contain such particulars as may be prescribed.”⁸⁵ If a permit is approved, the Director may include any conditions necessary for the proper management of the Coastal Zone.⁸⁶ The Director may also alter, vary or remove the conditions as well.⁸⁷

The Coast Conservation Act was enacted in 1988 and it was not designed specifically to address concerns related to protected areas network under the 2015 PAN Act. However, the Coast Conservation Act does set up a mechanism to ensure that any development activity first undergo a permit application process which entails an environmental impact assessment. The Director may impose certain conditions on the permit and may also exercise other authorities if found any waste intrusion into the coastal zone.⁸⁸ EPA has other relevant regulations like the Earth Moving Regulations that also require a permit application process before any development is carried out.⁸⁹ Although there is no guaranteed language in both the PAN Act and the Coast Conservation Act that ensures the protection of the surrounding of designated areas from any activities, The Coast Conservation Act does require a thorough examination of the application, its proposed development area, and an environmental impact assessment. The possibility that a protected area is identified in a coastal zone area is likely to be brought to the attention of the EPA and MIMRA. However, MIMRA may not know of such proposal for development until much later in the permit process and EPA may not know that a certain area has been designated a protected area given that EPA is not privy to such information as required by law or regulation. This is where local community and local governments may play an integral role in filling gap areas where government agencies may inadvertently fail to cross check. Coast Conservation Act is an important piece legislation that ensures coral reefs, and coastal marine resources are protected from development activities like land reclamation. Although MIMRA does not administer the coastal zone, their authority to protect coastal resources and ecosystems require the cooperation of the EPA and therefore a closer look between the Coast Conservation Act and the PAN Act may warrant more attention, particularly in terms of language that protects not just the protected coastal areas, but also the surroundings of those areas from activities that may jeopardize the integrity of those areas.

Recommendation:

1. Revisit the PAN Act to determine whether to insert language regulating activities outside the designated protected area.
2. Same as in Goal A, recommendation number 2.

⁸⁵ Id. at § 311(1).

⁸⁶ Id. at § 312.

⁸⁷ Id. at § 314.

⁸⁸ Id. at § 320.

⁸⁹ Earthmoving Regulations 1989 (incorporating 1994 Amendment).

- E. Legislation on conservation areas should require that management plans be prepared for each site and should specify the constituent elements of the plan. [There] Should require periodic revision of zoning and management plans and research and monitoring.

There does not appear to be clear language in both the PAN Act and the PAN regulations of 2020 specifying the constituent elements of the plan. The PAN Act and the PAN regulations refer to the requirement of submitting management plans with an application for a protected area, but neither the Act or the Regulations stipulate what is required or expected to be disclosed in the management plan.⁹⁰

The Kelleher Guidelines provides examples of the key elements of a management plan both large and small scale protected areas.⁹¹ Below is the outline from Annex 2 of the Kelleher guidelines describing what should be presented in a management plan:

Outline

During the development of plans and associated reports, it is necessary to consider the available information and to determine how far it is appropriate to cover the following items:

- Executive Summary: Covers the essential issues and necessary decisions. Many of the final decision-makers will not have time to read and digest supporting detail;
- Introduction: Defines the purpose and scope of the plan and explains the legislative basis and authority for plan development;
- Statement of the goal and objectives for the planned MPA as a whole;
- Definition of the area: A formal statement on the boundaries of the planned MPA and a geographic description of its setting and accessibility;
- Description of the resources of the area: A summary of information directly relevant to decisions (detail should be restricted to an annex or separate document);
- Description of uses of the area: Concentrates on present uses but should place these in the context of past types and levels of use. This includes social and economic analyses of use;
- Description of the existing legal and management framework, such as coastal fisheries, marine transportation and other relevant legal controls on present use of the area. Where they still exist or can be recalled, traditional practices of management, ownership or rights to the use of marine resources should be described;
- Analysis of constraints and opportunities for activities possible within the area;
- Statement of the principal threats to the conservation, management and maintenance of the area;
- Statement of policies, plans, actions, inter-agency agreements and responsibilities of individual agencies relevant to meet the objectives of the MPA and to

⁹⁰ See 35 MIRC § 508(3) “The Board shall review and approve Conservation or Resources Management Plans, Annual Work Plans and Budget for eligibility for funding;” see also Protected Areas Network Regulations 2020 Required Documents for Nomination Form Schedule 1.1.

