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Analysing the international legal framework for flag State duties: 'a Marshall Islands perspective'

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**ANALYSING THE INTERNATIONAL LEGAL
FRAMEWORK FOR FLAG
STATE DUTIES:**

‘A MARSHALL ISLANDS PERSPECTIVE’

**A thesis submitted for the fulfillment of the requirements
for the award of the degree of:**

Doctor of Philosophy

By:

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ABSTRACT

Increasingly, more and more States (and territories) are entertaining the prospects of establishing ship registries as a venture for economic development. Many of these States (and territories) are often small developing States (and territories) that lack the independent capacity to administer their own registries and the attending affairs of their flags, and are solely motivated in such venture for economic reasons. More often than not, such registries are open to the registration of foreign owned vessels, and as such, are internationally characterized as ‘open registries’ or ‘flags of convenience’ (as opposed to ‘national’ or ‘closed’ registries. Although ‘open registries’ or ‘flags of convenience’ have traditionally been described as havens for sub-standard shipping, the trend today appears to indicate that the open registries have become major players in the industry, with the top three biggest registries in terms of GRT, being open registries, or so called ‘flags of convenience.’

International law imposes upon all States who grant nationality to ships a duty to exercise effective jurisdiction and control over the administrative, technical, and social affairs of vessels sailing under the flags. To enforce such duty international law has adopted a number of standards, rules and regulations that States must enforce in order to ensure that ships flying their flags were sailing in compliance with these standards, rules and regulations, to ensure there is safety at sea, and to prevent the pollution of the marine environment. In the contemporary setting however, international law has also added new dimensions to the duty of flag States. In the aftermath of the 2001 terrorist attacks, the international community adopted a raft of security measures under the SOLAS 1974 Regulations. A number of these measures imposed on flag States a number of important duties. Then there is also the emerging international legal framework on the conservation and management of fish stocks, which again, imposes upon flag States a number of specific duties and obligations.

As a flag State, the Marshall Islands is under obligation to carry out its duties as such in the manner required under international law. The purpose of the thesis was therefore to analyse the performance of the Marshall Islands as a flag State under international law. The research was premised on a number of key questions. First, what are the duties of the Marshall Islands as a flag State, under international law?

Second, is the Marshall Islands discharging these duties effectively? Finally (if the Marshall Islands has not been able to discharge its flag State duties effectively) why has the Marshall Islands not been able to discharge its flag State duties effectively?

The analysis has shown that performance of the Marshall Islands as a flag State is a mixed one, with the administration suffering serious maritime incidents over a period of seven years, beginning in 1998. These incidents resulted in the loss of property, and in some cases, the loss of lives. It also appeared that post 2004, the registry appeared to have taken steps in the right direction, avoiding serious maritime incidents, and enjoying ‘white flag’ status under the Paris and Tokyo MOUs, and maintaining annual enrolment under the US Coast Guard Qualship 21 Program. The performance of the Marshall Islands under the maritime security framework also appears to be on par, particularly given the participation of experts and organizations engaged by the Maritime Administrator.

The only area of slight concern is found in the performance of the Marshall Islands under the emerging international legal framework on the conservation and management of fish stocks. The issue concerns the registration of fishing vessels and the issuance of fishing licenses. In the current national framework, the registration of fishing vessels and the issuance of fishing licenses are functions vested in two different entities which are under no legislative direction to coordinate their functions. Furthermore, although the Marshall Islands has been flagging fishing vessels, the Marshall Islands had only enacted legislation to enforce its flag State duties in the last few months, and it would take another few months to reflect upon whether the enactment of flag State duties under national law has enabled the Marshall Islands to improve on its performance as a flag State.

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To my principal supervisor *Professor Martin Tsamenyi*, I extend my deepest gratitude. Without your excellent guidance, my research would not have progressed this far. I can now leave ANCORS with a true sense of achievement. Thank you.

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LIST OF ABBREVIATIONS AND ACRONYMS

1. **ABS** American Bureau of Shipping.
2. **ALP** Australian Labour Party.
3. **AP** Associated Press.
4. **BOP** Blow Out Preventer.
5. **BP** British Petroleum.

6. BV	Bureau-Veritas.
7. CCS	China Class Society.
8. COM	Congress of Micronesia.
9. DNV	Det-Norske Veritas.
10. DWFN	Distant Water Fishing Nations.
11. EEZ	Exclusive Economic Zone.
12. FPSC	Future Political Status Commission.
13. FSM	Federated States of Micronesia.
14. FY	Financial Year.
15. GDP	Gross Domestic Product.
16. GL	Germanischer Lloyd.
17. GRT	Gross Registered Tons.
18. GT	Gross Ton.
19. HI	State of Hawaii.
20. IB	International Bank.
21. ILO	International Labour Organization.
22. IMO	International Maritime Organization.
23. IOPP	International Oil Pollution Prevention.
24. IRI	International Registries Inc.
25. ITU	International Tele-Communications Union.
26. IUU	Illegal, Unregulated and Unreported Fishing.
27. KRS	Korean Register of Shipping.
28. LR	Lloyds Register.
29. MARPOL 73/78	International Convention for the Prevention of Pollution From Ships, 1973 as modified by the Protocol of 1978.

30. MIIP	Marshall Islands International Participation.
31. MIMCA	Marshall Islands Maritime and Corporate Administrators.
32. MODU	Mobile Off-Shore Drilling Unit.
33. MODU-DPV	Mobile Off-Shore Drilling Unit Dynamically Positioned Vessel
34. MOU	Memorandum of Understanding.
35. MSMC	Minimum Safe Manning Certificate.
36. NK	Nippon Kaiji Kyokai.
37. NT	Net Ton.
38. OIM	Off-Shore Installation Manager.
39. OSV	Off-shore Service Vessel.
40. PSA	Point of Service Activation.
41. RINA	Registro Italiano Navale.
42. RMI	Republic of the Marshall Islands.
43. RO	Recognized Organization.
44. RS	Russian Maritime Register of Shipping.
45. RSO	Recognized Security Organization.
46. SIRB	Seafarer Identification and Record Books.
47. SOLAS 1974	International Convention for the Safety of Life at Sea, 1978.
48. SQC	Special Qualification Certificates.
49. SQM	Square Miles.
50. STCW 1978	International Convention on Standards of Training,
51. T&C	Transport and Communication.
52. TCMI	Trust Company of the Marshall Islands.
53. TTPI	Trust Territory of the Pacific Islands.
54. UN	United Nations.

55. USA/US	United States of America.
56. USCG	United States Coast Guard.
57. WCPFC	Western and Central Pacific Fisheries Commission
58. WMDs	Weapons of Mass Destruction.
59. WTO	World Trade Organization

CHAPTER 1

INTRODUCTION

1.1 INTRODUCTION

The Marshall Islands Ship Registry was established in 1988 as part of a broad economic strategy devised by the government in the face of economic uncertainty. In establishing the Registry, it was clear that the sole focus of the government was on the economic aspect of the venture, with no serious consideration being given to the legal implications of setting up such a venture under international law.

In brief, international law imposes upon States who grant nationality to ships a number of important duties, and expects such States to carry out these duties effectively. On the one hand, there are the traditional flag State duties (referred to as the ‘general duties’ of flag States) that arise under the *United Nations Convention on the Law of the Sea, 1982* (1982 LOSC) and the International Maritime Organization (IMO) framework. On the other, there are the ‘maritime security’ related duties adopted under a number of IMO instruments. In addition, there is also the emerging legal framework on the conservation and management of fish stocks, which again prescribes a number of specific duties of flag States.

In general, the thesis examines the history and the establishment of the Marshall Islands Registry, the experiences of the Marshall Islands as a flag State, the extent to

which the Marshall Islands is able to discharge its duties under international law as a flag State, and the lessons which can be learned with the benefit of hindsight. In particular, the thesis examines the performance of the Marshall Islands of its duties under international law.

This introductory chapter provides the contextual framework for the thesis by presenting an overview of the history of the Marshall Islands, as well as the reasons that led the government to consider the establishment of the ship Registry in 1988. The chapter also highlights the purposes of the research, the objectives and goals of the thesis, and the significance of the research.

1.2 OVERVIEW OF THE MARSHALL ISLANDS

The Republic of the Marshall Islands (Marshall Islands) is a low lying archipelago consisting of two main chains of islands that run almost parallel, in a North-West to South-Easterly direction. In total, these two chains are made up of 29 atolls and many more smaller islets, lying approximately between 4' and 14' degrees north and 160' degrees and 173' degrees east, in the mid-north west Pacific. In this position, the Marshall Islands is the northern-most of the Pacific Island countries, and the eastern-most of the Micronesian group.¹ While the islands and atolls are spread over an ocean area of approximately 750,000 square miles (sqm), the total land area is no larger than 70 square miles (sqm), roughly the size of Washington DC.² The Marshall Islands claims an *Exclusive Economic Zone* (EEZ) which spans approximately 2.1 million

¹ See Figure 1 on page 2.

²Global Education, *Marshall Islands* (2009) Global Education
<<http://www.globaleducation.edna.edu.au/globaled/go/pid/1477>>.

square kilometres of ocean.³ The islands were so named by the English explorer John Marshall, who visited the islands in 1799.⁴ The Marshall Islands gained constitutional government in 1986 and is currently classified as ‘developing country’ under the United Nations Office of the High Representative for the Least Developing Countries, Landlocked Developing Countries and Small Island Developing States (UN-OHRRLS) classifications.⁵

Figure 1 – Map of the Pacific.



Source: www.infoplease.com/atlas/pacificislandsandaus...

³Global Education, *Marshall Islands at a Glance* (February 2009) Global Education < <http://www.globaleducation.edna.edu.au/globaled/go/pid/1477>>.

⁴US State Department, *Background Note: Marshall Islands* (July 24, 2010) US State Department < <http://www.state.gov/r/pa/ei/bgn/26551.htm#geo>>.

⁵UN-OHRRLS ‘List of Small Islands Developing States (2012 UN-OHRRLS Website <http://www.un.org/special-rep/ohrrls/sid/list.htm>

1.2.1 Brief History

The Marshall Islands were first discovered by Spanish explorer Alonso de Salazar, who supposedly sighted *Bokak* Island on his way to the Philippines in 1526 on the ship *Santa Maria de la Victoria*. In 1529 another Spanish explorer, Alvaro de Saavedra Ceron, landed on *Ujelang* and *Enewetak* Atolls on his way to Cebu in the Philippines to investigate the fate of Magellan's voyage.⁶ Spain re-asserted its claim to the islands in 1874, but sold the islands to Germany, 11 years later on October 22, 1885.⁷ Upon taking possession of the islands, the Germans set up a company and began trade and commerce in the copra industry.⁸ On September 13, 1886, Germany formally declared a protectorate over the Marshall Islands, bringing the Marshall Islands under the German New Guinea protectorate.⁹

In the early part of World War I, Japan seized the islands.¹⁰ Later, at the end of the war, Japan assumed administration of the islands under a League of Nations trusteeship agreement, declared on December 17, 1920.¹¹ However, in defiance of the League of Nations agreement, Japan unilaterally declared that the mandated islands were to become an integral part of the Japanese empire, and began to fortify the Marshall Islands.¹² To this end, Japan secretly built airfields and naval bases in the Marshall Islands, as well as in other parts of Micronesia.¹³ Then, in 1944, in some of the fiercest battles in the Pacific, the U.S. Marines ousted the Japanese Imperial Army

⁶Philippine Almanac, *Saavedra Expedition* (Philippine Almanac, 2010)

<<http://www.philippinealmanac.com/2010/09/769/the-saavedra-expedition.html>>.

⁷US Department of State, *Background Note: Marshall Islands* (July 14, 2010) US Department of State <<http://www.state.gov/r/pa/ei/bgn/26551.htm>>.

⁸World Statesman, *Marshall Islands* (2000)< http://www.worldstatesmen.org/Marshall_islands.htm>

⁹Ibid.

¹⁰RMI Embassy (US) 'History of the Marshall Islands' (2012) RMI Embassy Website

<http://www.rmiembassyus.org/History.htm>

¹¹World Statesman, *Marshall Islands* (2000)< http://www.worldstatesmen.org/Marshall_islands.htm>

¹²Ibid.

¹³Blogaboutall.com, *History of the Marshall Islands* (March 9, 2010)

<<http://www.blogaboutall.com/2010/02/history-of-the-marshall-islands/>>.

from the islands. The United States then assumed administration of the islands, under a United Nations trusteeship arrangement known as the Trust Territory of the Pacific Islands (TTPI). Administration of the islands was subsequently transferred to the US Department of Interior.

The TTPI covered territories that are now the Republic of the Marshall Islands, the Federated States of Micronesia, the Republic of Palau, and the Commonwealth of the Northern Marianas (CNMI).¹⁴

1.2.2 The Road to Statehood.

The TTPI was formally in place in 1967 when the Congress of Micronesia (COM), the political arm of the TTPI, established what was then known as the Future Political Status Commission (FPSC). The aim of this commission was to explore and investigate the future political status of the territories administered under the UN trusteeship.¹⁵ It could thus be asserted that the decolonisation process insofar as the Marshall Islands and the other Micronesian territories were concerned was in fact set in motion by the Micronesians themselves through their elected congress.¹⁶ These agitations arose as the Micronesians could no longer endure the rather cautious, ‘go slow’ policy adopted by the United States in regards to the economic development and the future political status of the territories.¹⁷ In reality, however, the ‘go slow’ policy adopted by the United States was necessitated by a single difficulty – namely, the difficulty in organising the Micronesian territories into cohesive political entities,

¹⁴Title 48 USC, Chapter 14, ‘Trust Territory of the Pacific Islands’.

¹⁵Carl Heine, ‘Micronesia’s Future Political Status Commission: Its Rendezvous with Destiny’ (1969) 4(1) *The Journal of Pacific History* 127 – 132.

¹⁶*Ibid.*

¹⁷David Hanlon, *Remaking Micronesia: Discourses over Development in a Pacific Territory, 1944-1982* (University of Hawaii Press, 1988) 57..

or nation States. The reason for this difficulty was found in a number of areas. First, the TTPI is roughly located west of the international dateline, north of the equator, south of Japan, and East of China.¹⁸ Second, the total territory had boundaries as long as those of continental United States, but with a total land mass smaller than Rhode Island.¹⁹ Third, the population was scattered over approximately 2,100 islands. Therefore, when pro-independence supporters began campaigning for their right to self determination in the Marshall Islands and Palau, the United States decided not to oppose their wishes.²⁰ Indeed, the United States recognised the people's wishes for autonomy, albeit under a free association arrangement.

The Constitution of the Marshall Islands and the concomitant establishment of the Government of the Marshall Islands came about in 1979. In 1986, the arrangement was formalised when the Compact of Free Association was signed between the two governments, followed by the approval of funding by the United States Congress. On December 22, 1990, the United Nations Security Council passed *United Nations Security Council Resolution (UNSCR)* Number 704, ratifying the termination of the TTPI trusteeship and recommending to the United Nations General Assembly (UNGA) that the Marshall Islands be admitted as a member of the United Nations Organization.²¹ On September 17, 1991, the Republic of the Marshall Islands took its place on the international stage as a proud member of the United Nations Organization's (UN) family of nations.²²

¹⁸Hanlon, *loc. cit.*

¹⁹Roger Gayle, 'A New Political Status for Micronesia' (1978) 51(3) *Pacific Affairs* 427 – 447.

²⁰Hanlon, *above n 18*.

²¹World Statesman, 'Marshall Islands' (2000).
< http://www.worldstatesmen.org/Marshall_islands.htm>.

²²US Department of State, *Background Note: Marshall Islands* (July 14, 2010) US Department of State
<<http://www.state.gov/r/pa/ei/bgn/26551.htm>>.

1.2.3 System of Government.

The Constitution of the Marshall Islands incorporates both Westminster and Presidential concepts in the system of government it creates for the people of the Marshall Islands. The notion of separation of powers between the Legislature, the Executive and the Judiciary is a fundamental tenet of the system of government created under the Constitution. The Legislative arm of the Government (called the 'Nitijela') is a 33 member body whose members are elected every four years, representing 24 electoral districts. Under the Constitution, the Nitijela is vested with the traditional duties and responsibilities of legislatures, primarily that of law-making,²³ and secondly that of holding the executive to account for the expenditure of public funds. The Nitijela is headed by the Speaker, who is also elected to post from among the members of the Nitijela.²⁴

The Executive arm of government is headed by the President, who is both the Head of State as well as the Head of Government. The President is also elected to post from among the members of the Nitijela by the membership of the Nitijela itself. Members of the Cabinet are likewise appointed by the Speaker upon being nominated by the President from among the membership of the Nitijela.²⁵ To date, the Nitijela has installed five Presidents. The late Iroijlaplap Amata Kabua, the first President of the Marshall Islands, was elected unopposed for four terms. His cousin, Iroijlaplap Imata Kabua, was elected President in 1996. In 2000, Kessai Note became the first commoner to be elected President. However, the Marshallese traditional leaders again

²³See Constitution of the Republic of the Marshall Islands Article IV Section 1.

²⁴US Department of State, *Background Note: Marshall Islands* (July 14, 2010) US Department of State <<http://www.state.gov/r/pa/ei/bgn/26551.htm>>.

²⁵See Constitution of the Republic of the Marshall Islands Article V.

retained the Presidency when Iroij Litokwa Tomeing was elected in 2008, and when current sitting President Iroijlaplap Jurelang Zedkaia was elected in 2009.

The judicial authority of the people of the Marshall Islands is vested in the courts of the Marshall Islands. The judiciary is made up of the Supreme Court, the High Court, the District Courts, and the various community courts. The Marshall Islands Judiciary is guaranteed freedom from interference by both the Legislative and Executive arms of government. The appointment of Judges by the Judicial Services Commission and Cabinet is subject to confirmation by the Nitijela.²⁶

1.2.4 Overview of Economic Strategies in Formative Years

The early years of nationhood naturally posed a challenge for the Marshall Islands in terms of its ability to efficiently deliver goods and services to the populace, and at the same time promote the development of a strong economic base. The Government understood that it could not rely entirely on the goodwill of the United States Government and its people (whose grants under the Compact of Free Association were strictly tied),²⁷ to continue to inject much needed funds into the various areas of government services. Like the Federated States of Micronesia and Palau, economic vitality was still heavily dependent on government spending, given the lack of industry to turn the wheels of the private sector economy.²⁸ In addition, the lack of a robust industrial base meant that private sector business was weak, and in the absence of significant exports, tourism became a main driver of the economy, bringing in

²⁶Constitution of the Marshall Islands, Article VI, Section (1) (4).

²⁷The *Compact of Free Association* and the annual *Appropriation Acts* contain language tying the use of grants to specific purposes such as health, education, infrastructure and disaster management. The use of grants for purposes other than those permitted under the Agreement requires the permission of the United States Government.

²⁸ Francis X Hezel, *An Overview of FSM Economy* (2008) Micronesian Seminar <<http://www.micsem.org/pubs/articles/economic/frames/ovrvwfsmecofr.htm>>.

approximately \$US3 million dollars to the whole of Micronesia by the mid 1980s.²⁹ The new Micronesian governments then looked to alternative economic strategies in an attempt to boost their own gross domestic product (GDP). The concept of a 'sale of rights' thus emerged as an economic strategy. Indeed, the Compact of Free Association agreement (CFA) has been viewed by some commentators as a sale of defence rights to the United States, in exchange for economic benefits, defence and immigration privileges.³⁰ So, at this point in history, the Marshall Islands, like other Micronesian States, were leasing fishing rights to distant water fishing nations (DWFNs) to generate additional government revenue.

The Marshall Islands also introduced an Investor Passport Program in the early 1990s. However, due to the theft of funds, the Passport Investment Program was decommissioned and banned under the *Passport Investment Program Repeal Act*. The Australian Labour Party (ALP) powerbroker Graham Richardson, then Minister for Communications, was forced to resign from office for attempting to interfere in the prosecution of one Greg Symons in the Marshall Islands. Mr Symons had been apprehended on forgery and theft charges relating to the sale of Marshall Islands passports.³¹

While developing the various economic schemes discussed above, the government was at the same time heavily campaigning for membership in key international organisations, and further sought to forge bilateral and multilateral ties with

²⁹Francis X Hezel, *The Expensive Taste for Modernity* (2008) Micronesian Seminar <<http://www.micsem.org/pubs/articles/historical/frames/exptstmodfr.htm>>.

³⁰Title Two of the Compact of Free Association 1986, covering the period from 1986 to 2001 (Compact I).

³¹Anthony Van Fossen 'Citizenship for Sale: Passports of Convenience from Pacific Island Tax Havens' (2007) 44(1) *Commonwealth & Comparative Politics* 138, 147.

developed nations. This campaign was to become the centrepiece of Marshall Islands foreign policy in the early years.³² To date, the Marshall Islands has established diplomatic ties with 72 governments and is a member of 49 international and regional organisations.³³ The Marshall Islands has no doubt received substantial assistance from these associations and memberships over the years, but the Compact agreement between the governments of the Marshall Islands and the United States by far represents the cornerstone of the Marshall Islands economic existence, even to this day. Therefore, it was during this period, and in this context, that the government of the Marshall Islands decided in 1988 to establish the Marshall Islands Ship Registry.

1.2.5 The Compact of Free Association (CFA) Agreements.

When the issue of self determination in Micronesia surfaced in the late 1960s, it took almost ten years of negotiations before the United States government agreed to grant the Marshallese people the right to self-determination. The Compact of Free Association between the government of the United States and the people of the Marshall Islands (Compact I) was signed on June 25, 1983, and ratified by the Marshallese people in a plebiscite that was supervised by representatives of the United Nations (UN) later that year.³⁴ This initial agreement expired in 2001, and after more than two years of intense negotiations, the governments of the Marshall Islands and the US signed the Compact of Free Association (As Amended) (Compact II), in 2003.

³²US Department of State, *Background Note: Marshall Islands* (July 14, 2010) US Department of State <<http://www.state.gov/r/pa/ei/bgn/26551.htm>>.

³³Office of the President, *Diplomatic Relations* (June 2010) Office of the President Republic of the Marshall Islands <http://www.rmigovernment.org/news_detail.jsp?docid=343>.

³⁴US Department of State, *Background Note: supra., note 32*.

Compact I was a fifteen year agreement that entered into force on October 21, 1986.³⁵

The agreement provided for economic assistance, immigration privileges, and for the (military) defence of the Marshall Islands and its citizens against foreign aggression.³⁶

Under the economic provisions of Compact I, the United States provided grants totalling over US\$500 million dollars over the fifteen year life of the agreement. This funding was earmarked for infrastructure and areas such as communications, education, health, energy self sufficiency, surveillance capabilities, scholarships and the lease of Kwajalein Atoll by the United States military. In addition, citizens of the Marshall Islands had access to a number of United States Federal Programs such as the Federal Emergency Management Agency, as well as services such as the United States Weather Service, United States Postal Service, and the Federal Aviation Administration.

Under Title I Article IV of the Compact, citizens of the Marshall Islands are permitted to enter, reside and seek employment or education in the United States. It must be noted, however, that the Compact does not confer United States citizenship, but merely provides citizens of the Marshall Islands with the opportunity to enter, reside or gain employment or education in the United States. This is a privilege that may be revoked by the United States in respect of any national of the Marshall Islands that violates the laws of the United States.

Further, under Title III of the Compact, the United States assumes responsibility for the protection and defence of the Marshall Islands and its people. Pursuant to this role,

³⁵ Ibid.

³⁶ Title III Compact of Free Association (Compact I).

the United States possesses the authority to prevent the armed forces of any third party nation from entering the territory of the Marshall Islands. The Compact also gives the United States the right to exercise the so-called ‘strategic denial’. In exchange, the Marshall Islands, in a subsidiary agreement known as the *Military Use and Operating Rights Agreement*, grants the Armed Forces of the United States certain military use and operating rights in the Marshall Islands. Under the Agreement, the Marshall Islands also confers on the US the right to exercise ‘strategic denial’ to armed forces of third party nations.³⁷ If one were to take into account the combined territories of the three Freely Associated States, including Guam and the Commonwealth of the Northern Marianas Islands, the US now has the right to deny the entry by armed forces of third party nations to approximately half a million square miles of the Pacific.³⁸

Compact II has the effect of extending the relationship between the two governments to the year 2023. Under Compact II, the US has already given the Marshall Islands grants totalling approximately US\$460 million.³⁹ The Marshall Islands government also has access to Judicial Training Funds, Pell Grants, Centre for Disease Control Grants, the Enewetak Food & Agriculture Support Program, U.S. Department of Agriculture Rural Development housing loans and grants, as well as Federal Aviation Authority grants. Outside the Compact framework, the US offers assistance through USAID, International Military Education and Training and environmental monitoring of contaminated atolls.

³⁷ Compact of Free Association Title III.

³⁸ See area in [Figure 1](#) above (excluding Kiribati territory).

³⁹ United States Ambassador to the Marshall Islands, Martha L. Campell, ‘Compact 2023: What Next? (Speech Delivered at the College of the Marshall Islands Leto-Letak Melele Forum on the Compact, Majuro, April 22, 2010). See also, US Embassy Majuro <http://majuro.usembassy.gov/sp_04222010txt.html>.

Taking into account adjustments in the level of economic assistance, the loss of access to some US programs, as well as the need for clarification regarding the status of citizens who obtained citizenship under the Passport Program, Title III of Compact II (which contains the various defence provisions) remains virtually unchanged today. As will be discussed below, it was these very same provisions of Compact II that influenced the decision of the government to set up the Ship Registry in 1988.

1.2.6 Overview of the Current State of the Economy.

Today, the economy of the Marshall Islands continues to struggle. Indeed, difficult global economic conditions are exacerbated by the lack of any real industrial base at the domestic level. With a weak private sector, the government continues to bear the burden in terms of the labour workforce, employing approximately 46% of the salaried work force.⁴⁰ Various sectors including fishing and fish products exports, farming, handicrafts, combined with the wholesale and retail markets, the hospitality industry, banking and tourism, are struggling to maintain strong footholds in the economy. Grants under the Compact of Free Association make up more than 50% of the total annual budget for the Marshall Islands.⁴¹ From 2007 through to 2009, the total annual budget averaged approximately US\$124 million.⁴² The annual US contribution to the Marshall Islands during these three fiscal years averaged approximately US\$69 million dollars.⁴³

⁴⁰Supra., note 32.

⁴¹Ibid.

⁴² The Total Annual Budget for FY2007 was US\$124,629,238, for FY2008 it was US\$123,332,933 and for FY2009 it was US\$124,505,579.

⁴³ Appropriations Acts for FY 2007, 2008 and 2009.

As it currently stands, (based on the Marshall Islands 2007 record of National Accounts), Gross Domestic Product (GDP) was estimated at US\$149,219, and GDP *per capita* (based on current prices) was estimated at \$2,851. The GDP growth rate for 2007 was calculated at approximately 1.27%, as reflected in the tables below. Based on available data, the total value of exports averaged approximately 17% of imports in the years 1996 through to 2000. Today, the value of imports continues to exceed the value of total exports.

As the data shows, the Marshall Islands economy remains fragile, and US Federal grants under Compact II will continue to sustain the Marshall Islands government's services, and the economy as a whole, until the agreement expires in 2023. The economic fate of the Marshall Islands beyond 2023 remains in doubt. Whether a Compact III will be entered into depends entirely on the goodwill of the United States Congress. It must be noted, however, that the United States Embassy in Majuro has already warned the government and the people of the Marshall Islands not to take it for granted that Compact funding will be extended beyond 2023.⁴⁴

However, on a more positive note, steps have been taken to put in place measures that would ensure some economic stability for the Marshall Islands beyond 2023, with the establishment of The *Marshall Islands Intergenerational Trust Fund* (Trust Fund).⁴⁵ The Marshall Islands government, along with the United States and the Republic of China (Taiwan), contribute annually to the fund. In 2011, the Marshall Islands government invested a total US\$1.2 million, despite the fund losing about 10% of its

⁴⁴ Ambassador Martha L. Campbell, 'Compact 2023: What Next? (Speech Delivered at the College of the Marshall Islands Leto-Letak Melele Forum on the Compact, Majuro, April 22, 2010). See also, US Embassy Majuro <http://majuro.usembassy.gov/sp_04222010txt.html>.

⁴⁵ Ibid.

value earlier in the year due to declines in US and European stock markets.⁴⁶ The US annual contribution to the fund increases by US\$500,000 every year, and by 2023 the US would have invested over US\$235 million in the fund. Today, the fund is worth approximately US\$140 million.⁴⁷

1.2.7 Population.

The latest population estimates put the population of the Marshall Islands at approximately 64,522,⁴⁸ and growing at a rate of 2.08% per annum.⁴⁹ These estimates were largely predicted in the 1988 census figures, when the population was estimated at approximately 43,380.⁵⁰ Today, the population of the Marshall Islands is spread across 19 atolls and four islands, with about two thirds of the total population residing on Majuro and Ebeye, the two main centres in the country. Majuro Atoll alone accounts for approximately 35% of the population.⁵¹ The establishment of the seat of government on Majuro, combined with the introduction of commerce on the island, has resulted in dramatic population growth, as residents of other islands and atolls have moved to Majuro in search of jobs and a better quality of life.⁵² Another population trend is the ‘out-migration’ of many Marshall Islanders to the United States. The out-migration trend appears to coincide with specific economic and social events that have occurred in the Marshall Islands in the last fifteen years.⁵³ The peak in out-migration in 1997 coincided with the Public Sector Reform Program, which

⁴⁶Giff Johnson, ‘Marshall Islands trust fund takes financial hit, but gov’t re-invests’, *Marianas Variety* (online) September 12, 2011.

⁴⁷Ibid.

⁴⁸CIA, *Marshall Islands* (September 29, 2010) CIA Fact Book
<<https://www.cia.gov/library/publications/the-world-factbook/geos/rm.html>>.

⁴⁹Ibid.

⁵⁰Global Education, *Marshall Islands at a Glance* (February 2009) Global Education
<<http://www.globaleducation.edna.edu.au/globaled/go/pid/1477>>.

⁵¹Ibid.

⁵²Ibid.

⁵³Ben Graham, *Marshall Islands Outmigration Intensifies* (2006) Pacific Islands Report
<http://archives.pireport.org/archive/2006/November/graham_report.pdf>.

saw many public servants being retrenched and paid severance salaries, whereupon they moved to the United States.⁵⁴ Furthermore, the period between 2000 and 2002 was marked by uncertainties in the re-negotiation of the Compact of Free Association with the United States, as well as the threat of possible changes to the Compact's immigration provisions. These factors influenced many residents to move to the United States before the expiry of the first Compact Agreement.⁵⁵ The period between 2001 and 2005 saw the highest number of Marshall Islanders (approximately 5,403)⁵⁶ depart for the United States. Indeed, many of these residents regarded the privilege of living in the United States as a way out of poverty and the economic hardships faced at home.

1.2.8 Establishment of the Marshall Islands Ship Registry.

The Marshall Islands Ship Registry was established in 1988 as one of several government ventures designed to strengthen the nation's economy. Today, the Registry has grown to become the third largest in the world, behind only Panama and Liberia.⁵⁷ Although the steady growth of the Registry may be viewed by some as an achievement for the Marshall Islands, it is important to note that the right to grant nationality to ships is accompanied by the imposition of important duties and obligations under international law. Accordingly, the effective discharge of flag State duties by the Marshall Islands is imperative to the international law framework. Chapter 2 of this thesis examines in detail the issues associated with the Marshall Islands Ship Registry.

⁵⁴Ibid.

⁵⁵Ibid.

⁵⁶Ibid.

⁵⁷UNCTAD, 'Review of Maritime Transport, 2009' (Report by the UNCTAD Secretariat, 2009 - Table 13) 55.

1.3 OVERVIEW: THE INTERNATIONAL LEGAL FRAMEWORK ON FLAG STATE DUTIES.

International law accords every State the right to sail ships flying its own flag on the high seas.⁵⁸ Indeed, this affirms Article 91 of the *United Nations Convention on the Law of the Sea 1982* - that ships that sail on the high seas shall have the nationality of the State whose flag they are entitled to fly.⁵⁹ As a consequence of attaining nationality, ships are subject to the exclusive jurisdiction of the flag State on the high seas.⁶⁰

The concept of the ‘flag State’ emerged from practices as old 1000 BC by the ancient Egyptians as a means of identification of their ships. In ancient Greek and Egyptian civilizations flags were often carved out of pieces of wood, metal or stone.⁶¹ The use of the flag as a means for identification became more and more important as ships gained the ability to travel further and further away from their home places. Over the centuries, the role of the flag also evolved from being a symbol of identity, a symbol of nationality, and further, a symbol of protection, that a ship was under the protection of the State whose flag it was flying.⁶² Although much of the ancient uses of the flag survive today, the focus of this chapter is the flag State as the entity responsible for ensuring that the ships that fly its flag uphold the international law rules and regulations in all aspects of their operations, whether it be safety at sea, marine pollution, the welfare of seafarers, fisheries conservation or maritime security.

⁵⁸ 1982 LOSC Article 90.

⁵⁹ Ibid., Article 91.

⁶⁰ Ibid., Articles 91 and 92.

⁶¹ ‘FAQs about Flags’ <www.worldflags101.com.

⁶² John N.K Mansell, Flag State Responsibility (2009) 13.

As a flag State, the Marshall Islands has granted nationality to more than 2,315 vessels (as at September 30, 2010), for a total GRT exceeding 63,459,992 tons.⁶³ In 2011, tonnage grew by more than 16%, with 60% of vessels coming in as new buildings (bulk carriers and gas carriers being chief among them).⁶⁴ An increase in tonnage can be attributed to market growth in Greece and Turkey, the United States, Japan and South Korea.⁶⁵ The Marshall Islands Ship Registry now flags 2,506 vessels, with a total gross tonnage of 75,236,616.⁶⁶ The top three contributors according to vessel type are tankers, bulk carriers and yachts.⁶⁷ With this tonnage, the Marshall Islands flag has assumed the position as the world's third largest ship registry, behind only Panama and Liberia.⁶⁸ Though this may be viewed as a milestone in the history of the Marshall Islands, it must be borne in mind that the right to grant nationality to ships is not an infinite right. To the contrary, the right to attribute nationality to ships is one that incurs certain duties and obligations for the (flag) State under international law, particularly in regards to the affairs of ships that fly their flags. As Rayfuse has noted: 'For every right there is a concomitant duty, and the principle of 'due regard' requires of such (flag) States, the fulfilment of the duties and obligations imposed under international law'.⁶⁹

⁶³ IRI, *Fleet Highlights* (2010) IRI <<http://www.register-iri.com/index.cfm?action=page&page=110>>.

⁶⁴ IRI, *Marshall Islands Report*, Vol.22 No.1, October 2011, p.2.

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ Tankers: 665 vessels (27% of fleet) with combined gross tonnage of 30,636,984; Bulk Carriers: 550 vessels (22% of fleet) with combined gross tonnage of 21,850,014; Yachts: 516 vessels (21% of fleet) with combined gross tonnage of 91,302.

⁶⁸ IRI, *Fleet Highlights* (2010) IRI <<http://www.register-iri.com/index.cfm?action=page&page=110>>.

⁶⁹ Rosemary Rayfuse, 'The Anthropocene, Autopoiesis and Disingenuousness of the Genuine Link: Addressing Endorsement Gaps in the Legal Regime For Areas Beyond National Jurisdiction' (2009) *University of New South Wales Law Research Series 2* <http://www.austlii.edu.au/au/journals/UNSWLRS/2009/2.html>>.

Therefore, it is abundantly clear that for the rapid growth of the Marshall Islands Registry to be viewed in a positive light, it must be underpinned by effective flag State performance. This is particularly important for the Marshall Islands, given that it is a small developing State with limited capacity, as well as being a so-called flag of convenience. As these circumstances neither excuse nor mitigate the expectations of the Marshall Islands under international law, the nation is equally as culpable as other flag States are for disregarding or breaching their international law duties. The emphasis on the flag State as the main agent for enforcement, especially on the high seas, should come as no surprise given that international law principles themselves treat the flag State as pivotal in regulating the maritime sector, and on the high seas in particular. By imposing further duties on flag States, treaty law is merely reinforcing long standing international law principles. Indeed, as Goodman has rightly observed, while the rights of flag States have remained virtually untouched, their duties and obligations have “grown exponentially” in the areas highlighted above.⁷⁰

The duties of flag States are found in a number of international instruments that collectively form the international legal framework regulating the performance of flag States. First, the ‘general duties’ of flag States are enunciated under the provisions of Article 94 of the 1982 *LOSC*, and further elaborated under the IMO framework. Second, since the terrorist attacks on the United States on September 11, 2001, a raft of new measures have been adopted at the international level to guard against the threat of terrorist attacks in the maritime sector. These measures also recognise the important role of the flag State by prescribing a number of specific duties which flag States must abide by. This ‘maritime security’ framework is largely elaborated in key

⁷⁰Camille Goodman, ‘The Regime For Flag State Responsibility In International Fisheries Law – Effective Fact, Creative Fiction, or Further Work Required?’ (2009) 23 *Australia and New Zealand Maritime Law Journal* 157, 160.

instruments under the IMO framework. Finally, the emerging legal framework on the conservation and management of fish stocks promotes the notion that effective flag State control is critical to closing the gaps in the international effort to properly conserve and manage such stocks. To this end, the emerging framework assigns to flag States a number of important duties aimed at enabling flag States to exercise better controls over the activities of their fishing vessels.

A comprehensive analysis of these duties, and the performance of the Marshall Islands in relation to the discharge of these duties, is undertaken in chapters 3, 4, and 5. Chapter 3 analyses the performance of the Marshall Islands in relation to its ‘general duties’, while chapters 4 and 5 examine the nation’s performance under the ‘maritime security’ framework and the emerging fisheries framework respectively.

Before proceeding further, it is necessary to state that this chapter specifically addresses the performance of the Marshall Islands of its ‘duties and obligations’ as a flag State under the international legal framework for safety at sea and the prevention of marine pollution. It is not the intention of this chapter to discuss the international legal concept of ‘State responsibility.’ International law, it is asserted, has not yet recognised this ‘duty’ as having risen to the level of ‘responsibility,’ implying the attribution of liability to the ‘flag State’ in the event of a violation of international standards (although there have been discussions along those lines, particularly in the fisheries sector).⁷¹ The owners and operators of a ship continue to bear

⁷¹Tullio Treves, ‘Legal Tools for Effective Control’ (Paper presented at Expert Workshop on Flag State Responsibilities: Assessing Performance and Taking Action, 25-28 March 2008, Vancouver Canada). See also Rosemary Rayfuse, ‘Possible Actions for Non-Flag Enforcement: Actions Against Vessels and Flag States’ (Paper Presented at Expert Workshop on Flag State Responsibilities: Assessing Performance and Taking Action, 25-28 March 2008, Vancouver Canada) and Maria Gavouneli,

‘responsibility’ in the event of a violation.⁷² In examining the international legal framework on flag State duties, chapters 3 to 8 below dedicate a considerable amount of time in discussing and analysing the provisions of key international treaties. To ensure that some context is given to the discussions and analysis in those chapters, it is necessary to highlight at the outset, key principles in the interpretation of treaties.

Treaties are international agreements between States, in written form,⁷³ and States may enter into treaties on a whole range of matters, such as, international relations, peace, trade, independence, reparations, territorial boundaries, human rights, and immigration, for instance.⁷⁴ Treaties are binding on parties who have ratified same, and a party may not take any action that would derogate upon any provisions of a treaty after such State has ratified the treaty.⁷⁵ To the contrary, parties to a treaty have an obligation to perform their treaty obligations in good faith, or in accordance with the latin maxim ‘*pacta sunt servanda*.’⁷⁶ Even considerations of domestic law will not provide a State with a justifiable reason not to perform its treaty obligations.⁷⁷ Treaties are to be interpreted in in good faith, and in accordance with their ordinary meaning, taking into account their objectives and purposes (although a number of different interpretation approaches have been advanced).⁷⁸

Publications on Ocean Development: Functional Jurisdiction in the Law of the Sea (Martinus Nijhoff Publishers, 2007) 34.

⁷²International Commission on Shipping, *Inquiry into Ship Safety: Ships, Slaves and Competition* 2001, 87; Maritime International Secretariat Services Limited, *Shipping Industry Guidelines on Flag State Performance* (2nd ed, 2006) 6.

⁷³Vienna Convention on the Law of Treaties 1969 Article 2(1)(a).

⁷⁴UN, *Vienna Convention on the Law of Treaties* (2008) UN Website
<<http://untreaty.un.org/cod/avl/ha/vclt/vclt.html>>

⁷⁵ Vienna Convention on the Law of Treaties; *supra.*, Article 18. See also Article 27 of the convention.

⁷⁶Latin for ‘*agreement must be kept*’.

⁷⁷Vienna Convention on the Law of Treaties; *op.cit.*, Article 27.

⁷⁸ (a) ‘*Intent approach*’ (b) ‘*Textualist approach*’ (c) *Teleological approach*; (d) *New Haven approach*.

As a party to the *Vienna Convention on the Law of Treaties 1969*, the Marshall Islands is obligated under international law to perform its treaty obligations *in good faith*, in accordance with Article 26 of the convention.

1.4 PURPOSE, SCOPE AND OBJECTIVE OF THE RESEARCH.

The purpose of the thesis is to analyse the performance of the Marshall Islands of its duties as a flag State under international law. In carrying out the analysis, the thesis interrogates the international legal framework and analyses the duties of the Marshall Islands as a flag State in three different maritime areas. First, in regards to the issue of safety at sea and the prevention of marine pollution, often referred to as the ‘general duties’ of flag States. Second, in regards to the duties of the Marshall Islands as a Flag State under the international maritime security instruments, and finally, the duties as they relate to the conservation and management of fisheries. The objective of the analysis is to determine whether, as a flag State, the Marshall Islands has been able to carry out its duties under these different frameworks (and in accordance with international law), or whether substantive gaps exist in the discharge of these duties by the Marshall Islands. Additionally, the thesis intends to highlight issues and challenges undermining the performance of the Marshall Islands, and where warranted, recommend steps that the government of the Marshall Islands could take in order to improve its performance.

It has been asserted that the international legal framework itself provides an adequate and effective foundation for ensuring flag States comply with internationally agreed rules.⁷⁹ It has also been asserted that the failure of flag States to observe international

⁷⁹John N.K. Mansell, *Flag State Responsibility* (Springer-Verlag Berlin Heidelberg, 2009) 3.

standards lies in their inability or unwillingness to effectively carry out prescribed duties at the national level.⁸⁰ These concerns have long been associated with open registries (or ‘flags of convenience’ (FOCs) - such as the Marshall Islands), as they typically offer registration to foreign shipowners with no requirement for a national crew, as well as offering very low registration and tonnage fees, reduced taxes, and weak enforcement of international standards. Indeed, this is often due to a lack of resources and expertise on the part of FOCs.⁸¹ The International Transport Workers Federation (ITF) has long been a vocal critic of the system of open registries, attributing the problem of sub-standard shipping to the expansion in the practice of open registries and FOCs.⁸² Open registries have also come under scrutiny in the fisheries context, where it has been argued that the lack of adequate flag State control is the root cause of IUU fishing.⁸³ Although it may no longer be appropriate to make such generalisations, the safety records of vessels flagged to open registries continue to cause anxiety, particularly as the number of open registries continues to rise. The analysis in the thesis examines the performance of the Marshall Islands not only as flag State, but also as a small developing State and a flag of convenience.

1.5 THESIS STATEMENT.

The thesis will show that, as a flag State, the Marshall Islands has not quite lived up to its obligations under international law in the context of: (i) safety at sea and the prevention of marine pollution; (ii) maritime security; and (iii) the conservation and management of the world’s fish stocks. The reasons for this failure are many and varied.

⁸⁰*Loc. cit.*

⁸¹*Ibid.*, p.76.

⁸²ITF, *Flags of Convenience Campaign*, International Transport Workers Federation <<http://www.itfglobal.org/flags-convenience/index.cfm>>.

⁸³UNCED Agenda 21, Chapter 17.

The performance record of the Marshall Islands as a flag State over the past 23 years is a mixed one. As will be discussed in detail in Chapter 3, the period between 1998 and 2004 was the most challenging for the Marshall Islands. During this period, the Registry suffered major vessel losses, which included the loss of property and the loss of life. It also appears from the record that during this period the Registry was experiencing rapid growth in terms of incoming tonnage. Maritime accidents invariably point to poor performance by flag States, and the correlation between the rapid growth in tonnage and the series of maritime incidents suggests safety concerns were considered secondary to recording more tonnage. In the period between 2004 and April 20, 2010, the Marshall Islands Registry enjoyed relative success in stemming the occurrence of serious maritime incidents. However, port State control records continued to show minor “deficiencies” and, in some cases, “detentions” against vessels trading under the Marshall Islands flag. The explosion of the Deep Water Horizon in the Gulf of Mexico on April 20, 2010, indicates that decisive action is required to improve the level of ‘effectiveness’ with which the Marshall Islands is discharging its duties as a flag State. The failure of the Marshall Islands to take the necessary steps to enhance its level of ‘effectiveness’ as a flag State not only threatens the continued safety of vessels and seafarers, but also the fragile marine environment and the international effort to conserve and manage fish stocks.

1.6 THESIS QUESTIONS.

The research is guided by a number of research questions. First, the research will attempt to ascertain the duties of flag States under international law, with specific reference to the Marshall Islands. Second, the research asks why the Marshall Islands

as a flag State is still struggling to live up to its obligations under international law, 20 years after the Registry was first established. Finally, the thesis will ascertain what steps the government could take in the future in order to mitigate the issues undermining its performance as a flag State.

1.7 SIGNIFICANCE OF THE THESIS.

The significance of this research is two-fold. First, in the light of the difficulties the Ship Registry is facing, and the shortcomings of the Marshall Islands as a flag State, the research provides the opportunity for policy reform. In 1990, when the decision was reached to establish an open ship registry, the Marshall Islands was still standing on the threshold of nationhood, exploring and experimenting with different economic models in the face of financial uncertainty. The mainstay of the Marshall Islands economy was (and continues to be) the Compact of Free Association.⁸⁴ However, the efforts of the Marshall Islands to secure bilateral and multilateral relations must be applauded. Today, the Marshall Islands has established diplomatic relations with 71 States⁸⁵ and is a member of 49 international (and regional) organisations. Moreover, the Marshall Islands is benefitting from these relationships in terms of its economic aspirations.

Additionally, the new millennium has ushered in a new set of challenges for the maritime sector - challenges which require a coordinated international effort. The scourge of terrorism, for instance, is no doubt a challenge that the international community must collectively address in order to prevent terrorist attacks crippling the

⁸⁴The initial Compact of Free Association was concluded in 1986 between the two governments and remained in place for 15 years, ending in 2001. In 2003, the two governments concluded and executed the current Compact of Free Association (Compact of Free Association as Amended, or Compact II).

⁸⁵For the list of countries please refer to: <http://www.register-iri.com/content/marshall/diplorel.cfm>.

maritime sector. The challenge posed by IUU fishing also requires meaningful international cooperation. However, the success of these strategies heavily depend on flag States effectively implementing their international obligations at the national level.⁸⁶

As such, the focus of the Marshall Islands as a flag State should not only be on economic returns, but also the effective discharge of its flag State duties and obligations under international law. Indeed, the goal of economic prosperity cannot be pursued at all costs, and if the establishment of the Ship Registry is in fact a product of its time, then national policies must be reformed, modernized and brought in line with the obligations of the Marshall Islands under international law. The thesis could provide the impetus for such policy reform.

The thesis is also significant in that it will contribute to the international law literature on flags State duties and obligations, particularly with regards to the performance of small developing countries such as the Marshall Islands. For example, the emerging international legal framework on fisheries is a significant development in international law, and one which has not been comprehensively researched and analysed. It is envisaged that the analysis of the fisheries framework in this thesis will contribute to the emerging literature on flag States and their duties under the fisheries framework. Furthermore, the research could prove useful to other States, particularly those small islands States in the Pacific region that are contemplating the idea of establishing a ship registry. Indeed, the Marshall Islands experience could serve as a useful lesson for these States.

⁸⁶Sam Blay, Ryszard Piotrowicz, Martin Tsamenyi (eds) *Public International Law: An Australian Perspective* (2nd ed, Oxford University Press, 2005) 99.

1.8 CHAPTER STRUCTURE

The thesis consists of nine chapters, including this introductory chapter. Chapter 2 offers an insight into the establishment, operation and growth of the Registry, highlighting issues such as the maritime services provided by the Registry, the taxes charged and revenue generated by the Registry, the growth of tonnage over the last 23 years, as well as the type of tonnage currently sailing under the flag. Chapter 2 also highlights the distribution of tonnage ownership by nationality and the distribution of seafarers by nationality.

Chapter 3 analyses the international legal framework pertaining to the ‘general duties’ of flag States, and identifies the ‘general duties’ of flag States such as the Marshall Islands under international law. Chapter 4 on the other hand, tests the performance of the Marshall Islands of such duties at the national level against the requirements of the relevant international instruments. To this end, Chapter 4 inquires into areas such as the national policy framework, the national legislative framework, the institutional framework, the enforcement framework, infrastructure, capacity, and the performance of the Marshall Islands as a flag State. Chapter 4 also highlights the issues and challenges associated with the performance of the Marshall Islands of its duties under the framework. The analysis in this chapter is to a large extent influenced by the provisions of Article 94 of the 1982 *LOSC* and the core conventions under the IMO framework.

By contrast, Chapter 5 discusses the international legal framework regulating the ‘maritime security’ related duties of flag States. The chapter analyses this framework

with the objective of ascertaining the duties of flag States under the relevant international instruments. To this end, this chapter interrogates the relevant provisions of the 1982 *LOSC*, and the maritime security related instruments adopted under the auspices of the IMO. In this regard, the relevant international instruments are found under the IMO framework, notably the SUA Treaties⁸⁷ and the 1974 *SOLAS* Convention (particularly the maritime security amendments to the 1974 *SOLAS* Convention adopted in the 2002 Diplomatic Conference).

Chapter 6 on the other hand, embarks on an analysis of the performance of the Marshall Islands of these duties. In testing the performance of the Marshall Islands, Chapter 6 also inquires into, and examines the policy and legal framework of the Marshall Islands, as well as the nation's administrative and institutional arrangements, enforcement framework, and the general performance of the government's administration. Where applicable, the chapter also highlight the issues and challenges facing the Marshall Islands in this context.

The fourth substantive chapter, Chapter 7, discusses the emerging international legal framework dealing with the conservation and management of fisheries. The chapter analyses this framework and attempts to identify from the framework, the duties of flag States under this new legal framework. The aim of this review is to analyse the performance of the Marshall Islands of its flag States duties under the emerging international legal framework on the conservation and management of fish stocks. The actual analysis of the performance is carried out in Chapter 8.

⁸⁷The term 'SUA Treaties' is intended to collectively refer to the *International Convention on the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 1988*, the *Protocol on Fixed Platforms Located in the Continental Shelf, 1988*, and the *2005 SUA Protocols*.

Utilising the approach adopted in earlier chapters, Chapter 8 will analyse the performance of the Marshall Islands of its fisheries related duties, against the requirements of the framework. To this end, the chapter delves into issues such as policy framework, domestic legal framework, infrastructure, institutional capacity, and enforcement. The aim of the analysis, as explained above, is to test the performance of the Marshall Islands as a flag State of against the benchmarks articulated under Parts V and VII of the 1982 LOSC, as well as the so-called post-UNCED international fisheries instruments. Like the previous chapters, this chapter also highlight the issues and challenges that affect the performance of the Marshall Islands of its fisheries-related flag State duties.

Finally, Chapter 9 provides the conclusion to the thesis. It reiterates the main arguments of the thesis and summarises the results of the analysis of the Marshall Islands performance of its flag State duties under international law. Chapter 9 also proposes a set of recommendations that the government of the Marshall Islands may consider, in order to improve the level of its performance as a flag State, under international law.

CHAPTER 2

OVERVIEW OF THE MARSHALL ISLANDS SHIP REGISTRY

2.1 INTRODUCTION

As described in Chapter 1, the Marshall Islands Ship Registry was established by the Government of the Marshall Islands in 1988 as part of a far-reaching economic strategy designed to generate much needed revenue. Since its inception the Registry has enjoyed steady growth, and is now the third largest ship registry in the world, having surpassed the 70 million gross ton mark in the first half of 2011.¹

This chapter provides an insight into the establishment, operations, and current state of the Marshall Islands Ship Registry. The chapter previews the management structure of the registry, discusses the type of services offered by the registry, and examines the growth of the registry in terms of tonnage, tonnage type, tonnage ownership, as well as seafarer documentation over the course of the last 23 years.

2.2. HISTORICAL BACKGROUND

The Marshall Islands Ship Registry was established by the Government of the Marshall Islands in 1988, and was the brain child of Ambassador Fred Zeder, who at the time was President Ronald Reagan's representative for the Compact of Free Association status negotiations with the Marshall Islands and the Federated States of

¹IRI, *Information Centre* (IRI, 2011) <<http://www.register-iri.com/index.cfm?action=page&page=107>>.

Micronesia.² Today, the registry is managed by International Registries Inc. (IRI), a company based in Reston, Virginia (USA). IRI took over the management and acquired a majority interest in the venture in 1991.³ Between 1988 and 1991, the registry was managed by Maritime Registry Management Inc., a company owned by one Howard Zeder. In 1990, Howard Zeder relinquished control and management of the Registry, but remained a consultant to the new managers, as well as a Board member of the then, newly formed Trust Company of the Marshall Islands (TCMI), an affiliate of IRI.⁴

2.2.1 The Zeders

Ambassador Fred Zeder was a former navy fighter pilot in World War II, who served in the Pacific Theatre alongside the future United States President, George H.W. Bush.⁵ In 1974, President Gerald Ford appointed Fred Zeder to serve in the Department of the Interior as director of the Office of Territorial Affairs. In this capacity, Ambassador Zeder oversaw U.S. policy relating to the Trust Territory of the Pacific Islands (TTPI), under which the Marshall Islands was being administered.⁶ In 1982 he was confirmed by the United States Senate as President Ronald Reagan's personal representative to the Micronesian Status Negotiations,⁷ with the rank of Ambassador.⁸

²Giff Johnson, 'TV Host Pours Scorn on RMI' *Marshall Islands Journal* (Majuro, Marshall Islands) May 21, 2010, 1.

³Elizabeth Canna, *One Stop Shop For Registries? Liberian and Marshall Islands Registries become kissing cousins; more relatives may be on the way* (1990) American Shipper <<http://www.accessmylibrary.com/article-1G1-9061426/one-stop-shopping-registries.html>>.

⁴*Ibid.*

⁵US Department of Interior, Office of Insular Affairs, 'In Memoriam – Fred Monroe Zeder' (Press Release, March 12, 2008) 1 (OIA Website 2008) <http://www.doi.gov/oia/press/2004/fred_zeder.htm>.

⁶*Ibid.*

⁷These negotiations led to the decolonisation of the Marshall Islands and the Federated States of Micronesia.

⁸Above n 5.

It was reported that Ambassador Zeder himself proposed the ship registry, essentially within days of the multi-million dollar Compact of Free Association being signed with the Government of the Marshall Islands.⁹ Nevertheless, the company originally contracted to manage the registry was Maritime Registry Management Inc., owned by Howard Zeder, son of Ambassador Fed Zeder.¹⁰ Ambassador Zeder was accused in the press of conduct unbecoming, and for putting himself in a conflict of interest situation by doing business in the Pacific while acting as the US negotiator in the Micronesian Status Negotiations.¹¹ However, despite criticism by the media, the registry became a reality. Indeed, the proposal was attractive, as the Government of the Marshall Islands was not required to make any financial contribution, rendering any financial benefit earned under the venture a pure profit.

2.2.2 International Registries Inc (IRI)

In 1990, IRI entered into a joint venture agreement with the Government of the Marshall Islands, the Trust Company of the Marshall Islands Inc (TCMI), and the Marshall Islands Maritime and Corporate Administrators Inc (MIMCA), to administer the maritime and corporate programs of the Republic of the Marshall Islands.¹² Both TCMI and MIMCA are subsidiaries or affiliates of IRI. Howard Zeder, who had administered the program since its inception in 1988, sold his interests in the venture

⁹The Associated Press, 'Ambassador has secret company' *Wilmington Morning Star* (online) July 2009 <<http://news.google.com/newspapers?nid=1367&dat=19900430&id=XuUVAAAIAIAJ&sjid=IxQEAAAIAIAJ&pg=4098,5518717>>.

¹⁰Ibid.

¹¹Joan Mower, 'Bush Pal ran Business Closely Linked to His Ambassador Post' (online) April 30, 1990 *Chicago Sun-Times* April 30, 1990 <<http://www.highbeam.com/doc/1P2-3996129.html>>.

¹²IRI, *Who We Are* (2010) IRI <<http://www.register-iri.com/index.cfm?action=about>>.

to IRI though he remained part of the management team, as referred to earlier.¹³ At this time, IRI was also managing the Liberian Registry.¹⁴

IRI is a company based in Reston, Virginia, in the United States. Its headquarters are located at 11495 Commerce Park Drive. IRI is perhaps the oldest and most experienced company in the area of maritime and corporate affairs, and has been providing maritime and corporate services for over 60 years.¹⁵ Liberian Services Inc., the company which administered the Liberian Registry, was IRI's predecessor. IRI itself was established in 1990 and has extensive experience in the maritime sector,¹⁶ providing expert administrative services such as issuing certificates of registry and manning certificates, overseeing seafarers' licensing and documentation, conducting safety inspections, engaging recognised classification societies to monitor compliance of its vessels with all international and national standards, providing technical assistance, issuing radio station licences, providing investigative services, as well as providing information on maritime regulations and port activities (among others).¹⁷

To serve its growing list of clients, IRI has set up a global network of offices. For its clients in the far-east and Australia, IRI has offices in Dalian, Hong Kong, Seoul, Shanghai, Singapore and Tokyo.¹⁸ For Europe, Africa, the Middle-East and the Indian Sub-continent, IRI has offices in Dubai, Geneva, Hamburg, Istanbul, London,

¹³Above n 3.

