

# A THREATS- AND NEEDS- ASSESSMENT OF COASTAL MARINE AREAS IN THE STATES OF KOSRAE, CHUUK AND YAP, FEDERATED STATES OF MICRONESIA

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## TABLE OF CONTENTS

I	EXECUTIVE SUMMARY .....	3
II	THE PROJECT .....	4
III	ACKNOWLEDGEMENTS .....	5
IV	FEDERATED STATES OF MICRONESIA.....	6
IVA	Introduction.....	6
IVB	History .....	6
IVC	Economy .....	7
IVD	Government.....	8
IVE	Land Ownership .....	8
IVF	Environment .....	9
IVG	The National Constitution and Protection of the Marine Environment.....	9
IVH	Significant National Legislation for Protection of the Marine Environment.....	10
IVI	Planning for Coastal Marine Protection.....	11
IVI1	National Biodiversity Strategy and Action Plan .....	11
IVJ	National Implementation Support Partnership.....	11
IVK	Blueprint for Biodiversity.....	12
IVL	PEW Fellowship for Executive Director of Conservation Society of Pohnpei.....	12
IVM	Anthropogenic Threats to Coastal Marine Resources.....	13
IVM1	National Biodiversity Strategy and Action Plan .....	13
IVM1a	Threats .....	13
IVM1b	Constraints .....	14
IVM1c	Strategy and Action Plan .....	14
IVM2	Blueprint for Biodiversity.....	17
IVN	References .....	18
V	THE STATE OF KOSRAE .....	19
VA	Introduction.....	19
VB	Government.....	20
VC	Economy .....	20
VD	Natural Resources.....	21
VE	Land Ownership .....	21
VF	Selected Legislation for Protection of Coastal Marine Resources .....	22
VF1	Kosrae State Constitution.....	22
VF1a	Article XI. Land and the Environment.....	22
VF2	Kosrae State Code .....	23

VG	Planning for Coastal Marine Protection.....	32
VG1	Kosrae State Biodiversity Strategy and Action Plan.....	32
VG2	Kosrae Land Use Plan .....	33
VH	Anthropogenic Threats to Coastal Marine Resources.....	33
VI	Primary Agencies and Organizations Responsible for Coastal Marine Protection.....	36
VI3	Kosrae Island Management Resources Authority (KIRMA) .....	36
VI4	Department of Agriculture, Land and Fisheries.....	38
VI5	Kosrae Conservation and Safety Organization .....	39
VJ	Discussion.....	39
VK	Recommendations .....	42
VL	Meetings in Kosrae.....	44
VM	References.....	45
VI	THE STATE OF CHUUK.....	46
VIA	Introduction.....	46
VIB	Government.....	47
VIC	Land Ownership .....	47
VID	Selected* Legislation for Protection of Coastal Marine Resources .....	47
VID1	Chuuk State Constitution.....	47
VID2	Chuuk State Code .....	48
VID3	Other laws currently in effect.....	49
VIE	Chuuk State Biodiversity Strategy and Action Plan.....	69
VIF	Primary Agencies and Organizations Responsible for Coastal Marine Protection.....	70
VIF1	Environmental Protection Agency .....	70
VIF2	Department of Marine Resources .....	72
VIF3	Department of Forestry and Agriculture .....	74
VIF4	Chuuk Public Fisheries Corporation.....	74
VIG	Discussion.....	74
VIH	Recommendations .....	76
VIJ	Meetings in Chuuk.....	78
VIK	References.....	79
VII	THE STATE OF YAP .....	80
VIIA	Introduction.....	80
VIIB	Government.....	81
VIIC	Marine Resources .....	81
VIID	Ownership of Natural Resources .....	81
VIIE	Selected* Legislation for Protection of Coastal marine Resources .....	81
VIIE1	Yap State Constitution.....	82
VIIE2	Yap State Code .....	82
VIIF	Planning for Coastal Marine Protection.....	104
VIIF1	YAP State Biodiversity Strategy and Action Plan ACTION PLAN .....	104
VIIF2	International Waters Proposal .....	104
VIIG	Anthropogenic Threats to Coastal Marine Resources.....	106
VIIH	Primary Agencies and Organizations Responsible for Coastal Marine Protection....	107
VIIH1	Environmental Protection Agency .....	107
VIIH2	Marine Resources Management Division.....	109
VIIH3	YAP Fishing Authority .....	110
VIIH4	YAP Community Action Program .....	110
VIII	Discussion.....	111

VIIJ	Recommendations .....	113
VIIK	Meetings in Yap.....	115
VIII	References.....	117

## I EXECUTIVE SUMMARY

Kosrae, Chuuk and Yap States in the Federated States of Micronesia (FSM) depend heavily on their reef fisheries for food and revenue derived from sales to local markets. Diving and other tourism activities in marine areas of the States are also important to the local economy. Unfortunately, as the islands within the nation become “westernized” the traditional care Micronesians once had for their environment has decreased. This problem has increased in more recent times due to the changes from a subsistence lifestyle to a commercial economy and the development of centralized governments. The nation’s very high population growth, resulting in increased fishing pressure for local consumption and sale, has placed further pressure on the Micronesian environment and its pristine but limited resources. Even now, there are few, if any restrictions on harvesting reef species of fish. In addition, development is taking its toll on the environment through habitat destruction and pollution. As a result, populations of reef fish and other marine species have plummeted in some areas over recent decades and reef habitats are increasingly degraded near population centers.

Unfortunately, projects to develop Marine Protected Areas (MPAs) to protect critical habitat and limit human activities are still in their infancy. The constitutions of all three States emphasize the importance of traditional customs and laws and the need to protect the environment through initiatives that begin at the community level. When establishing community-based MPAs, effective management and enforcement will be very challenging, but the need to move forward in this regard is urgent.

Environmental agencies in Kosrae, Chuuk and Yap often lack appropriate legislation, resources and training to perform their jobs properly and therefore are not prepared to meet increasing anthropogenic threats to marine coastal areas. Although coastal development projects must be permitted by State Environmental Protection Agencies, the process by which permits are issued is often not clear or, when clear, not properly followed. There is also a clear need for a review of the underlying laws for protection of coastal marine resources. They often have gaps in operational responsibilities and overlaps in others, resulting in confusion and unnecessary duplication of effort as to the respective requirements of personnel.

Marine Resources personnel in the three States are involved in a variety of activities, with enforcement often considered as low priority by their respective Departments. Case loads are generally low, as are penalties. Enforcement personnel lack formal training in even basic law enforcement techniques, and their supplies and equipment are woefully inadequate.

**To address these problems, all three States should strengthen management and protection of their coastal marine resources through the following actions:**

- 1. Marine Protected Areas: Establish New Marine Protected Areas for Critical Reef Habitat and Regulations for Their Protection.**

2. **MOU With Public Safety: Create an MOU with the Department of Public Safety to Provide Assistance In Enforcement Actions.**
3. **Rapid Ecological Assessment: Complete a Rapid Ecological Assessment (REA), Focusing on Reef Fish Stocks**
4. **State Code: Complete a Review of Existing Environmental Statutory Provisions within the State Code. Draft and Recommend to the Executive/Legislature Statutory Amendments, and Review Policies Relevant to the Enforcement Of Environmental Laws.**
5. **Law Enforcement Assessment: Conduct Detailed Workplace Assessments of the Law Enforcement Units / Functions within Environmental Agencies.**
6. **Law Enforcement Training: Based on the In-Depth Assessment, Develop and Implement a One-Year Law Enforcement Training Plan for Environmental Agencies.**
7. **Monitoring: Monitor Progress in the Implementation of All Recommendations over a Two-Year Period, with Particular Focus on Recommendations 5 and 6.**

## II THE PROJECT

In September, 2005 WildAid received grants from NOAA and the David and Lucile Packard Foundation to conduct threats- and needs- assessments for existing and proposed Marine Protected Areas (MPAs) in the States of Chuuk, Kosrae and Yap, Federated States of Micronesia (FSM). As it was later determined through research that such areas either do not exist or are only community-based and very limited in number, the focus of the assessment was changed to coastal marine areas in general.

John Gavitt, WildAid's Project Officer, partnered with Willy Kostka, Executive Director of the Conservation Society of Pohnpei (CSP) throughout the assessment, which documents:

- 1) Present or potential threats from unsustainable or illegal activities in these areas, including illegal trade in reef species;
- 2) Legislation, government agency activities and initiatives by other stakeholders for protection of marine resources;
- 3) Current weaknesses in addressing such threats; and
- 4) Recommendations for strengthening protection of these areas.

WildAid conducted a similar assessment in Pohnpei State, which led to the successful implementation of several recommendations from the assessment, including enforcement workshops, training and changes in legislation and enforcement policy.

From February 10-24<sup>th</sup>, 2006, John Gavitt, Willy Kostka and Alissa Takesy, Protected Area Network Coordinator, traveled to Kosrae, Chuuk and Yap to seek information for the threats- and needs- assessment and to seek partnerships/support and to gain input and/or to gauge the general response/reaction towards the development of the PAN, the Micronesia Challenge and the PEW Fellowship (see information below). Draft assessment reports for each State were then developed by John in consultation with Willy and Alissa. In April 2006, Willy sent the drafts to stakeholders in each of the three States. Willy then followed up with an on-site visit to each State in May 2006 to discuss the reports with stakeholders and to receive their final comments. John then amended the drafts and developed a final report.

It is important to note that, during the submission and approval process for this grant, other initiatives for protection of coastal marine areas were evolving. In December 2004, the FSM National Government and a number of local partners signed a National Implementation Support Partnership (NISP) agreement pledging to collaborate and support the implementation of the Programme of Work on Protected Areas that was adopted at the seventh meeting of the Conference of the Parties to the Convention on Biological Diversity in Kuala Lumpur, Malaysia. The NISP provides an overarching framework for establishing a national protected areas network in the FSM. Signatories to the FSM NISP include the Government of The Federated States of Micronesia, the State governments, the College of Micronesia – FSM, the Micronesia Conservation Trust, FSM Visitors Board, The Nature Conservancy, Conservation Society of Pohnpei, Kosrae Conservation and Safety Organization, and the Yap Community Action Agency. The proposed goal of this project is to build consensus for a nationwide protected areas network (PAN) in the Federated States of Micronesia, begin network design, and work with the Micronesia Conservation Trust to ensure sustainable financing for the network. To show its commitment to the development of the PAN, the FSM Government recently hired and placed a PAN Coordinator (Alissa Takesy) within the Department of Economic Affairs. The Coordinator will work with the signatories and all other relevant stakeholders to further the goals and objectives set in the NISP and other supporting documents.

There is also a common commitment by the Micronesia island nations and territories (the Republic of Palau, the Federated States of Micronesia, the Republic of the Marshall Islands, Guam and the Commonwealth of the Northern Mariana's) to establish a comprehensive system of resilient MPA networks. This commitment will see at least 30% of the near-shore marine and 20% of the forest resources across Micronesia under effective conservation by 2020, contributing to global targets set out at the World Summit on Sustainable Development and the Convention on Biological Diversity (CBD) for protected areas, island biodiversity and to the sustainable livelihoods of island communities.

Finally, in addition to these initiatives is the recent awarding of a Pew Fellows Program in Marine Conservation to Willy Kostka. In the next three years the Pew Fellow proposes to support and advance this process in the FSM by implementing the following: convene stakeholder consultations with governments, NGOs, and community partners in each of the FSM states to identify at least two priority action sites; contribute substantively to the development of national and state policy and legislation to support these sites; and facilitate the development of management plans, including project design and financial planning, for each site. In addition, the fellow will document and share lessons learned from both FSM and Palau to facilitate adaptive learning, improve site conservation, and leverage support for a Micronesia-wide challenge to the rest of the Pacific toward implementation of PANs.

### **III ACKNOWLEDGEMENTS**

This assessment would not have been possible without the assistance of Simpson Abraham, Director of Kosrae Island Resource Management Authority, Julita Albert of the Chuuk Environmental Protection Agency, Charles Chieng and Vanessa Fread of the Yap Community Action Program. Simpson, Julita, Charles and Vanessa worked on the local logistical arrangements, including some local entertainment for our team. With

their assistance, we were able to meet with and obtain all the necessary information we required for our report.

Special thanks go to Alissa Takesy, FSM Protected Area Network Coordinator. Alissa provided us with excellent background information and laws pertaining to resource management and environmental protection. She also worked on setting up appointments and meeting schedules with our state participants and participated in our meetings. And finally, Alissa has also contributed to our reports in for each of the States.

Our appreciation also extends to the many other people we interviewed during this assessment and the time they graciously took from their very busy schedules to meet with us. Andy George and Katrina Adams of Kosrae Conservation and Safety Organization, MaryRose Nakayama, Vanessa Fread and MaryJane Hartman of Chuuk Conservation Society, Joe Konno of Chuuk EPA and many others both in government agencies and NGOs.

## **IV FEDERATED STATES OF MICRONESIA**

### **IVA INTRODUCTION**

The Federated States of Micronesia (FSM) is a part of the Caroline Islands, located in the eastern half of the Pacific Ocean. The FSM consists of 607 islands extending about 1800 miles (2899km) from east to west. It consists of four island groups - Yap, Chuuk, Pohnpei and Kosrae, with a total landmass of 271 sq miles (705 sq km). Pohnpei occupies nearly half the country's land area, with the rest almost equally divided between the other three states.

The FSM is a young independent nation. It was a United Nations Trust Territory of the Pacific Islands administered by the United States of America until the two nations signed a Compact of Free Association in 1986 leading to the trusteeship termination by the United Nations in 1991. The Compact treaty established a special relationship with America and provides economic support to the FSM.

The islands of Kosrae and Chuuk are high volcanic islands while Yap is a raised part of the Asian continental shelf, with fertile soils, lush vegetation and abundant water. "High islands" normally are very productive, with fertile soil, abundant water and lush vegetation. "Low islands" have little topsoil, thus limiting vegetation growth. Freshwater is also limited. The population of Kosrae is about 8,000, Chuuk about 57,000, Yap about 12,000, and Pohnpei about 37,000. Sixty-five of the islands are uninhabited.

### **IVB HISTORY**

According to popular theory, the first settlers from the Philippines and Indonesia reached Yap by outrigger between 4000 and 2000 BC. Much later, voyagers from Melanesia worked their way

from Kosrae to Pohnpei, Chuuk and Yap. Government structures emerged, based on the traditional rights and obligations of clans and extended families. The traditional Pacific customary system of non-confrontational decision-making and dispute resolution continues today, alongside a system of democratic government.

In 1494, Spain ceded ownership of Micronesia in its entirety. Four centuries later, Germany took possession of the present-day Marshall Islands. During the Spanish-American war, the Germans purchased Spain's remaining interests in the Islands.

During the 19th century, American and European traders, whalers and missionaries began visiting and settling on the Caroline Islands. Japan invaded the Caroline Islands in 1914 and Germany fled the Region. Japan developed the infrastructure and administration necessary to annex Micronesia, and in 1920 the League of Nations authorized Japan to govern the islands. The islands were a focal point for several World War II battles, with the United States (US) eventually occupying the islands. When the war ended the US occupation continued. In 1947, Chuuk, Kosrae, Pohnpei and Yap were established as a Trust Territory by the United Nations. The US was given administrative rights over the islands.

In July 1978, Chuuk, Kosrae, Pohnpei and Yap voted to share a constitution, and in May 1979 they became the FSM. Under a 15-year compact signed with the US in 1982, Micronesia agreed to let the US control its relations with other countries and maintain its exclusive military access to the islands. In turn, the US guaranteed annual funding. The compact was officially implemented in 1986 and continues to be renewed as a result of periodic negotiations. The FSM was admitted to the United Nations in 1991.

## **IVC ECONOMY**

US appropriations continue to be a significant part of the economic picture in the FSM. In 1998, US grants to the FSM totaled \$72 million. The compact between the FSM and the US has recently been renewed, and \$2 million is available annually for environmental programs.

The government is the dominant employer. Micronesian people produce very few products except for subsistence purposes. The coconut palm tree is Micronesia's most important plant. Copra is no longer the principal export. Breadfruit trees are used for building outrigger canoes and the fruit is a major food source. Other food sources are taro, yams, tapioca and bananas. Timber also is derived from introduced mahogany and other species, including the betel nut tree. Mangrove swamps are common along the shores of many of the high islands and several species of mangroves are also commonly used for timber. Other sources of income are betel nut and Sakau (kava) crops.

Subsistence farming and fishing continue to play a large role in each of the four states, accounting for 16% of the GDP based on FY 96 figures provided by the Asian Development Bank. An unspoiled marine environment is critical to sustainable fishing. The FSM contains some of the world's most productive tuna-fishing grounds. Commercial fishing vessels from China and Taiwan take more than \$250 million annually and fishing fees from these boats are the second-largest source of income for the FSM, following US aid.

Tourism is a growing industry (approximately 2% of the GDP), with diving and other activities in marine reef areas attracting foreign visitors worldwide. Pohnpei has the largest number of visitors, followed by Chuuk, Yap and Kosrae.

## **IVD GOVERNMENT**

The FSM is an independent, constitutional democracy. Its Constitution sets forth a system containing both Western and traditional governing structures. The national government is divided into executive, legislative and judicial branches. The Congress has 14 Senators; each State elects one senator-at-large and the other 10 are elected on the basis of population (five from Chuuk, three from Pohnpei and one each from Kosrae and Yap). The President of the FSM is elected for a four-year term. National judicial power is vested in the Supreme Court, and inferior courts are established by statute. The Congress includes one member elected at large from each of the four States. Additional members are elected from congressional districts in each State apportioned by population. A traditional leader may fill one of these seats, if so deemed by a State.

Each State elects its own governor, State legislature and State court. Traditional leaders often play an active role in government, in particular at the municipal level. Concerning traditional governing, Article V of the Constitution honors the functions of traditional leaders “as recognized by custom and tradition” and permits the traditions of the people of the FSM to be protected by statute. Article V, section 3, allows the establishment of a Chamber of Chiefs consisting of traditional leaders and elected representatives. Traditional land protection is addressed in Article XIII, which states that non-citizens may not buy land in the FSM.

## **IVE LAND OWNERSHIP**

The indigenous population is Micronesian with most of the people residing on the main islands of the State capitals. Traditional, social and cultural institutions are still very strong in Micronesia. Micronesian society is based on the extended family, which is responsible for the family welfare, especially in relation to customary family land. Ownership of land and aquatic areas varies between States. In Kosrae and Pohnpei, land is both privately and State owned, while all aquatic areas and some land areas are managed by the State as public trusts. In Chuuk, most land and aquatic areas are privately owned and acquired through inheritance, gift or, recently, by purchase. In Yap, almost all land and aquatic areas are owned or managed by individual estates and usage is subject to traditional control. In all States, land cannot be sold to non-citizens of the FSM.

These land and aquatic ownership patterns greatly influence the strategies and actions required to manage the biodiversity of the nation in a sustainable manner.

## **IVF ENVIRONMENT**

The FSM has a tropical oceanic climate that is consistently warm and humid, with some of the most uniform year-round temperatures in the world. Temperatures are in the range of about 81°F (27°C) on most days. The wettest months are April and May. From July to November the humidity can be particularly high. Typhoon season is between August and December.

Many islands in the FSM contain rich rain forests, which provide important resources for local inhabitants and a refuge for biodiversity. These forests are also critical to island hydrology, providing regular supplies of clean water and protecting the island's delicate coral reefs from sedimentation. However, the small size of these islands, combined with their rapid population increase and economic growth have placed Micronesia's forests among the world's most endangered.

The coral reef ecosystem is the dominant shallow marine feature of the nation. Coral reef biodiversity and complexity is high within the FSM and this diversity diminishes notably from west to east within the region. All major types of coral reefs are found within the FSM, including barriers reefs, fringing reefs, atolls and submerged reefs. The condition of reefs and inshore marine environments within the FSM are healthy with natural processes controlling reef condition and marine biodiversity.

All four States offer unspoiled coral reefs for snorkeling, diving and fishing. Some areas, Chuuk Lagoon in particular, offer the additional incentive of viewing sunken ships and aircraft from World War II. These wrecks are now artificial reefs for species of corals, sponges and anemones, as well as numerous fish species.

Marine life is abundant in the FSM. The FSM has over 1000 species of fish, including at least 12 endemics, several species of marine mammals (dolphins and whales) and four species of marine turtles, (green turtle *Chelonia mydas*, hawksbill *Eretmochelys imbricata*, olive ridley *Lepidochelys olivacea* and the leatherback *Dermochelys coriacea*). Over 350 species of stony corals, 60 species of soft corals, 150 species of alga and sea grasses, several hundred species of mollusks, echinoderms and crustaceans have been documented. However, reef and marine degradation and the loss of biodiversity (especially among food fishes) are attributed to various human activities.

## **IVG THE NATIONAL CONSTITUTION AND PROTECTION OF THE MARINE ENVIRONMENT**

Environmental declarations in the Constitution include:

1. A prohibition on the testing, storing using or disposing of radioactive, toxic, chemical or other harmful substances without approval of the National Government.
2. A mandate that revenue derived from the ocean floor mineral resources shall be divided equally between the Federal and State Governments.
3. Transitional provisions that retain law from the former Trust Territory, including environmental statutes and regulations, provided they are not in conflict with the Constitution.

Article IX of the Constitution provides a long list of powers to the Congress, including regulation of the ownership, exploration, and exploitation of natural resources beyond 12 miles from island baselines. As a result, regulation of marine resources within 12 miles of the coast has traditionally been considered the legal province of the States. Therefore, the States are ultimately responsible for protection of their marine resources within the 12-mile limit.

## **IVH SIGNIFICANT NATIONAL LEGISLATION FOR PROTECTION OF THE MARINE ENVIRONMENT**

1. **Federated States of Micronesia Code (FSCMC) Title 18 – Territory, Economic Zones and Ports of Entry.** Establishes the 200 mile extended fishery zone of the National Government and the 12-mile exclusive fishery zone of the States, their islands, and atolls. Section 106 states that traditionally recognized fishing rights in submerged reef areas shall be preserved and protected.
2. **FSCMC Title 24 – Marine Resources.** Creates the Micronesian Maritime Authority, now known as National Oceanic Resource Management Authority (NORMA), which regulates the management and exploitation of marine resources within the 200 mile Exclusive Economic Zone (EEZ), addresses foreign fishing agreements, and administers the fishing permit system. Provision is also made for the States to establish entities to regulate commercial use of marine resources within their jurisdictions.
3. **FSCMC Title 23, – Resource Conservation, Chapter One.** Addresses conservation of marine species. It prohibits fishing using destructive methods, including the use of explosives, poisons or chemicals. It also sets limits on the taking or killing of hawksbill sea turtles and regulates the taking of sponges. Penalties for violation of its provisions are inadequate, with a fine up to \$100 and/or six months imprisonment.
4. **FSCMC Title 23, – Resource Conservation, Chapter Two.** Provides for the protection of endangered species of fish, shellfish and game. The Chapter was established in anticipation of ratification of CITES, which has not yet occurred. In 1976, a Regulation went into effect listing several endangered species, including the following marine species: Blue Whale, Sperm Whale, Hawksbill Turtle and the Leatherback Turtle. However, Chapter Two of this Title allows for taking of these species for subsistence food or traditional uses, provided such taking does not further endanger the species involved. Violations may result in a maximum fine of \$10,000 and/or imprisonment up to one year.
5. **Federated States of Micronesia Environmental Protection Act.** Protects the environmental quality of air, land and water in Micronesia. The Secretary of Health, Education and Social Affairs (HESA) is given general authorization to control and prevent pollution. The Secretary administers a permit system for this purpose and is also authorized to enter into cooperative agreements with the States to implement environmental programs at the State level. The Act contains ample civil penalties for violations of its provisions.

## IVI PLANNING FOR COASTAL MARINE PROTECTION

### IVI1 NATIONAL BIODIVERSITY STRATEGY AND ACTION PLAN

The Federated States of Micronesia (FSM) National Biodiversity Strategy and Action Plan (NBSAP) was developed through a series of meetings and discussion among a broad range of government (State and National), NGO and private and community stakeholders over a period of 14 months (January 2001 – March 2002). The project was funded under the Global Environment Facility's Enabling Activities that are administered by the United Nations Development Programme.

The Department of Economic Affairs at the National Government was the lead agency for the NBSAP project and was actively supported by counterpart agencies in each of the four FSM States: The Development Review Committee (DRC), now known as Kosrae Island Resource Management Agency (KIRMA) in Kosrae State; the Department of Land and Natural Resources (DLNR) in Pohnpei State; the Environmental Protection Agency (EPA) in Chuuk State; and the Department of Resources and Development (DRD) in Yap State.

The NBSAP report outlines the state of the nation's biological resources and the current biological and human-related threats that are affecting their continued existence. Stakeholders identified eleven biodiversity themes as the most important issues currently facing the nation. Each theme has a series of proposed actions addressing these concerns. The responsibility for the implementation of the actions identified in the NBSAP has been sanctioned to the four individual states of the FSM.

### IVJ NATIONAL IMPLEMENTATION SUPPORT PARTNERSHIP

In December 2004, the FSM National Government and a number of local partners signed a **National Implementation Support Partnership (NISP) agreement** pledging to collaborate and support the implementation of the Programme of Work (PoW) on Protected Areas that was adopted at the seventh meeting of the Conference of the Parties (COP) to the Convention on Biological Diversity (CBD) in Kuala Lumpur, Malaysia held in February 2004. **The NISP provides an overarching framework for establishing national Protected Areas Network (PAN) in the FSM.** Signatories to the FSM NISP include the Government of The Federated States of Micronesia, the State governments (key partner agencies include the Chuuk Environmental Protection Agency, the Yap Department of Resources and Development, the Pohnpei Department of Lands and Natural Resources, and the Kosrae Island Resource Management Agency), the College of Micronesia – FSM, the Micronesia Conservation Trust, FSM Visitors Board, The Nature Conservancy, Conservation Society of Pohnpei, Kosrae Conservation and Safety Organization, and the Yap Community Action Agency.

Parallel to the PAN efforts in the FSM and Palau is a common commitment by the Micronesia island nations and territories (the Republic of Palau, the Federated States of Micronesia, the Republic of the Marshall Islands, Guam and the Commonwealth of the Northern Mariana's) to establish a comprehensive system of resilient MPA networks. **The commitment is to see at least 30% of the nearshore marine and 20% of the forest resources across Micronesia under effective conservation by 2020**, contributing to global targets set out at the World

Summit on Sustainable Development and the Convention on Biological Diversity (CBD) for protected areas, island biodiversity and to the sustainable livelihoods of island communities.

## IVK BLUEPRINT FOR BIODIVERSITY

In 2002, as a result of over two years work by individuals within the FSM Government, the U.S. Forest Service, the Nature Conservancy, university scientists and local experts, a “blueprint” was developed for conservation planning that will focus on Areas of Biological Significance (ABS) in Micronesia. Using methodology developed by the Nature Conservancy, 130 ABS sites were identified initially, encompassing over 1,126 sq. miles, or 19% of the terrestrial and inshore areas.

ABS sites in marine or coastal marine areas were identified as follows:

<b>Marine Only Sites</b>	<b>Number of Sites</b>	<b>Area (hectares)</b>	<b>Area (sq. miles)</b>
Yap	6	49,471.10	190.95
Chuuk	10	20,683.29	79.83
Pohnpei	5	12,480.50	48.17
Kosrae	1	54.52	.21
<b>Coastal Marine Sites</b>			
Yap	21	24,007.43	92.66
Chuuk	20	77,089.91	297.55
Pohnpei	18	75,695.26	292.17
Kosrae	5	1,466.07	5.66

In addition, 24 Priority Action Areas were selected to focus conservation action in the most biologically important and threatened areas within the next 3-5 years.

## IVL PEW FELLOWSHIP FOR EXECUTIVE DIRECTOR OF CONSERVATION SOCIETY OF POHNPEI

In addition to the previous initiatives is the recent awarding of a Pew Fellows Program in Marine Conservation to Willy Kostka of the Conservation Society of Pohnpei (CSP). The goal of the program is to build a consensus for a nationwide **Protected Areas Network (PAN)** in the Federated States of Micronesia, begin network design, and work with the Micronesia Conservation Trust to ensure sustainable financing for the network.

In the next three years the Pew Fellow proposes to support and advance this process in the FSM by implementing the following: convene stakeholder consultations with governments, NGOs, and community partners in each of the FSM states to identify at least two priority action sites; contribute substantively to the development of national and state policy and legislation to

support these sites; and facilitate the development of management plans, including project design and financial planning, for each site. In addition, Kostka will document and share lessons learned from both FSM and Palau to facilitate adaptive learning, improve site conservation, and leverage support for a Micronesia-wide challenge to the rest of the Pacific toward implementation of PANs.

## **IVM ANTHROPOGENIC THREATS TO COASTAL MARINE RESOURCES**

### **IVM1 NATIONAL BIODIVERSITY STRATEGY AND ACTION PLAN**

#### **IVM1A THREATS**

The NBSAP report describes the following threats to marine coastal resources, as well as the constraints in addressing those threats:

##### **Over-Exploitation and Unsustainable Harvesting Methods:**

1. Destruction of Coral Reefs and Associated Ecological Communities (e.g. coral extraction, reef anchors)
2. Over-exploitation of Marine Organisms (e.g. reef fish, sea cucumbers, giant clams)
3. Over-exploitation and inappropriate Development of Coastal & Marine Ecosystems (including Mangrove Forests)
4. Destructive and Unsustainable Fishing Methods – e.g. dynamite, chlorine, fish poisoning plant (*Derris elliptica*), small mesh gillnets
5. Over-exploitation of Fish Aggregation Spawning Sites
6. Illegal Bio-Propecting of Genetic Resources
7. Illegal Offshore and Inshore Fishing

##### **Waste Management:**

1. Terrestrial and Aquatic Pollution (e.g. oil spills, coastal waste dumpsites)
2. Solid Waste Collection and Disposal
3. Hazardous Waste Usage and Disposal
4. Sewage Collection, Treatment and Disposal

##### **Invasive Organisms and Pests:**

1. Introduction of Pests and Diseases
2. Direct Negative Impacts on Native Species and Terrestrial and Aquatic Habitats by Alien Invasive Species (e.g. *Mikania micrantha*, toad (*Bufo marinus*), rats and Feral Animals (e.g. pigs, wild cats)

## **IVM1B CONSTRAINTS**

1. Rapidly Increasing Populations and more Consumptive Lifestyles
2. Inadequate Scientific Base Line Biological Information on the Status of Biodiversity
3. Insufficient Aquatic and Terrestrial Conservation Areas and Management Plans
4. Insufficient Biodiversity Legislation and Lack of Enforcement
5. Insufficient Skilled/Trained Human Resources
6. Insufficient Coastal Planning and Zoning
7. Inadequate Awareness of Links between Conservation and Sustainable Economic Development
8. Insufficient Funding for Conservation Activities

## **IVM1C Strategy and Action Plan**

In total, eleven biodiversity strategic themes were developed. Strategy goals, objectives, and action plans include the following selections of particular relevance to this assessment:

### ***IVM1ci Theme 1: Ecosystem Management***

**Strategy Goal:** A full representation of FSM's marine, freshwater and terrestrial ecosystems are protected, conserved and sustainably managed, including selected areas designated for total protection.

**Objective 1: Research and Monitoring:** To undertake research and resource assessment/evaluation for the identification, documentation and monitoring of the FSM's ecosystems for the implementation of appropriate resource management programs, including conservation and protected areas.

**Objective 2: Conservation Areas:** To enhance the management of existing conservation areas and establish new areas to achieve a full representation of the FSM's ecosystems.

**Objective 3: Sustainable Use of Ecosystems:** To develop and implement effective management programs that promote income-generating activities and use of biodiversity resources sustainably within all FSM's ecosystems.

#### **Actions:**

1. Finalize, implement and enforce ecosystem management plans through legislation. Special enforcement actions are required to eliminate destructive practices (e.g. dynamite fishing).

### ***IVM1cii Theme 2: Species Management***

**Strategy Goal:** FSM's native, endemic, threatened, and traditionally important species are protected and used sustainably for the benefit of the people of the FSM and the global community.

**Objective 1: Conservation of Species:** To preserve and conserve all native, endemic, threatened, and traditionally important species in the FSM through effective conservation programs.

**Actions:**

1. Establish, maintain and update a threatened species list.
2. Further develop and strengthen endangered species laws and regulations.
3. Develop and implement programs for the conservation and protection of native species and varieties from the destructive impact of alien and invasive species.

