

Strengthening Yap State government services in coastal resource management

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IWP-Pacific Technical Report (International Waters Project) no. 43



Global
Environment
Facility



United Nations
Development
Programme



Pacific Regional
Environment
Programme

SPREP IRC CATALOGUING-IN-PUBLICATION DATA

McCoy, Mike

Strengthening Yap State Government services in coastal resource management / by Mike McCoy. – Apia, Samoa : SPREP, 2007.

iv, 43 p. ; 29 cm. - (*IWP-Pacific Technical report, ISSN 1818-5614 ; no.43*).

ISBN: 978-982-04-0366-6

1. Coastal ecology – Yap State. 2. Coastal zone management - Regional planning – Yap State. 3. Coastal zone management – Law and legislation – Yap State. 4. Coastal zone management – Citizen participation – Yap State. I. International Waters Project (IWP). II. Secretariat of the Pacific Regional Environment Programme (SPREP). III. Title. IV. Series.

333.917 17

Originally written in 2005.

This study was funded under the International Waters Program (IWP). The views expressed in this report are not necessarily those of the publisher.

Cover design by SPREP's Publication Unit
Editing and layout: Mark Smaalders, IWP editorial consultant

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Acronyms

EPA	Environmental Protection Agency
EPIC	Economic Policy Implementation Council
IWP	International Waters Project
MAREPAC	Marine Resources Pacific Consortium
MRMD	Marine Resources Management Division
SPREP	South Pacific Regional Environment Programme
YapCAP	Yap Community Action Program
YBSAP	Yap Biodiversity and Strategic Action Plan
YFA	Yap Fishing Authority
YINS	Yap Institute of Natural Science
YSC	Yap State Code
YSL	Yap State Legislature

Summary of recommendations

1. Two basic institutional changes need to be made, through the introduction of relevant legislation:

- Provide the Marine Resources Management Division, through the Director of Resources and Development, with the necessary regulatory powers to enable it to function as a management and conservation agency
- Divest the Yap Fishing Authority of its resource management functions and enable it to operate as a support agency for (primarily domestic) private enterprise-driven fisheries development.

2. Adopt a means by which communities can propose government-supported regulatory actions, in order to engage communities in the coastal resource management process.

3. Create a structure that enables a coordinated review process to function, within the overall framework of planning and economic development in Yap. This is will benefit the management and conservation of all natural resources in Yap, but particularly coastal aquatic resources.

Introduction

The ability of a government to provide useful and appropriate services that support and guide sustainable coastal resources development, management, protection and conservation is determined largely by three factors: (1) the clarity of the institutional roles and mandates given to the various government agencies concerned, (2) the appropriateness of the structure created to fill those roles and carry out mandates, and (3) the human and other resources that are applied to the required tasks.

This report reviews the environment and resource-management legislation and policies for key agencies involved in coastal resource management: the Yap Fishing Authority (YFA), Marine Resources Management Division (MRMD) and the Environmental Protection Agency (EPA).¹ It proposes changes to the current roles of YFA and MRMD, and offers suggestions on how available human and financial resources can be applied to implement the necessary changes. This study is not intended as a management plan or comprehensive approach to all aspects of management of coastal resources in Yap. The focus here is on institutional blockages to improved coastal resource management, a topic that lends itself best to the production of a relatively few succinct recommendations that can be implemented through legislative and/or administrative action.

In discussing the roles and objectives of government agencies, terms are used that sometimes mean different things to different people. References to “resources management” are based on a broad definition of the term, encompassing the controls that government places on the extraction of resources in support of established objectives or in response to perceived problems. For brevity, most references to “coastal resource management” usually include coastal resources development, management, and conservation. References to coastal resources alone to be made clear by the content.

The term “development” is used here in a broad sense, referring to all human economic activities modifying the environment rather than to a more specific use such as improvement of standards of living (Cooney 2004). When speaking of a “community” or “communities” the usual reference is to villages or specific geographic locations such as discrete islands within atolls that support human habitation on a full-time basis.

Some terms defy definition and must remain as they are. Foremost among these is “conservation”, a term that can mean different things to different people and refer to different levels of resource preservation or utilization. It is likely that the difficulty in definition of this and other similar terms is one of the reasons why none of the legislation creating the Executive Branch of government, YFA or EPA contains any definition of this (and other) terms commonly employed in the discussion that follows.

This study was undertaken at the request of the Yap International Waters Program. The intended audience includes the decision-makers within the Yap State administration and Yap State Legislature. The work undertaken included a visit to Yap during the period 18–23 June 2005, and to Guam 24–25 June 2005, where key people were consulted (see Appendix 6), and relevant documentation acquired (see list at conclusion of the report).

The author² thanks the Yap IWP Coordinator, Vitt Foneg, for his assistance during the visit to Yap, and Joseph Giliko, Director of Resources and Development and his staff (including the Chief of Marine Resources) and to all those who took the time to discuss and clarify important issues relevant to the study. Background and technical assistance was graciously provided by Dr. Margie Falanruw of the Yap Institute of Natural Science, and Charles Chieng of YapCAP.

¹ The applicable agencies were chosen by Yap State Government prior to commencement of the project, and include the role of the Resources and Development Department, of which MRMD is a part.

² Consultant with Gillette, Preston and Associates.

1 Legislative review

1.1 Overview

The FSM Constitution, Article IX, expressly delegates to the FSM Congress the power to “regulate the ownership, exploration, and exploitation of natural resources within the marine space of the Federated States of Micronesia beyond 12 miles from island baselines.” Article VIII of the FSM Constitution states that “A power not expressly delegated to the National Government or prohibited to the states is a state power”.

Yap State’s waters consist of the internal waters and the State Fishery Zone. The latter includes those waters within “12 miles from island baselines”. An “island baseline” is defined in the Yap State Code for 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). The Internal waters are defined in the Yap State Code as “waters landward of the baseline, including the lagoons of atolls or islands”.

The Yap State Constitution states that:

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 (Article XIII, Section 5).

There is some ambiguity in that internal waters are not mentioned, and government intervention is clearly allowed only in what became the State Fishery Zone, i.e. from the baselines to 12 miles.³

The Constitution also states that “The State Government shall promote the conservation and development of agricultural, marine, mineral, forest, water, land and other natural resources”.

During the 2004 Constitutional Convention held in Yap, Proposal No. 2004–39 was introduced and later passed. This proposal, along with other proposals passed during the Convention, is expected to be presented to voters during the 2006 general election. It appears that the proposal seeks to eliminate current ambiguity and further introduce the concept of sustainable development. The relevant proposals are to amend Section 1 of Article XIII to read (changes in *italics*):

Section 1 The State Government may provide for the protection, conservation *and sustainable* development of agriculture, 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 *from the high water mark up to 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 protection, conservation, and sustainable development* of natural resources within the marine space of the State *from the high water mark up to* 12 miles from island baselines.

In addition to the Constitution, there are several statutes relating to resource development and conservation in the Yap State Code that are important to understand. It is useful to briefly

³ In spite of this situation, the legislation creating the Yap Fishing Authority gave it the power “to adopt regulations for the conservation, management, and exploitation of all living resources in the State Fishery Zone and internal waters” (18 YSC §208)

review the evolution and history behind the development of this legislation to better understand the current situation.

1.2 Legislative and administrative history of coastal resource management in Yap

The legislative history of coastal resource management in Yap clearly shows the legislators' preference for agencies with environmental management responsibility to be governed by boards or commissions rather than line agencies of the State Government. The reasons for this are unclear. They may be rooted in a general distrust of line agencies engendered by the Trust Territory experience, a desire to spread out responsibility among representatives from various sectors, a desire to exert control through the advise and consent process, a general predisposition towards government by consultation and consensus, or a combination of these or other factors.

1.2.1 *Marine Resources Division*

Government marine resources agencies in Yap have a history of under-funding and lack of support. The first governmental Marine Resources Division in Yap was created under the Trust Territory in 1973 at a time when all lines of authority and responsibility went through the local District Administrator directly to the Marine Resources Division at Trust Territory headquarters in Saipan. For at least four years, the Yap Marine Resources Division consisted of two people: a District Fisheries Officer and a secretary/clerk. Although the division was charged with developing fisheries in the then Yap District, few funds were made available through the Trust Territory. Later, after the Congress of Micronesia became involved, almost all financial support for projects came directly from the Congress in the form of district appropriations outside of Trust Territory budgetary support.

In contrast to the government marine resources department, the Fishing Authority has enjoyed financial and other support from the outset. Fishing authorities as institutions came about because the Congress of Micronesia was highly unsatisfied with the lack of attention to and development of marine resources in the Trust Territory. The Congress created and funded Fishing Authorities in each district to encourage local development and bypass the Trust Territory bureaucracy in Saipan.⁴

The years 1979–1980 were a transition period in Yap's history. The 12-mile State Fisheries Zone was created and the Yap District Legislature enacted District Law 6–12 organizing the Executive Branch of the State of Yap. The Department of Resources and Development (R&D) was organized into the Divisions of Agriculture and Forestry, Marine Resources, Tourism and Commerce, Labor, and Land Management. The R&D department was charged with promoting “economic development and the conservation and development of agricultural, mineral, forest, water, and land and other natural resources.” There was, however, no specific mention of the responsibilities of the Marine Resources Division.

A subsequent law, Yap State Law 2-38, passed by the Second Yap State Legislature, renamed the Marine Resources Division the “Marine Resource Management Division” (MRMD) but did not further define its responsibilities. This situation has continued to this day, with almost a complete lack of legislative definition of the mandate, role and responsibilities of MRMD.

⁴ These Fishing Authorities were autonomous in each Trust Territory District, controlled by a board and given the mandate of fostering the development of local fishing through the development of fishing cooperative associations. As part of this legislation, Yap District Fishing Authority was created in 1974 and given operational funds as well as seed funds for a loan program. In actual practice, the Trust Territory Marine Resources Division in Yap worked closely with the Yap Fishing Authority, and the Yap Fisheries Officer served as Chairman of the Authority's board.

1.2.2 Yap Fishing Authority

In 1979, the Yap Legislature (still known as the Yap District Legislature) enacted District Law 6–13 creating the Yap Fishing Authority (YFA) as a successor to the entity created under the Trust Territory six years earlier. Known as the Fishing Authority Act of 1979, the new law significantly changed the previous role of YFA and gave the Authority certain duties and powers relating to development and exploitation of marine resources as a quasi-government body. For example, it was given the power to “adopt and enforce rules and regulations concerning its operations and the exploitation of living marine resources as permitted by law.”

The Authority is governed by a board that is appointed by the Governor and approved by the Legislature. Members are to have a “significant interest in the utilization of marine resources”, a criteria that could apply to almost everyone in Yap.

As is now described in the Yap State Code (YSC), YFA is charged to “provide guidance to the State Government in establishing marine resources development policy” (18 YSC §§111–112). YFA is also statutorily mandated to “promote, develop, and support commercial utilization of living marine resources within the State of Yap.”