¹⁴In 2000 however, due to the political situation in Liberia, and demands by then Liberian President Charles Taylor for higher royalties, IRI terminated its relationship with the Liberian registry. Today, IRI exclusively manages the Marshall Islands Ship Registry.

¹⁵IRI, *About IRI* (2010) IRI Website <<http://www.register-iri.com/index.cfm?action=about>>.

¹⁶IRI, *History* (2010) IRI <<http://www.register-iri.com/index.cfm?action=page&page=158>>

¹⁷Ibid.

¹⁸IRI, *Far-East/Australia* (2010) IRI Website <<http://www.register-iri.com/index.cfm?action=page&page=138>>.

Mumbai, Piraeus, Roosendaal and Zurich.¹⁹ In the Americas, IRI has opened offices in Baltimore, Fort Lauderdale, Houston, New York and Washington DC/Reston, VA.²⁰ In addition to these regional offices, IRI also has other affiliates, namely Chrysses Demetriades & CO. in Cyprus, Ehlermann Rindfleisch Gadow in Germany, and VOGT & WIIG AS in Norway.²¹ IRI is managed by a Board of Managers, which is responsible for the day to day management and growth of the company. The members of the Board of Managers are William R Gallagher, Florigio Guida and Guy E. C. Maitland.²²

The control and management of the registry takes place pursuant to a joint venture agreement, entered into in accordance with the *Maritime Administrations Act* of 1990.²³ Under these arrangements, the control and management of the Marshall Islands Ship Registry is vested solely in IRI. The Marshall Islands Government has, in fact, delegated the administration of its flag State duties to IRI not only in the legal sense, but also in respect of the day to day management and administration of the ship registry, which is conducted from IRI's head offices in Reston, Virginia, (USA).²⁴

Indeed, Section 107 of the *Maritime Administrations Act 1990*,²⁵ Section 262 of the *Documentation and Identification of Vessels Act 1990*, as well as Section 302 of the *Preferred Ship Mortgage and Maritime Liens Act 1990*, prescribe that all ship records be maintained in the head offices of IRI in the US. The Marshall Islands Government

¹⁹IRI, *Europe, Africa, Middle-East and the Indian Sub-Continent* (2010) IRI <<http://www.register-iri.com/index.cfm?action=page&page=138>>.

²⁰Ibid.

²²IRI, *Biographies Board of Managers* (2010) IRI <<http://www.register-iri.com/index.cfm?action=page&page=204>>.

²³47 MIRC Ch.1, *Maritime Administrations Act, 1990*.

²⁴IRI, *History* (2010) IRI <<http://www.register-iri.com/index.cfm?action=page&page=158>>.

²⁵Above n 23, Section 107.

plays no role in the day to day management or the business affairs of the registry. Even today, 23 years since its inception, the ship registry continues to be administered exclusively from IRI's head offices in Reston VA, United States.²⁶

2.3 MARITIME SERVICES OFFERED BY THE REGISTRY

Under the management of IRI, the Marshall Islands Ship Registry offers a number of maritime services and performs certain duties and functions in relation to such services, as required under domestic and international law. The services offered by the registry include the registration of merchant and fishing vessels, the recordation of mortgages, the issuance of ship licences and relevant certificates, as well as the provision of technical maritime safety assistance. More importantly, the registry is responsible for investigating all maritime incidents involving vessels flying the Marshall Islands flag, and ensuring that investigation reports are compiled in cases involving serious violations. In the case of serious maritime casualties involving Marshall Islands vessels, the Maritime Administrator must make inquiries into such casualties, or cooperate with States that are conducting such inquiries. In addition to the functions discussed above, the registry provides yacht services and seafarer documentation services.²⁷

2.3.1 Merchant Vessel Registration²⁸

The registration of merchant ships under the laws of the Marshall Islands is effected pursuant to the *Maritime Administrations Act*, the *Documentation and Identification of Vessels Act*, the *Republic of the Marshall Islands Maritime Regulations*, and the

²⁶IRI, *General Information/ Maritime Services* (2010) IRI <<http://www.register-iri.com/index.cfm?action=page&page=42&fromPage=5>>.

²⁷IRI, *Maritime Services* (2010) IRI <<http://www.registeriri.com/index.cfm?action=page&page=53>>.

²⁸Ibid.

Republic of the Marshall Islands Vessel Registration and Mortgage Recordation Procedures.²⁹ While the two Acts referred to above set out the general legal framework for the registration of vessels, the Regulations provide the technical specifications that must be met before a vessel is eligible for registration under the laws of the Marshall Islands. In accordance with the laws and regulations referred to above, the Maritime Administrator may accept the registration of vessels such as Tankers, Cargo ships, Container ships, Passenger vessels, Mobile Off-shore Drilling Units (MODUs), Tugs, Commercial Yachts of more than 24 meters, Private Yachts of more than 12 meters, as well as Decked Commercial Fishing Vessels of 24 meters or more in length.³⁰ However, ownership of such vessels must vest in the name of a Marshall Islands entity, or a qualified foreign entity.³¹ A ‘Marshall Islands entity’ refers to a domestically incorporated company, while the term ‘qualified foreign entity’ refers to foreign based corporation that has registered as a Marshall Islands entity pursuant to the *Business Associations Laws* of the Marshall Islands.

2.3.2 Fishing Vessel Registration

The Marshall Islands Ship Registry is also authorised to register fishing vessels under the *Documentation and Identification of Vessels Act*.³² The registry may consider an application for the registration of a fishing vessel provided certain conditions are met. First, the fishing vessel concerned must be owned by a citizen or entity in the Marshall Islands, or a qualified foreign entity. A ‘citizen’ of the Marshall Islands refers to natural persons as well as corporations formed under the laws of the Marshall

²⁹The details of these pieces of legislations, in terms of the compliance of the Marshall Islands with its Flag State duties are analysed in Chapter 4 below. For the purposes of this Overview, it is sufficient just to highlight these pieces of legislations as the legislations that make up the domestic legal framework.

³⁰47 MIRC Chapter 2, *Documentation and Identification of Vessels Act*, Section 203.

³¹*Ibid.*

³²*Ibid*, Section 279.

Islands. By contrast, a 'qualified foreign entity' refers to foreign corporations that have registered to be domesticated in the Marshall Islands. Second, the owners must show proof that the fishing vessel is seaworthy and that tonnage measurements have been certified in accordance with the *Documentation and Identification of Vessels Act 1990* (and the regulations promulgated under that Act). In this regard, the Maritime Administrator will require that the name and numbers of the vessel be marked in accordance with the specifications approved by the Food and Agriculture Organization of the United Nations.³³ Finally, in accordance with the regulations, an application to register a fishing vessel will only be considered if the owner has paid the appropriate registration fees and the applicable tonnage taxes.³⁴

2.3.3 Vessel Classification³⁵

In order for a vessel to gain registration in accordance with the technical specifications discussed above, the vessel must be issued a classification by a Classification Society or other Recognized Organization that is approved by the Maritime Administrator.³⁶ Currently, the Maritime Administrator recognises and works with a number of classification societies, all of which are members of the International Association of Classification Societies (IACS).³⁷

³³FAO Marking Specifications.

³⁴Above n 30, Sections 279 and 208.

³⁵IRI, *Maritime Services* IRI

< <http://www.register-iri.com/index.cfm?action=page&page=55>>.

³⁶*Classification societies* are defined as organised societies which undertake to arrange inspections and advise on the hull and machinery of a vessel from its initial construction stage onwards. The societies produce a certificate concerning the vessel's seaworthiness in accordance with the trade within which the vessel is intended to work or does work. See, Sean Diederich Durr LLM, 'An Analysis of the Potential Liability of Classification Societies: Developing Role, Current Disorder and Future Prospects' (Masters Thesis, University of Cape Town).

³⁷The societies concerned are the American Bureau of Shipping (ABS), Bureau Veritas (BV), China Classification Society (CCS), Det Norske Veritas (DNV), Germanischer Lloyd (GL), Korean Register of Shipping (KRS), Lloyds Register (LR), Nippon Kaiji Kyokai (NK), Registro Italiano Navale (RINA) and the Russian Maritime Register of Shipping (RS).

To verify that a vessel has been issued its classification for the purposes of registration, the application for registration must include confirmation from a Classification Society that all classification issues have been dealt with, and that the vessel concerned has been duly issued its classification.³⁸ Where warranted, the Classification Society must present the Maritime Administrator with a list of classification issues that require further work, as well as a list of Certificates that the Classification Society is prepared to issue.³⁹ The shipowner must also provide the Maritime Administrator with confirmation of the status of classification and relevant surveys.⁴⁰ Where a vessel fails to obtain classification, the responsible Classification Society must state the reasons for the failure, as well as the action required of the vessel in order to regain classification.⁴¹

For vessels that are 15 years old on the date of registration, the application must be further accompanied by proof that the vessel concerned has successfully passed a number of surveys, namely, the *Classification Special Survey-Hull*, *Classification Special Survey-Machinery and Electrical Equipment*, *Classification Drydocking Survey* (or *Underwater Examination*, in lieu of *Drydocking*), *Load Line Survey*, *Safety Construction Survey*, *Safety Radio Survey*, *Safety Equipment Survey*, and the *International Oil Pollution Prevention (IOPP) Survey*.⁴²

2.3.4 Ship Radio Licensing⁴³

³⁸Republic of the Marshall Islands Maritime Regulations.

³⁹*Ibid.*

⁴⁰*Ibid.*

⁴¹Republic of the Marshall Islands Vessel Registration and Mortgage Recordation Procedures.

⁴²*Ibid.*

⁴³IRI, Maritime Services/Ship Radio Licensing (2010) IRI <<http://www.register-iri.com/index.cfm?action=page&page=59>>.

The Maritime Administrator is responsible for issuing all Marshall Islands Ship and Vessel Radio Station Licences, based on the requirements of SOLAS 1974, the International Telecommunications Union (ITU), and the laws of the Marshall Islands.⁴⁴ Upon registration of a vessel, the Maritime Administrator issues a temporary radio station licence for a period up to 90 days, while conducting a further review to ensure there is full compliance by the vessel in terms of its equipment. Following this interim period, and upon a successful review, the Maritime Administrator issues a permanent radio station licence that is valid for a period of 4 years. A ship radio licence issued by the Maritime Administrator under these regulations is subject to renewal upon application by the shipowner.⁴⁵

Further, the regulations require that all Marshall Islands vessels carry on board at all times the Ship Radio Station Licence, Certificates of Competency of the Radio Operator (or the Operators and Radio Log), the ITU List of Call Signs and Numerical Identities of Stations used by the Maritime Mobile and Maritime Mobile-Satellite Services, ITU Lists of Coast and Ship Stations, the ITU List of Radio Determination and Special Service Stations, as well as the ITU Manual for use by the Maritime Mobile and Maritime Mobile-Satellite Services.⁴⁶

2.3.5 Mortgage Recordation⁴⁷

Another important service provided by the Marshall Islands Ship Registry is the recordation of ship mortgages - a service which protects the interests and titles of clients of the registry. In order to achieve this objective, the *Preferred Ship Mortgages*

⁴⁴See specifically the Republic of the Marshall Islands Maritime Regulations, Chapter 4.

⁴⁵Ibid.

⁴⁶IRI, *Maritime Services/Ship Radio Licensing* (2010) IRI < <http://www.register-iri.com/index.cfm?action=page&page=53>>.

⁴⁷Ibid.

and Maritime Liens Act provides for priority recognition for all mortgages, hypothecation and similar security instruments that are recorded with the Maritime Administrator.⁴⁸ The Act provides that a sale, conveyance, hypothecation, mortgage or assignment of mortgage of any vessel shall not be valid unless the instrument evidencing such interest is recorded in the offices of the Maritime Administrator.⁴⁹ The record must reflect the name of the vessel, the names of the parties, the time and date of recordation, the interest in the vessel concerned, and the value of obligation.⁵⁰ Therefore, under the laws of the Marshall Islands, mortgages, hypothecations, and other security instruments appearing in the register take precedence over other interests, thereby safe-guarding the interests and assets of clients of the registry by according such clients priority over clients whose interests are not recorded in the register.

2.3.6 Technical Support

The Ship Registry offers technical support to ensure that shipowners and operators are properly implementing national laws and international standards. It supports shipowners and operators on technical aspects of implementation, such as the *‘...issuance of technical dispensation, exemption, equivalency and survey certificates; multiple load line assignment books; technical interpretation of regulations and support on vessel detentions; liaison with classification societies, promulgation of marine notices and technical circulars, and other technical matters.’*⁵¹

2.3.7 Marine Safety Services and Investigations

⁴⁸Republic of the Marshall Islands Maritime Regulations, Chapter 3.

⁴⁹47 MIRC Chapter 7, *Preferred Ship Mortgages and Maritime Liens Act*, Section 302.

⁵⁰*Ibid.*

⁵¹LowTax Global Tax and Business Portal, ‘Marshall Islands: Offshore Business Sectors’ (Lowtax Website 2011) <http://www.lowtax.net/lowtax/html/marshall_islands/jmrobs.html>

In this regard, the Ship Registry ensures that vessels are properly inspected and that the appropriate instruments have been submitted by shipowners and operators. The Registry also conducts investigations into maritime incidents and maritime casualties.

2.4 REVENUE GENERATION THROUGH TAXES AND FEES⁵²

A substantial portion of the revenue of the Marshall Islands Ship Registry is generated from the taxes and fees it charges for services rendered to its clients.⁵³ The Maritime Administrator imposes a variety of fees and taxes pursuant to the *Republic of the Marshall Islands Maritime Regulations* and the *Republic of the Marshall Islands Vessel Registration and Mortgage Registration Procedures*. Such fees and taxes are incurred for the registration of vessels, as well as for other services rendered to shipowners and operators.⁵⁴ Such fees include *Registration Fees*, *Annual Tonnage Taxes*, *Marshall Islands International Participation Fees*, and other charges. The revised Schedule of fees is contained in *Marine Notice Number 1-005-1*, issued by the Maritime Administrator in December 2009.⁵⁵

2.4.1 Registration Fees for Merchant Vessels⁵⁶

For the registration of merchant vessels, the fee schedule provides for a dual fee system, identified as Schedule ‘A’ and Schedule ‘B’ registration fees.⁵⁷ Schedule ‘A’ fees are more suited for the registration of small to medium sized vessels, while Schedule ‘B’ fees are designed for the registration of larger vessels.⁵⁸ In short,

⁵²IRI, *Maritime Services/Fee Schedule* (2010) IRI <<http://www.register-iri.com/index.cfm?action=page&page=57>>. See also Marine Notice No. 1-005-1 attached as Annex ‘4’ below.

⁵³Ibid.

⁵⁴Ibid.

⁵⁵See Annex ‘10’ below.

⁵⁶See also Marine Notice No. 1-005-1 (Annex ‘4’ below).

⁵⁷IRI, *Fee Schedule* (2010) IRI <<http://www.register-iri.com/index.cfm?action=page&page=57>>.

⁵⁸IRI, *Tonnage Tax Calculator For the Marshall Islands* (2010) IRI <<http://www.register-iri.com/index.cfm?action=page&page=187&calc=1>>.

Schedule ‘A’ registration fees are standard fees, while Schedule ‘B’ offers a staggered fee system, based on tonnage categories.⁵⁹ .

The initial registration fee per vessel under Schedule ‘A’ is US\$2,500. For Schedule ‘B’ registrations, the applicable fee is dependent upon the particular tonnage category the vessel falls within. The initial registration cost for vessels of 2,500 Net Tons (NT) or less is US\$2,500. For vessels of 2,501 NT to 15,000 NT, the initial registration fee is US\$5,000. In respect of vessels of 15,001 NT to 35,000 NT, the initial registration fee increases to US\$10,000. For vessels 35,001 NT to 50,000 NT, the initial registration fee rises to US\$15,000. The initial registration fee for vessels over 50,000 is US\$20,000.⁶⁰ For the registration of commercial and non-commercial yachts, the initial registration fee is US\$1,500.⁶¹

2.4.2 Annual Tonnage Taxes⁶²

The Maritime Administrator also charges an annual tonnage tax on vessels which are listed on the Marshall Islands Registry. For commercial vessels under *Schedule A*, the annual tonnage tax per ton is US\$0.20 (or a minimum annual tonnage tax of US\$500.00). Under *Schedule B*, the Maritime Administrator charges an annual tonnage tax of US\$500 for vessels of 2,500 NT or less, US\$0.20 per NT for vessels of 2,500 NT to 5,000 NT, US\$0.17 per NT for vessels of 5,001 to 25,000 NT, US\$0.15 per NT for vessels of 25,001 to 50,000 NT, and US\$0.125 per NT for vessels over

⁵⁹IRI, *Fee Schedule* (2010) IRI < <http://www.register-iri.com/index.cfm?action=page&page=57>>.

⁶⁰IRI, *Fee Schedule* (2010) IRI <<http://www.register-iri.com/index.cfm?action=page&page=281&fromPage=10#VesselReg>>.

⁶¹Ibid.

⁶²See Annex ‘4’ below.

50,000 NT.⁶³ For commercial yachts, the Maritime Administrator charges US\$0.20 per NT, with a minimum tax of US\$500 per year.

For private yachts of 3,000 GT or less, the Maritime Administrator charges a one year annual registration fee of US\$1,500, an Annual Tonnage Tax in the amount of US\$500, a further US\$100 for a Certificate of Registry, as well as US\$100 for a one year Radio Licence. For yachts over 3,000 GT, an additional US\$0.10 is charged for each tonne in excess of 3,000. For tri-annual registration, yachts of 3,000 GT or less are charged a registration fee of US\$1,500, a Three Year Annual Tonnage Tax in the amount of US\$1500, as well as US\$100 for a Radio Licence.

2.4.3 Marshall Islands International Participation Fees⁶⁴

The Maritime Administrator also charges what is referred to as a Marshall Islands International Participation (MIIP) fee. For Schedule A registrations, all vessels up to 4,000 GT and engaged in commerce are subject to an annual MIIP fee of US\$1,660. Commercial yachts of 400 GT up to 4,000 GT are likewise subject to an annual MIIP fee of US\$1,660. All vessels over 4,000 GT are charged an annual MIIP fee of US\$1,500 plus US\$0.04 per GT.⁶⁵

2.4.4 Other Fees and Charges⁶⁶

In addition to the taxes and fees outlined above, the Maritime Administrator may collect fees for services related to change of name procedures, issuing certificates or other documentation for vessels, recording instruments, ship radio stations as well as

⁶³IRI, *Maritime Services/Registration of Vessels/Fee Schedule* (2010) IRI
< <http://www.register-iri.com/index.cfm?action=page&page=57>>.

⁶⁴Ibid.

⁶⁵IRI, *Maritime Services/Registration of Vessels/Fee Schedule* (2010) IRI
< <http://www.register-iri.com/index.cfm?action=page&page=57>>.

⁶⁶See also Annex '4' below.

any other special service.⁶⁷ The Maritime Administrator may also charge fees where it is required to investigate an incident involving any vessel flying the Marshall Islands flag. Furthermore, the Maritime Administrator is authorised to charges fees for Bareboat Charter registration, Foreign Bareboat Charter Registration, and Mortgage modifications. The complete Fee Schedule and Structure approved by the Maritime Administrator is available on IRI's website.⁶⁸

2.5 OVERVIEW: THE GROWTH OF THE SHIP REGISTRY

The Marshall Islands Ship Registry has enjoyed steady growth from about 1996 onwards. Although data on the performance of the ship registry between 1988 and 1996 has been somewhat difficult to obtain, records are available for the ten year period between 1996 and 2006. During this period, tonnage grew steadily from less than 5,000,000 GT in 1996 to just under 35 million GT in 2006.⁶⁹ The number of vessels in the registry in the corresponding period also grew from a mere 200 vessels in 1996 to over 1,000 vessels in 2006.⁷⁰

The same trend is also evident in the ten year period between 2000 and 2010, as reflected in Figure 2 below. In 2000, the total GT of the registry was less than 13,000,000 tonnes, and the total number of vessels on the registry was less than 600. By September 30, 2010, the total GT of the registry had increased to just over 63,000,000 tons and the number of vessels exceeded 2,000.

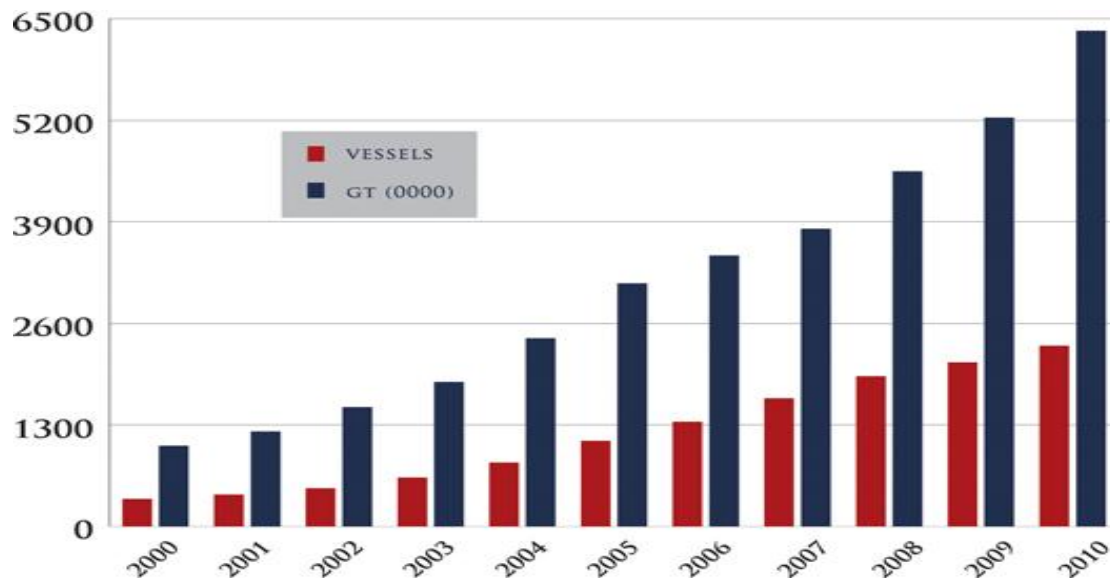
⁶⁷ Above n 60.

⁶⁸ See Annex '10' below.

⁶⁹ Bill Gallagher, 'Marshall Islands Registry' (Paper Presented at the Maritime Transportation of Energy: Identifying the Priority Policy Issues, Mare Forum, New York, USA, November 8-9, 2006) 1. <http://www.mareforum.com/ENERGY_TRANSPORTATION_USA_2006_PRESENTATIONS_files/GALLAGHER.pdf>.

⁷⁰ Ibid.

Figure 2. Fleet Growth - 2000 to September 30, 2010.



Source: IRI, *Fleet Highlights* (2010) IRI <<http://www.register-iri.com/index.cfm?action=page&page=110>>.

2.5.1 Tonnage Type

The type of tonnage sailing under the Marshall Islands flag consists largely of Bulk Carriers, Container Ships, Gas Carriers, General Cargo Ships, Mobile Off-shore Drilling Units (MODUs), Mobile Off-shore Units (MOUs), Off-shore Supply Vessels (OSVs), Passenger Vessels, Tankers, Fishing Vessels⁷¹ and Yachts.⁷² Tankers make up the majority of the tonnage, with 593 Tank Vessels totalling 26,979,719 GT. Bulk Carriers rank second in terms of tonnage type, with 441 vessels totalling 17,074,947 GT flying the Marshall Islands flag. The third biggest tonnage type is Gas Carriers, with 89 vessels totalling 7,576,595 GT. This category is representative of a modern trend which has seen new-build gas carriers comprising approximately 70% of the new tonnage entering the Marshall Islands registry, as explained in the paragraphs below. This is a promising development as it not only reflects the capability of the

⁷¹Fishing vessels are included under the “Miscellaneous” category.

⁷²See [Figure 3](#) below.

registry, but also eliminates a lot of the anxieties associated with having older vessels on the registry. Container vessels constitute the next biggest tonnage type, with 224 vessels totalling 5,905,358 GT.

Fishing vessels form only a minute percentage of the registry's tonnage and are covered in the "Miscellaneous" category, as set out in Figure 3 below. From the records of the Western and Central Pacific Fisheries Commission (WCPFC), the Marshall Islands has registered a total of 28 vessels, the majority of which are fish carrier vessels.⁷³ A review of other Regional Fisheries Monitoring Organisations (RFMOs) indicate no record of Marshall Islands flagged vessels being licensed to fish in their convention areas.⁷⁴ Today, the Marshall Islands Open Registry is ranked as the third largest open registry in the world, with a GT in excess of 63,000,000 tons.⁷⁵ With an Open Registry of this size, the Marshall Islands trails only Panama and Liberia - the two biggest registries in the world at present.⁷⁶

⁷³WCPFC, *Record of Fishing Vessel* (April 30, 2010) WCPFC
<<http://intra.wcpfc.int/Lists/Vessels/Stats.aspx>>.

⁷⁴A search was conducted on the websites of the following RFMOs: Inter-American Tropical Tuna Commission (IATTC), International Commission for the Conservation of Atlantic Tunas (ICCAT), North Atlantic Salmon Conservation Organization (NASCO), North Pacific Anadromous Fish Commission (NPAFC), Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), Northwest Atlantic Fisheries Organization (NAFO).

⁷⁵UNCTAD, 'Review of Maritime Transport, 2009' (Report by the UNCTAD Secretariat, 2009 -Table 13)55.

⁷⁶Ibid.

Figure 3 - Fleet Type as at September 30, 2010

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

Source: IRI, *Fleet Highlights* (2010) IRI <<http://www.register-iri.com/index.cfm?action=page&page=110>>.

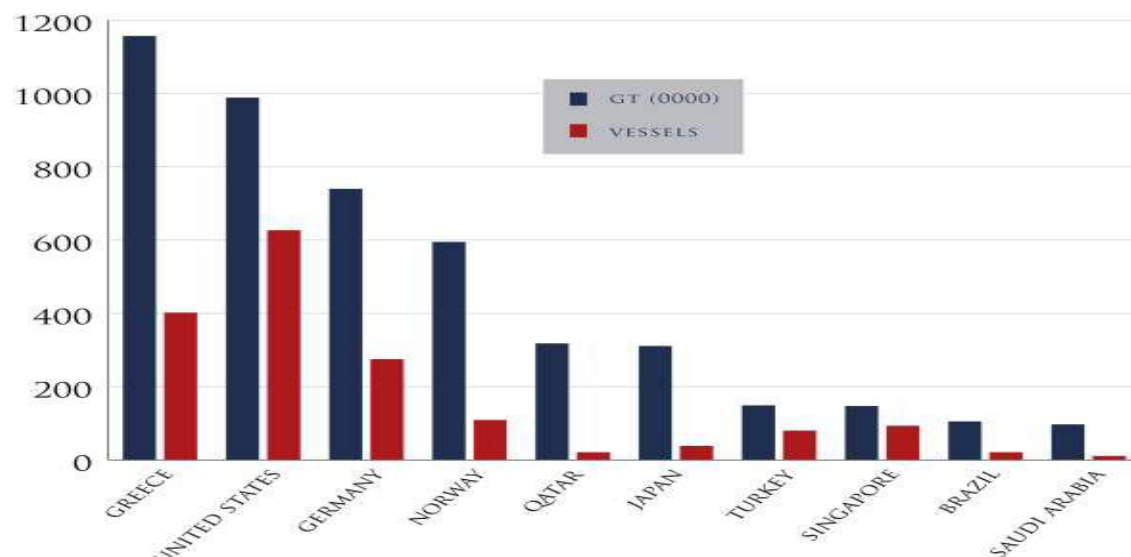
2.5.2 Tonnage Ownership by Nationality

Research into the nationality of the tonnage owners shows that tonnage enters the flag predominantly from the United States, Greece, Germany, Norway, Italy, Turkey, Japan and other areas in Asia.⁷⁷ According to the United Nations Conference on Trade and Development (UNCTAD), as of January 1, 2010, the top ten nationalities in terms of vessel ownership on the Marshall Islands Ship Registry were Greece with 282 vessels, Germany with 233 vessels, the United States with 170 vessels, Norway with 86 vessels, Turkey with 57 vessels, Cyprus with 42 vessels, Japan with 43 vessels, Singapore with 20 vessels, and the United Kingdom and the United Arab Emirates -

⁷⁷LowTax Global Tax and Business Portal, Marshall Islands: Off-Shore Business Sectors (2011)<http://www.lowtax.net/lowtax/html/marshall_islands/jmrobs.html.

both with 16 vessels.⁷⁸ The remainder of the fleet is distributed among China, Hong Kong, Denmark, Taiwan, Italy, Russia, India, Saudi Arabia, Belgium, Malaysia, Netherlands, Sweden, Brazil, Spain, Switzerland, Croatia and Bermuda.⁷⁹ These figures are captured in [Figure 4](#) below. To date, the total number of vessels on the Marshall Islands Ship Registry has increased to 2315, but information on the distribution of the additional tonnage according to nationality is not yet accessible.

Figure 4. Registrations by Nationality



Source: IRI, 'The Marshall Islands Registry' (Presentation at the Maritime Labour Convention, 2006 Round-Table Discussion, Houston, Texas, February 18, 2010) Slide 5.

Another trend that is most encouraging is the age of the buildings entering the Marshall Islands Ship Registry. As an indication of the direction the registry is heading, in 2008 50% of vessels that entered the registry were new-builds. This figure increased to 70% in 2009, with the bulk of these new buildings coming from the

⁷⁸UNCTAD, 'Review of Maritime Transport 2010' (Report to the United Nations 2010).

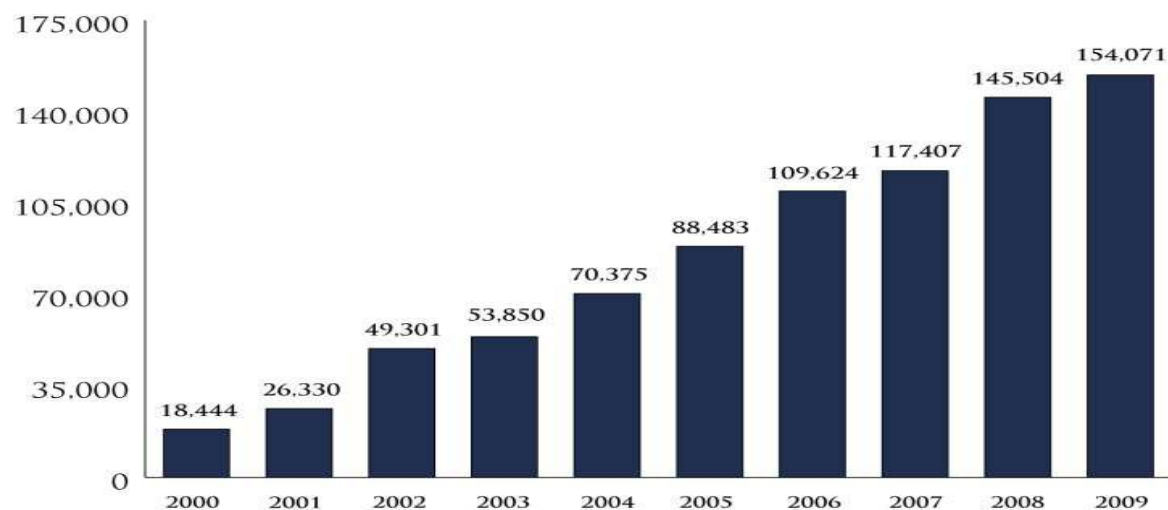
⁷⁹UNCTAD, 'Review of Maritime Transport 2009' (Report to the United Nations 2009, Table 15) 58.

energy sector.⁸⁰ This trend is reassuring in that it not only suggests that vessel owners have confidence in the capabilities of the registry, but also that the quality of vessels entering the registry is far better than it has been in the past. This is important for the image of the registry, given that open registries have often been stigmatised as havens for substandard vessels.

2.5.3 Seafarer Documentation By Nationality

The registry's increase in vessel and tonnage registration has been accompanied by a corresponding increase in seafarer documentation. As can be seen in Figure 5 below, in the period between 2000 and 2009 seafarer documentation issued by the registry increased from 18,444 to 154,071. Figure 6 below shows that from 2000 to December 31, 2009, a quarter of the 154,071 pieces of seafarer documentation were issued to Philippine nationals, 17% to Georgian, Russian and Ukrainian nationals, 12% to Indian nationals, and 9% to Croatian, Latvian and Romanian nationals.⁸¹

Figure 5 - Seafarer Growth.

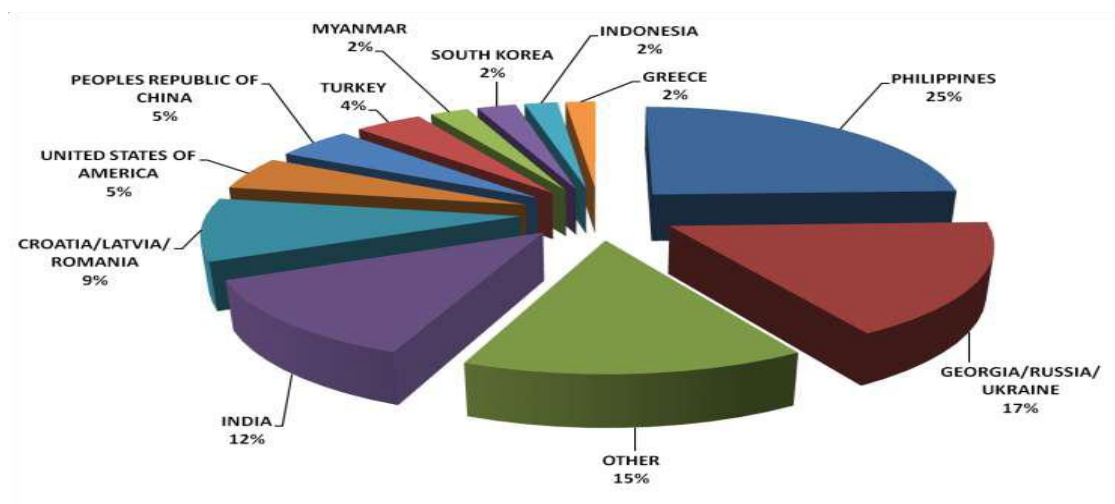


Source: IRI, 'The Marshall Islands Registry' (Presentation at the Maritime Labour Convention, 2006 Round-Table Discussion, Houston, Texas, February 18, 2010) Slide 9.

⁸⁰IRI, 'Marshall Islands Now Ranked as 3rd Largest Open Registry' (Press Release, January 27, 2010) 1 < <http://www.register-iri.com/index.cfm?action=page&page=178>>.

⁸¹ See Figure 6.

Figure 6 - Seafarer Documentation by Nationality.



Source: IRI, 'The Marshall Islands Registry' (Presentation at the Maritime Labour Convention, 2006 Round-Table Discussion, Houston, Texas, February 18, 2010) Slide 10.

2.5.4 The State of the Registry in 2011

In 2011, the Ship Registry performed extraordinarily well, growing by 16% by October.⁸² In contrast to October 2010, the Registry now stands at over 75,000,000 million gross tons, and more than 2,500 vessels.⁸³ The growth was particularly attributed to bulk carriers and gas carriers. Although the data on nationality of ownership, crew distribution by nationality, and the growth of seafarer is not currently available, one may extrapolate on the data provided above in order to get a fair idea of success of the Ship Registry in 2011.

2.6 ECONOMIC CONTRIBUTION

As previously discussed, the motivation behind the government's decision to set up the registry in 1988 was no doubt the creation of economic prosperity. Twenty-three

⁸²IRI, Marshall Islands Report, (Vol.22 No.1 October 2011) 2.

⁸³Ibid.

years later, the question of whether the ship registry has met the economic expectations of the Marshall Islands Government remains a very relevant one.

2.6.1 Direct Funding Contribution to the National Budget

It is difficult to quantify the financial contribution which the Marshall Islands Ship Registry has made to the government since its establishment in 1988. This is due to a lack of records detailing the registry's operations in its formative years, as well as the fact that the profit sharing formula between the Marshall Islands Government, Howard Zeder and IRI was modified in 1995. This modification fixed the registry's annual direct funding contribution to the Marshall Islands Government at US\$1 million dollars. This arrangement remained in place until 2007. Under the initial joint venture agreement, the government held a 70% stake in the profits of the ship registry. In 1991, the government's interest was adjusted and made dependent on the size of the profits earned each year. In 1995 the joint venture agreement was again modified, with royalties fixed at US\$1 million dollars per annum. Although this agreement remained in place for some time, in 2005, 2006 and 2007 IRI voluntarily paid an annual direct contribution of US\$2 million dollars. In 2008, the agreement was further amended, introducing a staggered annual contribution for the next ten years, as explained below.

Under the staggered contribution arrangement, the annual funding received by the government increased to US\$2 million dollars for Fiscal Years 2008 and 2009.⁸⁴ The contribution to the budget for Fiscal Year 2010 was US\$3 million dollars, while the annual contribution to the budget in Fiscal Years 2011 and 2012 was US\$3,750,000

⁸⁴See Financial Year 1995 Appropriation Act (Budget).

and US\$4,000,000 respectively. Therefore, based on available records, it is clear that beginning Fiscal Year 1995 to Fiscal Year 2012, the Marshall Islands Government received approximately US\$31.7 million dollars in direct funding from the registry. This figure does not include contributions for Fiscal Years 1988 through to 1994, as the relevant records could not be identified. If one takes into account contributions that may have been made during the registry's early years, the total amount of royalties received by the Marshall Islands Government could be in the vicinity of US\$40 million dollars.

2.6.2 Contribution to the National Economy in General.

By small developing country standards, the figure above represents a substantial amount of financial assistance to the government. Even so, in order for the registry to have a real and positive impact of the economy, the *Joint Venture Agreement* should have addressed other areas of investment in the Marshall Islands such as infrastructure, training, and employment. Indeed, as the operations of the registry are wholly carried out by IRI in the United States, no effort has been made to establish necessary infrastructure in the Marshall Islands, except an office complex for TCMI. Shifting the operations of the registry to the United States has also meant the loss of jobs for qualified Marshall Islands citizens, and the loss of training opportunities for potential Marshall Islands employees of the registry.

Moreover, seafarer training and qualification is an important aspect of the local economy. If opportunities were available, qualified Marshall Islands seafarers could find gainful employment on Marshall Islands flagged vessels and repatriate much needed cash flow into the local economy. However, no such training program currently exists. Based on 2009 figures, of the more than 154,071 seafarers who have been issued seafarer certification and employment on Marshall Islands vessels, not one is a citizen of the Marshall Islands.⁸⁵

Furthermore, all entities that own ships flagged in the Marshall Islands are exempt from taxes levied under the laws of the Marshall Islands. Section 112 of the *Business Corporations Act* and Section 503(4) of the *Secured Transactions Act* grant TCMI and all ship-owning entities that are not domiciled in the Marshall Islands exemptions from all taxes levied under Marshall Islands laws. Accordingly, one could be justified in arguing that the Marshall Islands is yet to enjoy the full financial benefit from the registry's operations. Nevertheless, it could be argued that the generous royalties paid by the Marshall Islands Ship Registry to the government in recent times should allay criticism of the registry's performance. After all, the registry is one venture that has contributed substantially to the annual budget since its inception. If one were to make a comparison between the revenue generated from the registry and that generated by other government initiated ventures, it would be apparent that from all the ventures undertaken by the government the Ship Registry has been the most successful to date in terms of the economic expectations of the government of the Marshall Islands. A brief overview of the economic performance by the other government economic ventures is set out below for comparison.

⁸⁵See Figure 6 above.

2.6.3 Economic Performance of the Ship Registry in Comparison With other Government Ventures

In addition to the Ship Registry, the government of the Marshall Islands had also decided to establish other economic ventures, to support the government in its efforts to provide the goods and services to the population. To this end, the government had decided to establish the Marshall Islands Marine Resources Authority (MIMRA), the Air Marshall Islands (AMI), the Marshall Islands Development Authority (MIDA, the Marshall Islands Visitor Authority (MIVA) and the Marshall Islands Resorts Hotel (MIR).

MIMRA has since 1995 consistently contributed the sum of US\$1.3 million dollars to the annual national budget. Like the Ship Registry, MIMRA appears to be the only other venture that has been consistent over the years in its financial contributions to the government. In fact, up until 2006, MIMRA was, amongst all government ventures identified above, consistently the biggest contributor, even surpassing the contributions by the Ship Registry by \$US0.3million dollars, generating for the annual budget, the sum of US\$1.3 million dollars. In the material period, the Ship Registry was contributing annually to the national budget, the sum of US\$1million dollars.⁸⁶

The situation changed when the Joint Venture Agreement on the management of the Ship Registry was re-negotiated in 2008, and the IRI agreed to increase its annual contributions in a staggered fashion, as discussed above. With the exception of MIMRA and the Ship Registry, the rest of the government ventures miserably failed to realize the economic expectations of the government, largely through mismanagement. The MIDA for instance, re-constituted by Act in 1994 to serve as the business arm of government, ceased operations in 1996 due to depletion of

⁸⁶ Appropriation Act, for Financial Years 1995 to 2010.

funds.⁸⁷ Its remaining assets were later transferred by Act to the Ministry of Resources and Development.⁸⁸

MIVA on the other hand, continues to struggle in making tourism take a foothold in the Marshall Islands. For many years since its establishment, the government of the Marshall Islands continues to spend heavily on the operations of MIVA, with very little success in terms of tourist numbers. Based on available data, in 2005 the Marshall Islands saw 9,000 arrivals. This figure is inclusive of business persons, tourists, persons in transit, persons on vacation, and persons visiting friends.⁸⁹

Perhaps, the worst performing government ventures have to be AMI, and the MIR. Both AMI and MIR are heavily in debt, and continue to rely on government subsidies to bail themselves out of financial difficulties. Both are financially and economically not viable, and the government must seriously look at the future of these two entities. Both entities have not contributed a single cent to the annual budget throughout their existence.⁹⁰

So overall, it does appear that in fact, that the Ship Registry venture turned out to be the most successful of the economic ventures the government pursued in the early 1990s, in terms of the amount of assistance now being returned by these ventures. It also does appear that the decision to set up the registry, although it may be argued that it was decided upon without much deliberation, appears to have vindicated the government, in terms of the economic expectations of the government and the leaders

⁸⁷See MIDA Repeal Act, 2003.

⁸⁸Ibid.

⁸⁹Marshall Islands Economic Planning Policy and Statistics Office, 'Tourism Statistics' (EPPSO Website 2007) <http://www.spc.int/prism/country/mh/stats/Tourism/vis_purpose_new.htm>

⁹⁰Appropriations Act, for Financial Year 1994 to 2010.

in the period in question. However, the important question is whether, all these prosperity is achieved through the diligent implementation and adherence to law and the duties of the Marshall Islands as a flag State. This is indeed the threshold question, particularly given the classification of the Marshall Islands as a flag of convenience.

2.7 CONCLUSION.

In a relatively short period of time the Marshall Islands Ship Registry has grown to become the third largest registry in the world (in terms of registered tonnage). And although the registry's 75,000,000 million deadweight tonnage (DWT) accounts for only approximately 5.74% of the world's total DWT, it still represents a significant portion of the total world fleet. Indeed, the Marshall Islands, Panama, Liberia, Hong Kong and Greece are home to approximately 50% of the world's fleet in terms of DWT.⁹¹

Flags of convenience, such as the Marshall Islands, have been branded havens for 'rust buckets' and substandard ships, and blamed for encouraging IUU fishing activities. Becoming the third largest ship registry in the world may indeed be a milestone for the Marshall Islands, but the critical question is whether the Marshall Islands is able to discharge its international obligations. Secondly, it is important to examine whether the international obligations incurred by the Marshall Islands as a result of its registry's operations, and the economic returns generated by the venture, justify the continued existence of the ship registry. The analysis of the performance of the Marshall Islands in terms of its flag State duties in Chapters 4, 6 and 8 will hopefully, shed some light on these issues.

⁹¹UNCTAD, 'Review of Maritime Transport 2009' (A Report to the United Nations) Table 13, 55.

CHAPTER 3

THE INTERNATIONAL LEGAL FRAMEWORK AND THE 'GENERAL DUTIES' OF THE MARSHALL ISLANDS AS A FLAG STATE

3.1 INTRODUCTION.

The law that regulates the 'general duties' of flag States is customary international law, now firmly codified and elaborated in a number of international instruments. These instruments include the *United Nations Convention on the Law of the Sea*, 1982 (1982 LOSC¹), the International Maritime Organization (IMO) conventions, and the various maritime labour-related conventions and protocols of the International Labour Organization (ILO).² These maritime related conventions and protocols were consolidated in the 2006 Maritime Labour Convention and were adopted by the ILO in the same year. Although the convention is yet to enter into force³, the ILO is confident that the convention will receive the necessary ratifications and will enter

¹The 1958 HSC for parties to the Convention that have not ratified the 1982 LOSC.

²The 37 Conventions and the one Protocol are the Minimum Age (Sea) Convention, 1920 (No. 7), Unemployment Indemnity (Shipwreck) Convention, 1920 (No. 8), Placing of Seamen Convention, 1920 (No. 9), Medical Examination of Young Persons (Sea) Convention, 1921 (No. 16), Seamen's Articles of Agreement Convention, 1926 (No. 22), Repatriation of Seamen Convention, 1926 (No. 23), Officers' Competency Certificates Convention, 1936 (No. 53), Holidays with Pay (Sea) Convention, 1936 (No. 54), Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (No. 55), Sickness Insurance (Sea) Convention, 1936 (No. 56), Hours of Work and Manning (Sea) Convention, 1936 (No. 57), Minimum Age (Sea) Convention (Revised), 1936 (No. 58), Food and Catering (Ships' Crews) Convention, 1946 (No. 68), Certification of Ships' Cooks Convention, 1946 (No. 69), Social Security (Seafarers) Convention, 1946 (No. 70), Medical Examination (Seafarers) Convention, 1946 (No. 73), Certification of Able Seamen Convention, 1946 (No. 74), Accommodation of Crews Convention, 1946 (No. 75), Wages, Hours of Work and Manning (Sea) Convention, 1946 (No. 76) Paid Vacations (Seafarers) Convention (Revised), 1949 (No. 91), Accommodation of Crews Convention (Revised), 1949 (No. 92), Wages, Hours of Work and Manning (Sea) Convention (Revised), 1949 (No. 93) Wages, Hours of Work and Manning (Sea) Convention (Revised), 1958 (No. 109), Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133), Prevention of Accidents (Seafarers) Convention, 1970 (No. 134), Continuity of Employment (Seafarers) Convention, 1976 (No. 145), Seafarers' Annual Leave with Pay Convention, 1976 (No. 146), Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147), Protocol of 1996 to the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147), Seafarers' Welfare Convention, 1987 (No. 163).

³ILO, 'Implementing the Maritime Labour Convention "is almost there"' (2010) ILO
<http://www.ilo.org/global/about-the-ilo/press-and-media-centre/insight/WCMS_145146/lang--en/index.htm>.

into force in early 2012.⁴ The international legal framework imposes upon flag States a number of specific duties that must be effectively carried out to ensure that their ships are seaworthy, appropriately equipped, and properly manned, thereby promoting the framework's goals of "safety at sea and the prevention of marine pollution". To appreciate the nature and extent of these duties, one must analyse the relevant international instruments in order to ascertain what the duty entails.

The purpose of this chapter is two-fold. First, the chapter analyses the international legal framework relating to the general duties of flag States, examining the relevant international instruments and their relationship to the overall framework. Secondly, the chapter analyses the framework in order to ascertain the general duties and obligations of flag States, and in particular, the duties of the Marshall Islands as a flag State. To this end, the chapter examines such duties and attempts to understand the nature and extent of the duties concerned.

3.2 'THE CONCEPT OF FLAG STATE'

The concept of the 'flag State' emerged from practices as old 1000 BC by the ancient Egyptians as a means of identification of their ships. In ancient Greek and Egyptian civilizations flags were often carved out of pieces of wood, metal or stone.⁵ The use of the flag as a means for identification became more and more important as ships gained the ability to travel further and further away from their home places. Over the centuries, the role of the flag also evolved from being a symbol of identity, a symbol nationality, and further, a symbol of protection, that a ship was under the protection of the State whose flag it was flying.⁶ Although much of the ancient uses of the flag survive today, the focus of this chapter is the flag State as the entity responsible for ensuring that the ships that fly its flag uphold the international law rules and

⁴Ibid.

⁵ 'FAQs about Flags' <www.worldflags101.com.

⁶ John N.K Mansell, *Flag State Responsibility* (2009) 13.

regulations in all aspects of their operations, whether it be safety at sea, marine pollution, the welfare of seafarers, fisheries conservation or maritime security.

3.3 THE INTERNATIONAL LEGAL FRAMEWORK ON THE ‘GENERAL DUTIES’ OF FLAG STATES.

The starting point for any discussion on the general duties of flag States must be the 1982 LOSC. Article 94 of the 1982 LOSC imposes upon flag States the duty:

*...to effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying their flag.*⁷

Article 94 of the 1982 LOSC essentially codifies the long-standing customary international law concept of the ‘flag State’, as well as the concept of ‘exclusive jurisdiction’ which flag States must exercise over the affairs of ships flying their flag.⁸

Together, these principles form the legal basis and the source of authority upon which the flag State is made responsible for certain matters in relation to the affairs of ships that fly their flags.⁹ While Article 94 of the 1982 LOSC provides a general statement of the ‘general duties’ of flag States, it is the IMO framework that elaborates the specific nature of the administrative and technical aspects of the ‘general duties’ of flag States. Indeed, the ILO’s maritime labour-related conventions define the duty as it relates to conditions of employment of seafarers.¹⁰ A closer examination of the relevant instruments is important for the purpose of understanding the nature of these ‘general duties’.

3.3.1 The Convention on the High Seas, 1958

⁸1982 LOSC Article 94(1).

⁹Ibid., Articles 91 and 92.

¹⁰Refer to the Conventions listed under Footnote 2 above.

As mentioned above, the concept of the ‘*flag State*’ is one that has long being recognised and supported by customary international law. The concept does not only involve the vesting of certain rights and privileges on the part of the (flag) State and the vessels concerned, but also involves the attribution of duties and obligations to States that grant nationality to ships. These concepts, and the prescription of flag State duties, were first codified under treaty law with the adoption of the *Convention on the High Seas, 1958 (1958 HSC)*. The preamble to the convention states that the provisions of the convention were “generally declaratory of established principles of international law.”¹¹

The purpose of the *1958 HSC* was to codify the rules of international law relating to the uses of the high seas. In summary, the *1958 HSC* specified the freedoms of the high seas, the right of a State to attribute nationality to ships, and the duties and obligations of flag States (among others).¹² Article 5 of the *1958 HSC* codified the concept of registration and attribution of nationality to ships, and affirms the ‘exclusive jurisdiction’ of the flag State over the affairs of ships sailing its flag. In short, the convention articulated the concept of the ‘flag State’.¹³ Moreover, Article 10 of the *1958 HSC* codified the duties of flag States in relation to technical matters, imposing upon flag States the duty to take necessary steps to ensure safety at sea with regard to such matters as the use of signals, the maintenance of communications, the prevention of collisions, the manning of ships and labour conditions for crews, as well

¹¹Louis B. Sohn, ‘The Law of the Sea: Customary International Law Developments’ [1985] (34) *The American University Law Review* 271, 277.

¹²Tullio Treves, *1958 Geneva Conventions on the Law of the Sea* (2008) UN Treaty <<http://untreaty.un.org/cod/avl/ha/gclos/gclos.html>>.

¹³1958 HSC Articles 5 and 6.

as the construction, equipment and seaworthiness of vessels under their flags.¹⁴ The actual text of Article 10 reads:

Every State shall take such measures for ships under its flag as are necessary to ensure safety at sea with regard inter alia to: (a) the use of signals, the maintenance of communications and the prevention of collisions; (b) the manning of ships and labour conditions for crews taking into account the applicable international labour instruments; (c) the construction, equipment and seaworthiness of ships.

As will be seen below, Article 10 of the 1958 HSC formed the basis for the later elaboration of the ‘flag State’ duty under Article 94 of the 1982 LOSC. As a matter of fact, paragraphs (a), (b) and (c) of Article 10 of the 1958 HSC were incorporated *verbatim* under Article 94(3) of the 1982 LOSC, although, paragraphs (a) and (c) of Article 10 are reversed in sequence under Article 94 of the 1982 LOSC. Therefore, Article 10 of the 1982 LOSC constituted the very first codification of the customary international law notion that States who attribute nationality to ships have an obligation to not only afford protection to such ships, but also regulate the affairs of such ships so that when they sail on the high seas, they do so in a manner that does not adversely affect the rights of other States to enjoy the freedoms and uses of the high seas. In other words, Article 10 constituted the very first codification of the ‘duty’ of flag States to ensure that ships are seaworthy when they sail on the high seas with regard to the use of signals, communications, collision prevention and safe manning.¹⁵

¹⁴Ibid., Article 10.

¹⁵1958 HSC, Article 10.

Lingering issues surrounding the outer limits of the territorial sea and fishery waters under the 1958 HSC and the *Convention on the Territorial Sea and Contiguous Zone* 1958, generated less than enthusiastic participation in, and ratification of, the 1958 HSC. This led to UN convening a second conference on the law of the sea (UNCLOS II) in 1960, which again failed to produce a common agreement.¹⁶ Finally in 1973, the United Nations, inspired by the infamous “common heritage of mankind” speech by Ambassador Pardo,¹⁷ convened the Third United Nations Conference on the Law of the Sea (UNCLOS III), to resolve once and for all the disagreements of the previous conferences. UNCLOS III began its work in 1973 and culminated in the adoption of the *United Nations Convention on the Law of the Sea* 1982, (1982 LOSC), in Montego Bay, Jamaica, in 1982. The convention entered into force twelve years later in November 1994.¹⁸ It must be noted that the 1958 HSC no longer binds States that have ratified the 1982 LOSC.

3.3.2 The United Nations Convention on the Law of the Sea, 1982 (1982 LOSC)

The 1982 LOSC is often referred to as the Constitution of the Oceans, prescribing the rights, privileges, duties and obligations of all nation states in their dealing with the oceans and marine living and non-living resources.¹⁹ The 1982 LOSC was historic because of its success in cobbling together an international agreement covering an incredibly diverse range of rights, privileges, duties and obligations. Indeed, it was for this reason that it was hailed by the then UN Secretary-General as ‘*possibly the most*

¹⁶UNEP, *Background to UNCLOS* (2009) UNEP < <http://www.continentalshelf.org/about/1143.aspx>>.

¹⁷Ibid.

¹⁸UN Oceans and Law of the Sea, Division for Ocean Affairs and Law of the Sea, *United Nations Convention on the Law of the Sea of 10 December 1982: Overview and Full Text* (8 January 2010) UN <http://www.un.org/Depts/los/convention_agreements/convention_overview_convention.htm>.

¹⁹Ibid.

significant legal instrument of [the] century".²⁰ The convention consists of 17 different parts, 320 articles and 9 Annexes. Of relevance to this chapter are the provisions of Part VII of the convention.

Part VII of the 1982 *LOSC* addresses the subject matters dealt with under the 1958 *HSC*. Part VII of the 1982 *LOSC* deals with the rights and privileges of States on the high seas, as well as the duties and obligations incumbent upon such States in regard to the enjoyment of such rights and privileges. In summary, Part VII of the 1982 *LOSC* accords all States certain freedoms, including the freedom of navigation, the freedom of fishing, as well as associated rights and privileges on the high seas.²¹ Importantly, Part VII of the *LOSC* 1982 reserves the high seas for peaceful purposes only,²² and prohibits any one State from apportioning any part of the high seas under their national jurisdiction.²³

Of particular significance to the analysis in this chapter are the provisions of Part VII that relate to registration and the attribution of nationality to ships. Article 91 of the 1982 *LOSC* prescribes that, in exercising the right to sail on the high seas, States may register ships and grant nationality to such ships.²⁴ In doing so, States may fix their own conditions for the grant of nationality.²⁵ As a consequence of the grant of nationality, Article 92 of the convention prohibits ships from sailing on the high seas under the flag of any other State except the flag of the State in which it is registered.²⁶

²⁰United Nations Oceans and Law of the Sea, A Division for Ocean Affairs and Law of the Sea, *United Nations Convention on the Law of the Sea, A Historical Perspective* (2010) UN <http://www.un.org/Depts/los/convention_agreements/convention_historical_perspective.htm>

²¹1982 *LOSC*, Article 87.

²²*Ibid.*, Article 88.

²³*Ibid.*, Article 89.

²⁴1982 *LOSC*, Article 91.

²⁵*Ibid.*, Article 91.

²⁶*Ibid.*, Article 92.

The implication of this prohibition is that international law compels (flag) States to fulfil certain obligations. The prohibition is made clear by the phrase: ‘. *shall be subject to its exclusive jurisdiction on the high seas*’ in paragraph 1 of Article 92 of the 1982 *LOSC*. Therefore, the rationale for mandating that ships sail under the flag of one State only is inextricably linked to the question of which State has the authority to exercise jurisdiction, and to control the activities of a ship on the high seas. A ‘Stateless’ vessel (or a vessel flying more than one flag) has no legal rights under international law.²⁷ Under Article 92 of the 1982 *LOSC*, the act of granting nationality to ships automatically imposes upon the granting State the authority to control the activities of the ship concerned on the high seas. Without such jurisdiction, the freedom of navigation on the high seas, as well as other high seas freedoms granted under Article 87 of the 1982 *LOSC*, could be subject to exploitation, chaos and anarchy.²⁸ The duty of flag States to exercise effective control and jurisdiction over the affairs of ships that fly their flags is imposed under Article 94 of the 1982 *LOSC*, and further elaborated in the core safety and marine pollution prevention conventions under the IMO framework. The starting point for the analysis of the ‘general duties’ of flag States must no doubt be the provisions of Article 94 of the 1982 *LOSC*.