**Objective 2: Research and Monitoring:** To undertake research for the identification, documentation and monitoring of species contributing to the implementation of appropriate conservation and management programs.

**Actions:**

1. Undertake research programs to complete the identification and current status of the nation's flora and fauna.
2. Establish and implement resource-monitoring programs for species that are threatened, rare, endemic, commercially harvested and culturally significant.
3. Develop monitoring programs to evaluate, document, and implement appropriate actions on all possible threats to the biodiversity of the nation.
4. Develop research and monitoring programs to identify the presence and evaluate effects of invasive species and develop eradication programs where appropriate.

**Objective 3: Sustainable Use and Management of Species:** To ensure the sustainable use and management of species for social and economic development.

**Actions:**

1. Reevaluate and/or develop appropriate sustainable management plans, including sustainable harvesting levels and enforcement programs for all commercial and subsistence harvested marine (inshore and offshore), freshwater and terrestrial flora and fauna.
2. Through legislation and enforcement eliminate all destructive harvesting practices (e.g. dynamite and fish poisoning fishing).

***IVM1ciii Theme 4: Biosecurity***

**Strategy Goal:** Border control, quarantine and eradication programs are effectively protecting the FSM's native biodiversity from impacts of alien invasive species.

**Objective 1: Policy and Legislation:** To improve and strengthen appropriate National, State and Municipal policies and legislation to ensure the effective management of Biosecurity.

**Actions:**

1. Develop National and State policies and actions for the management of all Biosafety issues.
2. Develop National and State policies, legislation and actions for the management of genetically modified organisms.

3. Further develop and implement National and State laws and screening processes for alien species introductions and genetically modified organisms to manage or minimize their impacts on the nation's biodiversity.
4. Further develop the National Government's power to enforce (including issues of transportation and staffing) all laws and legislation relating to alien introductions.

#### ***IVM1civ Theme 7: Waste Management***

**Strategy Goal:** All human-generated wastes are effectively managed to prevent or minimize environmental degradation, pollution and loss of the nation's biodiversity.

**Objective 3: Hazardous Chemicals.** Provide an environmentally safe mechanism to prevent or eliminate the use and abuse of hazardous chemicals and to develop and implement correct storage and disposal programs to prevent the degradation of the environment and loss of biodiversity within the nation.

**Actions:**

1. Revise and further develop legislation and regulations of hazardous chemicals, including importation requirements.

#### ***IVM1cv Theme 8: Human Resources and Institutional Development***

**Strategy Goal:** All citizens, residents and institutions of the nation are aware of the importance of biodiversity and have the technical knowledge, skills and capability to conserve, preserve and sustainably utilize, manage and develop all biodiversity within the nation.

**Objective 1: Human Capacity Building:** To develop and strengthen the capacity of resources owners, traditional leaders, communities, technical staff and policy makers in the coordination and implementation of conserving, preserving and sustainably utilizing and developing the biodiversity of the FSM.

**Actions:**

1. Develop and implement local capacity training programs for National, State and Municipal personnel involved in the formation and implementation of conservation related programs, including education and enforcement sectors.
2. Undertake capacity building training for quarantine personnel (National and State) on border control, quarantine services and the effective screening of new species introductions and necessary eradication of potentially invasive species.

#### ***IVM1cvi Theme 9: Resource Owners***

**Strategy Goal:** Traditional resource owners and communities are fully involved in the protection, conservation, preservation, and sustainable use of the nation's biodiversity.

**Objective 2. Empowering Resource Owners:** Empowering resource owners and communities to conserve and sustainably manage biodiversity under suitable customary and modern resource management practices.

**Actions:**

- Develop appropriate legislation at the State and Municipal levels that encourages the empowerment of resource owners and communities to monitor and enforce environmental regulations.

***IVM1cvii Theme 10: Mainstreaming Biodiversity***

**Strategy Goal:** All economic and social activities of the FSM take full account of impacts on and fully consider sustainability of biodiversity.

**Objective 4. Legislation:** To ensure that appropriate National, State and Municipal legislation is developed and effectively enforced to sustainably manage the FSM's biodiversity.

**Actions:**

- Review and strengthen existing National, State and Municipal government environmental legislation and acts to incorporate relevant actions from the NBSAP and ensure integration of all themes across all relevant sectors within the nation.
- Support and further develop National, State and Municipal capabilities for the enforcement of all biodiversity legislation.
- Develop ecological planning based on islands' biological carrying capacities.

***IVM1cviii Theme 11: Financial Resources***

**Strategy Goal:** Local, regional and international financial sources provide for the long-term financial sustainability of all conservation and biodiversity related activities.

**Objective 4. Conservation Trust Fund:** The continued establishment and development of the Micronesian Conservation Trust Fund (MCT) for implementation of the NBSAP and relevant biodiversity work.

## **IVM2 BLUEPRINT FOR BIODIVERSITY**

A threats analysis in the NBSAP identified over-fishing as the most urgent and critical threat across marine Areas of Biological Significance (ABS) in all States, followed by coastal erosion and sea level rise, inadequate landfills and dumping, erosion, sedimentation from land-based activities, destructive harvesting and invasive species. Based on this analysis, the single multi-area conservation strategy recommended by the plan is to create a government framework that enables local communities to establish and maintain conservation areas.

The plan notes that conventional western approaches to conservation-government management and enforcement of large-scale areas have been ineffective due to land and marine ownership patterns, the difficulty in regulating activities in remote areas and the limited resources available to government natural resource agencies. However, the report also states that the breakdown of traditional management systems throughout Micronesia has exacerbated the situation. Use of traditional practices is declining due to a growing cash economy and a lack of awareness about environmental problems.

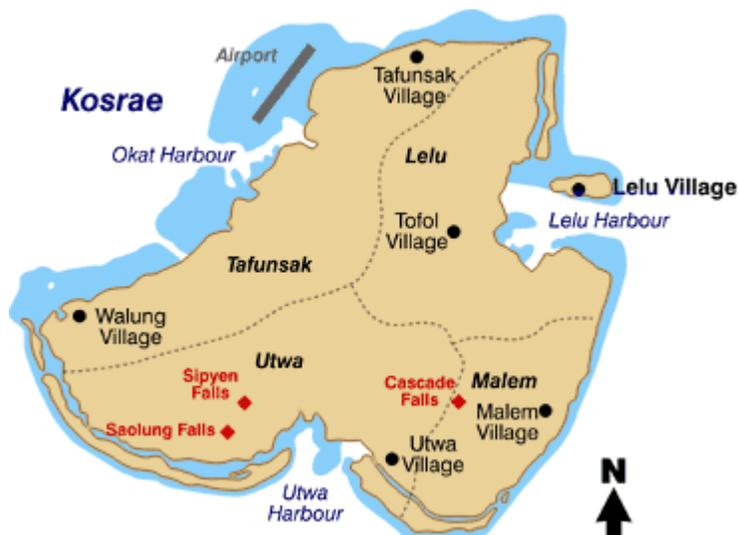
## IVN REFERENCES

NAME	TYPE	DATE
A Blueprint for Conserving the Biodiversity of the Federated States of Micronesia, by the FSM Government and the States of Yap, Pohnpei, Kosrae and Chuuk, the Nature Conservancy, the U.S. Forest Service, U.S. Department of Interior, and UNDP-GEF.	Plan	2002
<b>DESIGNING A PROTECTED AREAS NETWORK IN THE FEDERATED STATES OF MICRONESIA, BY THE NATURE CONSERVANCY</b>	Proposal	June 2005
FSM National Biodiversity Strategy and Action Plan	Plan	March 2002
Micronesia. Lonely Planet Publications. 4 <sup>th</sup> Edition. April, 1988. 367 pages. Authored by Galbraith, Kate; Bendure, Glenda; and Friary, Ned.		
Embassy of the Federated States of Micronesia. <a href="mailto:Fsm@fsmembassy.org">Fsm@fsmembassy.org</a>	Website	N/A
Federated States of Micronesia <a href="http://www.visit-fsm.org">http://www.visit-fsm.org</a>	Website	N//A
International Coral Reef Information Network <a href="http://www.coralreef.org">http://www.coralreef.org</a>	Website	N/A
Lonely Planet World Guide <a href="http://www.lonelyplanet.com/destinations/pacific/federated_states_of_micronesia/">http://www.lonelyplanet.com/destinations/pacific/federated_states_of_micronesia/</a>	Website	N/A
Strengthening Environment Management Capabilities in Pacific Island Developing Countries; 1992. Federated States of	Report	1992

Micronesia. Review of Environmental Law. Regional Environment Technical Assistance (RETA) 5403. South Pacific Regional Environment Program. By Elizabeth Harding. 128 pages.		
Legal Information System for FSM: <a href="http://www.fsmlaw.org/fsm/index.htm">http://www.fsmlaw.org/fsm/index.htm</a>	Website	N/A
Status of Coral Reefs in the Federated States of Micronesia. By Stephan Lindsay and Ahser Edward. 31 pages.	Report	January 2000
Protection Of Marine Sanctuaries In Pohnpei State, Federated States Of Micronesia: Status And Future Needs. By John Gavitt, WildAid.	Report	February 2003

## V THE STATE OF KOSRAE

### VA INTRODUCTION



The State of Kosrae is located the eastern-most island in the Federated States of Micronesia (FSM), located approximately 600 kilometers southeast of Pohnpei. Kosrae is a 109 square kilometer island surrounded by a reef. It is circular in shape, measuring only 16 kilometers across at its widest point, and it is the only state without an outer island. Kosrae is the second largest island in the FSM with its 43.2 square miles of land area. The ancient volcanoes create an interior with steep mountain ridges, peaks and valleys that occupies 70 per cent of the land area. Mt. Finkol (2,064 feet) is the dominating landmark. This undisturbed upland is covered with tropical rain forest that is home to many species of rare plants and animals. Dense jungle

occupies the sloping very fertile land from the interior to the coastal zone. Large areas of mangrove forest maintain the coral reef that surrounds Kosrae.

According to the Year 2000 population census, the population of Kosrae was 7,686, with 1,087 households, averaging seven persons per household.

## **VB GOVERNMENT**

The Kosrae State Government is a constitutional democracy with three branches of government: Executive, Legislative and Judiciary. Under the Executive Branch, the Governor is the highest elected official and directs ten government departments and offices. The director of the Department of Commerce and Industry, among others, oversees development activities for the Executive Branch. Five divisions support activities of the department: Consumer Services, Housing and Renovation, Industrial Development, Marketing and Research and Tourism. Foreign Investment belongs under the division of Industrial Development and is monitored by the Foreign Investment Office.

The legislative or law making power of the state is vested in the Kosrae legislature whose jurisdiction extends to all rightful subjects of legislation consistent with its constitution. The legislature is composed of 14 Senators who are elected by the voters of the electoral districts of Lelu, Malem, Tafunsak, and Utwe.

Under Article VI of the Kosrae Constitution, the judicial power of the State is vested in the Kosrae State Court and such inferior courts as may be created by law. The judiciary interprets the constitution and laws of the state. The decisions of the Kosrae State Court can be appealed to the Appellate Division of the FSM Supreme Court.

The Judiciary is headed by a Chief Justice, appointed by the Governor and confirmed by the legislature.

Each elected government official serves for a four-year term, except for the Justices who serve for a term of six years.

## **VC ECONOMY**

Gross domestic product (GDP) in 1994 was estimated at USD 14.4 million or USD 1,963 per capita annually. The major economic sectors are marine resources, tourism, agriculture and small scale and cottage industries. Combined output from these sectors contributed an estimated USD 1.6 million, or 10% of the state product.

Kosrae's economy still greatly depends on financial support from the United States, provided by the Compact Agreement with the FSM. Therefore, the public sector dominates the economy, employing the majority of Kosraeans within one of the ten different governmental departments. For example, public sector expenditures in 1994 were USD 12.4 million, or 81% of the total state budget. The estimated annual wage level in 1993 for private sector employees was USD 2,736 compared to USD 6,150 in the public sector.

The State government owns and operates all infrastructure facilities, all health and almost all education services, extensive commercial activity in fisheries, marketing and other small enterprises.

In the private sector the main occupations are retail outlets, restaurants and resorts, farming, fishing and some service businesses. Traditional subsistence economy remains very important and almost every family catches fish and has gardens as well as livestock for food production.

The Kosrae State Government seeks to promote foreign investment as a mean to improve the states trade balance and dependency on foreign funding.

## **VD NATURAL RESOURCES**

Kosrae's main natural resources are the abundant marine resources surrounding the island and the beautiful lush green island which has significant agricultural potential. The island is mountainous with a dense jungle, with white coral sand beaches around the rim. Kosrae is known for its citrus fruit which includes oranges, tangerines, and limes.

The marine environment is typical of a tropical volcanic island. Mountains account for 70% of the total land area, so virtually all of the population lives in five coastal villages. Several sandy beaches break through the mangrove shoreline to provide easy access to the narrow surrounding lagoon. The reef flats that surround Kosrae are considered to be among the most pristine remaining in the world.

The reef boasts some of the most amazing marine life and barracuda diving in the world. Snorkeling and scuba diving are available and several American planes and Japanese ships are submerged in Lelu Harbor.

Kosrae's biodiversity is significant, with over 100 plant species, 335 fish species (250 are food species) and 180 species of coral. Special Conservation Areas designated in the State's Land Use Plan cover the different ecosystem types to be managed and conserved. During the December mating season, large numbers of sea turtles congregate near Kosrae. Other important marine species include lobsters, trochus, sea cucumbers, crabs and giant clams. Declining species include the bumphead parrot fish, mullet fish, rabbit fish, napoleon wrasse and unicorn fish.

## **VE LAND OWNERSHIP**

Article XI, Section 4 of the Kosrae State Constitution states that the waters, land, and other natural resources **within the marine space of the State** are public property. The State shall regulate the marine space in the public interest, subject to the right of the owner of land abutting the marine space to fill in and construct on or over the marine space. Such right may be limited by other provisions and is subject to prior consultation between the State Government and the municipality where the marine space is situated.

During the Japanese occupation of Kosrae, public lands were expanded to include the shoreline below the mean high water mark, the mangroves, and the upland forests above the "Japanese line." The line (which is marked and surveyed) forms a dominant boundary on Kosrae Island, dividing more easily used land on the lower slopes from the upper more mountainous land. The land above the line includes approximately 67 percent of the total land area of Kosrae, and most of this land is still under government control. As much as 50 percent of this area is too steep for any development. Land below the line (about 47% of Kosrae) is essentially private land with a high percentage of it surveyed and with titles. The remaining area (about 2% of Kosrae) is Government-owned. There are about 4,500 registered land parcels in Kosrae.

Constitutional amendment 19, passed in 1995, allows reclamation of land above the Japanese line by the original landowners. Land will be awarded by issuing a Certificate of Title to an individual or to the Tenancy-in-Common. A procedure for reclamation must be established by law before any advancement can be made, and is meant to be guided by Kosrae's Land Use Plan.

There are differing views on how the State can protect its interests in watersheds, historic sites, and conservation areas, with one option being that the State becomes a claimant when the areas are designated. Another option is for the State to be proactive in legislating to protect its interests. The major claimants will be land owners abutting the line, as they restrict access to other claimants. Land areas claimed will be large. There has never been a case on Kosrae where the State has exercised its powers of eminent domain through a judicial proceeding.

The issue of how the State of Kosrae, and in particular the Land Court moves forward to deal with registrations above the Japanese line is the single most important legal issue facing Kosrae regarding land in the future.

## **VF SELECTED LEGISLATION FOR PROTECTION OF COASTAL MARINE RESOURCES**

\* Not inclusive of all legislation

### **VF1 KOSRAE STATE CONSTITUTION**

#### **VF1A ARTICLE XI. LAND AND THE ENVIRONMENT**

**Section 4.** The waters, land, and other natural resources within the marine space of the State are public property, the use of which the State Government shall regulate by law in the public interest, subject to the right of the owner of land abutting the marine space to fill in and construct on or over the marine space; provided, the right may be limited by other provisions of this article and any use of the waters, land and other natural resources within the marine space of the municipality by the State Government is subject to prior consultation between the State Government and the municipality where the marine space is situated. Consultation procedures shall be provided by statute.

(Amended in 1995)

**Section 5.** The State Government may acquire interests in private land for a public purpose without the consent of the interested parties. The acquisition may occur upon payment of fair compensation and the State Government's showing that the land and the interest are highly suited to their intended use, that it has made a good faith effort to gain the consent of the interested parties, and that it has made every reasonable effort to avoid substantial hardship to the interested parties in consideration of their personal circumstances. Procedures for the acquisition shall be prescribed by law and shall include the payment by the State Government to the interested parties of the attorney costs and reasonable attorney's fees incurred in connection with the acquisition proceedings. (Amended in 1995)

## **VF2 KOSRAE STATE CODE**

### **VF2a Title 7. Agencies**

#### **Chapter 4. The Development Review Commission**

**Section 7.401. The Development Review Commission.** (1) The Development Review Commission consists of five members who serve terms of four years. Two of the members initially serve terms of two years and three of the members initially serve terms of four years. Thereafter, all members serve terms of four years.

**Section 7.402. Powers and duties.** The Commission has the power and duty to: (1) Protect the environment, human health, welfare and safety, to abate, control and prevent pollution or contamination of air, land and water in accordance with this chapter and commission regulations by balancing the needs of economic and social development with those of environmental quality and adopting regulations and pursuing policies which, to the maximum extent possible, ensure that economic and social development is environmentally sustainable; (2) adopt and enforce regulations to effect the purposes of this chapter; (3) adopt and provide for the continuing administration of a development permit system, including the requirement of development proposals, for the construction, expansion or alteration of a development, including alteration of land or marine space, that may significantly affect, directly or indirectly, natural or historic resources, significantly alter the landscape or be incompatible with surrounding air, land or water uses. (4) adopt and enforce primary and secondary drinking water regulations, including the establishment of an underground injection control program; (5) adopt and provide for the continuing administration of a program for the abatement or prevention of the contamination of drinking water systems; (6) establish standards for classifying air, land and water in accordance with present and future uses; (7) adopt and implement plans for the certification of applicators of pesticides, for the issuance of experimental use permits for pesticides and a plan to meet special local needs; (8) establish and provide for the continuing administration of a permit system for the discharge of a pollutant in the air, land or water; (9) collect information and establish record keeping, monitoring and reporting requirements necessary and appropriate to carry out the purposes of this chapter; (10) enter public or private property to inspect or take samples in performance of its duties; (11) issue a cease and desist order to a person found to be in violation of law or regulation pertaining to the environment; (12) order a polluting party to abate the causing of, and to remove, polluting matter; (13) devise land use plans and, no later than two years after the effective date of this Chapter, propose legislation to the Legislature and

the Governor for the regulation of the use of land; (14) act as an agent of the Environmental Protection Board of the Federated States of Micronesia pursuant to written agreement approved by the Governor; and (15) preserve the State's forests and wildlife and regulate activities that affect them.

**Section 7.404. Commission staff.** The Commission selects a full-time program director who administers the functions of the Commission and has such duties and responsibilities as may be delegated to him by the Commission. The program director may be assisted in his duties by supporting staff as the Commission deems necessary.

**NOTE:** The Board of Commissioners may appoint a person to administer the functions of the Commission. That person (known as the Administrator) may seek assistance from supporting staff to carry out those functions. The personnel appointed to the Kosrae Island Management Authority (KIRMA) are therefore, appointed in accordance with the provisions of this Section. Legislation expanding enforcement powers for the KIRMA is being drafted.

**Section 7.405. Environmental impact studies.** The Commission requires that:  
(1) All persons include in their development proposals an environmental impact assessment study in accordance with regulations established by the Commission.  
(2) All persons submit an environmental impact statement to the Commission according to Commission specifications, prior to taking any action significantly affecting the quality of the human environment.

**Kosrae Island Management Authority (KIRMA) Regulations for Development Projects. Summary:** *These Regulations implement Title 7, Chapter 4 by establishing standard procedures for the formal review of development projects. Projects with significant impact on the environment require an Environmental Impact Statement.*

*Permits are required for the following: 1) Earthmoving; 2) Projects below the mean high water mark (including mangroves); 3) Project costing over \$5,000; 4) Projects incompatible with surrounding land uses; 5) Project involving the disposal or removal of dredged materials; and 6) Project involving the use, handling or disposal of toxic chemicals, pesticides, petroleum, oil and lubrication.*

*Applications are submitted to the KIRMA Program Office, which decides if an Environmental Impact Statement is required and also acts as technical advisor to the KIRMA board, which will decide on whether a permit will be issued and the conditions under which a permit is issued.*

*Under Part VII of the Regulations, employees or agents of KIRMA may enter private or public property on official business.*

*Violators are subject to receiving a cease and desist order and a \$10,000 civil penalty for each day of violation.*

## VF2a Title 11. Land & Environment

### Chapter 11. Marine Life

**Section 11.1101. Trochus.** The Director of the Department of Agriculture, Land and Fisheries has the power and duty to preserve and develop *trochus* resources for maximum economic and ecological benefit. By regulation the Director provides for: (1) the time, place and method of *trochus* harvesting by a permit system to assure responsible and environmentally sound harvesting; and (2) minimum and maximum shell size or other limitations in harvesting.

***Regulation 19 (1988). Summary:*** *This Regulation establishes a trochus sanctuary, harvest seasons, harvest methods and size limits.*

**Section 11.1102. Sea Cucumbers.** The Director of Agriculture, Land and Fisheries and the Development Review Commission have the power and duty to preserve and develop sea cucumber resources for maximum economic and ecological benefit. (1) No person may commercially harvest, commercially process, or commercially export sea cucumbers without having a valid permit; (2) No person may possess more than five (5) sea cucumbers, at one time, without a valid permit. 3) The Director of the Department of Agriculture, Land and Fisheries, the Development Review Commission shall adopt regulations to provide for the protection and sustainable commercial harvesting, commercial processing, and commercial exportation of sea cucumbers in accordance with this section.

### Chapter 13. Protection of Environment

**Section 11.1301. Right of Entry.** To enforce this chapter the Development Review Commission may at a reasonable time enter an establishment or public or private property for the purpose of obtaining information, making an inspection, obtaining samples, inspecting or copying a record required to be maintained by this chapter or regulation, or conducting a survey or investigation to enforce this chapter.

**Section 11.1302. Enforcement.** (1) A person who violates this chapter is subject to enforcement action by the Commission which may include issuance of a cease and desist order, imposition of a civil penalty up to ten thousand dollars for each day of violation, or commencement of a civil action to enjoin the violation. (2) If the Commission finds that an unlawful discharge of waste is taking place or may take place or that the waste collection treatment or disposal facilities of a discharger is approaching capacity the Commission requires the discharger to submit for approval of the Commission, with such modifications as it may deem reasonably necessary, a detailed time schedule of specific actions the discharger will take to correct or prevent a violation of requirements. (3) When the Commission finds that an unlawful development activity or discharge of waste is taking place or may take place, the Commission issues an order to cease and desist and directs that those persons not complying with the requirements or discharge prohibitions (a) comply forthwith, (b) comply in accordance with a time schedule set by the Commission, or (c) in the event of a threatened violation, take appropriate remedial or preventive action. In the event of an existing or threatened violation of waste discharge requirements in the operation of a community system, cease and desist orders may restrict or prohibit the volume, type, or concentration of waste that might be added to such system by dischargers who did not discharge into the system prior to the issuance of the cease

and desist order. (4) The Commission holds a public hearing to determine the authenticity of the facts upon which it issued a cease and desist order affording adequate notice and opportunity to appear and be heard to an interested person. (5) A cease and desist order of the Commission becomes effective upon issuance, and final upon the Commission's issuance of findings after a public hearing. The Commission serves a copy by registered mail upon a person charged with the violation and upon an affected person appearing at the hearing and requesting a copy. (6) A person who engages in a development activity or discharges a pollutant into the water, air, or on the land in violation of this Chapter or a regulation or other order issued by the Commission, or who intentionally or negligently causes or permits such a violation, upon order of the Commission, corrects the violation or abates its effect.

**Section 11.1303. Court proceeding.** Upon failure of a person to comply with a Commission order, following Commission request, the Attorney General petitions the Court for the issuance of an injunction, mandamus or other appropriate remedy requiring the person to comply with the order.

## **Chapter 16. Wildlife**

**Section 11.1601. Endangered species.** By regulation the Development Review Commission states an endangered species and provides for its protection.

***Regulation 18 (1988). Summary:** Giant clams of the following species are classified as endangered. *Tridacna gigas*, *Tridacna derasa*, *Hippopus hippopus* and *Hippopus porcellanus*. Penalty for violation: \$1,000 and/or 12 months imprisonment.*

### **VF2b Title 13. Offenses and Penalties**

Offenses for violation of State environmental laws are listed under **Part 1 of this Title, in Chapters 5 (Offenses against the Public Welfare and Tradition) and 6 (Offenses Against Government)**. Penalties are listed in **Part II**.

### **VF2c Title 14. The Sea and Transportation**

## **Chapter 11: State and Territorial Waters**

**Section 14.1101. Jurisdiction.** This chapter provides for the exercise of the State's power to the full extent allowed by law. To the extent that a matter treated by this chapter is within the exclusive jurisdiction of the national government the Governor through a written understanding with the national government provides for: (1) enforcement of the matter by the national government; and (2) a procedure for authorizing the entry of vessels into State or territorial waters.

**Section 14.1102. Permission to enter.** Except for innocent passage, stress of weather or force majeure, an unauthorized vessel may not enter or remain within territorial waters or State waters without first receiving permission to enter pursuant to this chapter and the procedure established pursuant to Section 14.1101(2).

**Section 14.1103. Innocent passage.** This chapter does not affect the right of innocent passage through territorial waters. Passage is not innocent when a vessel makes use of territorial waters to do an act prejudicial to the security, public policy or economic interests of the State or the Federation.

**Section 14.1104. Examination of unauthorized vessel.** Regarding an unauthorized vessel the Government may at any time: (1) board it when found within State waters; (2) if there is reason to suspect that the vessel is violating law, examine the manifest and other documents and papers; (3) inspect and search the vessel and each person and object on board; and (4) hail and stop the vessel, and use all necessary force to compel compliance.

**Section 14.1105. Examination of hovering vessel.** (1) Regarding a hovering vessel the Government may: (a) board and examine the vessel at any time; (b) examine, upon oath, the master or other person having command or charge of the vessel regarding the cargo and voyage of the vessel; (c) bring the vessel into the most convenient State port to examine the cargo. (2) If upon examination of a vessel, its master, officers, crew members, passengers or cargo the Government finds sufficient evidence that a person has committed an unlawful act within territorial waters or State waters or is planning to engage in an unlawful act, the vessel and the persons so engaged are subject to the penalties provided by law.

## **VF2d    *TITLE 17. The Public Safety***

### **Inter-government Enforcement**

**Section 17.1401. National government.** The Government enforces national law only pursuant to a written agreement executed by the Governor with the national government on behalf of the Government, and only if the agreement provides that the Government receives fair compensation for its services to the national government.

**Section 17.1402. Municipal governments.** The Government enforces municipal penal law pursuant to an agreement with a municipal government for the reciprocal enforcement of State and municipal penal law.

**NOTE:** KIRMA commented that Municipal police officers cannot enforce Kosrae State laws.

## **VF2di    *Title 19. Marine Resources***

### **Introduction**

**Section 1. Purpose.** The primary purpose of this Act is to ensure the sustainable development of the State fishery waters of Kosrae by balancing economic exploitation with wise stewardship of these renewable resources for future generations. In furtherance of this primary purpose, this Act provides for the management, conservation and development of these resources, the regulation of fishing and all activities in State waters, and the enforcement and administrative implementation of this Act.

## Chapter 1: General Provisions

**Section 19.101. Definitions.** "Commercial fishing" means any fishing resulting or intended to result in selling or trading any fish that may be taken, caught or harvested during the fishing operation. "Commercial fishing" does not include sport fishing. "Subsistence fishing" is not defined.

"Department" means the Department of Agriculture, Land and Fisheries;

**Section 19.102. State powers within the fishery waters.** The State has complete sovereign rights for all purposes, including exploring, exploiting, conserving, managing, and developing living and non-living resources within the State fishery waters.

**Section 19.103. Regulations.** The Director may adopt regulations for the management, conservation and development of the fishery waters and that otherwise implement this Title. These include, without limitation, regulations that:

- (1) Identify areas of the fishery waters for management, conservation or development;
- (2) Limit the size, number, location, or type of any species of fish taken from the fishery waters;
- (3) Prohibit specific activities related to fish and fishing;
- (4) Prohibit the sale, possession, and transportation of any species of fish; and
- (5) Prohibit the use of specific fishing methods, gear, or types of vessels.

**Section 19.104. Department consultation and approval required.** Any person planning any development or activity that may affect the environmental quality of the fishery waters shall inform and consult with the Director before initiating the development or activity. The Director may require that an Environmental Impact Assessment or other investigation be carried out by that person or any other authority provided in State law or appointed by the Director.

## Chapter 2. Permits

**Section 19.201. Permits required.** A State permit is required, and must be maintained on board, for the following: (1) Fishing from a foreign fishing vessel in the State fishery zone, unless the fishing is authorized under section 117 of Title 24 of the Code of the Federated States; and (2) Transshipment.

**Section 19.202. Other activities for which permits may be required.** (1) The Director may require and issue permits for the following activities in or associated with the fishery waters: (a) Fishing not covered by Section 19.201; (b) The import and export of fish or other marine resources; (c) Aquaculture; or (d) Marine research. (2) By regulation, the Director may exempt from permitting requirements any persons or fishing vessels for activities described in Subsection (1) above. **The Director shall exempt any person engaging in subsistence fishing.**

## Chapter 4. Prohibited Acts

The following acts are prohibited under this Chapter:

**Section 19.402. Inland water fishing.** No person shall engage in commercial fishing from a foreign fishing vessel in inland waters.

**Section 19.403. Fishing without a permit.** No person shall fish from a foreign fishing vessel in the State fishery zone without a valid State permit for that vessel on board.

**Section 19.407. Development or activity without approval.** No person planning any development or activity that may affect the environmental quality of the fishery waters shall violate Section 19.104 or any requirements established by the Director pursuant to that Section.

**Section 19.408. Violation of fishery waters.** No person shall use a vessel to enter or remain within the fishery waters in violation of this Title or any other law.

**Section 19.409. Contamination of fishery waters.** No person shall directly or indirectly contaminate the fishery waters, including, without limitation: (1) Discharging non-biodegradable trash or debris, poison, oil, petroleum, solvents, metals, sewage or other noxious substances; or (2) Taking any action likely to damage or degrade the quality of the fishery waters or fish.

**Section 19.411. Drift nets.** No person shall use a drift net in the fishery waters, or transport or process any fish caught by use of a drift net.

**Section 19.413. Prohibited methods of fishing.** (1) No person shall use or attempt to use any poison, explosive, electric charge device or other substance to kill, take, stun, immobilize or in any way render fish more easily caught; and (2) No person shall possess or control any poison, explosive, electric charge device or other substance with the intent to use it to kill, take, stun, immobilize or in any way render fish more easily caught.

**Section 19.414. Export or import of live fish.** No person shall export or import any live fish or viable fish eggs without the Director's prior written permission.

**Section 19.416. Export of fish.** No person shall export any fish or fish product caught in the fishery waters without the Director's prior written permission, unless (1) The terms and conditions of a permit or a fishing agreement with the State allow export; or (2) The export is for personal consumption by immediate family members.

**Section 19.417. Protection of species.** The Director may preserve and develop the resources of any fish species. (1) The Director may adopt regulations regarding the management of any species, including, without limitation, the time, place, and method of harvesting, a permit system, and minimum and maximum size or other restrictions to ensure responsible and environmentally sound harvesting; and (2) In addition to any prohibitions in regulations adopted under subsection (1), the following activities are prohibited: (a) Taking or killing a turtle whose shell is less than twenty-seven inches when measured over the top of the carapace shell lengthwise; (b) Taking turtle eggs or killing a turtle while it is on shore; (c) Taking or killing a turtle of any size from the first day of June to the thirty-first day of August or from the first day of December to the thirty-first day of January inclusive; (d) Taking or killing a Pinctada margaritifera (black-lip mother-of-pearl oyster) from the first day of August to the thirty-first day of December inclusive; (e) Taking or killing a Pinctada margaritifera whose shell is less than six inches in minimum diameter, measured along the largest dimension across the outside of the

shell; (f) Harvesting trochus (tukasungai) except as officially authorized by Section 11.1101; (g) Taking or killing a lobster less than one pound in weight or less than three inches in carapace length, or taking or killing a female lobster with eggs; (h) Taking or killing a Mangrove crab whose shell is less than 6 inches in length, measured along the largest dimension across the outside of the shell.