Later in 1980 the Yap State Legislature (YSL) enacted Yap State Law 1–55 that added to the responsibilities of YFA by making it responsible for management of “internal waters and the State Fishery Zone”. The key provision of the law relative to this management is found in Title 18, Chapter 2 (State Fishery Zone), Section 208, subsection (a) where the YFA is empowered:

(a) To adopt regulations for the conservation, management, and exploitation of all living resources in the State Fishery Zone *and internal waters* (emphasis added);

The inclusion of “internal waters” is a key point; not only for the reasons relating to the ambiguities contained in other portions of the law, but because these additional conservation and management powers effectively took over what were previously powers of the Marine Resources Division during the previous Trust Territory Administration. Those powers were hardly ever exercised, however, as the major thrust continued to be towards development of marine resources (as opposed to management).

It is likely that “internal waters” were included in the YFA mandate because it was already the agency responsible for fisheries development in Yap, and at the time that development usually centered on inshore resources.

The context of this portion of Yap State Law 1–55 is important to understand. In 1979 FSM was engaged in negotiations with foreign fishing entities for use of the 200-mile Extended Fishery Zone, and there was some sentiment at the national level that foreign vessels would be interested in access to various state 12-mile Exclusive Fishery Zones. The impetus for the legislation was thus to ensure Yap State had adequate control over its 12 mile Exclusive Fishery Zone and be in a position by itself to either accept or reject overtures for its utilization⁵. As such, YFA was empowered to enter into foreign fishing agreements for use of the State’s 12 mile zone.

1.2.3 Environmental Protection Agency

In another piece of important legislation, the Second Yap Legislature created the Environmental Protection Agency (EPA) through passage of the Environmental Quality Protection Act in 1987. The law was amended by the Third Yap Legislature in 1994. EPA is governed by a board (termed “the agency”) of members appointed by the Governor and approved by the Legislature. The Governor is required to select persons “...for their ability to

⁵ FSM legislation at the time closed a potential loophole by making it a national offense for foreign vessels to fish in the 12-mile state zone(s) without approval of the state(s) concerned. There was considerable encouragement to states at the time to enact their own 12-mile legislation.

inspire the highest degree of ability and confidence to carry out the policy and purpose of this chapter”.

Powers and duties of EPA as well as requirements for environmental impact studies to be included in “development proposals” are part of the law. Many of the EPA requirements are set out in regulations promulgated under authority of Title 18 of the Yap State Code. These regulations include:

- Environmental Impact Assessment Regulations
- Oil Spill Reporting Regulations
- Earthmoving and Sedimentation Control Regulations

1.2.4 Other Significant Legislation

Other laws that have a bearing on the conservation and management of marine resources in Yap are found in Title 18 of the Yap State Code. There are three major provisions that:

- Prohibit the sale of turtle meat, turtle eggs, or clams in stores licensed to do business in the State
- Prohibit fishing with explosives, poisons, chemicals, or other substances which kill fish or marine life
- Prohibit harvesting of trochus except during declared seasons

1.3 Proposed legislative changes, 2002

During the formative years of Yap State’s existence, succeeding administrations likely saw little need to address inconsistencies in the administrative arrangements for marine resource management due to the nature of government-driven marine resources activities undertaken at the time. YFA undertook investigations and instruction in fishing the outer reef slope and distant reefs, and began to develop tuna longline fishing, including inshore and deep slope fishing using vessels obtained through Japanese aid. MRMD operated a number of projects, including giant clam re-seeding and trochus re-seeding.

Throughout the 1980s, there was little imposition of effective management controls on Yap State’s coastal resources by either MRMD or YFA. A notable exception was the MRMD management of the trochus harvest, which in any case did not occur every year during the period.⁶

In the early 1990s MRMD’s focus began to change as projects began to address research on resources such as marine turtles. MRMD also took the initiative in to develop a Marine Resources and Coastal Management Plan (completed in 1994). Implementation of the plan seems to have languished during the 1990s, but major elements were revived beginning in about 2000.

Several legislative bills were developed over the period 2000-2002 that sought to address the perceived shortcomings in administrative arrangements relating to marine resources conservation and management. These efforts are said to have included input from numerous people at MRMD, Yap CAP, the Attorney General’s Office, and YFA, among others.

The key legislative proposals affecting coastal resource management resulting from these efforts were:

- Bill No. 5–187: “To amend Title 18 of the Yap State code by adding a new Chapter 12

⁶ Between 1979 and 1990 the trochus season was open during only 7 times and during the latter years of that period Marine Resources itself did not unilaterally control activities but became a part of a Trochus Harvest and Protection Review Committee (Fanafel, 1992).

- regarding conservation of coastal and aquatic resources, and for other purposes”.
- Bill No. 5–188: “To amend Title 18 of the Yap State Code, regarding the duties and responsibilities of the Yap Fishing Authority, by amending Subsections (b), (j), (l) and (m) of Section 112 and Sections 113, 151, 161, and 65 of Chapter 1 and Chapter 2 in its entirety, and for other purposes.”
 - Bill No. 5–189: “To amend title 20 of the Yap Sate Code by adding a new Chapter 6, creating a coordinated review process and a review committee for certain new projects, and for other purposes”.

None of these bills were acted upon by the Fifth Yap State Legislature. It is understood that they were returned to the Department of Resources and Development for review with the intention that the Legislature would entertain their re-introduction at a later time.

With the dissolution of the Fifth Legislature these bills ceased to exist at the legislative level and must be re-introduced to be considered again by the Sixth or subsequent Legislatures. It is further understood that the Sixth Legislature would still entertain their re-introduction by the Department of Resources and Development in amended form. Since there apparently were no public committee hearings on these bills, there were no committee reports and it is not clear what the sense of the Legislature was regarding possible amendments to the original drafting.

The content of the two bills dealing with MRMD and YFA represents the thinking of a group of Yap State administrators and staff on several new directions for the management and conservation of marine resources. It is thus useful to briefly review the key contents of the proposed legislation as they related to adjusting the responsibilities of MRMD and YFA.

The third proposed piece of legislation, the “coordinated review process”, was intended to create an entirely new section of Title 20 of the Yap State Code, the section that deals with planning and economic development. Parts of the proposed review process were intertwined with certain actions or powers granted to YFA in the now-defunct bill relating to that organization.

The importance of the content of these bills (even though the bills themselves are defunct) is that they appear to represent the culmination of coordinated activity and thought on the institutional aspects of coastal resource management, development and conservation.⁷

1.3.1 Major Provisions of Previously Drafted Legislation Relating to MRMD

The drafting of the now-defunct Bill No. 5–187 provided for certain powers, duties and authorities to be conferred on MRMD that reflected the generally-accepted role of a government resources management agency, such as the ability to establish seasons or fishing limits for the purposes of protecting fish stocks. There were also some powers conferred that, in retrospect, it seems unusual to grant to a division of the Government (e.g. the authority to approve or disapprove fishing agreements entered into by YFA). There were also duties that appear somewhat unusual (which one would expect a resource management agency to undertake without legal directive) but which may have fit the situation at hand. One of these required NRMD to compile scientific literature and use that knowledge base in its conservation practices. The complete listing of proposed powers and duties appear in section 1205 of the document in Appendix 1.

The Bill also envisioned a top-down approach to the rule-making process, one that would be undertaken “in consultation with the affected communities”. The rule-making process was also

⁷ During the course of the study, several key members of the legislative and administrative branches of government referred to these bills as such. There does not appear to have been a furthering of either the principles or details in the original contents of the legislation. The Legislature feels that the ball has been sent back to the Administration’s side of the court, and the Administration has not focused yet on revamping or resubmission.

to be subject to the State Administrative Procedure Act, which calls for hearings and an opportunity for review by the general public.

Enforcement of the proposed chapter was to be assumed by the State Attorney General. Employees of MRMD (and EPA) authorized by the “heads of those entities” were also authorized to “make inspections, obtain information, obtain samples, inspect or copy records, conduct surveys, or do anything else reasonably designed to detect a possible violation of any limit, rule, or decision promulgated by MRMD”.

1.3.2. Major Provisions of Previously Drafted Legislation Relating to YFA

Legislative Bill No. 5–188, also defunct, contained some proposed changes to the existing YFA mandates and responsibilities, but left the YFA structure intact. The section describing the purpose of the legislation refers to the purpose of fisheries management and development in Yap as being “to ensure the long-term conservation and the sustainable utilization of the State’s fishery resources”. The Bill also created links to the proposed legislation creating a Project Review Process in Bill No. 5-189 (which is also defunct).

The proposed bill left the powers of YFA to regulate fishing within State waters intact, although regulations adopted had to be “based on the precautionary approach”. In addition, new powers were granted to devise, operate or manage pilot aquaculture projects, and to develop or assist private enterprise to develop fisheries, and to provide relevant information regarding such fisheries to the public.

Several sections of the proposed Bill were devoted to fishing for reef fish in State waters and internal waters:

- (1) Fishing could only be done by a State citizen or visitor (but the visitor had to be accompanied by a State citizen and fish for noncommercial purposes only).
- (2) Fishing had to be done “in accordance with traditional property rights and custom and tradition”.
- (3) All fish taken had to be entirely used or consumed within the State, with export of fish for personal consumption allowed, provided the fish was cooked prior to exportation and exported only in the quantities established by regulations.

Two other provisions touched on subjects of marine resources utilization:

- sport fishing was made subject to the regulation and approval of MRMD, and
- shark finning, the practice of cutting the fins from sharks and discarding the carcass, was prohibited.

A provision also stated that the introduction of species not otherwise occurring in a particular habitat in Yap was prohibited, and a final catch-all declared that “all fishing or aquaculture in State waters was subject to control and regulation by the Authority and MRMD”.

1.3.3. Major provisions of previously drafted legislation proposing a coordinated review process

The purpose of the proposed legislation was to “provide a consistent and efficient approval process for development projects and research projects; to increase the level of public participation in economic development; and to ensure that all development and research projects minimize their impact on the culture, history, society, traditions and environment of Yap.”

Permits would be required of “development projects involving construction, land or marine alteration, movement, fill, removal, disposal or any other modification and that are not of an ongoing nature”. A completion certificate would also be required. Exempt would be traditional structures and traditional practices; new residential structures or additions to new residential

structures; new commercial structures or additions under 200 square feet in total floor area.

Permits would also be required for research. Approval of such permits would be by the Councils of Chiefs. The proposed legislation further set out a review process, and creates a “review committee” to review all permit applications. MRMD was included on this proposed committee, as well as the Natural Resources Advisory Council,⁸ EPA, Office of Planning and Budget, Small Business Center, Commerce and Industry, Agriculture, and Forestry.

2 Key agencies and organizations involved in coastal resource management

2.1 Institutional roles in coastal resource management policy

An examination of the responsibilities for formulation and execution of coastal resources policy within the government is useful in defining the roles and responsibilities of the departments and agencies concerned.⁹ Adoption of a policy should result in an overall plan approved at high levels of government, and that plan should specify those institutions or persons responsible for implementation.