Article 94 of the 1982 *LOSC* imposes upon flag States the duty to exercise effective control and jurisdiction over the administrative, technical and social matters of ships that are entitled to fly their flags. This duty entails the establishment of a register of ships²⁹ and the assumption of jurisdiction by the flag State over the administrative,

²⁷Justice John Middleton, ‘Ship Registration and the Role of the Flag’ (Paper Presented at Admiralty Education, Australian Federal Court, 2007) 1.

²⁸*Ibid.*

²⁹1982 *LOSC* Article 94(2)(a).

technical and social transactions of their ships.³⁰ Flag States are also obligated to take necessary measures to ensure the seaworthiness of ships when they set sail, namely with regard to their construction, manning and equipment. Indeed, such measures ensure the safety of vessels and their crew at sea, as well as preventing marine pollution.³¹ The measures contemplated in Article 94(2) must also include measures that will ensure that ships are subjected to proper surveys and inspections, and that such ships sail under the command of qualified master and officers who are knowledgeable of the applicable international instruments.³² The specifications for the construction of different types of sea going vessels, their equipment requirements, as well as minimum safe manning levels, are elaborated under the core ‘safety at sea’ and ‘marine pollution prevention’ IMO conventions (including the standards, codes, rules and regulations issued under those conventions). Therefore, to appreciate the scope of these ‘general duties,’ it is also important to review the relevant IMO instruments, and to identify the ‘general duties’ of flag States under the IMO framework. The ‘social’ aspect of the duty, however, is defined under a series of ILO maritime labour related conventions and recommendations, the majority of which have now been consolidated under the 2006 ILO Maritime Labour Convention.³³

3.3.3 The IMO Framework

In the middle of the twentieth century, the United Nations became particularly concerned about safety in the shipping industry, and began deliberating on the best scheme to halt the proliferation of substandard shipping practices.³⁴ The United

³⁰Ibid., Article 94(2)(b).

³¹Ibid., Article 94(3).

³²Ibid., Article 94(4).

³³The 2006 MLC is not yet in force.

³⁴IMO, *Home/About IMO/History of IMO/Brief History of IMO* (2010) IMO <<http://www.imo.org/About/HistoryOfIMO/Pages/Default.aspx>>.

Nations was convinced that safety issues in the shipping industry, and in the maritime sector generally, would be more effectively addressed at the international level.³⁵

Fortunately, this view was shared by many maritime States, who likewise suggested the establishment of a permanent international body dedicated to maritime safety.³⁶ In 1948, the convention setting up the International Maritime Organization (IMO) (known then as the Inter-governmental Maritime Consultative Organization (IMCO)) was adopted. The convention entered into force 10 years later in 1958.³⁷

The purpose of the IMO was described in the IMO Charter as:³⁸

*...to provide a machinery for cooperation among Governments in the field of governmental regulation, and practices, relating to technical matters of all kinds affecting shipping engaged in international trade; to encourage and facilitate the general adoption of the highest practicable standards in matters concerning maritime safety, efficiency of navigation and prevention and control of marine pollution from ships.*³⁹

In its revised strategic plan, the IMO envisages its mission as:

*promoting safe, secure, environmentally sound, efficient, and sustainable shipping through cooperation.*⁴⁰

The initial focus of the IMO was ‘safety at sea’, and upon its establishment in 1958, it took on the task of developing a modernised Safety of Life at Sea (SOLAS)

³⁵Robin R. Churchill, ‘The Role of IMCO in Combating Marine Pollution’ in Douglas J. Cusine and John P. Grant (eds) *The Impact of Marine Pollution* (1980) 73.

³⁶IMO, *Introduction to IMO* (2010) IMO <<http://www.imo.org/>>

³⁷IMO, *Home/About IMO/History of IMO/Brief History of the IMO* (2010) IMO <<http://www.imo.org/About/HistoryOfIMO/Pages/Default.aspx>>.

³⁸The name of the Organization was changed to the *International Maritime Organization* (IMO) in 1982.

³⁹*IMO Convention*, Article 1(a).

⁴⁰Craig. H Allen, ‘Revisiting the Thames Formula: The Evolving Role of the IMO and its Member States in Implementing the LOSC’ (1982) 10 *San Diego International Law Journal*, 272, 272.

Convention.⁴¹ However, the IMO was soon forced to take on the mandate of ‘marine pollution prevention’, as accidents involving oil tankers began to occur with increasing frequency. As technology developed and ships increased in size, the world was confronted by a new phenomenon:⁴² environmental damage from oil tanker accidents around the world.⁴³ Consequently, the issue of marine pollution became a concern the IMO had to address within its own framework.⁴⁴ Indeed, in 1975 the IMO Constitution was amended to include “..the prevention and control of marine pollution by ships” as part of its mandate.⁴⁵

Today, the IMO regime covers safety at sea, marine pollution and maritime security.⁴⁶ The IMO has also adopted a number of instruments pertaining to the safety of fishing vessels.⁴⁷ The core IMO ‘safety’ and ‘marine pollution prevention’ conventions comprise the *International Convention on Load Lines, 1966 (Load Lines Convention 1966)*, the *International Convention on Tonnage Measurement of Ships, 1969 (Tonnage Convention 1969)* the *International Convention on the Safety of Life at Sea, 1974 (SOLAS Convention 1974)*, the *International Convention for the Prevention of Pollution from Ships 1973/78 (MARPOL 73/78)*, the *International Regulations for Preventing Collisions at Sea 1972 (COLREGS 72)*, the *International Convention on the Standards of Training, Certification and Watch-keeping for Seafarers, 1978*

⁴¹Thomas A. Mensa, ‘Prevention of Marine Pollution: Contribution of the IMO’ in Jurgen Basedow and Ulrich Magnus (eds) *Pollution of the Sea: Prevention and Compensation* (Springer Berlin Heidelberg 2007) 41-61.

⁴²Ibid.

⁴³R. Michael M’Gonigle and Mark W. Zacher , *Pollution, Politics and International Law: Tankers At Sea* (University of California Press, 1979) 5.

⁴⁴IMO, *Introduction to IMO* (2010) IMO <<http://www.imo.org/MediaCentre/IMOMediaAccreditation/Pages/Home.aspx>>.

⁴⁵Mensa, *loc. cit.*

⁴⁶IMO, ‘*Introduction to IMO*’(2010) IMO <<http://www.imo.org/>>.

⁴⁷Such as the Torremolinos Protocol 1993 and the STCW-F Convention.

(*STCW Convention 1978*), and of course the *1982 LOSC* itself.⁴⁸ These conventions, as well as the standards, codes, rules and regulations promulgated under them, provide the administrative and technical specifications which flag State are expected to follow. Together with Article 94 of the *1982 LOSC*, these conventions and their associated instruments have formed the basis of the international legal framework governing the performance by flag States of their ‘general duties.’

3.3.4 The ILO Maritime Labor Related Conventions

The third category of flag State duties under Article 94(1) of the *1982 LOSC* is the duty relating to ‘social’ matters over ships. This category relates to the obligation of flag States to take necessary steps to ensure that seafarers are employed in accordance with the minimum terms and conditions approved under international law, and particularly under the ILO standards. This obligation requires flag States to ensure that seafarers are employed under conditions that are consistent with the minimum maritime labour conditions promulgated under the auspices of the ILO’s maritime labour conventions.⁴⁹ The welfare of seafarers, and the labour conditions under which seafarers are employed, have always been of special concern to the ILO.⁵⁰ Since 1920 the ILO has adopted over 40 maritime-related labour instruments (conventions and 29 recommendations),⁵¹ addressing a wide spectrum of issues, ranging from minimum age,⁵² the placing of seamen,⁵³ the medical examination of young persons employed at

⁴⁸ *Guidelines to Assist Flag States in the Implementation of IMO Instruments*, IMO Resolution A.847 (20) (November 27, 1997) 37.

⁴⁹ *1982 LOSC*, Article 94 (1), (2)(b) and (3)(b).

⁵⁰ ILO, *About the ILO* (2010) ILO < http://www.ilo.org/global/About_the_ILO/lang--en/index.htm >.

⁵¹ Eurofound, *Industrial Relations, Maritime Labour Standards* (2010) Eurofound <<http://www.eurofound.europa.eu/areas/industrialrelations/dictionary/definitions/maritimelabourstandards.htm>>.

⁵² *Minimum Age (Sea) Convention, 1936 (C58)*.

⁵³ *Placing of Seamen Convention, 1920 (C9)*.

sea,⁵⁴ ship owners liability for sick and injured seamen,⁵⁵ hours of work and manning,⁵⁶ accommodation of crews,⁵⁷ the prevention of accidents,⁵⁸ seafarer welfare,⁵⁹ as well as the repatriation of seafarers,⁶⁰ seafarers identity documents⁶¹ and social security,⁶² to name a few. In 1976 the *Merchant Shipping (Minimum Standards) Convention*, which incorporated a number of maritime labour conventions, was adopted by the ILO. The convention served as the reference point for the minimum living and employment conditions for seafarers.⁶³

In 2006 the ILO (in co-operation with the IMO), reviewed the duty of flag States under Article 94(1) of the 1982 *LOSC*⁶⁴ and decided to adopt a single convention incorporating 40 of the existing maritime labor conventions and 29 regulations.⁶⁵ The consolidation was aimed at modernising the existing conventions, setting minimum employment requirements for seafarers, addressing conditions of employment, accommodation, recreational facilities, food and catering, ensuring adequate standards of health and medical care, safeguarding the welfare and social security of seafarers, promoting compliance of rules and regulations among vessel owners and operators, as well as strengthening enforcement mechanisms (for example, by making complaint

⁵⁴*Medical Examination of Young Persons (Sea) Convention, 1921(C16).*

⁵⁵*Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (C55).*

⁵⁶*Hours of Work and Manning (Sea) Convention, 1936 (C57).*

⁵⁷*Accommodation of Crews Convention, 1946 (C75).*

⁵⁸*Prevention of Accidents (Seafarers) Convention, 1970 (C134).*

⁵⁹*Seafarers' Welfare Convention, 1987 (C163).*

⁶⁰*Repatriation of Seafarers Convention (Revised), 1987 (C166).*

⁶¹*Seafarers' Identity Documents Convention (Revised), 2003 (C185).*

⁶²*Social Security (Seafarers) Convention (Revised), 1987 (No. 165).*

⁶³John N.K. Mansell, *Flag State Responsibility: Historical Development and Contemporary Issues* (Springer-Verlag Berlin Heidelberg, 2009) 163.

⁶⁴Preamble to the MLC 2006 paragraph 7: "Recalling that Article 94 of the United Nations Convention on the Law of the Sea, 1982, establishes the duties and obligations of a flag State with regard to, inter alia, labour conditions, crewing and social matters on ships that fly its flag..".

⁶⁵Maritime Labor Convention 2006, *'Training for the MLC (2006) MLC*
'<<http://www.mlc2006.com/?PHPSESSID=vol7tc882nr9bgjgt7mbak4b1>>

procedures available to seafarers both on board and ashore).⁶⁶ The Maritime Labour Convention 2006 (MLC) was designed to be *globally applicable, easily understandable, readily updatable, and uniformly enforced*,⁶⁷ to ensure success in maintaining the health and welfare of the approximately 1.2 million seafarers world-wide.⁶⁸ As mentioned earlier, however, the convention is yet to enter into force.

3.4 'GENERAL DUTIES' OF FLAG STATES UNDER THE FRAMEWORK

The international legal framework relating to safety at sea and the prevention of marine pollution attributes certain duties and obligations to flag States. These duties and obligations are set out under Article 94(1) of the 1982 *LOSC*,⁶⁹ and are further elaborated under the IMO framework as well as the ILO instruments on the minimum employment conditions of seafarers. Article 94(1) categorises these duties and obligations into three groups, namely 'administrative,' 'technical' and 'social' duties. The 'administrative' and 'technical' duties of flag States emanate from the provisions of Article 94 of the 1982 *LOSC*, but are largely elaborated under the core IMO conventions and their associated instruments.⁷⁰ By contrast, the 'social' duty, though also introduced in Article 94 of the 1982 *LOSC*,⁷¹ is further elaborated under the *MLC 2006*.

Under international law, and particularly under the international legal framework discussed above, a State agrees to accept certain duties when granting nationality to

⁶⁶Juan Somavia, 'A new bill of rights for the maritime sector: A model for fair globalization.' (Speech delivered at the ILO Headquarters, Geneva, April 2006).

⁶⁷MLC 2006.

⁶⁸ILO, 'Seafarers' (2011) ILO

<[http://www.ilo.org/global/What we do/InternationalLabourStandards/Subjects/Seafarers/lang--en/index.htm](http://www.ilo.org/global/What_we_do/InternationalLabourStandards/Subjects/Seafarers/lang-en/index.htm).>

⁶⁹Article 10 of the 1958 HSC for parties to the 1958 HSC.

⁷⁰For parties to the 1958 HSC, the relevant provision is Article 10 of that convention.

⁷¹Ibid.

ships, particularly in relation to safety at sea and the prevention of marine pollution. Article 94(1) implores such States to exercise effective jurisdiction and control over the administrative, technical and social matters of ships that are entitled to fly their flags. The nature and scope of these administrative, technical and social duties can be gleaned from the provisions of Article 94 itself, and are further elaborated under the core conventions under the IMO framework. The duty of the flag State to effectively exercise control and jurisdiction over its ships, as prescribed by Article 94(1) of the 1982 *LOSC*, requires the flag State to perform both administrative and technical obligations in order to fulfil the duty.

The key duties of flag States are: (i) the duty to maintain a register of ships; (ii) the duty to assume jurisdiction over the affairs of flag ships; (iii) the duty to conduct ship surveys and inspections; (iv) the duty to issue necessary certificates; (v) the duty to conduct investigations and hold inquiries; (vi) the duty to take enforcement measures; (vii) the duty to conform to generally accepted international regulations, procedures and practices (GAIRPPs); and (viii) the duty to file (mandatory) reports with the IMO. These duties are often referred to as the ‘general duties’ of flag States under international law.

3.4.1 The Duty to Maintain a Register of Ships

As one way of exercising effective jurisdiction and control over ships that fly their flags (as well as their master(s), officer(s) and crew), Article 94(2)(a) imposes upon flag States the duty to maintain a register of ships containing the names and particulars of ships flying their flag. In this context, flag States such as the Marshall Islands must have in place the necessary infrastructure, and well as the necessary administrative and institutional support, for the proper discharge of their duties.

Indeed, in order to carry out their requisite duties, flag States require qualified personnel, adequate financial resources, as well as the infrastructure to establish and maintain the records of the registry.⁷² However, in order for flag States to effectively carry out their duties in the manner defined under the framework, it is imperative that their administrative capacity is supported by an effective legislative framework

The IMO's '*Code for the Implementation of Mandatory IMO Instruments*' and the '*Guidelines to Assist Flag States in the Implementation of IMO Instruments*,⁷³ support the need for a flag State's effective administrative infrastructure to be underpinned by an equally effective domestic framework. As a preliminary step upon accession to, or ratification of, mandatory international instruments, the *Code* requires flag States to develop the necessary (administrative) infrastructure that will enable the flag State to exercise effective jurisdiction and control over ships trading under its flag.⁷⁴ This duty is indeed implied under the provisions of Article 94(2)(a) and (b) of the 1982 *LOSC*.

Furthermore, the establishment of the registry is not only critical to the enforcement capabilities of the flag State, but also serves another important purpose. The registration of a ship, and the issuance of necessary documentation, means that the ship is legally recognised as a national of the flag State. Indeed, this status entitles the vessel to the protection of the flag State in foreign ports and on the high seas.⁷⁵ Another benefit of vessel registration is that it provides ship owners with conclusive proof of ownership, thus allowing owners to sell or mortgage the vessel without

⁷²*Code for the Implementation of Mandatory IMO Instruments*, IMO Resolution A.973(24) paragraph 7 (Initial Action) adopted on December 1, 2005.

⁷³*Ibid.*

⁷⁴See also *Shipping Industry Guidelines on Flag State Performance* (2nd edition) 8.

⁷⁵1982 *LOSC* Article 91.

difficulty. Maintaining a register of vessels is also critical for enforcement and rescue purposes.

3.4.2 The Duty to Assume Jurisdiction Over Ships

As a consequence of the registration of a vessel, and the issuance by the flag State of the necessary documentation, the flag State is obliged to assume jurisdiction and control over the administrative, technical and social affairs of the vessel. Article 94(2)(a) of the 1982 *LOSC* imposes upon flag States the duty to assume jurisdiction and control over ships that fly their flag, as well as their master(s), officers, and crew, in accordance with the flag State's national law. The term 'jurisdiction' broadly refers to the power, authority and competence of a State to govern persons and property within its territory, and in certain cases, beyond its territory.⁷⁶ Importantly, the term encompasses both the 'prescriptive' and 'enforcement' aspects of jurisdiction.⁷⁷ By requiring flag States to assume such 'jurisdiction' over ships that fly their flags, along with the master(s), officer(s) and crew of such ships, the 1982 *LOSC* ensures that when ships ply the waters of the high seas (and other maritime zones), they remain under the control and protection of a State.⁷⁸ The rationale for the requirement that a ship can only lawfully sail on the high seas if it sails under the flag of a particular State is indeed quite simple: it ensures that the ship is constantly under the control and protection of a State, regardless of its location. Without such jurisdiction, issues of control and protection would arise as soon as the ship enters the high seas. Furthermore, without effective control and supervision, the (unchecked) enjoyment of

⁷⁶Thomas G. Weiss, Don Hubert, *The Responsibility to Protect*, Supplementary Volume to the Report of the International Commission on Intervention and State Sovereignty, (2001) The Academic Council on the United Nations System < http://www.acuns.org/podcasts~2/current_issues/r2p>.

⁷⁷Ibid.

⁷⁸Julian Roberts, *Marine Environment Protection and Biodiversity Conservation: The Application and Future Development of the IMO's Particularly Sensitive Area Concept* (Springer, 2007) 66.

high seas freedoms could very well subject the high seas, and the resources found therein, to the tyranny of chaos and anarchy.⁷⁹

UNCLOS III recognised that the most pragmatic way of imposing control over ships on the high seas was by attributing nationality to ships, thereby bringing such ships within the exclusive jurisdiction of the flag State.⁸⁰ In practical terms, the duty requires flag States to establish sound laws regulating all aspects of shipping operations for ships registered within their territory. This includes laws relating to the administration of flag State functions, enforcement arrangements, necessary infrastructure, as well as the imposition of penalties for those who violate relevant safety standards.⁸¹ Furthermore, the flag State's domestic legislative framework must, at the very least, incorporate the core IMO conventions - namely, the *Load Lines Convention 1966*, the *Tonnage Convention 1969*, the *SOLAS Convention 1974*, *MARPOL 73/78*, *COLREGS 1972*, *STCW 1978* and the *1982 LOSC*.⁸²

3.4.3 The Duty to take necessary Enforcement Measures to Protect the Marine Environment From Pollution By Ships

In general, the duty to take necessary steps to ensure safety at sea and the prevention of marine pollution underscores the seriousness of the oversight responsibility of flag States. Articles 94(3) and (4) of the *1982 LOSC* requires flag States to take necessary measures to ensure the safety of their vessels and crew at sea with regard to the construction, equipment and seaworthiness of ships, the manning of ships, labour conditions and the training of crews, the use of signals, the maintenance of

⁷⁹Matthew Gianni, 'Real and Present Danger: Flag State Failure and Maritime Security and Safety' (Report compiled on behalf of the WWF and the ITF, June 2008).

⁸⁰*1982 LOSC*, Article 91.

⁸¹*Guidelines to Assist Flag States in the Implementation of IMO Instruments*, IMO Resolution A.847 (20) (November 27, 1997).

⁸²*Ibid.*

communications, as well as the prevention of collisions.⁸³ This duty is further elaborated under the core IMO safety at sea related conventions - namely, the *SOLAS Convention 1974*, *Tonnage Convention 1969*, *STCW Convention 1978*, *Load Lines Convention 1966*, *COLREGs 1972*, and of course *MARPOL 73/78* and its Annexes. Therefore, in order for flag States to properly carry out this duty, such States must not only refer to these instruments, but also incorporate the key provisions of these instruments into their domestic legislative framework. Taking these steps will enable flag States to understand the nature and the scope of the duty, thus enabling them to carry out the duty in accordance with the relevant conventions and associated instruments.

The duty requires flag States to enact a robust legislative and policy framework, establish the necessary infrastructure, as well as provide for the effective implementation, compliance and enforcement of international standards.⁸⁴ At a minimum, flag States must ensure that administrative and technical duties are carried out by personnel that are duly qualified (taking into account the number and type of tonnage under the flag), and that clear instructions exist as to the implementation of international standards, particularly with respect to the core IMO conventions. Flag States are also required to take necessary steps to ensure the proper training and certification of seafarers, and that statutory surveys and inspections, as well as casualty investigations, are carried out in the manner prescribed by law.⁸⁵ The duty of flag States to take necessary measures to ensure safety at sea and the prevention of marine pollution is enforced through surveys and inspections, investigations,

⁸³ 1982 LOSC, Article 94(3).

⁸⁴ Above n79.

⁸⁵ Ibid.

inquiries, and where necessary, by issuing fines and penalties in accordance with the laws of the Marshall Islands.

With regard to the prevention of marine pollution, the duty of flag States is specifically set out under Article 217 of the *1982 LOSC*. This provision requires flag States to ensure that vessels flying their flag comply with the rules and standards adopted under the IMO framework and MARPOL 73/78 (Annexes I to V), for the prevention, reduction and control of marine pollution by vessels.⁸⁶ Article 217 further requires flag States to adopt the necessary laws and regulations to implement these international rules and standards, and to take effective enforcement action against vessels that violate such rules and standards.⁸⁷ Such enforcement action includes prohibiting vessels from sailing until such time as they comply with relevant international rules and standards,⁸⁸ ensuring that requisite inspections and surveys are regularly carried out,⁸⁹ ensuring that necessary certificates are carried on board at all times, and also that investigations into suspected violations are conducted immediately. In addition, Article 217 requires flag States to impose meaningful penalties - i.e, penalties with adequate severity to deter future violations.⁹⁰

Furthermore, Article 217(6) of the *1982 LOSC* requires flag States to conduct investigations into allegations of non-compliance reported by other States, and where warranted, institute proceedings and impose penalties that carry adequate severity

⁸⁶*1982 LOSC* Article 217(1).

⁸⁷*Ibid.*, Article 217(1).

⁸⁸*Ibid.*, Article 217(2).

⁸⁹*1982 LOSC*, Article 217(3).

⁹⁰*Ibid.*, Article 217(2),(3),(4) and (8).

without delay. In these instances, flag States are obliged to advise the complainant State and the IMO of the action undertaken in regard to the complaint.⁹¹

The primary IMO instrument on the prevention of marine pollution by ships is MARPOL 73/78. The convention seeks to prevent or minimise both accidental pollution by ships, as well as pollution occurring from the routine operation of ships.⁹² More importantly, the convention sets out some of the technical and administrative duties of flag States aimed at preventing or minimising pollution. The key obligations of flag States under MARPOL Annexes 1 through 5 include the obligation to ensure timely surveys and inspections and the obligation to issue necessary certificates.⁹³

3.4.4 The Duty to Conduct Surveys and Inspections of Vessels

The use of ‘surveys’ and flag State ‘inspections’ are important ways for flag States to oversee the implementation efforts of shipowners and operators. The duty to conduct surveys and inspections is first mentioned under Article 94 (4) of the *1982 LOSC*, and is further elaborated under key IMO conventions.⁹⁴

Article 94(4)(a) makes it clear that flag States have an obligation to ensure that ships flying their flag are initially surveyed prior to registration, and thereafter at regular intervals to ensure that they satisfy the conditions set out under Article 94(4) paragraphs (a), (b) and (c) of the *1982 LOSC*. Indeed, the use of surveys and inspections to keep a vessel in ‘class’ is consistently called for under the core IMO

⁹¹Ibid., Article 217(7).

⁹²GARD AS, *MARPOL Annex I: Regulations for the Prevention of Pollution By Oil* (A Selection of Articles by GARD), (June 2011) GARD
<<http://www.gard.no/ikbViewer/Content/72338/Marpol%20April%202010.pdf>>.

⁹³MARPOL 73/78 Annex I Regulations 4 and 5.

⁹⁴*SOLAS 1974, Load Lines 1966, MARPOL 73/78,*

conventions., *SOLAS 1974* (1988 Protocol), *MARPOL 73/78* and the *Load Lines Convention 1966*, all require flag States to conduct a number of surveys following the initial survey. Under *SOLAS 1974*, for instance, both passenger vessels and cargo vessels require surveys and inspections, the main focus being on technical specifications such as the structure of the vessel, machinery and equipment, installation of radio communications, and life-saving appliances.⁹⁵ The survey requirements of *MARPOL 73/78* (contained in Annex I Regulation 4), are directed at oil tankers of 150 GT or more, and other ships of 400 GT or more. In Annex IV, surveys and inspections are directed at ships of 400 GT or more, or ships of less than 400 GT but which carry more than 15 persons. The focus of the surveys and inspections stipulated in Annex VI of *MARPOL 73/78* is air pollution generated by ships.

The *Load Lines Convention, 1966* also imposes survey obligations on flag States, focusing on the safe loading of vessels in accordance with the specifications set out in the Annexes to the convention.⁹⁶ The minimum safe manning of ships is also subject to surveys and flag State inspections. Ships must be inspected and the relevant *Minimum Safe Manning Certificate* classifications approved and issued by flag States. Compliance with labour standards is also determined via inspections. In this regard, flag States must inspect their vessels and, where warranted, certify that the vessel satisfies the requirements across the 14 different areas⁹⁷ addressed under Part 5 Appendix A5-I of the MLC 2006. Only then will the vessel be considered compliant

⁹⁵*SOLAS 1974*, RegI/6-1/10

⁹⁶*Load Lines Convention, 1966* Articles 13 and 14.

⁹⁷The areas include: 1.Minimum age; 2.Medical certification; 3.Qualifications of seafarers; 4.Seafarers' employment agreements; 5.Use of any licensed or certified or regulated private recruitment and placement service; 6.Hours of work or rest; 7. Manning levels for the ship; 8.Accommodation; 9.On-board recreational facilities; 10.Food and catering; 11.Health and safety and accident prevention; 12.On-board medical care; 13.On-board complaint procedures, and 14.Payment of wages.

and issued the necessary certificates.⁹⁸ Conversely, flag States have the authority to refuse certification where there is non-compliance, or to withdraw certification or registration of the vessel in accordance with the flag State's national laws where the violation is blatant. However, where the survey and inspection is successfully completed and the flag State is satisfied as to compliance, the flag State must issue the necessary certificates to the vessel concerned.

3.4.5 The Duty to Issue the Necessary Statutory Certificates

As a corollary to the enforcement mechanism of surveys and inspections, flag States also have the obligation to issue the necessary certificates⁹⁹ to vessels, thereby evidencing their compliance with all aspects of safety, seaworthiness and fitness to sail. Such certification remains valid for the duration of time approved under the flag State's national law, but cannot exceed five years. Furthermore, such certificates are taken on their face as valid documents of certification by port state control authorities of other contracting governments.¹⁰⁰ Under certain circumstances, flag States may request the survey and inspection authorities of other contracting governments to conduct such surveys, and to issue the necessary certificates on their behalf.¹⁰¹ However, in this situation the certificates must reflect the certification issued by the inspecting State and be carried out on behalf of the flag State.¹⁰²

3.4.6 The Duty to Conduct Marine Investigations and to Hold Marine Inquiries

⁹⁸ See 'Guidelines for Inspections under the MLC 2006' 1.3.4 <
http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_101788.pdf>.

⁹⁹ *Load Lines Convention 1966*, Articles 13-20, *SOLAS 1974* Regulations I/6- I/18, *Tonnage Convention* Article 7(2), *Load Lines 1966* Articles 13, 14, 16(3) and 19, *MARPOL 73/78* Annex I Regulations 4 and 5, Annex IV Regulations 4 and 5, Annex VI Regulations 5(3) and 5(5).

¹⁰⁰ *SOLAS 1974*, Regulation I/17, *Load Lines 1966* Article 20, *STCW Code* Regulations I/2 and I/10.

¹⁰¹ See for example the *Load Lines Convention*, 1966 Article 17, and *SOLAS 1974*, Regulation I/13.

¹⁰² *Ibid.*

The duty to conduct investigations and hold inquiries into maritime casualties is clearly articulated under Article 94(6) and (7) of the 1982 *LOSC*, and is an element of the exclusive jurisdiction flag States enjoy over ships that fly their flag. Under international law, flag States are duty-bound to investigate complaints and allegations of sub-standard performance, and to hold inquiries into serious incidents before suitably qualified persons. Flag States must also cooperate with other States conducting investigations and inquiries into maritime casualties involving their ships. This obligation is further reflected under the core IMO conventions, particularly, the *SOLAS 1974*,¹⁰³ *Load Lines 1966*¹⁰⁴ and *MARPOL 73/78*.¹⁰⁵

Marine investigations are colloquially referred to as ‘no-blame safety investigations’¹⁰⁶ as their objective is to prevent future maritime casualties rather than apportion blame.¹⁰⁷ Indeed, the purpose of maritime investigations is to “...identify the circumstances of the casualty under investigation, and establish the causes and contributing factors, by gathering and analysing information, and drawing conclusions.”¹⁰⁸ Maritime investigations must be conducted in all cases where a maritime incident has resulted in death or serious injury, the loss of a person from a ship, the loss or abandonment of a ship, material damage to a ship, the stranding of a ship, collisions between ships or between a ship and other objects, or where there has been damage to the environment. Investigation reports must outline the facts of the casualty and reflect any deaths, injuries or pollution caused by the casualty. The reports must also identify the flag State, the owners and managers of the vessel, any

¹⁰³*SOLAS 1974*, Regulation I/21.

¹⁰⁴*The Load Lines Convention 1966*, Article 23.

¹⁰⁵*MARPOL 73/78* Articles 8 and 12.

¹⁰⁶John Kavanagh, ‘Marine Inquiries: Balancing the ‘No-Blame’ Investigation With the Regulatory Investigation To Achieve Marine Safety Outcomes’ (2008) 22 *Australia and New Zealand Maritime Law Journal* 177, 219.

¹⁰⁷*Code for the Investigation of Marine Casualties and Incidents* (IMO Resolution A.849(20)).

¹⁰⁸*Ibid.*

company and/or classification society concerned, details of the dimensions and engines of any ship involved, a description of the crew, their work routine, as well as an explanation of the circumstances of the casualty.¹⁰⁹ Flag States are also obligated under this duty to report the findings of any such investigation to the IMO.¹¹⁰ Section 9 of the *ISM Code* requires safety management systems to have procedures in place to ensure that accidents are reported to the ship's management, and that such accidents are investigated and analysed to prevent further occurrences.¹¹¹ In order for prompt, effective and thorough investigations to be conducted, flag States must appoint qualified investigators, particularly in the areas of *navigation, collision regulations, certificates of competency, marine pollution, interviewing techniques, evidence gathering*, as well as in the evaluation of the effects of human elements.¹¹²

Marine inquiries have consistently been the traditional response to serious maritime incidents, but unlike 'marine investigations', the aim of an inquiry is to establish the facts pertaining to a marine casualty and attribute blame (which often results in criminal or civil proceedings being brought before the courts).¹¹³ *Marine Inquiries* are, in fact, special tribunals that are specifically empowered to conduct investigations into serious maritime incidents. In some cases, marine inquiries may result in disciplinary measures being imposed upon parties involved in a maritime incident.¹¹⁴ The duty to conduct marine investigations and hold inquiries is an important

¹⁰⁹ *Code for the Investigation of Marine Casualties and Incidents* (IMO Resolution A.849(20)).

¹¹⁰ *SOLAS 1974*, Chapter I, Part C Regulation 21(a) and (b).

¹¹¹ IMO *ISM Code* 9.1 and 9.2.

¹¹² *Guidelines to Assist Flag States in the Implementation of IMO Instruments*, MO Resolution A.847(20).

¹¹³ John Kavanagh, 'Marine Inquiries: Balancing the 'No-Blame' Investigation With the Regulatory Investigation To Achieve Marine Safety Outcomes' (2008) 22 *Australia and New Zealand Maritime Law Journal* 177, 178.

¹¹⁴ John Kavanagh, 'Marine Inquiries: Balancing the 'No-Blame' Investigation With the Regulatory Investigation To Achieve Marine Safety Outcomes' (2008) 22 *Australia and New Zealand Maritime Law Journal* 177, 178.

mechanism for flag States, not only to assist ship owners and operators in the implementation of minimum safety standards, but also in enforcing these standards through fear of penalty - whether administrative, civil or criminal.¹¹⁵

3.4.7 The Duty to take Enforcement Measures against Ships for Violations

Flag States are required under Article 94 of the *1982 LOSC*, as well as under the core IMO conventions, to take effective steps to ensure that shipowners and operators are reliably implementing standards approved under the relevant international instruments. One of the most effective ways of ensuring compliance with this requirement is by taking meaningful enforcement action against vessels that fail to comply with such international standards.¹¹⁶ Enforcement action may range from prohibiting ships from sailing until compliance is achieved, carrying out periodic inspections, instituting legal proceedings against ships for violations, as well as imposing meaningful penalties to discourage shipowners and operators from violating safety standards.¹¹⁷ Flag States are duty-bound to coordinate action taken against ships flying their flag to ensure that investigations are carried out promptly and thoroughly. In order to be effective, flag States must make the necessary resources available and employ qualified personnel. Moreover, they must enact effective laws and regulations which allow enforcement action to be carried out against non-compliant shipowners and operators, and penalties to be imposed which will deter and discourage future non-compliance.¹¹⁸ The IMO has

¹¹⁵Ibid.

¹¹⁶ *Guidelines to Assist Flag States in the Implementation of IMO Instruments*’ (MO Resolution A.847 (20)) (November 27, 1997) 40.

¹¹⁷Ibid.

¹¹⁸ *Guidelines to Assist Flag States in the Implementation of IMO Instruments*’ (IMO Resolution A.847 (20)) (November 27, 1997) 41.

proposed that flag States put in place a voluntary programme to evaluate their own effectiveness in this area, thereby enabling flag States to improve their performance.¹¹⁹

3.4.8 The ‘Social’ Aspect of the Duty of Flag States

As briefly discussed above, the ‘social’ aspect of the flag State duty is enunciated under a series of ILO maritime labour related conventions, which to a large extent have now been codified under the 2006 *Maritime Labour Convention, 2006* (MLC 2006). The convention incorporates an innovative mechanism, imposing on all stakeholders a part in the implementation and enforcement of labour standards in the maritime sector. The ‘continuous compliance awareness’ (CCA) mechanism, as it is known under the convention, involves the active participation of *ship owners* as well as *operators, masters, seafarers* and *flag States*, in ensuring the proper implementation and enforcement of the provisions of the convention. In brief, the CCA mechanism is designed to close the gaps in the implementation of these minimum standards, thereby discouraging the tendency of shipowners to circumvent the requirements of the convention.

Under the *MLC 2006*, shipowners and operators are obligated to advise seafarers of all their rights, including the right of seafarers to lodge complaints either on board or ashore.¹²⁰ Shipowners and operators must ensure that the exercise of such rights by seafarers is neither tampered with nor hindered.¹²¹ On the other hand, shipowners and operators are required to develop ‘plans’ to ensure that national laws and regulations implementing the convention are being complied with.¹²² These plans must then be

¹¹⁹Ibid., 40.

¹²⁰MLC 2006 Guideline B5.1.5.

¹²¹Ibid.

¹²²Ibid.

carried out by the master, who is required to keep records of the implementation of the standards.¹²³ Finally, the overall responsibility for ensuring that all these processes are being complied with rests with the flag State, which must enforce these measures through a coordinated system of regular inspections and monitoring. As the convention makes clear: “*An effective and coordinated system of regular inspections, monitoring and other control measures, of ships adopted by the competent authorities in flag States, is the primary tool for ensuring that ships meet the requirements under the MLC, 2006, as implemented in national laws and regulations.*”¹²⁴

This quote describes the duty of the flag State in regard to the social affairs of vessels flying its flag. The key components of the duty include the appointment of flag State inspectors or ROs, the need to monitor, conduct inspections and implement other control measures, the issuance, renewal and withdrawal of the Maritime Labour Certificate (MLC) and the completion of the Declaration of Maritime Labour Compliance (DMLC), as well as responding to seafarer complaints and taking enforcement action against shipowners and operators that are found to be in breach of the requirements of the convention.¹²⁵ Inspections under the *MLC 2006* are carried out in a similar fashion to inspections under the ISPS Code or ISM Code - under *SOLAS 1974*. Under Article V of the *MLC 2006*, flag States are required to “...*effectively exercise its jurisdiction and control over ships that fly its flag, by establishing a system for ensuring compliance with the requirements of this Convention, including regular inspections, reporting, monitoring and legal proceedings under the*

¹²³Ibid.

¹²⁴*Guidelines for Flag State Inspections under the Maritime Labour Convention, 2006* (2010) ILO < http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_101788.pdf>.

¹²⁵Ibid.

*applicable laws.*¹²⁶ Furthermore, flag States must ensure that ships flying their flag carry on board the *Maritime Labour Certificate* and the *Declaration of Maritime Labour Compliance* at all times.¹²⁷ Where warranted, flag States have the authority and the obligation to suspend or withdraw a ship's certificates for violating the provisions of the convention.¹²⁸

3.5 CONCLUSION

The privilege accorded to States under the 1982 *LOSC* to grant nationality to ships is not an infinite one. Rather, the exercise of this right is tempered to a degree by the imposition of certain duties and obligations under international law. Flag States, as such States have come to be known, are duty-bound under the provisions of the 1982 *LOSC* (and the related IMO and ILO conventions), to perform certain duties which are categorised as either administrative, technical or social duties, in respect of ships that sail under their flag. These duties are collectively referred to as the 'general duties' of flag States, and focus on ensuring safety at sea and the prevention of marine pollution. As a flag State, the Marshall Islands is likewise obligated under international law to perform these duties effectively. The proper performance of these duties by the Marshall Islands is particularly critical, given its categorisation as a flag of convenience (and the less than enviable reputation which flags of convenience possess). It is therefore incumbent upon the Marshall Islands to ensure that it carries out its general duties and obligations in the manner prescribed by law. Failure to properly discharge these duties not only strengthens the calls made by organisations such as the ITF to end the practice of open registries, but also puts the safety of

¹²⁶MLC 2006 Article V (2).

¹²⁷*Ibid.*, Article V(3).

¹²⁸*Ibid.*, Standard A5.1.3 (16).

seafarers and the marine environment in danger. For many States such as the Marshall Islands, the prime motivation to register vessels has been economic prosperity. This means that the discharge of flag State duties under international law has not been a priority. For responsible flag States on the other hand, economic prosperity is the fruit of sacrifice and hard work. *Rayfuse* reminds us that: “For every right there is a concomitant duty, and the principle of ‘due regard’ requires of such (flag) States, the fulfilment of the duties and obligations imposed upon them under the law.”¹²⁹

As a flag State operating the third largest ship registry in the world, it is imperative for the Marshall Islands to effectively discharge its flag State duties, particularly given its status as a small developing country without much of an independent capacity to administer the registry. The ultimate goal of the international legal framework is to ensure that flag States play their part in ensuring that vessels that fly their flag are appropriately manned and equipped, thereby promoting the goals of ‘safety at sea’ and the ‘prevention of marine pollution’. Whether the Marshall Islands is living up to these obligations is an interesting question. Chapter 4 embarks on an analysis of the performance of the Marshall Islands of such duties, and draws its own conclusions as to whether or not the Marshall Islands is discharging its duties effectively

¹²⁹Rosemary Rayfuse, ‘*The Anthropocene, Autopoiesis and Disingenuousness of the Genuine Link: Addressing Endorsement Gaps in the Legal Regime For Areas Beyond National Jurisdiction*’ [2009] UNSWLR 2.

CHAPTER 4

ANALYSING THE PERFORMANCE OF THE MARSHALL ISLANDS OF ITS ‘GENERAL DUTIES’ AS A FLAG STATE

4.1 INTRODUCTION

Chapter 3 of the thesis examined the international legal framework pertaining to the general duties of flag States and ascertained a number of specific duties that the framework imposes on flag States such as the Marshall Islands. In imposing these duties, international law makes it clear that flag States must take appropriate control of vessels trading under their flag, particularly with regard to safety at sea and the prevention of marine pollution. As highlighted in the discussion above, the duties enumerated under the framework are wide-ranging, covering the ‘administrative’, ‘technical’ and the ‘social’ aspect of shipping. Indeed, international law imposes upon flag States the obligation to carry out these duties effectively. As a flag State with the third largest ship registry world-wide, the Marshall Islands is equally obligated to carry out these duties effectively. That the Marshall Islands is a small developing State and a so-called ‘flag of convenience’ does not militate against the obligation to perform its duties effectively. To the contrary, these factors render it imperative that the Marshall Islands perform the duties set out under the framework in the due and proper way.

The purpose of this chapter is to analyse the performance of the Marshall Islands of its general duties as a flag State. The chapter examines each of the duties enumerated

under the framework, analyses the manner in which the Marshall Islands is discharging each duty (in its capacity as a flag State), and seeks to determine whether or not the Marshall Islands is performing its duties to the level demanded of it under the framework.

4.2 OVERVIEW OF PERFORMANCE

Having ascertained the ‘general duties’ of flag States under the international framework for ‘safety at sea’ and the ‘prevention of marine pollution’, this section embarks on an analysis of the performance of the Marshall Islands of its ‘general duties’ at the national level. It is important to note from the outset that in order for flag States to effectively discharge their duties, their performance must be underpinned by an adequate policy and legal framework, the requisite administrative tools, and qualified personnel. Therefore, in order for a flag State to successfully discharge its duties, its performance must be underpinned by a sound policy framework at the national level, implemented through a robust domestic legal framework, and supported by effective administration, compliance management procedures, and enforcement measures.¹ Indeed, the IMO recommends that flag States have in place sound policy aims and a robust legal framework when an instrument enters into force, thus allowing flag States to effectively exercise control and jurisdiction over their ships.² In particular, the legal framework must address requirements for registries, the inspection of vessels, safety and marine pollution measures, as well as an adequate legal basis for enforcing the measures adopted in

¹*Self Assessment of Flag State Performance*’ (IMO Resolution A.881(21) September 25, 1999).

²*Guidelines to Assist Flag States in the Implementation of IMO Instruments*’ (IMO Resolution A.847(20) November 27, 1997).

these areas.³ That flag States are bound by the provisions of the core IMO conventions to which they are members, to promulgate the necessary laws.⁴ The IMO also recommends that flag States establish a support infrastructure that is capable of implementing the measures required under international law. Therefore, before delving into the question of whether the Marshall Islands has successfully discharged its general duties as a flag State, it is crucial to determine whether the Marshall Islands has in place the necessary domestic framework to enable the proper discharge of such duties (as recommended by the IMO), in terms of its policy and legal framework, institutional and administrative arrangements, and infrastructure capabilities.

4.2.1 The National Policy Framework for International Shipping

Research into the Marshall Islands maritime sector has failed to uncover any comprehensive national policy on the sector as a whole or maritime shipping in particular. Although one could argue that the current national legislation regulating international maritime shipping represents government policy in the area, it is usually preferable for small Islands nations embarking on such a formidable task as establishing a ship registry to do so on the back of a sound policy foundation. The South Pacific Community's Regional Maritime Programme (SPC-RMP) agreed that the development of a holistic (maritime) policy framework by Pacific Island nations was critical for the management of their maritime sector.⁵ Such a policy should be wide-ranging, covering key aspects of maritime related activities including international, regional and domestic shipping services, regulatory and enforcement agencies, as well

³Ibid.

⁴Ibid.

⁵Regional Maritime Programme (SPC-RMP) 'Open Registries in the Pacific' (Maritime Legal Advisory, Issue No. 1 South Pacific Community, August 2005).

as training and development - with the ultimate objective being safety at sea and the prevention and minimisation of marine pollution. According to Bridgman and Davis, policy development begins with identifying the problems and issues in a particular sector, followed by carefully analysis, and eventually drafting, enacting and enforcing legislation.⁶ Legislation enacted on this basis could therefore be described as having been enacted upon a sound policy foundation.⁷

For the Marshall Islands, such policy-making should have been preceded by a sound feasibility study, taking into account a cost benefit analysis of the venture, the long-term economic viability of the venture, as well as the legal and political implications of entering into such a venture, with particular emphasis on the ability of the Marshall Islands to carry out the duties imposed under international law. Considering the nature of the duties and obligations imposed on flag States under international law, the establishment of a ship registry by a small developing State that lacks the necessary capacity to independently discharge flag administration functions is an onerous undertaking. It is proposed that it is fool-hardy for a small developing State such as the Marshall Islands to venture into a ship registration venture without the guidance of policies developed on the basis of sound analysis.

Indeed, the only semblance of a policy guideline is found under the *Maritime Administrations Act 1990*.⁸ Section 102 of the Act provides that:

[the Act] is intended, and shall be construed, to encourage and foster the growth and development of the foreign and domestic commerce; to promote and protect the national defense and security of the Republic of the Marshall Islands (hereinafter

⁶Ibid.

⁷Ibid.

⁸47 MIRC Chapter 1, *Maritime Administrations Act 1990*, Section §102.

sometimes referred to as “the Republic”); to preserve and protect the marine environment; and to regulate a uniform national program of marine safety, inspection and documentation.

Although not elaborated in the form of a policy framework document, the aim of the Marshall Islands Government in drafting Section 102 of the Act was to: ‘*preserve and protect the marine environment; and to regulate a uniform national program of marine safety, inspection and documentation.*’ Indeed, this objective is consistent with the mandate of the Marshall Islands as a flag State under international law. Therefore, the performance of the Marshall Islands must be premised on the objective of achieving the policy aims contained in Section 102. However, in order for the Marshall Islands to effectively discharge its flag State duties, its performance must be supported by an effective legislative framework.

In a legal advisory issued in September 2005,⁹ the South Pacific Community’s Regional Maritime Programme (SPC-RMP) agreed that the development of holistic (maritime) policy framework by Pacific Island nations was critical for the management of their maritime sectors. Such policy should be wide-ranging and encompassing, and must cover key aspects of maritime related activities, including international, regional and domestic shipping services, regulatory and enforcement agencies, training and development, with the objective of positively contributing to safety at sea, and the prevention, and minimization of marine pollution.¹⁰ In accordance with Bridgman and Davis, policy development begins with identifying the problems and issues in a particular sector, followed by a careful analysis, and eventually the drafting, enactment

⁹Regional Maritime Programme (SPC-RMP) ‘Open Registries in the Pacific’ (Maritime Legal Advisory, Issue No. 1 South Pacific Community, August 2005).

¹⁰Ibid.

and enforcement through legislation.¹¹ Legislation enacted on that basis therefore, could be described as legislation that has been enacted upon a sound policy foundation.

There is no argument, that policy had to be developed on the basis of sound feasibility study, which would have taken into consideration, matters such as, the cost and benefit analysis of the ship registry venture, the long-term economic viability of the venture, and the legal implications of registering ships, such as the attending duties and obligations and their effective discharge, to name a few. Bearing in mind the nature of the duties and obligations under international law, the establishment of a ship registry by a small developing State that lacks the necessary capacity to independently discharge the flag administration functions, is a humongous undertaking. It is in fact, fool-hardy, for a small developing State, such as the Marshall Islands, to venture into the ship registration venture, without the guidance of sound policy. However, as pointed out above, no such policy exists in the Marshall Islands, in regards to international shipping, and the attending flag State duties and obligations. The only semblance of a policy guideline is that found under the Maritime Administrations Act, 1990, referred to above.¹²

It is important to note that the *Maritime Administrations Act 1990* was enacted for the purposes of facilitating the administration of the ship registry and supporting the discharge of flag State duties by the Marshall Islands. However, it is submitted that the statement in Section 102 expresses policy aims that are supported by neither current legislation nor actual practice. In particular, the references to the “growth of domestic commerce” and “national defense and security” are not based on current law or the

¹¹Ibid.

¹²47 MIRC Chapter 1 *Maritime Administrations Act 1990*, Section §102.

circumstances currently prevailing in the Marshall Islands. For example, issues of “national defense and security” are, by virtue of Title III, Article 1, Section 311 of the Compact of Free Association (CFA), the responsibility of the United States. Secondly, the aim to “encourage and foster the growth and development of domestic commerce” appears disingenuous at best. Since its inception, the focus of the registry has always been to make available an ‘inexpensive’ regime for the registration of ships. Indeed, this is what entices foreign shipowners, who invariably want to avoid regimes with high taxes and cumbersome registration processes. If one were to reflect on the economics of the registry, one would discover that of the approximately 154,000 seafarers that have been documented by the registry, not one of them is a citizen of the Marshall Islands - a statistic made more striking by the fact that the ship registry has been in existence for more than 20 years.¹³ In addition, IRI, its affiliates, and ship-owning entities with ships trading under the Marshall Islands flag, are exempt from all Marshall Islands taxes.¹⁴ Common sense indicates that it is illogical for the Marshall Islands to expect the registry’s low registration fees and tax exemptions to translate into economic growth and prosperity. On the other hand, the ship registry’s level of direct contributions to the annual budget must be appreciated. The issue, however, is that the potential exists for the Marshall Islands to enjoy greater economic benefits than those derived solely from direct funding contributions.

As previously stated, the registry was an initiative introduced by the government six days after it signed a multi-million dollar credit facility with the United States Government.¹⁵ As part of the deal, 1.4 million dollars was supposedly allocated to set

¹³See [Figure 6](#) – ‘Seafarer Documentation’ in Chapter 2 above.

¹⁴51 MIRC Part I, *Business Corporations Act*, §.12.

¹⁵The Associated Press, ‘Ambassador has secret company’, *Wilmington Morning Star* (North Carolina, USA) April 30, 1990, 3A.

up the ship registry.¹⁶ Today, more than 20 years after the establishment of the registry, the Marshall Islands is still lacking the necessary infrastructure, resources, and education and training services (particularly in legal and technical areas) required to operate the registry. This state of affairs can only be attributed to the government's failure to develop sound and far-sighted policies to guide the activities of the Marshall Islands in relation to the operations of the registry and its activities in the maritime sector as a whole. If and when appropriate policies are developed, the area of flag State duties deserves much attention.

4.2.2 The National Legal Framework for International Shipping

The jurisdiction and control of the Marshall Islands over the administrative, technical and social matters of ships can only be achieved if such jurisdiction is underpinned by a sound legislative framework. In practice, the Marshall Islands, as a flag State, is required to put in place the necessary legislative framework that will provide such a foundation. As the concepts of 'flag State' and 'flag State duty' originate under international law, it is imperative for flag States to incorporate these concepts, together with international instruments that regulate the issues of safety at sea and the prevention of marine pollution, into their domestic legal framework.¹⁷ Indeed, Mansell has opined that the commitment of a flag State to the effective discharge of its duties and obligations under international law can be measured by the extent of that flag State's ratification of IMO instruments.¹⁸

A. The Marshall Islands' IMO Ratifications

¹⁶*Loc. Cit.*

¹⁷IMO, 'Guidelines to Assist Flag States in the Implementation of IMO Instruments' (IMO Resolution A.847(20) November 27, 1997).

¹⁸John N.K. Mansell, *Flag State Responsibility: Historical Development and Contemporary Issues* (Springer-Verlag Berlin Heidelberg, 2009) 154.

IMO Resolution A.881(21) acknowledges that the most significant IMO Conventions in terms of flag State performance are the International Convention for the Safety of Life At Sea, 1974 (SOLAS 74), the International Convention for the Prevention of Pollution From Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78), the International Convention on Load Lines, 1966 (LL66), the International Convention on Standards of Training, Certification and Watch-Keeping For Seafarers, 1978, as amended (STCW 78), and the Convention on International Regulations for Preventing Collision at Sea, 1972 (COLREG 72). Of course the *1982 LOSC*, as the ‘constitution of the oceans’, is an integral part of the international legal framework. As such, it is essential that, at the very least, flag States such as the Marshall Islands ratify the *1982 LOSC* and the core IMO conventions, and then incorporate the provisions of these conventions into their domestic law. Indeed, domesticating these international instruments is critical in that it provides flag States with the necessary legal basis for enforcing such standards at the national level. Therefore, as a flag State, the Marshall Islands is expected to have ratified the *1982 LOSC*, the core IMO conventions referred to above, as well as the *ILO 2006 MLC*. Furthermore, Article V Section 1 paragraph (4) of the Constitution of the Marshall Islands requires international instruments to have parliamentary approval before they become legally binding. This provision stipulates that “no treaty or other international agreement, which is finally accepted by or on behalf of the Republic shall of itself, have the force of law.” Unlike some jurisdictions, this provision, it is argued, requires the Marshall Islands Parliament to enact enabling legislation to give full force to the conventions and treaties ratified by the Marshall Islands. Without enabling legislation, the authority of the government to enforce such conventions and treaties in the Marshall Islands is severely undermined.¹⁹

¹⁹Augustine Blanco Baz’an, ‘Freedom of Navigation an Out-Dated Concept?’ (Lecture presented at

The Marshall Islands officially became a member of the IMO by acceding to the IMO Convention on March 26, 1998.²⁰ Indeed, IMO records indicate that the Marshall Islands has one of the highest rates of IMO ratifications.²¹ To date, the Marshall Islands has ratified or acceded to over 40 IMO conventions and protocols.²² These ratifications include the *SOLAS Convention 1974*²³, *MARPOL 73/78*²⁴, the *Load Lines Convention 1966*²⁵, *STCW 1978*,²⁶ *COLREG 1972*²⁷, the *Tonnage Convention, 1969*,²⁸ the *Convention on Limitation of Liability on Maritime Claims, 1976* (LLMC 76),²⁹ and the *International Convention on Civil Liability for Oil Pollution Damage, 1969* (CLC 69),³⁰ among many others. The Marshall Islands is also a party to the 1982 *LOSC*, having acceded to the convention on August 9, 1991. On July 3, 2007, the Marshall Islands formalised its membership in the ILO by acceding to the ILO Constitution. On September 25, 2007, the Marshall Islands ratified the ILO MLC, 2006.³¹ Therefore, in so far as the governance of the issue of ‘safety at sea and the prevention of marine pollution’ is concerned, the Marshall Islands record of ratifications appears to have exceeded expectations. Having acceded to the 1982 *LOSC* and ratified the core IMO conventions and the ILO maritime labour instrument, the Marshall Islands has agreed in good faith to enforce the provisions of the

IFLOS Summer Academy, August 17, 2007) <<http://www.iflos.org/media/8883/blanco-bazan%20lecture%20outline.pdf>>.

²⁰IMO, *Member States* (2010) IMO <[imo.org](http://www.imo.org)> .

²¹See Annex 11 below (RMI Treaty List).

²²IMO, *Status of Conventions by Country* (2011) IMO <http://www.imo.org/includes/blastDataOnly.asp/data_id%3D28426/status-X%282%29.xls> .

²³Acceded to SOLAS 1974 on October 16, 1995.

²⁴Acceded to MARPOL 73/78 on April 26, 1988.

²⁵Acceded to Load Lines 66 on April 26, 1988.

²⁶Acceded to STCW on April 25, 1989.

²⁷Acceded to COLREG 72 on April 26, 1988.

²⁸Acceded to Tonnage 69 on April 25, 1989.

²⁹Acceded to LLMC on November 29, 1994.

³⁰Acceded to the CLC 69 ON January 24, 1994.

³¹The ILO MLC 2006 is not yet in force.

international legal framework for safety at sea and the prevention of marine pollution.³² However, these ratifications and accessions, though critical, represent only the first step in the process of building the ideal domestic legal framework for regulating international shipping. For the Marshall Islands to effectively discharge its duties as a flag State, Parliament must enact national laws implementing the provisions of the relevant international instruments.

B. Domestic Legislative Framework

For the Marshall Islands to discharge its general flag State duties in the due and proper way, its activities must be supported by a robust national legal framework that provides for stringent compliance with, and enforcement of, international standards. Without the support and authority of such a framework, the effective implementation of the relevant international standards by Marshall Islands flagged vessels could be difficult for the Marshall Islands to achieve.

When the decision to establish the Marshall Islands Ship Registry was approved by Cabinet in 1990, the Marshall Islands Parliament (Nitijela) enacted a legislation package that consisted of the *Maritime Administrations Act 1990*, the *Documentation and Identification of Vessels Act 1990*, the *Preferred Ship Mortgage and Maritime Liens Act*, the *Carriage by Sea Act*, the *Merchant Seafarers Act*, the *Domestic Watercrafts Act*, and the *Limitation of Liability for Maritime Claims Act*. On October 15, 1993, the Nitijela enacted the *Civil Liability for Oil Pollution Act*. These laws were enacted specifically to cater for the administration of the ship registry, as well as to satisfy the obligations of the Marshall Islands in its new-found status as a ‘flag State’ under the relevant international conventions. However, the key pieces of legislation for

³²IMO, *Conventions Status by Country* (2011) IMO
<<http://www.imo.org/About/Conventions/StatusOfConventions/Pages/Default.aspx>>.

the discharge by the Marshall Islands of its duties include the *Maritime Administrations Act 1990*, the *Documentation and Identification of Vessels Act 1990*, the *Merchant Seafarers Act 1990* and the regulations promulgated under these laws by the Maritime Administrator.

B(i). The Maritime Administrations Act 1990³³

The *Maritime Administrations Act 1990* was enacted to provide the legal basis for the Marshall Islands Government to set up an open ship registry, and to facilitate the administration of functions related to the operations of the registry. Unlike the Vanuatu *Maritime Authority Act*,³⁴ which establishes the ‘Vanuatu Maritime Authority’ (VMA) as the entity responsible for the administration of the flag, the Act merely provides for the appointment by Cabinet of a ‘Maritime Administrator’, and confers upon the Maritime Administrator certain powers and functions in relation to the administration of the flag. Part I of the Act deals mainly with administrative matters, such as the establishment of key offices in the administration of the registry, as well as the powers and functions of such offices. Part I also vests the Maritime Administrator with the primary responsibility for the administration of the registry and thus the performance of flag State functions.³⁵ It also provides for the appointment of Commissioners of Maritime Affairs as well as Special Agents,³⁶ who are required to assist the Maritime Administrator in the discharge of flag State functions. The appointment of ‘Commissioners of Maritime Affairs’ and ‘Special Agents’ are necessary given the inevitable need to decentralise the functions of the Maritime Administrator as the

³³See Annex 1 below.