**Section 19.427. Interfering with enforcement.** No person shall (1) Fail to comply with the lawful instructions or directions of an authorized officer or observer; (2) Obstruct or resist an authorized officer or observer in the exercise of any provision of this Title, including, without limitation, preventing him from boarding or searching a vessel, vehicle or aircraft or preventing him from inspecting fishing gear, equipment, records, fish or fish products; (3) Assault, threaten, or use abusive language or behavior toward an authorized officer or observer in the execution of his duties; or (4) Resist lawful arrest for any violation of this Title.

**Section 19.428. Information and documentation.** Every person shall give true, complete, and correct information or documentation for the issuance of a permit or registration as required under this Title. Any change in circumstances that renders any information or documentation false, incomplete or misleading must be provided to the Director immediately.

**Section 19.429. Destruction of evidence.** No person shall destroy, abandon, or conceal any fish, fishing gear, net or other fish appliance, electric shock device, explosive, poison or any other thing or document knowing that it is about to be produced in evidence in any trial, inquiry, or investigation authorized by law, with the intent to prevent it from being produced.

## **Chapter 5. Monitoring, Control and Surveillance**

**Section 19.501. Primary responsibility for enforcement.** The Department has primary responsibility for enforcing this Title, except that the Attorney General's office is responsible for the review and final determination of any potential legal actions.

**Section 19.502. Appointment of authorized officers and observers.** The Director may appoint, in writing, any person or category of persons as authorized officers to ensure compliance with this Title. Any police officer is deemed to be an authorized officer for purposes of this Title. The Director may appoint any person as an observer for compliance, monitoring and any other function. Any authorized officer or observer appointed pursuant to Title 24 of the Code of the Federated States is deemed to be an authorized officer or observer with respect to foreign fishing vessels or activities in the fishery waters.

**NOTE:** The actual deputization of officers is performed by the Attorney General prior to any appointed officer being able to undertake law enforcement activities. The Kosrae State Attorney General has determined by way of policy, that no person will be deputized until they have undergone some form of basic training in law enforcement duties and been assessed as competent to perform the law enforcement tasks.

**Section 19.503. Powers of authorized officers and observers.** For the purposes of enforcing this Title, any authorized officer or observer may: (a) Require any person engaged in fishing to show his permit, fishing gear and catch; (b) Stop, board and search any vessel he reasonably expects is a fishing vessel in the fishery waters; (c) Stay on board any fishing vessel within the fishery waters; (d) Examine or inquire of any person aboard about the fishing

gear, fish, cargo, catch, contents of holds and storage spaces, voyage and activities of the vessel; (e) Inspect and search the vessel, vehicle, aircraft, nonresidential premises, fishing gear, fish, catch, cargo, content of holds and storage spaces, or other evidence of activities subject to this Title; (f) Request and receive a reasonable fish sample from any person in possession or control of fish or fish products; (g) Require any person aboard a fishing vessel to inform him of the vessel's name, call sign and country of registration and the names of the master, owner, charterer and all crew members; (h) Require the agent of any foreign fishing vessel holding a permit to fish issued under Title 24 of the Code of the Federated States, where the agent is based within the State, to inform him of the name, call sign and country of registration of any vessel that he represents and the name of the operator, officer, or crew members, or other information reasonably required; (i) Seize any vessel, vehicle, aircraft, fishing gear, equipment, stores, catch, cargo, fish, fish products, log books, charts, other documents or other items used in the commission of an offense, subject to procedures and requirements of Title 14, Chapter 12 of the State Code; (j) Arrest any person where there is probable cause to believe he has committed a criminal offense in violation of this Title; (k) Execute any warrant or other process issued by any court of competent jurisdiction relating to this Title; and (l) Exercise any other lawful authority.

**Section 19.504. Hot pursuit.** An authorized officer may, following hot pursuit in accordance with international law commenced within the fishery waters, stop, board and search any fishing vessel outside the fishery waters that he has probable cause to believe has been used in the commission of an offense in the fishery waters. The authorized officer may bring the fishing vessel and all persons and things on board within the fishery waters.

**Section 19.505. Immunity of authorized officers or observers.** An authorized officer or observer who acts pursuant to this Title may not be found civilly or criminally liable for those actions or omissions to act, unless taken in bad faith.

**Section 19.506. Duty of confidentiality.** The Director shall require an authorized officer or observer to swear an oath of confidentiality.

## **Chapter 6. Administrative Enforcement Proceedings**

**Section 19.601. Report of violation; approval for administrative enforcement.** The Director shall report all violations of this Title to the Attorney General. In appropriate cases approved by the Attorney General, the Director may enforce this Title through administrative proceedings as provided in this Chapter.

### Chapter 7. Civil Remedies

**Section 19.701. General enforcement.** The Attorney General shall prosecute violations of this Title unless he determines that administrative enforcement proceedings satisfy the interests of justice. The Attorney General may take action to stop any violation of this Title, including seeking injunctions and restraining orders. Any prosecution not handled administratively may be pursued under the criminal laws of Title 13 and/or the civil penalties and forfeiture provisions of this Title.

**Section 19.702. Civil penalties.** (1) Any person who is found in a civil proceeding to have committed an act prohibited by this Title is liable to the State for a civil penalty. Civil penalties

and fines may be imposed in addition to any criminal punishment imposed pursuant to Title 13. (2) The amount of the civil penalty may not exceed \$1,000,000 for each violation of this Title. Each day of a continuing violation constitutes a separate offense for which a separate penalty may be imposed. (3) In determining the amount of a civil penalty, the court shall consider: (a) The nature, circumstances, extent, and gravity of the acts; (b) The violator's degree of culpability and any history of prior offenses; and (c) Any other matter that justice requires. (4) The Attorney General may initiate all proceedings under this Title and recover the amount assessed as a civil penalty. (5) The proceeds of civil penalties must be deposited into the General Fund.

## **Chapter 8. Forfeiture of Property**

**Section 19.801. Forfeitures.** (1) Any fishing vessel involved in the commission of any act prohibited by this Title, along with its fishing gear, furniture, appurtenances, stores, or cargo used, is subject to forfeiture to the State. (2) Any fish taken or retained, in any manner, in connection with, or as a result of, the commission of any act prohibited by this Title is subject to forfeiture to the State. (3) An action for forfeiture pursuant to Subsection (1) or (2) is a civil proceeding.

**Section 19.802. Jurisdiction.** The Kosrae State Court has jurisdiction to order the forfeiture and seizure of anything subject to forfeiture under Section 19.801 upon determining that the forfeiture and seizure is reasonably related to the offense. The Attorney General may initiate an action for forfeiture on behalf of the State. If the court enters judgment for the State in a civil forfeiture proceeding, the Attorney General shall seize any property or other interest declared forfeited to the State that has not previously been seized pursuant to this Title.

# **VG PLANNING FOR COASTAL MARINE PROTECTION**

## **VG1 KOSRAE STATE BIODIVERSITY STRATEGY AND ACTION PLAN**

The National Biodiversity Strategy and Action Plan outlines the state of the nation's biological resources and the current biological and human-related threats that are affecting their continued existence. The responsibility for the implementation of the actions identified in the NBSAP has been sanctioned to the four individual states of the FSM.

The Kosrae State Biodiversity Strategy and Action Plan (KBSAP) was developed during a 5-month period in 2004. The process of developing priorities was community-based, with several government agencies and non-governmental organizations contributing to the consultation process, including the Resource Management Committees in the communities.

The KBSAP notes that a major development in the area of environmental management was the recent creation of the Kosrae Island Resource Management Authority (KIRMA) to regulate the rapid development taking place on the island. In addition to overseeing development projects, KIRMA has implemented a Land Use Plan for resource conservation. The purpose of the Plan is to guide and provide regulations for the use of natural resources.

## **VG2 KOSRAE LAND USE PLAN**

The Kosrae Land Use Plan, developed in 2003, represents the direction of land use desired by the people of Kosrae. The goals and objectives of the Plan include the following:

### **Goals:**

1. To assist with the orderly physical development of the resources of Kosrae.
2. To protect ecologically important or unique natural resources and habitat areas.
3. To assist with the review and permitting of development projects
4. To assist with the planning of Government activities and use of Government resources.
5. To provide guidelines for the sustainable use of natural resources.

### **Objectives:**

1. Identify existing uses of land areas and natural resources.
2. Designate Active Use Districts where certain development and land uses will be encouraged. Such districts to include ecosystem types where technical advice may be applied in order to manage and conserve Kosrae's natural resources. Special Consideration Districts cover the different ecosystem types to be managed and conserved including Mangroves, Freshwater Wetlands, Upland Forests, Ocean Waters from the reef crest to 19 kilometers (12 miles) out, the Shoreline and reef, and Highly Erodible Soils and Streambanks.
3. Designate Areas of Particular Concern for the delineation, protection and regulation of specific areas. Areas of Particular Concern are specific areas to be delineated and protected include Mangrove Reserves, Shoreline Erosion Hazard Areas, Rivers and Water Resources, Mouths of Rivers, the Trochus Sanctuary, the Green Snail Sanctuary, Cultural and Historic Sites, and areas identified by The Nature Conservancy as Areas of Biological Significance (ABS).
4. Provide, reference, or recommend the development of guidelines, recommendations and specific Management Strategies for each Active Use District, Special Consideration District or Area of Particular Concern.

The Plan has recommended restrictions on human activity in sensitive marine and terrestrial areas, but these recommendations have not been incorporated into legislation.

## **VH ANTHROPOGENIC THREATS TO COASTAL MARINE RESOURCES**

According to the KBSAP, anthropogenic threats are of the greatest concern in Kosrae, including over-harvesting or over-exploitation of resources, use of inappropriate and /or destructive harvesting methods, pollution, habitat modification and destruction, climate change and introduction of alien species. Net fishing and the use of chemicals in fishing are significant problems, and there is concern that the use of new fishing technology may be even more destructive. Over-harvest of species such as the mangrove crab, coral dredging, land fill in mangrove areas, boat anchoring on coral reefs destroy habitat, while oil spills, littering, and land-based sources of pollution are the main pollution concerns. To address these threats, the following Objectives and Actions are among those adopted by the KBSAP:

**Objective 1:** To develop, review and enforce policies and regulations for sustainable harvesting of natural resources.

1. **Action 2:** Ban the use of poisonous chemicals such as bleach, cyanide, local plant roots (*derris trifolia*), leafs (*canti cands*) and other destructive fishing methods as in the use of dynamite and electrocution devices.  
**Lead Agency:** Division of Fisheries.
2. **Action 3:** Enforce seasonal harvesting of threatened species protected by Kosrae State laws and regulations.  
**Lead Agency:** Attorney General's Office.
3. **Action 4:** Ban the use of modern fishing equipment and devices such as scuba gear. **Lead Agency:** Division of Fisheries
4. **Action 5:** Regulate exportation of significant species such as mud crabs, lobster, and other species considered threatened.  
**Lead Agency:** Department of Agriculture, Lands and Fisheries
5. **Action 6:** Ban the use of gillnets with a mesh size approximately less than one inch. **Lead Agency:** Division of Fisheries

**Objective 3:** To improve, manage and preserve vital ecosystems

1. **Action 1:** Prevent destructive development of terrestrial, freshwater and marine/aquatic areas – a) Enforce sustainable development of areas and b) Enforce development of regulations for vital areas.  
**Lead agency:** KIRMA
2. **Action 2:** Strengthen and enforce permitting laws and regulations.  
**Lead agency:** KIRMA
3. **Action 4:** Designate more conservation areas.  
**Lead agencies:** KIRMA and Kosrae Conservation and Safety Office (KCSO).

**Objective 4:** To minimize waste contributing to the pollution of the environment.

1. **Action 1:** Enforce littering law.  
**Lead agency:** KIRMA and Attorney General's Office
2. **Action 2:** Strengthen and enforce pollution regulations.  
**Lead agency:** KIRMA
3. **Action 4:** Prevent unsafe discharge of hazardous chemicals on land and in aquatic areas.  
**Lead agencies:** Department of Public Works and KIRMA.
4. **Action 5:** Prevent dumpsites in mangrove and swampy areas.  
**Lead agencies:** Department of Public Works and KIRMA.

Interviews with representatives of government agencies and private stakeholders in Kosrae indicated a consensus view that reef fisheries have declined substantially during the past decade. Fewer fish are being taken per hour of effort, fish winding up on local markets are generally smaller in size, once common species are caught infrequently and rarely seen on local markets, etc. Some of the reasons for these problems and possible solutions are noted in the table below, developed during meetings of the Kosrae Reef Protection Community Action Committee:

<b>Effects</b>	<b>Solutions</b>
Fishermen are Reporting Lower Fish Stocks	<i>Seek Professional Advice on Establishing Protected Areas</i>
Low Fish Catch	<i>Hatchery for Restocking</i>
No Fish in the Market	
Fish are Higher Priced	
Fewer Big Fish on the Reef / Fish are Smaller	<i>1. Increase Community Awareness / Education</i>
	<i>2. Seek Professional Advice on Establishing Protected Areas</i>
	<i>3. Create &amp; Enforce Regulations on Fish &amp; Mesh Size, Catch Quotas, Seasons</i>
	<i>Development of Alternative Livelihoods (for fishermen)</i>
	<i>4. Recover Traditional Management Techniques</i>
Lobsters are Immature	<i>1. Enforce Existing Regulations</i>
Lobsters in the Market have Eggs	<i>2. Create &amp; Enforce Regulations on Fish &amp; Mesh Size, Catch Quotas, Seasons</i>
	<i>3. Increase Community Awareness / Education</i>
Fewer Fish are seen at the Traditional Spawning Places	<i>1. Seek Professional Advice on Establishing Protected Areas</i>
	<i>2. Recover Traditional Management Techniques</i>
Spawning / Juvenile Habitat Loss	<i>1. Implement Solid Waste Management Program</i>
	<i>2. Restore Water Flow / Lelu Harbor</i>
	<i>3 Reduce Importation of Non Biodegradable Trash</i>

## **VI PRIMARY AGENCIES AND ORGANIZATIONS RESPONSIBLE FOR COASTAL MARINE PROTECTION**

### **VI3 KOSRAE ISLAND MANAGEMENT RESOURCES AUTHORITY (KIRMA)**

KIRMA, established in 1994, is a Statutory Authority established by legislation contained with the Kosrae State Code. The Authority reports to the KIRMA Board of Directors.

Title 7 of the KSC under Section 7.404, states that:

*“The Commission selects a full-time program director who administers the functions of the Commission and has such duties and responsibilities as may be delegated to him by the Commission. The program director may be assisted in his duties by supporting staff as the Commission deems necessary”.*

The Board of Commissioners may appoint a person to administer the functions of the Commission. That person (known as the Administrator) may seek assistance from supporting staff to carry out those functions. The personnel appointed to KIRMA are therefore, appointed in accordance with the provisions of this Section. KIRMA is a ‘Government Financed Enterprise’ and is a non profit organization.

KIRMA was established in 1994. Since that time, its functions (as provided by legislation) have broadly included:

1. Assessments relating to land usage.
2. Permitting for developmental programs.
3. Community awareness raising and education.
4. Identification of Conservation areas.
5. Enforcement of relevant laws.
6. Development of environmental regulations.
7. Research, development and implementation of various environmental management plans.

The Authority's objectives are as follows:

1. Protect the environment, human health, welfare and safety, to abate, control and prevent pollution or contamination of air, land and water in accordance with this chapter and commission regulations by balancing the needs of economic and social development with those of environmental quality and adopting regulations and pursuing policies which, to the maximum extent possible, ensure that economic and social development is environmentally sustainable;
2. Adopt and enforce regulations to effect the purposes of this chapter;
3. Adopt and provide for the continuing administration of a development permit system including the requirement of development proposals, for the construction, expansion or alteration of a development, including alteration of land or marine space, that may significantly affect, directly or indirectly, natural or historic resources, significantly alter the landscape or be incompatible with surrounding air, land or water uses.
4. Adopt and enforce primary and secondary drinking water regulations, including the establishment of an underground injection control program;

5. Adopt and provide for the continuing administration of a program for the abatement or prevention of the contamination of drinking water systems;
6. Establish standards for classifying air, land and water in accordance with present and future uses;
7. Adopt and implement plans for the certification of applicators of pesticides, for the issuance of experimental use permits for pesticides and a plan to meet special local needs;
8. Establish and provide for the continuing administration of a permit system for the discharge of a pollutant in the air, land or water;
9. collect information and establish record keeping, monitoring and reporting requirements necessary and appropriate to carry out the purposes of this chapter;
10. Enter public or private property to inspect or take samples in performance of its duties;
11. Issue a cease and desist order to a person found to be in violation of law or regulation pertaining to the environment;
12. Order a polluting party to abate the causing of, and to remove, polluting matter;
13. Devise land use plans and, no later than two years after the effective date of this Chapter, propose legislation to the Legislature and the Governor for the regulation of the use of land;
14. Act as an agent of the Environmental Protection Board of the Federated States of Micronesia pursuant to written agreement approved by the Governor; and
15. Preserve the State's forests and wildlife and regulate activities that affect them.

KIRMA has four programs: Forestry and Wildlife, Geographical Information System (GIS), Environmental Education and Permitting.

One of KIRMA's most significant projects involved the development of the Kosrae State Land Use Plan. This 90 page document, first developed in 1994 and completely revised in 2003 reflects actual management of use of the land, environment and use of natural resources. It is principally a guiding document in relation to the protection of the environment within Kosrae State.

Only two KIRMA employees (one within Forestry and Wildlife and the Head of KIRMA) currently have deputy credentials issued by the Attorney General's Office and thus are able to issue citations for violations. However, five additional employees are expected to be deputized, under guidance by the Attorney General's Office. Non-deputized employees are only authorized to enter property where illegal activity is suspected and, if a violation is witnessed, to draw up 'cease and desist' orders for signature by the Chairman of the DRC.

**NOTE:** A letter from KIRMA to the person in violation is often the first action taken, advising of the violation and requesting that they stop the illegal activity. If this does not have the desired effect, then a 'cease and desist' order is issued.

Law enforcement training has for the most part been limited to policies and procedures for such orders. Therefore, when other enforcement actions are contemplated, KIRMA works closely with the Attorney General's Office and the police. In fact, the police often accompany KIRMA officers delivering 'cease and desist' orders. Training for KIRMA officers is needed in evidence collection and other investigative techniques. Meanwhile, an attorney is expected to be assigned to KIRMA to provide guidance and to handle their cases.

According to KIRMA, a total of 83 applications were received in 2005 for land filling, sand mining, quarry (rock, earth moving), dumpsite, and other small projects. However, it is not known whether an EIS was filed for any of these projects. In 2005, from 20-25 'cease and desist' orders were issued. Five cases eventually wound up in court, and KIRMA was successful in all five. At the time of this report, two cases were pending prosecution. Strong traditions surrounding rights of private land owners are viewed by KIRMA as a major barrier to compliance with environmental regulations.

## **VI4 DEPARTMENT OF AGRICULTURE, LAND AND FISHERIES**

The Department of Agriculture, Land and Fisheries (DALF) is an official State Government Department under the Executive Branch of the State of Kosrae. The Division of Marine Surveillance and The Division of Fisheries Development maintain surveillance of the marine space and enforce regulations, foster and protect commercial production of marine resources and sea produce, manage, conserve and develop marine resources, identify and establish marine reserves and areas of natural and scientific interest, and protect marine and aquatic habitats and environments.

Marine Surveillance and Fisheries Development have a total of eight officers with law enforcement authority, four in each Division. They are empowered under Title 19, Section 503 to (a) require any person engaged in fishing to show his permit, fishing gear and catch; (b) Stop, board and search any vessel he reasonably expects is a fishing vessel in the fishery waters; (c) Stay on board any fishing vessel within the fishery waters; (d) Examine or inquire of any person aboard about the fishing gear, fish, cargo, catch, contents of holds and storage spaces, voyage and activities of the vessel; (e) Inspect and search the vessel, vehicle, aircraft, nonresidential premises, fishing gear, fish, catch, cargo, content of holds and storage spaces, or other evidence of activities subject to this Title; (f) Request and receive a reasonable fish sample from any person in possession or control of fish or fish products; (g) Require any person aboard a fishing vessel to inform him of the vessel's name, call sign and country of registration and the names of the master, owner, charterer and all crew members; (h) Require the agent of any foreign fishing vessel holding a permit to fish issued under Title 24 of the Code of the Federated States, where the agent is based within the State, to inform him of the name, call sign and country of registration of any vessel that he represents and the name of the operator, officer, or crew members, or other information reasonably required; (i) Seize any vessel, vehicle, aircraft, fishing gear, equipment, stores, catch, cargo, fish, fish products, log books, charts, other documents or other items used in the commission of an offense, subject to procedures and requirements of Title 14, Chapter 12 of the State Code; (j) Arrest any person where there is probable cause to believe he has committed a criminal offense in violation of this Title; (k) Execute any warrant or other process issued by any court of competent jurisdiction relating to this Title; and (l) Exercise any other lawful authority.

In addition, an authorized officer may, following hot pursuit in accordance with international law commenced within the fishery waters, stop, board and search any fishing vessel outside the fishery waters that he has probable cause to believe has been used in the commission of an offense in the fishery waters. The authorized officer may bring the fishing vessel and all persons and things on board within the fishery waters.

Although authorized to do so, officers are no longer issuing citations to violators. When citations were issued, fines were \$15 for the first offense, doubling with each additional offense. In 2005, only two cases were taken to court and only one was successfully prosecuted. In that case, six members of a family were fined \$600.

Officer work hours are constrained to normal government hours (8:00AM to 3:00PM), unless they receive a complaint and their supervisor authorizes overtime. Patrols take place about once a week, which also may involve reef fish counts and monitoring work. Police will occasionally assist with marine enforcement, upon request. They respond to complaints 2-3 times a year, and also respond to search and rescue requests.

Three vessels with inboard motors are available for enforcement work. Additional vehicles are needed, as are cameras and other equipment for enforcement work. Enforcement personnel have not received any formal law enforcement training, nor are they authorized to carry firearms. .

## **VI5 KOSRAE CONSERVATION AND SAFETY ORGANIZATION**

The Kosrae Conservation and Safety Organization (KCSO) is a non-governmental organization established in 1998. The Articles of Incorporation state it is the purpose of the organization “to further projects relating to awareness and protection of the natural environment and to public health and safety; to conduct community programs and related programs applicable to these projects within Kosrae....” ...”and to receive and accept contributions, gifts, and grants from any person, firm, association, corporation, any municipality, political body, governmental agency or authority.”

## **VJ DISCUSSION**

Current activities for marine protection in Kosrae include the following:

1. Reef Check Monitoring by the Division of Marine Surveillance and Kosrae Village Resort.
2. Municipal Resource Management Committees, which focus on resource management initiatives (i.e. U.S. Forest Services adaptive management practices) and municipal ordinances
3. Kosrae Reef Protection Action Group, a citizen advocate group working on reef protection.
4. Ongoing MPA community consultations (Utwe, Walung, and Tafunsak), by the Division of Marine Surveillance, KIRMA, and KCSO.
5. A proposed Marine Rescue Act for boat registration by the Lelu Fishing Association.

During on-site discussions with stakeholders, there appeared to be general agreement that, even if all current legislation was effectively enforced, reef fish populations would still continue to decline due to local over-harvest. Fish stock assessments are not currently available to provide a scientific basis to establish general harvest limits on the size and number of fish or specific fishing seasons. Therefore, the greatest priority in the short term is to identify and permanently establish Marine Protected Areas with regulations that will restrict or prohibit fishing activity in critical spawning and/or breeding areas for marine species. These areas, which will

contribute to the recently launched Micronesia Challenge and the FSM Protected Areas Network, will act as model MPAs for the rest of the state. Initially, establishment of such areas could be based on local knowledge and/or the ecological importance of the area and the willingness of local communities to protect the area. Harvest regulations for reef fish, including method of take, should be based as far as possible on current on population levels. An REA will provide the basis for such regulations, as well as justification for additional Marine Protected Area sites in future years.

There is also a clear need for a review of the Kosrae State Code, which currently creates gaps in operational responsibilities and overlaps in others. This results in confusion and unnecessary duplication of effort as to the respective requirements of personnel.

In addition, both enforcement programs lack strength in several areas. For example, within KIRMA:

- a. Enforcement powers are limited mainly to the issuance of warning letters and 'cease and desist' orders.
- b. Although KIRMA officers may enter private lands to document a suspected violation, they have no search and seizure or arrest powers,
- c. KIRMA officers must depend on the issuance of deputy credentials by the Attorney General's office in order to take other enforcement action\*.
- d. KIRMA officers lack formal law enforcement training.
- e. The small number of pending cases indicates the lack of a clear mandate to ensure that important cases are moved through the court system for prosecution.
- f. Financial resources limit the ability of KIRMA to require an Environmental Impact Statement for large projects.

KIRMA is currently drafting a proposal to address the agency's need for more rapid and efficient law enforcement action, in order to hold violators responsible for their actions. The agency is requesting additional legislation that would provide its personnel with the authority to arrest violators, issue citations, take additional civil action, execute temporary restraining orders and injunctions and expand their inspection authority. The legislation would also change the penalty section of the Kosrae State Code (11.1302) from a maximum civil penalty of \$10,000 to a maximum criminal penalty of \$1,000. Section 11.303 would allow KIRMA to file cases in court, with approval of the Attorney General's Office.

The enforcement program for the Divisions of Marine Surveillance and Fisheries Development appears to be exceptionally weak. Eight officers have full law enforcement authority under the Kosrae State Code. However, requiring them to work during normal government hours (8AM – 3PM) is both unreasonable and inefficient. Illegal fishing activity does not normally take place during the day, and local fishermen are certainly aware of the scheduled work hours for enforcement personnel. Enforcement personnel should be permitted to work varying schedules that allow them to focus on illegal activity.

In addition:

- a. Only two cases were taken to court in 2005, one of which was successful.
- b. Citations are no longer being issued for violations.

- c. Officers have received almost no formal law enforcement training, other than a written test provided by the Attorney General's Office\*.
- d. The fine schedule is outdated.
- e. Officers often do not have the opportunity to be involved in the development and submission of draft regulations.
- f. Enforcement-related activities appear to be a very low priority.

An in-depth review of enforcement operations is needed to determine the cause of gaps, duplication, inefficiency and operational obstacles in enforcement programs. Once the review process has been completed, training and monitoring mechanisms must be in place to effectively implement change at the field level within each agency.

Outcomes would be as follows:

- a. Responsibilities delegated to KIRMA and Marine Resources/Fisheries Development enforcement personnel are distinct and separate from each other to avoid overlap (or a decision could be made to merge the agencies into a single enforcement body).
- b. Improved levels of protection of the environment and natural resources through strengthened environmental laws and policies;
- c. Enhanced capacity of environmental law enforcement to perform duties through adequate powers;

**NOTE:** Enforcement officers must be deputized prior to being able to undertake law enforcement activities involving arrest, search and seizure, etc. The Kosrae State Attorney General has determined by way of policy, that no officer will be deputized until they have undergone some form of basic training in law enforcement duties and been assessed as competent to perform such duties. Enforcement personnel with Marine Surveillance and Fisheries Development were required to undertake one week of training in late 2004 prior to their deputization by the Attorney General. KIRMA officers will need similar training before they can be deputized. In the meantime, a uniformed officer with full police powers could be of great assistance to KIRMA and the Department of Agriculture in certain situations. Financial support to Public Safety using Environmental Sector Compact funds would help ensure that an officer will be available when needed.

In any case, training for KIRMA personnel will not result in the desired outcomes if the legislature does not provide the agency with adequate powers to enforce laws that are the responsibility of the agency. The present 'cease and desist' order is very ineffective with respect to serious violations.

- d. Development of appropriate resources to support operational activities of law enforcement officers, including handbooks, citation forms, report templates, etc.
- e. Procedural guidelines and personnel position descriptions amended to reflect roles and responsibilities of law enforcement officers; and
- f. Development and implementation of a training plan and curriculum, to include a mechanism for monitoring progress in implementation of skills learned from the training; and
- g. Enhanced efficiency and co-ordination between law enforcement responses within organizations.

## **VK RECOMMENDATIONS**

1. **MARINE PROTECTED AREAS: KIRMA, KCSO, AND THE DEPARTMENT OF AGRICULTURE, LANDS AND FISHERIES SHOULD WORK TOGETHER WITH LOCAL COMMUNITIES IN SETTING ANNUAL GOALS FOR ESTABLISHING NEW MARINE PROTECTED AREAS (AND ASSOCIATED REGULATIONS FOR THEIR PROTECTION) IN IMPORTANT REEF HABITAT.**
2. **WORK HOURS FOR ENFORCEMENT PERSONNEL: THE DEPARTMENT OF AGRICULTURE, LANDS AND FISHERIES SHOULD TAKE IMMEDIATE ACTION TO ALLOW MORE FLEXIBILITY IN WORK SCHEDULES FOR ENFORCEMENT PERSONNEL WITHIN THE DIVISIONS OF MARINE SURVEILLANCE AND FISHERIES DEVELOPMENT.**
3. **MOU WITH PUBLIC SAFETY: KIRMA AND THE DEPARTMENT OF AGRICULTURE, LANDS AND FISHERIES SHOULD DEVELOP AN MOU WITH THE DEPARTMENT PUBLIC SAFETY REGARDING ASSISTANCE BY PUBLIC SAFETY IN ENFORCING ENVIRONMENTAL LAW.**
4. **RAPID ECOLOGICAL ASSESSMENT: KIRMA, KCSO, AND THE DEPARTMENT OF AGRICULTURE, LANDS AND FISHERIES SHOULD WORK TOGETHER TO ARRANGE FOR A RAPID ECOLOGICAL ASSESSMENT (REA) OF REEF FISH STOCKS.**
5. **KOSRAE STATE CODE: KIRMA AND THE DEPARTMENT OF AGRICULTURE, LANDS AND FISHERIES SHOULD ARRANGE FOR AN INDEPENDENT REVIEW OF EXISTING ENVIRONMENTAL STATUTORY PROVISIONS WITHIN THE KOSRAE STATE CODE (KSC) AND POLICIES RELEVANT TO THE ENFORCEMENT OF ENVIRONMENTAL LAWS, AS FOLLOWS:**
  - a) Conduct a detailed review of the *KSC* to identify the appropriateness and adequacy of existing statutory provisions in relation to protecting Kosrae's environmental and natural resources (land and marine) and to avoid duplication of responsibilities delegated to KIRMA and Marine Resources/Fisheries Development enforcement personnel.
  - b) Where gaps or duplication exist, draft amended provisions which will more appropriately protect the environment and enhance the ability of the applicants to enforce those laws (through law enforcement officers); and
  - c) Conduct a review of existing law enforcement related policies to ensure integration with current and proposed laws.
6. **WORKPLACE ASSESSMENTS: KIRMA AND THE DEPARTMENT OF AGRICULTURE, LANDS AND FISHERIES SHOULD ARRANGE FOR DETAILED WORKPLACE ASSESSMENTS OF THE LAW ENFORCEMENT UNITS / FUNCTIONS WITHIN KIRMA AND THE DIVISIONS OF MARINE SURVEILLANCE AND FISHERIES DEVELOPMENT, AS FOLLOWS:**

- a) Identify barriers to the effective implementation of law enforcement programs / activities for each agency (including strategic and operational level responses but excluding legislative provisions) and make specific recommendations for change;
  - Review the roles, responsibilities and duties of enforcement personnel;
  - Conduct organizational Training Needs Analysis (TNAs) with the view of identifying current and desired knowledge and skill levels of operational officers; review organizational, administrative and operational functions which would include examining agency records, workflow processes, officer caseloads, work hours, morale, leadership, supervision, supplies and equipment, and circumstances for potential political interference with agency operations (if any);
  - Make specific recommendations for changes within each agency; and
  - Develop a program implementation plan identifying priority areas of response.
- b) Conduct a resource and equipment audit to identify required resources / equipment needs to support effective and efficient operational responses;
  - Resources to include, a First Response Handbook, citation forms, template operational reports and auditable prosecution recording processes; and
  - Amend existing operational procedural guidelines to reflect current laws and policies

**7. LAW ENFORCEMENT TRAINING: BASED ON THE IN-DEPTH ASSESSMENT, KIRMA AND THE DEPARTMENT OF AGRICULTURE, LANDS AND FISHERIES SHOULD ARRANGE FOR THE DEVELOPMENT AND IMPLEMENTATION OF A ONE-YEAR LAW ENFORCEMENT TRAINING PLAN FOR KIRMA AND THE DIVISIONS OF MARINE SURVEILLANCE AND FISHERIES DEVELOPMENT, AS FOLLOWS.**

- a) Develop a training plan for all environmental law enforcement personnel;
- b) Develop curriculum and assessment tools (for both “on” and “off” the job components); and
- c) Implement and deliver 12 days “off the job” training sessions (1 day per month) and 12 days “on the job” training sessions (1 day per month)

**NOTE:** Combining law enforcement training for Kosrae officers with training for officers in the other FSM states may result in an informal marine law enforcement network for cross-training and sharing information within the FSM.