In Yap, the Legislature formulates policy through the passage of laws and resolutions. Generally, the Administration implements policies set out in legislation; however from a practical standpoint, it also has available to it several avenues for policy formulation. It may, for example, allocate resources (organize, propose budgets, and provide staff) to departments to better suit a given policy. It may also adopt a policy proposed by others, as was the case in the endorsement of the Yap State Biodiversity Strategy and Action Plan endorsed by the Governor in September, 2004.

An example of a legislative policy statement followed by an overall plan for implementation can be found in the legislation that created EPA. The EPA enabling legislation states:

...that it is the continuing policy of the State of Yap, in cooperation with the FSM National Government, 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. (18YSC §1502)

Statements that can be later referred to as policy can also be generated at various conclaves and meetings, such as the Yap State Summit. That meeting, for example, produced a goal for marine resources:

To manage through development, exploitation and conservation, the marine resources of Yap State in a manner that will provide the best possible economic and social benefit to the peoples of Yap both today and in the future.

Leaving aside the issue of how management through “development and exploitation” might take place, the Summit agreed on a course of action:

Achievement of the goal will mean using the marine resources more intensively and extensively to generate production, while ensuring that the resources can continue to support production.¹⁰

⁸ The Natural Resources Advisory Council (NRAC) was proposed in different legislation but has not been created.

⁹ As used here, policy means a definite course or method of action selected from among alternatives and in light of given conditions to guide and determine present and future decisions on a particular topic or topics.

¹⁰ It must be said that adoption of such a course of action on the assumption that available resources can support commercial development appears somewhat out of place, particularly in the face of perceptions of diminishing inshore

The leadership of both the administrative and legislative branches can also play a role in setting policy on coastal resource management at a country-wide level. The highest assembly of FSM leaders, the Economic Policy Implementation Council (EPIC)¹¹ adopted a resolution on March 17, 2005 that endorsed priorities for coastal zone management. These included:

1. the creation of a national policy framework on coastal zone management that would be endorsed by government leaders;
2. public awareness of laws and regulations relating to coastal resources and public education on sustainable practices;
3. updating relevant laws and regulations taking into account emerging issues and available scientific data;
4. community-based involvement in management; and
5. reliable funding, especially for public education and marine surveillance and enforcement.

At the state level, the Governor and his Cabinet, including the Director of R&D, should be active in setting and carrying out government policy within the legal confines established by the Legislature. As shown above, at its inception R&D was charged with “development and conservation of ...marine resources”, but has been given little further direction.

2.2 Current institutional mandates, roles and responsibilities

2.2.1 Marine Resources Management Division

MRMD is headed by a Chief who reports directly to the Director of Resources and Development. In addition to the Chief, staffing reflected in the FY2005 budget includes six positions: marine technician, marine technician aide, two marine resources specialists, a clerk, and a librarian.

As noted in section 1.1, since its inception the MRMD has not had a legal definition of its role or responsibilities. It has functioned, more or less, as a *de facto* marine resources manager with direction from the Director of R&D. The current MRMD Director also has input into the decision-making processes and oversight of other agencies through membership on at least two boards and commissions. The Chief of MRMD is currently a member of the Environmental Protection Agency.¹²

The lack of a legal definition of MRMD’s role or responsibilities for 26 years has not prohibited the Yap State Government from funding and supporting the division, however. During the FY2005 budget cycle, the R&D Department cited the strategic goal of MRMD to be:

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.

MRMD is not directly engaged in developing policy but rather is a vehicle for implementing government policy. At present, primary guidance is to come from the administration, particularly the Department of Resources and Development, which is charged with promoting

resources.

¹¹ The Council consists of the FSM President, FSM Congress Speaker, four state governors and the presiding officers of the state legislatures.

¹² The appointments to the EPA are made on an individual basis by the Governor with the advice and consent of the YSL; there is no requirement for MRMD to be represented on the Board. The MRMD Chief is also a member of the IWP Task Force.

economic development and the conservation and development of agriculture, mineral, forest, water, land and other natural resources (3 YSC §125).

The core FY 2005 budget was approved at USD 97,097, of which USD 62,601 (64%) was for personnel. The Performance Budget Summary listed two objectives: a marine resources assessment/resources inventory and marine resources development. The former include the following outputs:

- Trochus stock assessment
- Clams assessment and inventory
- Coral reef study and inventory
- Invertebrate and mollusk inventory
- Fisheries data and statistics

Marine resources development outputs were listed as:

- Establishment of four marine protected areas in Yap's main islands
- Development of 18 marine educational programs, visits to all Yap outer island schools.

MRMD is the lead agency (along with EPA) called upon to respond to man-made disasters such as groundings and oil spills. MRMD has access to a considerable amount of equipment that has been made available to Yap through the Marine Resources Pacific Consortium (MAREPAC) based at the University of Guam. The Division is also the agency designated by the State Government to house the GEF-funded International Waters Project implemented by SPREP.

2.2.2 Yap Fishing Authority

As a legal entity created to “promote, develop, and support commercial utilization of living marine resources within the State of Yap”, YFA has been given the role of providing “guidance to the State Government in establishing marine resources development policy” (18 YSC §112).

YFA in 2005 is best described as being “a shadow of its former self”. YFA’s mandate contained in Title 18 of the Yap State Code remains the same, but its current activities revolve primarily around providing ice and some services to local fishermen and others.

YFA is still entwined in several business ventures undertaken with other government entities. It is a partner with the FSM National Fisheries Corporation in the now defunct Yap Fresh Tuna, Inc. (YFTI) that built an ice and fish processing facility on the dock in Yap.¹³ In turn YFTI became a partner with Micronesian Petroleum Corporation (MPC) of Kosrae in a fuel supply venture in Yap.

It is worth noting that YFA is “exempt from taxation and business regulation by the State or by any political subdivision or public corporation thereof” (Yap State Code).

YFA is controlled by a Board of Directors appointed by the Governor with the advice and consent of the Legislature. The Board consists of five members, with the requirement that Directors possess “a significant interest in the utilization of marine resources”. Terms on the Board are for two years and may be renewed. A new Board has been appointed recently, and the Chairman is the Director of Resources and Development.

The initial role given YFA (as contained in Chapter 1 of Title 18) is to promote, develop, and

¹³ It is understood that a \$4 million loan from the FSM Development Bank for construction of the facility is still outstanding, and the current Governor of Yap has issued an Executive Order directing his staff to investigate the various financial and legal implications to Yap of this and related failed ventures.

support commercial utilization of living marine resources within the State of Yap. As described in section 1.1 of this report, this mandate was expanded in 1980 to include responsibility for the conservation, management, and exploitation of all living resources in the State Fishery Zone and internal waters. Under the current legislation, YFA is given powers, duties and responsibilities in three major areas:

- the formulation of marine resources development policy,
- the promotion, development and support of commercial utilization of living marine resources in Yap
- the operation of the Authority as a tax-exempt quasi-governmental organization involved in marine resources exploitation.

The complete listing of powers and duties granted YFA can be found in Appendix 2. An important final clause provides that:

- (r) The enumeration of specific powers and duties under this section shall not be deemed to be exclusive.

After 1980 the increased YFA's mandate included the power to "adopt regulations for the conservation, management, and exploitation of all living resources in the State Fishery Zone and internal waters". The 1980 legislation also addressed the management of the State Fishery Zone. YFA was given the powers to negotiate and conclude foreign fishing agreements for the State Fishery Zone, issue foreign fishing permits and through those powers manage the Zone.

It is not clear if YFA has ever actually exercised the powers given it to adopt regulations concerning "conservation, management and exploitation" in internal waters. No regulations could be found during the study; if they do exist, few people are aware of them.

YFA has also never exercised its powers to conclude a foreign fishing agreement for use of Yap's State Fishery Zone. This is probably a result of a lack of desire locally in having industrial fishing vessels operate close to the islands. A contributing factor is a general disinclination of foreign fishing interests targeting pelagic species to involve themselves in negotiations at the state level that would likely result in additional payments for a relatively small area in which to fish.

2.2.3 Environmental Protection Agency

In the legislation creating Yap's EPA, "environment" is defined as the physical factors of the surroundings of human beings and includes the land, soil, water, atmosphere, climate, sound, odors, tastes and the biological factors of animals and plants of every description situated within the territorial limits of the State of Yap including the State Fishery Zone.

Yap State's Environmental Protection Agency consists of five members appointed by the Governor with the advice and consent of the Legislature. The legislation creating EPA requires the Governor to "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". Members serve 3 year terms that may be renewed. The current Chairman is the head of the Yap Community Action Program.

Day to day activities of EPA are handled by an Executive Officer chosen by the Agency. The EO is assisted by a staff of 9: two Pollution Control Specialists, two Pesticide Control Specialists, Safe Drinking Water Specialist, Public Education & Awareness Specialist, Water Quality Technician, Administrative Assistant, and Clerk.¹⁴

According to the Planning and Budget office, EPA's FY05 budget amounts to \$123,845. This

¹⁴ Some positions appear as "vacant" on budget documents, and it is understood that at least one overseas volunteer is assigned to EPA.

may not reflect the entire EPA budget, since as a semi-autonomous agency EPA may seek extra-budgetary assistance for certain projects. The four program areas identified in the EPA FY2005 budget are:

- Pollution control
- Pesticides and hazardous chemicals
- Public education and awareness
- Water quality

The EPA is an implementer of policy. The tools it has been given include the ability to promulgate as well as enforce regulations, and to set up and administer a permit system. The specific powers granted to EPA in Title 18 are listed in Appendix 3.

2.2.4 Councils of Chiefs

The Yap Constitution provides for a Council of Pilung and Council of Tamol which “shall perform functions which concern tradition and custom”. The Constitution further requires that “due recognition shall be given to traditions and customs in providing a system of law, and nothing in this Constitution shall be construed to limit or invalidate any recognized tradition or custom.

In practice many Yap State Government departments often consult with the relevant Chiefs Council before taking action that may have an impact on culture or tradition. In a place such as Yap, where the importance of culture and tradition are closely linked to everyday life, many government actions can be seen to have such an impact. As a result government departments often make the Councils aware of major proposals or activities, particularly if those proposals or activities have a direct impact on village life.

2.3 Linkages between principle government agencies active in coastal resources activities

There are few direct institutional linkages between the government agencies described above. Three different types of linkage are identified here as existing in Yap’s State Government:

1. those undertaken through informal consultations;
2. those that come about as a result of appointed *ad hoc* groups; and
3. those that result from cross memberships on appointed Boards or Steering Committees.

As a result of Yap’s relatively small size and the pervasiveness of government as an employer, most everyone knows (or is related to) others in government. This can facilitate informal consultations on issues of interest or concern.

When the State is faced with particular crises, such as the consequences of natural or man-made disasters like as storms and ship groundings, it is not unusual for the Governor to appoint a “task force” or other ad hoc group to address the problems at hand.

Some linkages between agencies occur through membership on Boards or steering committees. For example, the Chief of MRMD happens to be a member of the EPA, and the Director of R&D is a member of the YFA Board.