³⁴The Act can be viewed on the *Pacific Islands Legal Information Institute* website (paclii.org), under Vanuatu Laws.

³⁵47 MIRC-Chapter 1, *Maritime Administrations Act 1990*, Section 103.

³⁶*Ibid.*, Section 106.

registry's client base expands globally.³⁷ These 'commissioners' and 'special agents' are vested with the power to administer oaths³⁸ and issue licences, certificates and other documents for officers and ship personnel as regulated by the STCW 1978 on behalf of the Maritime Administrator. However, the Maritime Administrator retains the authority to suspend or revoke licences, certificates and any other document issued under the Act where the circumstances warrant such action.³⁹

In addition, Part I requires the Maritime Administrator to maintain a register of documents relating to the ships that fly the flag of the Republic of the Marshall Islands, although the Act calls for such records to be maintained in the Central Offices of the Maritime Administrator, located in the United States of America.⁴⁰ Part III of the Act requires all vessels that are entitled to fly the Republic of the Marshall Islands flag to undergo periodic inspections and carry on board the necessary certificates,⁴¹ while Part IV incorporates the provisions of the *Convention on International Regulations For Preventing Collisions at Sea*.⁴²

Here it can be seen that the *Maritime Administrations Act 1990* is intended to respond directly to the provisions of Article 94 of the 1982, if the Marshall Islands were to establish and operate a ship registry. Article 94 of the 1982 *LOSC* obliges States who grant nationality to ships to perform a number of specific duties, including the obligation to maintain a register of ships, assume jurisdiction over ships, and to take

³⁷The company has offices in Baltimore, Dalian, Dubai, Ft. Lauderdale, Geneva, Hamburg, Hong Kong, Houston, Istanbul, London, Mumbai, New York, Piraeus, Roosendaal, Seoul, Shanghai, Singapore, Tokyo and Zurich, and has recently expanded its operations with offices in Chile, Limassol, Oslo, Port Said, Rio de Janeiro and Taipei.

³⁸47 MIRC Chapter 1, *Maritime Administrations Act 1990*, Section 108.

³⁹*Ibid.*, Section 110.

⁴⁰The Headquarters of IRI, the parent company of the Republic of the Marshall Islands Ship Registry, is located in Reston, Virginia, USA.

⁴¹47 MIRC Chapter 1, *Maritime Administrations Act 1990*, Section 140.

⁴²*Ibid.*, Section 150.

necessary measures to ensure safety in regard to the construction, equipment and manning of ships. In fact, the IMO recognises that an effective flag State administration is one that, from the outset, enacts a robust legal framework and puts in place the necessary infrastructure for effective compliance management and enforcement. The *Maritime Administrations Act 1990* empowers the Marshall Islands Government, and the Maritime Administrator in particular, to give effect to these international law requirements. Indeed, the *Maritime Administrations Act 1990* forms an integral part of the domestic legal framework for the management and operation of the ship registry, as well as the performance by the Marshall Islands of its international obligations.

B(ii). Documentation and Identification of Vessels Act 1990⁴³

The *Documentation and Identification of Vessels Act 1990⁴⁴* also consists of six parts. Part I deals with technical issues such as the conditions which qualify a ship for registration under the Marshall Islands flag,⁴⁵ registration fees and tonnage taxes⁴⁶, Permanent and Provisional Certificates of Registry (and the conditions for their issuance⁴⁷), the surrender and cancellation of registry documents⁴⁸, as well as the names, numbers and marking of vessels⁴⁹ (among others). Part I also authorises the Maritime Administrator to engage Classification Societies to assist in the process of compliance management in regard to safety standards.⁵⁰ Seagoing vessels engaged in foreign trade, and commercial and private yachts that are 12 metres or more in length, may be registered under the laws of the Republic of the Marshall Islands. Commercial vessels that are more than 20 years old may be refused registration unless proof is

⁴³ Annex '2' below.

⁴⁴ MIRC Chapter 2, *Documentation and Identification of Vessels Act 1990*, Sections 202-204.

⁴⁵ Ibid: Sections 202-204.

⁴⁶ Ibid: Sections 205-206.

⁴⁷ Ibid, Sections 208 and 214.

⁴⁸ Ibid, Sections 215, 223 and 224.

⁴⁹ Ibid, Sections 230-232.

⁵⁰ MIRC Chapter 2, *Documentation and Identification of Vessels Act 1990*, Section 237.

submitted that the vessel is ‘in class.’ Vessels which are 15 years or older are required under the Act to submit their latest Special Survey Report, copies of their Status Report (which derive from their Statutory Survey and Certification), along with their application for registration.⁵¹

Part II of the Act regulates the measurements of vessels in accordance with the provisions of the *Tonnage Convention, 1969*. Section 252 of the Act prohibits the registration of a vessel in the Marshall Islands unless such vessel has been duly measured by the Maritime Administrator, or a person duly appointed by the Maritime Administrator in accordance with the Act. Section 251 requires the measurements to specify the construction of the vessel, the number of decks and masts, the length, breadth, depth, tonnage or tonnages of the vessel, and other such particulars usually descriptive of the identity of a vessel. Moreover, the ship’s net and gross tonnage must be indicated, and any markings required under the Act must be complied with. Parts III and IV of the Act regulate the registration of bare-boat charters, while Parts V and VI regulate the registration of yachts and fishing vessels respectively.

As its contents make clear, the *Documentation and Identification of Vessels Act 1990* is more technical in nature than the *Maritime Administrations Act 1990*. The former Act sets out the technical specifications for measures that the Maritime Administrator must enforce in accordance with the obligations of the Marshall Islands under the core IMO conventions. The Act empowers the Maritime Administrator to implement and impose relevant specifications and requirements, and to take enforcement action where there is a failure by ship owners or operators to comply with mandated specifications or

⁵¹Marshall Islands Maritime Regulations Chapter 1.

requirements. For this reason, the *Documentation and Identification Act 1990* is a critical instrument insofar as the discharge by the Marshall Islands of its duties and obligations as a flag State is concerned. The effective enforcement of the technical specifications and requirements imposed under the Act certainly casts a positive light on the Marshall Islands performance as a flag State.

B(iii). Merchant Seafarers Act⁵²

The *Merchant Seafarers Act* has the effect of incorporating into Marshall Islands law the minimum standards concerning the employment conditions of seafarers adopted under the various ILO conventions and recommendations. The Act applies to every person that is employed as a seafarer on any vessel entitled to fly the flag of the Marshall Islands. All shipowners and operators are required to adhere to the standards set out in the Act in regard to the employment of seafarers. Part II of the Act lays down the rights, duties and obligations of the Master, while Part III sets out the rights, duties and responsibilities of merchant seafarers. Among other matters, Part III regulates issues such as shipping articles, minimum wages, minimum age, working hours, overtime, holidays, accommodation, discharges, repatriation, on board offences, mutiny and revolt, freedom of association, strikes and picketing, as well as conciliation and mediation. The Maritime Administrator is vested with the authority to promulgate the necessary regulations for the implementation of the provisions of the Act. The Act was recently amended to reflect the consolidation of these standards under the *MLC 2006*.

The *Merchant Seafarers Act* is indeed a critical piece of legislation. The Act enables the Marshall Islands Government to carry out the ‘social’ aspect of its duties as a flag State (as required under Article 94 of the *1982 LOSC*), and to ensure that seafarers are

⁵²See Annex ‘4’ below.

employed on terms and conditions consistent with those set out under ILO maritime labour related conventions and recommendations.

C. Republic of the Marshall Islands Maritime Regulations.⁵³

Pursuant to the *Maritime Administrations Act 1990*, the *Documentation and Identification of Vessels Act 1990*, and the *Merchant Seafarers Act 1990*, the Maritime Administrator is vested with the authority to promulgate the regulations necessary for the implementation and administration of the provisions contained in these enabling Acts. To this end, the Maritime Administrator has promulgated the *Republic of the Marshall Islands Maritime Regulations*, the *Republic of the Marshall Islands Vessels Registration and Mortgage Recordation Procedures*, the *Republic of the Marshall Islands Requirements for Merchant Marine Certification*, the *Republic of the Marshall Islands Marine Investigation and Hearing Rules*, the *Republic of the Marshall Islands Commercial Yacht Code*, the *Republic of the Marshall Islands Code for Mobile Off-Shore Drilling Units*,⁵⁴ and the *Republic of the Marshall Islands Seafarer Documentation Filing Agents Manual*.⁵⁵ Of these instruments, the *Republic of the Marshall Islands Maritime Regulations* represent the day to day working instrument for shipowners and operators, who are required under the said regulations to maintain a copy of these regulations on board at all times.

The *Republic of the Marshall Islands Maritime Regulations* were approved by the Cabinet of the Republic of the Marshall Islands on March 21, 1991. These regulations constitute the Maritime Administrator's day to day working reference in enforcing compliance by vessel owners and operators of the administrative and technical

⁵³The most up to date version of the Regulations may also be found at www.register-iri.com.

⁵⁴Regulating the Construction and Design of MODUs.

⁵⁵Regulating the application process for seafarer certification and identification.

requirements for safety at sea and prevention of marine pollution. All shipowners, operators, charterers, managers and masters are required to familiarise themselves with these regulations and ensure that a copy of the regulations is maintained on board their vessels at all times.⁵⁶

Chapter 1 of the regulations governs administrative matters such as the authority of the Maritime Administrator, the registration of vessels, termination of registration, marine notices, recording of instruments, certificates of merchant seafarers, taxes, registration fees and penalties, control of movement of ships, the appointment of the Designated Person Ashore (DPA), and the Ship Security Officer. Chapters 2 through to 7 regulate the technical aspect of implementation and incorporate the international regulations promulgated under the core IMO conventions, including the *SOLAS Convention 1974*, *MARPOL 73/78* regulations and the *ILO MLC 2006*.

The *Republic of the Marshall Islands Vessels Registration and Mortgage Recordation Procedures* provide vessel owners, operators, charterers, lending institutions, and their representatives with information on the registration of vessels in the Marshall Islands and the recording of mortgages under Marshall Islands law. These regulations set out the conditions for registration, vessel ownership, the procedure for registration of vessels generally, procedures for the registration of bareboat charters, the recording of mortgages and other interests, as well as procedures for the transfer of vessels from the Marshall Islands ship registry.

The *Republic of the Marshall Islands Seafarer Identification and Certification Manual* is a manual for persons who process applications for Seafarers' Identification and

⁵⁶Maritime Regulations Chapter I Regulation 1.01.4.

Record Books (SIRBs), Special Qualification Certificates (SQC)s and Officers' Certificates of Competency (CoCs). Designed to prevent fraudulent certifications, the Manual provides general requirements for the different certificates and application forms, as well as the applicable fees.

Another critical instrument is the *Republic of the Marshall Islands Marine Investigation and Hearing Rules*. These rules are intended to govern the conduct of investigations into serious marine casualties. In short, the rules require shipowners to co-operate in a number of areas, provide for the appointment and powers of investigating officers, set out a process for formal investigations and administrative hearings, rules of admission and calling of witnesses, and the manner in which decisions are taken.

In addition to the instruments discussed above, the *Republic of the Marshall Islands Commercial Yacht Code* and the *Republic of the Marshall Islands Code for Mobile Off-Shore Drilling Units* are of notable importance. The former Code prescribes the specifications for the construction and manning of yachts, while the latter prescribes the technical specifications for the construction and the manning of Off-Shore Mobile Drilling Units.

4.3 INSTITUTIONAL AND ADMINISTRATIVE ARRANGEMENTS

Responsibility for the administration of the flag functions of the Marshall Islands lies with the Maritime Administrator,⁵⁷ who is appointed under the *Maritime Administrations Act 1990*. In the discharge of administrative functions, the Maritime

⁵⁷47 MIRC, Chapter 1, *Maritime Administrations Act 1900*, Section 103.

Administrator is assisted by *Commissioners* (and Deputy Commissioners) of Maritime Affairs⁵⁸, as well as *Special Agents*.⁵⁹ Since 1990, the Trust Company of the Marshall Islands (TCMI) has served (by Cabinet appointment) as the Maritime Administrator for the Republic of the Marshall Islands. The appointment of TCMI, an affiliate of IRI, as Maritime Administrator is a standing appointment, made pursuant to the terms of a joint venture agreement signed in 1990 by the Marshall Islands Government, TCMI and MIMCA.

Furthermore, to cater for the increasing cultural diversity of ship-owners, the registry has established 20 regional offices in different parts of the world. These regional offices employ over 200 personnel in total across a variety of professional backgrounds⁶⁰. The registry maintains offices in Asia,⁶¹ Europe,⁶² the Middle-East,⁶³ the Mediterranean,⁶⁴ the Indian sub-continent⁶⁵ and the United States of America.⁶⁶ In the Marshall Islands, the activities of IRI are carried out through TCMI. The location of these offices not only allows the Maritime Administrator to coordinate services for shipowners and operators in a timely manner, but also allows the Maritime Administrator to respond in a timely fashion to port state control reports, as well as to maritime casualties and incidents.

⁵⁸Ibid., Sections 104 and 105.

⁵⁹Ibid.,Section 106.

⁶⁰IRI, 'Marshall Islands Now Ranked as 3rd Largest Open Registry' (Press Release, 27 January, 2010) < <http://www.register-iri.com> > .

⁶¹Dalian, Hong Kong, Shanghai, Seoul, Singapore and Tokyo.

⁶²Geneva, Hamburg, London, Roosendaal and Zurich.

⁶³Dubai and Istanbul.

⁶⁴Piraeus.

⁶⁵Mumbai.

⁶⁶Baltimore, Fort Lauderdale, Houston, New York and Reston, Virginia.

4.3.1 Implementation and Compliance Management

The technical aspects of flag State functions are routinely delegated to *Classification Societies* and similar *Recognized Organizations* (and *Recognized Security Organizations*), most of which belong to the *International Association of Classification Societies* (IACS). The practice of engaging *Classification Societies* and other *Recognized Organizations* to conduct statutory surveys, inspections and audits, as well as to issue licences and certificates, is not unique to the Marshall Islands. Indeed, the IMO recognises the fallibility of flag State administrations around the world, and has endorsed the practice of flag States delegating some of their more technical responsibilities to *Classification Societies* and similar *Recognized Organizations*, provided that such delegation complies with IMO requirements.⁶⁷ *Classification societies* are organisations which develop and apply technical standards to the design, construction and assessment of ships, and that carry out survey work on ships.⁶⁸

The Classification Societies routinely engaged by the Maritime Administrator include the *American Bureau of Shipping* (ABS), *Bureau Veritas* (BV), *China Classification Society* (CCS), *Det Norske Veritas* (DNV), *Germanischer Lloyd* (GL), *Hellenic Register of Shipping* (HRS), the *International Yacht Bureau Inc.* (IYB), *Korean Register of Shipping* (KRS), *Lloyds Register* (LR), *Nippon Kaiji Kyokai* (NKK), *Polisi Regestr Statkow* (Polish Register of Shipping (PRS)), *Registro Italiano Navale* (RINA),

⁶⁷*Guidelines For the Authorization of Organizations Acting on Behalf of Administration* (IMO Resolution A.739(18) and *Specifications on the Survey and Certification Functions of Recognized Organizations Acting on Behalf of the Administration* (IMO Resolution A.789(19)).
European Maritime Safety Agency *Assessment of Classification Societies* (2011) EMSA <<http://www.emsa.europa.eu/implementation-tasks/visits-and-inspections/assessment-of-classification-societies.html>>.

regs4ships Ltd, and the *Russian Maritime Register of Shipping* (RMRS).⁶⁹ Functions routinely delegated by the Maritime Administrator to these organisations include surveys and inspections, the issuing of certificates, as well overseeing in-passenger ship safety, vessel construction and equipment, radio communications, the ISM Code, load lines, tonnage measurements, and well as the particular inspections and certificates called for under MARPOL Annexes I-VI. Each organisation employs personnel with extensive experience in carrying out these functions, and they regularly publish and maintain their rules and regulations. Moreover, they regularly involve the Maritime Administrator when developing regulations, consistently maintain an internal quality audit system, and have consistently demonstrated technical, administrative and managerial competence.⁷⁰ Indeed, all of the Classification Societies referred to above are members of the International Association of Classification Societies. Having outlined the policy and legal framework, the administrative and institutional arrangements, the ensuing discussion will test the performance of the Marshall Islands of each of its ‘general duties’ against the requirements of the framework, thus determining whether or not the Marshall Islands has been successful in discharging each specific duty.

4.3.2 Performance of the Duty to Maintain a Register of Ships

As discussed above, international law imposes on flag States the duty to maintain a register of Ships. Indeed, Article 94 of the 1982 *LOSC* requires flag States to maintain a register of ships containing the names and particulars of ships flying their flag. The

⁶⁹IMO, *Global Integrated Shipping Information System* (2011) IMO
<<http://gis.imo.org/Public/RO/ViewAuthorisation.aspx?cid=134&oid=62>>.

⁷⁰International Association of Classification Societies, *Safer and Cleaner Shipping* (2011) IACS
<<http://www.iacs.org.uk/>>.

Marshall Islands is likewise obligated to maintain a register of the ships that have been granted nationality and which are authorised to fly the Marshall Islands flag.

To comply with this international duty, the Marshall Islands enacted several pieces of legislation in 1990. The primary instrument supporting the discharge of the duty to maintain a register of ships is the *Maritime Administrations Act 1990* (and the Regulations promulgated under that Act by the Maritime Administrator). The *Maritime Administrations Act 1990* provides for a number important things - it authorises the Marshall Islands to register merchant vessels, provides for the appointment of the Maritime Commissioner, Commissioners of Maritime Affairs, as well as Special Agents, prescribes the manner and conditions under which records of vessels are to be maintained, provides the Maritime Administrator with the authority to issue licences and certificates, prescribes rules for vessel inspection, incorporates the Collision Regulations 1972 into its domestic framework, and requires all vessels flagged to the Marshall Islands to comply with all international conventions that the Marshall Islands is party to.

Section 107 of the Act requires a register of vessels to be maintained by the Registry containing all relevant instruments such as the *bills of sale* (and other instruments concerning the conveyance of vessels, *mortgage of vessels* and *assignment of mortgages*), *certificates* of permanent or provisional registry, as well as *licences* and *certificates* of officers and crew. Section 107 of the Act, together with the *Republic of the Marshall Islands Maritime Regulations*, provide that for *Provisional Certificates of Registry* to be granted, the Maritime Administrator shall enter on the Register the name of the vessel, her official number, call sign, IMO number, service and home port of

Majuro, the name of the person making the oath, the name, residence, citizenship and proportional ownership of the vessel, the IMO registered owner number, the former name or designation of the vessel, the year and place the vessel was built, the name of the builder, route restrictions and conditions of operation, as well as the best particulars with respect to the vessel's tonnage(s), build and description.⁷¹ In addition to this information, the regulations require the Maritime Administrator to record (when granting *Permanent Certificates of Registry*), information concerning the number of masts and decks of the vessel, the material of the hull, the number and type of engines, propelling power (in Kilowatts), as well as the length, depth, breadth and tonnage (gross and net) of the vessel.⁷²

When the Marshall Islands Government established the Marshall Islands Ship Registry in 1990, the registry was placed under the management of MIMCA under a joint venture agreement. MIMCA managed the registry until IRI took over operations in 1990. IRI has extensive experience in the maritime sector and provides expert administrative services such as the issuing of manning certificates and certificates of registry, overseeing seafarers' licensing and documentation, conducting safety inspections, engaging recognised classification societies to monitor compliance of its vessels with all international and national standards, providing technical assistance, issuing radio station licences, providing investigative services, as well as providing information on maritime regulations and port activities (among others). In taking over the management of the registry, IRI simultaneously assumed responsibility for the discharge of flag administration duties on behalf of the Marshall Islands. In addition, its vast international experience has given the ship registry access to its global network of

⁷¹Republic of the Marshall Islands Maritime Regulations, Reg.2.20.

⁷²*Loc. cit.*

resources, classification societies, recognised organisations, recognised security organisations and other support services. IRI has also established a network of offices in different regions of the world in order to respond timely to issues involving vessels that fly the Marshall Islands flag. According to Mansell, these are telltale signs of a competent administration.⁷³ Moreover, as was highlighted in Chapter 2, the Marshall Islands Ship Registry is now the third largest ship registry world in terms of gross registered tonnage. Indeed, the registry has over 2,000 vessels with a combined tonnage of over 75,000,000 GT, and it continues to grow.

On the basis of the ship registry's record, it does appear that the Marshall Islands (through IRI) is discharging the duty to maintain a register of vessels in an acceptable manner, thereby meeting its obligation under Article 94 of the *1982 LOSC*. The only issue is that the registry is being managed by IRI from its headquarters in Reston, Virginia - outside the jurisdiction of the Marshall Islands. Under Section 107 of the *Maritime Administrations Act 1990*, all documentation and records of vessels flying the Marshall Islands flag must be maintained in the offices of IRI in the United States. The issue with this arrangement is that of possible oversight. Removing the management of the ship registry and its records from the jurisdiction of the Marshall Islands leaves the Marshall Islands without any effective means to oversee the activities of IRI and the Maritime Administrator in regard to the registry. Conversely, it could be asserted that delegating flag State functions to IRI in the United States has enabled the Marshall Islands (through IRI) to discharge this duty in a competent and more effective manner.

⁷³John Norman Keith Mansell, *An Analysis of flag State Responsibility from a Historical Perspective: Delegation or Derogation?* (PhD Thesis, University of Wollongong, 2007) 6.

4.3.3 Performance of The Duty to Assume Jurisdiction over Ships

Under Article 94(2)(b) of the 1982 *LOSC*, flag States must take necessary steps to assume jurisdiction (in accordance with their domestic laws) over ships flying their flag, as well as their masters, officers and crew, in regard to the administrative, technical and social matters of ships. This duty requires flag States to put in place mechanisms at the national level that will enable the proper implementation of international standards through effective enforcement measures. In the discharge of this duty, the Marshall Islands (as a flag State), has undertaken to assume jurisdiction over its vessels through the enactment of a number of national laws and regulations. The *Maritime Administrations Act 1990* declares that all matters pertaining to Marshall Islands vessels are subject to Marshall Islands laws, and that jurisdiction for all violations involving Marshall Islands vessels is vested in the High Court of the Republic of the Marshall Islands.⁷⁴

The performance of administrative functions under the *Maritime Administrations Act 1990*, and the discharge of technical functions under the *Documentation and Identification of Vessels Act 1990*, the *Merchant Seafarers Act*, and the *RMI Maritime Regulations*, are all made subject to Marshall Islands laws. As a consequence, the responsibility for functions such as the promulgation of regulations, inspections and surveys, the issuing of certificates, as well as the implementation of requisite compliance management and enforcement measures vests in the Maritime Administrator in accordance with the *Maritime Administrations Act 1990*. Indeed, the Maritime Administrator is the primary entity with jurisdiction over the affairs of Marshall Islands vessels.

⁷⁴47 MIRC Chapter 1 *Maritime Administrations Act 1990*, Section 116.

Second, it is necessary to have in place the necessary infrastructure and support mechanisms that will enable the Marshall Islands to properly exercise jurisdiction over ships flying its flag. This means that resources, expertise and access to courts and other legal processes are required to enforce compliance. To this end, the exercise of jurisdiction by the Marshall Islands is carried out primarily through the office of the Maritime Administrator, who in turn is supported by a network of regional offices, experts, classification societies, recognised security organisations and other service providers. The Maritime Administrator also appoints Maritime Commissioners and Special Agents across its global network of offices to assist in the implementation and enforcement of international standards in a competent and timely way.

In analysing the performance of the Marshall Islands in this context, it is clear that the Marshall Islands Government has put in place a comprehensive domestic legal framework that allows it to effectively assume jurisdiction over its vessels. As previously discussed, this domestic legal framework allows the Marshall Islands (in its capacity as a flag State) to enforce the implementation of, and compliance with, international standards. In short, these laws allow the Marshall Islands to effectively carry out its international obligations in respect of the administrative, technical and social aspects of its vessels. Furthermore, the institutional arrangements and critical infrastructure set up by IRI to support the work of the registry enables the Marshall Islands to exercise such jurisdiction in a meaningful way.

4.3.4 Performance of The Duty to take Measures to Ensure Safety at Sea

The duty of flag States such as the Marshall Islands to take necessary measures to ensure safety at sea is set out under Article 94(3) of the *1982 LOSC*, and more generally under the core IMO conventions. Article 94(3) requires flag States to take necessary measures to ensure safety at sea in regard to the construction of vessels, their equipment, seaworthiness and manning, the labour conditions and training of their crew, signals and communications, as well as the prevention of collisions.⁷⁵

In the discharge of this duty, the Marshall Islands has taken a number of important steps. First, the Marshall Islands has ratified a number of key international instruments that promote the maintenance of safety at sea - namely, the *1982 LOSC* and the core IMO conventions highlighted in the last chapter. To implement the relevant provisions of these instruments at the national level, the Marshall Islands has enacted several pieces of legislation including the *Maritime Administrations Act 1990*, the *Documentation and Identification Act 1990*, and the *Merchant Seafarer Act 1990*. The *Maritime Administrations Act 1990* establishes administrative arrangements, while the *Documentation and Identification of Vessels Act 1990* and the *Merchant Seafarer Act* set out the technical standards that qualify vessels to enter the registry or remain on the registry. The requirements for the registration of vessels under the *Maritime Administrations Act 1990*, and the technical specifications outlined in the *Documentation and Identification of Vessels Act 1990* (and the various codes, standards, and regulations promulgated by the Maritime Administrator under these laws), are designed to prevent the entry of substandard ships into the registry, and to encourage those vessels already on the registry to maintain their seaworthiness. To

⁷⁵47 MIRC Chapter 1 *Maritime Administrations Act 1990*. See also; 47 MIRC Chapter 2 *Documentation and Identification of Vessels Act 1990*, 47 MIRC Chapter 8, *Merchant Seafarers Act 1990* and the Maritime Regulations promulgated under these Acts.

this end, these domestic instruments incorporate the safety standards adopted under the core IMO conventions on maritime safety.

The implementation and enforcement of international standards is overseen by the Maritime Administrator, who has wide ranging powers to “..*administer all matters pertaining to vessels of the Republic*”. These powers include, on the one hand, the authority to accept the registration of qualified vessels and to issue the necessary licences and certificates,⁷⁶ and on the other, the power to withdraw the registration of vessels and to suspend or withdraw licences and certificates where vessels are sailing in violation of international standards. The *Maritime Administrations Act 1990*, the *Documentation and Identification of Vessels Act 1990*, and the regulations promulgated by the Maritime Administrator under these Acts, prescribe the conditions which a vessel must satisfy in order to be eligible for registration, and the conditions which a vessel must meet to retain its registration under the Marshall Islands flag.

Furthermore, the Maritime Administrator has the power and authority to promulgate necessary rules and regulations,⁷⁷ set applicable fees,⁷⁸ regulate the issuing of ship radio licences,⁷⁹ establish rules and regulations to ensure the efficient and appropriate inspection of vessels on the Marshall Islands register,⁸⁰ as well as license and certify masters, officers and other personnel⁸¹. The Maritime Administrator administers the implementation of, and compliance with, international instruments through various Acts and regulations, including by issuing certificates of registry, seafarers

⁷⁶47 MIRC Chapter 1, *Maritime Administrations Act, 1990*, Section 109.

⁷⁷*Ibid.*, Sections 103, 131, 141, 150.

⁷⁸*Ibid.*, Section 111.

⁷⁹*Ibid.*, Section 131.

⁸⁰*Ibid.*, Section 141.

⁸¹*Ibid.*, Section 109.

documentation, manning certificates and radio station licences, conducting safety inspections, investigating marine casualties, monitoring vessel compliance with national and international standards (with the assistance of Classification Societies), as well as by issuing Marine Notices, Marine Guidelines, and Marine Safety Advisories.⁸² These measures are aimed at achieving effective control and jurisdiction over vessels, thereby ensuring that shipowners and operators are, in fact, complying with international standards designed to promote safety at sea. In this respect, the activities of the Maritime Administrator have been audited by the IMO through the *Voluntary Member Audit Scheme*, and have been found to comply with the recommendations of the IMO contained in the *IMO Code for the Implementation of Mandatory IMO Instruments*.⁸³

4.3.5 Performance of the Duty To take Measures To prevent Marine Pollution from Vessels

The duty of flag States to take necessary steps to reduce and prevent marine pollution is set out under Articles 211(2) and 217 of the *1982 LOSC*. Article 211(2) imposes upon flag States the duty to adopt laws and regulations designed to prevent or reduce marine pollution from their vessels, while Article 217 requires flag States to take effective enforcement measures, including prohibiting ships from sailing until such time as they are compliant.

In conformity with the provisions of Article 211(2), the Marshall Islands has ratified MARPOL 73/78 and incorporated the standards set out under Annexes 1 to VI of the convention into its domestic regulations. Indeed, the Marshall Islands has

⁸²Republic of the Marshall Islands Office of the Maritime Administrator, 'Deep Water Horizon Marine Casualty Investigation Report' (Marine Casualty Investigation Report, No.2213, Republic of the Marshall Islands, August 17, 2011) Prologue.

⁸³Ibid.

incorporated the standards set out under Annex I (which deal with various types of pollution) in regard to construction, equipment, oily discharges, oil record books, emergency plans, transfer of oil at sea, as well as assessment schemes.⁸⁴ With regard to construction, the regulations require vessels to be fitted with a tank or tanks capable of receiving oil residue, and that such tanks be constructed in accordance with the regulations under Annex I of MARPOL 73/78. Regulation 2.13(2) also prohibits the discharge of oil at sea, except in accordance with MARPOL, and also requires vessels to develop emergency plans, maintain oil record books, and to transfer oil at sea only in accordance with Regulations 40 and 41 of Annex I.

Regulation 2.13(3) (which deals with types of pollution set out under Annex II of MARPOL 73/78), prohibits the discharge of noxious liquid substances at sea and requires vessels to maintain record books, on board procedure manuals and emergency plans. For the types of pollution contained in Annex IV, the regulations require vessels to be fitted with sewage treatment systems, as required under Regulation 9 and 10 of Annex IV. Finally, Regulation 2.13(4) prohibits vessels from discharging garbage at sea, and requires vessels to be fitted with garbage reception facilities. As these responsibilities require a high degree of technical skill, the Maritime Administrator routinely delegates compliance management to *Classification Societies* and other experts. Some of the functions routinely delegated to Classification Societies include inspections and surveys, the issuing of certificates in regard to passenger ship safety, cargo ship safety equipment and construction, radio communications, the ISM Code, load lines, as well as inspections, surveys and certificates under Annexes I to V of MARPOL 73/78. Vessels that fail to comply with

⁸⁴ Republic of the Marshall Islands Maritime Regulations Reg.2.13(2).

these regulations may be subject to strict enforcement measures, such as detention or removal from the registry.⁸⁵

The Marshall Islands domestic legal framework for the prevention and reduction of pollution from ships appears robust, with the Marshall Islands having incorporated MARPOL Regulations into its domestic law. Furthermore, access by the Marshall Islands to necessary experts and specialist organisations has assisted greatly, not only in terms of crafting laws and regulations that are necessary to prevent or reduce marine pollution, but also in ensuring that these standards are actually being implemented by ship owners and operators.

The second part of the flag State duty to prevent and reduce marine pollution is imposed under Section 217 of the 1982 *LOSC*. Article 217 requires flag States such as the Marshall Islands to put in place necessary laws and enforce these laws effectively. It also requires flag States to implement measures such as prohibiting vessels from sailing until they comply with the minimum standards in so far as the prevention of marine pollution is concerned. The provision also requires that certificates be carried on board at all times, and that in the event of a violation, the flag State conduct relevant investigations. As was alluded to earlier, the Marshall Islands has put in place legislation and regulations to enforce marine pollution standards. Under these regulations, the Marshall Islands possesses the authority to take enforcement action against its vessels. Such enforcement is carried out by classification companies that are engaged to survey, inspect and certify that vessels are fit to sail under the MARPOL convention. Where a vessel is found to be non-compliant, the Maritime

⁸⁵ Above n 82.

Administrator, acting on its own volition or upon a report by a port state control administration, may investigate or detain the vessel, order the immediate repair of the vessel, or demand that compliance steps be taken. In the case of serious violations, the Marshall Islands is entitled to terminate the registration of a vessel altogether. It is submitted that these measures allow the Marshall Islands to perform this duty at an acceptable level.

4.3.6 Performance of The Duty to Conduct Surveys of Vessels

The duty to conduct inspections and surveys is an important one, imposed under the core IMO conventions, namely the *SOLAS Convention 1974*, the *Load Lines Convention 1966*, the *Tonnage Convention 1969* and MARPOL 73/78. Under the SOLAS Convention 1974, flag States must conduct surveys on the life-saving equipment of cargo ships, as well as on radio and radar installations, hull and machinery. MARPOL 73/78 regulations call for initial surveys, periodical surveys and one intermediate survey to be carried out. The *Load Lines Convention*, on the other hand, provides for initial surveys, renewal surveys and an annual survey three months prior to, or three months after, the anniversary of a certificate. These instruments require flag States to conduct surveys to ensure that a ship remains compliant with the four conventions cited above. No doubt surveys provide flag States with the opportunity to detect and eliminate substandard ships from their registry. Importantly, surveys also provide shipowners with the opportunity to detect and rectify any defects in a timely manner.

To discharge this duty, the Marshall Islands has incorporated the requirement for surveys into its domestic legal framework. Section 140 of the *Maritime Administrations Act 1990* prescribes that, in order to promote safety at sea, all vessels

flying the Marshall Islands flag must undergo surveys and carry proof of such surveys on board at all times.⁸⁶ Chapter 5 of the *Republic of the Marshall Islands Maritime Regulations* calls for initial surveys⁸⁷ to be carried out on vessels entering the registry, annual inspections⁸⁸ for vessels that are already on the registry, semi-annual inspections⁸⁹ for passenger vessels and high speed crafts, periodic inspections⁹⁰ for special purpose or uniquely constructed vessels, *special inspections*⁹¹ for any vessel if deemed necessary, and *alternative inspections*⁹² for vessels and platforms engaged in offshore seabed mining or operating in areas that are difficult to reach. Pursuant to these provisions, the Maritime Administrator has set up a “uniform national program of marine safety, inspection, and documentation.”⁹³ These regulations require shipowners to present their vessels for inspection at the appointed time and to cooperate with the Maritime Administrator in the performance of these inspections. If the shipowner fails to cooperate, the vessel may be subject to immediate detention, as well as having its Certificate of Registration suspended or withdrawn.⁹⁴ The regulations have a particular focus on passenger ship safety, cargo ship safety equipment and construction, radio and communication equipment, ISM Code compliance, load lines compliance, as well as the implementation of measures required under MARPOL 73/78 Annexes I to V.

⁸⁶47 MIRC Chapter 1, *Maritime Administrations Act 1990*, Section 140.

⁸⁷Republic of the Marshall Islands Maritime Regulations, Reg. 5.34.2.

⁸⁸*Ibid.*, Reg. 5.34.3.

⁸⁹*Ibid.*, Reg. 5.34.4.

⁹⁰*Ibid.*, Reg. 5.34.5.

⁹¹*Ibid.*, Reg. 5.34.6.

⁹²*Ibid.*, Reg. 5.34.7.

⁹³Republic of the Marshall Islands Office of the Maritime Administrator, ‘Deep Water Horizon Marine Casualty Investigation Report’ (Marine Casualty Investigation Report, No.2213, Republic of the Marshall Islands, August 17, 2011) Prologue.

⁹⁴Republic of the Marshall Islands Maritime Regulations, Reg.5.34.10.

The regulations further require that persons appointed to survey and inspect Marshall Islands vessels be appropriately qualified. Given this requirement, inspections and surveys are regularly conducted by the Marshall Islands through its “...*network of qualified marine inspectors, similarly qualified contract inspectors, and Recognized Organizations.*”⁹⁵ As explained above, the organisations routinely engaged by the Maritime Administrator are members of IACS and are renowned for their experience and expertise. Given the spread of its global network of offices, and the organisations at its disposal, the Marshall Islands is able to respond to the need for inspections and surveys in any region of the world. Its ability to do so ensures timely inspections and surveys, thereby reducing waiting time for shipowners and operators who do business by the hour.

The absence of maritime casualties on a particular vessel is invariably an indication that such a vessel is seaworthy. This implies that the vessel has been inspected and surveyed, and that it is constructed, equipped and manned in accordance with the minimum standards set down under international law. If this hypothesis is accepted, then the Marshall Islands has achieved the level of performance expected of it as a flag State under international law. Indeed, the last major maritime casualty involving a vessel flying the Marshall Islands flag occurred in 2004. Since then, the safety record of the Marshall Islands flag has been commendable.

The use of surveys has been described as the ‘last line of defence’ in ensuring the safety and seaworthiness of vessels, and thus it is important that such surveys are carried out in a professional manner. This is indeed a critical point as once a

⁹⁵Above n 93.

certificate is issued, it represents the licence for the ship to sail (even if the certificate has been issued erroneously). The performance of the Marshall Islands in this respect appears to be in accordance with international law; one could even be justified in describing the Marshall Islands' performance as excellent. However, the record of defects and detentions, such as those reported under the Paris and Tokyo MOUs, cannot be ignored. Therefore, although the Marshall Islands has performed exceptionally well, a number of issues need to be addressed so that the performance of its flag State duties conforms to international standards. Nevertheless, the its robust legal framework, its global network of experts, as well as the absence of maritime casualties on its vessels in the last eight years, does indicate that the Marshall Islands is discharging its flag State duties in this area in a competent manner.⁹⁶

4.3.7 Performance of The Duty to Conduct Inspections and to Issue Certificates

The duty to issue the relevant statutory certificates to a vessel and its crew is dependent upon the outcome of a survey or inspection. Section 109 of the *Maritime Administrations Act 1990* empowers the Maritime Administrator, the Commissioners of Maritime Affairs and Special Agents to issue the necessary licences, certificates and other documents required under international law in respect of all Marshall Islands vessels engaged in foreign trade.⁹⁷ The issuing of certificates is required to signify a vessel's compliance with international standards in regard to passenger ship safety, cargo ship safety construction and equipment, radio and communication installation, the ISM Code, load lines, as well as the regulations under MARPOL Annexes I to VI.

⁹⁶The Marshall Islands as a flag State has been absolved of any responsibility in the Deep Water Horizon explosion. The accident, it was found, resulted from defects in the well mechanisms itself, which were the responsibility of BP and its contractors.

⁹⁷47 MIRC Chapter 1, *Maritime Administrations Act 1990*, Section 109.

Where the corresponding inspection finds that a vessel is in compliance, the Maritime Administrator, or where necessary a Commissioner for Maritime Affairs or Special Agent, may on behalf of the Maritime Administrator issue the relevant certificates. On the other hand, where there are violations, the Maritime Administrator may deny, suspend or revoke a certificate, permit or licence issued under the Act.⁹⁸ In the case of serious breaches, the Maritime Administrator may suspend or withdraw the Certificate of Registry.⁹⁹ The issuing of the relevant certificates under the *Load Lines Convention, 1966*, the *Tonnage Convention, 1969*, the *SOLAS Convention, 1974*, and the MARPOL Annexes is also a function that has been delegated to the classification societies named above. The conduct of inspections and the issuing of the necessary certificates is a really part of the duty to conduct periodic statutory surveys, and certificates may be issued only to signify that a ship is seaworthy in accordance with the minimum safety standards imposed under the core IMO conventions. As highlighted briefly above, inspections and surveys may be described as the ‘last line of defence’ against substandard shipping, as once a certificate is issued, it clears the way for a ship to set sail (even if the certificate is issued in error). As such, it is crucial that certificates are issued only in respect of seaworthy vessels.

That the Marshall Islands have maintained a commendable safety record over the last eight years, earning ‘white flag’ classifications under the Paris and Tokyo MOUs and enjoying continuous enrolment under the US Coast Guard’s Qualship 21 Program, speaks highly of its overall performance. Indeed, it appears that the Maritime Administrator (with the support of a global network of experts) has been effective in preventing substandard vessels from entering the registry and in maintaining a

⁹⁸Ibid., Section, 110.

⁹⁹Ibid.

seaworthy fleet through the various inspections and surveys required under Marshall Islands law. The impression one receives of the survey and inspection regime is that it is being carried out in an effective manner.

4.3.8 Performance of the Duty to Conduct Marine Investigations and Inquiries

The duty of the Marshall Islands to conduct marine investigations and to hold marine inquiries is found under Article 94(7) of the 1982 *LOS* and the main IMO conventions. Indeed, this obligation is incorporated under Chapter 6 of the *Republic of the Marshall Islands Maritime Regulations*. These regulations compel the Maritime Administrator to investigate every serious marine casualty involving Marshall Islands vessels, as well as vessels of other (flag) States where the Maritime Administrator deems it necessary to prevent future incidents, or where assistance is requested by another flag State. An investigation is also required where a criminal offence is suspected to have occurred on such vessels.¹⁰⁰ All investigations must be supervised by an *Investigations Oversight Committee* which comprises IRI Board of Managers, as well as the company's Senior Vice President, Maritime Administration, Senior Vice President of Fleet Operations, an External Advisory Board and the Investigation Service Area Administrator.¹⁰¹ At the end of each investigation, the *Investigations Review Board* appointed by the Maritime Administrator makes a final determination on the relevant issues surrounding the investigation.

In the event of a marine casualty, marine incident, or where an offence has been committed, the regulations require the owner, charterer, manager, operator, Master, agent or person in charge of the vessel to report the incident to the Maritime

¹⁰⁰Republic of the Marshall Islands Maritime Regulations, Reg 6.38.1.

¹⁰¹*Ibid.*, Reg. 6.35.

Administrator within 24 hours by the fastest means of communication.¹⁰² Where the maritime casualty is serious, the Master of the ship concerned (or the next highest officer) is required under the regulations to promptly submit a Follow-Up Report to the Maritime Administrator in the form approved by the Maritime Administrator.¹⁰³ The report must identify the vessel and its owner, state the date and time of the incident, provide a description of the incident or offence, as well as the location of the incident or offence.¹⁰⁴ Where applicable, the report must also identify the other vessels involved, any persons whose lives were lost or who suffered injuries, together with a description of any property damaged as a result of the incident.¹⁰⁵

The goal of any investigation into a maritime incident is not to apportion blame but rather critically examine the cause(s) of the incident so that appropriate measures can be put in place to prevent future occurrences of such incidents.¹⁰⁶

In attending to this duty, the Marshall Islands (as party to the 1982 *LOSC* and the main IMO conventions) has incorporated provisions on investigations and inquiries into its domestic laws and regulations. These laws provide the legal basis for the Marshall Islands to carry out investigations where required. Furthermore, by virtue of the network of offices, classification societies and other experts available to the Maritime Administrator, the Marshall Islands is perfectly placed to discharge the duty to investigate and hold marine inquiries. Indeed, it does appear that the registry had learnt its lessons from past incidents and is determined to allow only seaworthy

¹⁰² Republic of the Marshall Islands Maritime Regulations, Reg.6.36.1.

¹⁰³ A serious maritime casualty is defined under Regulation 6.36.2 as “a marine incident where, there is damage to property valued in excess of US\$100,000; material damage affecting seaworthiness; where the vessel has suffered a grounding, or has been abandoned; where significant harm to the environment has occurred; where there is loss of life, or injury; where a fire has occurred on board; or where a port state administration reports a violation.”

¹⁰⁴ Above n 102, Reg. 6.36.3.

¹⁰⁵ Ibid.

¹⁰⁶ RMI Maritime Administrator, ‘Deep Water Horizon Marine Casualty Investigation Report’ (Report No.2213 August 17, 2011).

vessels to trade under the Marshall Islands flag. The fact that the Marshall Islands continues to enjoy ‘white flag’ classifications under the Paris and Tokyo regional MOUs, as well as continued enrolment in the US Coast Guard Qualship 21 Program, is testament to its improved level of performance in discharging its duties generally. Although a number of issues remain, the performance of the Marshall Islands of its flag State duty to investigate incidents and to hold marine inquiries is impressive. IRI’s global network of offices, as well as access to classification societies and other experts, has enabled the Marshall Islands to investigate reports of violations without delay. And although the Deep Water Horizon was flagged to the Marshall Islands, recent investigation reports have concluded that, as a flag State, the Marshall Islands bore no responsibility, as the accident was caused by defects in the well itself and not by the vessels. In any case, the Deep Water Horizon was inspected and certified as compliant by the US Coast Guard.¹⁰⁷

4.3.9 Performance of the ‘Social’ Aspect of its Duties as a Flag State

The welfare of seafarers is an indispensable factor when considering the issue of safety at sea. Happy, well-fed, well-rested and properly trained seafarers can well mean the difference between a seaworthy vessel and one that is not - a proposition international law has always recognised.¹⁰⁸ As the welfare of seafarers is indeed closely associated with safety at sea, flag States have an obligation to ensure that ships flying their flag employ seafarers on terms and conditions consistent with those set by the ILO in its series of labour related conventions and recommendations.

¹⁰⁷RMI Maritime Administrator, ‘Deep Water Horizon Marine Casualty Investigation Report’ (Report No.2213 August 17, 2011).

¹⁰⁸Dani Appave, ‘The ILO Maritime Labour Convention, 2006: Towards Ratification’ (Paper Presented At National Shipping Industry Conference Natship09, Sydney, June 3-5, 2009) Slide 12.

As a flag State, the Marshall Islands has taken positive steps to discharge this obligation in accordance with international law. In 1990, when the ship registry was still in its formative stages, the Marshall Islands Government enacted the *Merchant Seafarers Act 1990*. This Act incorporated into Marshall Islands law the minimum employment terms and conditions of seafarers adopted under the ILO instruments. The Act specifies the rights and duties of masters as well as seafarers, and provides a mechanism for resolving disputes.¹⁰⁹ Importantly, the Act prohibits corporal punishment as a valid disciplinary measure.¹¹⁰ When the Act came into effect, ship owners and operators trading vessels under the Marshall Islands flag were instructed to observe minimum employment terms and conditions when recruiting or placing seafarers. Seafarer Crewing Agencies that were recruiting seafarers for placement on Marshall Islands vessels were also apprised of the requirement to recruit seafarers on terms and conditions consistent with the benchmark terms set by the ILO. To ensure effective enforcement of this obligation, Section 853 of the Act prescribes that all seafarer employment agreements are subservient to, and governed by, the laws of the Republic of the Marshall Islands. This provision is, by operation of law, incorporated into every contract of employment between seafarers and shipowners who flag their vessels to the Marshall Islands.

Furthermore, the Marshall Islands was one of the first signatories to the 2006 ILO MLC. Indeed, the Marshall Islands was the second country to ratify the convention, having done so on September 25, 2007. Luxemburg had earlier ratified the convention

¹⁰⁹ 47 MIRC Chapter 8, *Merchant Seafarers Act 1990*, Section 861.

¹¹⁰ *Ibid.*, Section 846.

on June 7, 2006.¹¹¹ Following ratification, the Maritime Administrator issued *Marine Notice No. 7-045-1*¹¹² to all ship owners, operators, masters and officers of merchant ships, as well as to Recognized Organizations, informing these entities of the requirements of the ILO MLC 2006. The notice addressed the use of Seafarer Recruitment and Placement Services (SRPS) in countries that had not ratified the convention, as well as in non-convention countries, and instructed these entities to nevertheless ensure that recruitment and placement be achieved on terms consistent with the ILO MLC 2006 convention. The key areas of compliance enforced by the Marshall Islands include minimum age, medical certification, qualification, employment agreements, the use of recruitment and placement services, hours of work and rest, manning levels, accommodation, recreational facilities, food and catering, health and safety, on-board medical care, as well as the payment of wages.

On the basis of these actions, it appears that the Marshall Islands has been very proactive in taking the necessary steps to ensure that seafarers working on Marshall Islands vessels are employed on terms and conditions consistent with those set under international law. Even though the ILO MLC 2006 is yet to enter into force, the Marshall Islands has already taken steps to start implementing the provisions of the convention.

4.3.10 Performance of The Duty to Take Enforcement Action

The effective implementation of international standards can only be successful if there is effective enforcement on the part of flag States. As such, flag States are required to put in place the necessary tools that will allow for such enforcement. The exercise of this duty by the Maritime Administrator is based on the provisions of the *Maritime*

¹¹¹ILO, *List of Ratification of ILO Labour Conventions – Maritime Labour Convention* (2010) ILO <<http://webfusion.ilo.org/public/db/standards/normes/appl/appl-byConv.cfm?hdroff=1&conv=C186&Lang=EN>>.

¹¹²See Annex 12 page 1.

Administrations Act 1990 and the *Republic of the Marshall Islands Maritime Regulations*. These instruments provide a number of mechanisms which the Maritime Administrator may utilise to enforce international standards in relation to Marshall Islands vessels. As discussed earlier, the Maritime Administrator is authorised to set minimum safety standards and to implement such standards through legislation and regulations.

The Maritime Administrator ensures the implementation and compliance by shipowners with international standards by issuing (in accordance with the relevant Acts and regulations) certificates of registry, seafarers documentation, manning certificates and radio station licences, and by conducting safety inspections, investigating marine casualties and providing technical assistance (for example, by engaging Classification Societies to monitor vessel compliance with all national and international rules). Where there is non-compliance or a breach of international standards or Marshall Islands laws, the Maritime Administrator is authorised under the *Maritime Administrations Act 1990* to bring legal proceedings against the vessel concerned, and may resort to the variety of enforcement measures authorised under the *Maritime Administrations Act 1990* and the *Republic of the Marshall Islands Maritime Regulations*. In particular, where a ship is in violation of the regulations, or where a ship has failed to rectify a violation under international law or under Marshall Islands standards, the Maritime Administrator may resort to enforcement measures such as detaining the vessel, or suspending or revoking the vessel's licences, certificates, permits or other documents issued under the *Maritime Administrations Act 1990*.

Moreover, pursuant to the *Maritime Administrations Act 1990*,¹¹³ the *Documentation and Identification of Vessels Act 1990*,¹¹⁴ the *Investigations, Wrecks and Salvage Act 1990*,¹¹⁵ and the *Merchant Seafarers Act 1990*,¹¹⁶ the Maritime Administrator may institute both civil and criminal legal proceedings in the case of violation of the relevant provisions of the said laws. The jurisdiction to entertain such proceedings is vested in the High Court of the Republic of the Marshall Islands under Section 116 of the *Maritime Administrations Act 1990*. Such enforcement, however, is unlikely to discourage future violations unless the applicable penalties are severe. Additionally, enforcement could be futile if the Maritime Administrator is not provided with the proper legal avenues to enforce the necessary regulations impose the appropriate penalties meted out under the said regulations.

Section 211 of the *Judiciary Act 1983*, Section 116 of the *Maritime Administrations Act 1990*, Section 239 of the and the *Marshall Islands Maritime Regulations* all vest jurisdiction over maritime matters (including the enforcement of the relevant ‘safety at sea and prevention of marine pollution’ rules, regulations and applicable penalties) in the High Court of the Republic of the Marshall Islands. The general penalty provision under the ‘safety at sea and prevention of marine pollution’ framework is found under Section 115 of the *Maritime Administrations Act 1990*. This general penalty provision applies to what could be classified as criminal violations under the *Maritime Administrations Act 1990*, the *Documentation and Identification of Vessels Act 1990*, the *Wrecks and Salvages Act 1990* and the *Merchant Seafarers Act 1990*. According to Section 115 of the *Maritime Act 1990*, a single criminal violation under the laws

¹¹³Sections 116, 152, 153 and 154.

¹¹⁴Sections 216, 221, 223, 230 and 232.

¹¹⁵Section 704.

¹¹⁶Sections 804, 826, 837, 843, 846, 854 and 855.

referenced above is punishable by a fine not exceeding \$US25,000, a term of imprisonment not exceeding 10 years, or both. For violations that do not rise to the level of crimes, the Maritime Administrator has the authority to impose penalties such as administrative fees and fines, the suspension or revocation of statutory certificates, or the suspension or revocation of the certificate of registration. The Maritime Administrator also has the option of instituting civil proceedings to enforce safety standards.

The High Court also has jurisdiction to sit in Admiralty under Section 603 of the *Admiralty Jurisdiction Act 1986*. This Act vests the ‘admiralty jurisdiction’ in the High Court of the Republic of the Marshall Islands, and any persons aggrieved by the actions of a shipowner or operator may seek redress in the High Court sitting in Admiralty. Although the admiralty jurisdiction of the High Court is only available to private claims directed against shipowners and operators, such jurisdiction nevertheless presents another tool of enforcement under the Marshall Islands framework to ensure compliance by shipowners. The admiralty jurisdiction of the High Court covers claims for damages caused by ships,¹¹⁷ claims for unpaid wages,¹¹⁸ claims for damages suffered by a ship (inclusive of marine pollution damage),¹¹⁹ and claims for loss of life or injury,¹²⁰ among others.¹²¹

The enforcement of international standards is undertaken in a number of ways, more commonly through flag State surveys and inspections, as well as port state reports. The chief mechanism of enforcement available to the Maritime Administrator under the

¹¹⁷34 MIRC Chapter 6, *Admiralty Act 1986*, Section 603(1)(e).

¹¹⁸*Ibid.*, Section 603(1)(m).

¹¹⁹*Ibid.*, Section 603(1)(d).

¹²⁰*Ibid.*, Section 603(1)(f).

¹²¹A copy of the Admiralty Act may also be accessed at the Pacific Island Legal Information Institute website <paclii.org>.

laws of the Marshall Islands is the use of inspections and surveys. Under the relevant laws and regulations, vessels must undergo an initial inspection before being permitted to fly the Marshall Islands flag, and must thereafter submit to periodic inspections throughout its life on the Marshall Islands registry. These periodic surveys and inspections (which are also required under the various IMO and ILO conventions) are designed to ensure that vessels continue to remain in class while flying the Marshall Islands flag, and to ensure that vessels entering the registry comply with the ‘safety at sea and prevention of marine pollution’ requirements. Where a survey or inspection is successful, the Maritime Administrator must issue the necessary statutory certificates and allow the vessel concerned to continue to trade. On the other hand, where a survey or inspection uncovers violations and defects, the Maritime Administrator must not to certify the vessel until the defect or violation is corrected.

‘Port state control’ inspections have also emerged as an effective enforcement tool. Under Article 94(6) of the 1982 *LOSC*, flag States must take necessary steps to rectify any reports of non-compliance by other administrations in relation to their vessels. This provision recognises the critical role of port state control as a second line of defence against sub-standard shipping, and provides the legal basis upon which port state control may report a vessel that has escaped the scrutiny of the flag State concerned.

The *Maritime Administrations Act 1990*, the *Documentation and Identification of Vessels Act 1990*, and the *Marshall Islands Maritime Regulations* incorporate the duty of flag States to respond to port state control complaints. Under current arrangements, the classification societies engaged by the Maritime Administrator respond to all port state control reports of detentions, violations, as well as maritime incidents and casualties, on behalf of the Maritime Administrator. In responding to port State control

complaints, the Maritime Administrator, through the Classification Societies concerned, has a duty to investigate such complaints and, where necessary, take the required steps to ensure that the vessel concerned does not sail again unless the defect has been rectified.¹²² In fact, the various regional port state memoranda such as the Paris MOU, the Tokyo MOU and the US Coast Guard Port State Control, maintain important data on the frequency and type of violations detected on ships per flag per year, as well as the number of detentions per flag per year. Such data can be used to assess the effectiveness of a flag State (such as the Marshall Islands) in the performance of its legal duties.

On the whole, the Maritime Administrator is enjoying some moderate success in carrying out this duty. The fact that the Marshall Islands has not suffered any maritime casualties in the last eight years could very well be attributed to its effective oversight and enforcement of international standards. The global network of IRI offices and the engagement of necessary experts, coupled with a robust legal framework that prescribes heavy penalties, provides the Maritime Administrator with a solid foundation to undertake effective enforcement action and to remove substandard ships from the registry. Foreign Port State administrations must also be given credit for their role in assisting the Maritime Administrator to take the necessary enforcement action to avoid the occurrence of marine incidents and casualties.

¹²²See also the 1982 LOSC Article 217, paragraph (2).

4.4 THE RIGHT OF HOT PURSUIT

In general terms, the right of hot pursuit under international law allows the coastal State to extend its jurisdiction beyond the territorial sea limits in order to enforce its laws.¹²³

The implication is therefore that, the exercise of this right (by coastal States) has the potential to interfere with the rights of other States to freely navigate on the high seas.¹²⁴

Therefore to avoid conflicts between States, international law has set down a clear regime for the exercise of the right of hot pursuit by States. This regime is found under Article 111 of the 1982 LOSC.¹²⁵

Article 111 of the 1982 LOSC authorizes (coastal) States to pursue foreign vessels suspected of having violated their laws, beyond their territorial limits, and contiguous zones.¹²⁶ In exercising this right however, a number of preconditions must first be satisfied. A hot pursuit may only be commenced when the suspect ship (or one of its boats) is located within the waters¹²⁷ of the coastal State, and only after the pursuing vessel has given the suspect vessel *visual* or *auditory* signals to stop.¹²⁸ The right to hot pursuit ceases, either where the pursuit is interrupted, or where the pursued vessel enters the territorial sea of its own State, or of another State.¹²⁹ The exercise of the right of hot pursuit may only be carried out by warships and military aircrafts, and other vessels and aircrafts in the service of the government.¹³⁰

¹²³ Arn Bernaerts, *Bernaerts Guide to the United Nations Convention on the Law of the Sea* (2005) Bernaerts Sea-Law Website <<http://www.bernaerts-sealaw.com/>>

¹²⁴ Craig Allen, *Doctrine of Hot Pursuit: A Functional Interpretation Adaptable to Emerging Maritime Law Enforcement Technology and Practices* (1989) Vol. 20 *Ocean Development and International Law* pp.309-341.