Recommendations 5 -7 are based in part on a project proposal developed by KIRMA, in consultation with Timothy R. Fenlon, a former Australian police officer who currently lives in both Kosrae and Pohnpei State, and his wife, Donna-Maree Wrembeck. Mr. Fenlon and Ms. Wrembeck were employed by the Queensland Police Service. Mr. Fenlon’s work included roles as Superintendent and as Inspector of Police, while Ms. Wrembeck was primarily involved in law enforcement education and training. Mr. Fenlon and Ms. Wrembeck have worked with KIRMA and the Department of Agriculture in designing a procedural guidelines manual for law enforcement officers, which would be used during the review and training. They would be excellent contacts to assist with the implementation of these recommendations, including monitoring activities that follow.

**8. LAW ENFORCEMENT MONITORING: MONITOR PROGRESS IN IMPLEMENTATION OF RECOMMENDATIONS 5-7 OVER A TWO-YEAR PERIOD**

- a) Periodically monitor the effectiveness of amended law/policies and enhanced levels of officer's skills development over a two-year period, with updates reported each quarter and a final evaluation report at the end of two years.

## VL MEETINGS IN KOSRAE

### Meeting on February 13, 2006 – Kosrae State Dept. of Administration & Finance

LAST NAME	FIRST NAME	TITLE	ORGANIZATION	E-MAIL	PHONE
ABRAHAM	SIMPSON	DIRECTOR	KIRMA	<a href="mailto:SIMPSON@MAIL.FM">SIMPSON@MAIL.FM</a>	370-2076
ABRAHAM	TONY	ADMINISTRATOR	MARINE SURVEILLANCE DIVISION, DALF	<a href="mailto:TWABRAHAM@YAHOO.COM">TWABRAHAM@YAHOO.COM</a>	370-3031
ABRAHAM	TONY	ADMINISTRATOR	MARINE SURVEILLANCE DIVISION, DALF	<a href="mailto:TWABRAHAM@YAHOO.COM">TWABRAHAM@YAHOO.COM</a>	370-3031
ABRAM	ROOSTEN	FISH SPEC. II	KIRMA	<a href="mailto:FISHERIESKOS@MAIL.FM">FISHERIESKOS@MAIL.FM</a>	370-3031
ABRAM	ROOSTEN	FISH SPEC. II	KIRMA	<a href="mailto:FISHERIESKOS@MAIL.FM">FISHERIESKOS@MAIL.FM</a>	370-3031
ADAMS	KATRINA	BOARD MEMBER	KCSO	<a href="mailto:KOSRAEVILLAGE@MAIL.FM">KOSRAEVILLAGE@MAIL.FM</a>	370-3483
ADAMS	KATRINA	BOARD MEMBER	KCSO	<a href="mailto:KOSRAEVILLAGE@MAIL.FM">KOSRAEVILLAGE@MAIL.FM</a>	370-3483
BEITZ	DOUG	MANAGER	KOSRAE NAUTILUS RESORT	<a href="mailto:DOUG@KOSRAENAUTILUS.COM">DOUG@KOSRAENAUTILUS.COM</a>	370-3567
BEITZ	DOUG	MANAGER	KOSRAE NAUTILUS RESORT	<a href="mailto:DOUG@KOSRAENAUTILUS.COM">DOUG@KOSRAENAUTILUS.COM</a>	370-3567
CHARLEY	BLAIR	GIS COORDINATOR	KIRMA	<a href="mailto:CHARLEYBLAIR@YAHOO.COM">CHARLEYBLAIR@YAHOO.COM</a>	370-2076
CHARLEY	BLAIR	GIS COORDINATOR	KIRMA	<a href="mailto:CHARLEYBLAIR@YAHOO.COM">CHARLEYBLAIR@YAHOO.COM</a>	370-2076
FREDDY	JERSON	MAYOR	LELU MUNICIPALITY		970-1405
FREDDY	JERSON	MAYOR	LELU MUNICIPALITY		970-1405
GEORGE	ANDY	EXECUTIVE DIRECTOR	KCSO	<a href="mailto:KCSO@MAIL.FM">KCSO@MAIL.FM</a>	370-3673
GEORGE	ANDY	EXECUTIVE DIRECTOR	KCSO	<a href="mailto:KCSO@MAIL.FM">KCSO@MAIL.FM</a>	370-3673
HARO	CINDY	ASSISTANT AG	AG OFFICE	<a href="mailto:CWHARO@HOTMAIL.COM">CWHARO@HOTMAIL.COM</a>	370-3215
HARO	CINDY	ASSISTANT AG	AG OFFICE	<a href="mailto:CWHARO@HOTMAIL.COM">CWHARO@HOTMAIL.COM</a>	370-3215
LIVAE	LARSON	CHAIRMAN	UTWE MUNICIPALITY RMC	<a href="mailto:KCSO@MAIL.FM">KCSO@MAIL.FM</a>	370-3673
NENA	MADISON	BOARD MEMBER	KCSO	<a href="mailto:MADI@MAIL.FM">MADI@MAIL.FM</a>	370-3483
NODA	ROBINHOOD	CHIEF OF POLICE	PUBLIC SAFETY		370-3214
PALIK	MOSES	PROJECT COORDINATOR	KIRMA	<a href="mailto:MOPALEK@YAHOO.COM">MOPALEK@YAHOO.COM</a>	370-2076
SIGRAH	LEONARD	PROJECT	LRMC	<a href="mailto:LENSIGRAH@YAHOO.COM">LENSIGRAH@YAHOO.COM</a>	370-

Threats and Needs Assessment of Coastal Marine Resources: Kosrae, Chuuk and Yap, FSM: June 5, 2006

		COORDINATOR			8099
SINGRAH	AARON	CHIEF OF STAFF	GOVERNOR'S OFFICE	<a href="mailto:AFSIGRAH@MAIL.FM">AFSIGRAH@MAIL.FM</a>	370-3002
STEPHENS	MARK	DIVE OPERATOR	PACIFIC ISLAND DIVERS	<a href="mailto:PACIFICTREELODGE@MAIL.FM">PACIFICTREELODGE@MAIL.FM</a>	370-7856

Meeting on February 13, 2006 – Kosrae Conservation & Safety Organization (KCSO)

LAST NAME	FIRST NAME	TITLE	ORGANIZATION	E-MAIL	PHONE
ADAMS	KATRINA	BOARD MEMBER	KCSO	<a href="mailto:KOSRAEVILLAGE@MAIL.FM">KOSRAEVILLAGE@MAIL.FM</a>	370-3483
GEORGE	ANDY	EXECUTIVE DIRECTOR	KCSO	<a href="mailto:KCSO@MAIL.FM">KCSO@MAIL.FM</a>	370-3673
HOWELL	BRUCE	BOARD MEMBER	KCSO	<a href="mailto:BRUCEHOWELL@MAIL.FM">BRUCEHOWELL@MAIL.FM</a>	370-3165
LUEKYIMA	MARSTON	STAFF	KCSO	<a href="mailto:KCSO@MAIL.FM">KCSO@MAIL.FM</a>	370-3673
NEMA	MADISON	BOARD CHAIR	KCSO	<a href="mailto:MADI@MAIL.FM">MADI@MAIL.FM</a>	370-3391
SIGRAH	NORA	BOARD MEMBER	KCSO	<a href="mailto:NORAESIGRAH@MAIL.FM">NORAESIGRAH@MAIL.FM</a>	370-3033
WORTEL	OLIVER	BOARD MEMBER	KCSO	<a href="mailto:OLIVER96@HOTMAIL.COM">OLIVER96@HOTMAIL.COM</a>	970-1353

Meeting on February 14, 2006 – KIRMA

ABRAHAM	SIMPSON	DIRECTOR	KIRMA	<a href="mailto:SIMPSON@MAIL.FM">SIMPSON@MAIL.FM</a>	370-2076
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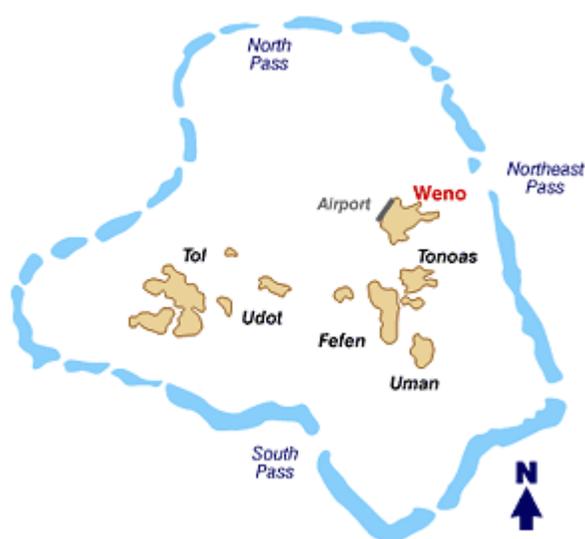
## VM REFERENCES

NAME	TYPE	DATE
Humphead Parrot Fish	Regulation	Unknown
Giant Clam (amended)	Regulation	Unknown
Kosrae Reef Protection Community Action Committee Meetings	Minutes	9/7/05, 8/17/05
KIRMA Development Projects	Regulations	Unknown
Kosrae State Biodiversity Strategy and Action Plan	Plan	8/04
State Law 7-99 on Title 19	Bill (passed)	7/99
Training Assessment and Way Forward For the States of Chuuk, Yap, Pohnpei and Kosrae. Department of Economic Affairs and Department of Finance and Administration Federated States of Micronesia & Asian Development Bank	Report	9/05
Valuation Technical Assistance Report, Kosrae. Department of Economic Affairs and Department of Finance and Administration Federated States of Micronesia & Asian Development Bank	Report	9/05
Technical Assistance Report, Kosrae State. Including: Land Registration, Survey and Mapping, System Analysis and Training, and Legal Aspects. Federated States of Micronesia	Report	9/05

& Asian Development Bank		
Kosrae State Land Use Plan (draft)	Plan	9/03
Legal Information System for FSM: <a href="http://www.fsmlaw.org/kosrae/index.htm">http://www.fsmlaw.org/kosrae/index.htm</a>	Website	N/A

## VI THE STATE OF CHUUK

### VIA INTRODUCTION



Chuuk is located about 1,000 kilometers southeast of Guam. It consists of 11 high mangrove-fringed islands in the Chuuk lagoon, and a series of 24 outlying atolls and low islands surrounding the lagoon – in all, close to 290 islands. The main islands, Weno, Tonoas, Uman, and Fefan are located in the main lagoon.

Chuuk has the largest population of the four States in the Federated States of Micronesia (FSM), estimated at 53,000, with more than 40,000 living on the larger islands in the main lagoon.

With its vast, shallow, beautiful lagoon, Chuuk is a Mecca for wreck divers. A major shipwreck site from WWII (over 50 hulks), the enclosed lagoon is one of the largest in the world. It is circled by 140 mile long barrier reef, covering an area of 832 square miles.

Hard and soft corals attract divers worldwide for both daytime and night diving. The vast selection of artifacts still found on the wrecks after five decades are testament to the unique

history of the Micronesian Islands. The outer reefs contain a great variety of pelagic and reef fish species.

## **VIB GOVERNMENT**

Chuuk State has its own constitutional government with three co-equal branches of government consisting of the executive, legislative, and judicial branches.

The Governor and Lieutenant Governor are the leaders of the Executive Branch and have the primary duty of executing the laws and administering state government services

The legislative or law making power of the state is vested in the Legislature, which consists of two houses, the Senate and the House of Representatives. This power extends to all rightful subjects of legislation not inconsistent with the Chuuk Constitution or the Constitution of the FSM.

The Senate consists of 10 members, with the President of the Senate as its highest officer. The House of Representatives consists of 28 members, with the Speaker as its highest officer.

The Chuuk State Supreme Court has constitutional jurisdiction to review the actions of any state administrative agency, and decide all relevant questions of law, interpret constitutional and statutory provisions and determine the meaning or applicability of the terms of an agency action

## **VIC LAND OWNERSHIP**

The islands of Chuuk are relatively small and are of volcanic origin. They also have one of the largest populations of any group of islands in Micronesia which makes ownership of land extremely important. About 95 percent of the total land in Chuuk is private land. Most of the people in Chuuk instinctively reject any government authority over their private land, and eminent domain initiatives by the State government are usually met with stiff resistance.

The Chuuk State Constitution recognizes all traditional rights and ownership over all reefs, tidelands, and other submerged lands subject to legislative regulation of their reasonable use. Tidelands traditionally are those lands from the dry land to the deep water at the edge of the reef, and must be shallow enough for Chuukese women to engage in traditional methods of fishing.

## **VID SELECTED\* LEGISLATION FOR PROTECTION OF COASTAL MARINE RESOURCES**

\* Not inclusive of all legislation

### **VID1 CHUUK STATE CONSTITUTION**

#### **ARTICLE I. Territory**

**Section 1.** The territory of the State of Chuuk includes the islands, reefs, shoals, banks, sands, oceans, and other natural landmarks bearing names or identities known in any of the dialects of the State, and any other territory or water belonging to the State by history right, custom, or legal title. Unless limited by law, this territory shall also include a marine space of 200 nautical miles measured outward from appropriate baselines, as well as related seabed, subsoil, and water column, insular and continental shelves, and airspace over land and water.

#### **ARTICLE IV. TRADITIONAL RIGHTS**

**Section 1.** Existing Chuukese custom and tradition shall be respected. The Legislature may prescribe by statute for their protection. If challenged as violative of Article III, protection of Chuukese custom and tradition shall be considered a compelling social purpose warranting such governmental action.

**Section 4.** Traditional rights over all reefs, tidelands, and other submerged lands, including their water columns, and successor's rights thereto, are recognized. The Legislature may regulate their reasonable use.

#### **ARTICLE XI. GENERAL PROVISIONS**

**Section 1.** The Legislature shall provide by law for the development and enforcement of standards of environmental quality, and for the establishment of an independent state agency vested with responsibility for environmental matters.

### **VID2 CHUUK STATE CODE**

#### **VID2a Title 9**

#### **CHAPTER 1. DYNAMITE FISHING PROHIBITED**

In October 2001, the Sixth Legislature of the State of Chuuk passed Act No. 6-06, which repealed Chapter 1 of Title 9 of CSC and replaced it with the following new Chapter, "Dynamite Fishing Prohibited".

##### **Section 2. Prohibition.**

**Summary:** This section prohibits catching fish with the use of dynamite, chemical, cyanide or other explosives, or possessing, selling, transporting or transshipping such fish outside the State of Chuuk. It also prohibits using a canoe, sailing or motored boat or other means of transport for the purpose of diving for, selling, purchasing, or possessing fish which have been caught by the illegal use of dynamite or other explosives.

##### **§Section 3. Seizure and Confiscation.**

**Summary:** If the Chuuk State Police or any Chuuk State conservation officers have reasonable grounds to believe that a violation of this Chapter has been or is being committed, they may seize and take control over any such vessel or means of transport used in violation of this Chapter. Upon judgment by a State court that a violation has occurred, the vessel or means

of transport and fishing gear shall be confiscated and become State property. The Chuuk State shall hold a public auction to dispose of such confiscated property, with the proceeds paid into the State Treasury.

**Section 4: Examination of Fish Before Purchase**

**Summary:** Businesses must report to Marine Resources or to Public Safety any arrival of fish and must allow their examination by these agencies.

**Section 5: Mandatory Inspection**

**Summary:** Marine Resources and Public Safety must conduct periodic inspections of fish markets and other business outlets involved in the selling and transshipment of fish.

**Section 6: Government Employees Engaged in Dynamite Fishing Activities**

**Summary:** Any State Government employee caught in violation of this Chapter shall be terminated, regardless of whether they are tried and convicted.

**Section 7: Penalty**

**Summary:** Businesses in violation of Section 4 shall be closed down. Any person convicted of violating Section 2, Sub-Section (possession of illegal fish) shall be imprisoned for not less than one year and/or fined between \$1,000 and \$5,000. The court may impose a “severe penalty” on repeat offenders.

Any person violating Section 2, Sub-sections 1, 3 or 4 shall be imprisoned for not less than five years and/or fined between \$5000 and \$10,000.

## **VID3 OTHER LAWS CURRENTLY IN EFFECT**

### ***VID3a Introduction***

The following provisions are based on a draft version of the Chuuk State Code (CSC) introduced in 2001. It was the first attempted codification of the laws of the State of Chuuk since the Truk District Code (TDC) was published in 1970.

As the draft Code was not passed into law, the titles, chapters and sections listed below do not refer to actual Code, unless otherwise stated. **Instead, its importance lies on its references to provisions of Truk District Laws (TDL), Truk State Laws (TSL), Chuuk State Laws (CSL), and selected Trust Territory Code (TTC) that are currently in effect. The source laws are referenced after each Section of the Code.**

The draft Code contains proposed technical revisions, with underlined text being added and struck out text being deleted. These proposed revisions should be ignored.

### ***VID3b Draft Title 22. Environmental Protection & Preservation (draft)***

## **CHAPTER 1. CHUUK STATE ENVIRONMENTAL PROTECTION ACT**

**§ 1001. Short Title.**

This Act Chapter may be cited as the "Chuuk State Environmental Protection Act."

**Source:** CSL 2-94-01, § 1, modified.

**Editor's note:** CSL 2-94-01 that created this chapter was signed into law by the Governor on January 4, 1994.

**Cross-reference:** The constitutional provision on environmental matters is found in Art. XI, Section 1 of the Chuuk State Constitution. Section 1 states as follows:

**Section 1.** The Legislature shall provide by law for the development and enforcement of standards of environmental quality, and for the establishment of an independent state agency vested with responsibility for environmental matters.

**§ 1004. Chuuk State Environmental Protection Agency-Board-Created; Membership; Vacancies; Chairman; Records; Qualification.**

(1) Establishment of Agency/Board-Memberships. There is hereby established an independent agency to be known as the Chuuk State Environmental Protection Agency. The administration and management of the Agency shall be controlled and its powers exercised by a Board of Directors, to be composed of five members one from each of the five senatorial regions of the State of Chuuk. All five members shall be appointed by the Governor with advice and consent of the Senate. The Governor in his appointment shall select persons who are citizens of the Federated States of Micronesia and residents of Chuuk, to carry out the policies and purposes of this Act Chapter. Members shall serve for four years. The initial terms of the first appointments under this Section shall be made for staggered terms, as follows:

**Source:** CSL 2-94-01, § 4, as amended by CSL 2-94-09 § 1, modified.

**Editor's note:** CSL 2-94-09 that amended this section was signed into law by the Governor on September 16, 1994.

**Cross-reference:** The constitutional provision on environmental matters is found in Art. XI, Section 1 of the Chuuk State Constitution. Section 1 states as follows:

**Section 1.** The Legislature shall provide by law for the development and enforcement of standards of environmental quality, and for the establishment of an independent state agency vested with responsibility for environmental matters.

**§ 1005. Powers and Duties of the Agency.**

(1) The Agency shall have the powers and duties to control and prohibit pollution of air, land, and water in accordance with this Act Chapter and with regulations adopted and promulgated pursuant to this Act Chapter, and for this purpose, is further empowered to:

- (a) Adopt, approve, amend, revise, promulgate, and repeal regulations or affect the purpose of this ~~Act~~ Chapter and enforce such regulations which shall have the force and effect of law;
  - (b) Accept appropriations, loans and grants from the Chuuk State Legislature, FSM Congress, the FSM National Government, or any Agency thereof and other sources, public or private, which loans, grants and appropriations shall not be expended for other than the purpose of this ~~Act~~ Chapter except as limited by the nature of the loan, grant or appropriation;
  - (c) Adopt and provide for the continuing administration of a State-wide program for the prevention, control, and abatement of pollution of the air, land and water of Chuuk State, and from time to time review and modify such programs as necessary;
  - (d) Establish criteria for classifying air, land and water in accordance with their present and future uses;
  - (e) Adopt and implement plans for the certification of importers and applicators of restricted pesticides, for the issuance of experimental use permits for pesticides and a plan to meet special local needs, and such other measures as may be necessary to carry out the purposes of this ~~Act~~ Chapter;
  - (f) Establish and provide for the continuing administration of a permit system whereby a permit shall be required before the discharge by any person of any pollutant in the air, lands and water or for the conduct by any person of any activity, including but not limited to, the operation, construction, expansion, alteration of any facilities; modification, suspension, revocation, and termination of such permit and/or the posting of an appropriate bond;
  - (g) Collect information and establish record keeping, monitoring, and reporting requirements as necessary and appropriate to carry out the purposes of this ~~Act~~ Chapter; and
  - (h) Prepare a budget of the Agency and submit it to the Governor for inclusion in the State Budget to be submitted to the Legislature.
- (2) The Agency is authorized to enter into cooperative arrangements with the National Government, municipalities, and other agencies for the protection of the Chuuk State Environment.
- (3) The Agency, in order to effectively implement the provisions of this ~~Act~~ Chapter, shall have the power to issue subpoena deuces tecum and subpoena ad testificandum and shall have quasi-judicial powers of contempt, issuance of orders, and enforcement of the provisions of this ~~Act~~ Chapter.

**Source: CSL 2-94-01, § 5, modified**

**Regulations: Marine and fresh water**

***Summary:*** *These regulations, as well as the regulations described below, were adopted under the authority of Section 5 of Chuuk State Law 2-94-01.*

*The regulations identify the uses for which the various waters of Chuuk State shall be maintained and protected, specify the water quality standards required to maintain the designated uses, and to prescribe regulations necessary for implementing, achieving and maintaining the specified water quality. They include provisions on water use classification, water quality standards, implementation measures, and classification and establishment of water use areas.*

*Any person found guilty of violation of any of the provisions of this regulation shall be subject to "enforcement action", but no further information is provided.*

### **Regulations: Solid waste**

**Summary:** *These regulations were adopted under the authority of Section 5 of Chuuk State Law 2-94-01. They establish minimum standards governing the design, construction, installation, operation, and maintenance of solid waste storage, collection and disposal system. Such standards are intended to prevent pollution of the drinking water or waters of Chuuk State; prevent air and land pollution; prevent the spread of disease and the creation of nuisance; protect the public health and safety; conserve natural resources; and preserve and enhance the beauty and quality of the environment. They include provisions on storage, collection, permitting, standards for facilities, standards for hazardous waste, waste management responsibility, etc.*

*The term "Solid Waste" means garbage, refuse and other discarded solid materials including solid waste materials resulting from industrial and commercial operations, and from community activities, but does not include solid or dissolved materials in domestic sewage or other substances in water sources, such as silt, dissolved or suspended solids in industrial waste water effluents, dissolved materials in irrigation return flows or other common water pollutants. This definition is intended to include liquid waste materials such as waste oil, pesticides, paints, solvents, and hazardous waste.*

*Penalties for violation of these regulations are up to a maximum of \$100,000 for each day of violation.*

### **Regulations: Toilet facilities and sewage disposal**

**Summary:** *These regulations were adopted under the authority of Section 5 of Chuuk State Law 2-94-01. They were approved on 3/24/95 and signed off by the Attorney General on 6/21/95. They establish construction standards and procedures for permits and maintenance and disposal of sewage. Violators are subject to a civil penalty of not to exceed \$100,000 per day of violation, to be deposited in the State Treasury, for credit to the Chuuk State Environmental Protection Agency.*

### **Regulations: Earthmoving**

**Summary:** *These regulations were adopted under the authority of Section 5 of Chuuk State Law 2-94-01. They were approved on 3/24/95 and signed off by the Attorney General on 5/31/95. They apply to all earthmoving activities, as defined, for the purpose of erosion and sedimentation control. Violators are subject to a civil penalty of not to*

*exceed \$100,000 per day of violation, to be deposited in the State Treasury, for credit to the Chuuk State Environmental Protection Agency. They are required to comply with cease and desist orders issued by the Chairman of that Agency.*

**§ 1006. Environment Impact Statement.**

A person shall submit an environmental impact statement to the Agency, in accordance with regulations established by the Agency, prior to taking any major action which may substantially affect the quality of the environment.

**Source: CSL 2-94-01, § 6.**

**Regulations: Environmental Impact Statement**

**Summary:** *These regulations are promulgated and issued by the Chuuk Environmental Protection Agency Board pursuant to Public Law 2-94-01. These regulations have the force and effect of law.*

*The purpose of these regulations is to implement Section 6 of the Chuuk State Environmental Protection Act by establishing standard procedures for preparation of an environmental impact assessment statement prior to taking or funding any major action that may significantly affect the quality of the human environment. The Environmental Impact Assessment (EIA) process is intended to help the general public and government officials make decisions with the understanding of the environmental consequences of their decisions, and take actions consistent with the goal of protecting, restoring, and enhancing the environment. These regulations provide the directions to achieve this purpose.*

*In addition, these regulations are designed to integrate the EIA process into early planning of projects to insure timely consideration of environmental factors and to avoid delays; and to identify at an early stage the significant environmental issues requiring further study and de-emphasize insignificant issues, thereby defining the scope of the EIA*

*The Chairman of the Environmental Protection Agency Board receives EIA Statements and reviews them for compliance with Section 6, CSL 2-94-01 and these regulations in terms of format, adequacy of information and objectivity. The Chairman shall only authorize commencement of projects if he determines that the EIA Statement is sufficient. No permits shall be issued until approval of the EIA Statement by the Chairman.*

*The degree of EIA detail for a project depends upon the significance of its potential environmental impacts. An initial assessment shall be conducted for projects that do not appear to have significant environmental impacts, either as a result of findings in an initial study or otherwise, a comprehensive EIA must be conducted and an EIA Statement prepared in accordance with procedures described in Part 5 and 6 of the regulations.*

**§ 1007. Right of Entry.**

Whenever it is necessary for the purposes of this ~~Act~~ Chapter, the Agency, or any member, agent, or employee thereof when duly authorized by the Agency or by Court Order, may within reasonable times, enter any establishment or upon any property to make inspection or to do other acts as directed by the Agency or the Court.

**Source: CSL 2-94-01, § 7.**

**§ 1008. Violation Subject to Enforcement.**

Any person who violates any provision of this ~~Act~~ Chapter, or of any permit, regulation, standard, or order issued or promulgated hereunder, shall be subject to enforcement action by the Agency. Such enforcement action may include, but is not limited to:

(1) The imposition of a civil penalty up to \$100,000.00 for each day of the violation. ~~Penalty~~ Penalties collected hereunder shall be paid to the Treasury of Chuuk State for credit to the Chuuk Environmental Protection Agency. The Agency shall provide by regulation minimum due process requirements to apply before it exercises the powers pursuant to this subsection;

(2) A civil action may be commenced in the Trial Division of the Chuuk State Supreme Court to enjoin the violation;

(3) A civil action for damages may be commenced in the Trial Division of the Chuuk State Supreme Court. Such action may be in addition to any civil penalties imposed hereunder. In determining such damages, the Court shall take into consideration all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the nature and persistence of the violation, the length of time during which such violation occurred, and corrective action, if any taken by the violator. Damages collected hereunder shall be paid to the Treasury of Chuuk State and credited to the accounts of the Agency. The Agency shall apportion any monetary damages collected pursuant to this section among any private landowners or property owners actually affected by the violation, in accordance with its regulations;

(4) A person who intentionally, knowingly, or recklessly violates any provision of this ~~Act~~ Chapter shall be guilty of an offense, and upon conviction, may be imprisoned for a period of up to ten years, or fined up to \$500,000 or both. A criminal conviction may be in addition to any civil penalty herein provided; and

(5) A person who is affected by any violation of this ~~Act~~ Chapter retains the right to seek civil remedies in the appropriate court irrespective of whether any claim or suit has been instituted pursuant to the other provisions of this Section.

**Source: CSL 2-94-01, § 8, modified.**

**CHAPTER 3. LITTERING**

**§ 1301. Littering.**

It shall be unlawful for any person, establishment, corporation, or firm to throw, discard, scatter or abandon any waste materials, garbage or other debris in any form or substance upon any public road, street, easement, land or body of water other than a public dumping ground

maintained by the Government of Chuuk or any of the municipalities of the State of Chuuk or subdivision thereof.

**Source: CSL 191-33, § 1.**

**Editor's note: CSL 191-33 contained a repeal clause as follows:**

**Section 7. Repeal. Truk District Law No. 23-12, relating to littering is hereby repealed in its entirety.**

**§ 1302. Definitions.**

"Littering" means dumping, throwing, placing, depositing, or leaving, or causing to be dumped, thrown, deposited, or left any refuse of any kind or any object or substance which tends to pollute, mar or deface, into or upon or about:

(1 a) Any public street, highway, alley, road, stream, watercourse, or by other body of water; or

(2 b) Any private property without the consent of the owner or occupant of such property. Littering shall also mean any unpermitted writing, drawing, painting, engraving, on any wall, structure, building, vessel, vehicle or boat.

**Source: CSL 191-33, § 2, modified.**

**§ 1303. Business.**

Every business establishment shall place at a suitable location a sufficient number of receptacles to securely contain all garbage resulting from the operation of the business. Every business establishment shall be responsible for the proper removal and disposal of all such garbage and shall maintain the business premises at all times in a neat and orderly manner.

**§ 1305. Penalties and Enforcement.**

(1) Every person, establishment, corporation or firm who willfully violates Section 1301 of this Chapter Act shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than 50 ~~five~~ dollars (\$50.00); PROVIDED, that for the conviction of a third or subsequent offense under this Subsection, the penalty shall be a fine of not more than 500 ~~five hundred~~ dollars (\$500.00).

(2) Every person, corporation, establishment or firm who willfully violates Section 1303 of this Chapter Act shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than 500 ~~five hundred~~ dollars (\$500.00).

(3) In enforcing the provision of this Section, the Division of Public Safety, including municipal law enforcement forces, may use any enforcement methods they see fit, which may include the citation system.

**Source: CSL 191-33, § 5, modified.**

**§ 1306. Alternative Sentencing.**

In prescribing penalties for convictions under this Chapter Act, the Court shall, to the extent practicable, prescribe alternate sentencing in the form of clean-up programs and other public government activities in lieu of fines as prescribed by Section 1305 of this Act.

**Source:** CSL 191-33, § 6, modified

**VID3c Draft Title 25. Maritime and Marine Resources**

**CHAPTER 1. STATE FISHERY ZONE**

**§ 1001. Short title.**

This ~~act~~ Chapter shall be known as and may be cited as the "State Fishery Zone Act of 1983."

**Source:** TSL 5-92, § 1, modified.

**Editor's note:** TSL 5-92 that created this Chapter was signed into law by the Governor on April 5, 1984.

**§ 1002. Purpose.**

The purpose of this ~~Act~~ Chapter is to promote economic development and to manage and conserve living sea resources within the jurisdiction of the State of Chuuk Truk pursuant to the Constitution of the Federated States of Government.

**Source:** TSL 5-92, § 2, modified.

**§ 1003. Definitions.**

**§ 1004. Application of this ~~Act~~ Chapter.**

The provisions of this ~~Act~~ Chapter apply to the State of Chuuk Truk.

**Source:** TSL 5-92, § 4, modified.

**§ 1005. Baseline system defined.**

A baseline is a continuous line which encircles an island or atoll. The baseline from which the zones designated in this ~~Act~~ Chapter are to be measured is as follows:

(1) The baseline of an island or portion of an island lacking a barrier reef, fringing reef, or other reef system is the low water line of the islands as marked on large scale charts ~~of~~ officially recognized by the Government of the Federated States of Micronesia and Government of the State of Chuuk Truk.

(2) The baseline of an atoll or island or portion of an island having a barrier reef, fringing reef, or other system is a line following the contour of the seaward edge of the reef system, which line connects those outermost elevations of the reef which are above water at low tide,

and which line exists as marked on large scale charts officially recognized by the Government of the Federated States of Micronesia and Government of the State of Chuuk Truk.

(3) Notwithstanding the above measurement, this whole law is only applicable immediately beyond the continental shelves for these islands having a barrier reef.