For YFA and EPA, the membership is determined by the Governor, with the advice and consent of the Legislature. There are no requirements for specific government positions to be represented on the either the YFA Board or as members of the EPA. The only requirement for appointees to the YFA Board by the Governor is that they must be persons “with a significant interest in the utilization of marine resources”. In the case of EPA, the Governor is directed to “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”.

2.4 Institutional Capacities

During the short time available in Yap, it was not possible to completely assess the current institutional capacities of the three major governmental bodies engaged in coastal resources activities. Some generalizations can be made for MRMD.

2.4.1 *Marine Resources Management Division*

MRMD was seriously affected by the affects of Typhoon Sudal in 2004. The day-to-day work program can best be described as appearing relatively light, however there are periods of intense work in response to natural and man-made disasters such as ship groundings, oil spills and the aforementioned typhoon.

There does not appear to be any regular collection of local fisheries data, including export data, although the manpower for such a program exists within the Division. Rhodes (2003) noted that in Yap, “stock analyses, including those of spawning aggregations, will require a substantial time and monetary contribution from international conservation and funding bodies, since none of the local government or conservation agencies currently have any baseline data on their stocks.”

Earlier, a study by Walton (1999) indicated that:

In some respects it could be considered desirable to have more highly qualified personnel on staff, however the current technical capacity of MRMD appears adequate for present and likely future programs provided more specialized technical advisory input is obtained as required.

In the FY 2005 Performance Budget Summary, the MRMD work program’s largest budgetary item was for a clam assessment and inventory, and the second and third largest are for trochus stock assessment and an invertebrate and mollusk inventory, respectively. These three projects concentrating on sedentary species represents about 36 percent of the total MRMD budget and may reflect the expertise and knowledge of current staff in the species covered.

2.4.2 *Yap Fishing Authority*

As indicated in section 2.1.2 above, there are two aspects to the operations of YFA: its management role in marine resources, and its commercial activities.

The management role is, for all intents and purposes, non-existent. There are no activities dealing with marine resources management at present, and it does not appear that there have been many in the 25 years since the Authority’s inception. The YFA staff does not possess the capacity to conduct scientific surveys or monitoring, and would rely on MRMD or others for any scientific advice.

YFA staff indicated that its commercial activities are funded by its daily revenue, which stems primarily from the sale of ice and income from a repair shop. A management summary of income and expenses for the first 9 months of the current fiscal year showed net income of USD 744 on total revenues of almost USD 84,000. The greatest revenue was received from ice sales USD 38,673 (46%), and services and rentals USD 30,175 (36%). The largest expenses appear to be salaries (including overtime) of USD 26,494 (32%), and utilities (including phone) USD 32,294 (39%).

The Director of R&D, who was recently appointed Chairman of the YFA Board, indicated that an appropriation of USD 80,000 from the Yap Legislature several years ago is still being used by YFA, with approximately one-half of that amount remaining.

3 Needed changes in the institutional arrangements for coastal resource management

Four reasons are given below for implementing adjustments to institutional and administrative arrangements for coastal resource management. These ideas are not new, having been discussed since the 1990s. Taken together, they make a strong case for the need to revisit and adjust the way in which the government approaches coastal resource management from an administrative standpoint.

3.1. Greater recognition of the shift away from exploitation towards conservation of coastal resources

Among the several indicators that point to the need for institutional changes in Yap State Government's approach to management of coastal resources, particularly fishery resources, is the recognition that exploitation and commercial development needs to be secondary to protection and conservation. An example of the changing attitudes towards management policy formulation can be found in the discussions of the marine resources policy matrices developed by the Second and Third FSM Economic Summits.

At the Second Economic Summit (1999), the policy matrix echoed the rhetoric of the 1990s and prior years, calling for increased commercial development, which contributed to an impression of unrealistic commercial development expectations. The matrix noted the need for commercial development to be "sustainable" but argues heavily for creating an environment favorable for business operations, providing infrastructure, and encouraging foreign investment in the inshore fisheries sector.

Review of the matrix by a Coastal Fisheries Consortium meeting attended by delegates from Yap and convened by the FSM national government in Pohnpei in December, 2000 acknowledged that the matrix contained a number of weaknesses, and recommended an amendment to:

Take a precautionary approach to management of inshore resources and refrain from promoting or allowing commercial exploitation for export until it is determined to be ecologically sustainable.

By the time the Third FSM Economic Summit was held five years after the previous one, changes in attitudes towards inshore fisheries had changed dramatically. The policies requiring implementation were identified as consisting of:

- Prioritizing traditional and subsistence use over commercialization.
- Integration of marine resource management with economic planning, land use, watershed management, or atoll management wherever appropriate.
- Encouraging states to develop and implement state biodiversity strategic action plans in coordination with local communities.
- Promoting the development and implementation of co-management arrangements, particularly at the community level.
- Ensure fair and equitable use of marine environment.

3.2 The need for institutions to address priority areas of coastal resource management

The current reality is that MRMD has little impact on the use of coastal resources by communities in Yap. This situation is not unique to Yap, as Foale (2006) has noted. Even when regulations are enacted by a government, there is no guarantee that communities will follow

them. As an example, a World Bank study of comparative coastal resource management in five countries found that 42 percent of respondents at the village level were unable to identify at least five government coastal fishery management regulations (World Bank 1999).¹⁵

YFA, 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 or management, has historically been involved in the commercial sphere and is struggling to survive on a day-to-day basis.

Given the current situation, the recommendations of the Yap Biodiversity Strategy and Action Plan (YBSAP) would appear difficult to implement without changes to MRMD’s role and the consequential changes to those of YFA. The Action Plan specifies several important programs that need to be undertaken to promote stewardship of natural resources. Under the heading of “Marine Stewardship”, the YBSAP calls for establishment of programs that would be useful for government to establish, endorse and support. The programs proposed in the Plan would:

- regulate fishing seasons;
- designate fishing zones and protected areas, especially to protect routes of spawning aggregations and sites of spawning;
- set species-specific lower and upper size restrictions and to minimize the use of small nets; and
- collect catch and export data.

The YBSAP also recognizes the need to pass legislation to control the export of inshore and near-shore marine resources, and to take the precautionary approach “in which a marine resources commercial industry is not initiated until it has been shown to be sustainable”.

On a national level (reflecting attitudes of the state leadership), the Third Economic Summit put forward the following strategic goal: “Inshore fisheries resources are well managed and economic utilization is maximized within sustainable levels”. Specific activities endorsed in support of the strategic goal include:

- Establish and maintain Marine Protected Areas, as appropriate (MPAs may be temporary, seasonal, and/or shifting, especially in line with traditional practice).
- Promote community-based management of inshore resources incorporating traditional knowledge.
- Establish extension services on sustainable production in artisanal fisheries.
- Enforce marine resource conservation laws and promote safe practices.
- Promote community-based monitoring and enforcement.
- Increase exposure of students to marine studies at primary, secondary and post-secondary levels.
- Improve collection, analysis and dissemination of data regarding marine species composition in readily understood language (for management purposes).
- Effectively manage and control the export of live marine resources.

Many of the activities and programs listed above are not easily accommodated within existing legal or institutional arrangements in Yap, and will require significant changes to existing structures.

¹⁵ The countries were Fiji, Palau, Samoa, Solomon Islands and Tonga. In almost all study sites within these countries villagers were unfamiliar with government-imposed bans on the taking of turtles; even when they were known, they were most often ignored.

3.3 The need for institutions and government agencies to be given direction and adjust to the uniqueness of Yap

Yap is unique in the degree to which traditional marine tenure arrangements have been preserved, both in Yap proper and in the outer islands. Inshore fishery management institutions in the state need take into account community input to a greater degree, and to develop and strengthen ties to communities, which are currently very weak.

This does not mean, however, that the traditional system of resource and reef tenure alone guarantees effective stewardship. The over-exploitation of some resources (e.g. sessile resources such as clams; turtles; and various resources in proximity to the state center of Colonia) clearly demonstrates a need for government intervention on behalf of the public at large. There are also resources that may be more remote or the use of which are unknown or poorly understood. In these situations a government role in management is important to provide technical guidance and to make decisions on the use of such resources based on the common good of the greater community as a whole.¹⁶

It is difficult to see how government intervention from MRMD in such areas can become effective without an appropriate legal mandate and direction from policy makers. In the absence of such a mandate, either MEMD must either determine work priorities on its own, or depend on constant attention and direction from the Department of Resources and Development. Neither course of action is desirable from an administrative or practical perspective.

3.4 The need to eliminate the dual role of YFA

There have been several calls for adjustment of the mandate given YFA in earlier legislation. A report on Yap's coastal fisheries by Yap delegates to a Coastal Fisheries Consortium meeting in Pohnpei in 2000 indicated that adjustment of YFA's dual role as both a development agency and a management agency needed to be considered. The 1994 Marine Resources and Coastal Management Plan began an on again-off again dialog among departments and with the Yap State Legislature that eventually resulted in the 2002 introduction of legislation to remedy this and other perceived institutional shortcomings.

One of the major problems created by YFA's dual role is that, as a regulator, it clearly needs to be funded by the government, lest it become incapable of carrying out its functions. But as a development agency/resource exploiter it would be expected to produce revenue to support its operations.

The dual roles can cause two major problems. First, in circumstances where government funding was not forthcoming at a level required, it would leave the regulatory function dependent upon commercial success in what it has already learned is a very difficult business. Since regulatory functions are not necessarily reduced during periods of financial loss, conservation activities could suffer. When periods of financial gain are experienced, the tendency would be to put those profits back into the business side in search of further profits.

Second, it could be very difficult for YFA to take required management or conservation measures against its own fishery operations in a situation where those operations contributed significantly to the Authority's finances. Even relatively peripheral activities such as the operation of an ice plant or operating an air freight service could cause YFA to seriously compromise its regulatory or conservation roles. Such commercial activities not only rely on increased fishing activity to increase potential profitability, but YFA's commercial

¹⁶ During the course of collecting information for this report, the R&D Director was asked about administration's level of authority for investigating and permitting proposed projects in which Yap had no prior experience (e.g. collection of "live rock" for the aquarium trade, or live reef fish for the food fish trade). His answer was that there was little authority, and that they would have to rely on the villages and chiefs to assess such projects and approve or disapprove.

involvement could influence approvals for competing private enterprises.¹⁷

4 Recommendations

4.1 Overview

The recommendations put forward in this report recognize the complexity of the current situation and the degree to which prior recommendations for the organization and management of coastal resources have not, for whatever reason, been implemented.

Initial changes

Given the past history of proposals for institutional change (and the lack of action on most of these), it is believed that changes should be introduced gradually and incrementally, with the dual objectives of (1) enabling community-based resources management structures to evolve, and (2) providing those communities with a measure of confidence in the capacity of Yap State Government to fulfill its role in conservation and protection of coastal resources.

Two basic institutional changes need to be made at the outset:

- Provide MRMD, through the Director of Resources and Development, with the necessary regulatory powers to enable it to function as a management and conservation agency; and
- Divest YFA of its resource management functions and enable it to function as a support agency for primarily domestic private enterprise-driven fisheries development.