¹²⁵ See also 1958 HSC Article 23.

¹²⁶ 1982 LOSC Article 111(1).

¹²⁷ Namely, internal waters, the archipelagic waters, the territorial sea or the contiguous zone, EEZ and continental shelf.

¹²⁸ 1982 LOSC Article 111(4).

¹²⁹ *Ibid.*, Article 111(3).

¹³⁰ *Ibid.*, Article 111(5).

4.5 ANALYSIS OF PERFORMANCE

It is often noted that the performance of flag States can be measured by how many of their vessels are detained, cited for violations, or are involved in marine casualties or incidents.¹³¹ Where a flag State has a high number of detentions or citations, or a high frequency of marine incidents or casualties, this usually indicates substandard performance on the part of the flag State. On the other hand, the lower the rate of port State detentions and citations, and the lower the frequency of marine incidents and casualties, the greater the likelihood that the flag State concerned is discharging its flag State duties in an effective manner.¹³² In reviewing the overall performance of the Marshall Islands, this part looks at performance in three key periods.

4.5.1 The Period from 1988 to 1998

It is difficult to obtain documentation on the performance of the Marshall Islands Ship Registry in the ten year period between 1988 (when the registry was first established) and 1998 (when the registry began to grow in terms of tonnage). Indeed, the early years of statehood was marked by a lack of proper record keeping and archiving of records. However, the change in management of the registry in 1990 may have also contributed to the lack of available records and documentation. In light of the above difficulties, one can perhaps attempt to extrapolate from the growth of the registry in the period after 1996 as a way of gaining an insight into status and the growth of the registry in the years after its establishment, leading up to 1998. It is important to note that during this period no major maritime incident or casualty was reported.

¹³¹Matthew Gianni, 'Real and Present Danger: Flag State Failure and Maritime Security and Safety' (Report Prepared for WWF and ITF, June 2008) Executive Summary.

¹³²Ibid.

4.5.2 The Period from 1998 to 2004

The most difficult period in the registry's history was undoubtedly the period between 1998 and 2004, where a number of serious maritime casualties occurred. A number of these casualties resulted in the loss of vessels, and in others, the loss of lives and property, as well as injury to seafarers. In some cases, these casualties also resulted in the pollution of the marine environment. In total, seven vessels flagged to the Marshall Islands suffered serious marine casualties in the six year period between 1998 and 2004.¹³³

On April 18, 1998, the *Sea-Land Mariner* - a container vessel, suffered an explosion in one of its cargo holds. Although the fire was successfully extinguished by the crew, the explosion caused injury to two seafarers and took two lives.¹³⁴ In the case of the *ELIZA* - another container vessel, an explosion in the vessel's engine room on November 24, 1999 resulted in the vessel sinking in the Bay of Bengal.¹³⁵ On March 27, 2001, the *Baltic Carrier* collided with another vessel, the '*Tern*', in the Baltic Sea. The collision was attributed to a steering gear malfunction. Investigations later revealed that the *Baltic Carrier* had suffered the same steering malfunction in its maiden voyage a year earlier. In yet another incident, the *Winterset*, a general cargo vessel, suffered a fire in its engine room on February 27, 2002. The crew tried to extinguish the fire but failed to do so because of the failure of the CO2 system. Having initially abandoned vessel, the crew returned after the smoke had cleared and towed the vessel into port, in Puerto Rico.¹³⁶ In 2004, a series of explosions in the cargo holds rocked the '*YTHAN*' - a bulk

¹³³IRI, *Report of Investigation In the Matter of the Explosion and Fire On Board the Container Vessel SEA-LAND MARINER – O.N. 1100 Off the Island of Crete on 18 April 1998* (2010) IRI
< <http://www.register-iri.com/index.cfm?action=forms&cat=232&page=162&displayFiles=1>>.

¹³⁴Ibid.

¹³⁵IRI, *Report of Investigation*., *loc. cit.*

¹³⁶IRI, Marshall Islands Marine Investigations Report.

carrier. The vessel eventually sank, resulting in the disappearance of the vessel's master and five crew members. Unfortunately, these personnel were never found and were eventually presumed dead.

It is important to note that this string of casualties occurred during a period when the registry was experiencing a steady influx of vessels. Indeed, it could be argued that the registry was so overwhelmed by the increase in tonnage that it was unable to effectively oversee the standards being implemented on Marshall Islands vessels and on vessels entering the registry. Preventing explosions and fires in the holds and engine rooms of ships, as well as taking measures to avoid steering gear malfunctions, are routine technical matters that are regulated, inspected and enforced by flag States and the *Classification Societies* they engage. In the absence of any rational explanation, the string of serious maritime incidents which occurred over a seven year period can only be attributed to lax flag State oversight.

4.5.3 Performance Since 2004

In the period following the *YTHAN* accident in 2004, it appears the Marshall Islands took steps to halt any further maritime casualties. Records from certain Port State control administrations show that Marshall Islands vessels were performing reasonably well. Although a number of deficiencies and detentions have been recorded against Marshall Islands vessels, the registry has not suffered a serious maritime casualty in recent times.

Port State control has emerged as one of the most reliable sources for measuring the performance of flag States of their duties and obligations.¹³⁷ Port State control involves the inspection of foreign flagged vessels by port state control enforcement officers to determine whether such vessels are sailing in compliance with international standards.¹³⁸ Different regions of the world have entered into collaborative port state control agreements to prevent substandard ships from trading in their regions. Indeed, these agreements have been acknowledged by the IMO as being more effective than traditional approaches in eliminating substandard shipping.¹³⁹ The port state control inspection records of these regimes can therefore give a relatively accurate picture of a flag State's performance. The two regional port state control MOUs described by Mansell¹⁴⁰ as "leading regional port state control regimes" are the *Paris MOU* for the European Community and Canada, and the *Tokyo MOU* for the Asia-Pacific region. Although the Marshall Islands is not a member of either organisation, it nonetheless has vessels that trade at ports in these regions.¹⁴¹ A brief overview of the inspection records maintained under these two regimes on vessels flying the Marshall Islands flag provides a general insight into the performance of the Marshall Islands as a flag State. In outlining the details of these inspection records, the intention is not to provide a scientific analysis of port state control inspection data, but merely to provide sample data for the *deficiency* and *detention* rates involving vessels registered in the Marshall Islands that are trading in the regions concerned within defined periods of time.

¹³⁷Mansell, *loc. cit.*

¹³⁸*Ibid.*

¹³⁹The Paris MOU (European Union), the Tokyo MOU (Asia-Pacific), Indian Ocean MOU (Indian sub-continent), the Mediterranean MOU (Mediterranean) Acuerdo Latino MOU (Latin America,) the Caribbean MOU (the Caribbean), Abuja MOU (West Africa) the Riyadh MOU (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and UAE), and the Black Sea MOU (Bulgaria, Russia, Georgia, Turkey, Ukraine and Romania).

¹⁴⁰Mansell, *loc. cit.*

¹⁴¹Paris MOU and Tokyo MOU, Annual Reports.

According to its 2006 Annual Report, the *Paris MOU* Port State Control conducted a total of 556 inspections on vessels registered under the Marshall Islands flag. Of these 556 inspections, 229 cited deficiencies, which resulted in 8 detentions in 2006. This translates into a detention rate of 1.4% for Marshall Islands vessels trading in the region.¹⁴² The total Paris MOU regional detention rate for 2006 was 5.44%.¹⁴³ In 2007, the Paris MOU region conducted 589 inspections on Marshall Islands vessels.¹⁴⁴ Of these inspections, 263 cited deficiencies, which resulted in a total of 17 detentions involving Marshall Islands vessels. This translates into a detention rate of 2.55% for 2007. The total Paris MOU regional detention rate in the same year was 5.46%.¹⁴⁵ In 2008, the Paris MOU Port State Control recorded an increase in inspections of Marshall Islands vessels, with a total of 707 inspections.¹⁴⁶ Of these inspections, 340 deficiencies were cited and a total of 18 detentions were recorded, translating into a 2.5% detention rate for Marshall Islands vessels trading in the Paris MOU region.¹⁴⁷ The total Paris MOU regional detention rate for the same year was 4.9%.¹⁴⁸

An inspection of the annual port state control reports under the Tokyo MOU in the corresponding period showed similar trends, with the average number of deficiencies and detentions recorded against Marshall Islands vessels being lower than the regional rates.

¹⁴²Paris MOU Annual Report 2006 p.40.

¹⁴³*Ibid.*

¹⁴⁴Paris MOU Annual Report 2007, p.38.

¹⁴⁵*Ibid.*, p.39.

¹⁴⁶Paris MOU Annual Report 2008, p.36.

¹⁴⁷*Ibid.*, p.36.

¹⁴⁸*Ibid.*,p.38.

If the figures discussed above are any indication, the Marshall Islands, as a flag State, appears to have taken the necessary steps to improve the performance of its flag State duties, and not surprisingly has won a ‘*White Flag*’ classification under the Paris and Tokyo regional MOUs. In addition, the Marshall Islands flag has qualified for enrolment in the United States Coast Guard (USCG) Qualship 21 program for the seventh straight year.¹⁴⁹ The USCG Qualship 21 program is similar in concept to the ‘White Flag’ Classifications under the Paris and Tokyo regional MOUs. Until the explosion of the *Deep Water Horizon* in the Gulf of Mexico on April 10, 2010, the Marshall Islands safety record was exemplary. On the basis of the Paris MOU and the Tokyo MOU Port State Control reports referred to above, the three biggest *flags of convenience* - the Marshall Islands, Panama and Liberia, are performing better than Norway and Denmark - the traditional, national registries.¹⁵⁰ Notwithstanding the *White Flag* classifications under the Paris and Tokyo MOUs, and the *USCG Qualship 21* enrolment, minor *deficiencies* and *detentions* continue to be recorded against Marshall Islands vessels in these jurisdictions. This is an indication that there is still work to be done in order for the Marshall Islands to fully satisfy the expectations of the international legal framework on the ‘general duties’ of flag States. It is acknowledged that the *Deep Water Horizon* accident has also tarnished the reputation of the Marshall Islands as a flag State, and that much work is required to restore the success of the registry’s last seven years.¹⁵¹

¹⁴⁹International Registries Inc., ‘Marshall Islands Registry Qualifies for United States Coast Guard Qualship 21 for Seventh Consecutive Year’ (Press Release, June 7, 2011) (2011) IRI <http://www.register-iri.com/forms/upload/Marshall_Islands_Registry_Qualifies_for_USCG_Qualship_21_for_Seventh_ConsecutiveYear.pdf>.

¹⁵⁰Paris MOU Annual Report 2006, 2007; Tokyo MOU 2007/2008.

¹⁵¹The Bureau of Ocean Energy Management, Regulation and Enforcement, ‘Report Regarding the Cause of the April 20, 2010 Macando Well BlowOut’ (Investigation and Conclusions)

4.5.4 Issues Undermining Performance

Looking at the performance of the Marshall Islands from the time the ship registry was first established to date, it is clear that its record, at least in the context of its administrative, technical and social duties as a flag State, is indeed a mixed one. Very little information is available to accurately analyse the performance of the Marshall Islands Ship Registry in the ten year period between 1988 and 1998. Given the registry's relatively low tonnage during that period, it appears to have escaped scrutiny. It was only in the mid-1990s that the ship registry began to significantly increase its tonnage, establishing itself as a strong competitor in the maritime sector. However, this increase in tonnage coincided with a string of marine incidents which resulted in personal injury, property damage, marine pollution and the loss of life. Whether a link exists between the growth in tonnage during that period and the marked decline in the registry's safety record cannot be verified, but the convergence of events could lead one to assume that there is a nexus. Nevertheless, since the *Ythan* accident in 2004, the ship registry has not suffered a major marine casualty, maintaining a model safety record for the last eight years.¹⁵² One could even attribute this untroubled period to the lessons learned from the failures of the past. Therefore, although the registry has endured some very difficult times, with regard to the performance of its general duties, and in particular its safety at sea record, the overall performance of the registry in the last eight years is impressive. Except for minor defects and port State detentions, no major marine casualty involving a Marshall Islands vessel has occurred in the last eight years. The Maritime Administrator must

¹⁵²The investigations into the *Deep Water Horizon* accident of April 20, 2010, concluded that the defect was in the well itself and not the rig. (See 1. US Department of Interior Bureau of Ocean Energy Management Regulation and Enforcement, 'Report Regarding the April 20, 2010 Macondo Well Blow Out, September 14, 2011; and 2. Republic of the Marshall Islands Office of the Maritime Administrator, 'Deep Water Horizon Marine Casualty Investigation Report, No.2213, August 17, 2011).

therefore be accorded a degree of credit for taking the necessary measures to ensure that shipowners and operators are properly implementing the minimum safety standards mandated under international law.

However, it must be pointed out that in order for the registry to maintain its admirable safety record, further work is required. Indeed, a number of issues exist that could potentially undermine the performance of the Marshall Islands as a flag State if left unattended. These issues include the need to formulate a comprehensive policy framework, the need for effective government oversight, as well as the need for the Marshall Islands to incorporate several international instruments into its national law. These key areas will form the focus of the discussion from this point on.

A. The Policy Framework

The absence of a policy framework supporting the work of the ship registry represents a key weakness in the Marshall Islands flag State regime. As such, the Marshall Islands must take necessary steps to develop and implement a comprehensive policy framework to guide its activities in regard to its flag State obligations under international law. Although Section 102 of the *Maritime Administrations Act 1990* contains aims that are consistent with the Marshall Islands' international obligations as a flag State, it is imperative that a comprehensive policy framework be established for the operations of the registry – one which takes into account, among other matters, the discharge by the Marshall Islands of its flag State duties. Indeed, such a framework will guide the activities of the Marshall Islands in regard to the operations of the ship registry. The absence of a policy framework not only reduces the

importance of the ship registry, but also undermines the efforts of the Marshall Islands in carrying out its flag States duties in accordance with international law.

B. Effective Government Oversight

Another fundamental issue is the ability of the Marshall Islands Government to exercise effective oversight of IRI - the company which manages and operates the ship registry. As previously discussed, the Marshall Islands has delegated the entire management of the registry to IRI, a private entity. However, this delegation not only divests the government of its management responsibility, but also transfers to IRI the responsibility for discharging the Marshall Islands flag State duties and obligations. Indeed, the delegation is not only effected in a legal sense, but also a physical sense – with the management of the registry being taken out of the Marshall Islands and conducted from the offices of IRI in the United States. Section 107 of the *Maritime Administrations Act 1990* authorises the Maritime Administrator to maintain the registry's records in the offices of IRI in the United States. As a result, the government does not have a say in the day to day running of the registry or in the businesses decisions of the registry. It is also submitted that the appointment of TCMI, a private entity and affiliate of IRI, as the Maritime Administrator, and the delegation of ministerial powers to TCMI, must be re-visited. Indeed, these arrangements have only served to further distance the registry from the Marshall Islands Government, eroding the ability of the government to maintain effective oversight over the activities of TCMI and IRI in regard to the ship registry. The ability to exercise effective oversight is critical for the Marshall Islands as a flag State, as under international law the duties which accompany the operation of a ship registry rest with the Marshall Islands, not IRI.

Furthermore, this management arrangement raises important questions of accountability and transparency. By agreeing to a ‘hands off’ approach, the government has placed itself in the dark in regard to the operations of the registry and the management activities of the IRI. Moreover, the Marshall Islands Government will continue to rely on decisions of TCMI and IRI, without the opportunity to independently scrutinise and verify such decisions. Without an effective oversight mechanism, the government cannot guarantee that IRI and TCMI will always act in the best interests of the Marshall Islands as a flag State. Indeed, this arrangement does not sit well for the Marshall Islands given that, at the end of the day, it is the government that bears the responsibility for the ship registry under international law. Accordingly, the Marshall Islands must reform the management structure of the registry so that it provides for a more transparent relationship between the government on the one hand, and TCMI and IRI on the other.

C. The ‘Regulations’ Approach

Finally, the Marshall Islands domestic legislative and regulatory framework requires a degree of strengthening. In the Code for the Implementation of Mandatory IMO Instruments (IMO Resolution A.973(24)), the IMO Assembly resolved that when an IMO instrument comes into force, member States are obliged to implement the provisions the instrument through the enactment of appropriate national laws. Indeed, the IMO was at pains to stress this importance of this obligation, particularly in regard to flag States. As discussed earlier, the key international instruments regulating safety at sea and the prevention of marine pollution are the core IMO conventions - namely SOLAS 1974, MARPOL 73/78, Load Lines 1966, Tonnage 1969, COLREG 1972,

STCW 1978, the ILO MLC 2006, and of course the 1982 LOSC. The Marshall Islands, as a member of the IMO, has ratified the 1982 LOSC, the core IMO conventions and the ILO MLC 2006. In accordance with the IMO Code for the Implementation of Mandatory IMO Instruments, the Marshall Islands, having ratified these instruments, is thereby obliged to enact national legislation enforcing the standards provided for under these instruments.

However, a review of the Marshall Islands domestic legal framework reveals that, to date, the Marshall Islands has not enacted national legislation incorporating the requirements of SOLAS 1974 and MARPOL 73/78. Instead, the approach of the Marshall Islands has been to utilise the lesser rule-making authority of the Maritime Administrator to incorporate SOLAS 1974 and MARPOL 73/78 regulations into Marshall Islands law. Such an approach is advantageous in that it gives the Maritime Administrator the flexibility to modify the regulations as changes occur at the international level, while at the same time by-passing the lengthy delays associated with rigorous and protracted parliamentary debates and processes. Conversely, such an approach fails to accord these important conventions the profile they deserve – a profile which often derives from parliamentary debate and scrutiny. Furthermore, these laws and conventions involve issues of policy - issues which are best left to policy-makers in Parliament.

Enacting legislation provides clarity, and therefore effectiveness, in the enforcement of the regulations under these conventions. Importantly, the process allows the government to oversee how the laws and regulations are being implemented and enforced, and to determine which offences should carry the most severe penalties.

Empowering the Maritime Administrator (through its lesser rule-making authority) to freely promulgate and enforce regulations, set administrative fees and impose fines, without having an effective oversight mechanism in place, does not serve the interests of the Marshall Islands as a flag State. To the contrary, allowing Parliament to enact legislation on important conventions guarantees a greater level of government involvement in the activities of the ship registry.

4.6 CONCLUSION

The significance of the duty of flag States to take measures to ensure ‘safety at sea’ and the ‘prevention of marine pollution’ cannot be over-emphasised. Such a duty has long been recognised under international law, and is currently codified in treaty law under the 1982 LOSC. Where a State chooses to exercise its right to grant nationality to ships, international law requires, by virtue of Article 94 of the 1982 LOSC, that the State exercises effective control and jurisdiction over the affairs of such ships to ensure safety at sea and the prevention of marine pollution. As a flag State with the third largest registry in the world, it is imperative that the Marshall Islands discharge this obligation effectively.

As discussed above, in 1990 the Marshall Islands delegated the management of its ship registry and flag administration responsibilities to IRI, a private entity based in the United States. Indeed, this decision was made to compensate for the Marshall Islands’ lack of capacity. However, a review of the history of the registry under the management of IRI (and TCMI as the Maritime Administrator), demonstrates that the performance of the Marshall Islands registry has been mixed. The review showed that between 1998 and 2004 - undoubtedly the registry’s most challenging period - seven serious maritime casualties occurred that resulted in the loss of life and the pollution

of the marine environment. This period also saw the rapid growth of the registry in terms of registered tonnage, which could suggest that IRI and TCMI were so overwhelmed with the tonnage entering the registry that they were unable to carry out their flag administration duties effectively.

In the period between 2004 and April 20, 2010, the registry appeared to have improved its performance, halting any further maritime casualties and maintaining ‘white flag’ classifications under the Paris and Tokyo MOUs, as well as enrolment in the USCG Qualship 21 initiative. However, the explosion of the DWH on April 20, 2010, in the Gulf of Mexico, which took eleven lives and caused the biggest oil spill disaster in the history of the United States, has certainly erased the progress made by the Marshall Islands Ship Registry since 2004. This incident is a reminder that, as a flag State, the Marshall Islands cannot rest on its laurels, relying solely on IRI and TCMI to determine the course of the registry. After all, it is the Marshall Islands that bears responsibility for the registry under international law. The analysis has showed that more work is required on the part of the Marshall Islands if it is to attain the level of effectiveness anticipated under the 1982 LOSC in carrying out its oversight duty. It is also proposed that, to this end, any steps undertaken by the Marshall Islands are unlikely to succeed unless it first addresses and resolves the lingering issues that continue to undermine its effectiveness as a flag State. Only then will its efforts to improve its effectiveness bear real fruits, thereby allowing the Marshall Islands to rise above the DWH tragedy. If the registry were to suffer another casualty (due to inaction) of similar magnitude to the DWH explosion, the continued existence of the registry would most likely be called into question.

CHAPTER 5

THE INTERNATIONAL LEGAL FRAMEWORK AND THE MARITIME SECURITY-RELATED DUTIES OF THE MARSHALL ISLANDS AS A FLAG STATE

5.1 INTRODUCTION

The safety of maritime navigation is an issue that has challenged nation States ever since human beings were able to put to sea. Indeed, even before the pyramids of Egypt were built, the safety of maritime endeavour was threatened by piracy and similar acts of violence, as well as debauchery on the high seas and along coastal settlements.¹ Although piracy *per se* was thought to have been successfully eradicated in the latter part of the 19th century, certain parts of the world began to witness a resurgence of piracy and ‘piracy-like’² incidents in the aftermath of World War II. However, not all of these violent acts fell neatly into the definition of piracy, as codified under international law. Acts of violence were perpetrated upon ships within the internal waters and territorial seas of coastal states, and were increasingly motivated by reasons other than ‘private gains.’ The hijacking of the *Achille Lauro* in 1985³ was a turning point, as it highlighted the weaknesses inherent in the international framework to adequately respond to the volatile nature of security threats in the maritime sector.

¹Angus Konstam, *Piracy: The Complete History* (Osprey Publishing, 2008) 10.

² Incidents of violence against ships that do not fall within the legal definition of ‘piracy’ under the 1958 HSC or the 1982 LOSC.

³Helmu Tuerk, ‘Combatting Terrorism at Sea: The Suppression of Unlawful Acts Against the Safety of Maritime Navigation’ [2008] 15 *University of Miami International & Comparative Law Review* 337, 338.

The *Convention for the Suppression of Unlawful Acts of Violence Against the Safety of Maritime Navigation, 1988* (SUA Treaty, 1988)⁴ and the *Protocol on Fixed Platforms Located on the Continental Shelf, 1988*⁵ (SUA Protocol 1988), were adopted under the auspices of the IMO in response to the debate that surrounded the *Achille Lauro* incident.⁶ The SUA Protocol 1988 applies the provisions of the convention, *mutatis mutandi*, to fixed platforms located on the continental shelf.

The bombing of the *USS Cole* in 2000, and the terrorist attacks in New York on September 11, 2001, gave rise to new fears of large scale terrorist attacks infiltrating the maritime sector. These fears were heightened almost a year after the September 11, 2001 terrorist attacks when the French Tanker, the *Limburg*, was attacked by terrorists in the Gulf of Aden. The *USS Cole* and the *Limburg* were both attacked by terrorists using small crafts laden with explosives.⁷ These events led the IMO to swiftly convene a diplomatic conference in December 2002, which saw the adoption of new measures under the *SOLAS Convention 1974* aimed at enhancing the security of the maritime sector as a whole.⁸ The most far-reaching of these measures is perhaps the International Ships and Port Facilities Security Code (ISPS Code). The ISPS Code imposes functional requirements upon flag States as well as port States,

⁴IMO, 'Maritime Security and Piracy' (2011) IMO.

<http://www.imo.org/OurWork/Security/Instruments/Pages/SecurityInstruments.aspx>

⁵IMO, 'Maritime Security and Piracy' (2011) IMO

<http://www.imo.org/OurWork/Security/Instruments/Pages/SecurityInstruments.aspx>

⁶The *Achille Lauro* was an Italian cruise ship that was hijacked by Palestinian terrorists on October 7, 1985. The terrorists demanded that Israel set free 50 prisoners. In the attack, the terrorists shot and killed Leon Klinghoffer, a US citizen, and threw his body and wheelchair overboard. See <http://www.specialoperations.com/Images_Folder/library2/achille.html>.

⁷BBC World News Edition, *Yemen Says Tanker Blast Was Terrorism* (2010) BBC
<http://news.bbc.co.uk/2/hi/middle_east/2334865.stm>.

⁸Inmarsat, *Long Range Identification and Tracking: A Testing Time for Maritime Security* (2010) PoleStar <http://www.lrit.com/documents/documentation/Inmarsat_briefing_LRIT-0806.pdf>.

and is designed to safeguard the security of ships and the port facilities that serve such ships.⁹

Flag States play a crucial role in the success of the maritime security framework, as evidenced by the allocation of a number of important duties to flag States under the framework. Indeed, flag States have an obligation to fulfil the duties assigned to them in the manner anticipated under the framework, thereby ensuring the security of ships under their flags, as well as the port facilities that serve such ships. As the third largest ship registry in the world,¹⁰ and as a party to the *SOLAS Convention, 1974*, the *SUA Convention, 1988*, the *2005 SUA Protocols*, and the *1982 LOSC*, the Marshall Islands has an obligation to carry out the duties assigned to it as a flag State under the framework in a meaningful manner. Therefore, the purpose of this chapter is to review the international legal framework governing the issue of maritime security, and to critically examine the duties of the Marshall Islands as a flag State under the framework. An analysis of the Marshall Islands' *performance* of these duties is conducted in the next chapter.

In approaching this task, the chapter commences by interrogating the maritime security framework. It provides an overview of the international instruments that are relevant to the maritime security framework, highlighting their relevance to the safety of maritime navigation. Second, the chapter analyses these instruments and attempts to ascertain from the framework the duties and obligations of flag States such as the

⁹IMO, 'ISPS Code' (2011) IMO

<<http://www.imo.org/ourwork/security/instruments/pages/ispscode.aspx> >

¹⁰Refer to Chapter 2 above.

Marshall Islands. In analysing such duties, this chapter delves into related instruments and attempts to clarify the nature and extent of the duties under investigation.

To put the following discussion into context, the chapter begins by reviewing the threat to maritime safety and security, then traces the legal mutation of the threat, beginning with a brief overview of the crime of piracy, then followed by robberies at sea, and then finally examining the threat in the context of terrorism. The mutation of the threat necessitated the development of a new security framework that was capable of confronting the threat.

5.1.1 The *Achille Lauro* Saga

The *Achille Lauro*, an Italian flagged cruise ship was hijacked on October 7, 1985 by members of the Palestine Liberation Front (PLF), a sub-group under the Palestine Liberation Organization (PLO).¹¹ The hijackers, disguised as tourists, boarded the Vessel in Italy, and seized the vessel en-route to Port Said, form Alexandria, Egypt, threatening to kill the passengers unless Israel freed 50 Palestinian prisoners held in Israeli jails.¹² Realising that Israel would not bow to their demands, the hijackers shot and killed a US national and tossed his body overboard.¹³ When confirmation of the killing was announced, the United States demanded that Egypt extradite or prosecute the persons involved, to no avail. On October 10, 1985 the hijackers boarded an Egypt-Air plane bound for Tunisia, but the airliner was intercepted by United States

¹¹ Malvina Halberstam, 'Terrorism on the High Seas: The *Achille Lauro*, Piracy and the IMO Convention on Maritime Safety'(1988) Vol. 82 No.2 *The American Journal of International Law*, p.269

¹² Ibid.

¹³ Ibid.

fighter jets and forced to land in Sicily, Italy, where the hijackers were arrested by Italian authorities.¹⁴

Whereas the *Achille Lauro* was flagged to Italy, the hijacking occurred in Egyptian territory, by Palestinian persons, the airliner that was intercepted was Egyptian, the lone casualty of the hijacking, was a United States citizen, and the hijackers were arrested by Italian authorities.¹⁵ The case generated a complex international legal questions, sparking international debate on international law issues of jurisdiction, the right of self defense and the like.¹⁶ Most importantly, the case generated debate on whether the hijacking was an act of piracy or not, within the context of the Convention on the High Seas, 1958, Article 15, given that the hijacking occurred within territorial waters, and that the motive of the hijackers was a political one, rather than a motive for private gain.¹⁷ The United States declared the hijacking an act of piracy and charged the perpetrators with the crime of piracy on the high seas, hostage taking and conspiracy, under their laws,¹⁸ but opinion was divided on the position of the United States.¹⁹

Egypt accused the United States of air piracy and demanded an apology from the United States, which was swiftly rebuffed by the United States. In any event, the debate surrounding the *Achille Lauro* incident, highlighted deficiencies in the maritime safety framework, and in the application of the definition of '*piracy*' itself,

¹⁴ Mark D. Larsen, 'The Achille Lauro Incident and the Permissible Use of Force, (1987) Vol. 9 *Loy. L.A. Int'l & Comp. L. Rev.* , p.482.

¹⁵ Malvina, *loc. cit.*

¹⁶ Larsen *op. cit* p. 485

¹⁷ See also 1982 LOSC Article 101.

¹⁸ Tracy E Madden, 'An Analysis of the United States Response to the Achille Lauro Hijacking' (1988) Vol. 8 Issue 1, *Boston College Third World Law Journal* p.140.

¹⁹ Malvina *op. cit.* p.270.

to acts such as that committed by the hijackers. These revelations led the international community to devise another mechanism to close these gaps, thus the adoption of the *International Convention on the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 1988* (and its protocol on fixed platforms on the continental shelf), often referred to as the SUA Convention 1988. This convention provided the platform for enhanced maritime security measures in the form of the 2005 SUA Protocols.

5.2 OVERVIEW: THE EVOLVING THREAT TO THE SECURITY OF MARITIME NAVIGATION

To gain a better appreciation of the evolving threat to the security of maritime navigation, it is worthwhile casting one's mind back briefly and tracing the threat back to its historical origins. There is no doubt that the threat to maritime endeavour has existed for as long as human beings were able to sail, and has evolved over several millennia. From the ancient Norse Raiders and Vikings of the north seas, to the Muslim Corsairs who plundered the Mediterranean, and the opportunistic pirates and privateers of piracy's 'golden age', whose sole motivation was 'private gain.' Over time, the threat has evolved into a set of sophisticated and deliberately coordinated acts of violence against maritime navigation. Moreover, in contemporary society maritime attacks appear to be fuelled by objectives other than private gain, and are increasingly committed within the territorial seas and internal waters of States. In other words, the threat to maritime navigation has evolved from opportunistic acts of piracy to carefully orchestrated acts of violence perpetrated by criminal organisations and terrorists. Examples of the latter include the hijacking of

the *Achille Lauro* and the bombings of the *USS Cole* and the *Limburg*.²⁰ The next few paragraphs highlight the dynamic nature of the threat to the security of the maritime sector and briefly traces the evolution of the threat to maritime security.

5.2.1 Piracy

Whenever piracy is discussed, the issue quickly evokes images of swashbuckling, one-eyed villains, plundering ships on the high seas, as well as flags bearing the ominous *skull and crossbones*.²¹ These images are largely attributed to Hollywood.²² Perhaps the world would prefer that piracy be confined to the fiction of the silver screen. However, history itself records a different story - one that tells of a real menace that terrorised maritime shipping with untold brutality.²³ It was primitive, opportunistic, cruel and indiscriminate, so much so that piracy was codified under international law as a universal crime, with pirates being declared '*hostis humani generis*' and subjected to universal jurisdiction.^{24,25} As Gottshalk and Flanagan have opined: "The very first time something valuable was known to be leaving the beach on a raft, the first pirate was around to steal it."²⁶

²⁰United States Congressional Research Service, 'Maritime Security: Potential Terrorist Attacks and Protection Priorities' (Order Code RL33787, United States Congress, 2007, CSR-2).

²¹Tracy V. Wilson, *How Pirates Work* (1998-2010) How Stuff Works

< <http://www.howstuffworks.com/pirate.htm/printable> >.

²²Ibid.

²³Michael Crawford and David Whitehead, *Archaic and Classical Greece: A selection of Ancient Sources in Translation* (Cambridge University Press 1983) 171.

²⁴Mike Walser, *Piracy and America* (2008) Pirates Facts and Legend

<http://www.piratesinfo.com/cpi_piracy_and_america_american_pirates_916.asp>

²⁵*History of Piracy* (2012) History.Com

<http://www.history.com/marquee.do?content_type=Marquee_Generic&content_type_id=53944&display_order=1&marquee_id=53952>

²⁶J.A Gottshalk and B.P Flanagan with L.J Kahn and D.M LaRochelle, 'Jolly Roger with an Uzi: The Rise and Threat of Modern Piracy' (2000) (Annapolis, Naval Institute Press), 11. Also cited by Jose Luis Jesus in 'Protection of Foreign Ships Against Piracy and Terrorism at Sea: Legal Aspects' (2003) 18(3) *The International Journal of Marine and Coastal Law* 363, 364.

The discovery of the ‘New World’ by Christopher Columbus in the latter part of the 15th century heralded a new chapter in the history of piracy, with pirates of all dispositions gravitating to the Caribbean in search of Spanish galleons laden with treasure.²⁷ This period, from the mid to late 17th century through to the early part of the 18th century, has become known as the ‘golden age of piracy.’²⁸ In addition to piracy in the classical sense, countries such as England, France and the Netherlands sanctioned privateers to disrupt the Spanish influence in the Caribbean. Today, it could be argued that privateering is tantamount to ‘state-sponsored’ piracy.²⁹ After all, there is really no distinction between *privateering* and *piracy* in terms of *modus operandi* (except for the *Letters of Marque*).³⁰ The outrage over piracy only resulted in it becoming an offence under international law in the 20th century under the *Convention on the High Seas, 1958* (1958 HSC).³¹

The early 1990s saw an upsurge in piratical activities, particularly in south-east Asia.³² This resurgence was blamed on difficult economic conditions in the region, the high rate of maritime traffic passing through routes in the region, as well as the failure of coastal States to adequately enforce the rule of law in their territories.³³ The ongoing piracy saga in the Gulf of Aden is a classic example of this phenomenon,

²⁷Konstam, *loc. cit.*

²⁸There is some debate as to the exact period of the so-called ‘Golden Age of Piracy.’ What is undisputed is the increase in piracy at the beginning of the 18th century. See Angus Konstam, *Piracy: A Complete History* (Osprey Publishing, 2008) 150.

²⁹Konstam, *loc. cit.*

³⁰*Ibid.*

³¹United Nations Treaty Collections, ‘Database –Chapter XXI Law of the Sea’ (2012) United Nations <http://untreaty.un.org/ilc/texts/instruments/english/conventions/8_1_1958_high_seas.pdf>

³²Adam J Young, ‘Roots of Contemporary Piracy in South East Asia’ in Derel Johnson and Mark Valencia (eds) *Piracy In South East Asia: Status, Issues and Responses* (Institute of Southeast Asian Studies, Singapore 2005) 2.

³³Ger Teitler, *Piracy In South East Asia: A Historical Comparison* Centre For Maritime Research <<http://www.marecentre.nl/mast/documents/GerTeitler.pdf>>.

with Somalia, a so-called 'failed State' that has virtually abandoned the rule of law in its maritime zones, providing the perfect environment for piracy to thrive.³⁴

5.2.2 Hijackings and Robberies at Sea

In the 20th century, there was a widespread belief that piracy was a thing of the past.³⁵ Others believed it had been completely eradicated with the advent of the steam engine and the expansion of colonialism, with England, the predominant maritime and colonial power, making its presence felt around the world.³⁶ However, the reality is that piracy has never really disappeared; indeed it remains a viable threat to the safety of maritime navigation.³⁷ However, as it began to re-emerge in the mid 20th century, it began to mutate in a legal sense. No longer were piratical attacks exclusively perpetrated on the high seas, and no longer was the primary motivation 'private gain.' Increasingly, the world began to witness 'piracy-like' atrocities motivated by ideology and politics.³⁸ Indeed, McNicholas has asserted that the boundaries between piracy and terrorism have become increasingly blurred, with terrorists resorting to acts of 'piracy' to fund their activities.³⁹

The upsurge in violence in the 1980s against passengers and crew members, which included the hijacking of ships, the kidnapping of crew members and passengers, the

³⁴Tarun Ahluwalia, *Anarchy Begets Piracy: Somalia as a failed State and the Myopic International Response* (2010) University of Flinders
<http://www.socsci.flinders.edu.au/global/africa/tarunahluwalia_piracy_somalia.pdf>

³⁵Douglas Guilfoyle, *Shipping Interdiction and the Law of the Sea* (Cambridge University Press, 2009) 45.

³⁶Stefan Eklof, 'The Return of Piracy: Decolonization and International Relations in a Maritime Border Region (the Sulu Sea), 1959-63' Working Paper Number 15, Centre for East and South-East Asian Studies, Lund University, Sweden (2005), Abstract.

³⁷United Nations Security Council, *The Situation in Somalia* (UNSCR1918 (2010)).

³⁸As in the case of the bombings of the *USS Cole* and the French Tanker *Limburg*.

³⁹Michael McNicholas, *Maritime Security: An Introduction* (Butterworth-Heinemann, 2008) 170.

deliberate grounding and scuttling of ships, the destruction of ships with explosives,⁴⁰ the disappearance of entire ships and their cargo (and in some cases the disappearance of the entire crew), as well as the identity theft of ships and their illegal registration,⁴¹ all pointed to the fact that violence against ships in the 21st century was no longer the work of petty criminals and the ‘riff-raff’ of society.⁴² Rather, it was becoming clear that these attacks were being waged by well-established criminals and terrorist organisations. It must be noted that prior to the *Achille Lauro* hijacking and the subsequent SUA Convention, 1988, the most comprehensive IMO measure addressing crimes at sea was a set of recommendations set out in an Assembly Resolution urging States to prevent piracy at sea.⁴³ Meanwhile, the bombings of the *USS Cole* and the *Limburg* confirmed the mutation of the threat from hijackings and sea-robberies perpetrated by common criminals, to bombings perpetrated by well-trained terrorist organisations.

5.2.3 Terrorist Attacks in the Maritime Sector

As previously mentioned, on October 12, 2000, the *USS Cole* was attacked by suicide bombers as it lay berthed during a refuelling stop off the coast of Yemen. The attack ripped a 60 by 40 foot hole in the hull of the *USS Cole* and killed 17 US sailors.⁴⁴ Then, on September 11, 2001, terrorist hijacked four commercial jetliners, crashing two into the World Trade Centre, one into the Pentagon, and the other in a field in

⁴⁰IMO, *SUA Convention* (2011) IMO <imo.org>.

⁴¹McNicholas *loc. cit.*.

⁴²Rolf Wippich ‘19th Century Piracy and Anti-Piracy Measures in Chinese Waters (Paper Presented at the Annual Conference ‘Frontiers of Knowledge’ Heidelberg, Germany October 5, 201) 1.

⁴³Augustine Blanco Bazan, ‘Suppressing Unlawful Acts: IMO Incursion In the Field of Criminal Law’ in Tafsir Malick Ndiaye and Rudiger Wolfrum (eds) *Law of the Sea, Environmental Law and Settlement of Disputes: Liber Amicorum Judge Thomas Mensah* (Martinus Nijhoff, 2007) 720.

⁴⁴Michael Isikoff, *US Failure to Retaliate for USS Cole Attack Rankled then-and Now MSNBC Online* (October 12, 2010) <http://www.msnbc.msn.com/id/39622062/ns/us_news-security/>.

Pennsylvania.⁴⁵ Fears of further terrorist attacks led the international community to tighten security measures, not only in the commercial airline industry, but also in sectors that were deemed more vulnerable, such as shipping, and the maritime sector generally. Approximately one year after the September 11, 2001 attacks, fears of large scale attacks in the maritime sector were heightened when al-Qaeda terrorists attacked the *Limburg* on October 6, 2002 in the Gulf of Aden.⁴⁶ The attack against the *Limburg* was reminiscent of the attacks two years earlier on the *USS Cole*, not only in terms of the identities of the perpetrators, but more importantly in terms of the *modus operandi*. Both attacks were carried out by suicide bombers using small crafts laden with explosives.

Approximately two months after the *Limburg* attack, the IMO convened a diplomatic conference aimed at putting in place new measures to counter the potential threat of terrorism in the maritime sector.⁴⁷ The urgency of the conference was premised on the fact that, if terrorist were able to infiltrate security in the commercial airline industry (which was virtually impregnable in terms of security standards compared to the maritime sector), then it would not take much effort for terrorists to launch another large scale attack against ships, or to actually use ships to carry out the attacks.⁴⁸ This conference resulted in the adoption of new security measures under the 1974 SOLAS Regulations which focused on the detection and prevention of threats to the maritime sector.

⁴⁵Smithsonian National Museum of American History, 'September 11, Bearing Witness to History' (2002) National Museum of American History Smithsonian Institute <<http://americanhistory.si.edu/september11/>>.

⁴⁶Reuters, 'Yemen Court Sentences Limburg Bomb Leader to Death' *ABC News Online* February 5, 2005 <<http://www.abc.net.au/news/newsitems/200502/s1296753.htm>>

⁴⁷Department of Infrastructure and Transport, *International Ship and Port Facility Security Code* (October 13, 2010) Australian Department of Infrastructure and Transportation <<http://www.infrastructure.gov.au/transport/security/maritime/isps/index.aspx>>.

⁴⁸Graham Gerard Ong-Webb (ed), *Piracy, Maritime Terrorism and Securing the Malacca Straits* (ISEAS Publishing, 2006) 30.

In 2005, the security measures of the SOLAS Convention, 1974 were buoyed by the adoption of the 2005 SUA Protocols. These instruments focus on four main components in the shipping industry - namely, the ships themselves, the cargo carried by ships, the ports and port facilities that serve ships, and the crew and passengers that are located on the ships concerned. The SOLAS Convention, 1974 security measures were adopted on the rationale that the security of ships and port facilities is risk management process - one which must be underpinned by a thorough needs assessment as to what the risks are and what measures are appropriate to deter or avoid the risk.⁴⁹ The ISPS Code - one of the measures adopted in the 2002 conference, comprises a key aspect of the international legal framework for maritime security.

5.3. THE INTERNATIONAL LEGAL FRAMEWORK FOR MARITIME SECURITY

In discussing the responses of the international community to the security threat confronting maritime navigation as well as the development of the current international security framework, it is important to recognise the transformation of the IMO regime from one which was predominantly focused on the 'safety' of maritime navigation, to one which is now more cognitive of the sector's security demands. Up until the adoption of the new maritime security measures under the SOLAS 1974 Regulations in 2002, the IMO regime focused rather narrowly on the issue of 'safety' of maritime navigation, as 'security' was looked upon as the responsibility of security agencies.⁵⁰ This earlier attitude is evident in the SUA Convention 1988 (and the SUA

⁴⁹Chris Trelawny, 'IMO Maritime Security Measures' (IMO Maritime Security Policy Background Paper, IMO 2008) 3.

⁵⁰Sam Bateman, 'Safety and Security in the Malacca and Singapore Straits' (2006) 148 *Maritime Studies* 20.

Protocol 1988) even though the United Nations directed the IMO to study the issue of ‘terrorism’ in the context of maritime navigation as earlier as 1985.⁵¹ The 2002 amendments to the SOLAS 1974 regulations, coupled with the adoption of the 2005 SUA Protocols and the revision of the IMO ‘motto’ to reflect its maritime security dimension, represents a recognition by the IMO of the strong link between ‘safety’ and ‘security’ in the context of maritime navigation.⁵²

5.3.1 Piracy under the 1958 HSC and the 1982 LOSC

It has been suggested that in ancient times, piracy was in fact, the predominant maritime adventure, and that States themselves were complicit through the use of privateers. Indeed, it was not until the introduction of maritime commerce that views on piracy were reversed, mainly because of the importance of maritime trade.⁵³ The 1958 HSC was the first formal international agreement to define the offence of piracy,⁵⁴ a definition that was later adopted *verbatim* under Article 101 of the 1982 LOSC.⁵⁵

The piracy regime under these conventions was critically tested in the *Achille Lauro* incident in 1985, as the circumstances of the hijacking did not fall perfectly within the

⁵¹*Measures to Prevent International Terrorism Which Endangers or Takes Innocent Lives or Jeopardizes Fundamental Freedom and Study of Underlying Causes of those Forms of Terrorist Acts of Violence Which Lie in Misery, Frustration, Grievance and Despair and Which Cause Some People to Sacrifice Human Lives, Including their Own in an Attempt to Effect Radical Changes* (UNGA Res 40/61, December 9, 1985).

⁵²Sam Bateman, ‘Safety and Security in the Malacca and Singapore Straits’ (2006) 148 *Maritime Studies* 20.

⁵³Ilias Bantekas and Susan Nash, *International Criminal Law* (2nd ed, 2003) 95.

⁵⁴*Ibid.*

⁵⁵Both the 1958 HSC and the 1982 LOSC define piratical acts as consisting of:

(1) Any illegal acts of violence, detention or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed: (a) On the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft; (b) Against a ship, aircraft, persons or property in a place outside the jurisdiction of any State; (2) Any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft; (3) Any act of inciting or of intentionally facilitating an act described in subparagraph 1 or subparagraph 2 of this article.

definition of ‘piracy’. Indeed, the narrow scope of the crime of piracy (as defined under the 1958 HSC and 1982 LOSC), did not cater for the actual dynamics of the threat to maritime navigation, eventually leading to the adoption of the *SUA Convention 1988* and the *SUA Protocol on Fixed Platforms Located on the Continental Shelf, 1988*.⁵⁶

5.3.2 The SUA Convention 1988 (and the SUA Protocol 1988)

Prior to 1985, the IMO’s efforts in addressing piracy, robbery at sea and similar crimes were confined to a set of recommendations contained in an Assembly Resolution adopted in 1993.⁵⁷ These recommendations urged States to take action to prevent piracy and robbery at sea committed against ships and small crafts at sea, in their waters, or in areas adjacent to their waters.⁵⁸ The *Achille Lauro* hijacking precipitated the very first steps by the IMO in considering the ‘security’ aspect of maritime navigation, with the United Nations calling upon the IMO to study the issue of terrorism as it related to the safety of maritime navigation.⁵⁹ In Resolution A.584(14), adopted on November 20, 1985 (approximately two months after the hijacking of the *Achille Lauro*), the IMO noted the danger to passengers and crews resulting from increased incidents of piracy, armed robbery, and other unlawful acts at sea. The Resolution called upon all governments, ports authorities, shipowners, operators, masters and crews to immediately strengthen security on board their vessels, as well as in their ports. The resolution also directed the Maritime Safety Committee of the IMO to develop, on a priority basis, detailed technical measures to

⁵⁶R. Chuck Mason, ‘Piracy: A legal Definition’ Congressional Research Service Report No.R41455, Prepared for Members of Congress, United States Congress, October 19, 2010) 1.

⁵⁷Bazan, ‘*loc. cit*’

⁵⁸*Ibid.*

⁵⁹See Above n 42.

be adopted by governments to protect the maritime sector from these unlawful acts.⁶⁰

In the meantime, the United Nations General Assembly, which had also been drawn into the debate, requested the IMO to study the issue of ‘terrorism at sea’ and recommend appropriate measures for States to undertake in dealing with the issue.⁶¹

The *SUA Convention 1988*, and the *SUA Protocol 1988*, were eventually adopted the 10th of March, 1988, and entered into force on the 1st of March, 1982.

In essence, the SUA Convention was designed to address the uncertainties and gaps relating to fundamental issues of the law of the sea raised by the *Achille Lauro* hijacking.⁶² The convention attempts to address these gaps by prescribing new maritime related offences and creating multiple jurisdictional bases to ensure that perpetrators do not escape prosecution.⁶³ The convention sought to criminalise acts such as the seizure of ships (and platforms) by force, acts of violence against persons on board ships and platforms, and the placing of explosive devices on board ships and platforms.⁶⁴ In addition, the convention provided an extradition mechanism and imposed upon parties the duty to either prosecute or extradite an offender found in their jurisdiction.⁶⁵ The convention applies to all ships as defined under Article 1 of

⁶⁰IMO, *Measures to Prevent Unlawful Acts Which Threaten The Safety of Ships and the Security of Their Passengers and Crews* (IMO Assembly Resolution A584(14) (November 20 1985).

⁶¹United Nations, *Measures to prevent international terrorism which endangers or takes innocent human lives or jeopardizes fundamental freedoms and study of the underlying causes of those forms of terrorism and acts of violence which lie in misery, frustration, grievance and despair and which cause some people to sacrifice human lives, including their own, in an attempt to effect radical changes*, (GA Res 40/61) (December 9, 1985).

⁶²Christopher Young, ‘2005 SUA Protocol: New Offenses and Boarding Provisions’ (Paper Presented at the Workshop for ASEAN Member States on Developing and Integrated Approach to Maritime Security Through the Counter-Terrorism Conventions, Criminal and International Law: Legal Perspectives, Capacity Building, Rajaratnam School of International Studies, Singapore, June 9-10, 2009) 9.

⁶³IMO, *World Maritime Day, IMO 2004: Focus on Maritime Security: A message from the Secretary – General of the IMO Mr. Efthimios Mitropoulos* (2004)
<http://www.imo.org/includes/blastDataOnly.asp/data_id%3D9885/Englishmessage.pdf > .

⁶⁴SUA Convention 1988, Article 3.

⁶⁵Ibid., Article 6.

the convention.⁶⁶ Unlike the piracy provisions of the 1958 HSC and the 1982 LOSC, the SUA convention applies not only to offences committed on the high seas, but also those committed within the territorial sea of State parties (provided the ship is scheduled to navigate beyond the limits of the territorial sea, such as in the case of ‘transit’ or ‘innocent’ passage).⁶⁷ In this sense, the scope of application of the SUA Convention is wider than the piracy regime under the 1958 HSC and the 1982 LOSC.⁶⁸

Pursuant to Article 3 of the SUA Convention, a person commits a SUA offence if that person unlawfully and intentionally seizes control of a ship by force, commits an act of violence against any person on a ship, destroys or causes damage to a ship or cargo, destroys navigational equipment, places on a ship a deadly device, communicates false information or kills or injures any person in the commission of any of the unlawful acts prescribed therein.⁶⁹ Where an offender is found in the territory of a State party, such party is obligated to apprehend the offender and take such measures to ensure the presence of the offender for the purposes of a criminal prosecution or extradition. State parties are obligated under the convention to criminalise the offences listed under Article 3 in their national laws, and further, to make such offences ‘extraditable’ under any extradition agreements with other State parties.⁷⁰ Importantly, the convention established the notion of the ‘super treaty’, where State parties can, in the absence of formal treaty arrangements, use the convention itself as a legal basis for an extradition.⁷¹ Even so, the SUA Convention 1988 lacked a

⁶⁶Ibid., Article 4.

⁶⁷Ibid., Article 4.

⁶⁸Bazan *loc cit*.

⁶⁹SUA Convention 1988, Article 3.

⁷⁰Ibid., Article 11.

⁷¹SUA Convention 1988, Article 11(2).

‘security’ focus, as it dwelled on the ‘safety’ aspects of maritime navigation instead.⁷² Moreover, the treaty was legally and practically limited in its application, as it did not provide for an effective enforcement mechanism, such as preventing an impending unlawful act or suspicious activities.⁷³ This issue was addressed in Article 8 *bis* of the 2005 SUA Protocol to the SUA Convention 1988, which provides for the ‘boarding’ of suspect ships.

5.3.3 The 2005 SUA Protocols

In addition to the *SOLAS Convention 1974* security measures, the *SUA Convention 1988* also became a platform for the development of further maritime security measures. In 2002 the IMO Legal Committee, pursuant to IMO Assembly Resolution A.924(22), conducted an expedited review of the SUA treaties,⁷⁴ and after three years of negotiations, the 2005 SUA Protocols were finally adopted on October 14, 2005 (2005 SUA Protocols).⁷⁵ The 2005 SUA Protocols orchestrated a shift in focus by emphasising ‘maritime security’ rather than ‘maritime safety’ (as was the case under the initial SUA Conventions). In this respect, the 2005 SUA Protocols adopted a number of new security initiatives.⁷⁶

⁷²See Title of the Convention.

⁷³Christopher Young, ‘2005 SUA Protocol: New Offenses and Boarding Provisions’ (Paper Presented at the Workshop for ASEAN Member States on Developing and Integrated Approach to Maritime Security Through the Counter-Terrorism Conventions, Criminal and International Law: Legal Perspectives, Capacity Building, Rajaratnam School of International Studies, Singapore, June 9-10, 2009) 9.

⁷⁴Is meant to refer to the SUA Convention 1988 and the SUA Protocol 1988)

⁷⁵Robert C. Beckman, ‘The 1988 SUA Convention and the 2005 SUA Protocols: Tools to Combat, Armed Robbery and Maritime Terrorism’ in Rupert-Herbert Burns, Sam Bateman and Peter Lehr (eds) *Lloyds MIU Handbook on Maritime Security* (Auerbach Publications, 2009) 187, 192.

⁷⁶While the 2005 Protocols amend both the 1988 SUA Convention and the 1988 Protocol on Fixed Platforms, for brevity and convenience the discussion herein will make reference only to the amendments to the SUA Convention proper. It must be borne in mind that the 2005 Protocol to the 1988 Protocol to the SUA Convention applies the same amendments *mutatis mutandi* to the 1988 Fixed Platforms Protocol, and therefore it is not necessary to repeat the discussion.

First, the 2005 SUA Protocols expanded the scope and nature of offences under the SUA Convention by adding three categories of offences.⁷⁷ The first category covers acts such as using a ship as a weapon, or using a ship as a means to carry out a terrorist attack. The second category relates to the proliferation of WMDs and their delivery systems by sea.⁷⁸ The third category criminalises the deliberate and wilful transportation of persons who have committed crimes under the SUA Convention (inclusive of the 2005 SUA Protocols), and any of the nine terrorism related conventions contained in the Annex to the Convention.⁷⁹ The 2005 SUA Protocols also criminalise acts of violence that result in the loss of life. The elevation of what would otherwise be murder in many domestic jurisdictions to an international crime is an indication of the effort made under the SUA treaties to shut down all potential avenues of escape by offenders. The 2005 SUA Protocols complement the various UN terrorism related instruments, such as the International Convention for the Suppression of Terrorist Bombings (1997), and the International Convention for the Suppression of the Financing of Terrorism (1999).⁸⁰

The most contentious provisions of the 2005 SUA Protocols are those contained in Article 8 *bis*, setting out the procedure for boarding suspect ships on the high seas. Article 8 *bis* requires State parties to first confirm the nationality of the ship, and then to request approval from the flag State to board the ship, or to take other measures such as stopping the ship, searching the ship, its cargo, and any persons on board, or questioning any persons on board. Under Article 8 *bis*, a flag State may respond in a

⁷⁷Article 3 *bis*, 3 *ter* and 3 *quater* of the 2005 SUA Protocols introduce three new categories of offences.

⁷⁸Beckman *loc. cit.*

⁷⁹*Ibid.*

⁸⁰Organization for Security and Cooperation in Europe, 'Work Undertaken by the International Maritime Organization in an Effort to Prevent and Combat Terrorism (2008)' OSCE
<<http://www.osce.org/eea/31855?download=false>>

number of ways. First, the flag State may authorise the boarding. Second, the flag State may conduct the boarding on its own, or in conjunction with the requesting State. Third, the flag State may deny the boarding request outright. Where a flag State denies a request for boarding, the requesting State must refrain from boarding the ship concerned.

However, the real controversy over the 2005 SUA Protocols concerns the ‘tacit boarding approval’ mechanism under Article 8 *bis*. Under this mechanism, ‘boarding’ is deemed to have been approved where a flag State fails to respond to a boarding request within 4 hours of the request being made. Although the ‘tacit boarding approval’ mechanism has been the subject of criticism, it has also been viewed as a critical tool of enforcement, allowing for the boarding and interdiction of suspect ships, as well as those in the process of planning attacks or in the actual process of carrying out such attacks. Suffice to say, this was a feature that was absent under the provisions of the *SUA Convention 1988*. In other words, Article 8 *bis* provides the much needed ‘teeth’ in protecting against threats to the maritime sector. However, it is not sufficient for the 2005 SUA Protocols to be implemented by themselves. To be effective, the 2005 SUA Protocols must be enforced in conjunction with existing maritime security regimes, and adopted as part of the overall maritime security framework. Mitropoulos confirms the importance of such multilateral action when he remarks that the SUA treaties⁸¹ are part and parcel of a comprehensive maritime security framework, complemented by the International Ship and Port Facility

⁸¹IMO Press Release, *18 States Sign 2005 SUA Protocols* (2007) IMO
<http://www.imo.org/newsroom/mainframe.asp?topic_id=1472&doc_id=7790 >

Security Code (ISPS Code) and other measures achieved through amendments to the *SOLAS Convention, 1974*.⁸²

5.3.4 New Security Measures adopted under SOLAS Convention, 1974

The response of the international community and the IMO in the wake of the September 11, 2001 terrorist attacks culminated in the adoption of new maritime security measures. First, new maritime security measures were adopted under the *SOLAS Convention, 1974* regulations, and second, the adoption by the IMO of the 2005 SUA Protocols.⁸³ The new *SOLAS Convention 1974* security measures included the International Ships and Port Facilities Security Code (ISPS Code), the Long Range Identification and Tracking system (LRIT), requirements for a new installation schedule for AIS equipment, and the requirement that ships carry on board a Continuous Synopsis Record (CSR), among others. The ISPS Code is perhaps the most far-reaching of these measures. By and large, these instruments have come to form the core framework for maritime security in the post-9/11 world.⁸⁴ Furthermore, in addition to the formal international agreements, the United States has secured bilateral and multilateral maritime security arrangements outside of the international framework to enhance its own maritime security network.⁸⁵ However, these bilateral arrangements focus heavily on the security of international trade, ensuring that the tools of the system - such as ships and containers, are not used to facilitate terrorist acts and transnational criminal activities.