**Source: TSL 5-92, § 5, modified.**

**§ 1006. State Fishery Zone.**

(4) The inner boundary of the State Fishery Zone of each island or atoll is the baseline as defined in Section 1005 of this Act Chapter, and the outer boundary is a line, every point of which is 12 twelve nautical miles seaward of the nearest point of the baseline as defined in Section 1005 of this Act Chapter. Waters, landward of the baseline, including the lagoons of atoll or islands are internal waters.

**Source: TSL 5-92, § 6, modified.**

**§ 1007. Submerged Reefs.**

Traditionally recognized fishing rights over submerged reef wherever located within the State Fishery Zone and internal waters shall be preserved and respected.

**Source: TSL 5-92, § 7.**

**§ 1008. Truk Maritime Authority.**

In addition to duties and powers prescribed by Truk State Law No. 3-44, the Authority shall have the following duties, functions and authority:

- (1) To adopt regulations for the conservation, management and exploitation of all living resources in the State Fishery Zone and internal waters;
- (2) To negotiate and conclude foreign fishing agreements in accordance with Section 1010 of this Act Chapter, with the advice and consent of the Micronesian Maritime Authority when a party to an agreement is a foreign government, subdivision of such government or entity thereof;
- (3) To issue foreign fishing permits in accordance with procedures established by the Authority or regulations promulgated pursuant to this Act Chapter;
- (4) To require all foreign vessels to possess a permit before fishing in the State Fishery Zone; and
- (5) To rebate according to regulation approved by the Authority all or a portion of a fee collected pursuant to Section 1010 44 (7) of this Act Chapter from a joint fishing venture duly organized by law, if the rebate will promote fishery development within the State.

**Source: TSL 5-92, § 8.**

**§ 1009. Foreign Fishing Permitted.**

No foreign fishing regulated pursuant to the provisions of this ~~Act~~ Chapter is permitted in the State Fishery Zone except by valid and applicable permit issued under authority conferred by this ~~Act~~ Chapter. Foreign fishing in internal waters is prohibited.

**Source: TSL 5-92, § 9, modified.**

**§ 1010. Foreign Fishing Agreements.**

(1) Each foreign fishing agreement shall acknowledge the exclusive fishery management authority of the Government of Chuuk Truk as set forth in this ~~Act~~ Chapter.

(2) In negotiating foreign fishing agreements, the authority shall seek substantial agreement by the foreign parties to the following terms and conditions:

(a) The foreign party and the owner or operator of any fishing vessel fishing pursuant to such foreign fishing agreement will abide by the agreement that:

(i) Any officer authorized to enforce the provisions of this ~~Act~~ Chapter shall be permitted to board and search or inspect any vessel at any time and make arrests and seizures provided for in Section 1016 47 of this ~~Act~~ Chapter whenever such official has reasonable cause to believe, a result of such search or inspections, that any such vessel or any person has committed an act prohibited by this ~~Act~~ Chapter or regulations adopted by the Authority pursuant to this ~~Act~~ Chapter;

(ii) Such officer shall also be permitted to examine and make notations on the permit issued pursuant to Section 1010 44 of this ~~Act~~ Chapter;

(iii) The permit issued for any such vessel pursuant to Section 1010 44 of this ~~Act~~ Chapter shall be prominently displayed in the wheelhouse of such vessel;

(iv) Appropriate position-fixing and identification equipment shall be installed and maintained in working order on each such vessel;

(v) Duly authorized state observers shall be permitted on board any such vessel and that the Government of Chuuk Truk State shall be reimbursed for the cost of such observers; and

(vi) Agents shall be appointed and maintained within Chuuk Truk who are authorized to receive and respond to any legal process issued in Chuuk Truk with respect to such owner or operator.

(b) The foreign party and the owners or operators of all of the fishing vessels of such party shall not, in any year, exceed such party's allocation of the total allowable level of foreign fishing established by the Authority.

(c) Foreign parties will:

(i) apply, pursuant to Section 1010 44, for any required permits;

(ii) deliver promptly to the owner or operator of the appropriate fishing vessels any permit which is issued under that Section for such vessel;

(iii) abide by the requirement that no foreign fishing will be permitted in the State Fishery Zone without a valid and applicable permit, and that all conditions and restrictions of the permit are complied with; and

(iv) abide by the prohibition that no foreign fishing shall be permitted in internal waters.

(3) Each foreign party entitled to permits in accordance with its foreign fishing agreement shall application on forms prescribed by the Authority specifying inter alia:

(a) The name and official number or other identification of each fishing vessel for which a permit is sought, together with the name and address of the owner thereof;

(b) The tonnage, capacity, speed processing equipment, type and quantity of fishing gear, and such other pertinent information with respect to characteristics of each such vessel as the Authority may require;

(c) The amount of fish or tonnage of catch contemplated for each such vessel during the time such permit is in force and as required by the foreign fishing agreement; and

(d) The ocean area which, and the season or period during which, such fishing will be conducted as required by the foreign fishing agreement.

(4) Upon receipt of an application, including an application for rebate of a fee, the manager shall transmit copies to each member of the Authority.

(5) The Authority shall review the application, solicit views from appropriate persons in the State, hold public hearings where necessary, and may approve the application on such terms and conditions and with such restrictions as the Authority deems appropriate.

(6) If the Authority does not approve the applications submitted by the foreign party, the chairman shall notify such foreign party of the disapproval and the reasons therefor. After taking into consideration, the reasons for disapproval, the foreign party may submit a revised application.

(7) Fees and other forms of compensation for the right to exploit living resources within the State Fishery Zone shall be established in the agreement.

(8) Upon notification by the foreign party of acceptance of the terms, conditions, and restrictions on the applications and permit, the chairman shall issue the permit.

(9) If any foreign fishing vessel for which a permit has been issued pursuant to this Section has been used in the commission of any act prohibited by this Act Chapter has not been paid and is overdue, the Authority shall:

- (a) revoke such permit with or without prejudice to the right of the foreign party involved to obtain a permit for such vessel in any subsequent year; or
- (b) suspend such permit for the period of the time deemed appropriate; or
- (c) impose additional conditions and restrictions on the approved application of the foreign party involved and on any permit issued under such application.

(10) Notwithstanding any other provisions of this ~~Act~~ Chapter, the Authority may provide for the issuance of permits, on reasonable conditions, to foreign vessels or parties for research, survey, recreational, or noncommercial fishing within the State Fishery Zone and internal waters.

**Source: TSL 5-92, § 10, modified.**

**§ 1011. Prohibited Acts.**

- (1) It is unlawful for any person:
  - (a) to violate any provisions of this ~~Act~~ Chapter, or of any regulation or permit issued pursuant to this ~~Act~~ Chapter;
  - (b) to use any fishing vessel to engage in fishing after revocation, or during the period of suspension, of an applicable permit issued pursuant to this ~~Act~~ Chapter;
  - (c) to violate any provision of, or regulation under, an applicable foreign fishing agreement entered into pursuant to this ~~Act~~ Chapter;
  - (d) to refuse to permit any officer authorized to enforce the provisions of this ~~Act~~ Chapter to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of this ~~Act~~ Chapter or any regulation, permit, or agreement referred to in this ~~Act~~ Chapter;
  - (e) to forcibly assault, resist, oppose, impede, intimidate, or interfere with any such authorized officer in the conduct of any search or inspection described in paragraph (d) of this subsection;
  - (f) to resist a lawful arrest for any act prohibited by this Section;
  - (g) to knowingly ship, transport, offer for sale, sell, purchase, import, to have custody, control or possession of any fish taken or retained in violation of this ~~Act~~ Chapter or any regulation, permit, or agreement referred to in this ~~Act~~ Chapter; or
  - (h) to interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that such person has committed any act prohibited by this Section.
- (2) It is unlawful for any foreign fishing vessel, and for the crew, owner or operation of any foreign fishing vessel, to engage in fishing in the Fishery Zone or internal waters unless such

fishing is authorized by and conducted in accordance with a valid and applicable fishing permit issued pursuant to Section 1010 44 of this Act Chapter.

**Source:** TSL 5-92, § 12, modified.

**§ 1012. Civil Penalties.**

(1) Any person who is found in a civil proceeding to have committed an act prohibited by Section 1011 42 of this Act Chapter shall be liable to the Government of Chuuk Truk for a civil penalty. The amount of the civil penalty shall not exceed \$75,000 for each violation. Each day of a continuing violation shall institute a separate offense. In determining the amount of such penalty, the court shall take into account the nature, circumstance, extent, and gravity of prohibited acts committed and, with respect to the violator, the degree of culpability, and history of prior offenses, and such matters as justice may require.

(2) The State Attorney General is authorized to initiate all proceedings under this Section and to recover the amount assessed as a civil penalty. The proceeds of civil penalties shall be deposited in the General Fund of the Legislature.

**Source:** TSL 5-92, § 13, modified.

**§ 1013. Criminal Penalties.**

(1) A person is guilty of an offense if he commits any act prohibited by Section 1011 42 of this Act Chapter.

(2) Any offense described as a prohibited act by Section 1011 42(1)(a), (b), (c), or (g), is punished by a fine of not more than \$50,000.

(3) Any offense described as a prohibited act by Section 1011 42(1)(d), (e), (f) or (h), is punished by a fine of not more than \$100,000, or imprisonment for not more than two years, or both; except that if in the commission of any such offense the person uses a dangerous weapon, engages in conduct that causes bodily injury to any officer authorized enforce the provisions of this Act Chapter, or threatens any such officer with bodily injury, the offense is punishable by a fine of not more than \$25,000, or imprisonment for not more than ten years, or both.

(4) Any offense described as a prohibited act by Section 1011 42 (2), is punished by a fine of not more than \$100,000. Each day of continuing violation shall be considered a separate offense.

**Source:** TSL 5-92, § 14, modified.

**§ 1014. Forfeitures.**

(1) Any fishing vessel including its fishing gear, furniture, appurtenance, stores, and cargo used, and any fish taken or retained, in any manner, in connection with or as a result of the commission of any act prohibited by Section 1011 42 of this Act Chapter shall be subject to

forfeiture to the Government of Chuuk Truk State. All or part of such vessel may, and all such fish may, be forfeited to the Governor of Chuuk Truk pursuant to a civil proceeding under this Section.

(2) A court of competent jurisdiction in the State shall have jurisdiction, upon application by the State Attorney General on behalf of the Government of Chuuk Truk to order any forfeiture authorized under this Subsection (1) of this Section.

(3) If a judgment is entered for the Government of Chuuk Truk in a civil forfeiture proceeding under this Section, the State Attorney General shall seize any property or other interest declared forfeited to the Government of Chuuk Truk, which has not previously been seized pursuant to this ~~Act~~ Chapter.

(4) The forfeited vessel, gear, furniture, appurtenances, stores, cargo, and fish may be sold and proceeds deposited in the General Fund of the State, or may be retained for use by, or at the direction of, the Government of Chuuk Truk, or may be distributed by the Authority to persons whose traditional fishing rights have been violated by such vessel.

(5) Pending completion of the civil forfeiture proceeding, the seized vessel, gear, furniture, appurtenances, stores, cargo and fish, or any part thereof, may be discharged at the discretion of the court upon deposit with the court of a satisfactory bond or other security property. Such bond or other security shall be conditioned upon such person delivering such property to the appropriate court upon order thereof, without any impairment of its value, or paying the monetary value of such property pursuant to an order of such court. Judgment shall be recoverable on such bond or other security against both the principal and any sureties in the event that any condition thereof is breached, as determined by such court.

(6) Any fish seized pursuant to this ~~Act~~ Chapter may be sold, subject to the approval and direction of the court. The proceeds of any such sale shall be deposited with such court pending the disposition of the civil forfeiture proceeding.

(7) For purpose of this ~~Act~~ Chapter, it shall be a rebuttable presumption that all fish found on board a fishing vessel which is seized in connection with an act prohibited by Section 1011 42 of this ~~Act~~ Chapter were taken or retained in violation of this ~~Act~~ Chapter.

**Source: TSL 5-92, § 15, modified.**

#### **§ 1015. Fees.**

Fees collected by the Authority pursuant to Section 1010 44 (7) shall be deposited in the General Fund of the State; provide, however, that in the case of fees collected from a joint fishing venture, and if its application for a fishing permit includes a request for rebate of fees which the Authority accepts pending its decision to rebate the fee, such fees shall be deposited in a separate trust account maintained by the Authority until rebated on the joint fishing venture or paid into the General Fund of the State, if the rebate request is denied.

**Source: TSL 5-92, § 16.**

**§ 1016. Enforcement.**

(1) Primary responsibility for the enforcement of this ~~Act~~ Chapter shall be assumed by the State Attorney General.

(2) Any officer who is authorized and appointed by the State Attorney General to enforce the provisions of this ~~Act~~ Chapter; may:

(a) with or without warrant or other process:

(i) arrest any person, if he has reasonable cause to believe that such person has committed an act prohibited by Section 1011 42 of this ~~Act~~ Chapter;

(ii) board, and search or inspect any fishing vessel which is subject to the provisions of this ~~Act~~ Chapter;

(iii) seize any fishing vessel used or employed in, or when it reasonably appears that such vessel was used or employed in, the violation of any provisions of this ~~Act~~ Chapter;

(iv) seize any fishing gear, furniture, appurtenances, stores, cargo, and fish in the possession of a fishing vessel seized pursuant to authority granted by Sub-paragraph (iii) of this paragraph; and

(v) seize any other evidence related to any violations of any provision of this ~~Act~~ Chapter.

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

(c) exercise any other lawful authority.

**Source: TSL 5-92, § 17, modified.**

**§ 1017. Severability.**

If any provision of this ~~Act~~ Chapter or amendment or additions thereto, or the application thereof to any person, thing or circumstances is held invalid, the invalidity does not effect the provisions or application of this ~~Act~~ Chapter or the amendments or additions that can be given effect without the invalid provisions or application, and to this and the provisions of this ~~Act~~ Chapter and the amendments or additions thereto are severable.

**Source: TSL 5-92, § 18, modified.**

**CHAPTER 3. FISHING LICENSES**

**§ 1203. Fishing License.**

(1) All persons who operate one or more fishing vessels, which carry a normal crew of ten or more individuals, in and out of any port, anchorage, lagoon, or dock of any kind at or in the vicinity of any island or other land area within the administration area of the State of Chuuk ~~Truk District~~ to engage in or conduct high seas fishing shall not engage in or conduct high seas

fishing without first obtaining from the Chuuk State ~~Truk District~~ Treasurer a license to engage in or conduct such fishing.

**§ 1204. Permission for Bait Fishing.**

No person shall engage in or conduct any bait fishing within the area surrounding any island in State of Chuuk ~~Truk District~~ to a distance of three (3) statute miles from the ordinary high water rank of such island without first obtaining written permission from the individual, clan, family or any combination thereof and the municipality having any legal interest in or traditional or customary fishing rights to the place where such bait fishing is to be conducted.

**Source: TDL 21-27, § 4, modified.**

**§ 1205. Reports Required.**

All persons who are engaged in high seas fishing and who operate one or more fishing vessels, which carry a normal crew of ten (10) or more persons, in and out of any port, anchorage, lagoon, or dock of any kind at or in the vicinity of any island or other land are within the administration area of the State of Chuuk ~~Truk District~~ shall submit the following reports, by vessel, to the Governor ~~District Administrator~~, or his duly authorized representative, on the first Monday of each month covering the previous month. The records used for inspection of the reports required under this Section shall be available for inspection by the Governor ~~District Administrator~~ or his duly authorized representative, at all reasonable times.

(1) Operation Report. This report shall include accurate information on fuel and lubricants consumed, wages and salaries paid, provisions and other supplies purchased, total number of bait boats, operation the number and type of fishing year on board, and number of days spent on high seas fishing.

(2) Bait fishing Operation Report. This report shall include by species, weight by volume and estimated length of bait fish caught and the location where caught.

(3) High Seas Fishing Operation Report. This report shall include by species, the total tonnage caught, estimated overall length, the disposition of the catch, name and address of the buyer and the buyer agent, if any, the means used to collect, store and deliver the catch to the market, the gross income derived from the sales of the catch and the disposition of the gross income.

**Source: TDL 21-27, § 5, modified.**

**§ 1206. Penalties.**

Any person who:

(1) Engages in or conducts high seas fishing or bait fishing without a license required by this Chapter ~~the Act~~; or

(2) Fails, neglects, or refuses to make, keep or maintain any records and reports required by this Chapter ~~Act~~; or

(3) Knowingly submits any false or fraudulent report required by this Chapter ~~Act~~; or

(4) Engages in or conducts bait fishing without first obtain written permission from the municipality and owner of the traditional or customary fishing rights thereat shall, upon conviction, be fined not more than \$1,000.00 or imprisoned for a period of not more than one year, or both.

**Source: TDL 21-27, § 6, modified.**

## **CHAPTER 5. CHUUK PUBLIC FISHERIES CORPORATION**

### **§ 1401. Purpose.**

The purpose of this Act ~~Chapter~~ is to create a public corporation to promote the development of pelagic fisheries and related industries for the economic benefit of the people of Chuuk State.

**Source: CSL 5-99-22, § 1.**

**Editor's note: CSL 5-99-22 that created this Chapter was signed into law by the Governor on March 1, 2000.**

### **§ 1402. Chuuk Public Fisheries Corporation established as a Public Corporation.**

There is established a public corporation to be known as the "Chuuk Public Fisheries Corporation," hereinafter "Corporation," subject to the laws of Chuuk State.

**Source: CSL 5-99-22, § 2.**

### **§ 1403. Legal Capacity.**

The Corporation may engage in any commercial activity which will further the development of the fisheries industry in Chuuk State, including but not limited to, the authority to:

- (1) Establish, create, or enter into partnerships or other types of business ventures with any other person or entity;
- (2) Assume the duties, obligations, debts, or other liabilities or benefits of any existing purse-seining or marine-related entity, provided that an entity agrees in writing;
- (3) Incur indebtedness for the purposes of establishing improving, or maintaining purse-seining activities in which the Corporation or the State of Chuuk is involved;
- (4) Acquire, in any lawful manner, real, personal, or mixed property, either tangible or intangible, and to exercise any and all rights incident to the ownership of such property;
- (5) Distribute surplus revenues to its sole shareholder, the State of Chuuk;
- (6) Adopt and amend bylaw governing the conduct of its business and the exercise of its powers;
- (7) Sue and be sued in its corporate name;

- (8) Adopt, alter, and use a corporate seal;
- (9) Appoint such officers and agents as the Corporation may require, and to act as an agent for any other person or entity;
- (10) Hire, train, and terminate employees, and to promote the training of Chuukese citizens in skills related to the fisheries industry;
- (11) Conducts, its business, establish offices, and exercise the powers granted herein in any State or Territory of the Federated States of Micronesia or in any foreign country;
- (12) Permit the Corporation to be registered or recognized in any State or Territory of the Federated States of Micronesia or in any foreign country;
- (13) Exercise other powers and duties as may be prescribed by law, or are incidental, necessary, and proper to accomplish the duties, functions, and purpose of the Corporation.

**Source:** CSL 5-99-22, § 3.

**§ 1404. Board of Directors.**

The administration and management of the Corporation shall be controlled and its corporate powers exercised by a Board of Directors, hereinafter called "the Board"

**Source:** CSL 5-99-22, § 4.

**§ 1405. Board of Directors; composition.**

**§ 1412. Employees of the Corporation.**

(1) The Corporation may employ a full-time Executive Director to manage the daily operation of the Corporation. The Executive Director shall be appointed by a majority vote of the entire membership of the Board. The compensation, terms, and conditions of employment shall be determined by the Board. The Executive Director may be removed by a majority vote of the entire membership of the Board.

(2) The Executive Directors may hire, subject to the approval of the majority of the Board, such support staff as he deems necessary and proper to effectuate the purpose of this Act Chapter. The employees of the Corporation shall be exempt from the provisions of the Chuuk State Public Service Act.

**Source:** CSL 5-99-22, § 12.

**§ 1413. Account and Records.**

(1) The Chairman of the Board, not later than ~~30~~ thirty days after the close of each governmental fiscal quarter, shall submit to the Governor and to the Legislature of Chuuk State a report showing activities during the quarter, the present financial status and condition of the

Corporation, and such other matters as the Board deems appropriate, or as requested by the Governor or the Legislature.

(2) The Board shall appoint a certified public accountant to audit the financial records of the Corporation annually. A copy of the audit shall be transmitted to the Governor and to the Legislature within 14 days of its completion, but in no event later than 60 sixty days following the close of the fiscal year.

**Source:** CSL 5-99-22, § 13.

**§ 1417. Disposal of Net Profits.**

The Corporation shall deposit into the General Fund of the Chuuk State Treasury no less than 50 percent of the net profit generated each fiscal year of its operation, provided further that any revenue generated by the business of the Corporation shall be considered revenue of the State of Chuuk.

**Source:** CSL 5-99-22, § 17.

**CHAPTER 6. INSHORE-NEARSHORE FISHING PROGRAM**

**§ 1501. Establishment.**

There is hereby established an inshore-near shore fishing program (the Program) for the purpose of procuring fishing vessels from the Chuuk Truk Boat Building Program, equipment, materials, and supplies; to instruct residents of Chuuk State Truk District in the proper use of the vessels for inshore and nearshore fishing; and to enter lease-purchase agreements for the vessels to successful graduates of the instruction course.

**Source:** TDL 26-1-3, § 1 (71), modified.

**Editor's note:** TDL 26-1-3 that created this Chapter was signed into law by the District Administrator on August 9, 1976.

**§ 1504. Administration.**

(1) The Chief of the Chuuk State Truk District Division of Marine Resources shall be the administrator of the Program and shall submit an annual report and accounting to the Chuuk State Truk District Legislature on or before May 1 of each fiscal year.

(2) Any funds received from the lease-purchase agreements shall be retained by the Division of Marine Resources to be used in continuing the Program.

(3) Students of the Program shall be entitled to six dollars (\$6.00) per working day during the course of instruction as allowance.

**Source:** TDL 26-1-3, § 1 (74), modified.

## CHAPTER 8. CHUUK LAGOON MONUMENT

### **§ 1701. Declaration of Policy.**

It is hereby declared that it is a State district policy to preserve forever historic landmarks, structures, and other sites and objects of State district and national territorial significance situated within the administration area of the State of Chuuk Truk District for the inspiration and benefit of the people of the Federated States of Micronesia.

**Source:** TDL 21-5, § 1, modified.

### **§ 1702. Establishment of ChuukTruk Lagoon StateDistrict Monument.**

All ships, vessels and aircraft, and any and all parts thereof and all other objects, including non-military items, which formerly belonged to or were part of the armed forces of Japan and were sunk to or otherwise deposited in the Chuuk Truk Lagoon prior to December 31, 1945 shall be, and hereby are, designated as State district monuments, which shall be collectively called the "Chuuk Truk Lagoon State District Monument". For purposes of this Section the Chuuk Truk Lagoon is defined as all marine areas below the ordinary high water mark which are enclosed by the Chuuk Truk barrier reef.

**Source:** TDL 21-5, § 2, as amended by TDL 24-20, § 1, modified.

### **§ 1703. Administration, Protection, and Development.**

The administration, protection, and development of the aforesaid State district monuments shall be exercised under the direction of the Governor District Administrator of the Chuuk State Truk District Legislature shall be obligated therefor unless or until the Chuuk State Truk District Legislature has appropriated funds which are available for that purpose.

**Source:** TDL 21-5, § 2, modified.

### **§ 1705. Permits to Examine.**

(1) All persons who dive to or by any other means seek and obtain access to the aforesaid ships, other vessels and aircraft, or any and all parts thereof, for the purpose of examination shall first obtain a permit therefor from the managers of the duly licensed diving shops in the State, and no person may dive to or by any other means seek and obtain access to the aforesaid ships, other vessels and aircraft, or any and all parts thereof for the purpose of examination without first obtaining a certified diving guide from the duly licensed diving shops in the State. The managers of the duly licensed diving shops are authorized to issue such permits to those persons whom they deem qualified to conduct such examination subject to such rules and regulations as the Governor may prescribe.

(2) The managers of the duly licensed diving shops in the State shall collect a 30 thirty dollars fee for each permit and deliver the collected fees to the State Treasury to be deposited in the General Fund. All fees collected pursuant to this Section ~~5 of this act~~ shall be earmarked exclusively for the administration, protection, and development of Chuuk Lagoon State Monument.

**Source:** TDL 21-5, § 5, as amended by TSL 3-18, § 1 (5) and CSL 5-99-19, § 1 (5), modified.

**Editor's note:** CSL 5-99-10 that amended this Section was signed into law by the Governor on February 17, 2000.

**§ 1706. Rules and Regulations.**

The ~~Governor District Administrator~~ of the ~~State of Chuuk Truk District~~ shall make and publish from time to time uniform rules and regulations for the purpose of carrying out the provisions of this ~~Chapter Act~~.

**Source:** TDL 21-5, § 6, modified.

**§ 1707. Penalties.**

Any person who, without the written permission of the Governor, removes, appropriates, damages, or destroys the aforesaid ships, other vessels or aircraft, or any or all parts thereof, or who violates any provisions of this act, any rules and regulations issued pursuant to the act shall, upon conviction, be fined a sum not more than \$1,000 or be imprisoned for a period of not more than six months, or both.

**Source:** TDL 21-5, § 7, as amended by TSL 3-26, § 1 (7), modified.

## **VIE CHUUK STATE BIODIVERSITY STRATEGY AND ACTION PLAN**

The National Biodiversity Strategy and Action Plan outlines the state of the nation's biological resources and the current biological and human-related threats that are affecting their continued existence. The responsibility for the implementation of the actions identified in the NBSAP has been sanctioned to the four individual states of the FSM.

The Chuuk State Biodiversity Strategy and Action Plan (BSAP) was developed over a series of community consultations and expert meetings from 2001-2004. The BSAP focuses only on biodiversity, and therefore waste management is not included. The Plan is divided into four main groups of objectives and activities related to people, assistance, management and control.

According to the Chuuk BSAP, anthropogenic threats include conversion and degradation of habitat and ecosystems, invasive organisms and pests, and over-harvesting or over-exploitation of resources. In addition, there are very few controls in place to meet these threats. For example, although Chuuk State has a very high number of marine species, only *trochus*, two species of sea turtles, and the black lip pearl are protected by State law. The use of dynamite, poisons and other inappropriate/destructive harvesting methods, pollution, habitat modification and destruction, and introduction of alien species add to the list of problems.

To meet these growing concerns, the Chuuk BSAP lists several activities that address anthropogenic threats, either directly or indirectly. A short description and timeline for implementation follows:

YEAR	LEAD AGENCY	ACTIVITY
2006	Land Commission	Complete demarcation and registration of at least to Areas of Biological Significance.
2006	Attorney General	Create legislation for protection of endemic, endangered and rare species
2006	Quarantine	Improve control of alien species
2006	Marine Resources	Involve all in process of granting permits affecting marine biodiversity
2006	Attorney General	Require approval by law prior to commercial exportation of any natural marine resources
2006	Marine Resources	Ban commercial exportation of reef fish and other reef products
2007	Marine Resources	Designate three community marine protected areas
2007	Attorney General	Create legislation for patrol of marine areas under traditional law, or 'pwau'
2007	Attorney General	Create legislation for the control of alien species
2007	Attorney General	Create legislation for protection of natural marine resources
2008	Marine Resources	Establish three fully protected marine areas

Interviews with representatives of government agencies and private stakeholders in Chuuk indicated a consensus view that reef fisheries have declined substantially during the past decade. Similar to the other States, fewer fish are being taken per hour of effort, fish winding up on local markets are generally smaller in size, once common species are caught infrequently and rarely seen on local markets, etc.

## **VIF PRIMARY AGENCIES AND ORGANIZATIONS RESPONSIBLE FOR COASTAL MARINE PROTECTION**

### **VIF1 ENVIRONMENTAL PROTECTION AGENCY**

The Chuuk State Environmental Protection Agency (EPA) is a Statutory Authority established in January 1994 by Chuuk State Law (2-94-01), based on Act 2-17.

Section 4 of the Act states as follows:

“(1) Establishment of Agency/Board-Memberships. There is hereby established an independent agency to be known as the Chuuk State Environmental Protection Agency. The administration and management of the Agency shall be controlled and its powers exercised by a Board of Directors, to be composed of five members one from each of the five senatorial regions of the State of Chuuk. All five members shall be appointed by the Governor with advice and consent of the Senate. The Governor in his appointment shall select persons who are

citizens of the Federated States of Micronesia and residents of Chuuk, to carry out the policies and purposes of this Act. Members shall serve for four years.”

The powers and duties of the EPA are described in Section 5 of the Act:

“(1) The Agency shall have the powers and duties to control and prohibit pollution of air, land, and water in accordance with this Act and with regulations adopted and promulgated pursuant to this Act, and for this purpose, is further empowered to:

(a) Adopt, approve, amend, revise, promulgate, and repeal regulations or effect the purpose of this Act and enforce such regulations which shall have the force and effect of law;

(b) Accept appropriations, loans and grants from the Chuuk State Legislature, FSM Congress, the FSM National Government, or any Agency thereof and other sources, public or private, which loans, grants and appropriations shall not be expended for other than the purpose of this Act except as limited by the nature of the loan, grant or appropriation;

(c) Adopt and provide for the continuing administration of a State-wide program for the prevention, control, and abatement of pollution of the air, land and water of Chuuk State, and from time to time review and modify such programs as necessary;

(d) Establish criteria for classifying air, land and water in accordance with their present and future uses;

(e) Adopt and implement plans for the certification of importers and applicators of restricted pesticides, for the issuance of experimental use permits for pesticides and a plan to meet special local needs, and such other measures as may be necessary to carry out the purposes of this Act;

**NOTE:** Although there is a clear responsibility to regulate pesticides, interviews with EPA staff members indicate that legislation is apparently lacking in this area.

(f) Establish and provide for the continuing administration of a permit system whereby a permit shall be required before the discharge by any person of any pollutant in the air, lands and water or for the conduct by any person of any activity, including but not limited to, the operation, construction, expansion, alteration of any facilities; modification, suspension, revocation, and termination of such permit and/or the posting of an appropriate bond;

(g) Collect information and establish record keeping, monitoring, and reporting requirements as necessary and appropriate to carry out the purposes of this Act; and

(h) Prepare a budget of the Agency and submit it to the Governor for inclusion in the State Budget to be submitted to the Legislature.

(2) The Agency is authorized to enter into cooperative arrangements with the National Government, municipalities, and other agencies for the protection of the Chuuk State Environment.

**(3) The Agency, in order to effectively implement the provisions of this Act, shall have the power to issue subpoena duces tecum and subpoena ad testificandum and shall have quasi-judicial powers of contempt, issuance of orders, and enforcement of the provisions of this Act.”**

Penalties for violation of the Act's provisions are described in Section 8. A civil penalty up to \$100,000 for each day of the violation may be imposed. In addition, a civil action may be commenced in the Trial Division of the Chuuk State Supreme Court to enjoin the violation. Finally, anyone convicted of intentionally, knowingly, or recklessly violating any provision of this Act may be imprisoned for a period of up to ten years, or fined up to \$500,000 or both. A criminal conviction may be in addition to any civil penalty. Further, any person affected by any violation retains the right to seek civil remedies.

EPA consists of a Board, which reports to the Governor, an Executive Director, an Administrative Officer and the following four divisions:

**Natural Resources and Conservation:** biodiversity, genetic resources and permitting; **Solid and Hazardous Waste:** oil spills and other pollutants;

**Water/wastewater:** permitting, inventory, surveys, designs, etc.

**Support Services:** GIS, public awareness, financing, engineering, and communications.

Section 5 of the Act allows any duly authorized member, agent or employee of the Agency to enter any establishment or upon any property to inspect or conduct other necessary activities. However, EPA personnel do not have powers of arrest, search and seizure.

EPA employs only two inspectors to conduct enforcement activities. In 2005, the agency issued 15 warning letters to persons violating EPA regulations. Three 'cease and desist' orders were issued following the warning letters. A hearing with the Chairman of the EPA Board is the next step, and EPA officials were not aware of any cases that went beyond the hearing stage. EPA is trying to have an attorney assigned to the agency to ensure that appropriate cases are taken through the judicial system.

## **VIF2 DEPARTMENT OF MARINE RESOURCES**

The Department of Marine Resources has four Divisions – Operational and Technical Supply, Research and Development, Conservation and Management and Fisheries.