The third change is to give the R&D Director greater responsibility for guiding MRMD and participating in the regulatory process.

Fourth, a structure need to be created that will enable a coordinated review process (functioning within the overall framework of planning and economic development in Yap); this will act to support management and conservation of all natural resources in Yap, and particularly aquatic resources.

These four changes to the status quo are to be made through the introduction and passage of the appropriate legislation. Draft legislation relating to these three measures already exists and has been reviewed in section 1.2. The draft bills need to be re-written in several important areas, re-introduced with the full support of the institutions concerned and with the prior understanding by the Yap State Legislature of the intention of each of the bills.¹⁸

Longer-term goals

Longer-term goals are also proposed for the evolution of MRMD and YFA. Ideally, these would be put into place at the outset; however, as noted above, incremental, rather than dramatic large-scale change may be better accepted and easier to implement.

The long-term goal proposed for MRMD is to convert it into a semi-autonomous agency similar to EPA, with specific functions relating to conservation and protection of marine resources, governed by a Board appointed by the Governor and approved by the legislature. The longer term goal for YFA is to phase out the organization entirely, privatizing its facilities

¹⁷ A precedent in Yap for not allowing direct government involvement in an area where private enterprise has functioned is the rejection of a proposed “trochus marketing authority” in favor of local private buyers acting in concert with foreign interests to provide a market during trochus seasons.

¹⁸ This is important because it appears that in the past 25 years the Yap Legislature has changed from being a formulator of legislation-backed policy in the area of resources management (such as during the initial creation of YFA) to reactively supporting, modifying or rejecting legislation proposed by the administration.

and providing additional revenue to the reconstituted agency responsible for conservation and protection of marine resources.

Legislative changes

The recommendations for immediate action are bridging activities that will allow the longer term goals to be accomplished; the required legislative changes are described and justified in the following sections. A separate section describes the additional functions that the Director of R&D would assume as a result of the changes to MRMD and YFA.

Suggestions for draft legislation appear in the Appendices. Suggestions for the content of new legislation concerning the transformation of YFA are provided in Appendix 4, but not in legislative draft form. The content of legislation for the coordinated review process is not presented, as that contained in the 2002 proposal, Bill No. 5-189 is sufficient for the discussion purposes here. Further possible refinement of this draft is best left to internal discussions in Yap.

The overall intention in providing the legal drafting suggestions is to set out a general framework and substance on the issues addressed in this report. Additional details should await the appropriate legal drafting, following internal discussions at the departmental or other level(s) in Yap.

It is important to understand that some of the tasks assigned in the general framework cannot be performed by government alone. There is a need to put in place institutions that can better link communities to government activities (e.g. the proposed National Resources Stewardship Council, described in section 4.6.2 of the Yap Biodiversity Strategy and Action Plan; or alternatively formalization of the existing Environmental Stewardship Council, formed on recommendation of the Council of Pilung). In the context of the proposed framework for MRMD and its successor agency, these bodies would participate in deliberations regarding development of regulations and/or rules. These bodies could also propose such regulations on behalf of communities.

4.2 Proposed institutional roles and responsibilities

4.2.1 MRMD

In the proposed legislation (see Appendix 1) MRMD is to function as a management and conservation agency. It is also given a role in assisting communities to develop their own management regime, and to give effect to such activities within the overall State regulatory framework. The legislation should enable MRMD to carry out functions found in Walton (1999) that described recommendations made as early as 1997 by N. Idechong and A. Smith. These recommendations are listed in Appendix 5 for information purposes.

MRMD would be required to employ the precautionary approach to resource management. This approach is set out in the proposed legislation as a section on “management approach”.

There are two components to the activities of MRMD with respect to its mandate to manage, conserve and regulate coastal resources:

1. First, MRMD will use the regulatory process to be able to anticipate and confront problems caused by non-sustainable use of resources. This is essentially the top-down process of formulating regulations that was included in the draft 2002 legislation.¹⁹ Interventions by the government in these situations would be expected to result in regulatory activity with widespread impact, both geographically and biologically. Thus regulations would be

¹⁹ There are also some important deletions from the existing draft legislation. MRMD should not be given the power to approve or disapprove fishing agreements (that is left to the Legislature), and MRMD should not be the sole participant in the rule-making process.

expected to address the state's waters or a large portion of the state's waters as a whole, as opposed to one particular specific locale, and an ecosystem or parts of ecosystems.

MRMD is to receive overall direction from the Director of R&D in this rule-making process leading up to the promulgation of regulations.²⁰ MRMD would be required to comply with the Administrative Procedures Act in giving effect to any regulations formulated, thus affording an opportunity for input from the general public and other concerned parties where such input was not already a part of the consultative process.

This approach can be useful for banning certain activities affecting greater areas of the State than just at the village or municipal level, and give effect to a precautionary approach to development. Examples of actions that might be taken using this procedure are the banning of the live reef food fish fishery within the State when impacts on the environment are unknown, or regulating the production and export of bêche-de-mer to insure previously determined sustainable levels of sea cucumber harvests.

From a regulatory standpoint, it is also necessary to provide for the power to promulgate emergency regulations that can respond quickly to fast-developing situations concerning management and conservation of the aquatic environment. As part of the policy function, the Director of R&D should be allowed to promulgate such emergency regulations (to be in effect for a realistic period, perhaps no longer than 6 months). Enactment of such regulations would be expected to be preceded by consultation with the Chiefs Councils, MRMD, EPA and others concerned.

2. The second component is designed to enable communities to become more fully involved in the formulation and implementation of regulations directly affecting those communities. It is clear from discussions held in Yap during this study as well as references in past work such as that of Idechong and Smith (1997), the IWP socio-economic baseline assessment (Foale 2006), and others that community involvement by MRMD is a priority in Yap's coastal resource management.²¹ Unfortunately, none of these or other studies provide a specific means by which a government agency, in this case MRMD, can assist communities in the management of marine resources.

In this approach communities are encouraged to participate in management and conservation through a process by which they can propose regulations and rules affecting their specific concerns. The process is set out in Appendix 1, draft MRMD legislation, Section 1205: Consultative community rule-making process.

After completion of the consultative process (involving the communities concerned, MRMD, the Director of R&D, and others), the proposals can be adopted by the State Government and enacted as laws. Examples of regulations that could result from this process include the banning of fishing on specific spawning aggregations within the jurisdiction of a particular village or community, or the declaration of a marine protected area.

The consultative process requiring MRMD to review and possibly adopt regulations coming from community proposals is a first step in bridging the existing gap between government and the communities it is intended to serve. Communities would be expected to propose rules or regulations affecting "their" resources only and not necessarily for Yap State as a whole.

One of the incentives for communities to participate lies in the enforcement provisions of the proposed statute. They are assisted in enforcement of rules and regulations by the State

²⁰ As a political appointee, and one who has been approved by the State Legislature, the incumbent is usually someone of high standing in the community and in an appropriate position to provide direction to the regulatory process.

²¹ Community involvement was also endorsed by the 2005 EPIC meeting as a priority in coastal zone management.

(i.e. State Attorney General, and MRMD and EPA as needed); a percentage of any fines levied would accrue to the municipalities affected²².

Should communities fail to gain government support for their proposals, they are still protected by the provisions of the Yap State Constitution relating to “traditional rights and ownership of natural resources and areas”. They can revert to the status quo or pure community control without government input, as the case may be. In practice, however, they would appear to have little to lose by participating in this process.

In order for MRMD to be able to more fully carry out its responsibilities, it is proposed that the position of “community affairs liaison for inshore marine affairs” be created and filled with someone who is highly knowledgeable in village level fisheries activities and who enjoys the respect of communities in Yap. This position would initially exist outside the normal public service, and would be filled through an appointment by the Director of Resources and Development, in consultation with the Council(s) of Chiefs.

In many respects this position can be seen as following from the current IWP Coordinator’s position. There are, however, several important differences. The incumbent would be chosen through a process that includes consultation and approval of the Council(s) of Chiefs and would not be burdened with large amounts of administrative work.

4.2.2 Resources and development

The office of the Director of the Department of Resources and Development needs to become actively involved in providing overall policy direction to MRMD and assist the division in carrying out its management functions. In the proposed legislation granting MRMD management and conservation functions, the Director is given specific duties in participating in the consultative process aimed at reviewing community proposals for regulatory action.

In the proposed legislation, the Director shall:

- receive proposals that come from the community through the Council of Chiefs;
- direct MRMD to review and prepare a written comprehensive report on the proposals;
- convene a consultation on those proposals;
- rule on the validity of the request; and
- as necessary, instruct MRMD to implement the regulations.

In addition to these duties, the Director should also be the person to take the lead for the government in a negotiating team, consisting of the Director of Resources and Development, the Director of Planning and Budget, and the Attorney General, should any negotiations for use of the State Fishery Zone by non-FSM entities take place. Any agreement so negotiated should be submitted to the State Legislature for approval before licenses for foreign fishing in the State Zone are issued.²³

4.2.3 Yap Fishing Authority

YFA is a special case. It has been in existence for over 30 years, and over that period it has been granted extensive powers in resource management, has entered into large-scale development projects with the FSM National Fisheries Corporation, and has in many ways

²² Comments by an Assistant Attorney General on the proposed legislation in 2002 indicated a need to revise downward the civil and criminal penalties in the draft. This is done in Appendix 1, although left to further consultation and drafting to propose realistic amounts.

²³ At present the law provides for YFA to be responsible for such agreements, and although there has never been an agreement negotiated or concluded (and none are contemplated according to government officials interviewed in Yap during the course of this study), it is important to provide for this function.

operated as a state-owned business.

At present, however, it is clearly not capable of exercising the resource management powers granted to it in Title 18 of the Yap State Code.²⁴ Even if it was capable, it is not desirable to have one organization responsible for both development and regulation of resources (see section 3.4).

YFA has no shareholders, and its “owner” is the State of Yap. It is not a private business enterprise, yet it has been directly and extensively involved in fishing and fishing support activities that have rarely, if ever, made a profit. There has never been an analysis of the overall benefits gained by Yap from the activities of YFA, nor has there been an analysis of the opportunity cost of diverting government funds to its operation and subsidies. Its current financial and operational position suggests that prospects for it to continue in operation are poor.

As a general principle, it is proposed that YFA divest itself of those commercial activities that could be carried out by the private sector. These include:

- retail sales of fish;
- outboard engine repair and servicing;
- mechanical repair that has little to do with fishing activity;
- retail sales of fishing gear; and
- fishing for domestic sales where it involves direct competition with the private sector.

Although MRMD, with the support and guidance of R&D, would assume the functions of marine resources conservation and management, there is still a need for the government to be able to influence, assist, and promote the sustainable development of marine resources through commercial means.