⁹¹ Graeme Kelleher, Guidelines for Marine Protected Areas, Best Practice Protected Area Guideline Series No. 3, Annex 2.

deal with threats and conflicts. This may include a summary of consultative processes followed in plan development;

- Statement of the boundaries, objectives and conditions of use and entry for any component zones of the planned area;
- Provision for regulations required to achieve and implement boundaries and conditions of use and entry;
- An assessment of the financial, human and physical resources required to establish and manage the MPA including:
 - staffing
 - equipment and facilities
 - training
 - budget
 - interpretation and education
 - monitoring and research
 - restoration
 - surveillance
 - enforcement
 - contingency/emergency planning
 - evaluation and review of effectiveness.

It is likely that the zoning or management plan will have to be supplemented by separate reports and procedure manuals, which will be developed during the life of the plan.

Recommendations:

1. Revisit the PAN Regulation to determine whether specific language should include elements of a management plan to guide applicants in the process of drafting management plans for protected areas. Please refer to pages 79 to 87 of the Kelleher guidelines for a more thorough review of the suggested elements that MIMRA may consider in assisting with an application for a protected area. The above example is one example of a small scale protected area management plan and Annex 2 contains other versions including a large scale protected area management plan in Annex 3.

- F. Local users of the marine environment must be involved in establishing, maintaining, monitoring and implementing management of conservation areas, and it is desirable that this is anchored in legislation.

Local users is an important aspect in the overall conservation of the marine environment and including coastal reefs and resources, because of the dependency and inter-connected nature of the sea in which actions may impinge on other areas.⁹² The Reeimanlok Plan identifies the impact of urban development and pollution on habitat depletion, sedimentation of marine ecosystems, reductions of lagoon flushing through restriction or blockage of reef passes by road construction, and water pollution.⁹³ The objective of this goal is to legislate and involve local

⁹² Kelleher *supra* note 91 at 29.

⁹³ Reeimanlok Plan *supra* note. 7.

users in establishing, maintaining and monitoring conservation areas including coastal reefs and resources.

The existing legal framework on the conservation coastal resources including reefs, do involve local government as explained in goal letter C above. For instance, Section 503 of the PAN Act allows for the designation of protected areas network designated by the Ministry of Resources and Development and that the Protected Areas Network office is administered by the Ministry and managed by Local Resources Committees (LRC).⁹⁴ LRC consist of four members approved by the local community and LRC's are empowered to,

- (a) ... initiate and establish processes that lead to the formulation and approval of a management plan and local government ordinances related to compliance and enforcement of the management plan.
- (b) With assistance from Lead Technical Agency, determine conditions and fees for any licenses required under the management plan.
- (c) Report the progress on the development of a Protected Area Management Plan to the community and the local government council from time to time or when required.
- (d) Develop an annual work plan to guide the yearly implementation of the plan's activities and the achievement of its objectives.
- (e) Make sure that the responsibilities of the community under the plan are properly detailed and completed in a timely manner.
- (f) Work closely with the Lead Technical Agency and follow up the Lead Technical Agency's obligations under its responsibilities so that they are carried out in a timely manner.
- (g) Arrange and organize community workshops and gatherings as required under the plan.
- (h) Provide reports to the PAN Office as set out under relevant guidelines.

The PAN Act involves local community members to be significantly involved in establishing the protected area through developing the management plan, report on progress made on the development of the protected area, ensuring that responsibilities of the community under the plan are detailed, etc. The PAN Act appears to have achieved this goal. The PAN Regulations also appears to achieve the goal of involving local users. For example, under the PAN Regulations, an applicant for a protected area must also obtained signature (approval) from both a local government official and the traditional leader for the site.⁹⁵ Please refer to goal letter C above, for a more detail description of each of relevant legislation that requires and empowers certain roles and responsibilities on local governments as well.