⁸²Ibid.

⁸³Chris Trelawny, 'Maritime Security Policy Background Paper, (IMO) 2005.

⁸⁴Beckham, 'loc cit.

⁸⁵These arrangements include the Container Security Initiative (CSI), the Proliferation Security Initiative (PSI) and the various Ship-Boarding Agreements which the United States has concluded with many governments around the world. The Ship-Boarding Agreements between the United States and leading flag States such as Liberia, Panama and the Marshall Islands mean that the United States can now gain access to over 50% of the world's commercial fleet (DWT).

A. Expedited AIS Timetable (SOLAS Regulation V-19/2).

Regulation V-19/2 introduced an expedited timeline for bringing ships into compliance with AIS requirements. The new timeline required ships (other than passenger ships and tankers) greater than 300 GT but less than 50,00 GT to install and carry *automatic identification systems* (AIS) no later than the date of their first safety equipment survey after July 1, 2004, or at least by December 31, 2004. The Regulation also specified that the AIS must be capable of providing information on the ship's identity, type, position, course, speed, navigational status and other safety-related information to shore stations, other ships and aircraft. Indeed, the amendment required that AIS be able to receive information, monitor and track ships and exchange data with shore stations.⁸⁶

B. Ship Identification Numbers Amendment (SOLAS Regulation XI-I/ 3).

SOLAS Regulation XI-1/3 imposed upon flag States, in a new Paragraph 4, the requirement to visibly and permanently mark on the ship's hull or superstructure the ship's identification numbers (also known as IMO numbers), to allow for ease of identification and for the tracking of such ships.⁸⁷ As a result of the amendment, flag States, shipowners, operators and managers must now ensure that ships are marked in accordance with internationally approved marking specifications.

C. Continuous Synopsis Record, (SOLAS Regulation XI-1/ 5).

Regulation XI-1/5 resulted in flag States having to maintain a Continuous Synopsis Record (CSR) of ships entitled to fly their flag. When the Regulation was passed, it was anticipated that the CSR would contain information and particulars that would

⁸⁶IMO, 'AIS Transponders' (2002) IMO <<http://www.imo.org/>> .

⁸⁷McNicholas, *op. cit.* p.113.

assist in the identification and tracking of such ships,⁸⁸ including the name of the ship, particulars of the flag State, the date the ship was registered under a particular flag, the ship's identification number and port of registry, the names and addresses of the registered owners, the names of any bareboat charterers and their registered addresses, the name of the company that owns, or operates the vessel, and its registered address, the names and addresses of all classification societies with which a ship is classed, the names of responsible administrations or contracting governments, as well as the date on which registration with a particular flag was terminated. The Regulation further requires that any and all changes in the circumstances and particulars of a ship be entered into the CSR so that information on the history of a ship remains current.⁸⁹ The original CSR must be maintained on board at all times, with the flag State administrations maintaining their own separate copies.⁹⁰

D. LRIT System, (SOLAS Regulation V/19-1).

SOLAS Regulation V/19-1 requires parties to implement a system for the Long Range Identification and Tracking of ships (LRIT). The two major components of the system are the 'reporting component' - where ships are required to report certain information, and the 'receiving component' - where flag States (as well as coastal States and port States) may request such LRIT-generated information.⁹¹ The LRIT regulations were adopted on May 19, 2006,⁹² and entered into force on January 1, 2008.

⁸⁸SOLAS Convention 1974 Regulation XI-1/5.

⁸⁹IMO, *December 2002 Amendments (Conference) – Measures to Enhance Maritime Security* (2002) IMO <www.imo.org>

⁹⁰Ibid.

⁹¹Australian Maritime Safety Authority, *Long Range Identification and Tracking: A Guide to Requirements and Implementation* (April 2009) AMSA <[http:// www.amsa.gov.au/publications/fact_sheets/lrit_fact_sheet.pdf](http://www.amsa.gov.au/publications/fact_sheets/lrit_fact_sheet.pdf)>.

⁹²MSC Resolution MSC.202(81).

The LRIT regulations only apply to SOLAS vessels such as high speed passenger crafts engaged on international voyages, cargo ships and high speed cargo crafts of 300 GT and above engaged on international voyages, as well as mobile offshore drilling units.⁹³ The Regulations require that these ships be fitted with automated identification systems that will enable them to automatically transmit information concerning their identity, position, as well as the date and time their specific position is reported.⁹⁴ In accordance with Paragraph 4.1 of Regulation 19-1, all ships that fall into the categories referred to in paragraph 2.1 of Regulation 19-1 (and that are constructed after December 2008), must be fitted with LRIT equipment capable of transmitting the information required under the regulations.⁹⁵ Secondly, ships constructed before December 31, 2008 that are certified for operations in Sea areas A1, A2, and A3 (as per Regulations IV/2.1.12, IV/2.1.13 and VI/2.1.14)⁹⁶ must install LRIT equipment before their first radio survey after December 31, 2008.⁹⁷ Ships constructed before December 31, 2008 and certified for operations in sea areas A1, A2, A3, and A4 (in accordance with Regulations IV/2.1.12, IV/2.1.13, IV/2.1.14 and IV/2.1.15), must install LRIT capability by their first radio survey after July 1, 2009 at the latest.⁹⁸ Ships fitted with automatic identification systems (AIS) that operate exclusively in sea area A1 are exempt from the application of the LRIT regulations.⁹⁹

The Regulation also makes it compulsory that ships install equipment that meets IMO

⁹³SOLAS Convention, 1974, Chapter V, Regulation V-19/1 (2.1).

⁹⁴Ibid., Regulation V-19/1(4.1 and 4.2).

⁹⁵Ibid., Regulation V-19/1 (4.1.1).

⁹⁶**Area A1** refers to areas within range of VHF coast stations with continuous DSC alerting available (about 20-30 miles). **Area A2** refers to areas beyond area A1, but within range of MF coastal stations with continuous DSC alerting available (about 100 miles). **Area A3** refers to areas beyond the first two areas, but within coverage of geostationary maritime communication satellites (in practice this means Inmarsat). This covers the area between roughly 70 deg N and 70 deg S. **Area A4** covers the remaining sea areas. The most important of these is the sea around the North Pole (the area around the South Pole is mostly land). Geostationary satellites, which are positioned above the equator, cannot reach this far. See IMO, *GMDSS – FAQs* (2002) <www.imo.org >.

⁹⁷SOLAS Convention, 1974 Chapter V, Regulation 19-1 (4.1.2).

⁹⁸Ibid., Regulation 19-1 (4.1.3).

⁹⁹Ibid., Regulation 19-1 (4.2).

standards and that is approved by the flag State.¹⁰⁰ Vessels must ensure that LRIT systems remain operational at all times, and that they are only switched off where international rules so provide,¹⁰¹ or where it is necessary to preserve the safety and security of the ship. The type of information that must be automatically transmitted under LRIT regulations includes the vessel's *identity, position*, as well as the *date* and *time* of the automatic reporting.¹⁰²

It is important to note that under the *SOLAS Convention, 1974*, contracting governments can only receive LRIT generated information under specified circumstances. Flag States are entitled to receive LRIT generated information on ships entitled to fly their flag at any time, regardless of where the ship is located.¹⁰³ Port States may only receive LRIT generated information where the ship concerned intends to enter one of its ports or another area under its jurisdiction.¹⁰⁴ Coastal States may only receive LRIT information where the ship in issue does not intend to enter port, but is navigating within 1000 nautical miles from the State's coast (provided the ship is not located in the maritime zone of another contracting government).¹⁰⁵ The flag State may, however, temporarily withhold LRIT information where there is a possibility that the safety and security of the ship and its crew may be compromised.¹⁰⁶

¹⁰⁰*Ibid.*, Regulation 19-1 (6).

¹⁰¹*Ibid.*, Regulation 19-1 (7.1).

¹⁰²*Ibid.*, Regulation 19-1 (5.1, 5.2, 5.3).

¹⁰³*Ibid.*, Regulation 19-1 (8.1.1).

¹⁰⁴*Ibid.*, Regulation 19-1 (8.1.2).

¹⁰⁵*Ibid.*, Regulation 19-1 (8.1.3).

¹⁰⁶*Ibid.*, Regulation 19-1 (9.1).

The incorporation of the LRIT regulations under SOLAS Chapter V, Regulation 19-1 (*Safety of Navigation*), rather than under SOLAS Chapter X1-2 (*Special Measures to Enhance Maritime Security*) was deliberate, owing to the multiple applications of the LRIT system, as well as the need to quell political reservations over the legality of the system.¹⁰⁷ Indeed, the LRIT system is a tool that is not only crucial to maritime security, but also one that is useful in the context of search and rescue (SAR) operations.¹⁰⁸ However, the LRIT system was originally designed to complement the implementation of the ISPS Code and other SOLAS security related measures, thereby ensuring the early detection of threats before a ship arrives in port. From a technical and practical point of view, the LRIT system is a complex and layered one, and for the system to function in the manner anticipated under the framework, all of its components need to be functional.¹⁰⁹

The LRIT is made up of a number of components, namely, the *vessels* which are required under the convention to be fitted with LRIT information transmitting equipment capable of automatically transmitting LRIT data to the designated data centre(s),¹¹⁰ the *Communications Service Provider* (CSP), whose task it is to ensure the security of the LRIT information as it is being transferred to the data centres, the *Application Service Provider* (ASP) that monitors, collects, manages and organises the transfer of LRIT information to data centres (national, regional, cooperative and international),¹¹¹ as well as the *LRIT data centres* that collect, store and disseminate

¹⁰⁷IMO, *Implementation of LRIT-Key Decisions Made at IMO's MSC* (October 22, 2007) <www.imo.org> .

¹⁰⁸Martin Tsamenyi and Mary Ann Palma, 'Long Range Identification and Tracking Systems for Vessels' in Rupert Herbert-Burns, Sam Bateman and Peter Lehr (eds) *Lloyds MIU Handbook on Maritime Security* (2009) 215, 216.

¹⁰⁹*Ibid.*

¹¹⁰Tsamenyi and Palma *loc. cit.*

¹¹¹*Ibid.* p.219.

information as instructed by flag States. In addition, there is the *LRIT Data Distributing Plan* (DDP), a database that holds important information, the *International LRIT Data Exchange* (ILRITDE), the component that facilitates the exchange of LRIT data among data centres, and the *LRIT Data Users* (LDU), who comprise the SOLAS contracting States.¹¹²

One of the sticking points of the negotiations was the distance at which LRIT information should be transmitted to ‘coastal States.’ A number of countries including the United States, Australia and the European Community argued that ships should only have to transmit LRIT data to ‘coastal States’ from distances beyond 200 nautical miles (nm) from the coast. However, other countries such as China, Iran, Russia and Brazil favoured an approach whereby ships would be required to transmit LRIT data to coastal States from distances within 200 nm from the coast.¹¹³ Indeed, these States argued that, requiring ships to provide LRIT data from distances in excess of 200 nm from the coast amounted to the creation of new coastal State ‘rights’, thereby encroaching on the exclusive jurisdiction which flag States have over ships, as well as their freedom of navigation on the high seas guaranteed under the 1982 *LOSC*. It was noted, however, that coastal States already have the prescriptive power under the 1982 *LOSC* framework to require LRIT data from vessels in excess of 200 nm from their coast.¹¹⁴ It is also noted that the LRIT regulations do not provide an automatic legal basis for coastal States to mount enforcement action against threats posed by ships,¹¹⁵ as enforcement action on the basis of LRIT information is governed by normal international rules, and must be carried out in accordance with the relevant

¹¹²Ibid.

¹¹³Ibid.p.222.

¹¹⁴Ibid.

¹¹⁵IMO, *Implementation of LRIT high on Agenda at IMO’s Maritime Safety Committee* (2007) IMO < <http://www.imo.org/> > .

provisions of the 1982 *LOSC* which govern the jurisdiction and authority of coastal States, port States and flag States in the different maritime zones.¹¹⁶ Regulation V/19-1 makes it clear that the LRIT system is not designed to award any new legal rights to States, but is merely intended to operate in conjunction with the existing rights, obligations and jurisdiction of States under international law, and particularly the 1982 *LOSC*.¹¹⁷ For non-LRIT vessels operating within coastal waters only, contracting governments are encouraged to find a way under their respective national legislation to monitor the movements of such vessels.

In the maritime security context, it is the responsibility of each contracting government to take steps to receive LRIT data. Indeed, States (flag States, port States and coastal States) may request LRIT data by submitting a request for data, or by issuing a standing order to the data centre(s) concerned. These requests and standing orders may seek information such as the name of the ship, its IMO identification number and reporting date,¹¹⁸ the flag under which the ship is sailing, as well as the distance of the ship from the relevant port or coast.¹¹⁹

E. The ISPS Code (SOLAS Regulation (XI-2/3).

Of the measures adopted in the December 2002 Diplomatic Conference, the most far reaching was possibly the International Ships and Port Facilities Security Code (ISPS Code). The ISPS Code, adopted under SOLAS Chapter XI-2 '*Special Measures to Enhance Maritime Security*', is designed to enhance the security of ships under the

¹¹⁶Tsamenyi and Palma, *op. cit.* p.224.

¹¹⁷SOLAS Convention, 1974 Chapter V/19-1(1).

¹¹⁸In the case of flag States.

¹¹⁹In the case Port States.

SOLAS Convention, 1974, as well as the port facilities that serve such ships.¹²⁰ The ISPS Code was intended “to provide a standardized, consistent framework for evaluating risk”, thereby allowing flag States and port States to respond appropriately to maritime threats.¹²¹ The overall objective of the Code is to establish an international framework for co-operation between contracting governments, government agencies, and the shipping and port industries, thereby allowing such entities to: (i) detect and assess security threats; (ii) take the necessary preventive security measures; (iii) define the roles of key stakeholders at the national and international level; (iv) ensure the timely exchange of security-related information; (v) provide a methodology for security assessments and the development of the necessary security plans; and (vi) assure the public that the security of the maritime sector is being effectively addressed.¹²²

The ISPS Code consists of two parts – A and B. Part A sets out mandatory obligations while Part B covers voluntary and recommendatory provisions aimed at assisting contracting governments to implement Part A. As the ISPS Code is incorporated under the *SOLAS Convention, 1974*, compliance with the provisions of the Code is mandatory for all parties to the convention.¹²³ The ISPS Code applies only to SOLAS standard passenger ships (including high speed crafts) engaged on international voyages, cargo ships (including high speed crafts) of 500 GT and above engaged on

¹²⁰IMO, *IMO Adopts Comprehensive Security Measures* (2010) IMO <<http://www.imo.org>>.

¹²¹Chris Trelawny, ‘IMO Maritime Security Measures’ (IMO Maritime Security Policy Background Paper, IMO, 2008) 3.

¹²²Australian Government Department of Infrastructure and Transport, *International Ship and Port Facility Security Code* (2010) Department of Infrastructure and Transport <<http://www.infrastructure.gov.au/transport/security/maritime/isps/index.aspx>>.

¹²³IMO, *What is the ISPS Code* (2010) IMO <<http://www.imo.org>>

international voyages, mobile off-shore drilling units, as well as port facilities serving these category of ships.¹²⁴

The ISPS Code provides a set of measures aimed at enhancing the security of ships as well as the port facilities that serve them. The Code takes the position that safeguarding the security of ships and port facilities is a risk management process, and that ships and port facilities can only take appropriate measures once an assessment of the risk has been fully undertaken.¹²⁵ Accordingly, the Code aims to ensure that security related information is collected and shared with other parties in the most efficient manner,¹²⁶ and that standards and procedures for risk assessment are made available so that ships and ports can develop security plans that are responsive to potential threats.¹²⁷ The concept of ‘risk management’ has been embodied in a number of functional requirements under the Code, such as the development of security plans, the appointment of security officers and company security officers, as well as the installation of necessary equipment.¹²⁸ Indeed, if properly implemented, the provisions of the ISPS Code should improve cooperation between ships and ports, ships and companies, as well as between ships and flag States. Indeed, the Code allocates specific duties and obligations to each of these entities as part of the risk management process.¹²⁹

Contracting governments are charged with a plethora of responsibilities, including the duty to: (i) gather and assess information about particular threats; (ii) share relevant

¹²⁴ISPS Code Part A, Section 3.

¹²⁵IMO, *FAQ on the ISPS Code* (2002) IMO <http://www.imo.org/safety/mainframe.asp?topic_id=897>.

¹²⁶ISPS Code Part A Section 1.2.3.

¹²⁷ISPS Code Part A Section 1.2.4.

¹²⁸IMO, *What is the ISPS Code?* (2010) IMO <www.imo.org/Safety/mainframe.asp?topic_id=897#>.

¹²⁹ISPS Code Part A, Section 1.2.2.

information with responsible persons or agencies¹³⁰; (iii) ensure the maintenance of communication capabilities on ships and in ports¹³¹; (iv) ensure that steps are taken to prevent unauthorised access to ships and port facilities and other restricted areas¹³²; (v) ensure that dangerous weapons are prevented from being carried onto ships or taken into port areas¹³³; (vi) ensure that ships and port facilities put in place effective alarm systems¹³⁴; (vii) ensure that appropriate security plans for ships and ports are developed¹³⁵; and (viii) ensure that periodic security drills and exercises are being carried out.¹³⁶ The effective discharge of each of these duties is fundamental to the overarching objective of the Code, as well as to the security of shipping and ports in general. Each entity identified in the Code constitutes a ‘link’ in the ‘chain’ of defence against maritime security threats, and the failure by any one entity to perform its functions effectively could potentially sever the security ‘chain,’ leaving ships and ports vulnerable to terrorist attacks. As Rummage has asserted: “*It is the concept of working together that will determine the success or failure of the ISPS Code*”.¹³⁷

E(i) The Compliance Process

In order for a vessel to become a ‘compliant’ ship under the Code, a number of tasks must be undertaken. The first step in the process involves an ‘assessment’ of the security issues of a ship. Flag States are required to conduct an assessment of the security of its ships to determine what security issues (if any) are presented by the ship. This assessment is a three-step process, beginning with an identification and

¹³⁰ Ibid., Section 1.3.1.

¹³¹ Ibid., Section 1.3.2.

¹³² Ibid., Section 1.3.3.

¹³³ Ibid., Section 1.3.4.

¹³⁴ Ibid., Section 1.3.5.

¹³⁵ Ibid., Section 1.3.6.

¹³⁶ Ibid., Section 1.3.7.

¹³⁷ John Rummage, ‘Creating a Security Culture: The Role of the flag State’ (Paper Presented at Lloyds 2nd Annual Maritime Security and & Safety Summit, England, February 18, 2004) <<http://www.register-iri.com/content/artspesche/LloydsMaritimeSecuritySummit.cfm>> .

evaluation of critical security issues, followed by an identification of the actual threats, to finally addressing the weaknesses identified in the security of the ship.¹³⁸

The ship security assessment (SSA) provides the platform upon which risk management activities can be carried out. These activities include the development and adoption of ship security plans (SSP)¹³⁹, the designation of ship security officers (SSO)¹⁴⁰ and company security officers (CSO)¹⁴¹, the installation of appropriate equipment on board ships, as well as the training necessary to ensure the entire crew is familiar with the ship security system.¹⁴²

The SSP is critical to ISPS Code compliance, and is intended to set out the procedures that must be followed in the event of a security threat. The SSP must set out: (i) measures to prevent unlawful activities from reaching the ship; (ii) measures that must be undertaken in response to security threats; (iii) procedures for evacuation in the event of an attack; (iv) the duties and obligations of on-board personnel in the event of a security threat; (v) measures to be taken in relation to training, drills and exercises; (vi) measures that ensure the testing of equipment; and (vii) procedures for reporting security breaches and the use of the ship's alarm system (among others).¹⁴³ Flag States may delegate the task of developing and approving the SSP to recognised security organizations (RSOs), provided that no organisation involved in developing such plan is involved in the approval process.¹⁴⁴ Importantly, a SSP must incorporate

¹³⁸ IMO, *The IMO adopts comprehensive maritime security measures* (2010) IMO <<http://www.imo.org>>

¹³⁹ ISPS Code Part A, Section 9.

¹⁴⁰ Ibid., Section 12.

¹⁴¹ Ibid., Section 11.

¹⁴² Ibid., Section 13.

¹⁴³ Ibid., Section 9.4.

¹⁴⁴ Ibid., Section 9.1.

the three security threat levels as defined under Section 2.1.9, 2.1.10 and 2.1.11 of the Code.

Security Level 1 indicates that the ship (or port) is operating under normal circumstances, while *Security Levels 2 and 3* indicate that the ship (or port) is operating at a ‘heightened’ or ‘exceptional’ security threat level. Ships and ports operating under Security Level 2 are required to take ‘additional’ security measures and maintain such measures throughout the period of the threat, while ships (and ports) operating under Security Level 3 are required to take ‘further specific security measures’, with such measures being maintained throughout the period of the ‘exceptional threat’.

Convention vessels must also designate a SSO, whose responsibility it is to oversee the implementation of security measures on board the ship, and to ensure that the ship maintains a *Security Level 1* status under normal circumstances. The SSO’s duties include regularly inspecting the ship, supervising the implementation of the SSP, reviewing and proposing improvements to the SSP, liaising with the CSO on matters of ship security, reporting all security incidents, as well as ensuring that equipment on board the ship is maintained in good working order, among others.¹⁴⁵ Like the SSO, the CSO is a key entity under the Code. The CSO’s responsibility is to ensure that ships have in place an approved SSP, and that it is carried on board at all times.¹⁴⁶ The procedures set out under the ISPS Code for ships apply *mutatis mutandi* to the management of maritime risks for ports and port facilities.

¹⁴⁵Ibid. Section 12.2.

¹⁴⁶Ibid., Section 11.2.

Even though the scope of the ISPS Code is far-reaching, it has nonetheless been criticised by some commentators as being too limited in its application. Such criticism is based on the fact that the Code does not apply to fishing vessels and other vessels of 500GT or less.¹⁴⁷ The irony is that, if the international community had learnt any lessons from the *USS Cole* and the *Limburg* bombings, it is surely that smaller vessels pose a far more serious threat to maritime navigation than vessels in excess of 500GT. Indeed, the ‘exemptions’ in the ISPS Code have created a gap in the framework, allowing smaller vessels to have continued access to port facilities as well as a presence in the relevant maritime zones.¹⁴⁸ In recognition of this weakness, the United States began developing a ‘Small Vessel Security Strategy’ in 2006, the details of which are still being finalised.¹⁴⁹

E(ii) Obligations of Contracting Governments in General

The successful implementation of the security measures called for under the ISPS Code is the responsibility of each contracting government.¹⁵⁰ Contracting governments are responsible for setting the security levels and providing guidance to ships (and port facilities) on how to respond to the various security levels. In setting these levels, the contracting government must consider issues such as the credibility of the threat as well as the potential consequences if the threat materialises.¹⁵¹ Where the credibility of the threat is such that a contracting government is obliged to set the

¹⁴⁷Fiona McNaught, *Effectiveness of the ISPS Code in Addressing the Maritime Security Threat* (2005) Royal Australian Navy
<http://www.defence.gov.au/adcdocs/publications2010/PublcnsGeddes2005_310310_Effectiveness.pdf>.

¹⁴⁸*Ibid.*

¹⁴⁹US Department of Homeland Security, *Factsheet: DHS Small Vessel Security Strategy* (April 28, 2008) Department of Homeland Security <http://www.dhs.gov/xnews/releases/pr_1209398073431.shtm> .

¹⁵⁰Reference to ‘contracting governments’ in this context means the Coastal State, the Port State, or the flag State, depending on the context.

¹⁵¹ISPS Code Part A, Section 4.1.

security level at ‘Level 3’, such government must issue the appropriate instructions and advise the ships (and port facilities) concerned.¹⁵² Contracting governments may delegate some of their security related duties to RSOs, but not the duty to set the appropriate security level.¹⁵³ Most importantly, it is the responsibility of contracting governments (flag States) to ensure that ships entitled to fly their flag are compliant with the ISPS Code. This responsibility is exercised through periodic inspections and surveys, as well as the issuing of the various International Ship Security Certificates.

F. SID Convention 2003

The September 11, 2001 terrorist attacks also directed the IMO’s attention to issues surrounding seafarer identification documents (SIDs) under the *ILO Seafarers Identity Documents Convention 1958*. Indeed, several studies have indicated that a high proportion of international seafarers possess fraudulent identification documents.¹⁵⁴ Therefore, given the fact that fraudulent SIDs are readily available, and that such documents pose a serious maritime security threat, the IMO was adamant that the issue be addressed as part of the maritime security framework.¹⁵⁵ To this end, the IMO Diplomatic Conference on Maritime Security invited the International Labour Organization (ILO) to work towards the development of a universal identification system that was ‘tamper-proof’.¹⁵⁶ In response, the ILO adopted amendments to the SID Convention in 2003. These amendments aim to improve the security and credibility of SIDs by requiring that the data be electronically stored on biometric identification cards that can be swiped and scanned to show proof of the

¹⁵²*Ibid.*, Section 4.2.

¹⁵³*Ibid.*, Section 4.3.1.

¹⁵⁴Martin Tsamenyi, Mary Ann Palma and Clive Schofield, ‘International Legal Framework for Seafarers and Maritime Security, Post-911’ in Rupert Herbert-Burns, Sam Bateman and Peter Lehr (eds) *Lloyds MIU Handbook on Maritime Security* (2009), 234.

¹⁵⁵*Ibid.* p. 235.

¹⁵⁶*Ibid.* p.234.

identity of the holder. The amendments also require seafarers to produce their passports in addition to their biometric identity cards when entering foreign ports - a requirement that was waived under the 1958 convention.¹⁵⁷ The 2003 SID amendments are intended to complement and supplement the 2002 SOLAS security amendments, particularly the implementation of the new maritime security measures adopted under the ISPS Code.¹⁵⁸

G. United States Bilateral Security-Related Agreements.

Outside of the (formal) international legal framework for maritime security, the United States has negotiated and reached agreement with a number of countries (on a bilateral basis), for the implementation of additional security measures aimed at safeguarding international trade¹⁵⁹ as well as suppressing and preventing the proliferation of weapons of mass destruction.¹⁶⁰ Opposition to these initiatives has come from countries such as China, who argue that the measures are really unilateral measures clothed in bilateral agreements, and may even be illegal under international law on the basis that they encroach on the sovereignty of States. However, the importance of trade and economic relations with the United States, combined with the fact that a shutdown of the United States economy would wreak havoc for smaller world economies, has resulted in many countries deciding to support these

¹⁵⁷ILO, 'New Ratification Opens the Way for ILO Convention on Seafarers ID Card' (Press Release, 18 August 2004, ROAP/04/29).

¹⁵⁸Cleopatra Doumbia-Henry, 'How Biometry Helps the Seafarer and World Trade' (2006) ILO, <http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_088015.pdf>.

¹⁵⁹Refer to the Customs Trade Partnership Against Terrorism (C-TPAT), the '24 hour Advance Manifest Rule' and the Container Security Initiative (CSI), which targets governments as well as corporations.

¹⁶⁰In the context of preventing the proliferation of weapons of mass destruction, the United States has signed bilateral Proliferation Security Initiatives (PSI) (and Ship-rider Agreements) with some of the world's largest flag States (including the Marshall Islands), giving the United States access to a considerable percentage of world fleet.

initiatives.¹⁶¹ The measures in issue include the Customs-Trade Partnership Against Terrorism (C-TPAT), the '24 hour Advance Manifest Rule', as well as the Container Security Initiative (CSI). Indeed, these initiatives not only seek the cooperation of foreign governments, but also the cooperation of foreign corporations.

G(i) Customs-Trade Partnership Against Terrorism (C-TPAT).¹⁶²

This is a voluntary arrangement between the United States and business houses worldwide, aimed at encouraging businesses to play an active role in enhancing the security of the trade and supply chain. As an incentive, the United States will accord to businesses and States implementing the C-TPAT regime, among other benefits, priority and expedited border inspections, C-TPAT training, as well as a commitment that their security and trade will be protected by the United States.

G(ii) The 24 Hour Advance Manifest Rule.¹⁶³

This rule requires 'cargo manifest information' (for cargo bound to the United States), to be submitted to US Customs and Border Protection (CBP) at least 24 hours before the cargo is loaded onto ships in a foreign port. This advance notification allows suspect and high risk containers to be identified in advance of loading and inspected at the loading port.

G(iii) The Container Security Initiative.¹⁶⁴

¹⁶¹In 2006, 47 foreign ports were participating in the CSI.

¹⁶²US Department of Homeland Security, *C-TPAT Overview* (2007) US DHS <http://www.cbp.gov/xp/cgov/trade/cargo_security/ctpat/what_ctpat/ctpat_overview.xml> .

¹⁶²US Department of Homeland Security, *Keeping Our Waters Safe, Secure and Open for Business* (2004) US DHS <<http://www.dhs.gov/xlibrary/assets/DHSPortSecurityFactSheet-062104.pdf>>.

¹⁶³Department of Homeland Security, *Keeping Our Waters Safe, Secure and Open for Business* (2004) US DHS <<http://www.dhs.gov/xlibrary/assets/DHSPortSecurityFactSheet-062104.pdf>>.
<http://www.cbp.gov/xp/cgov/newsroom/news_releases/archives/cbp_press_releases/012003/01302003.xml> .

¹⁶⁴US Department of Homeland Security, *CSI: Container Security Initiative* (September 29, 2006) US DHS <http://www.cbp.gov/xp/cgov/trade/cargo_security/csi/>.

The Container Security Initiative (CSI) is aimed at preventing terrorists from using foreign cargo containers to facilitate large scale attacks in the United States. The initiative also looks at measures to enhance the security of containerised cargo.

G(iv). Agreement Concerning the Suppression of Proliferation of Weapons of Mass Destruction and their Delivery Systems, and Related Material, by Sea (PSI Agreement)¹⁶⁵

The United States has also entered into Proliferation Security Initiative Agreements (PSI Agreements) with many countries including the Marshall Islands. Countries which have partnered with the US as part of these PSI Agreements include the Bahamas, Belize, Cyprus, Croatia, Liberia, Malta, the Marshall Islands, Mongolia and Panama.¹⁶⁶ Indeed, these countries represent some of the largest ship registries in the world, registering approximately over 60% the world's commercial tonnage.¹⁶⁷ Therefore, as a result of these PSI Agreements, the United States has the ability to board over 60% of the world's merchant fleet in order to enforce the initiative. The PSI is a measure that is targeted mainly towards the prevention of the trafficking of weapons of mass destruction (WMD) and their delivery systems by sea, and participating States have in principle agreed to allow other partner States to board their (suspect) vessels on the high seas.¹⁶⁸

The Marshall Islands and the United States signed the PSI Agreement on August 13, 2004,¹⁶⁹ with both governments expressing concern over the proliferation of WMD

¹⁶⁵Ibid.

¹⁶⁶Ibid.

¹⁶⁷US Department of State, *Ship-boarding Agreements* (2009) United States State Department <<http://www.state.gov/t/isn/c27733.htm>>.

¹⁶⁸US Department of Homeland Security, *CSI: Container Security Initiative* (2006) US Department of Homeland Security <http://www.cbp.gov/xp/cgov/trade/cargo_security/csi/>.

¹⁶⁸US Department of State, *Proliferation Security Initiative* (2009) US Department of State <<http://www.state.gov/t/isn/c10390.htm>>

¹⁶⁹US Department of State, *Marshall Islands* (2009) US Department Of State < <http://2001-2009.state.gov/t/isn/c12771.htm> .>

and their delivery systems by sea, as well as the possibility that such material could fall into the hands of terrorists.¹⁷⁰ According to the United States, the Agreement is founded on a United Nations Security Council (UNSC) Presidential Statement (dated January 31, 1992), that the proliferation of WMD constitutes a threat to peace, as well as UNSCR 1540, and the various UN conventions on nuclear weapons and WMD.¹⁷¹ UNSCR 1540 imposes a binding obligation on all State parties to suppress the proliferation of WMD by: (i) prohibiting support for non-state actors who seek to obtain such weapons¹⁷²; (ii) enacting and enforcing laws to suppress the proliferation of WMD;¹⁷³ and (iii) prohibiting persons from assisting or financing such activity.¹⁷⁴

G(v) Agreement concerning Cooperation in Maritime Surveillance and Interdiction Activities (Ship-rider Agreements).

The United States has also signed ‘Ship-rider’ Agreements with a number of States. Although these agreements target illegal activities at sea such as fisheries offences, illicit drug trafficking and people smuggling, they also supplement the security efforts under the PSI Agreements. Under these Ship-rider Agreements, law enforcement officers of coastal States are embarked on United States Coast Guard (USCG) vessels and undertake enforcement action within the maritime zones of such States. Ship-rider agreements typically target fishing vessels, go-fast vessels and recreational vessels claiming nationality of the coastal State.¹⁷⁵ The Governments of the Marshall Islands and the United States signed a Shiprider Agreement on August 5, 2008.

¹⁷⁰PSI Agreement between the Marshall Islands and the United States, paragraph 2.

¹⁷¹Such as the *Convention on the Prohibition of the Development, Production and Stockpiling of Chemical Weapons and of their Destruction*, 1993, the *Treaty on Non-Proliferation of Nuclear Weapons*, 1968, and the *Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological and Toxin Weapons and their Destruction*, 1972.

¹⁷²United Nations Security Council, ‘Non-Proliferation of Weapons of Mass Destruction’ UNSCR 1540 Paragraph 1.

¹⁷³*Ibid.*, Paragraph 2.

¹⁷⁴*Ibid.*, Paragraph 3.

¹⁷⁵Ship-rider Agreement, Article 4 (1).

5.4 DUTIES OF FLAG STATES UNDER THE INTERNATIONAL LEGAL FRAMEWORK FOR MARITIME SECURITY

The concept of the ‘freedom of the high seas’, coupled with the exclusive jurisdiction of flag States’, have rendered the flag State the pre-eminent enforcer of international rules in the maritime domain. As discussed elsewhere in the thesis, the successful implementation of any maritime-related regime depends to a large extent on effective flag State performance. This assessment could not be more accurate in the context of maritime security. The maritime security framework depends largely on the flag State to maintain the security of ships and the maritime sector as a whole.

In discussing the duties of flag States in the context of maritime security, this part looks at the maritime security regime as it existed prior to the 1985, as well as its transformation over the years up to the adoption of the 2002 SOLAS maritime security amendments. In this respect, this part interrogates the codification of the crime of piracy under the 1958 HSC and the 1982 LOSC, as well as the provisions of the SUA treaties and the 2002 SOLAS maritime security amendments. Ascertaining the duties and obligations of flag States in this wider context enables one to appreciate the dynamic nature of the threat to the overall security of the maritime sector, and the corresponding evolution in the international framework to counter the dynamics of the threat. As suggested earlier, the differences between piracy and terrorism may no longer be material, as terrorists now resort to piracy to fund their violent activities. In any case, the indispensable role of flag States under the maritime security framework is evident in a number of critical duties allocated to such States under the framework – duties which aim to ensure the security of ships and the sector as a whole.

5.4.1 The Duty to Cooperate in Suppressing Piracy

The offence of piracy was first codified as an international crime under the *1958 HSC*,¹⁷⁶ the provisions of which were replicated in the *1982 LOSC*. Under these conventions, flag States must cooperate fully in suppressing the crime of piracy on the high seas and in other areas outside of their national jurisdiction. This general obligation is imposed upon States under Article 14 of the *1958 HSC*¹⁷⁷ and under Article 100 of the *1982 LOSC*.¹⁷⁸

5.4.2 The Duty to Prosecute or Extradite Offenders

The duty to prosecute or extradite an offender is one that originates under the *SUA Convention 1988* and its Protocol on Fixed Platforms (SUA treaties). Where an attack has been perpetrated against a ship of a State party, or where an offender is found on a ship of a State party, Article 10 of the *SUA Convention 1988* obligates the flag State to apply the ‘prosecute or extradite rule.’ This rule requires the flag State to prosecute the offender, or where it decides not to proceed with prosecution, to extradite the offender to a jurisdiction that is willing to institute criminal proceedings.¹⁷⁹ The ‘prosecute or extradite’ rule was incorporated under the SUA treaties in response to the *Achille Lauro* case, designed to ensure that offenders did not escape the jurisdiction of State parties. The plethora of ‘jurisdictional claims’ allowed under the *SUA Convention, 1988* gives flag States the jurisdiction to prosecute an offender (where the offender is found on board a ship flying their flag), and regardless of the *situs* of the offence. In this situation, the flag State must act in accordance with the

¹⁷⁶See the *1958 HSC* Articles 14-22.

¹⁷⁷Article 14 of the *1958 HSC* reads: “All States shall cooperate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State.”

¹⁷⁸Article 100 of the *1982 LOSC* is titled ‘Duty to Cooperate in the Repression of Piracy’ and reads: “All States shall cooperate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State.”

¹⁷⁹*SUA Convention 1988*, Article 10

procedures set out under Article 7 of the convention, and decide whether to prosecute or extradite the offender. Where the flag State decides not to proceed with prosecution, the convention obligates the flag State to extradite the offender to a jurisdiction that is willing to institute proceedings. A flag State is duty bound under the convention to notify all States that have a right to claim jurisdiction under the convention upon apprehending an offender.¹⁸⁰

However, in order to apply the ‘prosecute or extradite’ rule effectively, flag States must take necessary steps to establish jurisdiction over ‘SUA’ offences.¹⁸¹ This obligation requires flag States to enact the necessary laws criminalising the acts defined as ‘offences’ under Article 3 of the SUA Convention, thereby vesting enforcement jurisdiction over such offences in the various State enforcement agencies, including the courts, and providing for meaningful penalties under States national laws. Without this platform, the ability of flag States to apply the ‘prosecute or extradite rule’ would be severely hampered.

5.4.3 The Duty to Ensure Proper Delivery of Suspects

Under the *SUA Convention 1988*, flag States must ensure that where an offender is found on a ship flying their flag, the master delivers the suspect in accordance with the provisions of the convention. The convention requires that in preparation for the delivery of a suspect, the flag State must ensure that the master notifies the authorities in the receiving State of his intention to deliver the suspect, and the reasons supporting his intention to do so.¹⁸² Furthermore, the flag State must ensure that the

¹⁸⁰Ibid., Article 6(5).

¹⁸¹Ibid., Article 6(1)(a).

¹⁸²Ibid., Article 8(2).

master furnishes all relevant evidence of the alleged offence located on the ship and in his possession to the authorities of the receiving State party.¹⁸³

Where the intended receiving State declines to accept delivery of the suspect, and instead requests the flag State to take custody of an alleged offender, the flag State may accept custody of the alleged offender and proceed to deal with the alleged offender in accordance with the procedures laid down under Article 7 of the convention. The flag State could otherwise refuse to take custody of an alleged offender, in which case the flag State is obligated to furnish its reasons for refusing to take custody to the intended receiving State.¹⁸⁴ Despite the objective of the convention being to close all enforcement gaps, the delivery of a suspect under these provisions remains a concern, as the convention does not clarify the course of action to be taken in the event that both the flag State and the intended receiving State refuse to take custody of the accused.¹⁸⁵

5.4.4 The Duty to Approve Ship Security Plans

The development and approval of a *Ship Security Plan* (SSP) is a requirement under Part A, Section 9 of the ISPS Code. Such a plan is intended to provide contingency measures, procedures and steps that must be carried out to prevent maritime threats, as well as in the event of an actual threat to the security of a ship. Among other considerations, the ISPS Code requires that the *Ship Security Plans* take into account: (i) measures to prevent weapons and dangerous substances from reaching the ship; (ii) measures that restrict unauthorised access to the ship; (iii) procedures to respond to a breach of security of the ship; (iv) the security responsibilities of on board personnel; (v) procedures for ‘ship to port’ interface; (vi) the designation of the *Ship Security*

¹⁸³Ibid., Article 8(4).

¹⁸⁴Ibid., Article 8(5).

¹⁸⁵Ibid., Article 10.

Officer (SSO); and (vii) procedures for the use of ship security alert systems, to name a few.¹⁸⁶ A *Ship Security Plan* is to be developed on the basis of, and in response to, security assessments *Ship Security Assessments* (SSA) carried out under the authority of the company security officer *Company Security Officer* (CSO)).

The duty to approve *Ship Security Plans* (and any future amendments to such plans) rests with flag States. Indeed, when reviewing *Ship Security Plans* for approval, flag States must refer to the *Ship Security Assessment* to ensure that the *Ship Security Plans* adequately address the findings of the *Ship Security Assessment*.¹⁸⁷ The flag State may, in its discretion, delegate this approval function to a *Recognized Security Organization* (RSO), provided that such organisation was not involved in the assessment process, or the development of the plans themselves. SSPs must be kept in secure locations and protected against unauthorised access or disclosure,¹⁸⁸ and are not subject to port state control inspections unless there is clear evidence of non-compliance by the vessel concerned.¹⁸⁹

4.4.5 The Duty to Verify Compliance of Ships

The ISPS Code requires flag States to carry out verification and inspection processes to ensure ships flying their flag remain compliant with the provisions of the ISPS Code. Section 19 of the Code provides for a number of verification inspections, obligating flag States to conduct an “initial verification,” a “renewal verification,” an “intermediate verification,” as well as “additional verifications”.

¹⁸⁶The complete list of factors to be taken into account when developing and approving a SSP is set out under Part A Section 9.4.

¹⁸⁷ISPS Code Part A Section 9.3.

¹⁸⁸*Ibid.*, Section 9.7.

¹⁸⁹*Ibid.*, Section 9.8.1.

The initial verification constitutes the very first inspection of the ship, and is carried out before a ship begins service. The initial verification is designed to confirm that the security system on the ship complies with the requirements of the ISPS Code, and that associated security equipment on the ship is being maintained in proper working order.¹⁹⁰ After the initial verification, no changes may be made to the security system on board the ship (or the related security equipment), without the approval of the flag State.

The renewal verification process also verifies that the security system on the ship is adequate, and that security related equipment is in proper working order. However, this verification process is to be carried out at intervals to be determined by the flag State, provided the intervening period between inspections does not exceed five years.¹⁹¹

The ISPS Code further requires that flag States carry out an intermediate verification of ships flying their flag, thereby ensuring that such ships remain compliant with the ISPS Code. Section 19.1.3 of the Code specifies that this intermediate verification be carried out “between the second and third anniversary date of the certificate, as defined in regulation I/2(n).” These intermediate verifications again focus on the ship’s security system and related equipment to ensure they have not been compromised. Moreover, where the flag State deems it necessary, it may conduct additional verification inspections to those outlined above. These additional inspections may be carried out at any time and may focus on any aspect relating to the

¹⁹⁰Ibid., Section 19.1.1.

¹⁹¹Ibid., Section 19.1.4

security of the ship.¹⁹² Flag States may conduct these verification inspections themselves, or may delegate the function to an RSO.¹⁹³

5.4.6 The Duty to Issue or Endorse International Ship Security Certificates (ISSC)

The issuing of the ISSC represents the second stage of the verification process discussed in Section 19.1 above. The issuing of these certificates indicates a successful verification inspection and compliance by the ship with the requirements of the ISPS Code. An ISSC, however, is only issued after the *initial verification* and the *renewal verification*, provided such verifications confirm compliance with the ISPS Code.¹⁹⁴ The period of validity of the ISSC is determined by the flag State, but cannot exceed five years.¹⁹⁵ The ISPS Code Part A Section 19.4 also provides for an interim certification system to help ships transition into the ISPS Code regime.

It is the responsibility of the flag State to issue ISSCs. However, like other technical and maritime security related functions, the flag State may choose to delegate this certification function to a RSO.¹⁹⁶ Furthermore, where the circumstances so warrant, the flag State may request the administration of another contracting party to conduct the required *verifications* and to issue the ISSCs on its behalf.¹⁹⁷ In such cases, the ISSC must contain a statement to this effect. ISSCs issued under these circumstances are deemed to have the same force and effect as if issued by the flag State. Copies of

¹⁹²Ibid., Section 19.1.4.

¹⁹³Ibid., Section 19.1.2

¹⁹⁴Ibid., Section 19.2.1.

¹⁹⁵Ibid., Section 19.2.1.

¹⁹⁶Ibid., Section 19.2.2.

¹⁹⁷Ibid., Section 19.2.3.

the certificates, and all verification reports issued in this manner, must be obtained and retained by the flag State.¹⁹⁸

5.4.7 The Duty to Set Ship Security Levels

The duty to set the appropriate security level for ships is a critical function - one which rests with the flag State alone. Unlike other technical flag State functions under the security framework, the ISPS Code prohibits the delegation of this function to RSOs.

Setting the appropriate security level for ships is a three step process. The first step involves assessing the security situation, either worldwide or in a localised area. This is followed by a determination as to what security level is appropriate, given the security situation. In making a determination, the ISPS Code requires the flag State to take into account factors such as the credibility of the threat as well as the potential consequences if such a threat were to materialise.¹⁹⁹ Depending on the nature of the threat, the flag State can either set the security level at *Security Level 1*, *Security Level 2*, or *Security Level 3*.

Security Level 1 indicates that a ship is operating under normal circumstances and that there are no threats to the ship. As such, under *Security Level 1*, vessels (and ports) are required to maintain only the “minimum” protective security measures. *Security Level 2*, on the other hand, indicates a “heightened” threat level, and requires ships (as well as the ports that service such ships) to maintain “additional” security measures for as long as the heightened security threat exists. In the event of a serious, credible and imminent threat, flag States are obligated under the ISPS Code to set the security level

¹⁹⁸Ibid., Section 19.2.3.1.

¹⁹⁹Ibid., Section 4.1.

at *Security Level 3*. This security level indicates that the threat is “exceptional”, with ships (and the ports that service such ships) facing a “probable and imminent” security incident. Under these circumstances, ships are required to maintain “further” protective security measures for the duration of the threat.

Security Level 3 should only be activated in exceptional security situations.²⁰⁰ Where a flag State determines that it is appropriate to raise the threat level to *Security Level 3*, the flag State is obligated under the ISPS Code to communicate this fact to the IMO, other contracting States and the relevant port authorities. The flag State must also direct its ships, any affected ports, and other relevant parties on how to cooperate in order to mitigate the threat.²⁰¹ The duty to set the relevant security threat level is a critical duty which can only be carried out by the flag State (in regard to ship security). For this reason, it is deemed a non-delegable duty under the ISPS Code.²⁰²

5.4.8 The Duty to Set Requirements for Declaration of Security (DoS)

In addition to setting the appropriate security levels, flag States are required under the ISPS Code to define the circumstances under which a *declaration of security (DoS)* must be completed. The *declaration of security* is an agreement between two ships, or between a ship and a port facility, setting out each of their responsibilities and security requirements in the event of a security threat. A *declaration of security* must be completed whenever an interface is likely to take place and the ships concerned, or the ship and port facility concerned, are operating under different security arrangements. For instance, in the UK, a *declaration of security* must be completed where the ship intending to enter a port facility is operating at a higher security level

²⁰⁰IMO, ‘FAQs on ISPS Code and Maritime Security’ (2002) IMO
<http://www.imo.org/safety/mainframe.asp?topic_id=897#what>.

²⁰¹ISPS Code Part A, Section 4.2.

²⁰²Ibid., Section 4.3.1.

than the port facility concerned. A *declaration of security* is also required at all interfaces where the ship is operating under Security Level 3, or where the ship or port concerned has experienced a security incident.²⁰³

Port facilities may also initiate a *declaration of security* under the same circumstances outlined above. For ships, the *declaration of security* request is usually the responsibility of the *Ship Security Officer*, while in the case of port facilities, the *declaration of security* is initiated by the *Port Facilities Security Officer (PFSO)* where the ship intends to dock. The purpose of the *declaration of security* is to essentially mitigate the differences that may exist in security arrangements during an interface, thereby allowing for greater cooperation and a better response to security incidents.²⁰⁴

5.4.9 The Duty to Issue a Continuous Synopsis Record (CSR)

Under the SOLAS Convention 1974 Regulations, flag States have a duty to issue a Continuous Synopsis Record (CSR) to ships sailing their flags. The regulation was one of the new measures adopted at the SOLAS Diplomatic Conference convened in December 2002, and is found under SOLAS Regulation XI-1/5.

The duty to issue ships with a *Continuous Synopsis Record* applies to all passenger vessels and cargo vessels of 500 GT or more. At a minimum, the *Continuous Synopsis Record* must contain the name of the ship, the nationality of the flag, the ship's date of registration under its current flag, the ship's identification numbers, the name of the ship's port of registry, as well as the name and address of ship's registered owner(s). Flag States must ensure that each CSR is sequentially numbered in accordance with

²⁰³ UK Maritime and Coast Guard Agency, *Declaration of Security* UK Maritime and Coast Guard Agency <http://www.mcga.gov.uk/c4mca/mcga-dops_ms_declaration_of_security.pdf>.

²⁰⁴ ISPS Code Part A, Section 5.

the date of transfer of nationality, and further, that the original version of the *Continuous Synopsis Record* remains on board the ship at all times throughout its life.²⁰⁵ The flag State must retain copies of all *Continuous Synopsis Record* issued to ships flying its flag.²⁰⁶ The essence of the *Continuous Synopsis Record* is to provide an accessible record of the history of each ship, thereby enabling authorities to effectively identify, and where necessary, track such ships.

5.4.10 The Duty to Cooperate in the Implementation of the Long Range Identification and Tracking (LRIT) System

Chapter V/19-1 of the SOLAS LRIT Regulations also imposes certain duties and obligations on flag States to ensure the effective implementation of the LRIT system. The primary task of a flag State under the system is to identify the LRIT Data Centre to which ships flying its flag may report. To this end, the flag State may either set up its own data centre or join a regional or cooperative Data Centre. If the flag State decides to join a regional or cooperative Data Centre, it will be the flag State's obligation to finalise the necessary provider agreements (ASP and CSP agreements) and organise the necessary links between the ships that fly its flag and the selected Data Centre. The flag State is then required to transmit to the selected Data Centre the names of the ships that will be reporting their IMO identification numbers, call signs and Maritime Mobile Service Identities. In the case of newly registered ships, the flag State must also transmit the date and time of the transfer of flag, as well as the last nationality of the ship. Furthermore, in the event of the transfer of a ship to another administration, or where a ship is permanently taken out of service, the flag State is required to report to the Data Centre the ship's name, IMO identification number, the

²⁰⁵ See also the 'Format and Guidelines For the Maintenance of Continuous Synopsis Record' (IMO Resolution A.959(23) as amended by MSC Resolution MSC.198(80)).

²⁰⁶ *Format and Guidelines For the Maintenance of Continuous Synopsis Record* (IMO Resolution A.959(23) as amended by MSC Resolution MSC.198(80)).

date and time of the transfer, and the nationality of the new flag (if known). Finally, flag States are required under the LRIT system to ensure that ship-borne LRIT system equipment complies with the minimum requirements of Regulation V/19-1(4). Accordingly, the responsibility for verifying and approving the installation and specification of the onboard LRIT equipment rests with the flag State. The flag State may, at its discretion, delegate these services to a provider such as an ASP.

5.5 CONCLUSION

Threats to the safety and security of the maritime sector have existed since time immemorial, and in many different forms. Over the years, however, these threats have evolved and become more complex. Piracy and privateering were the norm in the mid 16th century, persisting for some time until nation-states began embracing trade and commerce. Today, the threat has evolved and mutated. Indeed, ‘piracy’ (in the classical sense) is no longer ‘piracy’ (in the legal sense), as the motivation and location of piratical attacks do not sit comfortably with the traditional legal formulation of the crime. Then there are ‘sea robberies’, where the attacks are piratical in nature, but are legally deficient in one or more elements of the crime of piracy (as it exists under the 1982 *LOSC*). The terrorist attacks of September 11, 2001 were the driving force behind the international community’s decision to take the necessary measures to keep up with the changing face of the threat, with a raft of new maritime security measures being adopted. In doing so, and in recognition of the fundamental principles of international law, flag States such as the Marshall Islands were accorded paramount responsibility for the security of ships that trade under their flag.

Pursuant to the *1982 LOSC*, the SUA Treaties, and the maritime security amendments to the *SOLAS Convention 1974*, the Marshall Islands has been accorded a number of key duties and obligations that it is expected to carry out effectively in its capacity as a flag State. These duties include the duty to cooperate in the suppression of piracy under the *1982 LOSC*, the duty to ensure the proper delivery of suspects under the SUA treaties, and the duty to issue CSRs. There is also the ISPS Code, perhaps the most far reaching security measure to be implemented thus far. This instrument also imposes a number of duties on the Marshall Islands, including the duty to ensure its vessels comply with the provisions of the Code, the duty to issue ISSCs, and the duty to set the security levels for ships. The international legal framework requires the Marshall Islands to carry out these duties in an effective manner; a failure to do so not only jeopardises the security of its ships, but also the security of the maritime sector as a whole. An analysis of whether the Marshall Islands is indeed living up to its obligations under the maritime security framework is undertaken in the next chapter.

CHAPTER 6

ANALYSING THE PERFORMANCE OF THE MARSHALL ISLANDS OF ITS FLAG STATE DUTIES UNDER THE MARITIME SECURITY FRAMEWORK.

6.1 INTRODUCTION.

Having ascertained and analysed the nature and extent of the duties of the Marshall Islands as a flag State under the maritime security framework, it is critical to draw conclusions as to whether the Marshall Islands has effectively discharged such duties under the framework.

The chapter thus begins by analysing the steps taken by the Marshall Islands to discharge its duties under the framework, testing the performance of each specific duty and then providing an analysis of the Marshall Islands' performance against that duty. It is important to state from the outset that the Marshall Islands has taken a number of positive steps to enable it to carry out its duties effectively, and the Marshall Islands appears to be discharging its duties in accordance with international law. However, it is also clear that its performance is being hampered by a number of issues which, if not addressed immediately, could potentially undermine performance and thus the security of its vessels.

6.2 OVERVIEW

This part examines the performance of the Marshall Islands of its flag State duties in the context of the vessels trading under its flag. In doing so, this part examines the steps which the Marshall Islands has taken in key performance areas, scrutinising them against the requirements of the maritime security framework. To this end, this

part examines the efforts of the Marshall Islands in terms of policy development, the effectiveness of its domestic legal framework for maritime security, the administrative and institutional framework (which seeks to facilitate the discharge of its duties under international law), and most importantly, the enforcement framework (which is designed to ensure the compliance of shipowners and operators with the Marshall Islands' domestic legal regime). Satisfactory effort in these critical areas is essential if the Marshall Islands is to carry out its duties and obligations effectively as a flag State, under this framework.

6.2.1 Policy Framework for Maritime Security

The issue of maritime security continues to pose a major challenge for the international community in today's rapidly changing world. The safety and security of ships, their passengers, crew, cargo, and the maritime shipping industry as a whole, can no longer be guaranteed without a comprehensive security framework which promotes global cooperation. Indeed, issues of maritime security have long been a concern for the international community and competent international organisations, but the events of September 11, 2001 propelled the adoption of new measures under the SOLAS 1974 Regulations - measures designed to ensure for the most part, the security of the maritime sector.

As a flag State, the Marshall Islands has become the third largest ship registry world worl-wide,¹ with GRT exceeding 75 million.² As discussed in Chapter 2 above, this

¹IRI, *Marshall Islands Now Ranked As 3rd Largest Open Registry* (Press Release, January 27, 2010) 1. < <http://www.register-iri.com/forms/upload/MI%20Ranks%203rd%20Largest%20Open%20Registry%2027%20January%202010.pdf> > .

²IRI, *Marshall Islands Now Ranked As 3rd Largest Open Registry* (Press Release, January 27, 2010) 1. < [http://www.register-](http://www.register-iri.com/forms/upload/MI%20Ranks%203rd%20Largest%20Open%20Registry%2027%20January%202010.pdf)

tonnage is spread throughout the world, in regions as far as South East Asia and the Indian Subcontinent,³ the Persian Gulf,⁴ Africa,⁵ the Red Sea, Latin America⁶ and the Caribbean Sea.⁷ Moreover, each year thousands of seafarers, passengers and pieces of cargo are transported on vessels registered under the Marshall Islands flag. In the context of the maritime security framework, the sheer size and complexity of this tonnage could pose be a nightmare for some States, and thus the Marshall Islands cannot afford to adopt a *laissez faire* attitude in the discharge of its flag State duties. To the contrary, it is imperative that the Marshall Islands carry out such duties in the manner contemplated under the maritime security framework.

However, in order for this to occur, the Marshall Islands must first lay down the necessary foundation, a key element of which is a comprehensive policy framework to guide its activities as a flag State under the international legal framework. By having a policy framework in place, a flag State eschews the *ad hoc* performance of its duties, while simultaneously enjoying the flexibility that comes from not having to rely solely on the text of the relevant piece of legislation. Indeed, since September 11, 2001, an increasing number of States have developed and implemented comprehensive policies, while others have reformed or enhanced existing policy guidelines to accommodate the new security measures that have been adopted at the international level.

iri.com/forms/upload/MI%20Ranks%203rd%20Largest%20Open%20Registry%2027%20January%202010.pdf > .

³East Timor, Cambodia and India (among other ports).

⁴Um Quasr, Syria and Iran (among other ports).

⁵Gulf of Aden, ports in Morocco, Nigeria, Cameroon, Equatorial Guinea, Guinea-Bissau, Liberia, Madagascar, Mauritania, Republic of Congo, Sao Tome and Principe.

⁶Venezuela and Cuba.

⁷UNCTAD, 'Review of Maritime Transport 2009' (A Report to the United Nations) Table 13, 55.

Developed in 2004, the draft US maritime security policy urges the government, in the interests of US trade, to take necessary steps to prevent terrorist attacks, maximise awareness of maritime security issues, and enhance international relations (especially with allies).⁸ The UK's security policy emphasises risk assessment, developing a security awareness culture, enhancing training and professionalism, and cooperating fully in fulfilling obligations under international agreements.⁹ Meanwhile, Canada's maritime security policy focuses on domain awareness, responsiveness, as well as collaboration with other States to safeguard foreign waters, international waters and Canadian waters, to name a few.¹⁰ These States obviously value the significance of sound policy, having in place the right policy aims to maximise their efforts under the maritime security framework.