The current YFA management seems to be doing a good job in providing ice for the community in the absence of other sources of ice on Yap. Activities such as this should be maintained in the short term. YFA lost considerable assets (boats and equipment) during typhoon Sudal. There is a need to prevent further deterioration of YFA’s assets, mainly the physical plant at the dock. These two points argue for a continuation of the day-to-day operations of the organization in some form.

Two options for YFA in the near-term include:

- leasing of space at YFA to private enterprise to take over the functions noted in the bullet points above; and
- establishment and support of programs to promote and guide fishery enterprises in Yap.

The concept of YFA leasing space at its facilities is not new. It was incorporated in the enabling legislation for YFA (see section 2.1.2 above) and is still part of that statute.

To carry out these functions, it is proposed that the staff of the Authority be placed under the management of the Small Business Development Center. The current staff would report directly to the Director of the Center and be provided support as needed.

It is likely that prior to such a shift formally taking place, businesses in which YFA is involved would have to be wound up, and entanglement with the various enterprises to which it is directly or indirectly a party resolved. This should not, however, preclude the Legislature from

²⁴ Although the YFA Board is capable, the analysis, support, and implementation of Board decisions would not be practical in the Authority’s present condition.

taking action to rescind the fisheries management functions granted YFA in the law.

4.3 Coordinated review process

The coordinated review process and the creation of a review committee for certain new projects were both proposed previously in Bill 5–189, which was not acted upon in the previous State Legislature. Passage of this or similar legislation is important to the overall conservation and protection of resources that compliment the institutional changes proposed above.

Essentially, the review process would:

- provide a consistent and efficient approval process for development projects and research projects covered in the legislation;
- increase the level of public participation in economic development; and
- ensure that all development and research projects covered in the legislation minimize their impact on the culture, history, society, traditions and environment of Yap.

The process would require permits for the defined development and research projects and set up a review process for such permits. Permits would be issued by a Review Committee comprising State members from EPA, Office of Planning and Budget, Small Business Center, MRMD, Agriculture and Forestry.²⁵ The affected community would also have a representative on the Review Committee.

Regulations would determine which projects qualified as being of sufficient magnitude, cost, or expected impact as to require prior clearance by the (appropriate) Council of Chiefs, Governor, and Legislature before submission to the Review Committee. Specific procedures would be set up whereby other agencies of government within whose jurisdiction a development project falls would be included in the review process. A right of appeal would also be provided for in the event of a denial of a permit.

Provision of overall direction to the coordinated review process would be the responsibility of the Director of Planning and Budget. The Director would have duties and responsibilities that include:

- guiding applicants through the review process;
- coordinating assessments and reviews within established time frames;
- communicating decisions on applications to concerned parties; and
- coordinating monitoring of development projects.

4.4 Further institutional evolution

The changes to MRMD and YFA proposed above can be seen as intermediate measures designed to lay the foundation for further evolution of MRMD and the eventual dissolution of YFA. It is not practical to estimate a definite timetable or period for these transformations to take place, as the first steps outlined above need to be put in place and be given a reasonable period to work (whether this turns out to be two, four, or more years is unknown).

4.4.1 MRMD

The evolution of MRMD should continue to the point that it can be constituted as a semi-

²⁵ If a Natural Resources Advisory Council as proposed in other legislation is created, that organization would also participate.

autonomous body controlled by a Board similar to the current EPA. The direction provided to the regulatory activities of MRMD by the Director of R&D under the arrangements described above would cease and be supplanted by a Board, with members nominated by virtue of their position within government and the community at large and approved by the Legislature.

The EPA model is attractive for several reasons. First, it can specify a broad-based Board that can provide overall policy direction. Second, agencies such as this usually hire an Executive Officer or Director that is responsible to the Board and who can be replaced for poor or non-performance. Third, (as is the case with EPA), the agency can be given the power to accept appropriations, loans and grants from bodies such as the Yap State Legislature, FSM Congress, the FSM National Government, or other agencies. This can also open the door to funding from other public and private sources for specific projects or purposes allowed under the legislation creating the body.

4.4.2 Yap Fishing Authority

It is anticipated that the private sector, supported by a revised and downsized YFA as described above, would be able to exist on its own without subsidy from the government. The privatization of all facilities owned by YFA is anticipated, with the elimination of the Authority's control. Assistance to marine resources-related enterprises could continue under the auspices of the Small Business Center, with some of the former YFA employees knowledgeable in the area retained by that organization.

5 Implementation and financing options

As previously stated, there have been few efforts undertaken in Yap with regard to coastal resource management by the two major institutions addressed in this report, MRMD and YFA. Although YFA has the legal powers to intervene in coastal management, little has been done and most efforts have been directed towards commercial development. MRMD lacked the legal mandate to implement management measures, but focused on responses to man-made and natural crises and (if the current budget is any indication) work with certain sedentary species.

Yap State has thus provided little budgetary support for coastal resource management, and changes to the current structure of R&D will present the government with significant financing challenges.²⁶ A freeze on staff increases has been in effect for some time; according to department heads in Yap, it is not expected to be lifted soon.²⁷

5.1 MRMD

MRMD/R&D will initially need to find additional funds to carry out the above recommendations in two areas: (i) to fill the position of "community affairs liaison for inshore marine affairs" as described in section 4.2.1, and (ii) to fund enforcement activities relating to regulations adopted by the processes described earlier.

Given current administrative directives relating to staff increases, the community liaison position may have to be funded from sources other than the MRMD recurrent budget. R&D should initially attempt to avoid shifting budgetary support away from current agriculture

²⁶ The coastal management functions of the EPA are not included in this statement as it has not been involved directly in the management or control of extractive activities aimed at aquatic resources.

²⁷ It is understood that in addition to the freeze on hiring or filling vacant positions there is also a freeze on increasing government salaries on a regular basis, i.e. the "step increases" that have been come to be expected by government employees since FSM was a Trust Territory. One department head remarked how this has had an adverse affect on morale within his department and resulted in less than enthusiastic participation in daily work activities by some of the staff. It is not known the extent to which other incentives to encourage productivity have been tried as substitutes for the pay increases.

extension agents in order to attach such a position to MRMD.²⁸

Should it not be possible to fund the position internally, external source(s) will need to be obtained. This may not be as difficult as it sounds, since community-based management has been heavily promoted and funded through a variety of regional and non-governmental sources during the last few years. Should R&D and/or MRMD not have the capacity to apply for and attract such support, it may be possible to work with a local NGO such as YapCAP to provide for such a position on secondment.

Enforcement is the second priority area for funding within MRMD. Yap State Government has not had to expend funds in this area in the past, and obtaining funding for this may be difficult.

Three potential sources of funds for enforcement are initially identified:

1. through adjustment of MRMD's existing budget;
2. through the sale of fishing supplies and equipment that are obtained from the "goods and services" provided each FSM state once every four years under terms of the Japanese fishery access agreement with the FSM National Government; and
3. through the use of funds collected from fines, including those assessed and collected for violations of fishery laws in the State Fishery Zone and those distributed by the FSM National Government for infringements of the FSM EEZ.²⁹

The first source will require internal discussion and adjustment in consultation with the Director of R&D. The second source may require the inclusion of a legislative provision to set up a fund for resources management purposes. The third source could be expected to contribute to such a fund on an occasional basis, but should not be relied upon.

MRMD may need to rearrange and realign its work priorities so that it provide maximum human and material resources support for regulations adopted through the community formulating process described above. MRMD should be prepared to assign tasks to staff in support of those regulations rather than carry on research or development efforts on particular species as is reflected in the current budget.

5.2 YFA

The activities of YFA appear to be self-sustaining at present, the USD 80,000 appropriation from the Yap State Legislature notwithstanding. No further government funds should be expended to support the Authority in the form it would take once the recommendations are implemented.

Privatization of some of the Authority's functions could result in the generation of income from the lease of some of its facilities. Any such income should be used to maintain remaining YFA assets, and to operate such support programs for local fisheries that are not undertaken by the private sector.

²⁸ It was mentioned that some of the existing agricultural extension positions are redundant, in that few if any extension programs actually exist in some geographic areas.

²⁹The Marine Resources Act of 2002 that amended Title 24 of the FSM Code continues to provide that "fifty percent of the revenues from fines and forfeitures shall be distributed to an FSM State(s) which may be affected by the situation which has given rise to the fine and/or forfeiture". It is noted that during the 13 year period 1986-1999 the FSM national government collected a total of almost USD 3.4 million in settlements and fines for illegal fishing and other infringements of national law, as well as the confiscation of six fishing vessels. Although existing records do not indicate the amounts given to specific affected states, it can be assumed that at least some of the USD 1.7 million distributed under the terms of the law went to Yap State.

5.3 Coordinated review process

The review process proposed in past legislation and endorsed here does not create any new permanent departments within the State Government. The Review Committee consists of appointees from existing departments or division within the Government.

The Director of Planning and Budget is given additional duties and responsibilities in the legislation, and plays a coordinating role, including ensuring that permitted projects comply with the appropriate terms and conditions. It is not expected that the office of the Director of Planning and Budget would take on these duties, but rather it would call on members of the Review Committee (e.g. EPA, MRMD, and Agriculture and Forestry) to provide assistance.

6 Conclusion

This report has recommended the transfer of management functions to MRMD and an eventual phasing out of YFA over time. It has also suggested the form that MRMD should take in the future (i.e. a regulatory agency similar in structure to EPA). As a measure to engage communities in the regulatory process, a method has been proposed by which communities can cooperate with MRMD and by so doing result in the revision of MRMD's priorities and work program to better serve those communities. It has also recommended a greater role for the Director of R&D in the formulation of policy and in providing direction to MRMD, with the explanation that the role of the latter agency is one of implementation and not policy formulation.

It is also recommended the 2002 proposal for a coordinated review process be reintroduced, as this clearly sets forth the methodology and legal structure required to protect coastal resources in the face of unfettered development. Adoption of this review process (or something similar) should be seen as an integral part of furthering coastal resource management, in concert with realignment of the responsibilities of MRMD and YFA.

The production of the first draft Marine Resources Management Plan in 1994 was helpful in suggesting many of the changes that needed to be made to that situation. Although the Plan was a comprehensive document, and still serves as a useful guide, it covered a large number of subjects and contained too much to digest and implement at one time.

The dialog in Yap among the agencies and individuals that produced the draft legislation introduced in 2002 was also a valuable exercise. It helped to distill thinking on numerous important topics. Although the drafts included some subjects that were inappropriate, the resulting work products (like the 1994 Plan) remain useful as guides.

During period during which administrative and legislative changes have been considered, the need for effective management of coastal resources and interest in community based management have both increased in Yap. One element missing from these past attempts has been a clear idea of how the two institutions involved, YFA and MRMD, should fulfill their appropriate roles and at the same time include communities willing and interested in joining the management process. This report has outlined a regulatory process by which community management can be integrated with the existing government structure. It assumes that all parties are willing and able to move forward in a cooperative manner.