Department activities are based on Truk State Law 5-92, which was signed in April 1984. This law is based on the State Fishery Zone Act of 1983, which was signed into law “to promote economic development and to manage and conserve living sea resources” within the jurisdiction of the State. The State Fishery Zone has inner and outer boundaries. The inner zone is based on a baseline following the seaward edge of the reef system, while the outer zone extends 12 nautical miles seaward of the nearest point of the baseline. Waters, landward of the baseline, including the lagoons of atoll or islands are internal waters.

The State Maritime Authority is empowered to “adopt regulations for the conservation, management and exploitation of all living resources in the State Fishery Zone and internal waters”. The State Attorney General is the primary body responsible for enforcement of the Act.

Enforcement officers appointed by the Attorney General may, with or without warrant or other process:

- 1) Make arrests for violations of the Act;
- 2) Board, search and inspect fishing vessels;
- 3) Seize any fishing vessel involved in violations of the Act, along with fishing gear, furniture, appurtenances, stores, cargo, and fish in the possession of the vessel;
- 4) Seize any other evidence related to any violations;
- 5) Execute any warrant or other process issued by any court of competent jurisdiction; and
- 6) Exercise any other lawful authority.

The Act provides for civil penalties of up to \$75,000 per day for each violation. Criminal penalties range from a \$50,000 fine for violations of fishing regulations to ten years in prison and a \$25,000 fine for using a dangerous weapon, threatening an enforcement officer or causing bodily injury to an enforcement officer. Fishing vessels involved in illegal activities and fish taken illegally are subject to forfeiture by the Governor of the State. **There are no restrictions concerning species or methods of harvest in the Act.** Marine Resources staff members believe that such restrictions are needed, including limits on net mesh size, fish size and certain species. Protection of fish spawning areas is also considered to be a high priority. The lagoon is considered the area at most risk, as traditional laws are still enforced in outer islands.

Chapter 1, Title 9 of the Chuuk State Code prohibits fishing with dynamite or chemicals, or possessing, selling, transporting or transshipping such fish outside the State of Chuuk. It also prohibits using a canoe, sailing or motored boat or other means of transport for the purpose of diving for, selling, purchasing, or possessing fish which have been caught by the illegal use of dynamite or other explosives.

If Chuuk State Police or any Chuuk State conservation officers have reasonable grounds to believe that a violation of this Chapter has been or is being committed, they may seize and take control over any such vessel or means of transport used in violation of this Chapter. Upon a finding by a State court that a violation has occurred, the vessel or means of transport and fishing gear shall be confiscated and become State property.

Businesses in violation of Section 4 shall be closed down. Any person convicted of possession of illegal fish shall be imprisoned for not less than one year and/or fined between \$1,000 and \$5,000. The court may impose a "severe penalty" on repeat offenders. Any person actually involved in fishing with dynamite or poison shall be imprisoned for not less than five years and/or fined between \$5,000 and \$10,000.

Enforcement activities are located primarily within the Division of Conservation and Management, which has 18 officers. The Division has two vessels and no vehicles assigned to it. Other supplies and equipment are lacking, including additional vessels and fuel for operations. Officers are not issued firearms. Only about ½ the officers have completed a national and/or state police course. The officers are deputized by the Attorney General's Office.

According to Marine Resources, 13 suspects were apprehended for dynamiting fish in 2005. Seven persons were fined and eight cases were still pending at the time of this report. Interviews with staff indicate that hundreds of suspects are involved, often obtaining the

gunpowder from munitions salvaged from the Truk Lagoon. Some persons have even been apprehended at the airport trying to export such munitions. The public has not been very cooperative in turning in violators.

### **VIF3 DEPARTMENT OF FORESTRY AND AGRICULTURE**

Two State Quarantine officers work with national authorities in Chuuk, assisting in enforcement of national quarantine laws (State quarantine laws do not exist). As important mangrove areas are under private ownership, they are not managed by the State.

### **VIF4 CHUUK PUBLIC FISHERIES CORPORATION**

The purpose of the Chuuk Public Fisheries Corporation is to create a public corporation to promote the development of pelagic fisheries and related industries for the economic benefit of the people of Chuuk State. However, during interviews with stakeholders, it became apparent that it is not an active organization in the State.

## **VIG DISCUSSION**

Current efforts for protection of coastal marine areas include:

- Magur, Namunweito Atoll – Turtle ordinance
- Parem Island – MPA and municipal ordinance enforced by traditionally designated Conservation Officers
- Epinup Village, Weno Island – Mangrove forest management
- UFO, Fefan Island – 3-village effort in conservation
- Chuuk Conservation Society (CCS) – established late 2005, CCS goals and activities will strongly compliment the priorities of the state of Chuuk. They will be able to bring in extra resources (financial and technical) that otherwise would not be available to the state. CCS will also serve as a linkage/liaison between the government(s) and the local communities.
- Te Island, Mortlocks – Mangrove initiative facilitated by Chuuk Forestry Division.

During on-site discussions with stakeholders, there appeared to be general agreement that, even if all current legislation was effectively enforced, reef fish populations would still continue to decline due to local over-harvest. Currently, fish stock assessments are not available to provide a scientific basis to establish general harvest limits on the size, number or species of fish and/or fishing seasons. Therefore, the greatest priority in the short term is to identify and permanently establish Marine Protected Areas with regulations that will restrict or prohibit fishing activity in critical spawning and/or breeding areas for marine species.

Establishing MPAs based on traditional law is very important in Chuuk. Therefore, such areas should be prioritized based on their importance to local communities for fish spawning or other critical habitat. Marine Resources staff members are seriously concerned about the lack of regulations restricting the harvest of reef and/or inshore species of fish, as well as harvest methods. Such regulations should be based as far as possible on population estimates. A Rapid Ecological Assessment (REA), coupled with a Creel Survey that determines the present volume of fish extracted from the reefs versus the productivity level of Chuuk's near shore marine areas, will provide the basis for such regulations, as well as sites for potential Marine

Protected Areas in future years. Without these assessments, new restrictions on fishing activity may be met with strong opposition.

Restrictions on activities in MPAs by local members of local communities can certainly be based on traditional law. However, regulations should be passed by the State so that such restrictions can be enforced by State officers in instances where such assistance is needed.

The Chuuk State Code has not yet been consolidated in the area of environmental protection, including marine resources. In fact, some legislation still in effect dates back to the Truk District Code of 1970, and needs to be updated.

In addition enforcement programs within EPA and Marine Resources can be strengthened in several areas. For example, within EPA:

1. Enforcement powers are limited mainly to the issuance of 'cease and desist' orders.
2. Officers may enter any establishment or upon any property to inspect or conduct other necessary activities. However, EPA personnel do not have powers of arrest, search and seizure.
3. Officers must request assistance by the police when conducting hazardous enforcement activities.
4. Officers lack formal law enforcement training.
5. In spite of adequate civil and criminal penalties, EPA cases are rarely if ever submitted for prosecution.
6. Financial resources and technical expertise limit the ability of EPA to implement the requirement of an Environmental Impact Statement for large projects.

The Marine Resources enforcement program requires considerable strengthening. Eighteen officers have full authority to enforce marine protection laws, and yet:

1. The main focus of enforcement activities appears to be on dynamiting fish in the Truk Lagoon. While 13 suspects were apprehended in 2005, Marine Resources believes the number of persons engaging in this type of violation is in the hundreds.
2. Officers have not received formal law enforcement training. Instead, training has been provided only by their supervisor.
3. Officers do not carry firearms and feel they are not adequately prepared to defend themselves. Just before the arrival of the authors of this report in Chuuk, a police officer was shot and killed by dynamite fishermen.
4. Officers do not have adequate equipment and supplies to conduct enforcement activities.
5. Morale appears to be quite low within enforcement ranks.

An in-depth review of enforcement operations is needed to determine the cause of gaps, duplication, inefficiency and operational obstacles in enforcement programs. Once the review process has been completed, a training and monitoring mechanism must be in place to effectively implement change at the field level within each agency.

As Marine Resources officers are not trained in the use of firearms or other self-defense techniques, a uniformed police officer(s) could provide backup assistance in dangerous

situations. The same might also be useful to EPA. Providing Compact (Environmental Sector) funds for this purpose would help ensure that an officer will be available when needed.

## **VIH RECOMMENDATIONS**

- 1. MARINE PROTECTED AREAS: MARINE RESOURCES, EPA AND THE CHUUK CONSERVATION SOCIETY SHOULD WORK TOGETHER WITH LOCAL COMMUNITIES IN SETTING ANNUAL GOALS FOR ESTABLISHING NEW MARINE PROTECTED AREAS (AND ASSOCIATED REGULATIONS FOR THEIR PROTECTION) IN IMPORTANT REEF HABITAT.**

**NOTE:** These areas will serve as models for the rest of the State and will become the first sites included in the proposed Chuuk State and FSM National Protected Areas Network (PAN), as part of the FSM's obligations under the Micronesia Challenge and the Convention on Biological Diversity.

- 2. MOU WITH PUBLIC SAFETY: MARINE RESOURCES (AND PERHAPS EPA) SHOULD DEVELOP AN MOU WITH THE DEPARTMENT PUBLIC SAFETY REGARDING ASSISTANCE BY PUBLIC SAFETY IN ENFORCING ENVIRONMENTAL LAW.**

**NOTE:** This is a cost that can be paid through the Environment Sector funds of the Compact.

- 3. RAPID ECOLOGICAL ASSESSMENT: MARINE RESOURCES, EPA AND THE CHUUK CONSERVATION SOCIETY SHOULD WORK TOGETHER TO ARRANGE FOR A RAPID ECOLOGICAL ASSESSMENT (REA) OF REEF FISH STOCKS.**
- 4. CHUUK STATE CODE: EPA AND MARINE RESOURCES SHOULD ARRANGE FOR AN INDEPENDENT REVIEW OF EXISTING ENVIRONMENTAL STATUTORY PROVISIONS WITHIN THE CHUUK STATE CODE (CSC) AND POLICIES RELEVANT TO THE ENFORCEMENT OF ENVIRONMENTAL LAWS, AS FOLLOWS:**
  - a)** Conduct a detailed review of the CSC to identify the appropriateness and adequacy of existing statutory provisions in relation to protecting Chuuk's environmental and natural resources (land and marine) and to avoid duplication of responsibilities delegated to EPA and Marine Resources enforcement personnel.
  - b)** Where gaps or duplication exist, draft amended provisions which will more appropriately protect the environment and enhance the ability of the applicants to enforce those laws (through law enforcement officers); and
  - c)** Conduct a review of existing law enforcement related policies to ensure integration with current and proposed laws.
- 5. WORKPLACE ASSESSMENTS: EPA AND MARINE RESOURCES SHOULD ARRANGE FOR DETAILED WORKPLACE ASSESSMENTS OF THE LAW ENFORCEMENT UNITS / FUNCTIONS WITHIN EACH AGENCY, AS FOLLOWS:**
  - a)** Identify barriers to the effective implementation of law enforcement programs / activities for each agency (including strategic and operational level responses but excluding legislative provisions) and make specific recommendations for change;

- Review the roles, responsibilities and duties of enforcement personnel;
  - Conduct organizational Training Needs Analysis (TNAs) with the view of identifying current and desired knowledge and skill levels of operational officers; review organizational, administrative and operational functions which would include examining agency records, workflow processes, officer caseloads, work hours, morale, leadership, supervision, supplies and equipment, and circumstances for potential political interference with agency operations (if any);
  - Make specific recommendations for changes within each agency; and
  - Develop a program implementation plan identifying priority areas of response.
- b) Conduct a resource and equipment audit to identify required resources / equipment needs to support effective and efficient operational responses;
- Resources to include, a First Response Handbook, citation forms, template operational reports and auditable prosecution recording processes; and
  - Amend existing operational procedural guidelines to reflect current laws and policies.
6. **LAW ENFORCEMENT TRAINING: BASED ON THE IN-DEPTH ASSESSMENT, EPA AND MARINE RESOURCES SHOULD ARRANGE FOR THE DEVELOPMENT AND IMPLEMENTATION OF A ONE-YEAR LAW ENFORCEMENT TRAINING PLAN, AS FOLLOWS.**
- a) Develop a training plan for all environmental law enforcement personnel;
  - b) Develop curriculum and assessment tools (for both “on” and “off” the job components); and
  - c) Implement and deliver 12 days “off the job” training sessions (1 day per month) and 12 days “on the job” training sessions (1 day per month)

**NOTE:** Combining law enforcement training for Chuuk officers with training for officers in the other FSM states may result in an informal marine law enforcement network for cross-training and sharing information within the FSM.

Recommendations 4-6 are based in part on a project proposal developed by the Kosrae Island Management Authority (KIRMA), in consultation with Timothy R. Fenlon, a former Australian police officer who currently lives in both Kosrae and Pohnpei State, and his wife, Donna-Maree Wrembeck. Mr. Fenlon and Ms. Wrembeck were employed by the Queensland Police Service. Mr. Fenlon’s work included roles as Superintendent and as Inspector of Police, while Ms. Wrembeck was primarily involved in law enforcement education and training. Mr. Fenlon and Ms. Wrembeck have worked with KIRMA and the Department of Agriculture in designing a procedural guidelines manual for law enforcement officers, which would be used during the review and training. They would be excellent contacts to assist with the implementation of these recommendations, including monitoring activities that follow.

7. **LAW ENFORCEMENT MONITORING: MONITOR PROGRESS IN IMPLEMENTATION OF RECOMMENDATIONS 4-6 OVER A TWO-YEAR PERIOD**
- a) Periodically monitor the effectiveness of amended law/policies and enhanced levels of officer’s skills development over a two-year period, with updates reported each quarter and a final evaluation report at the end of two years.

## VII MEETINGS IN CHUUK

### General Meeting on 2/15/06 at the Governor's Office Building

LAST NAME	FIRST NAME	TITLE	ORGANIZATION	E-MAIL	PHONE
ALBERT	JULITA	NATURAL RESOURCES MANAGER	EPA	<a href="mailto:JULITA-EPA@MAIL.FM">JULITA-EPA@MAIL.FM</a>	330-4158
ANISIN	VANESSA	VOLUNTEER BOARD MEMBER	CHUUK CONSERVATION SOCIETY	<a href="mailto:VKONNO@HAWAII.EDU">VKONNO@HAWAII.EDU</a>	330-4589
JORDAN	MICHAEL	PEACE CORPS VOLUNTEER	MARINE RESOURCES	<a href="mailto:MJPCM70@YAHOO.COM">MJPCM70@YAHOO.COM</a>	930-7258
KONNO	JOE	ADVISOR	EPA	<a href="mailto:JOE-EPA@MAIL.FM">JOE-EPA@MAIL.FM</a>	330-4158
MARAR	DIANE	HEALTH INSPECTOR	DEPT. HEALTH AND SANITATION		330-2395
MIKEL	ISMAEL	EPA DIRECTOR	EPA	<a href="mailto:ISMAEL-EPA@MAIL.FM">ISMAEL-EPA@MAIL.FM</a>	330-4158
NAKAYANA	MARY ROSE	VOLUNTEER BOARD MEMBER	CHUUK CONSERVATION SOCIETY	<a href="mailto:MROSE@MAIL.FM">MROSE@MAIL.FM</a>	930-3394
OSIENA	ROMIO	DIRECTOR	MARINE RESOURCES	<a href="mailto:KCSO@MAIL.FM">KCSO@MAIL.FM</a>	370-3673
RUDOLPH	ARIMICHY	FIELD ASSISTANT (SURVEYOR)	HISTORIC PRESERVATION OFFICE	<a href="mailto:FISHERIESKOS@MAIL.FM">FISHERIESKOS@MAIL.FM</a>	370-3031
SARED	SLEEPER	CHIEF OF FORESTRY	AGRICULTURE AND FORESTRY		330-6131
TAYLOR	TIFFANY	PROGRAM ANALYST (GRANTS)	U.S. DEPT. OF INTERIOR	<a href="mailto:TIFFANY@USCOMPACT.ORG">TIFFANY@USCOMPACT.ORG</a>	808-525-5308

### Meeting on 2/15/06 with Chuuk Conservation Society

LAST NAME	FIRST NAME	TITLE	ORGANIZATION	E-MAIL	PHONE
ANISIN	VANESSA	VOLUNTEER BOARD MEMBER	CHUUK CONSERVATION SOCIETY	<a href="mailto:VKONNO@HAWAII.EDU">VKONNO@HAWAII.EDU</a>	330-4589
NAKAYANA	MARY ROSE	VOLUNTEER BOARD MEMBER	CHUUK CONSERVATION SOCIETY	<a href="mailto:MROSE@MAIL.FM">MROSE@MAIL.FM</a>	930-3394

### Meeting on 2/16/06 with EPA

LAST NAME	FIRST NAME	TITLE	ORGANIZATION	E-MAIL	PHONE
ALBERT	JULITA	NATURAL RESOURCES MANAGER	EPA	<a href="mailto:JULITA-EPA@MAIL.FM">JULITA-EPA@MAIL.FM</a>	330-4158
MIKEL	ISMAEL	EPA DIRECTOR	EPA	<a href="mailto:ISMAEL-EPA@MAIL.FM">ISMAEL-EPA@MAIL.FM</a>	330-4158
SOS	MERCY	ENV. SPECIALIST	EPA	<a href="mailto:CHUUKPOPS@MAIL.FM">CHUUKPOPS@MAIL.FM</a>	330-4158
WINTER	STEVE	ENVIRONMENTAL ENGINEER	EPA	<a href="mailto:STEPHENWINTER@MAIL.FM">STEPHENWINTER@MAIL.FM</a>	330-4158

Meeting on 2/16/06 with Marine Resources

LAST NAME	FIRST NAME	TITLE	ORGANIZATION	E-MAIL	PHONE
NIFON	FRITZ	CHIEF, RESEARCH AND DEVELOPMENT	MARINE RESOURCES		330-6729
OSIENA	ROMIO	DIRECTOR	MARINE RESOURCES	<a href="mailto:KCSO@MAIL.FM">KCSO@MAIL.FM</a>	370-3673
ROBERT	MIKE	CHIEF, CONSERVATION AND MANAGEMENT	MARINE RESOURCES		330-4660 CELL: 930-4550

Meeting on 2/16/06 with Public Safety

LAST NAME	FIRST NAME	TITLE	ORGANIZATION	E-MAIL	PHONE
STINNETT	WILLIAM	DIRECTOR	DEPT. OF PUBLIC SAFETY	<a href="mailto:KBSTINNETT@MAIL.FM">KBSTINNETT@MAIL.FM</a>	330-2224 OR 330-4232

## VIJ REFERENCES

NAME	TYPE	DATE
Chuuk State Environmental Protection Act: Act No. 2-17, State Law 2-94-01	Act	12/8/93
State Fishery Zone Act of 1983: Act No. 2-95, Truk State Law 5-92	Act	4/5/84
Dynamite Fishing Prohibited: Act No. 6-06, Chuuk State Law No. 6-01-07	Act	10/17/01
Chuuk State Biodiversity Strategy and Action Plan	Plan	9/04
Adoption of Toilet Facilities and Sewage Disposal Regulations	Regulations	3/24/95
Adoption of Earthmoving Regulations	Regulations	3/24/95
Solid Waste Regulations	Regulations	5/31/95
Marine and Fresh Water Quality Standard Regulations	Regulations	Unknown
Environmental Impact Assessment Regulations	Regulations	Unknown
Chuuk State Visitors Center: <a href="http://www.visit-fsm.org/">http://www.visit-fsm.org/</a>	Website	N/A
FSM Visitors Bureau: <a href="http://www.visit-fsm.org/chuuk/">http://www.visit-fsm.org/chuuk/</a>	Website	N/A
Land issues in Chuuk: <a href="http://www.micsem.org/pubs/counselor/frames/landchkfr.htm?http&amp;&amp;www.micsem.org/pubs">http://www.micsem.org/pubs/counselor/frames/landchkfr.htm?http&amp;&amp;www.micsem.org/pubs</a>	Website	N/A

FSM Investment Guide: <a href="http://www.fsminvest.fm/chuuk/profile.html">http://www.fsminvest.fm/chuuk/profile.html</a>	Website	N/A
Pacific Service Region (Chuuk): <a href="http://www.prel.org/pacserv/chuuk.asp">http://www.prel.org/pacserv/chuuk.asp</a>	Website	N/A
Micronesia: Chuuk <a href="http://www.janeresture.com/fedmic/chuuk.htm">http://www.janeresture.com/fedmic/chuuk.htm</a>	Website	N/A
Legal Information System for FSM: <a href="http://www.fsmlaw.org/chuuk/index.htm">http://www.fsmlaw.org/chuuk/index.htm</a>	Website	N/A

## VII THE STATE OF YAP

### VIIA INTRODUCTION



Yap is the Western-most island State in the Federated States of Micronesia (FSM), located about midway between Guam and Palau, and comprised of the main islands of Yap, Gagil, Tomil, and Rumung. Yap State stretches eastward for about another 1,200 kilometers and includes another 134 outer islands, most of them low-lying atolls.

Yap is probably best known for its stone money - huge disks of crystalline stone. These stone disks measure up to two meters in diameter, and weigh as much as four tons, making them the world's largest currency. Many centuries ago, Yapese made a life-threatening 1000 kilometer round trip voyage to Palau's Rock Islands to quarry the stone.

## **VIIB GOVERNMENT**

Yap State has its own constitutional government with three co-equal branches of government consisting of the executive, legislative, and judicial branches. Yap also has traditional leaders that serve in the Council of Pilung and the Council of Tamol. Tradition and custom are very important to the culture.

The Executive Branch is headed by a Governor and a Lt. Governor, who are primarily responsible for executing the laws and administering State government services. The Legislature is composed of ten members, who are elected by voters of the respective election districts. The judicial power of the State is vested in its State Court and other courts as may be created by law. The State Court is the highest court of the State and consists of a Chief Justice and two Associate Justices, who may be increased upon the request of the State Court.

## **VIIC MARINE RESOURCES**

Yap is the most biologically diverse island in the FSM, although the number of endemic species is not as high as in some of the more isolated eastern islands. Four species of marine turtle inhabit the marine environment: Green, Hawksbill, Ridley and leatherback. The dugong, blue whale and sperm whale are listed as endangered species. Four potential Marine Protected Areas (MPAs) are described in the International Waters Project for the State.

## **VIID OWNERSHIP OF NATURAL RESOURCES**

Yap State's waters consist of the internal waters and the State Fishery Zone. The Fishery Zone includes those waters within "12 miles from island baselines". An "island baseline" is defined in the Yap State Code as an island or atoll with a fringing reef or barrier reef as a "line following the contour of the seaward edge of the reef system" (i.e. the outer edge of the reef). Internal waters are defined as "waters landward of the baseline, including the lagoons of atolls or islands".

Under Article XIII of the Constitution, title to land may be acquired only in a manner consistent with traditions and customs. The State recognizes traditional rights and ownership of natural resources and areas within the marine space of the State, within and beyond 12 miles from island baselines. The State may also provide for the conservation and protection of natural resources within these areas. Therefore, almost all land and marine areas on Yap are held under a complex system of customary ownership. Public lands and waters generally do not exist.

## **VIII SELECTED\* LEGISLATION FOR PROTECTION OF COASTAL MARINE RESOURCES**

\* Not inclusive of all legislation

## VIIIE1 YAP STATE CONSTITUTION

### ARTICLE XIII. CONSERVATION AND DEVELOPMENT OF RESOURCES

**Section 1.** The State Government shall promote the conservation and development of agricultural, marine, mineral, forest, water, land and other natural resources.

**Section 3.** Title to land may be acquired only in a manner consistent with traditions and customs.

**Section 5.** The State recognizes traditional rights and ownership of natural resources and areas within the marine space of the State, within and beyond 12 miles from island baselines. No action may be taken to impair these traditional rights and ownership, except the State government may provide for the conservation and protection of natural resources within the marine space of the State within 12 miles from island baselines.

**Section 6.** A foreign fishing, research or exploration vessel shall not take natural resources from any area within the marine space of the State, except as may be permitted by the appropriate persons who exercise traditional rights and ownership and by statute.

## VIIIE2 YAP STATE CODE

### ***VIIIE2a Introduction***

The information provided below is based on an unofficial version of the 1987 Code, as previously supplemented twice, and in 2000 was in the process of being updated. As the final version was not available to the authors of this report, it is important to note in particular the source laws set forth in the source following each Section of the Code.

### ***VIIIE2b Title 18: Conservation and Resources***

#### **Chapter 1: Yap Fishing Authority**

##### **§101. Short title.**

This chapter shall be known and may be cited as the "Fishing Authority Act of 1979".

**Source:** YDL 6-13 §1, modified.

**Cross-reference:** The statutory provisions on the State Fishery Zone are found in chapter 2 of this title.

##### **§102. Purpose.**

The purpose of this chapter is to create a legal entity to promote, develop, and support commercial utilization of living marine resources within the State of Yap pursuant to the provisions of Public Law No. 7-111.

**Source:** YDL 6-13 §2, modified.

**Cross-reference:** The constitutional provisions on conservation and development of marine resources are found in Yap Const., Art. XIII, Sections 1, 5, and 6. Those sections state:

"Section 1. The State Government shall promote the conservation and development of agricultural, marine, mineral, forest, water, land and other natural resources.

Section 5. The State recognizes traditional rights and ownership of natural resources and areas within the marine space of the State, within and beyond 12 miles from island baselines. No action may be taken to impair these traditional rights and ownership, except the State Government may provide for the conservation and protection of natural resources within the marine space of the State within 12 miles from island baselines.

Section 6. A foreign fishing, research or exploration vessel shall not take natural resources from any area within the marine space of the State, except as may be permitted by the appropriate persons who exercise traditional rights and ownership and by statute.

**§111. Yap Fishing Authority.**

There is created an authority of the State to be designated and known as the Yap Fishing Authority, hereinafter referred to as the Authority. The Authority's functions shall be governmental and public and it shall have the right to sue and be sued in its own name.

**Source:** YDL 6-13 §3, modified.

**Cross-reference:** The statutory provisions on Civil Proceedings are found in Title 31 of this Code.

**§112. Powers.**

The Authority, in addition to the powers and duties elsewhere conferred and imposed, shall have the following duties and powers:

(a) The Authority shall provide guidance to the State Government in establishing marine resources development policy.

(b) The Authority shall have the power to adopt and enforce rules and regulations concerning its operations and the exploitation of living marine resources as permitted by law.

(continues)

**Source:** YDL 6-13 §4, modified.

**Cross-reference:** Further duties, functions, and authority of the Yap Fishing Authority are set forth in section 208 of chapter 2 of this title.

**Chapter 2: State Fishery Zone**

**§201. Short title.**

This chapter shall be known and may be cited as the "State Fishery Zone Act of 1980".

**Source:** YSL 1-55 §1, modified.

**Cross-reference:** The statutory provisions on the Yap Fishing Authority are found chapter 1 of this title.

**§202. Purpose.**

The purpose of this chapter is to promote economic development and to manage and conserve living sea resources within the jurisdiction of the State of Yap pursuant to the Constitution of the Federated States of Micronesia and Section 1 of Article XIII of the Constitution of the State of Yap.

**Source:** YSL 1-55 §2, modified.

**Cross-reference:** Section 1 of Article XIII of the Constitution of the State of Yap reads: "The State Government shall promote the conservation and development of agricultural, marine, mineral, forest, water, land and other natural resources."

**§205. Baseline system defined.**

A baseline is a continuous line which encircles an island or atoll. The baseline from which the zones designated in this chapter are to be measured is as follows:

(a) The baseline of an island or portion of an island lacking a barrier reef, fringing reef, or other reef system is the low water line of the islands as marked on large scale charts officially recognized by the Government of Micronesia and Government of Yap.

(b) The baseline of an atoll or island or portion of an island having a barrier reef, fringing reef, or other system is a line following the contour of the seaward edge of the reef system, which line connects those outermost elevations of the reef which are above water at low tide, and which line exists as marked on large scale charts recognized by the Government of Micronesia and Government of Yap.

**Source:** YSL 1-55 §5, modified.

**Cross-reference:** Section 5 of Article XIII of the Yap Constitution states: "The State recognizes traditional rights and ownership of natural resources and areas within the marine space of the State, within and beyond 12 miles from island baselines. No action may be taken to impair these traditional rights and ownership, except the State Government may provide for the conservation and protection of natural resources within the marine space of the State within 12 miles from island baselines."

**§206. State Fishery Zone.**

The inner boundary of the State Fishery Zone of each island or atoll is the baseline as defined in section 205 of this chapter, and the outer boundary is a line, every point of which is twelve nautical miles seaward of the nearest point on the baseline as defined in section 205 of

this chapter. Waters landward of the baseline, including the lagoons of atolls or islands, are internal waters.

**Source:** YSL 1-55 §6, modified.

**Cross-reference:** Section 205 of this chapter is on the baseline system defined.

**§207. Submerged reefs.**

Traditionally recognized fishing rights wherever located within the State Fishery Zone and internal waters shall be preserved and respected.

**Source:** YSL 1-55 §7.

**Cross-reference:** Section 5 of Article XIII of the Yap Constitution states: "The State recognizes traditional rights and ownership of natural resources and areas within the marine space of the State, within and beyond 12 miles from island baselines. No action may be taken to impair these traditional rights and ownership, except the State Government may provide for the conservation and protection of natural resources within the marine space of the State within 12 miles from island baselines." The constitutional provisions on Traditional Leaders and Traditions are found in Yap Const., Art. III. The statutory provisions on Traditional Leaders and Traditions are found in Title 5 of this Code.

**§208. Yap Fishing Authority.**

In addition to duties and powers prescribed by chapter 1 of this title, the Authority shall have the following duties, functions and authority.

- (a) To adopt regulations for the conservation, management, and exploitation of all living resources in the State Fishery Zone and internal waters;
- (b) To negotiate and conclude foreign fishing agreements in accordance with section 210 of this chapter, with the advice and consent of the Micronesian Maritime Authority when a party to an agreement is a foreign government, subdivision of such government or entity thereof;
- (c) To issue foreign fishing permits in accordance with procedure established by the Authority or regulations promulgated pursuant to this chapter;
- (d) To require all foreign vessels to possess a permit before fishing in the State Fishery Zone; and
- (e) To rebate according to regulation approved by the Authority all or a portion of a fee collected pursuant to section 211(g) of this chapter from a joint fishing venture duly organized by law, if the rebate will promote fishery development within the State.

**Source:** YSL 1-55 §8, modified.

**Cross-reference:** The statutory provisions establishing the Yap Fishing Authority are found in chapter 1 of this title. Section 210 of this chapter is on foreign fishing agreements. Section 211 of this chapter is on fishing permits.

**§209. Foreign fishing permitted.**

No foreign fishing regulated pursuant to the provisions of this chapter is permitted in the State Fishery Zone except by valid and applicable permit issued under authority conferred by this chapter. Foreign fishing in internal waters is prohibited.

[continues]

**Source:** YSL 1-55 §9, modified.

**Cross-reference:** Section 6 of Article XIII of the Yap Constitution states: "A foreign fishing, research or exploration vessel shall not take natural resources from any area within the marine space of the State, except as may be permitted by the appropriate persons who exercise traditional rights and ownership and by statute."

**§211. Fishing permits.**

- (a) No foreign fishing vessel shall engage in fishing regulated pursuant to the provisions of this chapter in the State Fishery Zone unless such vessel has on board a valid permit issued under this section for such vessel.

[continues]

**Source:** YSL 1-55 §11, modified.

**Cross-reference:** Section 6 of Article XIII of the Yap Constitution states: "A foreign fishing, research or exploration vessel shall not take natural resources from any area within the marine space of the State, except as may be permitted by the appropriate persons who exercise traditional rights and ownership and by statute." The statutory provisions on the Yap Fishing Authority are found chapter 1 of this title.

**§212. Prohibited acts.**

- (a) It is unlawful for any person:
  - (1) To violate any provision of this chapter or of any regulation or permit issued pursuant to this chapter;
  - (2) To use any fishing vessel to engage in fishing after revocation, or during the period of suspension, of an applicable permit issued pursuant to this chapter;
  - (3) To violate any provision of, or regulation under, an applicable foreign fishing agreement entered into pursuant to this chapter;
  - (4) To refuse to permit any officer authorized to enforce the provisions of this chapter to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of this chapter or any regulation, permit, or agreement referred to in this chapter;

(5) To forcibly assault, resist, oppose, impede, intimidate, or interfere with any such authorized officer in the conduct or any search or inspection described in paragraph (a)(4) of this subsection;

(6) To resist a lawful arrest for any act prohibited by this section;

(7) To knowingly ship, transport, offer for sale, sell, purchase, import, to have custody, control or possession of any fish taken or retained in violation of this chapter or any regulation, permit, or agreement referred to in this chapter;

(8) To interfere with, delay, or pre-vent, by any means, the apprehension or arrest of another person, knowing that such person has committed any act prohibited by this section; or

(9) To conceal or destroy a vessel's registration, certification, and/or catch logbook and navigational documents.