In the case of the Marshall Islands, however, no discernible policy framework on maritime security is available. This is indeed a grave concern, given the size of the Marshall Islands fleet, the global spread of the registry's tonnage, and the substantial numbers of passengers, crew and cargo that routinely travel on its flag vessels. The urgent need for the Marshall Island to have in place a sound policy framework is further compounded by the fact that more than ten years have passed since the attack on the *USS Cole* and the September 11, 2001 terrorist attacks in New York. The failure to develop a comprehensive policy framework represents a weakness in the

⁸Federation of American Scientist: Intelligent Resource Program, *National Security Presidential Directives (NSPD) George W. Bush Administration* (March 2, 2010) <www.fas.org/irp/offdocs/nspd/nspd41.pdf>.

⁹UK Cabinet *HMG Security Policy Framework* (December 2008) <www.cabinetoffice.gov.uk/media/111428/spf.pdf>.

¹⁰Gerry Frappier, 'Maritime Transportation Security: Who Should Guard the Coast?' Presentation to the Conference held by Centre for Foreign Policy Studies, Dalhousie University, 10-12 June 2005 <www.centreforforeignpolicystudies.dal.ca/pdf/.../msc2005frappier.ppt>.

performance of the Marshall Islands as a flag State and could very well undermine its efforts to perform under the maritime security framework.

6.2.2 Legislative Framework for Maritime Security

The efforts of the Marshall Islands to prevent terrorist attacks and similar acts of violence in the maritime sector are also unlikely to succeed without the support of a comprehensive domestic legislative and regulatory framework. Indeed such a framework must incorporate and implement measures called for under the international legal regime on maritime security. Therefore, as part of their obligations under the international legal framework, flag States such as the Marshall Islands are expected to accede to or ratify the various instruments that make up the international legal framework for maritime security.

A. Ratification of International Instruments

As noted in the previous Chapter, the international legal framework for maritime security is built upon a number of international instruments.¹¹ Ideally, responsible flag States are expected to ratify these instruments, thereby providing the basis for their subsequent promulgation under the relevant domestic laws.¹² This is particularly the case for the Marshall Islands, as it is a constitutional requirement that international conventions and other international instruments be ratified by Parliament if they are to be enforceable in the Marshall Islands.¹³

¹¹1982 LOSC, the SUA Convention 1988 and its Protocol on Fixed Platforms Located on the Continental Shelf, 1988, the 2005 SUA Protocols, as well as the 2002 amendments to the 1974 SOLAS Convention Regulations.

¹²IMO, 'Code for the Implementation of Mandatory IMO Instruments, IMO Resolution A.973(24) paragraph 7 (Initial Action) adopted on December 1, 2005.

¹³Constitution of the Marshall Islands, Article V, Section 1 (4). A copy of the Constitution is available at: www.paclii.org.

To date, the Marshall Islands is a party to the 1982 *LOSC*,¹⁴ the *SUA Convention 1988* and its Protocol on Fixed Platforms Located on the Continental Shelf, 1988,¹⁵ and the *SOLAS Convention 1974*.¹⁶ The Marshall Islands has also ratified other anti-terrorism related conventions, including the *International Convention Against the Taking of Hostages*, the *International Convention for the Suppression of Terrorist Bombings*, the *International Convention for the Suppression of the Financing of Terrorism*¹⁷ the *Convention on the Physical Protection of Nuclear Material*,¹⁸ and the *Convention on the Marking of Plastic Explosives for the Purpose of Detection*¹⁹.

Furthermore, the participation of the Marshall Islands in a number of regional initiatives, particularly the 1992 Honiara Declaration (Transnational Crimes Enforcement Cooperation)²⁰, the 1997 Aitutaki Declaration on Regional Security,²¹ the 2002 Nasonini Declaration on Regional Security²², and the Biketawa Declaration²³, must be complimented. These regional instruments recognise the fundamental importance of maintaining ‘security’ in the Pacific region, and call upon governments to act cooperatively in order to maintain security in the Pacific region. On July 12-13, 2010, Australia hosted the Pacific Islands Forum Ministers Meeting to discuss ways to enhance maritime security cooperation in the Pacific. The Marshall Islands was represented at the meeting by the Minister for Resources and

¹⁴The Marshall Islands acceded to the 1982 *LOSC* on August 9, 1991.

¹⁵The Marshall Islands ratified the *SUA Convention* on November 29, 1994 and the 1988 Protocol on October 16, 1995.

¹⁶The Marshall Islands acceded to the *SOLAS 1974* on April 26, 1988.

¹⁷The Marshall Islands ratified these Conventions on January 27, 2003.

¹⁸The Marshall Islands ratified this Convention on February 7, 2003.

¹⁹The Marshall Islands ratified this Convention ratified on February 6, 2003.

²⁰ Pacific Islands Forum Secretariat, ‘*Security*’ (2002) PIFS <
<http://www.forumsec.org/pages.cfm/political-governance-security/security/>>

²¹*Ibid.*

²²*Ibid.*

²³*Ibid.*

Development, the Minister for Justice, the Police Commissioner and the Deputy Director of the fisheries body - the Marshall Islands Maritime Resources Authority (MIMRA). That the Marshall Islands ratified and acceded to several international instruments post September 11, 2001, and has visibly participated in various regional initiatives, suggests that the Marshall Islands is engaging with the international maritime security framework in a proactive way. However, the commitment of the Marshall Islands to the aims of the maritime security framework, and the Marshall Islands' ability to effectively discharge its flag State duties, can only properly be measured in terms of its performance at the domestic level.

B. The Domestic Legislative Framework for Maritime Security.

Under the Constitution of the Marshall Islands, maritime security measures adopted under the relevant international instruments - namely, the piracy provisions of the 1982 *LOSC*, the SUA treaties, the 2005 SUA Protocols and the 2002 SOLAS maritime security amendments, require domestic legislation to have force and effect.²⁴ The ILO *SID Convention* (amended in 2003) is also an important component of the IMO's maritime security framework.

Following the terrorist attacks on New York, the Pacific Island countries, under the auspices of the Pacific Islands Forum Secretariat (PIFS), enacted several pieces of legislation on terrorism.²⁵ These legislations sought to facilitate cooperation among Pacific Island countries in terms of the collection and admissibility of evidence against alleged terrorists, the transfer of suspects and witnesses, the taking into custody of suspects, as well as the disposition of proceeds of crimes. These initiatives

²⁴See Article V Section 1 (4) of the Constitution of the Republic of the Marshall Islands.

²⁵Such as the *Anti-Terrorism Act 2003*, *Mutual Legal Assistance Act 2003*, the *Anti-Money Laundering Act 2003*, and the *Proceeds of Crimes Act 2003*.

were incorporated into Marshall Islands domestic law under the *Counter-Terrorism Act 2002*, the *Mutual Assistance in Criminal Matters Act 2002*, the *Foreign Evidence Act 2002*, and the *Proceeds of Crime Act 2002*.

B(i). The Counter-Terrorism Act 2002.²⁶

The *Counter-Terrorism Act 2002* was enacted on November 11, 2003, as part of the raft of post-9/11 legislative activities aimed at fulfilling the obligations of the Marshall Islands under the various United Nations Counter-Terrorism Resolutions.²⁷ In particular, the Act sought to implement United Nations Security Council Resolution 1373 (UNSCR 1373) and other anti-terrorism related instruments.²⁸ UNSCR 1373 was adopted by the United Nations Security Council under Chapter VII of the UN Charter, calling upon governments to prevent terrorist attacks, prevent and suppress the financing of terrorism, deny support and safe havens to terrorists, criminalise terrorist activities under the domestic legal framework of States, as well as cooperate fully in the dissemination of critical information. Before proceeding further, perhaps it is necessary to understand the legal impacts of United Nations Resolutions, since the obligation to enact legislation, emanates from *UNSCR 1373*. Resolution 1373 was adopted by the UNSCR under Chapter VII of the UN Charter.

The two main bodies of the United Nations that regularly adopts Resolutions are the General Assembly (UNGA) and the Security Council (UNSC), and the legal implications of Resolutions adopted by these bodies differ from the other.²⁹

²⁶See Annex '5' Below.

²⁷ Ibid.

²⁸ Adopted under Chapter VII of the UN Charter.

²⁹ Paul Norman, 'The United Nations and counter-terrorism after September 11: towards an assessment of the impact and the prospects of counter-terror 'spill-over' into international criminal justice cooperation (Paper to British Society of Criminology Conference 6-9th July 2004, University of Portsmouth) 4.

Generally, the Resolutions adopted by the General Assembly are termed as ‘non-binding’, as the UNGA lacks the legal authority to declare international law, so as to legally bind States.³⁰ The UNSCR on the other hand, may adopt resolutions under Chapters VI and VII of the UN Charter. Again the legal implications of Resolutions adopted under these two Chapters, differ from the other.³¹ Under Chapter VI of the Charter³², the UNSC may only call on parties to a conflict, to resolve such conflict through dialogue and negotiations, but does not impose stringent obligations on the parties.³³ Chapter VII³⁴ Resolutions on the hand, however, have binding effect on States. In this case, the UNSCR has the powers to issue resolutions that require the compliance of States.³⁵ Therefore given that UNSCR 1373 was adopted under Chapter VII of the UN Charter, UN member States, including the Marshall Islands, has an obligation to put in place the necessary legal framework to combat terrorism in all its forms.

In essence, the *Counter-Terrorism Act 2002* achieves three things. First, it prohibits acts of terrorism and deems every person that engages in terrorist acts to be guilty of an offence (if proven beyond a reasonable doubt).³⁶ Second, it subjects terrorists to severe criminal penalties, including imprisonment for a term of up to 30 years or a

³⁰Eli. E Hertz, ‘The Legal Effect of UN Resolutions’(2007) 2.

³¹See UN Charter Articles VI and VII.

³²UN Charter Chapter VI - ‘*Pacific Settlement of Disputes*’.

³³UN Charter Article VII – (1)The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice. (2) The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means. See also Eli E. Hertz *loc. cit.*

³⁴UN Charter Chapter VII – *Actions With Respect to Threats to peace, Breaches of peace, and Acts of Aggression.*

³⁵UN Charter Chapter VII Articles 39, 40 and 41.

³⁶*Counter-Terrorism Act 2002*, Section 106.

fine of up to \$100,000,000.³⁷ Third, the Act prescribes that no statute of limitation applies in the prosecution of persons suspected of having engaged in terrorist activities in the Marshall Islands.³⁸ Fourth, recognising the possibility of transnational incidents, the *Counter-Terrorism Act 2002* sets out cooperative measures to combat terrorist elements, such as providing extradition measures³⁹, mutual legal assistance⁴⁰, intelligence sharing, measures that facilitate the transfer of suspects⁴¹, as well the denial of safe havens for terrorists⁴². The Act also prohibits the violation of international conventions, such as those concerning the financing of terrorism, weapons of mass destruction, internationally protected persons, hostage taking, terrorist bombings and plastic explosives, as well as civil aviation and maritime navigation⁴³. Of particular interest is Section 135 of the Act, which seeks to criminalise offences created under the SUA treaties. In addition, Section 135 criminalises activities that contravene the provisions of the conventions listed in Annex I⁴⁴ of the *SUA Convention 1988*, prescribing a maximum penalty of one billion US dollars where WMD are involved in such criminal activity.

B(ii) The Mutual Assistance in Criminal Matters Act 2002

³⁷ Ibid., Section 107(1).

³⁸ Ibid., Section 107(4).

³⁹ Ibid., Section 114.

⁴⁰ Ibid., Section 115.

⁴¹ Ibid., Section 116.

⁴² Ibid., Section 119.

⁴³ (i) Convention on Offences and Certain Other Acts Committed on board Aircraft (1963); (ii) Convention for the Suppression of Unlawful Seizure of Aircraft (1970); (iii) Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971); (iv) Convention on the Prevention of and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (1973); (v) International Convention against the Taking of Hostages (1979); (vi) Convention on the Physical Protection of Nuclear Material (1980); (vii) Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation (1988); (viii) Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (1988); (ix) Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (1988); (x) Convention on the Marking of Plastic Explosives for the Purpose of Detection

⁴⁴ See the Conventions listed herein-above (footnote 34).

The aim of the *Mutual Assistance in Criminal Matters Act 2002* is to regulate international cooperation in the investigation and prosecution of criminal matters (including terrorism related matters), committed across national boundaries. In brief, the Act sets out the procedures and the authority of the Marshall Islands to make international requests for assistance in terms of the collection and exchange of evidence, as well as the transfer of suspects and witnesses. Pursuant to Section 411 of the Act, foreign authorities may request the Attorney General of the Marshall Islands to assist in the collection of evidence through search warrants, or other evidence gathering-orders. When a request is received, the Attorney General, acting through authorized persons may apply to the High Court for a search warrant or other evidence gathering orders. The High Court may, on probable cause grant such orders.

B(iii) Foreign Evidence Act 2002 and the Proceeds of Crimes Act 2002

The *Foreign Evidence Act 2002* regulates the manner in which the Marshall Islands may request evidence from foreign jurisdictions, and the form of evidence that may be transferred to the Marshall Islands (and vice versa). The Act also lays down the rules of admissibility relating to the collection of such foreign evidence. Section 207 of the Foreign Evidence Act requires that for evidence to be admissible, that such evidence be taken before the courts under Oath or Affirmation, as well as under caution, or admonition that would be acceptable to the courts in the foreign country. The *Proceeds of Crimes Act 2002*, sets out procedures and measures for identifying, tracing, freezing, seizing and impounding proceeds of serious crimes and other property used in the commission of serious crimes.

B(vi) The Regulations issued under the SOLAS Convention 1974 Maritime Security Amendments

In addition to the legislation discussed above, the Marshall Islands Maritime Administrator has, pursuant to its powers under the *Maritime Administrations Act 1990*, promulgated the necessary regulations incorporating the new maritime security measures adopted in December 2002 under the *SOLAS Convention, 1974*, including the ISPS Code, the LRIT Regulations, the AIS and CSR. Briefly, the LRIT regulations govern the reporting by ships of their positions to flag states or to certain database centres as a measure to prevent against terrorist attacks. So that the coastal States, or port States are able to identify a threat even before a vessel reaches their coast or port. The AIS system on the other hand, however is similar in concept but its purpose is for traffic management and operates on shorter distances.

6.2.3 Enforcement Arrangements

The (local) enforcement of maritime security measures called for under the international security framework involves a number of entities, but as the flag State, the Marshall Islands is ultimately responsible for ensuring that such measures are implemented in accordance with the terms of the framework. The flag State administration, RSOs, Port State Control authorities, as well as the shipowners and operators themselves, all have obligations under the Marshall Islands domestic legal framework to ensure that flag State functions are being carried out effectively.

A. The Role of the Flag State Administration

Under the Marshall Islands maritime security framework, flag State duties are carried out by the Marshall Islands Maritime Administrator, pursuant to the *Maritime Administrations Act* and the Joint Venture Agreement between TCMI and the Government of Marshall Islands. As the Maritime Administrator, TCMI is responsible for ensuring that the flag State duties of the Marshall Islands are being carried out in

an effective manner. TCMI performs these duties in the context of the Marshall Islands' domestic legal framework and through the regulations it is empowered to make under the *Maritime Administrations Act*. Additionally, TCMI, in its role as the administrator of the flag, periodically issues 'Marine Notices', 'Marine Safety Advisories' and similar directives to shipowners, operators, inspectors and other RSOs, requesting their cooperation, alerting them to new rules or changes in security levels, or merely providing them with new information on a particular issue. In fact, TCMI issued a number of 'Marine Safety Advisories' and 'Marine Notices' after the new security measures were adopted in 2002, alerting ship owners, operators and the responsible classification societies that new security measures had been approved.

Marine Notice No. 2-011-16 (Rev.8/09) advised shipowners, operators, masters, officers, inspectors and recognised organisations of the need to implement the measures in the ISPS Code and the LRIT system.⁴⁵ Marine Notice 2-011-17, addressed to all shipowners, operators, masters, officers and recognised organisations, explains the requirements for AIS, the performance standards required for AIS as well as the guidelines for installing AIS equipment.⁴⁶ Marine Notice No.2-011-18 explained the requirement for *Ship Security Alarm Systems* as well as the technical guidelines for developing and installing these systems in conformity with SOLAS 1974, Regulation XI-2/6. Marine Safety Advisories 47-10, 46-04 and 70-04 advised the regional offices of the Marshall Islands flag administration, as well as ship inspectors, masters, owners, operators and managers of the appointment of the relevant *Recognized Security Organizations* for the purposes of the ISPS Code and the

⁴⁵IRI, *Maritime Security Links* (2010) IRI < <http://www.register-iri.com/index.cfm?action=page&page=244&fromPage=5>>.

⁴⁶IRI, *Maritime Security Links* (2010) IRI < <http://www.register-iri.com/index.cfm?action=page&page=244&fromPage=5>>.

LRIT system, and provided clarification on the *Continuous Synopsis Record* and *Ship Security Alarm System* Alert back up services respectively.

However, TCMI, as the Maritime Administrator, maintains overall responsibility for ensuring the proper discharge of Marshall Islands flag State duties under the maritime security framework on behalf of the government. A number of core flag State functions under the security framework are highly technical, and therefore may only be effectively carried out by experts and persons with specialised training. The IMO itself is aware of this fact, and therefore acknowledges that flag States lacking the necessary expertise may need to delegate certain functions to persons and organisations with the requisite skill and knowledge. As such, the flag State functions of the Marshall Islands that are technical in nature are routinely delegated to classification societies and similar recognised organisations (ROs). Regarding technical functions under the maritime security framework, TCMI routinely delegates such functions to classification societies and RSOs.

B. The Role of Classification Societies and Recognised Organisations.

Classification societies are expert organisations that set the appropriate technical standards in relation to the design and construction of ships.⁴⁷ When engaged by flag States, these societies have the responsibility for carrying out technical surveys of ships, ships hulls and other superstructures of the ship, thereby ensuring that such ships maintain ‘class status’ and are able to be issued the necessary statutory certificates. As acknowledged above, much of the technical work of the Marshall Islands flag State administration under the maritime security framework is delegated

⁴⁷International Association of Classification Societies (IACS), *What Are Classification Societies?* (January 2004) IACS < <http://www.hellenicshippingnews.com/pdf/Classmono.pdf> >.

to, and performed by, classification societies and recognised security organisations. Functions such as the conduct of a *Ship Security Assessment*, the development and approval of a *Ship Security Plans*, as well as the various inspection, verification and certification processes, are flag State functions that are routinely delegated by TCMI to classification societies and *Recognized Security Organizations*.⁴⁸ In exercising this option under the ISPS Code, TCMI has engaged the following classification societies: the American Bureau of Shipping (ABS), Bureau Veritas (BV), China Classification Society (CCS), Det Norske Veritas (DNV), Germanischer Lloyd (GL), Lloyds Register (LR), Russian Maritime Register of Shipping (RS), Korean Register of Shipping (KRS), Nippon Kaiji Kyokai (NKK) and RINA Services S.p.A. All of these classification societies are members of the International Association of Classification Societies (IACS).

The functions delegated to these organisations include the review and approval of SSPs, verification audits of onboard SSPs, as well as the issuing of ISSCs.⁴⁹ In the case of SSAs, TCMI has engaged The Obrien's Group (TOG), Securewest International and Gray Page.⁵⁰ To ensure compliance with LRIT reporting requirements, TCMI has, on behalf of the Marshall Islands, engaged Pole Star, Transas Telematics Limited (Transas) and Fulcrum Maritime Systems Limited.⁵¹

Organisations are selected by the Maritime Administrator on the basis of their expertise in matters of maritime security. In particular, the Maritime Administrator

⁴⁸See ISPS Code Sections 9 and 19.

⁴⁹IRI, Maritime Security Links, (2010) IRI <www.register-iri.com/forms/upload/MSAdvisory_47-10.doc> *Marshall Islands Marine Safety Advisory No.47-10*. >.

⁵⁰IRI, Maritime Links (2010) IRI <www.register-iri.com/forms/upload/MSAdvisory_70-04.doc> *Marshall Islands Marine Safety Advisory No.70-04*. >.

⁵¹IRI, Maritime Links (2010) IRI <www.register-iri.com/forms/upload/MSAdvisory_70-04.doc> *Marshall Islands Marine Safety Advisory No.23-09*. >.

considers an organisation's expertise in areas such as ship design and construction, their ability to assess risks, the level of expertise and experience of its personnel, their ability to maintain confidentiality over sensitive security information, familiarity with the ISPS Code, as well as their knowledge of weapons detection and security surveillance.⁵²

C. Shipowners, Operators and Managers

Although the successful implementation of maritime security measures involves a number of entities, shipowners, operators and managers represent 'the frontline' of the security effort. Indeed, the maritime security framework relies on these entities for the proper implementation of security measures. As such, cooperation between shipowners, operators and managers in the implementation of the mandated security measures is fundamental for the overall success of the security framework.

Under the SOLAS Convention 1974 amendments of 2002, shipowners, operators and managers of Marshall Islands vessels are required to implement the maritime security measures agreed to therein. In regard to the measures under the ISPS Code, shipowners, operators and managers must appoint a CSO, whose task is to oversee the implementation of the ship's security plans. Among other things, the CSO must ensure that a SSA is carried out, and that a SSP is finally approved. The CSO is also responsible for reviewing the SSP.

The CSO must also ensure that the SSP clearly defines the authority of the master, so as to leave no doubt as to the chain of command in the event of a security incident. Shipowners, operators and managers must further ensure that the CSO, the master of

⁵²Clay Maitland, 'Maritime Security Requirements: A Flag State View' (Paper Presented at the 'Maritime Security and Safety Conference', London, February 12, 2003) 15-16.

the ship and the SSO have the necessary support to carry out their duties and responsibilities in accordance with Chapter XI-2 of the ISPS Code. Indeed, it is responsibility of these entities to document, review and maintain the SSP.

With regard to the LRIT system, ship owners, operators and managers of ships flying the Marshall Islands flag must ensure that the onboard radio, LRIT and AIS systems comply with the standards advocated under the framework, and that these systems pass conformance tests. Shipowners, operators and managers are also obliged to ensure that existing equipment can transmit LRIT information. If existing equipment does not conform to LRIT standards, then shipowners are required to install LRIT specific equipment.

Where a shipowner, operator or manager fails to install systems and equipment that comply with these standards, or where there is a failure to effectively implement measures required under the maritime security framework, such ships are subject to enforcement action. Such action may result in the cancellation of the ship's registration, the ship being detained by port State authorities, or the imposition of administrative fines and penalties in accordance with the *Maritime Administrations Act 1990*. Indeed, TCMI has the authority under the *Maritime Administrations Act 1990* to institute proceedings, withdraw certificates, or impose penalties such as administrative fines. Shipowners, operators and managers are thus encouraged to submit their vessels to voluntary conformance testing to ensure ongoing compliance with the requirements of the maritime security framework.

D. Port State Control Enforcement

Port State control enforcement also plays a key role in keeping shipowners, operators and managers honest in regard to the implementation and maintenance of maritime security measures on board their vessels. Port State control inspections may be conducted periodically, on an *ad hoc* basis, or be directed towards particular types of vessels. In any event, port State control inspections may be instigated by the relevant Port State Administration on the basis of a report or complaint by another administration, or on the basis of information provided by other persons or entities. Under the maritime security framework, Port State inspections target ISSCs, thereby ensuring that ships verifications are valid and current.

A valid ISSC presented for inspection is *prima facie* evidence of a ship's compliance with the ISPS Code, and must be regarded as such by the relevant port State administration. However, where there is clear evidence of a violation, the ISPS Code allows the port State administration to go beyond the ISSC and inspect the ship's SSP.⁵³

6.3 ANALYSIS OF PERFORMANCE UNDER THE MARITIME SECURITY FRAMEWORK

The security of ships that sail under the Marshall Islands flag, and the passengers and crew that are carried on such ships, depend on the Marshall Islands as a flag State to effectively monitor the implementation of security measures by recognised organisations, shipowners, operators and managers. On the face of these arrangements, it appears that the domestic legal framework is adequate, and that each

⁵³ISPS Code Part A Section 19.

of these entities is carrying out their specific tasks in accordance with the framework. However, the ongoing vulnerability of Marshall Islands ships to acts of violence - such as hijackings, armed robberies and piratical acts - in violence-prone regions of the world, does to some extent indicate that there is more work to be done. This part examines the performance of the Marshall Islands of its specific duties and obligations as a flag State under the maritime security framework.

6.3.1 Performance of the Duty to Cooperate in Suppressing Piracy

The Marshall Islands has an obligation to cooperate in the suppression of piracy, not only because it is a flag State, but primarily because it is a party to the *1982 LOSC*. However, to date, the Marshall Islands is yet to put in place domestic legislation giving effect to this undertaking even though a number of vessels trading under the flag have come under piratical attack as explained below.

Although the duty to cooperate in the suppression of piracy is not a flag State duty per se, it is one that may be referred to as (in the fisheries parlance) an ‘all State’ duty. And the Marshall Islands, is similarly obligated, whether as a flag State, or as a good standing member of the international community, to contribute meaningfully to the suppression of the scourge of piracy and piratical activities. It has been postulated that the dividing lines between piracy and terrorism are rapidly disappearing, with terrorists often resorting to piracy to fund their atrocities.⁵⁴ Moreover, despite the increasing frequency of piratical attacks, some of which involved its flag vessels, the Marshall Islands is yet to put in place effective policies and legislative oversight to address the issue of piracy. In a number of the incidents outlined above, the Marshall

⁵⁴McNicholas, *loc. cit.*

Islands sought the assistance of the United States, invoking Title Three, Article I, Section 311 of the *Compact of Free Association*.⁵⁵ However, in each case the request was not fulfilled. In reality though, it does appear that the Marshall Islands has adopted a *laissez faire* attitude towards the obligation to cooperate in the suppression of piracy. Unlike many countries in the region, the Marshall Islands has not put in place a legal framework to address piracy, the prosecution and detention of pirates, or the processing of property and assets found on pirate vessels. For this reason, the Marshall Islands may be considered an ineffective partner in the global effort to thwart the activities of pirates and criminals.

6.3.2 Performance of the Duty to Ensure the Proper Delivery of Suspects

Another important duty of the Marshall Islands is found under the Article 8 (2) of the *SUA Convention 1988*. As a party to the convention, the Marshall Islands has an obligation to ensure that suspects apprehended under the convention are delivered to the appropriate State party, in accordance with the provisions of the convention. Article 8(2) of the *SUA Convention 1988* requires flag States to ensure that masters of vessels delivering suspects properly inform the receiving State of their intention to do so, along with their reasons for so intending. The Master is also obliged to furnish all relevant material found on the vessel to the receiving State, upon the request of the receiving State.⁵⁶ Indeed, a sound domestic legal framework would allow the Marshall Islands to ensure that the delivery of suspects is carried out in accordance with the convention, and that enforcement measures are applied in the event of non-compliance by masters. However, the Marshall Islands is yet to enact domestic legislation implementing the provisions of the convention regarding the delivery of

⁵⁵ See discussion on Compact of Free Association Agreement in Chapter 2 above.

⁵⁶ *SUA Convention 1988*, Article 8.

suspects. This is interesting to note, given that the Marshall Islands was one of only a handful of States that ratified the 2005 SUA Protocols soon after their adoption. Without a legal framework in place, the Marshall Islands - both as a flag State and a signatory to the SUA Conventions,⁵⁷ has no ability to ensure that masters of vessels trading under the Marshall Islands flag will deliver suspects and offenders in accordance with the requirements of the convention. Therefore, the Marshall Islands has failed to carry out this duty as contemplated by the maritime security framework.

Perhaps inaction on this front is due to the fact that the Marshall Islands as a flag State has not yet been put in a position to carry out the delivery of a suspect in accordance with Article 8 (2) of the convention. On the other hand, it may be that, the *Achille Lauro* fervour dissipated along with the international community's rhetoric on the importance of the convention, and as such, contracting parties saw no urgency to put in place the necessary mechanism at the national level to give effect to the objectives of the convention. Even the Marshall Islands, one of the very first few countries to sign off on the 2005 Protocols, has yet to develop at the national level the legal framework necessary to facilitate the discharge of this duty. On this basis, it could very well be asserted that the Marshall Islands as a flag State is lagging behind, in the discharge of its duty as a flag State, to ensure the proper delivery of suspects under the *SUA Convention, 1988*.

6.3.3 Performance of Duties under the ISPS Code

The duties and obligations of flag States under the ISPS Code are highly technical, and are thus usually referred to expert organisations such as ROs or RSOs. Indeed, the

⁵⁷Used as generic reference to the SUA Convention 1988, and Protocol on Fixed Platform on Continental Shelf 1988 and the 2005SUA Protocols.

Marshall Islands flag administration regularly engages classification societies (such as those referred to above), and similar organisations with proven experience and expertise in order to discharge its obligations under the Code. To ensure the confidentiality of security plans and arrangements, the Maritime Administrator closely monitors the organisations it delegates its security functions to. Most of these organisations are members of the International Association of Classification Societies (IACS), where membership is reserved only for the most competent and experienced organisations.⁵⁸ As discussed in the last chapter, a large component of flag State duties under the maritime security framework are imposed under the ISPS Code, namely, the duty to: approve ship security plans, verify compliance and the issuance of the relevant certificates, set *ship security levels* and *Declaration of Security*.

A. The Duty to Approve Ship Security Plans

The duty to approve *Ship Security Plans* is another obligation which exists under the ISPS Code. Like other obligations under international law, the Marshall Islands has delegated the approval of *Ship Security Plans* to IRI and the Maritime Administrator. The Maritime Administrator routinely engages recognized (security) organizations to carry out this technical function, with each organisation usually being appointed from among those that are members of the International Association of Classification Societies. Notwithstanding this delegation, the Maritime Administrator is ultimately responsible for the approval of *Ship Security Plans*. Thus far, it appears that these organisations have performed this task in a competent manner, as there have been no issues surrounding the discharge of this function. Indeed, the association of the

⁵⁸Namely, American Bureau of Shipping (ABS), Bureau Veritas (BV), China Class Society (CCS), Croatian Register of Shipping (CRS), Det Norske Veritas (DNV), Germanischer Lloyd (GL), Indian Register of Shipping (IRS), Korean Register of Shipping (KR), Lloyds Register (LR), Nippon Kaiji Kyokai (NK) (ClassNK), Polish Register of Shipping (PRS), Registro Italiano Navale (RINA) and the Russian Maritime Register of Shipping (RS).

Marshall Islands with IRI has given the Marshall Islands access to critical expertise, ensuring the approval of SSPs is undertaken in a professional and competent manner.

B. Performance of the Duty to Verify Compliance and the Issuance of International Ship Security Certificates.

As discussed in Chapter 5 above, the verification process which ships must undergo is carried out in a number of stages. First, an *initial verification* is carried out before a vessel is put to sea. This *initial verification* focuses on a vessel's security system and associated equipment, thereby ensuring that that security system and equipment are in compliance with the ISPS Code and the SSP.⁵⁹ The *initial verification* is followed by a *renewal verification*, which is carried out to ensure that the security system and associated equipment has remained compliant with the various instruments and that the vessel is indeed fit for service.⁶⁰ Vessels are also required under Marshall Islands regulations to undergo an *intermediate verification*. As explained above, an *intermediate inspection* must be carried out between the second and third anniversary of the ISSC being issued.⁶¹ Again, these verifications are required under the Marshall Islands regulations and are carried out by expert organisations such as those classification societies identified in the earlier paragraphs.

The verification process discussed above is routinely delegated to RSOs with the requisite knowledge and the experience, with the main focus being on the ship's security system and associated equipment. The expertise which these organisations bring to this role enables the Marshall Islands to rest confident in the knowledge that its vessels set sail under the most stringent security conditions. Although Marshall

⁵⁹Republic of the Marshall Islands ISPS Code Regulations, Reg.16.2.3

⁶⁰Ibid., Reg.16.2.6

⁶¹Ibid., Reg.16.2.5

Islands vessels have been hijacked, such security challenges are not only faced by Marshall Islands flagged vessels, but all vessels that set sail in our post 9/11 period. The Marshall Islands (in conjunction with other States) is taking the necessary steps to discourage hijacking, piracy and terrorist attacks on or against its vessels.

D. Performance of the Duty to Set Security Levels and Declaration of Security

According to the ISPS Code, flag States cannot delegate the duty to set the appropriate security levels for their vessels.⁶² However, given the appointment of TCMI (a semi-government entity) as the Maritime Administrator for the Marshall Islands, TCMI is able to perform this function on behalf of the Marshall Islands. Indeed, TCMI approves the setting of security levels and advises all relevant governments and its shipowners of any changes in the security levels.⁶³ In discharging this function, TCMI is assisted by expert *recognized (security) organizations*.

The same arrangements exist in the setting of a *Declaration of Security* prior to an interface. The Maritime Administrator, in consultation with *recognized (security) organizations* considers a particular situation prior to an interface between two vessels (or between a vessel and a port) and sets the security conditions for the *Declaration of Security*. Under the Marshall Islands ISPS Code Regulations, the use of DoS is discretionary under Security Level 1, and where it is implemented under Security Level 1, it usually valid for a period of not more than 90 days.⁶⁴ Under Security Level 2, a DoS is valid for a period of 30 days.⁶⁵ Furthermore, all *DoS* must describe the

⁶²Ibid., Reg.4.3.1

⁶³Ibid.

⁶⁴Ibid., Reg.7.2.3

⁶⁵Ibid.

security obligations of a ship or facility during an interface.⁶⁶ Where a vessel is entering port at a higher security level, the regulations require the ports facility security officer to conduct an assessment and agree on the appropriate security arrangements,⁶⁷ and where a security level increases beyond that set in the DoS, then a new DoS must be implemented to address the new security level.⁶⁸

In setting the appropriate security levels for vessels, the Maritime Administrator assesses the security situation in the world or the region concerned and determines the appropriate Security Level, based on the history and experience.⁶⁹ In discharging this duty the Maritime Administrator routinely engages the services of expert organizations and personnel to assist in setting the appropriate security levels. When the appropriate security level has been determined, the Maritime Administrator advises its vessels and all ports concerned. The same is also true to in the case of the duty to determine a *Declaration of Security*, only in the case of a *Declaration of Security*, the *Ship Security Officer* takes charge of that process.⁷⁰ An important aspect of these processes is ‘communication’ with vessels and ports concerned and other States, and so far, if it is indeed an indication, the absence of a major maritime security incident involving Marshall Islands vessels could be extrapolated to mean that the Marshall Islands performance in this area is adequate. Whether that is case, or whether it is sheer luck, remains to be seen. However, what can be said is that, these processes are being regularly carried out whenever there is a potential risk⁷¹ or whenever the security levels between Marshall Islands vessels inter se, or Marshall

⁶⁶Ibid.

⁶⁷Ibid., Reg.7.2.5

⁶⁸Ibid., Reg.7.2.8

⁶⁹Ibid., Reg. 1.8 Setting the Security Levels

⁷⁰Ibid., Reg. 1.8

⁷¹Setting the Appropriate Security Level.

Islands vessel(s) and another State vessel, or Marshall Islands vessel(s) and a port, are incompatible during an interface.⁷² Therefore there exist grounds for the Marshall Islands as a flag State to be cautiously optimistic that it is indeed attending to these duties in accordance with the letter and the spirit of the ISPS Code.

6.3.4 Performance of the Duty to Issue a Continuous Synopsis Record

The Marshall Islands places a very high importance on issuing *Continuous Synopsis Records* to vessels trading under its flag, and takes the necessary steps to ensure that vessels maintain their CSR on board for inspection.⁷³ To ensure that vessels CSRs are properly issued and maintained, the Maritime Administrator issued *Marine Notice No. 2-011-19*⁷⁴ instructing all shipowners, operators, masters, officers and recognised organisations of the requirements of the new *SOLAS Convention 1974* regulations under Chapter XI-1/5. Consistent with the ISPS Code, the regulations on the requirement to issue a *Continuous Synopsis Record* applies to all passenger vessels and high speed passenger crafts, cargo ships and high speed crafts of 500 GT and above, as well as self-propelled MODUs. The Maritime Administrator requires that each vessel's CSR file contain all CSR documents issued by successive administrations, all amendments to such documentation, and further requires that such information be maintained permanently in a binder on board each vessel. Masters of each vessel are obligated to review and verify information in the vessel's CSR file by countersigning the documents.

⁷²Setting the DoS.

⁷³Clay Maitland, 'Maritime Security Requirements: A Flag State View' (Paper Presented at the Maritime Security and Safety Conference, London, February 12, 2003) 15-16.

⁷⁴See Annex 13.

The procedures and requirements outlined in the Notice by the Maritime Administrator closely mirror those of Regulation XI-1/5 of the *SOLAS Convention 1974*, with vessel owners being required to diligently record every change in the circumstances of their vessels. The underlying rationale for the CSR is traceability, and it appears that the framework and the processes devised by the Maritime Administrator for Marshall Islands vessels ensures the appropriate issuance and maintenance of vessels CSR, in accordance with the said SOLAS regulation. In *Marine Notice No. 2-011-19*, the Maritime Administrator made it clear that that the CSR requirements were to be strictly implemented as of July 1, 2004, and that the maintenance of CSR was mandatory and all shipowners and operators were under the risk of penalty if the regulation was not complied with. The notice clarified that the CSR requirements applied only to passenger ships, including high-speed passenger craft, cargo ships, including high-speed craft, of 500 gross tonnage and upwards; and self-propelled Mobile offshore drilling units.⁷⁵ The notice also clarified that the regulation does not apply to government vessels, cargo vessels of less than 500gt, wooden crafts, private pleasure yachts and fishing vessels.⁷⁶

For its part however, the Marshall Islands views the CSR with great importance, so much so that even though fishing vessels are exempt, the Maritime Administrator has insisted that fishing vessels registered under the Marshall Islands flag must comply with the requirement to maintain a CSR. Furthermore the Maritime Administrator encourages exempt vessels to appreciate the importance of the CSR and to voluntarily adopt the regulation as their own. As a consequence of the acceptance of this regulation, a number of additional requirements are being enforced by the Maritime

⁷⁵Ibid.

⁷⁶Ibid.

Administrator. For instance, the master of a vessel trading under the Marshall Islands flag must periodically review the CSR to ensure that it covers all amendments to the history of the vessel and to ensure there are no inconsistencies. In the case of transfer of flag, the owner must request from the Maritime Administrator, along with the *Permission to Transfer Out of the Marshall Islands Flag*, a certified copy of the vessels CSR file to be forwarded to the new flag. Even for the registration of vessels, a copy of a vessels CSR file and all amendments must be made available to the Maritime Administrator.⁷⁷

Judging by the flurry of activities that the Marshall Islands as a flag State had undertaken following the adoption of the CSR requirement, it does appear that the Marshall Islands as a flag State takes this obligation rather seriously. Issuing out *Marine Notices*, amending its own registration regulations to implement the requirements of the CSR regulation are clear indications of the Marshall Islands intentions to see to it that the regulation is adhered to by shipowners and operators. On this basis, and under the current circumstances, the Marshall Islands as a flag State appears to be discharging this duty appropriately.

6.3.4 Issues Undermining Performance

The Marshall Islands has performed exceptionally well in establishing a strong foundation for the performance of its duties under the maritime security framework. Its decision to ratify the appropriate international conventions (and to follow through with the enactment of domestic legislation implementing the various conventions), as well as its establishment of the necessary infrastructure and management processes,

⁷⁷Ibid.

has enabled it to carry out its duties under the maritime security framework in a competent manner. Indeed, the institutional and administrative arrangements, as well as the technical aspects of its flag State functions, appear to be in good order. This is mainly due to the fact that the administrative and technical functions are routinely delegated to, and carried out by, classification societies and similar recognised (security) organisations. It thus appears that, as a flag State, the Marshall Islands has put in place an adequate framework to ensure the effective implementation of maritime security measures and the discharge of its duties under the security framework.

According to Maitland, the new maritime security framework achieves a number of things.⁷⁸ First, it highlights the most contentious aspect of the ISPS Code – that is, the interplay between ships, ports and contracting States, and secondly, the framework imposes additional duties and responsibilities on flag States. Third, it promotes greater transparency in terms of the type of information that is made available, particularly through the vigorous compliance audits.⁷⁹ As a flag State, the Marshall Islands has been at the forefront of these changes, signing up to the relevant international instruments, enacting the necessary domestic legislation, engaging qualified and competent organisations, and employing qualified and competent personnel to support the discharge of its flag State duties under the maritime security framework. These steps provide the Marshall Islands with ample opportunity to successfully carry out its duties under the framework. So far, that appears to be the case, and that the performance of the Marshall Islands of most of its flag State duties under the maritime security framework, is progressing well. At the same time,

⁷⁸Maitland, *op. cit* p.15-16.

⁷⁹*Ibid.*

however, there are a number of issues that continue to undermine the work of the Maritime Administrator under the framework. Addressing these issues in a timely manner will enhance the effectiveness of the Marshall Islands as it discharges its functions under the maritime security framework. For instance, the absence of a comprehensive policy framework, coupled with lingering gaps and weaknesses in the domestic legal framework, could potentially undermine the security of vessels trading under the Marshall Islands flag.

6.3.5 The Absence of any Comprehensive Policy Framework

Although not directly required under the international legal framework, robust a national policy framework underpins the implementation of various international obligations at the domestic level. The failure of the Marshall Islands to develop and implement a comprehensive maritime security policy could undermine the Marshall Islands attempts to ensure that shipowners and operators comply with the requirements of the maritime security regime. Given the sheer volume of tonnage registered under the flag, the multitude of seafarers, passengers and cargo that travel on Marshall Islands flagged vessels, as well as the emerging threats to maritime security, the development of a comprehensive maritime policy would be a valuable asset, guiding the activities of the ship registry and the discharge of the Marshall Islands of its flag State duties under the security framework.

Generally speaking, policies are management instructions on how to address a situation.⁸⁰ In most cases, policies offer a pre-determined course of action on how to

⁸⁰Search Security *Information Security Policies Made Easy* (2010) Search Security
<http://searchsecurity.techtarget.com/searchSecurity/downloads/Wood_ISPME_Ch2.pdf>.

resolve an issue.⁸¹ In the context of maritime security, a sound policy framework may address certain risks, set objectives or outline strategies which accord with the objectives of the maritime security framework. Importantly, such a policy framework must address the question of capacity and be capable of refinement as circumstances change.⁸² Without the benefit of such a framework, the Marshall Islands must perform its flag State functions on the basis of legal text alone, which is often too technical and not easily understood by responsible entities and officers. Furthermore, in many cases relying on the legal text alone (as opposed to a policy framework *and* the legal text), does not provide an adequate background to the task to be performed, and as such responsible entities and officers are sometimes forced to implement or enforce measures inconsistently or on an *ad hoc* basis. Extrapolating on this hypothesis, the Marshall Islands risks the possibility of discharging its responsibilities under international law in an *ad hoc manner*. Under these circumstances, the likelihood of performing duties in an inconsistent manner, lacking direction in the execution of certain objectives, or enforcing standards in a less than rigorous manner, is very high. Attempting to carry out legal obligations without the guidance of a comprehensive maritime security policy is indeed a daunting task. As such, it is incumbent upon the Marshall Islands, as the third largest registry world, to take the necessary steps to develop such a policy without further delay.

6.3.6 Gaps in the incorporation of international law requirements under the Domestic Legislative Framework

It would also be prudent for The Marshall Islands to address the weaknesses that currently exist in the domestic legal framework. As discussed in the previous sections, the major concerns with the domestic legal framework relates to the manner in which

⁸¹Ibid.

⁸²Ibid.

the crime of piracy is treated under Marshall Islands domestic law on the one hand, and the incorporation of internationally approved maritime security measures, under domestic law.⁸³

A. Piracy under Marshall Islands Domestic Law.

As a party to the 1982 LOSC, the Marshall Islands is obligated under Article 100 to cooperate to the fullest extent to suppress piracy on the high seas and in other areas outside of its national jurisdiction.⁸⁴ As *hostis humani generis*, pirates are subject to universal jurisdiction and States can take the extra step of codifying piracy as an offence under their national laws, thereby targeting their nationals and ships that sail under their flag.⁸⁵ Unlike Papua New Guinea,⁸⁶ Kiribati,⁸⁷ Tuvalu,⁸⁸ the Solomon Islands⁸⁹ and Vanuatu⁹⁰ for instance,⁹¹ the Marshall Islands has not yet codified ‘piracy’ as an offence under its national laws. Under the Criminal Code of Papua New Guinea, *piracy*, and *attempted piracy with personal violence*, are crimes punishable by death,⁹² while *aiding and betting piracy*, is punishable by imprisonment for life. In Kiribati, Tuvalu, Solomon Islands and Vanuatu, piracy is punishable by life imprisonment.⁹³ The irony is demonstrated both in the size of the Marshall Islands ship registry and the number of piratical attacks directed at vessels flying the Marshall Islands flag (compared to the registries of the States named above). The failure to

⁸³Such as the measures adopted under the adopted under the *SUA Convention 1988* and its Protocol on Fixed Platforms, the *2005 SUA Protocols*, and the 2002 maritime security amendments to the SOLAS Convention 1974.

⁸⁴1982 LOSC Article 100.

⁸⁵P.W. Birnie, *Piracy: Past Present and Future*, Marine Policy (July 1987)165.

⁸⁶PNG Criminal Code Division 6, Sections 81, 82 and 83.

⁸⁷Kiribati Penal Code, Section 63.

⁸⁸Tuvalu Penal Code, Section 63.

⁸⁹Solomon Islands Penal Code, Section 65.

⁹⁰Vanuatu Penal Code, Section 145.

⁹¹Pacific Islands Legal Information Institute, ‘Papua New Guinea Laws’ (2012) PacLii <<http://www.pacii.org/databases.html#PG>>

⁹²PNG Criminal Code Division 6, Sections 81, and 82.

⁹³Kiribati Penal Code Section 63, Tuvalu Penal Code, Section 63, Solomon Islands Penal Code, Section 65 and Vanuatu Penal Code, Section 145.

codify piracy as an offence under its national law could be viewed as an indication that the Marshall Islands lacks commitment in terms of its international obligations.

Under Article 100 of the 1982 *LOSC*, States must “cooperate” in the repression of the crime of piracy, as indicated by the use of the phrase “shall cooperate to the fullest extent.” The *travaux préparatoires* of the UNCLOS I shows that there were indeed proposals to hold States that fail to uphold this obligation liable.⁹⁴ Criminalising piracy under a State’s national law not only gives the State the ability to fight piracy effectively, but also indicates a commitment by the State to effectively uphold the obligation. Even the United Nations Security Council agrees with this proposition, calling on all States to criminalise piracy under their domestic laws so that the fight against piracy will be truly effective.⁹⁵

As a party to the 1982 *LOSC*, a member of the United Nations, and a State with the third largest ship registry world, it is remiss of the Marshall Islands to ignore the United Nations Security Council’s call to all States to make piracy a crime under their national law. Indeed, fighting piracy is not just an obligation of the Marshall Islands under the 1982 *LOSC*; it also contributes to the discharge of its obligations under the maritime security framework, particularly as the lines between piracy and terrorism have become blurred.

Having set out the above however, it is noted that the failure of the Marshall Islands to enact piracy laws does not mean that the Marshall Islands is left entirely without legal basis to cooperate in the suppression of the crime of piracy as obligated

⁹⁴UNSCR1918 (2010) paragraph 2

⁹⁵*Ibid.*

under the 1982 LOSC Article 100. Piracy, being an international crime, attracts universal jurisdiction under international law, and as such, all States possess the competence to claim jurisdiction and take the necessary enforcement action to suppress it.⁹⁶ Where however, a State is not in a position to take enforcement action, then such State is again, bound under international law to extradite the subjects to a State that is in a position to do so, under the principle of *aut dedere aut judicare*.⁹⁷ This procedure therefore ensures that a suspect is not able to escape jurisdiction.

Aut dedere aut judicare is an international law principle that refers to an alternative obligation of a State either to *prosecute or extradite* a suspect to another State, particularly in respect of international crimes such as *piracy*.⁹⁸ The rule is considered by some as having matured to the status of customary international law, thereby binding on all States.⁹⁹ Others have however considered the rule merely as an ‘imperfect obligation’ to be applied only as a moral obligation, and therefore requires an express treaty to bind States.¹⁰⁰ Whatever the argument, evidence suggests that the principle has become a cornerstone of many international agreements, in regards to international crimes. One such agreement is the SUA Conventions 1988. The convention obligates States to prosecute an offender, or where the State is unable to, it must extradite the offender to a State that is able to do so.¹⁰¹

The argument advanced therefore is that, pursuant to the principle of *aut dedere aut judicare*, the Marshall Islands is obligated to prosecute piracy suspects, whether or not

⁹⁶ Madden, ‘supra.’, p.141.

⁹⁷ Cherif Bassiouni and Edward M. Wise, ‘*Aut Dedere Aut Judicare: The Duty to Prosecute or Extradite Under International Law*’ (Martinus Nijhoff Publishers, 1995) 6.

⁹⁸ *Ibid.*, p.7.

⁹⁹ *Ibid.*

¹⁰⁰ *Ibid.*

¹⁰¹ See Article 10 of the Convention.

it has enacted national laws, and where it is not in a position to do so, it must extradite the offender to a State that is in a position to do so. It is noted however that the enactment of national legislation, allows the Marshall Islands at the national level (emphasis) to organize itself, establishing the jurisdiction of national courts, prescribe penalties, and to establish rules for the disposal of seized properties, amongst others, allowing for the effective cooperation in the international efforts to suppress the crime of piracy.

B. Maritime Security Measures under Marshall Islands Domestic Law: The 2005 SUA Protocols.

The *Counter-Terrorism Act 2002* is a piece of umbrella legislation that criminalises ‘terrorism’ generally. Indeed, prior to 2002, the Marshall Islands did not have any counter-terrorism laws, despite being a party to the relevant international instruments. Although the *Counter-Terrorism Act 2002* was intended to provide the legal basis for enforcement against a broad range of terrorism related activities, including SUA offences, the Act falls short of this objective, particularly in light of the new offences listed under Article 3 *bis* of the 2005 SUA Protocols (among others). The 2005 SUA Protocols were negotiated and adopted as part of the counter-terrorist measures to provide the necessary legal basis “...for the arrest, detention and extradition of terrorists acting against shipping or ports or when using ships to perpetrate acts of terrorism.”¹⁰²

The 2005 SUA Protocols therefore constitute an integral part of the post September 11, 2001 security framework of which the Marshall Islands is a party. And yet the

¹⁰²IMO, *18 States sign 2005 SUA Protocols* (February 13, 2007) IMO
<http://www.imo.org/newsroom/mainframe.asp?topic_id=1472&doc_id=7790>.

Marshall Islands has not enacted legislation incorporating the 2005 SUA Protocols into its domestic legal framework. This failure certainly leads one to question the commitment of the Marshall Islands to the SUA treaties, and also weakens the ability of the Marshall Islands to effectively carry out enforcement action such as boarding suspect vessels or permitting the boarding of Marshall Islands vessels in conformity with Article 8 *bis* of the 2005 SUA Protocols. It is therefore of the utmost urgency that the Marshall Islands enact legislation criminalising the new offences under the 2005 SUA Protocols, thereby establishing a legal basis for the enforcement of such offences. In particular, Section 135 of the *Counter-Terrorism Act 2002* (which criminalises the original SUA offences), is acutely inadequate and requires revision.

C. Maritime Security Measures under Marshall Islands Domestic Law: ISPS Code and the LRIT Regulations.

Another concern with the Marshall Islands domestic legal framework on maritime security is the manner in which the ISPS Code and the LRIT Regulations have been incorporated into domestic law. Indeed, the Marshall Islands Parliament has not enacted national legislation domesticating the ISPS Code or the LRIT Regulations. Instead, they have been incorporated into Marshall Islands law by way of the Maritime Administrator's delegated rule-making authority under the *Maritime Administrations Act 1990*. The issue with this procedure is that it downplays the importance and prominence of these critical instruments. Moreover, as these instruments have far-reaching implications and will most likely involve issues of policy, they deserve to be reviewed and approved on the national stage - namely in Parliament. Indeed, the security of the Marshall Islands, its subjects (ships) and ports facilities are matters of public policy deserving of deliberation by the Parliament.

Indeed, the security of Marshall Islands vessels is an issue that requires the direct input of the Parliament - particularly with respect to formulating offences, setting the relevant penalties, and in authorising enforcement activities. Delegating this important function to the rule-making authority of the Maritime Administrator not only results in the Parliament losing oversight of the implementation of important international instruments, but also sends the wrong message about the commitment of the Marshall Islands towards its obligations under the maritime security framework. As such, comprehensive legislation must be enacted by the Marshall Islands Parliament, incorporating the measures, duties and obligations of flag States set out in the ISPS Code and in the LRIT Regulations.

D. Synopsis of Selected Maritime Incidents

Several Marshall Islands vessels have had encounters with pirates, particularly in the Gulf of Aden and on the east and west coast of the African continent. No lives were ever lost in these incidents. Providing an anecdotal review of maritime security incidents is important at this point, as it highlights the fact that a genuine maritime security threat exists, and that flag States such as the Marshall Islands cannot afford to become complacent when it comes to securing their vessels. Indeed, the regular occurrence of maritime security incidents rarely portrays a flag State in good light. Meanwhile, the Marshall Islands should be thankful that the incidents in issue were piratical in nature, fuelled mostly by economic motivations, and were not terrorist attacks. Even so, the Marshall Islands cannot 'rest on its laurels', but should rather be proactive in the implementation of new security measures.

The measures called for under the ISPS Code, such as the creation of a SSP and DoS, the installation of a SSAS, the setting of appropriate security levels for ships, as well as the measures required under the LRIT Regulations, are all aimed at preparing and securing a ship so that it is better placed to respond to security incidences. The failure of any one of the components no doubt leaves a ship vulnerable to attack. Below is an anecdotal overview of selected maritime security incidents involving Marshall Islands vessels.

On October 29, 2008 the *MV Yasa Neslihan* - a bulk cargo ship owned by a Turkish national was hijacked by Somali pirates in the Gulf of Aden. The vessel, on its way to China from Canada, was carrying 77,000 tons of iron ore. The owners of the ship were alerted to the hijacking through the ship's SSAS. On January 6, 2009, 66 days after first being captured, the vessel was freed, reportedly after ransom was paid.¹⁰³

The *Oceanic Nautica*, an eleven-deck ocean cruise yacht with 684 passengers and more than 400 crew members, came under fire from Somali pirates in the Gulf of Aden on November 30, 2008. Upon spotting the approaching pirates, the master ordered the ship to travel at full speed, outrunning the pirates.¹⁰⁴ In another attack, a Greek bulk carrier, the *MV Delvina*, was carrying wheat to Mombasa, Kenya, when it was hijacked by pirates 280 nautical miles off the coast of Tanzania on November 5, 2009. Authorities were not able to maintain contact with the ship, although the crew

¹⁰³Chinaview, *Somali Pirates Release Turkish Ship* (August 1, 2009) Chinaview <www.chinaview.cn>.

¹⁰⁴USA Today, *Shots Fired as Pirates attack Oceania Ship* (30 November 2008) USA Today <<http://travel.usatoday.com/cruises/legacy/item.aspx?type=blog&ak=59258324.blog>>.

reportedly sent out an alert. The vessel was finally released on December 17, 2009, after ransom was paid.¹⁰⁵

2010 was also marked by several hijackings. In one incident the *MV Motivator*, a chemical tanker, lost contact with its owners on July 4, 2010. On the next day, it was confirmed that the tanker and its crew (consisting of 18 Filipinos) had been hijacked by pirates in the Red Sea. On January 16, 2011, more than six months after first being captured, the vessel was released near the coast of Somalia.¹⁰⁶

6.4 CONCLUSION

The flag State has emerged as a critical player under the international legal framework for maritime security. Important international instruments such as the 1958 HSC, the 1982 LOSC, the SUA Convention 1988, the 1988 Protocol on Fixed Platforms, the 2005 SUA Protocols, and the 2002 Maritime Security Diplomatic Conference all recognise this fact, charging flag States with certain duties and obligations aimed at preventing terrorist attacks in the maritime sector. As a flag State and party to the instruments named above, the Marshall Islands has an obligation under international law to effectively discharge its duties under the maritime security framework so that the security of its vessels, and that of the maritime sector in general, is not compromised. This obligation requires the Marshall Islands to perform a number of tasks.

¹⁰⁵ RTT News, *Suspected Somali Pirates Capture Greek Cargo Ship Off Tanzania* (May 11, 2009) RTT News <<http://www.rttnews.com/ArticleView.aspx?Id=1120296&SMap=1>>.

¹⁰⁶ CNN, *Pirates Hijack ship in Red Sea* (July 5, 2010) CNN <<http://edition.cnn.com/2010/WORLD/africa/07/05/pirate.hijacking/index.html?iref=obinsite&fbid=dUyok0VMXUs>>.

In particular, the Marshall Islands must enact a comprehensive legal framework – one that is supported by an equally comprehensive and robust policy framework. This legal and policy framework must then be implemented and administered by a competent administration. As such, the Marshall Islands must also put in place the infrastructure and administrative capacity that allows for effective enforcement. The analysis in this chapter has shown that the Marshall Islands has indeed put in place the necessary legal framework and supportive infrastructure, and that, to date, it has performed its duties under the maritime security framework to an acceptable level. However, the analysis has also shown that the Marshall Islands could vastly improve its performance by addressing (in a meaningful way) several important issues. For instance, the failure of the Marshall Islands to develop a comprehensive policy framework constitutes a major weakness in its domestic security regime. Secondly, the gaps and weaknesses identified in its domestic law will continue to undermine the effectiveness of the Marshall Islands under the framework, increasing the risk of its vessels being attacked. The absence of an appropriate oversight mechanism further weakens the ability of the Marshall Islands to effectively ensure the proper implementation of the new maritime security measures. Therefore, if any lesson is learned from the analysis, it is that the *status quo* is not sustainable and the Marshall Islands must take action to develop the necessary policies and eliminate the various gaps and weaknesses in its laws. Taking these steps will no doubt enable the Marshall Islands to perform its flag State duties under the framework effectively. To delay action in this regard will cast an unfavourable light on the Marshall Islands, and leave more than 2,000 ships, their crew, passengers and cargo vulnerable to terrorist attacks. Suffice to say, time is of the essence for the Marshall Islands as far as the changes it needs to make to its domestic maritime security regime.