Merely passing the necessary legislation is not sufficient to bring about the changes needed to implement successful coastal resource management. As adjustments are made to government agencies, additional changes should be implemented so as to make appropriate use of Yap's human resources. Institutional changes must be accompanied by a renewed commitment by government employees to protect and conserve Yap's coastal resources, and to work with communities in doing this. Where necessary, changes should be made to existing personnel structures to enable the strengthened government agencies to deliver the appropriate and required services described in this report.

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Appendix 1: Proposed draft MRMD legislation

(Significant additions to old draft legislation, Bill No. 5-187 in italics)

_____ LEGISLATURE OF THE STATE OF YAP

_____ Regular Session

200____

A BILL FOR AN ACT

To amend title 18 of the Yap State Code by adding a new Chapter 12 regarding conservation of coastal and aquatic resources, and for other purposes.

Be it enacted by the Legislature of the State of Yap.

Section 1. Title 18 of the Yap State Code is hereby amended by enacting a new Chapter 12 to read as follows:

Chapter 12: *Management and Conservation of Coastal and Aquatic Resources*

Section 1201. Short Title. This Chapter shall be known and may be cited as the ‘Coastal and Aquatic Resources *Management and Conservation Act*’.

Section 1202. Purpose. Recognizing the importance of the State’s coastal and aquatic resources, the purpose of this Chapter is to empower the Marine Resources Management Division of the Department of Resources and Development, hereinafter MRMD, to conserve Yap’s aquatic resources and their ecosystems, to preserve marine biodiversity, *and to work with local communities* to maintain the integrity of coastal regions for future generations. This Act shall be executed and interpreted in accordance with this purpose.

Section 1203 Management approach. All State fisheries shall be managed using the precautionary approach. The precautionary approach involves the application of prudent foresight, recognizing that changes in fishery systems are only slowly reversible, difficult to control, and not well understood. Taking account of the uncertainties in fisheries systems and the need to take action with incomplete knowledge, the precautionary approach requires, among other things, the following:

- (a) Consideration of the needs of future generations and avoidance of changes that are not potentially reversible;*
- (b) Prior identification of undesirable outcomes and of measures that will avoid them or correct them promptly;*
- (c) That any necessary corrective measures are initiated without delay, and that they should achieve their purpose as promptly as possible; provided, however, that this provision shall not be interpreted to require corrections that are technically impossible;*
- (d) That where the likely impact of resource use is uncertain, priority shall be given to conserving the productive capacity of the resource; and*

Section 1204. Definitions. As used in this chapter, unless the context otherwise requires, the term:

- (a) “Aquatic” means dependent for survival upon a body of water, whether fresh, brackish, or marine. The term shall not include insects.*
- (b) “Director” means the Director of the Department of Resources and Development*

- (c) “Ecosystem” means a dynamic complex of living communities and their non-living environment which interact as a functional unit.
- (d) “Fish” means any and all forms of aquatic biota, whether alive or dead, whether piscine or not, and includes any part, product, egg or offspring thereof.
- (e) “Fishing” means:
 - (1) The actual or attempted catching, taking, harvesting of or searching for fish;
 - (2) Any other activity which can reasonably be expected to result in the catching, taking or harvesting of fish;
 - (3) Any waterborne operations in support of or in preparation for, any activity described in paragraphs (1) or (2) of this Subsection; or
 - (4) Aquaculture, as defined in Chapter 2 of this Title.
- (f) “Fish stock” means a group or category of fish that can be identified on the basis of geographical, scientific, technical, recreational, temporal, cultural, or economic characteristics.
- (g) “MRMD” means the Marine Resources Management Division
- (h) “State waters” means the internal waters and the State Fishery Zone, as those terms are defined in Chapter 2 of this Title, and submerged reefs that belong to the State and its citizens by custom and tradition, wherever located.

Section 1205. Powers and duties of MRMD. In addition to any powers and duties elsewhere conferred and imposed, *and subject to the procedures outlined in Section 1205 and 1206 of this Title*, MRMD shall have the following powers, duties and authorities:

To establish aquatic and/or coastal preserves.

- (a) To establish seasons, limits, protected fish stocks or areas or other controls on fishing in State waters;
- (b) To designate legal and illegal fishing devises, equipment and methods;
- (c) To prohibit activities that may adversely affect Yap’s aquatic resources, biodiversity or coastal areas;
- (d) To impose such other terms, conditions and restrictions on fishing or other activities in or affecting State waters as are necessary to effectuate the purpose of this Act; such terms, conditions and restrictions shall be subject to periodic evaluation and amendment;
- (e) To establish rules and regulations to prevent the unintentional introduction of species into State waters, to restrict the removal of native species from State waters, and to prevent the spread of pathogens and diseases in State waters;
- (f) To regularly monitor, research and assess the health, viability, sustainability and quantities or other measure of fish and their ecosystems;
- (g) To compile as much scientific literature, published and unpublished, as is available regarding the matters within its jurisdiction, and use that knowledge base in its conservation practices;

- (h) To establish rules and regulations for the collection of catch data, catch-effort data, and any other data relevant to the monitoring of fish stocks or ecosystems, to analyze that data and use it in its conservation practices; and
- (i) To educate the people of the State, as well as other governmental entities, as to the need for and appropriate methods of conservation and preservation.

Section 1206. Consultative Community rule-making process. Considering the powers and duties conferred upon MRMD in Section 1204, particularly (a) through (f) and (i), a process by which a community or communities may propose rules, regulations or procedures for the conservation and management of aquatic resources in their respective community is established.

(a) A community or communities may propose rules, regulations, or procedures (“proposal”) affecting the use of aquatic resources in those communities through the appropriate Council of Chiefs to the Director of Resources and Development.

(b) Within ____ days of receipt of such a proposal, the Director of Resources and Development shall cause MRMD to review the proposal, in consultation with such bodies or organizations, both formally and informally constituted in Yap, as may be deemed appropriate by the Director of Resources and Development, and to issue a report on the proposal. Such bodies or organizations may include, but not be limited to representatives of the Yap EPA, councils or committees created by Yap State Government to advise the government on natural resources use, YapCAP, and local environmental non-governmental organizations.

(c) Within ____ days of the receipt of the proposal from the appropriate Council of Chiefs, the Director of Resources and Development shall convene a consultation including MRMD and the community putting forward the proposal for the purpose of presenting and discussing the findings of the report and the Director’s decision. The report shall be provided in writing one week in advance to all parties invited to the consultation and shall include, but not be limited to:

(1) recommendations for approval or disapproval of the proposal and the scientific, socio-economic, or other reasons for recommending approval or disapproval;

(2) recommendations for any modifications deemed necessary to the proposal and the scientific, socio-economic, or other reasons for such modifications;

(d) In the case where the proposal is approved by the Director, either in its original or amended form, the Director shall instruct MRMD to establish the rules, regulations or procedures contained in the proposal in accordance with the State Administrative Procedures Act.

(e) In the case where the proposal is disapproved, the community shall be entitled to re-submit the proposal in the same or amended form without a loss of rights granted under the Constitution of the State of Yap.

Section 1207. MRMD rule-making process. Where the Director believes that the status of any aquatic resource or resources of Yap require the intervention of the State Government to protect or ensure the conservation of those resources, the Director shall instruct MRMD to draft rules, regulations or procedures affecting the use of those resources.

- (a) *All limits, rules, regulations or procedures established by MRMD which affect the general public shall be made in consultation with the affected communities and shall be subject to the State Administrative Procedure Act.*

Section 1208 Emergency Regulations

- (a) *Notwithstanding the provisions of Sections 1206 and 1207, where the Director believes that the status of any aquatic resource or resources of Yap requires the immediate intervention of the State Government to protect or ensure the conservation of these resources, the Director is empowered to promulgate emergency regulations governing the utilization of such resource or resources.*
- (b) *Emergency regulations promulgated under authority of this section shall be valid for a maximum period of six months from the date of their adoption.*

Section 1209 Fund Created

R&D should consult other administration sources on the best way to create a fund that would be used to support specific activities of MRMD, provide for oversight of the fund, and require regular reporting on its use.

Section 1210. Enforcement.

- (a) Primary responsibility for the enforcement of this chapter shall be assumed by the State Attorney General. Enforcement responsibility shall also reside in MRMD and the Environmental Protection Agency.
- (b) Such employees of MRMD and the Environmental Protection Agency as are duly authorized by the heads of those entities may, with or without a warrant, enter any establishment or upon any property and make inspections, obtain information, obtain samples, inspected or copy records, conduct surveys, or do anything else reasonably designed to detect a possible violation of any limit, rule or decision promulgated by MRMD.

Section 1210. Injunctions and civil penalties.

- (a) Where, on application by the Director of Resources and Development Attorney General, a court of competent jurisdiction has determined by a preponderance of the evidence that a person has acted, or is about to act, in contravention of any limit, rule or decision promulgated by MRMD pursuant to this Chapter, the court may enjoin said act and grant such other remedy as it deems appropriate. Rules of civil procedure shall apply to any proceeding brought pursuant to this Section.
- (b) Any person who is found in a civil proceeding to have acted in contravention of any limit, rule, or decision promulgated by MRMD pursuant to this Chapter shall be liable to the Government of Yap for a civil penalty. The amount of the civil penalty shall not exceed _____ (\$5,000) 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.
- (c) The Attorney General or the Director of Resources and Development is authorized to initiate all proceedings under this section and to recover the amount assessed as a civil penalty.

- (d) Fifty percent (50%) of any civil penalties paid for violations of any limit, rule or decision promulgated by MRMD pursuant to this Chapter shall be deposited in the General Fund of the State of Yap; fifty percent (50%) of the civil penalties paid for such violations 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.

Section 1211. Forfeitures.

- (a) All or part of any fishing vessel including its fishing gear, furniture, appurtenances, stores, and cargo used, and all fish taken or retained in any manner, in connection with or as a result of the commission of any act prohibited by any limit, rule, or decision promulgated by MRMD pursuant to this Chapter shall be subject to forfeiture 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 Attorney General or the Director of Resources and Development, 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 attorney general shall seize any property or other interest declared forfeited to the Government of Yap.
- (d) The forfeited property may be sold and the proceeds deposited in the General Fund of the State of Yap, or maybe retained for use by, or at the direction of, the Government of Yap, or may be distributed by the Director of Resources and Development to persons whose traditional fishing rights have been violated by such vessel; provided, however, that fifty percent (50%) of the net proceeds from the sale of the forfeited vessel shall be distributed to persons whose traditional fishing rights have been violated by such vessel.
- (e) Pending completion of the civil forfeiture proceeding, the seized property 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 purposes 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 any limit, rule or decision promulgated by MRMD

pursuant to this chapter were taken or retained in violation of this chapter.

Section 1212. Criminal penalties.

- (a) A person is guilty of an offense if he or she commits any act prohibited by any limit, rule or decision promulgated by MRMD pursuant to this chapter.
- (b) Any person who commits an offense pursuant to Subsection (a) of this Section, upon conviction thereof, shall be subject to the following penalties:
 - (i) in the case of an individual or officers or directors of legal entities, imprisonment for not more than ____ (one) year, or a fine of not more than _____ (\$20,000) each, or both.
 - (ii) in the case of a legal entity, a fine of not more than \$250,000.