(b) It is unlawful for any foreign fishing vessel, and for the crew, owner or operator of any foreign fishing vessel, to engage in fishing in the State Fishery Zone or internal waters unless such fishing is authorized by and conducted in accordance with a valid and applicable fishing permit issued pursuant to section 211 of this chapter.

(c) It shall be unlawful for any vessel with living quarters which are also used while the vessel is in port to enter the State Fishery Zone or internal waters with-out a waste holding tank of at least two weeks capacity. The Attorney General, or his designee, and the Environmental Protection Agency and environmental health representatives shall inspect all entering vessels to insure strict compliance with this subsection.

**Source:** YSL 1-55 §12, as amended by YSL 1-210 §1 and YSL 3-76 §1, modified.

**Cross-reference:** Section 211 of this chapter is on fishing permits.

### **§213. Civil penalties.**

(a) Any person who is found in a civil proceeding to have committed an act prohibited by section 212 of this chapter shall be liable to the Government of Yap for a civil penalty. The amount of the civil penalty shall not exceed \$75,000.00 for each violation. Each day of a continuing violation shall constitute a separate offense. In determining the amount of such penalty, the court shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, and history of prior offenses, and such other matters as justice may require.

(b) The State Attorney General is authorized to initiate all proceedings under this section and to recover the amount assessed as a civil penalty.

(c) Fifty percent (50%) of the proceeds of civil penalties for violations of section 212 of this chapter shall be deposited in the General Fund of the State of Yap; fifty percent (50%) of the proceeds of civil penalties for violations of section 212 of this chapter shall be held in a separate

trust account for the benefit of the municipality in whose boundary the violation occurred. The trustee of such separate trust account shall be appointed by the Governor and shall release trust funds to the residents of the municipality where the offense occurred pursuant to a plan, the purpose of which is to maintain, develop, and protect such municipality's marine resources or otherwise protect the well-being of the people of the municipality.

**Source:** YSL 1-55 §13, as amended by YSL 2-103 §1, modified.

**Cross-reference:** Section 212 of this chapter is on prohibited acts.

#### **§214. Criminal penalties.**

(a) A person is guilty of an offense if he commits any act prohibited by section 212 of this chapter.

(b) Any offense described as a prohibited act by section 212(a)(1), (2), (3), or (7), is punishable by fine of not more than \$50,000.00.

(c) Any offense described as a prohibited act by section 212(a)(4), (5), (6), (8), or (9), is punishable by a fine of not more than \$100,000.00, or imprisonment for not more than two years, or both; except that if in the commission of any such offense the person uses a dangerous weapon, engages in conduct that causes bodily injury to any officer authorized to enforce the provisions of this chapter, or threatens any such officer with bodily injury, the offense is punishable by a fine of not more than \$250,000.00, or imprisonment for not more than ten years, or both.

(d) Any offense described as a prohibited act by section 212(b), is punishable by a fine of not more than \$100,000.00. Each day of a continuing violation shall be considered a separate offense.

(e) Any offense described as a prohibited act by Section 212(c) is punishable by a fine of \$25,000.00. Each day of a continuing violation shall be considered a separate offense.

**Source:** YSL 1-55 §14, as amended by YSL 1-210 §2 and YSL 3-76 §2, modified.

**Cross-reference:** Section 212 of this chapter is on prohibited acts.

#### **§215. Forfeitures.**

(a) Any fishing vessel including its fishing gear, furniture, appurtenances, stores, and cargo used, and any fish taken or retained, in any manner, in connection with or as a result of the commission of any act prohibited by section 212 of this chapter shall be subject to forfeiture to the Government of Yap. All or part of such vessel may, and all such fish may, be forfeited to the Government of Yap pursuant to a civil proceeding under this section.

(b) A court of competent jurisdiction in the State shall have jurisdiction, upon application by the State Attorney General on behalf of the Government of Yap, to order any forfeiture authorized under subsection (a) of this section.

(c) If a judgment is entered for the Government of Yap in a civil forfeiture proceeding under this section, the State Attorney General shall seize any property or other interest declared forfeited to the Government of Yap, which has not previously been seized pursuant to this chapter.

(d) The forfeited vessel, gear, furniture, appurtenances, stores, cargo, and fish may be sold and the proceeds deposited in the General Fund of the State of Yap, or may be retained for use by, or at the direction of, the Government of Yap, or may be distributed by the Authority to persons whose traditional fishing rights have been violated by such vessel, provided however, that fifty percent (50%) of the net proceeds received from the sale of the forfeited vessel shall be distributed by the Authority to persons whose traditional fishing rights have been violated by such vessel.

(e) Pending completion of the civil forfeiture proceeding, the seized vessel, gear, furniture, appurtenances, stores, cargo, and fish, or any part thereof, may be discharged at the discretion of the court upon deposit with the court of a satisfactory bond or other security at least equal to the fair market value of the seized property. Such bond or other security shall be conditioned upon such person delivering such property to the appropriate court upon order thereof, without any impairment of its value, or paying the monetary value of such property pursuant to an order of such court. Judgment shall be recoverable on such bond or other security against both the principal and any sureties in the event that any condition thereof is breached, as determined by such court.

(f) Any fish seized pursuant to this chapter may be sold, subject to the approval and direction of the court. The proceeds of any such sale shall be deposited with such court pending the disposition of the civil forfeiture proceeding.

(g) For purpose of this chapter, it shall be a rebuttable presumption that all fish found on board a fishing vessel which is seized in connection with an act prohibited by section 212 of this chapter were taken or retained in violation of this chapter.

**Source:** YSL 1-55 §15, as amended by YSL 3-82 §1, modified.

**Cross-reference:** Section 212 of this chapter is on prohibited acts. The statutory provisions on the Judiciary are found in Title 4 of this Code.

[continues]

### **§217. Enforcement.**

(a) Primary responsibility for the enforcement of this chapter shall be assumed by the State Attorney General.

(b) Any officer who is authorized and appointed by the State Attorney General to enforce the provisions of this chapter, may:

(1) With or without a warrant or other process:

- (A) Arrest any person, if he has reasonable cause to believe that such person has committed an act prohibited by section 212 of this chapter;
  - (B) Board, and search or inspect any fishing vessel which is subject to the provisions of this chapter;
  - (C) Seize any fishing vessel used or employed in, or when it reasonably appears that such vessel was used or employed in, the violation of any provisions of this chapter;
  - (D) Seize any fishing gear, furniture, documents, appurtenances, stores, cargo, and fish in the possession of a fishing vessel seized pursuant to authority granted by subparagraph (C) of this paragraph; and
  - (E) Seize any other evidence related to any violations of any provision of this chapter.
- (2) Execute any warrant or other process issued by any court of competent jurisdiction; and
  - (3) Exercise any other lawful authority.

**Source:** YSL 1-55 §17, as amended by YSL 1-210 §3, modified.

**Cross-reference:** The statutory provision on the Office of the Attorney General is found in section 128 of Title 3 (Executive) of this Code. Section 212 of this chapter is on prohibited acts.

**§218. Severability.**

If any provision of this chapter or amendment or additions thereto, or the application thereof to any person, thing or circumstances is held invalid, the invalidity does not affect the provisions or application of this chapter or the amendments or additions that can be given effect without the invalid provisions or application, and to this end the provisions of this chapter and the amendments or additions thereto are severable.

**Source:** YSL 1-55 §18, modified

## **Chapter 4: Lagoons and Waters**

**§401. Petroleum disposal; acts unlawful.**

No person shall release or dispose or cause to be released or disposed in the State any petroleum product:

- (a) In or on the water within the lagoon;
- (b) On the shoreline below the high water mark;
- (c) On any part of the shoreline from which it is probable that it will seep or flow into the water within the lagoon; or

- (d) In or on the waters of the State Fishery Zone.

**Source:** YDC §6503, as amended by YSL 3-24 §1, modified.

**Cross-reference:** The statutory provision on the sale of petroleum products is found in section 401 of chapter 4 of Title 15 (Health and Welfare) of this Code. The statutory provision on penalties for intentional petroleum disposal is found in section 805 of Title 11 (Crimes and Punishment) of this Code. The statutory provision on penalties for negligent petroleum disposal is found in section 806 of Title 11 of this Code.

**§402. Damage to reefs; acts unlawful.**

- (a) Except as provided herein, no person shall damage or cause to be damaged:

(1) Any coral reef; or

(2) Any part of the natural environment that is important to the maintenance of a coral reef, including, but not limited to, seagrass areas and mangroves.

(b) Damage may be caused by, but shall not be limited to, physical injury caused by petroleum disposal and shipwrecks.

(c) This section shall not be interpreted to impair any existing private rights of action for civil damages, or to impair any citizen's traditional rights to fish or engage in other activities which may fall within the scope of subsection (a) above.

(d) A person who has fully complied with the requirements of section 1509 of this title shall be exempted from this section.

**Source:** YSL 3-25 §1, modified.

**Cross-reference:** Section 1509 of this title is on Environmental impact statement

## **Chapter 10: Wildlife Conservation**

**§1004. Protection of coconut crab.**

(a) No coconut crab, *Birgus latre* or "ayuy" whose shell is less than three inches in diameter measured at the base, shall be taken or killed within the State nor shall any such crabs be taken or killed during their breeding season each year and from June 1st to September 30th nor shall any such crabs be sold commercially in any wholesale or retail store licensed to do business in the State.

(b) **Penalties.** Any person who violates any of the provisions of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$100.00, or imprisoned for not more than 30 days, or both.

**Source:** YDC §2204, as amended by YDL 4-28 §1, modified.

**§1005. Protection of turtles.**

Turtle meat and turtle eggs shall not be sold commercially by any wholesale or retail store licensed to do business in the State.

**Source:** YDC §2207, as enacted by YDL 4-28 §2, modified.

**§1006. Protection of clams.**

The Governor is authorized to declare a harvesting season and to set a size limit for the taking or harvesting of clams. Clam meat shall not be sold commercially by any wholesale or retail store licensed to do business in the State.

**Source:** YDC §2208, as enacted by YDL 4-28 §3, modified.

**§1007. Penalties.**

Any person who violates any of the provisions of this chapter, shall, unless a section specifically provides otherwise, be guilty of a misdemeanor and, upon conviction thereof shall be punished by a fine of not more than \$500.00, or imprisoned for not more than 60 days, or both.

**Source:** YDC §2209, as enacted by YDL 4-28 §4, modified.

**§1008. Prohibited fishing methods.**

(a) Except as provided in subsection (b) of this section, no person shall knowingly catch any fish or other marine life by means of explosives, poisons, chemicals or other substances which kill fish or marine life, nor shall any person knowingly possess or sell any fish or other marine life caught by means of explosives, poisons, chemicals, or other substances which kill fish or marine life. The terms "poisons," "chemicals," or "substances" include but are not limited to hypochlorous acid or any of its salts, including bleaches commonly sold under various trade names, such as Clorox, and bleaching powders, preparations containing rotenone, tephrosin or plant material from *Barringtonia asiatica*, *Coculus ferrandianus*, *Hura crepitans*, *Piscidia erythrina*, *Tephrosia purpurea*, and *Wilkstremia spp.*

(b) The provisions of subsection (a) shall not apply where the Governor has given advance written permission to use the means prohibited, when determined to be in the public interest.

(c) Nothing in this section shall be construed to prohibit any fishing method used under custom and tradition, including use of local roots, nuts or plants.

(d) Criminal penalties. Any offense described as a prohibited act by subsections (a), (b), or (c) of this section, is punishable by a fine of not less than \$100.00 or more than \$2,000.00, or imprisonment for not less than six months or more than two years, or both.

**Source:** Part C of Chapter 2 of the Yap District Code, as amended by YSL 2-23 §1 that creates new YDC §2210, modified.

**§1009. Protection of *trochus*.**

(a) The harvesting of or in any way intentionally interfering with the growth of *trochus* in the waters of the State of Yap is prohibited except as provided in this section.

(b) The Governor may designate and vary from year to year an open season or seasons for such period of time as deemed advisable for the harvesting of *trochus* in the State. The open season may vary in different areas or islands within the State, and may identify certain reefs or sections thereof that shall be closed for the harvesting of *trochus*, notwithstanding the fact that the season is open. The Governor may place any and all restrictions on the size of *trochus* to be taken during the open season, and in enforcement of the open season the Governor may punish the harvesting, taking, purchasing, or selling of *trochus* outside the legal size limits or from a designated sanctuary. Public notice shall be given of the dates designated for the harvesting of *trochus*, the restricted sizes, and the reefs or islands that have been declared closed, if any.

(c) The Governor may, if it is deemed advisable, prohibit the harvesting of *trochus* during any given calendar year or years. Public notice shall be given of the prohibition.

**Source:** Part C of Chapter 2 of the Yap District Code, as amended by YSL 2-23 §2 that creates new YDC §2211, modified.

**§1010. Protection of seeded or planted species.**

No person shall take or harvest any species which has been seeded or planted by or on behalf of the State of Yap, knowing or having reason to know that such species was seeded or planted, except where the Governor has given express written permission authorizing the taking or harvesting.

**Source:** Part C of Chapter 2 of the Yap District Code, as amended by YSL 2-23 §2 that creates new YDC §2212, modified.

**§1011. Temporary moratorium for protection of species.**

The Governor may, upon convincing evidence that the population of a species, subspecies, or class of marine life is in imminent danger of dropping below a minimum desirable maintenance level, declare a temporary moratorium prohibiting the taking or harvesting of said marine life. The Declaration of Moratorium shall state any and all restrictions imposed on the taking and harvesting of marine life, including, but not limited to, size limitations and areas affected. Public notice shall be given of the moratorium. No person shall violate the Declaration of Moratorium.

**Source:** Part C of Chapter 2 of the Yap District Code, as amended by YSL 2-23 §2 that creates new YDC §2213, modified.

## **Chapter 15: Environmental Quality Protection**

**§1501. Short title.**

This chapter may be cited as the "Environmental Quality Protection Act".

**Source:** YSL 2-19 §1, modified.

**§1502. Public policy.**

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

(b) In order to carry out the policy set forth in this chapter, it is the continuing responsibility of the State of Yap to use all practicable means, consistent with other essential considerations of State policy, to improve and coordinate governmental plans, functions, programs, and resources to the end that the inhabitants of the State of Yap may:

(1) Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(2) Assure for all Yapese safe, healthful, productive and aesthetically and culturally pleasing surroundings;

(3) Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable or unintended consequences; and

(4) Preserve important historic, cultural, and natural aspects of Yapese heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice.

**Source:** YSL 2-19 §2, modified.

**Cross-reference:** The constitutional provision on public health is found in Yap Const., Art. XII, Sect. 1. That section states: "The State Government shall provide for the protection and promotion of the public health, which may include the traditional practice of medicine." The statutory provisions on Health and Welfare are found in Title 15 of this Code. The constitutional provisions on Conservation and Development of Resources are found in Yap Const., Art. XIII. Section 1 of Article XIII states: "The State Government shall promote the conservation and development of agricultural, marine, mineral, forest, water, land and other natural resources." The statutory provisions on Planning and Economic Development are found in Title 20 of this Code.

**§1503. Definitions.**

The following words, for the purpose of this chapter, shall have the following meanings:

- (a) "Agency" means the Yap State Environmental Protection Agency.
- (b) "Beneficial uses" means a use of the environment that is conducive to public benefit, welfare, safety or health and which requires protection from the effect of wastes, discharges, emissions and deposits.
- (c) "Chairman" means the Chairman of the Yap State Environmental Protection Agency personally or his duly authorized representative.
- (d) "Environment" means the physical factors of the surroundings of human beings and includes the land, soil, water, atmosphere, climate, sound, odors, tastes and the biological factors of animals and plants of every description situated within the territorial limits of the State of Yap including the State Fishery Zone.
- (e) "Land" includes buildings and any easements relating thereto.
- (f) "Person" means the Government of Yap State or the Federated States of Micronesia or any of their subdivisions or entity thereof, joint venture, association, firm, corporation, or company organized or existing under the laws of Yap State or any state of the Federated States of Micronesia or a foreign country, lessee or other occupant of property, or individual, acting singly or as a group.
- (g) "Pollution" means any direct or indirect alteration of the physical, thermal, chemical, biological or radioactive properties of any part of the environment by the discharge, emission or deposit of wastes so as to affect any beneficial use adversely or to cause a condition which is hazardous or potentially hazardous to public health, safety or welfare, or to animals, birds, wildlife, aquatic life or to plants of every description.
- (h) "Protection and management" includes all rules, regulations, methods and measures that:
  - (1) are required to build, restore or maintain, or are useful in building, restoring or maintaining the environment; and
  - (2) are designed to ensure that
    - (A) beneficial uses may be made on a continuing basis;
    - (B) irreversible or long-term ill effects on the environment are avoided; and
    - (C) there will be a multiplicity and variety of options available with respect to uses of the environment.
- (i) "State Fishery Zone" means the zone as specified to be the State Fishery Zone under Section 206 of the State Fishery Zone Act of 1980.

(j) "Waste" includes any matter prescribed by regulation to be waste, and any matter whether liquid, solid, gaseous, or radioactive which is discharged, emitted or deposited in the environment in such volume, component or manner as to cause an alteration of the environment.

**Source:** YSL 2-19 §3, as amended by YSL 3-73 §1, modified.

**§1504. Yap State Environmental Protection Agency created; membership; terms; vacancies; chairman, vice chairman; records; qualifications.**

(a) There is hereby established the Yap State Environmental Protection Agency to be composed of five members who shall be appointed by the Governor with the advice and consent of the Legislature. If the Legislature does not confirm an appointment within 30 days after it has been submitted to the Legislature, the appointment shall be deemed to have been withdrawn. The Governor in his appointment shall select persons who are FSM citizens and residents of Yap for their ability to inspire the highest degree of ability and confidence to carry out the policy and purpose of this chapter. The first appointments made under this provision of this section shall be made as follows:

- (1) One member for a period of three years;
- (2) Two members for a period of two years; and
- (3) Two members for a period of one year.

Each subsequent appointment shall be for a term of three years and shall, unless removed from office, be eligible for reappointment. Vacancies for unexpired terms shall be filled in the same manner as the original appointments. If the remaining unexpired term is less than one year, the Governor shall fill such vacancy without the advice and consent of the Legislature. Any member of the Agency may be removed from the Agency by the Governor or by the Agency for inefficiency, neglect of duty, or misconduct in office.

(b) The Agency shall elect from among its members a Chairman and a Vice-Chairman. The Governor shall designate a member to serve as a Chairman until such time as the Agency shall elect a Chairman.

(c) Compensation. Any member of the Agency who is an employee of the State Government shall be granted administrative leave with pay while engaged in the performance of the duties of the Agency. Non-State Government members of the Agency, who are not otherwise compensated, shall receive compensation of \$25.00 per day while engaged in the performance of the duties of the Agency. Members shall also be entitled to receive reasonable travel costs and per diem at standard Yap State rates when engaged in the performance of the duties of the Agency.

(d) Meetings. The Agency shall meet at least once a quarter. Meeting may be held at any time or place as determined by the Agency, or upon the call of the Chairman or upon written request of any two members. Three members of the Agency shall constitute a quorum for the

transaction of business. All meetings shall be open to the public, and public notice of time and place of such meetings shall be posted in public places and shall be announced on the radio throughout Yap State.

(e) Records. The Agency shall provide for the keeping of all of its records and actions. These records shall be open to the public for public inspection.

**Source:** YSL 2-19 §4, as amended by YSL 2-29 §1 and YSL 3-73 §2, modified.

**§1505. Officers; staff.**

The Agency shall designate a full time executive officer who shall administer the functions of the Agency and shall have such duties and responsibilities as may be delegated to him by the Agency. The executive officer shall not be a member of the Agency and shall not have the right to vote. The executive officer shall be assisted in his duties by supporting staff as the Agency deems necessary to implement the functions of the Agency.

**Source:** YSL 2-19 §5, modified.

**§1506. Technical, legal and other assistance.**

(a) At the request of the Agency, the Governor shall provide the Agency with necessary technical assistance through the departments, offices, and agencies of the State Government.

(b) The Attorney General shall provide legal assistance and representation to the Agency in any suit or prosecution brought by or against the Agency or against any member, officer, staff or agent of the Agency, and shall advise the Agency on matters of law whenever requested.

**Source:** YSL 2-19 §6, as amended by YSL 3-73 §3, modified.

**Cross-reference:** The statutory provisions on the Executive are found in Title 3 of this Code.

**§1507. Powers and duties of the Agency.**

The Agency shall have the power and duty to control and prohibit pollution of air, land, and water in accordance with this chapter and with the regulations adopted and promulgated pursuant to this chapter, and for this purpose is authorized and empowered to:

(a) Adopt, approve, amend, revise, promulgate, and repeal regulations, in the manner which is or may be provided by law, to effect the purposes of this chapter, and enforce such regulations which shall have the force and effect of law.

**Regulations: Earthmoving And Sedimentation Control**

**Summary:** *These regulations were promulgated by the Environmental Protection Agency ("EPA") pursuant to 18 YSC 1507 (a), as amended. They apply to all earthmoving activities, as defined.*

*The EPA Board may give notice to a person in violation of the intent of the Board to issue a Cease and Desist order or to order compliance forthwith with this subchapter or*

*order that they take remedial and preventative action. In the event of such notice to the person or persons, a request may be made to the Board by the persons affected within five (5) days after service thereof that the Agency holds a public hearing on the proposed order or orders on receipt of this request and public hearing shall be held in accordance with applicable provisions of the State Administrative Procedure Act. The Board may, at the conclusion of the hearing, or, at the expiration of the time set in the notice, issue the proposed order or orders. The order or orders shall be final on issuance by the Agency.*

*In the case of immediate and irreparable injury, which shall be presumed in the case of actual or presumed harm to the natural environment, the Agency may issue an emergency order to cease and desist and take remedial and preventative action, and such order shall take effect immediately and shall remain in effect until a hearing is held and final action is taken or the matter is otherwise resolved; but in no event shall such an emergency order remain in effect for more than twenty (20) days.*

*Any person who violates any provisions of these regulations or a Cease and Desist Order or other order of compliance with this sub-section shall be liable for civil penalties as provided in the Environmental Quality Protection Act.*

#### **Regulations: Oil Spill Reporting**

**Summary:** *These regulations were promulgated by the Yap State Environmental Protection Agency ("EPA") pursuant to 18 YSC 1507 (a), as amended. The purpose of these regulations is to implement the Yap State Environmental Quality Protection Act (Y.S.L. 3-73) by establishing a reporting system for all releases of petroleum products within Yap State. Recognizing the Yapese tradition of self-reporting, the purpose of these regulations is to allow for immediate response to all petroleum releases and to enable the responsible party to assist in the cleanup effort to minimize impacts to the environment.*

*Any person who violates any provisions of these regulations shall be liable for civil penalties or damages as provided by the Environmental Quality Protection Act. Notification received pursuant to these regulations shall not be used against any such natural person in any criminal case, except a prosecution for perjury or for giving a false statement.*

(b) Accept appropriations, loans, and grants from the Yap State Legislature, FSM Congress, the U.S. Government, the FSM National Government, or any agency thereof and other sources, public or private, which loans, grants, and appropriations shall not be expended for other than the purposes of this chapter.

(c) Adopt and provide for the continuing administration of a Yap State-wide program for the prevention, control, and abatement of pollution of the air, land, and water of Yap State, and from time to time review and modify such programs as necessary.

(d) Establish criteria for classifying air, land, and water in accordance with their present and future uses.

(e) Adopt and implement plans for the certifications of importers and applicators of restricted use pesticides, for the issuance of experimental use permits for pesticides and a plan to meet special local needs, and such other measures as may be necessary to carry out the purposes of this chapter.

(f) Establish and provide for the continuing administration of a permit system whereby a permit shall be required for the burning of any office, warehouse, store, barn, shed, cookhouse, boat, canoe, lumber, copra or any other building or shelter, crop, shrub, grass, timber or other property, or for the discharge by any person of any pollutant in the air, land, or water, or for the conduct by any person of any activity, including but not limited to, the operation, construction, expansion, or alteration of any installation, which results or may result in the discharge of any pollutant in the air, land, or water, provide for issuance, modification, suspension, revocation, and termination of such permits, and for the posting of an appropriate bond.

(g) Collect information and establish record keeping, monitoring and reporting requirements as necessary and appropriate to carry out the purposes of this chapter.

(h) Exercise all such powers as necessary for carrying out its duties.

**Source:** YSL 2-19 §7, as amended by YSL 3-73 §4, modified.

**Cross-reference:** The constitutional provision on public health is found in Yap Const., Art. XII, Sect. 1. That section states: "The State Government shall provide for the protection and promotion of the public health, which may include the traditional practice of medicine." The statutory provisions on Health and Welfare are found in Title 15 of this Code. The constitutional provisions on Conservation and Development of Resources are found in Yap Const., Art. XIII. Section 1 of Article XIII states: "The State Government shall promote the conservation and development of agricultural, marine, mineral, forest, water, land and other natural resources." The statutory provisions on Planning and Economic Development are found in Title 20 of this Code.

**§1508. Right of entry.**

Whenever it is necessary for the purposes of this chapter, the Agency, or any member, agent, or employee when duly authorized by the Agency or by court order, may, at reasonable times, enter any establishment or upon any property for the purpose of obtaining information, making inspections, obtaining samples, inspecting or copying records required to be maintained under the provisions of this chapter or any regulation made hereunder, or conducting surveys or investigations or detecting any offenses committed in violation of the provisions of this chapter or any regulation made hereunder.

**Source:** YSL 2-19 §8, as amended by YSL 3-73 §5, modified.

**§1509. Environmental impact studies.**

(a) All persons shall include in their development proposals an environmental impact assessment study in accordance with the provisions of this chapter and the regulations established by the Agency. Copies of the environmental impact assessment study shall be made available to the Agency, and to the public for inspection and copying.

**Regulations: Environmental Impact Assessments**

*Summary: These regulations were promulgated and issued by the Chairperson of the Yap State Environmental Protection Agency "EPA" pursuant to 18 YSC 1509 (a), as amended. The purpose of these regulations is to implement the Yap State Environmental Quality Protection Act (Y.S.L. 3-73) by establishing standard procedures for the preparation of an Environmental Impact Statement prior to any action proposed to be undertaken in Yap State that may significantly affect the quality of the human or natural environment.*

*In addition, these regulations are designed to integrate the EIA process into early planning of projects to ensure timely consideration of environmental factors and to avoid delays; and identify at an early stage the significant environmental issues requiring further study thereby defining the scope of the EIA.*

*Any person who violates any provisions of these regulations shall be liable for civil penalties or damages as provided by the Environmental Quality Protection Act, 18 YSC 1501, et. seq. In addition, any person who willfully provides any information that is false or misleading in any material particular in relation to the EIS or EIA process shall be liable for civil penalties or damages as provided by the Environmental Quality Protection Act, 18 YSC 1501, et. seq.*

*Nothing in these Regulations shall preclude the commencement of proceedings at law for an injunction or any other remedy or shall relieve a proponent from compliance with any other legal or statutory requirement.*

(b) All persons shall submit an environmental impact statement to the Agency, in accordance with the provisions of this chapter and the regulations established by the Agency, prior to taking any action significantly affecting the quality of the environment as determined by the Agency.

(c) The environmental impact statement shall include, but not limited to, statements certifying:

(1) That the environmental impact of the proposed action has been studied and considered by a competent and independent environmental agency;

(2) That alternatives to the proposed action have been given consideration;

(3) That any adverse environmental effects which cannot be avoided by adopting reasonable alternatives are justified by other substantial benefits to the state; and

(4) Any short-term uses of the environment are consistent with maintaining and enhancing long-term productivity or usefulness of the environment, or if not, why it is proposed that the action proceed regardless.

**Source:** YSL 2-19 §9, as amended by YSL 3-73 §6, modified.

**§1510. Annual report.**

The Agency shall submit to the Governor and the Yap State Legislature, not later than October 30 of each year a report on its activities for the preceding fiscal year.

**Source:** YSL 2-19 §10, modified.

**§1511. State and FSM EPB cooperation.**

(a) The Agency is authorized to enter into cooperative agreements with any appropriate FSM agency, or agencies, for the protection and management of the environment.

(b) Such function or functions when delegated to the Agency pursuant to this section may be reassumed and performed by the delegating body.

**Source:** YSL 2-19 §11, as amended by YSL 3-73 §7, modified.

**§1512. Violations and enforcement.**

Any person who violates any provision of this chapter or of any permit, regulation, standard, or order issued or promulgated hereunder, shall be subject to enforcement action by the Agency and the Attorney General of the State of Yap.

(a) **Discharges of waste.**

(1) When the Agency finds that:

(A) a discharge of waste is taking place, or is threatening to take place, in violation of the provisions of this chapter or regulations established by the Agency concerning requirements as to discharges; or

(B) the waste collection, treatment or disposal facilities of a discharger are approaching capacity, the Agency shall require the discharger to submit for approval by the Agency a detailed time schedule of specific action to be taken by the discharger to prevent a violation of the requirements as to discharges, and the Agency may approve the schedule subject to such modifications as it considers reasonably necessary.

(2) When the Agency finds that a discharge of waste is taking place, or is threatening to take place, in violation of the requirements as to discharges, the Agency shall issue a cease and desist order, and direct that the discharger:

(A) comply immediately with those requirements;

(B) comply with those requirements in accordance with a time schedule set by the Agency;  
or

(C) in the event of a threatened violation, take appropriate remedial or preventive action.

(b) Pollutants.

(1) Any person who:

(A) discharges any pollutant into the air or water, or on land in violation of this chapter or of any permit, requirement or order issued or made by the Agency under this chapter; or

(B) intentionally or negligently causes or permits any pollutant to be deposited where it is discharged into the air or water, or on land, shall, on the order of the Agency, clean up the pollutant or abate its effects.

(c) Civil penalties.

(1) A person who violates any provision of this chapter or any regulation made hereunder, shall be liable to a civil penalty in an amount not less than \$100.00 and not more than \$10,000.00 for each day of the violation.

(2) A public hearing may be conducted to determine the authenticity of the facts upon which the alleged violation is based, adequate notice of which, and opportunity to appear and be heard at which, shall be afforded to all interested persons.

(d) Declaratory and equitable relief.

(1) The Attorney General on behalf of the Agency or the State Government, a local government or any other person may maintain an action in the Yap State Court for declaratory or equitable relief against any person for the protection of the air, land, water or other aspect of the environment from pollution, impairment or destruction.

(2) Any person may maintain an action in the State Court for declaratory relief against the Government of the State of Yap, or any agency or instrumentality of the Government of the State of Yap for the protection of the air, land, water or other aspect of the environment from pollution, impairment or destruction.

(3) Subject to paragraph (4) of this subsection, if in an action under paragraph (1) or (2) of this subsection, the Court finds that any relevant standard or requirement fixed or made by the Agency or any other instrumentality or agency of the Government of the State of Yap is unreasonable, either generally or in the particular circumstances, the Court may apply, and may order the adoption of, a reasonable standard or requirement.

(4) Paragraph (2) of this subsection does not apply with respect to a standard or requirement fixed or made by State law or any other law applicable to the State, or by the Governor by virtue of powers conferred on him by law.

(e) Damages. Where a person violates any provision of this chapter or any regulation made hereunder, the Attorney General may maintain a civil action for damages in the Trial Division of the Yap State Court. Such action may be in addition to any civil penalties imposed hereunder. In determining such damages, the Court shall take into consideration all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurred, and corrective action, if any, taken by the violator.

(f) False statements. Any person who knowingly makes any false statement, representation, or certification in an application, record, report, plan, or other document filed or required to be maintained under this chapter, or by any permit, regulation or order issued under this chapter, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than \$100.00 and not more than \$10,000.00, or by imprisonment for not less than three months and not more than six months, or both.

(g) Falsifying monitoring systems. A person who falsifies, tampers with or knowingly makes inaccurate any monitoring system, system device or method required to be maintained under this chapter or under a permit, regulation or order issued or promulgated hereunder shall be guilty of a misdemeanor, and shall upon conviction be punished by a fine of not less than \$100.00 and not more than \$10,000.00, or by a term of imprisonment of not less than three months and not more than six months, or both.