Recommendations:

No recommendations for this goal as it appears to have been satisfied under the PAN Act and Regulation.

⁹⁴ 35 MIRC § 503.

⁹⁵ Protected Areas Network Regulations 2020 Schedule 1.1.

- G. The legislation should provide for surveillance of use in order to determine the extent to which users adhere to the provisions of management; monitor the condition of the managed ecosystem and its resources; and measure any changes in user demands.

One of the functions and powers of the PAN Office is to “provide or arrange technical assistance to the LRCs for management of their protected areas including, but not limited to, assistance in surveying, monitoring, developing site management plans, identifying and establishing sustainable use practices, conducting scientific investigations, supporting compliance and enforcement of Protected Areas and educating the public about conservation and protected areas.”⁹⁶ Monitoring and managing the protected areas may also entail enforcement provisions. The PAN Act, Section 519 provides for criminal penalties for any person who violates any provisions of the PAN Act and section 520 provides for civil penalties.⁹⁷ Similarly the PAN Regulations 2020 also provide for enforcement mechanisms. Section 8 of the Regulations provide for specific duties the PAN Coordinator must carry out. For example, the coordinator must “provide guidelines to collect information and establish record keeping, monitoring, and reporting requirements as necessary and appropriate to carry out the purposes of these Regulations.”⁹⁸ The coordinator must also,

“provide or arrange technical assistance to the LRCs for management of their protected areas including, but not limited to, assistance in surveying, monitoring, developing site management plans, identifying and establishing sustainable use practices, conducting scientific investigations, supporting compliance and enforcement of Protected Areas and educating the public about conservation and protected areas; and conduct monitoring and evaluation of sites included in the network.”⁹⁹

These provisions appear to satisfy the objective of the goal G.

Recommendations:

No recommendations for this goal as it appears to have been satisfied under the PAN Act and Regulation.

- H. Financial arrangements for the management of marine areas should be identified in legislation.

As indicated above, Part VI of the PAN Act establishes the PAN fund and management. Part VI of the Act is important because it provides for the establishment of the PAN fund and management. Section 516 creates a PAN Fund and requires all funding sources including revenues from the Marshall Islands Challenge Endowment Fund and any appropriate from the Nitijela and or contributions from the RMI Government, and any other sources of

⁹⁶ 35 MIRC § 507A(7).

⁹⁷ 35 MIRC §§ 519-20.

⁹⁸ Protected Areas Network Regulations 2020, Section 8(d).

⁹⁹ Id. at § 8(e)(f).

funding to be administered by the PAN and the MIMRA Board. Section 516(4) specifically states, “Funds received through all sources of funding as described under subsection (2) and (3) above shall be administered by the PAN Office and disbursed for the management of the PAN sites and other conservation efforts, through the PAN Office according the rules and regulations established and in consultation with the MIMRA Board.” This language is important because as suggested by the Kelleher Guidelines, there is a need for protected areas to be more financially self-sustaining, by generating their own income and not relying on government budgets as their only source of funding. This depends on governments allowing MPA managers to retain the income they have generated for management, a practice which finance departments sometimes oppose.” Here, the legislation requires that funding sources are used primarily for managing PAN sites and other conservation efforts.

Recommendations:

No recommendations for this goal as it appears to have been satisfied under the PAN Act and Regulation.

- I. Legislation must provide for making regulations to control or, if necessary, prohibit activities.

Section 120 of the MIMRA Act, authorizes MIMRA to promulgate regulations that may control and prohibit activities that may affect coastal resources including reefs. Some of the relevant provisions include:

(a) the conservation, management and sustainable development of fish in the Fishery Waters, including but without restricting the generality of the foregoing the catching, loading, landing, handling, transporting, possession, inspection, disposal and export of fish.¹⁰⁰

(d) the use and protection of fishing gear and equipment, including fish aggregating devices and artificial reefs;¹⁰¹

(f) pollution or the environmental quality of the Fishery Waters.¹⁰² Fishery Waters’ means the exclusive economic zone, the territorial sea and internal waters, including lagoons, as described in the Marine Zones (Declaration) Act, 1984, and any other waters within the jurisdiction of the Republic of the Marshall Islands.¹⁰³

Although these provisions may be interpreted broadly to include coastal resources, there is no specific language on the protection and conservation of coral reefs within this section. The definition of fish is broad to include specified coastal resources, but the definition did not include

¹⁰⁰ 51 MIRC § 120(a).