Each day of a continuing violation shall be considered a separate offense.

Section 2. This Act shall become law upon its approval by the Governor, or upon its becoming law without such approval. This Act shall take effect one hundred and twenty days after its becoming law.

Date: _____ Introduced by: _____

Appendix 2: YFA powers and duties granted by Title 18

- (a) shall provide guidance to the State Government in establishing marine resources development policy.
- (b) 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.
- (c) shall serve as a conduit for public funds to establish and operate facilities required for commercial fisheries development, to conduct pilot fishing operations and to participate in large scale commercial fishing, including joint ventures, and related activities which are not suitable for investment by the private sector.
- (d) shall establish and support programs to promote, support and guide fishing cooperative associations.
- (e) shall help finance and support the development of locally owned private enterprises and may make loans to accomplish the same.
- (f) shall be empowered to act as an agent for the sale of supplies and provisions, including fuel, oil, water and food to foreign fishing vessels lawfully permitted to enter a port within the State.
- (g) may generally carry on the business of establishing, developing, maintaining, operating and managing facilities for the commercial utilization of marine resources with all powers incident thereto.
- (h) shall be authorized to purchase, lease, and sell real or personal property, supplies, goods, materials, and commodities and to furnish and supply services as incident to its operations. It may procure insurance against liability or loss in connection with its operations hereunder in such amounts and from such insurers as it deems advisable.
- (i) in operating facilities and properties owned, leased or controlled by it, may enter into contracts, leases, and other arrangements with any persons for terms not exceeding 15 years, granting the privilege of using or improving such facilities and properties or a portion thereof or space therein for any utilization of marine resources connected purposes; may confer the privilege of supplying goods, commodities, things, or facilities at such facilities or properties or of making available services to be furnished by the Authority or its agents at such facilities or properties. It shall determine the charges or rentals for the use of any facility or property under its management and control, and the terms and conditions under which the facility or property may be used. Charges shall be reasonable and uniform for the same class of service, and established with due regard to the value of the facility or property and improvements used and the expenses of the operation of the Authority. The Authority shall have and may enforce liens to enforce the payment of any such charges through appropriate judicial proceedings. The right to levy charges or rental for the use of the facility or property under its management shall be exclusively that of the Authority and all such charges and rentals as well as other revenues of the Authority to be applied as herein set forth.
- (j) may contract with any person, firm or corporation for the planning, supervision, financing, construction, operation and maintenance of, or may itself construct or otherwise acquire, operate, and maintain all structures or improvements which, in its judgment are useful, desirable or convenient in efficiently operating and maintaining facilities and properties. The Authority may also enter into agreements with the government of the Trust Territory, the Federated States of Micronesia and the State Government, their departments and agencies, for the rendering of services performed by such departments and agencies to the Authority.

- (k) shall have the free use of the State Government pouch mails.
- (l) including but not limited to its franchise, capital, obligations, including interest thereon, reserves, surplus, loans, income, assets, and property of any kind shall be exempt from all licensing and taxation now or hereafter required or imposed by the State, or any political subdivision or taxing authority of the State. However, such exemption shall not apply to persons entering into independent contracts with the Authority.
- (m) is authorized to apply for, accept, expend and repay the Government of the United States, Trust Territory, Federated States of Micronesia or State for all monies made available by grant, loan, or both, to plan or accomplish in whole or in part, any of the purposes of this chapter. Unless otherwise prescribed by the agency from which such monies are received, the chief financial officer of the Authority shall deposit all monies received pursuant to this subsection in a separate denominated account.
- (n) shall maintain such records, libraries, research materials, administrative or office materials and other property, real or personal, deemed to be necessary to enable the Authority to carry out the purposes of this chapter. Upon the request of the Manager, employees of the State Government may be assigned by the Governor to assist the Authority to carry out activities of the Authority as set forth herein. Expenses thereof, if any, shall be reimbursed by the Authority as may be required by the Governor in the assignment.
- (o) may employ agents and employees, and contract for the services of qualified managers, specialists or experts, as individuals or as organizations, to advise and assist the Authority and its employees. The Authority may set its own compensation, wage and salary scales.
- (q) may issue general or special revenue bonds pursuant to this chapter for purposes it deems necessary.
- (r) The enumeration of specific powers and duties under this section shall not be deemed to be exclusive.

Appendix 3: Powers granted EPA

The specific powers granted to EPA in Title 18:

- (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.
- (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.

Appendix 4: Recommendations for legislation to redefine the role of YFA

Powers Granted in 18 YSC	Retain	Amend	Delete
Section 112:			
(a) provide guidance to State Government in establishing marine resources development policy			X
(b) adopt and enforce rules and regulations concerning...the exploitation of living marine resources as permitted by law			X
(c) serve as conduit for public funds to establish and operate facilities for commercial fisheries development, conduct pilot fishing operations, participate in large scale commercial fishing, joint ventures and related activities not suitable for investment by the private sector			X
(d) establish and support programs to promote, support and guide fishing cooperative associations		Programs to promote and guide domestic commercial fishing within State waters	
(e) help finance and support development of locally owned private enterprises and may make loans to accomplish the same		Delete ability to make loans	
(f) act as agent for sale of supplies and provisions, including fuel, oil, water, and food to foreign fishing vessels			X
(g) carry on business of establishing, developing, maintaining, operating and managing facilities for the commercial utilization of marine resources		Delete establishing and developing	
(h) purchase, lease, and sell real or personal property, supplies, goods, materials, and commodities and to furnish and supply services as incident to its operations.	X	May only lease and sell real or personal property etc. in its possession at time of enactment of this legislation	
(i) enter into contracts, leases, and other arrangements etc...	X		
(j) contract with any person, firm or corporation for the planning, supervision, financing, construction, operation and maintenance of, or may itself construct or otherwise acquire, operate, and maintain all structures or improvements which, in its judgment are useful, desirable or convenient in efficiently operating and maintaining facilities and properties. SEE BELOW	X	Limited to real or personal property in its possession at time of enactment of this legislation;	
(j) part 2: may also enter into agreements with the government of the Trust Territory, the Federated States of Micronesia and the State Government, their departments and			X

Powers Granted in 18 YSC	Retain	Amend	Delete
agencies, for the rendering of services performed by such departments and agencies to the Authority.			
(k) The Authority shall have the free use of the State Government pouch mails			X
(l) exempt from all licensing and taxation now or hereafter required or imposed by the State, or any political subdivision or taxing authority of the State. However, such exemption shall not apply to persons entering into independent contracts with the Authority.			X
(m) authorized to apply for, accept, expend and repay the Government of the United States, Trust Territory, Federated States of Micronesia or State for all monies made available by grant, loan, or both, to plan or accomplish in whole or in part, any of the purposes of this chapter. Unless otherwise prescribed by the agency from which such monies are received, the chief financial officer of the Authority shall deposit all monies received pursuant to this subsection in a separate denominated account.	X	Delete Trust Territory	
(n) ...Upon the request of the Manager, employees of the State Government may be assigned by the Governor to assist the Authority to carry out activities of the Authority as set forth herein. Expenses thereof, if any, shall be reimbursed by the Authority as may be required by the Governor in the assignment.	X	State Government employees may be assigned to assist only when directly related to assistance to domestic fishing activities	
(o) fiscal year of the Authority shall correspond to that of the State.	X		
(p) may employ agents and employees, and contract for the services of qualified managers, specialists or experts, as individuals or as organizations, to advise and assist the Authority and its employees. The Authority may set its own compensation, wage and salary scales.	X	Necessary to retain flexibility	
(q) may issue general or special revenue bonds pursuant to this chapter for purposes it deems necessary			X
(r) The enumeration of specific powers and duties under this section shall not be deemed to be exclusive.	X		
Section 113, Exempt from taxation		Specific language required to define YFA as distinct from a "political subdivision" of State Government	X

Appendix 5: MRMD mandate and functions

Proposed for MRMD by A. Smith and N. Idechong in 1997

MANDATE:

1. Promote the sustainable use and conservation of the marine resources of the State's waters;
2. Manage, conserve and monitor the marine resources of the State's waters;
3. Protect the waters and surrounding environment which support these resources;
4. Facilitate the development of community based management of the State's internal waters;

FUNCTIONS:

1. In respect of marine resources management and conservation:

- a) Manage and conserve the marine resources in accordance with sustainable usage;
- b) Provide management and conservation advice to the State Government, the Councils of Chiefs and to managers of communally controlled marine resources;
- c) Seek and disseminate management and conservation advice from appropriate sources within and outside the state;
- d) Assist local communities to manage their marine resources;
- e) Promote the establishment of community based marine reserves, conservation areas and special management areas;
- f) liaise and develop effective partnerships with traditional leaders, community groups and businesses involved with the management and usage of marine resources;
- g) Promote care of the marine and aquatic environment and the life within it through programs of direct education and public awareness of conservation and management issues;

2. In respect of scientific and monitoring functions:

- a) Provide scientific and monitoring advice and support for projects concerned with management, conservation and development of marine resources within the State;
- b) Seek and disseminate scientific and monitoring advice from appropriate sources within and outside the State;
- c) Advise the State Government, Councils of Chiefs and managers of communally controlled marine resources on all aspects of the management, conservation and monitoring of fisheries development projects in the internal waters of the state;
- d) Collect and analyze data and information of the marine resources of the State and provide such data, statistics and information as may be necessary for effective monitoring and management;
- e) Disseminate timely and accurate information to marine resources managers and users;
- f) Review development plans or practices which may affect the marine and aquatic resources or the environment upon which those resources depend;

Appendix 6: Persons contacted

Name	Title, affiliation
Marion Henry	FSM Marine Resources Administrator, Pohnpei
Sebastian Anefal	FSM Secretary of Foreign Affairs, former Secretary of Economic Affairs, Pohnpei
Emilio Musrasrik	Staff attorney, FSM Attorney General's office, Pohnpei
Dominic Brug	YFA Acting Manager
Melissa Iwamoto	Researcher, Department of Geography, University of Hawaii at Manoa
Dr. Margie Falanruw	Yap Institute of Natural Science
Joe Giliko	Director, R&D
Jesse Tamel	Deputy Director, R&D
Vitt Foneg	IWP Coordinator
Andy Tafleichig	Chief, MRMD
Leelkan Dabchuren	Legislative Council Sixth Legislature of the State of Yap
Ted Rutun	Senator, Yap State Legislature, Chairman of R&D Committee
James Limar	Business Advisor, Small Business Center, IWP Task Force Member
Mike Gaan	Director, Small Business Center, IWP Task Force Member
Dave Vecela	Part owner, Beyond the Reef Divers
Tony Ganngiyen	Speaker, Yap State Legislature
Bill Acker	Owner, Manta Ray Divers
Vanessa Fread	Researcher and intern, Yap CAP
Tiffany Taylor	Grants Manager, Office of Insular Affairs, Honolulu Office
Francis Itimai	Director, Planning and Budget
Charles Chieng	Executive Director, YapCAP