**Source:** YSL 2-19 §12, as amended by YSL 3-73 §8, modified.

**Cross-reference:** The statutory provisions on the Judiciary are found in Title 4 of this Code.

**§1513. Supersession.**

Section 510 (1)-(7) of Title 63 of the Trust Territory Code (District Environmental Protection Advisory Boards) is superseded in its entirety.

**Source:** YSL 2-19 §13.

**§1514. Severability.**

If any provision of this chapter or any regulation or order promulgated hereunder, or the application of any such provision, regulation, or order to any person or circumstance shall be held invalid, the remainder of this chapter, or any regulations or orders promulgated pursuant thereto, or the application of such provisions, regulations, or orders to persons or circumstances other than those to which it is held invalid shall not be affected thereby, and to this extent the provisions of this chapter are severable.

## **VIIIF PLANNING FOR COASTAL MARINE PROTECTION**

### **VIIIF1 YAP STATE BIODIVERSITY STRATEGY AND ACTION PLAN ACTION PLAN**

The National Biodiversity Strategy and Action Plan outlines the state of the nation's biological resources and the current biological and human-related threats that are affecting their continued existence. The responsibility for the implementation of the actions identified in the NBSAP has been sanctioned to the four individual States of the FSM.

The Yap State Biodiversity Strategy and Action Plan (YBSAP) began in 1999 when, following a meeting of Traditional Leadership from throughout Micronesia, and Environmental Stewardship Consortium (ESC) was created to work cooperatively with Yap State Government to develop an environmental stewardship program for the State. The process of developing the YBSAP builds upon the efforts of the ESC. "Take care of Yap State" is the overall goal of the BSAP. A draft Action Plan was developed in November 2001 by the ESC, working in collaboration with task force created by the Governor.

The YBSAP was published in September 2004. Seven action areas address institutional arrangements, traditional knowledge, inventory and monitoring, bio-security, pollution, environmental awareness, research and capacity-building and developing stewardship programs and ecologically sustainable industries.

### **VIIIF2 INTERNATIONAL WATERS PROPOSAL**

In July 2002 an International Waters Proposal (IWP) was introduced to address the lack of a system by which local communities can address and manage two major contributors to decline of reef fisheries: relatively uncontrolled increase in fishing pressure and environmental damage (pollution).

The project's objectives were to:

1. Work with communities to define and clarify root problems relating to fisheries resources and develop their capacity to address these problems with assistance from relevant agencies;
2. Survey and demarcate Marine Protected Areas (MPAs) and surrounding areas and develop a context for their management;
3. Conduct surveys to gather data needed to enhance the design and function of the MPAs;
4. Increase fisheries resources through locally managed MPAs;
5. Gather data needed to manage external pressures on coastal fisheries exploitation;
6. Develop a co-management system that will integrate community desires and efforts with relevant government and non-government services and resources; and
7. Share information and experience from the project with others on Yap and elsewhere to enhance awareness and replication of the project within and beyond Yap.

The project involved four communities, which have demonstrated an interest in establishing MPAs. Each of these communities has expressed their willingness to protect portions of marine areas within their customary tenure as reserves.

The following partners are involved in the IWP, each with clearly defined responsibilities.

<b>Government</b>	<b>Non-Government</b>	<b>Project Personnel</b>	<b>Communities</b>	<b>Outside sources of assistance</b>
United Nations Development Programme (UNDP)	COP	Project Coordinator	IWP Community Council	South Pacific Regional Environment Programme (SPREP), Secretariat of the Pacific Community (SPC), etc.
SPREP	Community Reps (NRAC)	Admin. Asst./Accountant	Point persons	Marine Resources Pacific Consortium (MAREPAC)
FSM National Gov	ESC	Technical Advisor	Field Associates	The Nature Conservancy (TNC)
Yap State IWP Task Force	Yap CAP	Intern students	Community	Colleges & Universities (Queen's College, Lewis & Clarke College)
Marine Resources Management Division	Yap Institute of Natural Science			Coral Reef Research Foundation
DOE/SEED	YWA			Others

The four MPAs are meant to inspire other communities to establish their own MPAs. The co-management system and information base developed will support the establishment of additional MPAs. As the number of MPAs increase, the connectivity between MPAs will increase and thus contribute to an increase in fisheries resources. The basic pattern of the

project can be replicated so Yap’s project will be applicable to other islands in the region that are struggling to develop relevant systems of marine management.

As progress in implementation of the project has been much slower than expected (of the four original MPAs targeted, the current focus is on Riken only), a plan for its revitalization is in the works. Recommendations include the passage of enabling legislation for MPAs, establishment of a diving permit system, and legislation requiring the registration of motorized boats on Yap to help control illegal fishing.

## VIIG ANTHROPOGENIC THREATS TO COASTAL MARINE RESOURCES

The YBSAP refers to the National Plan with respect to anthropogenic threats, including bio-security, waste management, the conversion and degradation of habitat and ecosystems, and over-harvesting or over-exploitation of resources. The YBASP also describes the constraints on addressing these problems, including increasing human population, insufficient biodiversity legislation, lack of enforcement, insufficient skilled/trained human resources, and insufficient funding. The report stresses that solutions must be based on managing resources on a sustainable basis through community-based approaches and that the “precautionary principle” must be used in management decisions.

To meet these growing concerns, the YBSAP lists several activities that address anthropogenic threats, either directly or indirectly. A short description and timeline for implementation follows:

ACTION	LEAD AGENCY
Define roles of government agencies whose work relates to natural resources	Resource and Development
Evaluate traditional ways of managing erosion and sedimentation	Communities
Support ecologically sustainable traditional resource management practices	Attorney General, Resource and Development
Conduct baseline surveys of four potential MPAs	International Waters Project
Establish invasive species subcommittee of the ESC and develop a 5-year program	Department of Agriculture and Forestry
Develop appropriate program for mitigating coastal erosion	Department of Agriculture and Forestry
Enforce earthmoving regulations	Environmental Protection Agency
Explore alternatives to dredging	Public Works
Develop solid waste management strategy	Environmental Protection Agency
Install composting toilets in outer islands	YapCAP
Community waste management projects	Communities
Persistent organic pollution program	Environmental Protection Agency

Pesticide and hazardous chemicals program	Environmental Protection Agency
Waste oil removal project	Environmental Protection Agency
Develop oil spill contingency plan and legislation	Environmental Protection Agency
Map traditional marine water jurisdiction	Community of Rull
Map marine communities, document traditional management and evaluate best blend of traditional and scientific management system	Community of Rull
Identify fish spawning aggregation routes and sites	Community of Rull
Develop Municipal marine resource management program	Community of Rull

Foreign interests in the export of reef fish are an increasing issue with respect to the live fish trade in particular. An American citizen living in Hong Kong was recently denied a business license for such trade by the Attorney General, but the lack of a patrol vessel prevented any monitoring to ensure for compliance with the decision. In addition, legislation prohibiting such exports does not exist. Therefore, the decision to deny the permit by the Attorney General was based only on policy and not on law.

Commercial logging is also being proposed for Yap State, a potential threat to both terrestrial and marine resources.

## VIII PRIMARY AGENCIES AND ORGANIZATIONS RESPONSIBLE FOR COASTAL MARINE PROTECTION

### VIII1 ENVIRONMENTAL PROTECTION AGENCY

The Second Yap Legislature created the Environmental Protection Agency (EPA) through passage of the Environmental Quality Protection Act in 1987, which was amended in 1994. EPA is governed by a board appointed by the Governor and approved by the Legislature. The Agency designates a full time executive officer to administer the functions of the Agency and shall have such duties and responsibilities as may be delegated to him by the Agency. The executive officer is assisted in his duties by supporting staff as the Agency deems necessary to implement the functions of the Agency, including specialists in pesticide control, safe drinking water, and public education & awareness. There were nine EPA staff members in 2005, including support staff.

EPA has four main program areas: Pollution control, pesticides and hazardous chemicals; public education and awareness, and water quality. EPA has the following powers in order to control and prohibit pollution of air, land and water:

1. Adopt, approve, amend, revise, promulgate, and repeal regulations;
2. Accept appropriations, loans, and grants from the State, Federal and non-governmental sources;

3. Adopt and provide for the continuing administration of a Yap State-wide program for the prevention, control, and abatement of pollution and review and modify such programs as necessary;
4. Establish criteria for classifying air, land, and water in accordance with their present and future uses;
5. Adopt and implement plans concerning the use of pesticides;
6. Establish and provide for the continuing administration of a permit system whereby a permit shall be required for discharging pollutants into the air, land or water;
7. Collect information and establish record keeping, monitoring and reporting requirements as necessary and appropriate to carry out the purposes of this chapter; and
8. Exercise all such powers as necessary for carrying out its duties.

Many of the EPA requirements are set out in regulations promulgated under authority of Title 18 of the Yap State Code. These regulations include:

1. Environmental Impact Assessment Regulations
2. Oil Spill Reporting Regulations
3. Earthmoving and Sedimentation Control Regulations

Violations are subject to a civil penalty ranging from \$100.00 to \$10,000.00 for each day of the violation. The Attorney General, on behalf of the Agency or the State Government, a local government or any other person may maintain an action in the Yap State Court for declaratory or equitable relief against any person for the protection of the air, land, water or other aspect of the environment from pollution, impairment or destruction.

Any person who knowingly makes any false statement, representation, or certification in an application, record, report, plan, or other document is subject to a fine between \$100.00 and \$10,000.00, and/or imprisonment of 3-6 months. Although violators are subject to enforcement action by EPA and the Attorney General, EPA staff members are not provided specific law enforcement authority under Title 18 of the Yap State Code other than the authority to enter any establishment or upon any property for the purpose of obtaining information, making inspections, obtaining samples, inspecting or copying required records, or conducting surveys or investigations or detecting any offenses committed in violation of Chapter 15 or its regulations.

In 2005, approximately ten 'cease and desist' orders were issued by EPA. No fines were imposed although one oil spill case is still pending. Currently, most development projects involve the government. Many of the pollution matters EPA addresses involve discharge violations by the Department of Public Works, and are very difficult to resolve because it is a public agency. Rather than relying on the Attorney General's office to handle such cases, a private attorney might be more appropriate.

The Agency processes 20-30 earth-moving applications each year. Only one Environmental Impact Statement (EIS) was completed in 2005. Staff members often do not have the expertise to review an EIS involving proposed actions with significant impact on the environment. They also lack training in dealing with pollution cases of a catastrophic nature, such as large oil spills. They also lack training in handling dangerous chemicals and other hazardous wastes and do not have equipment or a laboratory for water testing. Training is also needed for EPA Board

members, currently from Public Works, Yap Cap, Marine Resources and the Yap Visitors Bureau.

## VIIIH2 MARINE RESOURCES MANAGEMENT DIVISION

The Marine Resources Management Division (MRMD) is a Division of the Department of Resources and Development (R&D). Other Divisions include Workforce Enrichment, Agriculture and Forestry, Commerce and Industry, and Land Resources. The R&D Department is charged with promoting “economic development and the conservation and development of agricultural, mineral, forest, water, and land and other natural resources.”

The MRMD has a Chief and six other positions: marine technician, marine technician aide, two marine resources specialists, a clerk, and a librarian. During the FY2005 budget cycle, the R&D Department cited the strategic goal of MRMD is to manage, conserve and develop the marine resources of Yap State in a manner that will provide the best possible economic and social benefit to the people of Yap both today and in the future.

The 2005 Performance Budget Summary listed two objectives: a marine resources assessment/resources inventory and marine resources development. Outputs under the assessment/inventory included assessments for *trochus* and clams, as well as fisheries data and statistics. However, as the Division has very limited capacity in the marine science area, there needs to be a mechanism in place to provide financial support to undergraduates who are working for MRMD.

A 2005 output under marine resources development was establishment of four marine protected areas in Yap’s main islands. This effort has apparently not been very successful and MRMD is currently only working with only one community in this regard. One of the reasons for this may be the MRMD’s lacking of liaison with the public. Local communities are often not aware of the Division’s work, even when taking place nearby.

MRMD responds to man-made disasters such as groundings and oil spills, along with EPA. It is also the lead agency for the International Waters Program. MRMD is not mentioned in the Yap State Code, nor are its roles or responsibilities legally defined elsewhere. However, as the Attorney General is responsible for enforcement of Title 18, Chapter 2 of the Yap State Code (“State Fisheries Zone”), that office may appoint officers to enforce its prohibitions. Such officers may, with or without a warrant 1) make arrests; 2) board, and search or inspect fishing vessels; 3) seize fishing vessels and other items as evidence; 4) execute any warrant or other process issued by any court of competent jurisdiction; and 5) exercise any other lawful authority. It stands to reason that such officers could be from MRMD, if they received training and were deputized by the Attorney General. However, this is currently not the case.

Equipment and supplies are lacking in many areas. MRMD is in critical need of a patrol vessel to reach outlying areas. However, as the role of the Division in enforcement is not defined, it is not clear exactly what laws it would be called upon to enforce. Even the *trochus* harvest is enforced by the police, and not MRMD.

### **VIII3 YAP FISHING AUTHORITY**

The Yap Fishing Authority is strongly supported by State legislation. The Authority has the following powers under Title 18, Chapter 1 (Yap Fishing Authority):

1. Provide guidance to the State Government in establishing marine resources development policy.
2. The power to adopt and enforce rules and regulations concerning its operations and the exploitation of living marine resources as permitted by law.

In addition, the Authority has the following powers under Title 18, Chapter 2 (State Fishery Zone):

1. To adopt regulations for the conservation, management, and exploitation of all living resources in the State Fishery Zone and internal waters;
2. To negotiate and conclude foreign fishing agreements in accordance with section 210 of this chapter, with the advice and consent of the Micronesian Maritime Authority when a party to an agreement is a foreign government, subdivision of such government or entity thereof;
3. To issue foreign fishing permits in accordance with procedure established by the Authority or regulations promulgated pursuant to this chapter; and
4. To require all foreign vessels to possess a permit before fishing in the State Fishery Zone.

Clearly, this legislation does not accurately reflect the current work of the Authority, which is mainly to sell ice to fishermen. The Authority has not, nor has it ever assumed any management role. Authority staff members do not possess the capacity to conduct scientific surveys or monitoring, and relies on MRMD or others for any scientific advice.

### **VIII4 YAP COMMUNITY ACTION PROGRAM**

The Yap Community Action Program, or YapCAP, was established in 1979. After the Yap Community Development Act was passed in 1995, YapCAP has been involved as the administering agency. YapCAP helps ensure that development and infrastructure projects at the community level are consistent with the State's overall development goals and policies.

Specific powers under Title 20 include promoting, encouraging and implementing development projects at the community level; adopting enforcing rules and regulations, receiving, coordinating and administering grants and funds and serve as a conduit for public funds; purchasing equipment, entering into contracts, and evaluating project proposals.

YapCAP's mission is to operate or support programs aimed at environmental and cultural preservation and other sustainable economic and social development programs in the pursuit of self-reliance for all Yap citizens.

Environmental goals include the following:

1. Implement the Yap Biodiversity Strategy and Action Plan to ensure the preservation of Yap's unique environment.
2. Work with communities to identify and develop environmental projects, and then link communities with the appropriate government agencies to aid implementation.
3. Seek funding for environmental projects identified by community groups and other environmental agencies, and administer and regulate the funds.

Current environmental projects in coastal marine areas include the **Ngulu Atoll Marine Conservation Project**, a locally managed marine conservation project, and a **Marine Turtle Conservation Project**. **NOTE:** The Locally Managed Marine Area (LMMA) Network is a Pacific Region-wide initiative that focuses on management of marine resources by local communities. The program endeavors to determine the conditions under which a locally managed marine area strategy works best, and why. Information about similar projects is shared between project managers and communities through a learning framework.

With consent from the Council of Tamol (Council of Outer Island Traditional Chiefs) and the community of Ngulu, YapCAP is working with all relevant stakeholders as well as outside support organizations to initiate and implement this project. Ngulu Atoll is not currently managed aside from some traditional practices and it is being targeted by local commercial fisheries, international commercial fisheries, and poaching. Since the community is the rightful owner of the marine ecosystem it is only rational that they be completely involved with the development of its management plan and implementing activities within it.

The neighboring islands of Yap State have been identified as important nesting and foraging areas for the Green turtle, *Chelonia mydas*, and Hawksbill turtle, *Eretmochelys imbricata*. The goals for the Marine Turtle Conservation Project include; establishing and implementing a community-based sea turtle research and conservation program for Yap State that will involve traditional leaders and local community members, surveying and identifying turtle stocks in key foraging and nesting areas, assessing mortality with harvesting data, assessing genetic stocks, promoting increased hatchling production at nesting beaches on Gielop Island, and collaborating with international sea turtle management and research groups.

## VIII DISCUSSION

During on-site discussions with stakeholders, there appeared to be general agreement that, even if all current legislation was effectively enforced, reef fish populations would still continue to decline due to local over-harvest. Currently, fish stock assessments are not available to provide a scientific basis to establish general harvest limits on the size and number of fish or specific fishing seasons. Therefore, the greatest priority in the short term is to identify and permanently establish Marine Protected Areas with regulations that will restrict or prohibit fishing activity in critical spawning and/or breeding areas for marine species. These areas, which will

contribute to the recently launched Micronesia Challenge and the FSM Protected Areas Network, will act as model MPAs for the rest of the state. Initially, establishment of such areas could be based on local knowledge and/or the ecological importance of the area and the willingness of local communities to protect the area. Harvest regulations for reef fish, including method of take, should be based as far as possible on current on population levels. A Rapid Ecological Assessment will provide the basis for such regulations, as well as justification for additional Marine Protected Area sites in future years.

While there is strong enthusiasm and support for a national Protected Area Network, most participants agreed that the development of a national law might be premature. Most participants felt that a national legislation/policy should only be developed to provide further assistance to State laws that recognize the resource management role of the local communities, resource users and other stakeholders. Therefore, the State should take the lead, with a national commitment to support the local process, especially while the traditional tenure system is still strong and active. They also felt that a State umbrella/comprehensive law (modeled after Pohnpei's MPA Act), which would be amendable to include new sites once the communities have given their support, would be suitable for Yap. But they stressed that such legislation must only be developed to support community/village conservation efforts.

Establishing community-based MPAs for management and protection of reef resources is essential. However, without involvement by the State during the process, the process by which decisions are made will lack consistency between communities and, in some cases, may even result in restrictions on fish and other human activities that are overly-harsh or too liberal. Such restrictions should also be backed up by State regulations, in order to ensure that they apply to violators outside the community and can be enforced by State officers, whenever necessary. Because of a lack of a legislative mandate, MRMD's role in on the use of coastal resources by communities in Yap, including enforcement, is minimal. The Yap Fishing Authority, the agency legally given the "responsibility for the conservation, management, and exploitation of all living resources in the State Fishery Zone and internal waters", has had little or no involvement in conservation, management, or enforcement activities. Instead, it is primarily a commercial operation and conducting very few activities in that area.

Under the current situation, the comprehensive recommendations contained in the YBSAP will not be implemented and enforcement of current and future restrictions surrounding reef fisheries will not take place without a transfer of the powers vested in the Yap Fishing Authority to MRMD. When this occurs, MRMD must be provided the resources to work with local communities in managing their marine resources by establishing new MPAs and their regulations and enforcing State wide restrictions such as fishing seasons, size restrictions and harvest methods.

Legislation is presently lacking to support the protection of species or limit methods of harvest. Only sea turtles, clams and *trochus* are protected in some degree, and the only restriction on method of harvest is the prohibition on fishing with explosives, poisons, chemicals, or other substances which kill fish or marine life. However, before these issues can be resolved, the roles and responsibilities of MRMD and the Yap Fishing Authority must be addressed legislatively.

Although legislation exists to impose penalties for polluting the air, water or land, EPA staff members are often frustrated by procedures not being followed in the permit application and approval process due to outside interests. There also seem to be barriers to moving a pollution case beyond the Chairman and through the adjudication process. As noted early the Attorney General's office does not normally receive cases from EPA. In addition, although EPA officers may enter private lands to document a suspected violation, they have limited search and seizure authority and no arrest powers. They also lack formal law enforcement training. Bills have been introduced in an Environmental Legislation Package to address some of these issues. **The Project Review Process (5-189)** creates a process of approval and permit issuance for all new development projects and research projects in Yap State. Certain large projects will require policy clearance by the Governor, the Legislature the Councils of Chiefs before moving forward. Once cleared, the project goes to interested agencies that make recommendations, which are passed to a review committee.

**Conservation of Coastal and Aquatic Resources (5-187)** would empower MRMD to conserve and protect coastal and aquatic resources. MRMD would work in consultation with affected communities to establish MPAs, establish seasons, limits, protected fish stocks or areas or other controls on fishing, designate legal and illegal fishing devices, equipment, and methods, prohibit activities that may adversely affect Yap's aquatic resources, biodiversity, or coastal areas, approve or disapprove fishing agreements entered into by the Yap Fishing Authority, prevent the unintentional introduction of species into State Waters, and monitor the health, viability, and sustainability of fish and their ecosystems.

**Authority and Proposed Designation of Marine Parks** would authorize the Yap Visitors Bureau to designate any area within the territorial and internal waters of the State, starting from the high water mark, as a marine park on the basis of its bio-diversity, aquatic life, or other aesthetic attraction to visitors. The Bureau must first obtain approval from the Council of Pilung, if such area is in Yap main islands, or the Council of Tamol, if such area is in the neighboring Islands. Neither the designation of a marine site as a marine park nor this Act would be construed as depriving any person of any customary or traditional user or property right to such site.

**Fisheries Management (5-188)** would revise the conservation powers and duties of the Yap Fishing Authority, which would implement the "precautionary approach" to fisheries management and transfers authority to issue commercial fishing permits to the Project Review Process. MRMD will remain primary responsible for conservation, but the Yap Fishing Authority will also have a role, in the way that it makes its management decisions. The bill would extend "internal" waters to include the top of the watershed to a line three miles from the fringing reef or low water line of the island or atoll. This means the "State Fishery Zone" would not begin until after the 3-mile point. It includes as part of the State waters submerged reefs "wherever located" that belong to the State and its people because of tradition and custom.

## VIIJ RECOMMENDATIONS

1. **MARINE PROTECTED AREAS: EPA, MRMD, AND YAPCAP SHOULD WORK TOGETHER WITH LOCAL COMMUNITIES IN SETTING ANNUAL GOALS FOR**

**ESTABLISHING NEW MARINE PROTECTED AREAS (AND ASSOCIATED REGULATIONS FOR THEIR PROTECTION) IN IMPORTANT REEF HABITAT.**

2. **MARINE RESOURCES MANAGEMENT DIVISION: THE DEPARTMENT OF RESOURCES AND DEVELOPMENT SHOULD PROVIDE MRMD WITH THE NECESSARY REGULATORY POWERS TO ENABLE IT TO FUNCTION AS A MANAGEMENT AND CONSERVATION AGENCY, INCLUDING AUTHORITY TO ENFORCE LAWS FOR PROTECTION OF THE MARINE ENVIRONMENT.**
3. **YAP FISHING AUTHORITY. THE YAP LEGISLATURE SHOULD DIVEST THE YAP FISHING AUTHORITY OF ITS MANAGEMENT AND ENFORCEMENT FUNCTIONS OR ENSURE THAT SUCH FUNCTIONS ARE UNIQUE AND SEPARATE FROM THOSE OF MRMD.**

**NOTE:** Recommendations 2 and 3 parallel those stated in the 2005 report, "Strengthening Yap State Government Services in Coastal Resources Management", by M.A. McCoy of Gillett, Preston and Associates, Inc. The report reflects an extensive analysis of the current situation in Yap State with respect to management of coastal resources and changes that need to be undertaken by State government in the long and short term to ensure for protection of areas vital to these resources.

4. **MOU WITH PUBLIC SAFETY: EPA AND THE DEPARTMENT OF RESOURCES AND DEVELOPMENT SHOULD DEVELOP AN MOU WITH THE DEPARTMENT PUBLIC SAFETY, WHEREBY PUBLIC SAFETY WOULD PROVIDE ASSISTANCE IN ENFORCEMENT ACTIONS.**
5. **RAPID ECOLOGICAL ASSESSMENT: EPA, MRMD AND YAPCAP SHOULD WORK TOGETHER TO ARRANGE FOR A RAPID ECOLOGICAL ASSESSMENT (REA) OF REEF FISH STOCKS.**
6. **WORKPLACE ASSESSMENTS: EPA AND THE DEPARTMENT OF RESOURCES AND DEVELOPMENT SHOULD ARRANGE FOR DETAILED WORKPLACE ASSESSMENTS OF THE LAW ENFORCEMENT UNITS / FUNCTIONS WITHIN EPA AND MRMD, AS FOLLOWS:**
  - a) Identify barriers to the effective implementation of law enforcement programs / activities for each agency (including strategic and operational level responses but excluding legislative provisions) and make specific recommendations for change;
    - Review the roles, responsibilities and duties of enforcement personnel;
    - Conduct organizational Training Needs Analysis (TNAs) with the view of identifying current and desired knowledge and skill levels of operational officers; review organizational, administrative and operational functions which would include examining agency records, workflow processes, officer caseloads, work hours, morale, leadership, supervision, supplies and equipment, and circumstances for potential political interference with agency operations (if any);
    - Make specific recommendations for changes within each agency; and
    - Develop a program implementation plan identifying priority areas of response.

- b) Conduct a resource and equipment audit to identify required resources / equipment needs to support effective and efficient operational responses;
  - Resources to include, a First Response Handbook, citation forms, template operational reports and auditable prosecution recording processes; and
  - Amend existing operational procedural guidelines to reflect current laws and policies.

**7. LAW ENFORCEMENT TRAINING: BASED ON THE IN-DEPTH ASSESSMENT, EPA AND THE DEPARTMENT OF RESOURCES AND DEVELOPMENT SHOULD ARRANGE FOR THE DEVELOPMENT AND IMPLEMENTATION OF A ONE-YEAR LAW ENFORCEMENT TRAINING PLAN FOR EPA AND MRMD, AS FOLLOWS.**

- a) Develop a training plan for all environmental law enforcement personnel;
- b) Develop curriculum and assessment tools (for both “on” and “off” the job components); and
- c) Implement and deliver 12 days “off the job” training sessions (1 day per month) and 12 days “on the job” training sessions (1 day per month)

**NOTE:** Combining law enforcement training for Yap officers with training for officers in the other FSM states may result in an informal marine law enforcement network for cross-training and sharing information within the FSM.

Recommendations 6 -7 are based in part on a project proposal developed by the Kosrae Island Management Authority, in consultation with Timothy R. Fenlon, a former Australian police officer who currently lives in both Kosrae and Pohnpei State, and his wife, Donna-Maree Wrembeck. Mr. Fenlon and Ms. Wrembeck were employed by the Queensland Police Service. Mr. Fenlon’s work included roles as Superintendent and as Inspector of Police, while Ms. Wrembeck was primarily involved in law enforcement education and training. Mr. Fenlon and Ms. Wrembeck have worked with KIRMA and the Department of Agriculture in designing a procedural guidelines manual for law enforcement officers, which would be used during the review and training. They would be excellent contacts to assist with the implementation of these recommendations, including monitoring activities that follow.

**8. LAW ENFORCEMENT MONITORING: MONITOR PROGRESS IN IMPLEMENTATION OF RECOMMENDATIONS 6-7 OVER A TWO-YEAR PERIOD**

- a) Periodically monitor the effectiveness of amended law/policies and enhanced levels of officer’s skills development over a two-year period, with updates reported each quarter and a final evaluation report at the end of two years.

## **VIK MEETINGS IN YAP**

General Meeting on 2/20/06 at YapCap

LAST NAME	FIRST NAME	TITLE	ORGANIZATION	E-MAIL	PHONE
CHIENG	CHARLES	EXECUTIVE DIRECTOR	YAP CAP	<a href="mailto:YCAP@MAIL.FM">YCAP@MAIL.FM</a>	350-2198
FILLMED	TINA	WATER QUALITY PROGRAM	EPA	<a href="mailto:TINA@MAIL.FM">TINA@MAIL.FM</a>	350-2113

**Threats and Needs Assessment of Coastal Marine Resources: Kosrae, Chuuk and Yap, FSM: June 5, 2006**

FREAD	VANESSA	ENVIRONMENT PROGRAM OFFICER	YAP CAP	<a href="mailto:FREADV_YAPCAP@MAIL.FM">FREADV_YAPCAP@MAIL.FM</a>	330-2395
GAJDUSEK	JESSE	DEPUTY DIRECTOR	DEPT. RESOURCES AND DEVELOPMENT	<a href="mailto:JTGRD@MAIL.FM">JTGRD@MAIL.FM</a>	350-2182
GILWAYOCH	THOMAS	VOLUNTEER BOARD MEMBER	RIKER VILLAGE	<a href="mailto:YOCHTUN@HOTMAIL.COM">YOCHTUN@HOTMAIL.COM</a>	350-4922
GORONG	THOMAS		KADAY VILLAGE		350-4949
LEDGERWOOD	RON	ASSISTANT ATTORNEY GENERAL	YAP OAG	<a href="mailto:RLEDGERWOOD@MAIL.FM">RLEDGERWOOD@MAIL.FM</a>	350-2105
TAFILEICHIG	ANDY	DIVISION CHIEF	MRMD	<a href="mailto:MRMEYAP@MAIL.FM">MRMEYAP@MAIL.FM</a>	350-2294/2350
TAYLOR	TIFFANY	PROGRAM SPECIALIST (GRANTS)	U.S. DEPT. OF INTERIOR	<a href="mailto:TIFFANY@USCOMPACT.ORG">TIFFANY@USCOMPACT.ORG</a>	808-525-5308
TORTELL	PHILIP	SPREP CONSULTANT	EML	<a href="mailto:TORTELL@ATTGLOBAL.NET">TORTELL@ATTGLOBAL.NET</a>	
YINUG	LEO		EPA	<a href="mailto:EPAYAP@MAIL.FM">EPAYAP@MAIL.FM</a>	350-2113

Meeting on 2/20/06 with EPA

LAST NAME	FIRST NAME	TITLE	ORGANIZATION	E-MAIL	PHONE
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YINUG	LEO		EPA	<a href="mailto:EPAYAP@MAIL.FM">EPAYAP@MAIL.FM</a>	350-2113

Meeting on 2/20/06 with Yap Cap

LAST NAME	FIRST NAME	TITLE	ORGANIZATION	E-MAIL	PHONE
CHIENG	CHARLES	EXECUTIVE DIRECTOR	YAP CAP	<a href="mailto:YAPCAP@MAIL.FM">YAPCAP@MAIL.FM</a>	350-2198
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TAYLOR	TIFFANY	PROGRAM SPECIALIST (GRANTS)	U.S. DEPT. OF INTERIOR	<a href="mailto:TIFFANY@USCOMPACT.ORG">TIFFANY@USCOMPACT.ORG</a>	808-525-5308
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Meeting on 2/22/06 with MRMD

LAST NAME	FIRST NAME	TITLE	ORGANIZATION	E-MAIL	PHONE
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TAFLEICHIG	ANDY	DIVISION CHIEF	MRMD	<a href="mailto:MRMEYAP@MAIL.FM">MRMEYAP@MAIL.FM</a>	350-2294/2350
TUN	THOMAS	PUBLIC AFFAIRS OFFICER	OPB	<a href="mailto:YCHUN@HOTMAIL.COM">YCHUN@HOTMAIL.COM</a>	350-4922

## VIII REFERENCES

NAME	TYPE	DATE
Summary of Proposed Environmental Legislative Package MRCMP Task Force and the Yap Environmental Stewardship Consortium	Memo	July 2002
Yap State International Waters Project Proposal	Proposal	July 2002
Title 20	Act	2002
Title 18	Act	2001
Yap Environmental Quality Protection Act	Act	
EIA Regulations	Regulations	
Pesticide Regulations	Regulations	
Oil Spill Regulations	Regulations	
Marine Park Bill	Bill	2004
Earthmoving and Sedimentation Control Regulations	Regulations	
IWP Salvage Action Plan, authored by Francis Ruegorong & Margie Falanruw	Memo	September 2005
Yap Biodiversity Strategy and Action Plan	Report	September 2004
Strengthening Yap State Government Services in Coastal Resource Management, authored by M.A. McCoy of Gillett, Preston and Associates	Report	July 2005
Legal Information System for FSM: <a href="http://www.fsmlaw.org/yap/index.htm">http://www.fsmlaw.org/yap/index.htm</a>	Website	N/A