¹⁰¹ Id. at § 120(d).

¹⁰² Id. at § 120(f).

¹⁰³ Id. at § 102(31).

coral reefs. Subsection (d) mentions of artificial reefs, but again does not mention the protection of existing coral reefs.

The PAN Act, on the other hand, mentions coral reefs as a potential designated protected area under Type IV.¹⁰⁴ If an area is designated as Type IV, activities are prohibited within this area. The PAN Regulations also provides provisions for the prohibition of activities within Type IV.¹⁰⁵

Recommendation:

1. Revisit and review the MIMRA Act and determine whether specific mentioning of coral reefs should be inserted into the list of authorized promulgation of rules.
- J. Enforcement, Incentives and Penalties: To be effective, legislation must be capable of being enforced.

The list of relevant legislation below provides enforcement and penalties. It is also important to note that apart from the legislation, the various regulations under these statutes, also provide enforcement mechanisms by penalizing those who breach those regulations.

Coast Conservation Act

Section 324:

(1) Any person who:

(a) fails to comply with the requirement of a notice sent by the Director under Section 320(1)(a) of this Chapter :

(b) resists or obstructs the Director or any officer in the exercise of any power conferred on the Director or such officer;

(c) fails to comply with the requirements of a notice issued under Section 322 of this Chapter; or
(d) makes any statement, which to his knowledge is false or incorrect, in any return or information furnished by him in compliance with a notice issued by the Director under Section 322 of this Chapter, shall be guilty of an offense under this Chapter and shall on conviction, be liable to a fine of not less than one thousand dollars (US \$1,000) and not exceeding five thousand dollars (US \$5,000), or to imprisonment for a term not exceeding six (6) months, or both.¹⁰⁶

PAN Act

Section 518:

Enforcement.

(1) This Act and regulations in relation to the nationally designated protected area, whether established by local or national authorities, may be enforced by the Ministry of Justice, local law enforcement officers, or such personnel of the Ministry of Resources and Development as the

¹⁰⁴ 35 MIRC § 504(d). “Type IV – Traditional Mo. This area includes either parts of land, a whole island, or a reef area that is managed through practices of Mo.” (emphasis added).

¹⁰⁵ Protected Areas Network Regulations 2020, Section 11(d).

¹⁰⁶ 35 MIRC § 324.

Minister may designate. (2) A local government council may enact an ordinance with respect to the protected areas (3) Any person who violates the national laws, local ordinances or any rule, regulation or procedure promulgated pursuant to this Act, may be prosecuted by the national or applicable local authorities.¹⁰⁷

Section 519:

(1) Any person who is convicted of a violation of this Act or regulations in relation to a nationally designated protected area may be sentenced to imprisonment for a term of up to one (1) year, or fined not less than \$500, or both. Any person convicted of a second violation may be sentenced to imprisonment for a term of up to two (2) years, or fined not less than \$2,500, or both. Subsequent violations shall carry a penalty of up to five (5) years imprisonment and a fine of up to \$10,000, or both.¹⁰⁸

(2) Any person who violates local ordinances in relation to the protected areas shall be guilty of a misdemeanor and shall upon conviction be liable to a fine not exceeding \$100.¹⁰⁹

Fisheries Act

Section 209:

(1) The Minister may, by proclamation, declare any fish as protected which are designated as endangered by international agreement on advice from the Director. (2) The Authority may make regulations regarding the management of the species protected under this Section.¹¹⁰

Section 216:

(1) No sponges artificially planted or cultivated shall be taken or molested, except by permission of the Authority. (2) Any person who contravenes Subsection (1) commits an offense and upon conviction shall be fined not more than \$10,000 or may be imprisoned up to six months, or both.¹¹¹

Section 217:

(1) No pinctadamargarztfra, commonly known as black-lip mother of pear oyster shell, shall be taken from the first day of August to the thirty-first day of December inclusive; provided that at no time may any such shell be taken which is less than four inches in minimum diameter as measures across the nacre; and provided further that such shells of any size may be taken at any time for scientific purposes when specifically authorized by the Authority. (2) Any person who contravenes Subsection (1) commits an offense and upon conviction shall be fined not more than \$10,000 or may be imprisoned up to six months, or both.¹¹²

Section 218:

(1) Except as permitted by or under this Title, the taking or harvesting of trochus, or any intentional or reckless interference with the growth of trochus in the Fishery Waters is prohibited. (2) The Authority may from time to time declare, in relation to any part of the Fishery Waters, an open season for trochus. (3) A declaration under Subsection (2) of this

¹⁰⁷ Id. at § 518.

¹⁰⁸ Id. at § 519(1)(2).

¹⁰⁹ Id.

¹¹⁰ 51 MIRC § 209.

¹¹¹ Id. at § 216.

¹¹² Id. at § 217.

Section shall be published widely in such ways as the Authority may direct. (4) An open season with respect to any part of the Fishery Waters shall not exceed three months in any period of twelve months. (5) The taking or harvesting of trochus is permitted in an open season only: (a) by a citizen living in an area in which he or she has, in accordance with customary law, a right to fish; (b) under a fishing license issued by the Authority that specifically authorizes the taking or harvesting of trochus; (c) in respect of trochus whose shell is greater than three inches in diameter at the base, or such larger dimension as the Authority may require. (6) The Director may at any time grant to any person a permit to remove and transport trochus from an area for the purpose of its introduction, transplanting or propagation in any other area, and no person shall remove Or transport trochus for such purpose without a permit. (7) If the Authority determines that any underwater operations, or proposed underwater operations, that will or may interfere with a trochus bed are in the public interest, the Director may grant a permit for the removal and transplanting of the bed at the expense of the person conducting or desiring to conduct the underwater operations. (8) No person shall acquire, accumulate or hold trochus or any part thereof for the purpose of sale, marketing or export without a permit issued by the Director which states the maximum tonnage to be sold or exported and the period of time during which such export is permitted. (9) Any person who contravenes Subsection (1), (5), (6), or (8) commits an offense and upon conviction shall be fined not more than \$10,000 or may be imprisoned up to six months, or both, and in addition shall be liable for the market value of any trochus or part thereof held at the time of seizure, and such trochus or part thereof shall be forfeited.¹¹³

Fisheries Enforcement Act

This Act mainly regulates illegal, unregulated, and unreported fishing. Although fish is broadly defined to include coastal resources, the Act does not specifically define coral reef and related ecosystems. It is yet to be tested whether enforcement of conservation of coastal resources and species can be protected pursuant to this Act.

Recommendations:

No recommendation since it appears, the statutes and regulations both provide penalties and enforcement mechanism to ensure compliance with the statutes.

VIII. Overall Conclusion

RMI appears to have made significant progress in implementing legislation and regulations that were envisioned in the Reeimanlok Plan as explained above. It is important to note that while the Reeimanlok Plan is aimed at conserving and managing coastal resources, the overall legal structure of MIMRA is principally aimed at administering all marine resources within its exclusive economic zone and territorial waters which may include conservation methods. The current legal structure for administering marine resources, is primarily focused on sustainable management that both conserves the marine resources by controlling fishing methods, incoming fishing vessels, regulating export of marine resources, as well as generating economic return for

¹¹³ Id. at § 218(1)-(9).

these resources. The recommendations shared in this Project leave MIMRA with an opportunity to revisit its current legislations and determine whether more language is to protect and conserve coastal resources including coral reefs. Such decisions should also take account of past experiences on the challenges faced with achieving this goal including cases and agency adjudication contested matters that also shed light on improving the legal system.