CHAPTER 7

THE INTERNATIONAL LEGAL FRAMEWORK, AND THE FISHERIES RELATED DUTIES OF THE MARSHALL ISLANDS, AS A FLAG STATE

7.1 INTRODUCTION.

'... As fishing is often the livelihood of last resort and fish often the only source of animal protein for the poor, the state of the world's fisheries can be critical in the fight against poverty in many parts the developing world... '

(The World Bank)¹

Rapidly declining fish stocks, is a phenomenon that could have immense and long term implications on the issue of food security, given the rate of growth of the global population, which has been predicted to rise to approximately 9.1 billion by the middle of the century.² Equally crucial is that fact that 'fisheries' represents one of the major sources of economic well-being and daily sustenance for millions of people world-wide.³ Under the emerging international legal framework for fisheries, the flag State has been identified as a key participant in the effective enforcement of conservation and management measures, particularly with regard to high seas fisheries. The recognition of the role of the flag State as critical to the proper conservation and management of high seas fisheries is found in the allocation of a

¹Warren Evans, 'How Do We Ensure Fish For All? (Presentation to the NEPAD Fish For All Summit, Abuja Nigeria, August 25, 2005) 3.

²Thalif Deen, *Development: Rising Population Threatens Global Security* UN Interpress Service (IPS) News Agency)

³FAO, *Stopping Illegal, Unreported and Unregulated (IUU) Fishing* (2002) FAO
<<http://www.fao.org/DOCREP/005/Y3554E/y3554e01.htm>>.

number of critical duties to the flag State. As such a State, the Marshall Islands is likewise obligated to carry out these duties and obligations effectively, in order to ensure the proper conservation and management of particularly, straddling and highly migratory fish stocks.

7.2 BRIEF BACKGROUND

In the early part of the 20th century, the realization by nation States that a decline in the world's fish stocks would be devastating in terms of food security as well as economic well-being, galvanized nations into taking the very first steps to manage and conserve the world's fish stocks, at the League of Nations.⁴ These very first efforts however failed to bring about any concrete resolution and subsequent efforts were then picked up by the United Nations (UN) following its inauguration in 1945, through the processes of the 1st United Nations Conference on the Law of the Sea (UNCLOS I). UNCLOS I resulted in the adoption in 1958 of four separate conventions, one of which, was the *Convention on Fishing and Conservation of Living Resources on the High Seas (1958 Conservation of Living Resources Convention)*, which entered into force on March 20, 1966.⁵ Lingering disagreements about the question of the breadth of the territorial sea however resulted in less than enthusiastic participation by States in the convention.⁶ The adoption of the United Nations Law of the Sea Convention (1982 LOSC) in 1982 was itself seen as a major diplomatic success, garnering the agreement of a vast majority of States, over the broadest spectrum of issues concerning the governance of the oceans and its resources, and in particular, in providing for measures to manage and conserve the

⁴Lawrence Juda, *International Law and Ocean Use Management: The Evolution of Ocean Governance*, (Routledge, 1996) 65.

⁵The other three conventions are the Convention on the High Seas 1958, Convention on the Continental Shelf, 1958, and the Convention on the Territorial Sea and Contiguous Zone, 1958.

⁶ Juda, *op. cit.* p.62.

world's fish stocks.⁷ Despite wide international support for the 1982 LOSC and the promise of better management of fish stocks through the apportionment of vast areas of the oceans to coastal States, concerns over the decline in fish stocks magnified into the post 1982 period. These concerns were linked directly to the management of fisheries by coastal States, and the management and conservation of highly migratory, and straddling fish stocks within the EEZ, and on the high seas.⁸ The call for more comprehensive efforts in fisheries management intensified post 1982, and in particular, following the United Nations Conference on Environment and Development (UNCED)⁹ held in Rio de Janeiro, in 1992. The international community, acting in response to the findings adopted under UNCED Agenda 21, particularly Chapter 17,¹⁰ adopted additional instruments under the auspices of the United Nations Food and Agriculture Organization (FAO), aimed at supporting and strengthening the framework for the conservation and management of high mainly high seas fisheries.

Chapter 17 of Agenda 21 highlighted overcapitalization, excessive fleet size, vessel reflagging to escape controls, insufficiently selective gear, unreliable databases and lack of sufficient cooperation between States, major problems affecting the conservation and management of fish stocks.¹¹ Chapter 17 also called for greater cooperation at the bilateral, subregional, regional and global levels to address these issues.¹²

⁷Oceans and Law of the Sea: A Division for Ocean Affairs and the Law of the Sea, *The United Nations Convention on the Law of the Sea: A Historical Perspective* (2007) United Nations <http://www.un.org/Depts/los/convention_agreements/convention_historical_perspective.htm>

⁸Agenda 21, Chapter 17.

⁹Also often referred to as the 'Earth Summit.'

¹⁰Titled, "*Protection of the Oceans, all kinds of Seas, including enclosed and semi-enclosed Seas, and Coastal Areas, and the Protection, Rational Use and Development of their Living Resources*".

¹¹Agenda 21 Chapter 17 paragraph 17.45.

¹²*Ibid.*

Following the UNCED conference, the international community adopted a series of fisheries instruments under the auspices of the FAO. These instruments, often referred to as the post UNCED international fisheries instruments, comprise the 1993 of the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, (FAO Compliance Agreement), the 1995 Agreement for the Implementation of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, (1995 UN Fish Stocks Agreement), the 1995 Code of Conduct for Responsible Fisheries (FAO Code of Conduct). The International Plan of Action to Combat Illegal Unreported and Unregulated (IPOA-IUU) fishing was adopted in 2001 within the framework of the FAO Code of Conduct. The IPOA-IUU was adopted to provide States a set of measures to tackle illegal, unreported and unregulated fishing activities.

Unlike the 1982 LOSC regime, these later instruments for the first time emphasized the importance of designing specific duties and obligations for flag States, in particular, in combating illegal fishing, by imposing stricter controls on fishing vessels on the register, as well as fishing vessels applying for registration under their laws.¹³ Reports have shown that open registries and flags of convenience in particular have been the worst performers, in the context of fisheries management, and have served as a convenient ‘cover’ for vessels that are intent on engaging in IUU fishing activities.¹⁴ As a flag State, and a party to the key international fisheries instruments,

¹³*FAO Compliance Agreement and the IPOA-IUU.*

¹⁴Matthew Gianni, ‘The Changing Nature of High Seas Fishing: How Flags of Convenience Provide Cover for Illegal, Unreported and Unregulated Fishing.’ (An Independent Report, funded by the

the Marshall Islands likewise has obligations under the fisheries framework to exercise effective control over fishing vessels that fly its flag.

The purpose of this chapter is to therefore, to analyse this emerging international legal framework for the conservation and management of fisheries, in order to ascertain from the framework the fisheries related duties of the Marshall Islands. In this task, the chapter briefly revisits the fisheries framework under the 1982 LOSC, and analyses the provisions of the so called post UNCED international fisheries instruments, to determine with clarity the nature and extent of the duties of flag States. The actual analysis of the performance by the Marshall Islands of such duties is undertaken later, in Chapter 8 below.

7.3 OVERVIEW: THE FISHERIES ISSUE.

‘Overfishing’ as an issue is not confined to the contemporary era, but a phenomenon that was witnessed as early as thousands of years ago.¹⁵ In the nineteenth century, John Cleghorn, in 1854, argued that ‘*..the extinction of districts as fishing-stations, and the fluctuations in the fisheries generally, are imputable to ‘over-fishing,”*’ implying that even in the context of 1854, that fisheries was not an inexhaustible resource.¹⁶ In 1863, biologist Thomas Huxley, was cited as having said, ‘*...and probably all the great sea fisheries are in exhaustible...; that is to say that nothing that we seriously do, affects the number of fish. And any attempt to regulate these*

Australian Government Dept. of Agriculture, Fisheries and Forestry, ITF and WWF International October 2005) 9.

¹⁵James McGoodwin, ‘Crisis in the World’s Fisheries: People, Problems and Policies.’(Stanford University Press 1990)51.

¹⁶Ibid.

*fisheries seems consequently... to be useless.*¹⁷ However, Huxley's comments were prefaced with the phrase, '*...in relation to our present mode of fishing.*'¹⁸ With this qualification, it is obvious that Huxley's assertion was made in the light of the primordial state of the technology in use in the nineteenth century.¹⁹ Another expert Zoologist Ray Lankester, theorized that fishing activity could potentially affect the prey-predator equilibria in fish populations, which is a critical element in all ecological systems, as it ensures balance in species, and therefore the survivability of such species.²⁰ Scientific rationalization intensified in the early part of the twentieth (20th) century with the emergence of yet a number of concepts and arguments. For instance, the concept of the immature fish, and the diminishing average age of marketable fish, the practical and economic issue of irrational fishing, the relationship among phytoplankton and zooplankton, A.G Huntsman's pyramidal fish diagram, and the debate between Baranov and Knipowitsch on the effects of declining fish populations, to name a few.²¹ These different works all contributed to the early science on the management of fisheries,²² and became more intense as difficulties emerged in that period especially relating to the use of ocean space and fishing rights in the marginal seas.²³ These arguments incidentally, were being proliferated during the period of explorations, the discovery of new lands, and the colonization of foreign territories by powers in Europe,²⁴ leading these nations to staking their claims to

¹⁷Ronaldo Angelini and Coleen L. Moloney, 'Fisheries, Ecology and Modelling: an historical perspective' (2007), *Pan-American Journal of Aquatic Sciences* 2 (2) 75-85.
<http://www.panamjas.org/artigos.php?id_public=137>.

¹⁸Ibid.

¹⁹Ibid.

²⁰Ibid.

²¹Ibid.

²²Ibid.

²³L. Larry Leonard, *International Regulation of Fisheries* (Johnson Reprint Corp 1971) 1.

²⁴Such as the Anglo-Dutch rivalry in the 17th century or the Anglo-French rivalry of the 18th century.

resources in their new found territories. This rivalry was often referred to as the struggle for ‘raw material,’ or the ‘struggle for fishing grounds.’²⁵

In this period also the principle of freedom of the seas, and the generally accepted ‘three-mile canon Rule’ territorial sea, were the accepted regimes of the day, and as such, allowed foreign fishers to harvest fish as little as three miles from the shores of the coastal States.²⁶ The first signs of trouble first appeared when vulnerability of fisheries was properly understood and coastal States attempted to exert control over fishing activities on the high seas, adjacent to their coasts, bringing the ‘canon shot rule’ territorial sea regime into question.²⁷ Three key points profoundly influenced the need to re-visit the regime. These were, first, the lack of proper understanding of the sciences surrounding fisheries, which led to inaction and the failure of the international community to put in place effective conservation measures,²⁸ second, population increases in coastal areas meant that there were now more fishers,²⁹ and third, the level of sophistication in the technology developed rapidly that it was quoted in the media that ‘*Now Fish have nowhere to hide.*’³⁰ For instance, the use of sonar, satellite technology and highly sophisticated technology is closely tied to the rapid depreciation in fish stocks.³¹

²⁵Leonard, *loc. cit.*

²⁶Bernard G. Heinzen, ‘The Three Mile Limit: Preserving the Freedom of the Seas’ (1959) Volume 11. No.4 *Stanford Law Review* 597.

²⁷Oceans and Law of the Sea: A Division for Ocean Affairs and the Law of the Sea, *The United Nations Convention on the Law of the Sea: A Historical Perspective* (2007) United Nations <http://www.un.org/Depts/los/convention_agreements/convention_historical_perspective.htm>.

²⁸Rob Stewart, *Oceanography in the 21st Century-An on-line Book: Fisheries Policy Issues* (Texas and A&M University Website, May 2009) <<http://oceanworld.tamu.edu/resources/oceanography-book/policy-fisheries.htm>>.

²⁹*Ibid.*

³⁰*Ibid.*

³¹*Ibid.*

Today, despite the efforts of the international community to properly conserve and manage the world's fisheries through the adoption of the 1982 LOSC, and later, the post UNCED international fisheries instruments, the state of the world's fisheries continues to suffer. According to 2008 FAO report, statistics, indicate that in 2007, about 28 percent of stocks were considered overexploited, depleted, or recovering, due to overfishing, 52 per cent of stocks were considered fully exploited, and only 20 percent of stocks considered as moderately exploited or under-exploited.³² With over 80 percent of stocks in danger, a robust management framework is warranted. There is no doubt that the biggest threat to the conservation and management of the world's fish stocks today, is what has come to be known as IUU fishing.³³

The term 'IUU fishing' is an all encompassing term, describing the ills confronting modern day efforts to conserve and manage the world's fisheries. The term was born out of the UNCED conference, which sought to identify the issues currently confronting international efforts to conserve and manage fisheries. Chapter 17 of UNCED's so called Agenda 21 identified many of the issues and constraints hampering these efforts and proposed further action, which were eventually realized in the series of post UNCED FAO fisheries instruments. The term IUU fishing was later incorporated into, and emerged as the key focus of the IPOA-IUU adopted by the FAO in 2001.³⁴ 'Illegal' fishing activities refers to fishing activities undertaken in violation international and national of laws, and includes activities such as fishing out of season, harvesting prohibited species, using banned fishing gear, catching more

³²FAO 'The State of World Fisheries and Aquaculture' (2009) FAO <<http://www.fao.org/fishery/sofia/en>>.

³³FAO, 'Expert Consultation on Illegal, Unreported, Unregulated Fishing' (FAO Fisheries Report No.666 FAO, 15-19 May 2000) Appendix 1, page 55.A/54/429, 30 September 1999, paragraph 249.

³⁴MaryAnn Palma, Martin Tsamenyi, and William Edeson, *Promoting Sustainable Fisheries: Legal Aspects of Sustainable Development* (Martinus Nijhoff Publishers, 2010) 4.

than the set quota and fishing without a licence,³⁵ whilst ‘Unreported’ fishing activities describe fishing activities that have not been reported or misreported to the relevant national authorities or regional fisheries management organisations.³⁶ The term ‘Unregulated’ fishing generally refers to fishing activities that are not regulated by any authority, or fishing for stocks that do not come under any management regime.³⁷

IUU fishing represents the biggest threat to management and conservation efforts,³⁸ as it not only affects fisheries on the high seas, but similarly, IUU fishers target fisheries in the Exclusive Economic Zones (EEZ) and in coastal areas.³⁹ It has been estimated that the value of IUU fishing activities range between 10 billion and 23.5 billion dollars annually,⁴⁰ and the cost to third world developing countries alone, was reported in 2005 to be in the range of 2 billion and 15 billion dollars per annum.⁴¹

IUU fishing is driven simply by cost. With minimum operating costs, the IUU fishers gain an unjust and unfair economic advantage over legitimate fisherman as they target the same fish stocks as legitimate fisherman, to maximize their returns.⁴² In a study on IUU fishing, the OECD Fisheries Committee identified two major factors that contribute to illegal fishing. First, the global imbalance brought about by overcapacity especially where there is a lack of proper domestic management of fisheries, and

³⁵The IPOA-IUU Article II paragraph 3.1.

³⁶Ibid., paragraph 3.2.

³⁷Ibid., paragraph 3.3.

³⁸The IPOA-IUU Introduction.

³⁹FAO, ‘*Illegal, Unreported and Unregulated Fishing*’ (2010) FAO <<http://www.fao.org/fishery/topic/3195/en>>.

⁴⁰Environmental Justice Foundation, *IUU Fishing Background: What is Illegal, Unreported and Unregulated (IUU) Fishing?* (2005)EJF <<http://www.ejfoundation.org/page162.html>>.

⁴¹Matthew Gianni, ‘Real and Present Danger: Flag State Failure and Maritime Security and Safety’ (An Independent Report, funded by ITF and WWF International June 2008) 24. <assets.panda.org/downloads/flag_state_performance.pdf>.

⁴²OECD Committee for Fisheries, ‘Why Fish Piracy Persists: The economics of Illegal, Unreported and Unregulated Fishing’ (Study, OECD 2005) 14. <<http://www.oecd.org/dataoecd/12/38/35493720.pdf>>.

secondly, the incomplete and inadequate enforcement of the international legal framework for the management and conservation of fish stocks.⁴³ In addition, other factors such as weak enforcement of national and domestic fisheries laws, the existence of tax havens that support IUU fishers with low tax and low cost of risk, poor economic conditions resulting in weak law enforcement, and subsidies that reduce the cost of IUU fishing, compound the already complex challenge of stemming IUU fishing activities.⁴⁴ Moreover, the FAO has concluded on the basis of several studies and surveys, that the lack of effective flag State control constitutes the ‘root cause’ of IUU fishing, and as such, new approaches to resolving the issue of fisheries management were imperative.⁴⁵ Flag States, especially those that operate open registries have widely been criticized as the worst performers, given the poor record of controlling their fishing vessels.⁴⁶ Accordingly, the post UNCED international fisheries instruments place special emphasis on the control of fishing vessels by flag States.⁴⁷

7.4 THE INTERNATIONAL LEGAL FRAMEWORK FOR THE MANAGEMENT AND CONSERVATION OF FISH STOCKS.

The first formal attempts to address the issue of conservation and management of fisheries were undertaken by the League of Nations in the period leading up to the end

⁴³Ibid.

⁴⁴Ibid.

⁴⁵FAO Fisheries and Aquaculture Department, *Illegal, Unreported and Unregulated (IUU) Fishing* (2010) Food and Agriculture Organization of the United Nations <<http://www.fao.org/fishery/topic/3195/en>>.

⁴⁶Matthew Gianni, ‘The Changing Nature of High Seas Fishing: How Flags of Convenience Provide Cover for Illegal, Unreported and Unregulated Fishing.’ (An Independent Report, funded by the Australian Government Dept. of Agriculture, Fisheries and Forestry, ITF and WWF International October 2005) 15.

⁴⁷Judith Swan, ‘Fishing Vessels Operating Under Open Registries and the Exercise of Flag State Responsibilities’ (FAO Fisheries Circular, No.980 Food and Agriculture Organization of the United Nations, 2002) 7. <ftp://ftp.fao.org/fi/document/Ec-OpenRegistries/Exec_Sum_FC980_e.pdf>.

of World War II,⁴⁸ as tensions began to build between two parties of interest, on the one hand, the coastal States, and on the other, the distant water fishing nations (DWFNs). This situation required urgent resolution and was prioritized by the United Nations soon after its creation in 1945. Both UNCLOS I and UNCLOS II conferences failed to reach agreement on the question of the breadth of the territorial seas and the question of fisheries delimitation, as States tied the issue of the breadth of the territorial sea, to exclusive jurisdiction over fisheries resources.⁴⁹ As a result, the 1958 Conservation Convention failed to muster wide international acceptance.⁵⁰ It was not until the adoption of the 1982 LOSC that a regime on fisheries conservation was widely accepted, albeit, by the standards and circumstances of that period.

The 1982 LOSC fisheries regime was agreed upon in the nine years of negotiations in UNCLOS III,⁵¹ culminating in the adoption of the convention in Montego Bay, in 1982. The fisheries conservation and management measures are found under Parts V and VII of the convention. The 1982 LOSC was touted as providing for the first time, a comprehensive framework for the governance of the oceans, in fact, as the ‘Constitution of the Oceans’. No sooner had the accolades subsided, problems associated with the management and conservation of fisheries by coastal States, the management and conservation of highly migratory, and straddling fish stocks, and the onset of illegal fishing, exposed substantive gaps within the 1982 LOSC fisheries

Jesse S. Reeves, ‘Progress of the Work of the League of Nations Codification Committee’ (1972) *The American Journal of International Law*, Vol. 21, No. 4 (Oct., 1927), pp. 659-667.

<<http://www.jstor.org/stable/2188475>>

⁴⁹Jose A de Yturriaga, ‘The International Regime of Fisheries: From UNLCOS 1982 to the Presential Sea (1997) 100.

⁵⁰Ibid.

⁵¹See the Preamble to the 1982 LOSC, paragraph 4.

framework.⁵² In response, the international community, in the post UNCED period, acting under the auspices of the FAO, adopted the so called post UNCED international fisheries instruments, enumerated above. These instruments were a combination of mandatory and voluntary instruments and in conjunction with the 1982 LOSC fisheries framework, form the core of the emerging international legal framework on the conservation and management of fish stocks. Despite these noble efforts, some argue that the current ‘patchwork’ of measures have merely resulted for instance, in IUU operators shifting their activities to high seas and weaker fisheries management regions.⁵³ In order to ascertain the duties of flag States under the framework, each of the relevant instruments is examined and analysed below.

7.4.1 The United Nations Law of the Sea Convention, 1982 (1982 LOSC)

The 1982 LOSC convention was adopted by the UNCLOS III in Montego Bay, Jamaica, in 1982, after nine years of intensive negotiations.⁵⁴ Underpinning the convention is the notion that all activities connected with ocean space are closely connected and need to be addressed as a whole.⁵⁵ The convention is often credited as the ‘Constitution of the Oceans’ for providing the foundation for the development of a more comprehensive framework for the governance of the oceans and the resources

⁵²Yoshinobu Takei, ‘Filling Regulatory Gaps in High Seas Fisheries: Discreet High Seas Fish Stocks, Deep Sea Fisheries and Vulnerable Marine Ecosystems (Masters Dissertation, Utrecht University, 2004).

⁵³Patricia Lee Devaney, ‘Regional Fisheries Monitoring Organizations: Bringing Order to Disorder’ (Report for Program for Negotiation, Harvard Law School) <www.pon.org/downloads/ien14_4Devaney.pdf>.

⁵⁴Oceans and Law of the Sea, Division for Ocean Affairs and the Law of the Sea, *United Nations Convention on the Law of the Sea: A Historical Perspective* (2007, United Nations Website) <http://www.un.org/Depts/los/convention_agreements/convention_historical_perspective.htm#Third%20Conference>.

⁵⁵Judith Swan, ‘Fishing Vessels Operating Under Open Registries and the Exercise of Flag State Responsibilities’ (FAO Fisheries Circular, No.980 Food and Agriculture Organization of the United Nations, 2002) 8. <ftp://ftp.fao.org/fi/document/Ec-OpenRegistries/Exec_Sum_FC980_e.pdf>. See also the Preamble to the 1982 LOSC, paragraph 3.

therein.⁵⁶ It is by and large, considered to have codified existing customary international law, in general, and more specifically under Part V and Part VII, Section 2, in regards to the obligation to manage and conserve fisheries resources.⁵⁷ While it is true that many find something to complain about the convention, others find certain aspects of the convention that they would rather retain than change,⁵⁸ and the convention represents the best attainable compromise on the international scene.⁵⁹ The convention consists of 17 Parts, 320 Articles and 9 Annexes, covering almost all aspects of governance of the oceans and the resources found therein.

One of the major impacts of the 1982 LOSC was that the convention effectively divided ocean space into a number of different maritime zones with distinct legal characteristics and varying degrees of jurisdictional competences, namely, internal waters, the territorial sea,⁶⁰ the contiguous zone,⁶¹ the exclusive economic zone⁶² and the high seas.⁶³ As such, it is important to note the different enforcement regimes in the context of fisheries conservation and management, particularly, enforcement in zones under ‘sovereignty’ (internal waters and the territorial seas), and zones in which States only have sovereign rights to the resources (exclusive economic zone), and enforcement on the high seas.⁶⁴

⁵⁶Oceans and Law of the Sea, Division for Ocean Affairs and the Law of the Sea *loc. cit.*

⁵⁷*Ibid.*

⁵⁸Thomas Mensah, ‘Keynote Address, in Martin Tsamenyi, Sam Bateman, and Jon Delany (eds) *The United Nations Law of the Sea: What it means to Australia’s Marine Industries* (1996) 9, 12.

⁵⁹*Ibid.*

⁶⁰1982 LOSC Articles 3 and 8.

⁶¹*Ibid.*, Article 33.

⁶²*Ibid.*, Part V.

⁶³*Ibid.*, Part VII.

⁶⁴Martin Tsamenyi, ‘Fisheries Enforcement Framework under International Law’ (Lecture Presented at the Australian National Centre for Ocean Resources and Security (ANCORS) University of Wollongong, September 9, 2009).

In the territorial sea, Article 2 (1) of the LOSC provides that the sovereignty of a coastal State extends beyond its land territory and internal waters (including archipelagic waters), to the territorial sea. The territorial sea being a zone of sovereignty, entitles coastal States to exercise full and exclusive enforcement competence in regards to the management and conservation of fisheries in that zone, subject only to provisions of the 1982 LOSC and other relevant rules of international law.⁶⁵ The fisheries provisions of the convention focus more on balancing the interests of coastal States and those of foreign fishers in the exclusive economic zone.⁶⁶

In the exclusive economic zone, coastal States are vested sovereign rights, for the purpose of exploring and exploiting, conserving and managing natural resources, whether living or non-living, found in the zone, subject only to the due regard requirement. The ‘due regard’ notion requires that coastal States pay due regard to the rights of other States in the exclusive economic zone, and vice versa, that States who enjoy high seas freedoms within the EEZs must pay due regard to the interests of the coastal State.⁶⁷

The regime of high seas fisheries on the other hand, is premised on three key principles, namely the right to access fisheries, the obligation to adopt conservation measures, and the obligation to cooperate in implementing and enforcing such measures.⁶⁸ The 1982 LOSC provisions on conservation of living resources on the

⁶⁵1982 LOSC Article 2(3).

⁶⁶Oceans and Law of the Sea, Division for Ocean Affairs and the Law of the Sea *loc. cit.*

⁶⁷1982 LOSC Article 58 (3).

⁶⁸The Convention on Fishing and the Conservation of Living Resources on the High Seas, 1958, Article 1.

⁶⁸Yturriaga, *op. cit.* p.155.

high seas are found under Part VII Section 2, Articles 116 through to 120. Article 116 accords all States the right to have their nationals fish on the high seas, subject to their own treaty obligations, the rights of other States, and the provisions of the 1982 LOSC. The right to do so however is qualified to the extent that States are expected to perform certain duties and obligations in the exercise of this right, namely the duty to take measures in respect of their nationals that would ensure the proper management and conservation of fish stocks on the high seas.⁶⁹ Article 118 calls upon States to cooperate in the conservation of living resources on the high seas, and where appropriate, set up regional or subregional bodies to take up the management of region specific fish stocks. Article 119 urges States to take the necessary measures based on the best science, to maintain or return harvested stocks to levels for maximum sustainable yield, and further to ensure that levels of dependent species (species dependent on the harvested fishery) are maintained.

Having emerged as the one major international achievement of its era, the 1982 LOSC presented a promising vehicle for the conservation and management of the world's fish stocks. It was largely assumed that the acceptance of the concept of 'extended jurisdiction' into the corpus of international law would translate into rational conservation and management of fish stocks. However, as fisheries conservation and management issues began to mount in the post 1982 period, the international community realized that the 1982 LOSC framework alone would not be adequate to sustain the pressure on fish stocks.⁷⁰ Some commentators attributed the flaw in the 1982 LOSC fisheries regime to factors such as, the discretionary nature of the

⁶⁹ 1982 LOSC Article 117.

⁷⁰ David J. Douman, 'The Code of Conduct for Responsible Fisheries: The Requirement for Structural Change and Adjustment in the Fisheries Sector' (Prepared for the FAO Fisheries Department, November 1998) 2.

conservation measures in the exclusive economic zone, the use of the maximum sustainable yield formula as the default biological reference point, the emphasis placed on the notion of optimum utilization, and the lack of clear guidelines on the modalities for international cooperation in the management and conservation of straddling and highly migratory fish stocks.⁷¹ Fontaubert and Lutchman⁷² argue that the 1982 LOSC merely represented one stage of the evolution of the regime, and that there were of course outstanding matters because States were unwilling or unable to agree, and UNCLOS III voted merely to put in place a general framework that could muster a unanimous agreement.⁷³

Furthermore, the principle of freedom of the high seas placed highly migratory and straddling fish stocks under increasing pressure as the 1982 LOSC provisions concentrated more or less, on management of fisheries within the EEZ.⁷⁴ Others even apportion blame on the 1982 LOSC for IUU fishing activities, as the extended jurisdictions meant that a large part of fishing activities were pushed further out to sea, beyond the limits of the EEZ and where management and oversight is limited, and therefore conducive to IUU activities.⁷⁵ Some others have even argued that the fundamental principles of international law themselves, such as the freedom of navigation, the freedom of fishing on the high seas, exercise of exclusive

⁷¹Martin Tsamenyi, Lara Managrangi-Trott and Shilpa Rajkumar 'The International Legal Regime for Fisheries Regime' (Paper Presented at the UNEP Workshop on Fisheries Subsidies and Sustainable Fisheries Management, Geneva, 26-27 April 2004) 7.

⁷²Charlotte Fontaubert and Indrani Lutchman (with David Jones and Carolyn Deere), *Achieving Sustainable Fisheries: Implementing the New International Regime* (2003). 12

⁷³*Ibid.*

⁷⁴*Ibid.*

⁷⁵Simon Upton and Vangelis Vitalis, 'Stopping the High Sea Robbers: Coming to Grips With Illegal, Unreported and Unregulated Fishing' (Paper Presented to the Round Table on Sustainable Development on 'The sustainable development of global fisheries, with particular reference to enforcement [against illegal, unreported and unregulated fisheries] on the high seas' Paris, June 6, 2003) 4. <<http://www.oecd.org/dataoecd/46/45/21018775.PDF>>.

jurisdiction,⁷⁶ and the legal limitations in the operations of these principles have themselves lent to ‘free riders’ taking advantage of the fruits of conservation measures, whilst at the same time, avoiding responsibility for conservation measures.⁷⁷ In 1993, the revised FAO document, ‘The State of Food and Agriculture 1992’ showed that fisheries management had not improved with the new ‘world order’ and certain fisheries were either, fully exploited, over-exploited, or in a state of recovery.⁷⁸

7.4.2 The Post UNCED International Fisheries Instruments

The international community’s response in addressing the inadequacies in the 1982 LOSC fisheries framework is epitomized in the work of the Food and Agriculture Organization of the United Nations (FAO) prior to, and following the UNCED conference in Rio, in 1992.⁷⁹ At its 19th session in 1991, the FAO Committee on Fisheries (COFI) recommended that the concept of responsible fishing be formally elaborated in the form of an instrument. The Cancun Declaration of 1992, and UNCED Agenda 21, Chapter 17, gave further momentum to the concept and efforts to design an instrument promoting responsible fisheries.⁸⁰ The 1991 COFI initiative, the Cancun Declaration of 1992, and the UNCED’s Agenda 21, Chapter 17, generated international initiatives resulting in the adoption of the post UNCED FAO fisheries instruments, alluded to above. These instruments, based upon the general framework of the 1982 LOSC, targeted in particular, issues such as unsustainable fishing

⁷⁶David A Balton, ‘Strengthening the Law of the Sea: The New Agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks’ (1996) Vol. 27 Issue No.1 *Ocean Development and International Law* 125, 132.

⁷⁷Rachel J. Baird, *Reviews: Methods and Technology in Fish Biology and Fisheries: Aspects of Illegal, Unreported and Unregulated Fishing in the Southern Ocean* (Springer, 2006) 35.
<<http://www.springerlink.com/content/978-1-4020-5338-2/#section=476762&page=3&locus=97>>.

⁷⁸Doulman, *loc. cit.*

⁷⁹*Ibid.*

⁸⁰*Ibid.*

practices, inadequate fisheries management and ineffective flag State control on the high seas.⁸¹ The FAO Compliance Agreement and the 1995 UNFSA are legally binding agreements and require ratification for States that intend to participate in the enforcement of its provisions. The FAO Code of Conduct and the IPOA-IUU on the other hand, are voluntary instruments, designed to support the implementation and enforcement of the legally binding instruments above.⁸²

According to Swan, the FAO Compliance Agreement and the 1995 UNFSA comprise the core ‘rule books’ on fisheries management, flag State responsibility, monitoring compliance and enforcement and dispute settlement.⁸³ In this emerging framework, the effective control of fishing vessels is a major focal point and both the FAO Compliance Agreement and the 1995 UNFSA place a considerable amount of importance around the control of the activities of fishing vessels, carving out specific duties and obligations on the part of flag States. A brief review of these instruments is essential to analysis that will follow in the later paragraphs.

A. The Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, 1993 (FAO Compliance Agreement).

In the post UNCED period it was apparent that in order to comprehensively address the gaps in the 1982 LOSC fisheries regime that there had to be new approaches to confront the challenge. Weak flag State control over the activities of fishing vessels

⁸¹Judith Swan, ‘International Systems for Monitoring and Verifying Fisheries Agreements’ in Trevor Findlay (ed) *Verification Year Book 2004* (Vertic 2003) 171.

⁸²Ibid.

⁸³Ibid., p.72.

was emerging as a critical issue.⁸⁴ At its twentieth session in March 1993 the FAO Committee on Fisheries (COFI) was requested to draw up and implement in an expedited manner, new measures specifically aimed at preventing the practice of ‘flag-shopping.’⁸⁵ These new measures were drawn up and adopted under the FAO Compliance Agreement, in November 1993.

The FAO Compliance Agreement’s primary focus is resolving the problem of overfishing on the high seas, by imposing upon flag States the obligation to exercise better controls on the activities of their fishing vessels, and to encourage a higher level of cooperation in the exchange of information and data on fishing activities on the high seas.⁸⁶ The thrust of the instrument was directed toward fishing vessels operating under flags of convenience, aimed at discouraging the practice of re-flagging as a technique to circumvent fisheries management and conservation measures.⁸⁷ The agreement applies to all fishing vessels used for fishing on the high seas.⁸⁸ The agreement recognizes the critical role of the ‘flag State’ as the best medium with which to address the problem of re-flagging, acknowledging that the practice of reflagging to avoid conservation measures, thrives under circumstances where there is weak flag State oversight.⁸⁹ Securing the cooperation of flag States therefore was utterly critical to the objectives of the agreement, and thus, the wider

⁸⁴FAO, ‘Report of the Expert Consultation on Fishing Vessels operating under Open Registries and their Impact on Illegal, Unreported and Unregulated Fishing’ (FAO Fisheries Report No.722, FAO 2003) 2.

⁸⁵*Ibid.*, p.1.

⁸⁶See the Preamble to the FAO Compliance Agreement.

⁸⁷Office of Director-General, ‘*Part I - International Legal Setting*’ (FAO website, 2010) <<http://www.fao.org/docrep/007/y2776e/y2776e03.htm>>.

⁸⁸See the Preamble to the Compliance Agreement.

⁸⁹‘**Mindful** that the practice of flagging or reflagging fishing vessels as a means of avoiding compliance with international conservation and management measures for living marine resources, and the failure of flag States to fulfil their responsibilities with respect to fishing vessels entitled to fly their flag, are among the factors that seriously undermine the effectiveness of such measures.’

question of conservation and management of fish stocks, particularly on the high seas.⁹⁰

The FAO Compliance Agreement imposes upon flag States the duty to take the necessary measures to ensure that fishing vessels entitled to fly their flags do not engage in activities that undermine international conservation efforts on the high seas in conformance with core conservation principles.⁹¹ Under the agreement, Flag States have an obligation not to allow its fishing vessels to fish on the high seas unless such vessels have been issued with an authorization to fish,⁹² and they are in a position to exercise effective control over the activities of such fishing vessels.⁹³ In addition, flag States must not issue any authorization to vessels that have a history of violating conservation and management measures, unless it satisfies the exceptions approved under the instrument.⁹⁴ Furthermore, flag States have a duty to maintain a record of all its fishing vessels that have been issued with authorization to fish,⁹⁵ to furnish such records to the FAO,⁹⁶ and to take enforcement action and impose sanctions ‘of sufficient gravity’ against vessels that violate conservation and management measures.⁹⁷

Although the agreement focuses on the obligations of ‘flag States,’ this fact by no means implies that the success of the framework depends on flag States alone. To the

⁹⁰‘**Realizing** that the objective of this Agreement can be achieved through specifying flag States’ responsibility in respect of fishing vessels entitled to fly their flags and operating on the high seas, including the authorization by the flag State of such operations, as well as through strengthened international cooperation and increased transparency through the exchange of information on high seas fishing.’

⁹¹The FAO Compliance Agreement Article III.

⁹²*Ibid.*

⁹³*Ibid.*, Article III(3).

⁹⁴*Ibid.*, Article III (5).

⁹⁵*Ibid.*, Article IV.

⁹⁶*Ibid.*, Article VI.

⁹⁷*Ibid.*, Article VI.

contrary, the role of flag States is, but a small piece of the puzzle. The successful enforcement of the agreement, as well as the fisheries framework at large, hinges on meaningful cooperation with stakeholders, such as other State Parties, port State control and even cooperation from non-State parties.⁹⁸ As fishing vessels travel huge distances and often have to put to shore in ports of different States, the effectiveness of a flag State's surveillance diminishes. As such, flag States must rely upon its co-State parties, and even non-State parties, in maintaining control over its fishing vessels. An illustration of the type of cooperation is found under Article V paragraph 2 of the agreement, which imposes upon port State control, the duty to report violations to flag States. Article V paragraph 3, the agreement further obliges State parties to cooperate on a global, regional and sub-regional levels to achieve the goals of the Agreement.

Lutgen theorises that FAO Compliance Agreement perhaps represents the most relevant international legal instrument incorporating hard law at the moment.⁹⁹ However Lutgen also postulated that the Agreement itself is plagued with gaps, such as, the restricted application of the agreement to the high seas, the exemption of vessels below 24 meters in length, and the 'discretionary' nature of the obligation to exchange data.¹⁰⁰ The Agreement also represents the first international instrument to effectively connect the right to fish on the high seas, to a vessels level of compliance with conservation measures.¹⁰¹ Some have argued that conditioning the right to fish on the high seas on the level of the vessels compliance does raises the spectre of an

⁹⁸Ibid., Article VIII.

⁹⁹L Lutgen, 'Legal Consultation of the FAO of the UN- 'Development of a Comprehensive Global Record of Fishing Vessels, Refrigerated Carriers, and Support Vessels' in FAO Fisheries Report No.865 (2008) p.53 <http://books.google.com.au/books?id=228ne4rWuIEC&pg=RA1>, 53.

¹⁰⁰Ibid.

¹⁰¹The FAO Compliance Agreement Article III.

encroachment on 'States' freedom of fishing on the high seas guaranteed under the 1982 LOSC.¹⁰²

B. The United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, 1995 (1995 UN Fish Stocks Agreement).¹⁰³

The 1995 UNFSA elaborates on the 1982 LOSC provisions on the management and conservation of fisheries in areas beyond national jurisdictions, in particular the management of straddling and highly migratory fish stocks.¹⁰⁴ Some describe the purpose of the agreement as, to provide content to the vague expressions contained under the provisions of the 1982 LOSC on the conservation and management of fish stocks.¹⁰⁵ Whatever the case, the objective of the agreement is to ensure the long term conservation and sustainable use of straddling and highly migratory fish stocks through the effective implementation of the fisheries provisions of the 1982 LOSC.¹⁰⁶ The agreement reiterates the 1982 LOSC principles of 'cooperation' as a tool for ensuring conservation and promoting the goal of optimum utilisation of fisheries both within areas under national jurisdiction and on the high seas.¹⁰⁷ To achieve these

¹⁰²Martin Tsamenyi, Lara Manarangi-Trott and Shilpa Rajkumar, 'The International Legal Regime for Fisheries' (Paper Presented at the UNEP Workshop on Fisheries Subsidies and Sustainable Fisheries Management, Geneva, 26-27 April 2004) 9.

¹⁰³Entered into force on December 11, 2001.

¹⁰⁴The 1995 UN Fish Stocks Agreement, Article III.

¹⁰⁵Oceans and Law of the Sea: A Division for Ocean Affairs and the Law of the Sea, 'The United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea 10 December 1982, Relating to the Conservation of Straddling Fish Stocks and Highly Migratory Fish Stocks' (UN website, July 10, 2010)

<http://www.un.org/Depts/los/convention_agreements/convention_overview_fish_stocks.htm>.

¹⁰⁶Judith Swan, 'International Systems for Monitoring and Verifying Fisheries Agreements' in n Trevor Findlay (ed) *Verification Year Book 2004* (Vertic 2003) 173.

¹⁰⁷UN Division of Ocean Affairs and The Law of the Sea, 'The 1995 UN Fish Stocks Agreement' (July 2010) UN Website <http://www.un.org/Depts/los/convention_agreements/convention_overview_fish_stocks.htm>.

goals, the 1995 UNFSA provides a framework for cooperation and prescribes some minimum standards for conservation and management of highly migratory and straddling fish stocks in the Exclusive Economic Zone as well as in the adjacent high seas. The agreement ensures that proper high seas compliance and enforcement mechanisms are in place.¹⁰⁸ Like the FAO Compliance Agreement, the 1995 UNFSA is a mandatory instrument and States who intend to participate must ratify the agreement.

The 1995 UN Fish Stocks Agreement was adopted as direct response to the resolutions of the UNCED conference set out in Agenda 21, Chapter 17, on sustainable fisheries. The conference acknowledged that resources on the high seas, especially, were over-utilized and that there was an apparent lack of an effective mechanism to protect, conserve and manage these high seas fish stocks.¹⁰⁹ The UNCED conference therefore called upon the United Nations to convene an inter-governmental conference to give effect to the aims of the 1982 LOSC, in the conservation and management of straddling and highly migratory fish stocks. On August 4, 1995, after more three years of intense negotiations, the 1995 UN Fish Stocks Agreement was adopted.¹¹⁰

The 1995 UNFSA, by and large adopts the approach in the 1982 LOSC, that the successful implementation of conservation measures on the high seas (as well as in the *EEZ*) must be inextricably linked to cooperation by States, through international,

¹⁰⁸Ibid.

¹⁰⁹The UNCED Agenda 21, Chapter 17.

¹¹⁰Entered into force on December 11, 2001.

regional and even sub-regional fisheries organizations.¹¹¹ Further, that conservation and management efforts be predicated on the ‘precautionary approach,’ and that such efforts must promote the objective of the optimum utilization of fisheries resources both within and beyond the exclusive economic zone.¹¹² The agreement promotes the vehicle of Regional Fisheries Management Organizations (RFMOs) as the appropriate tool for managing highly migratory and straddling fish stocks, and¹¹³ State parties are obliged to adopt measures that will ensure long term sustainability, based on the best scientific evidence, and on the precautionary approach. Furthermore, State parties must ensure the protection of the marine biodiversity, and the prevention of over-fishing, amongst others.¹¹⁴

The agreements obligates States to introduce additional control measures such as licensing systems, records of fishing vessels, vessels and fishing gear markings, and catch reports, to name a few.¹¹⁵ The agreement anticipates that regional efforts be coordinated through the relevant RFMO instruments, and where there is a disparity between national and regional efforts, flag States must adopt measures that conform with regional measures. In other words, flag States who are parties to RFMO undertake to give effect to the measures approved at such regional levels, in so far as the obligation of flag States are concerned.¹¹⁶ By the same token, the implementation of conservation and management measures must not be left to flag States alone, but requires extraordinary cooperation from others States. *‘Straddling fish stocks and highly migratory fish stocks are not politically adept, and have no respect for*

¹¹¹See Part III of the 1995 UN Fish Stocks Agreement.

¹¹²The 1995 UN Fish Stocks Agreement, Articles 5 and 6.

¹¹³Ibid., Article 2.

¹¹⁴Ibid., Article 5.

¹¹⁵Office of Director-General, ‘Part I - International Legal Setting’ (FAO website, 2010)

<<http://www.fao.org/docrep/007/y2776e/y2776e03.htm>>.

¹¹⁶Ibid.

*imaginary maritime zones and international boundaries.*¹¹⁷ As such, the cooperation of all States, whether it be coastal state, port State, or flag State, in the management and conservation of these stocks is critical.

Part V of the 1982 LOSC, leaves the management and conservation of living resources found within the *EEZ*, largely to the coastal States, but for straddling and highly migratory fish stocks, the conservation and management measures are spread between the coastal States and those States whose nationals fish for such stocks on the high seas. Articles 117 and 118 of the 1982 LOSC impose upon States, in general, the duty to take measures in respect of their nationals that fish on the high seas, and measures to manage and conserve the resources of the high seas, respectively. In this context however, the 1982 LOSC does not attribute any specific duties or obligations to flag States per se, but imposes a duty upon ‘States’ in general, to cooperate in the interests of conserving and managing such fisheries resources on the high seas. The FAO Compliance Agreement attempted to address this short-coming by prescribing specific flag State obligations. However, reliance on flag States alone raises the possibility that no other state jurisdiction will step in where the flag States fails to discharge its obligations, especially in the case of non-parties and flag States that have weak enforcement records.¹¹⁸ As such, the 1995 UNFSA, attempts to address this predicament by laying down a web-like regime of over-lapping duties and obligations between coastal States, port states and of course flag States, thereby putting in place defences, in addition to flag State enforcement.¹¹⁹ For instance, parties to the 1995 UNFSA have agreed in advance, to the boarding of their fishing vessels by other

¹¹⁷Jean Pierre Levy and Gunar C. Schram, *United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks: Selected Documents*, (Kluwer Law International, 1996) 67.

¹¹⁸Fontaubert and Lutchman, *op. cit.* p.49.

¹¹⁹The 1995 UN Fish Stocks Agreement Articles 18, 19, 20, 21, 22 and 23.

parties where there is suspicion that such fishing vessels may have engaged in fishing activities contrary to international law.¹²⁰ Nevertheless, the 1995 UNFSA acknowledges the critical role of the flag State in the conservation and management of straddling and highly migratory fish stocks and other high seas species, and as such imposes upon flag States, a number of important duties and obligations.

C. *The Code of Conduct for Responsible Fisheries (FAO Code of Conduct).*

The FAO Compliance Agreement, the 1995 UNFSA, and the FAO Code of Conduct together, form the core of the post UNCED response to addressing the gaps in the fisheries conservation and management framework. The FAO Code of Conduct is a voluntary instrument, designed to supplement the implementation of the FAO Compliance Agreement and the 1995 UNFSA by encouraging policies aimed at achieving best practices in the management of fisheries especially on the high seas. The Code, and its series of Technical Guidelines and the four International Plans of Action (IPOAs), has ‘..become the most authoritative reference for fisheries managers.’¹²¹

In brief, the FAO Code of Conduct was adopted to facilitate structural adjustments and changes in the governance of fisheries, in particular, to ensure the sustainable utilization of resources, and to maintain the contribution of fisheries to food security.¹²² The Code establishes principles and standards for responsible fishing, taking into account the technological, economic, social, environmental and commercial aspects, and promotes technical and financial cooperation, the

¹²⁰Ibid., Article 21.

¹²¹University of the South Pacific, ‘Responsible Fisheries in the Pacific Islands Region: Implementation of Post-UNCED International Instruments (Course delivered at the University of the South Pacific from July 9 to July 20, 1997) 2.

¹²²Doulman, *op. cit.* p.13.

contribution of fisheries to food security, the protection of aquatic resources and the coastal areas, and the trade of fisheries in compliance with international rules.¹²³ The Code applies globally and covers all fishing activities undertaken in zones under national jurisdiction as well as on the high seas.¹²⁴ Although it is non-binding, the code incorporates principles already established under the FAO Compliance Agreement, and the 1995 UN Fish Stocks Agreement, both of which are legally binding instruments.¹²⁵ It sets out management and conservation principles and standards for all types of fisheries and covers areas such as, fisheries management, fishing operations, aqua-culture development, the integration of fish into coastal area management, post harvest practices, trade of fisheries, and research.¹²⁶ The overall objectives of the Code is to see, a reduction in fleet sizes, the rebuilding of fish stocks, combating IUU fishing, and minimizing the impact of on biodiversity and the environment.¹²⁷

Like the prior instruments, the importance of effective flag State control is a factor that was not lost to in the negotiations leading up to the adoption of the code. The Code reiterates the key flag State obligations imposed under the FAO Compliance Agreement and the 1995 UN Fish Stocks Agreement. The duty to maintain a record of fishing vessels , which record shall record details such as, ownership of the vessels, and evidence of authorization to fish,¹²⁸ the duty to ensure that no fishing vessels fish on the high seas or in the exclusive economic zones of other States, unless such vessels have been issued with a Certificate of Registry and have been authorized to

¹²³FAO Code of Conduct, Article 1.

¹²⁴*Ibid.*

¹²⁵Such as the precautionary approach, the marking of vessels and gear to name a few.

¹²⁶Judith Swan, 'International Systems for Monitoring and Verifying Fisheries Agreements' in Trevor Findlay (ed) *Verification Year Book 2004* (Vertic 2003) 175.

¹²⁷*Ibid.*

¹²⁸FAO Code of Conduct Article 8.2.1.

fish by the competent authorities,¹²⁹ and the duty to ensure that fishing vessels maintain onboard at all times, the Certificate of Registry and evidence of the authorization to fish,¹³⁰ are reproduced under Article 8.2 of the Code. Flag States are also required to ensure that vessel and fishing gear markings conform to internationally agreed marking systems.¹³¹ The Code further obligates flag States to take effective and meaningful enforcement measures.

D. The International Plan of Action to Prevent, Deter, and Eliminate Illegal, Unreported and Unregulated (IPOA-IUU) Fishing.

IUU fishing activities have emerged as one of the biggest threats to efforts to manage and conserve the world's fish stocks in a rational way.¹³² Recognizing the dilemma, the FAO Ministerial meeting agreed in 1999 to develop an international plan of action to eliminate IUU fishing activities.¹³³ A draft of the proposed plan was deliberated upon in an expert consultation in Sydney in May 2001, followed by further technical consultations later that year, and in February of 2001. After extensive consultations the IPOA-IUU was finally adopted by the COFI in March 2001, and endorsed by the FAO Council on June 23rd 2001.

The IPOA-IUU is a voluntary instrument, adopted within the framework of the FAO Code of Conduct. It represents again, the culmination of wide ranging international efforts to further enhance conservation and management measures under the fisheries

¹²⁹Ibid., Article 8.2.2

¹³⁰Ibid., Article 8.2.2.

¹³¹Ibid., Article 8.2.3

¹³²UNGA Resolution 61/105 Part IV paragraph 33

<<http://daccessdds.un.org/doc/UNDOC/GEN/N06/500/73/PDF/N0650073.pdf?OpenElement>>

¹³³OECD, 'Short History of International Actions and Initiatives Against IUU Fishing Activities' (2010) OECD Website

<http://www.oecd.org/document/24/0,3343,en_2649_33901_23460248_1_1_1_1,00.html>

framework The plan involves a system of integrated approaches involving national, sub-regional, regional, and international cooperation. It is the very first international instrument to introduce a comprehensive regime to combat IUU fishing.¹³⁴

The objective of the IPOA-IUU is to prevent, deter and eliminate IUU fishing activities, by providing States, acting in their various capacities as flag States, port States, coastal States, and market States, with effective and transparent measures to combat IUU fishing activities.¹³⁵ The IPOA-IUU assists States by making available a ‘tool-box’ of tools and measures, that States can incorporate and adapt into their own national regimes to combat IUU fishers, irrespective of their scale of operations.¹³⁶

The advantage that the IPOA-IUU has over other instruments is that it covers the entire spectrum of actors in the fisheries sector, including non-FAO members, fishing entities, international organizations, and those generally interested in processing and marketing of fisheries.¹³⁷ The plan seeks to promote a greater level of participation by all concerned, so as to leave no gaps for exploitation by illegal fishers. It focuses more on compliance and enforcement, and particularly, in filling in the loopholes in the enforcement by making available to States the ‘tool box’ from which national jurisdictions could borrow from, in dealing with their own national fisheries regimes.¹³⁸ Like the instruments that preceded it, the IPOA-IUU also promotes the

¹³⁴Gilles Hoch, *What is the Implementation Status of the International Plan of Action to Prevent, Deter, and Eliminate Illegal, Unreported and Unregulated Fishing in Southern Africa: Assessing the THE IPOA-IUU* (2007) ‘Stop Illegal Fishing’ (NEPAD) <http://www.stopillegalfishing.com/doc/publication/eng/assessing_the_THE_IPOA-IUU.pdf>.

¹³⁵MaryAnn Palma, Martin Tsamenyi, and William Edeson, *Promoting Sustainable Fisheries: Legal Aspects of Sustainable Development* (Martinus Nijhoff Publishers, 2010) 16.

¹³⁶David Doulman, ‘Regional and National Action To Combat IUU Fishing in the Asian Region’ (Paper Presented at APFIC Regional Workshop on Managing Fishing Capacity and IUU Fishing in the Asian Region, Phuket, Thailand, June 13-15, 2007) Slide 5.

¹³⁷Palma, Tsamenyi, and Edeson, *loc. cit.*

¹³⁸Mary Ann Palma, ‘Combating IUU Fishing’ in Quentin Hanich and Martin Tsamenyi (eds) *Navigating Pacific Fisheries: Legal and Policy Trends In the Implementation of International*

flag State as an important participant in enforcement and reiterates important duties of flag States mandated under the FAO Compliance Agreement and the 1995 UN Fish Stocks Agreement. By the same token the plan also recognizes that focusing solely on strengthening the role of flag States is only part of the solution, and that an integrated approach guarantees the framework a better chance of success than States going it alone. On this basis the IPOA-IUU not only imposes duties on flag States per se, but similarly recognizes the importance of the cooperation by ‘port states’, ‘coastal states’ and even ‘market states’ in designing measures to prevent and eliminate IUU fishing activities. It imposes obligations that may be described as cross-cutting, and that apply equally to port states, coastal states, markets States and to flag States, described under Article IV as ‘All State Responsibilities,’ in addition to the ‘flag State’ specific duties and obligations.¹³⁹ Nevertheless, reservations have also been levelled at the effectiveness of the IPOA-IUU. One criticism is that the IPOA-IUU does not specify what ‘measures’ to apply to each a specific element of IUU fishing, whether it be illegal fishing, unreported fishing or unregulated fishing, thereby undermining enforcement efforts,¹⁴⁰ and therefore often leads to confusion at national levels, resulting in the implementation of ineffective measures. Notwithstanding, it is acknowledged that the IPOA-IUU constitutes for the very first time, the most comprehensive and complete international instrument targeting IUU fishing activities.¹⁴¹ It must be noted however, that the successful implementation of measures under the IPOA-IUU depend very much on sustained political commitment,

Fisheries Instruments in the Western and Central Pacific Region (Ocean Publications, ANCORS)71, 72.

¹³⁹Palma, Tsamenyi, and Edeson, *loc. cit.*

¹⁴⁰Palma, Tsamenyi, and Edeson, *op. cit.* p.17

¹⁴¹Gilles Hoch, *What is the Implementation Status of the International Plan of Action to Prevent, Deter, and Eliminate Illegal, Unreported and Unregulated Fishing in Southern Africa: Assessing the THE IPOA-IUU* (2007) ‘Stop Illegal Fishing’ (NEPAD)<http://www.stopillegalfishing.com/doc/publication/eng/assessing_the_THE_IPOA-IUU.pdf>.

properly trained personnel, strong national institutions, adequate financial and capital resources, and serious stake holder participation.¹⁴² Without political commitment, the resources and stakeholder participation, success in eliminating IUU fishing will continue to remain a far-fetched reality.

7.5 DUTIES OF FLAG STATES UNDER THE INTERNATIONAL LEGAL FRAMEWORK FOR THE CONSERVATION AND MANAGEMENT OF FISH STOCKS

Having examined the international legal framework for fisheries and the instruments that comprise the key components of this emerging framework, the following paragraphs embark on a review of the framework to ascertain from the framework the key duties of flag States under the framework. Flag States

Although the 1982 LOSC fisheries regime allocates duties to ‘States’ generally, and does not articulate duties to flag States per se, parties to the convention, have a duty to implement the fisheries provisions of the convention in good faith, in implementing and enforcing fisheries conservation and management measures. The obligation to give effect to the provisions of the convention is incumbent on States acting either in their coastal State capacity, port State capacity, market State capacity and of course, the flag State capacity. The Marshall Islands therefore in its capacity as a flag State is likewise obligated as party to the 1982 LOSC to give effect to the provisions of the convention in good faith.

¹⁴²David Doulman, ‘Regional and National Action to Combat IUU Fishing in the Asian Region’ (Paper presented at the APFIC Regional Workshop on Managing Fishing Capacity and IUU Fishing in the Asian Region, Phuket, Thailand, June 14, 2007) Slide 15.

But the increasing emphasis on the role of flag States in the post UNCED international fisheries instruments recognizes that the failure of flag States to effectively control the activities of their fishing vessels was adversely affecting the conservation and management of high seas fisheries, and that new approaches were imperative if the international community was to be successful in reigning in the activities of IUU fishers.¹⁴³ The IPOA-IUU itself consolidated, reinforced and enhanced key international law principles such as found under the 1982 LOSC, the FAO Compliance Agreement, the 1995 UN Fish Stocks Agreement the IMO and even the World Trade Organization (WTO).¹⁴⁴ For the very first time, the international community had adopted a comprehensive instrument specifically targeting the elimination of IUU fishing and involving all key stake-holders.¹⁴⁵

The FAO Compliance Agreement and the 1995 UN Fish Stocks Agreement on the one hand, impose specific duties and obligations on flag States. The FAO Code of Conduct and the IPOA-IUU, on the other, both incorporate and reiterate the importance of such duties, and the effective control of fishing vessels by flag States in regards to the management of high seas fisheries.¹⁴⁶ The IPOA-IUU, categorizes these duties into two categories, namely, ‘all State duties’ and ‘flag State duties; per se. ‘All State duties’ are cross-cutting, in the sense that the performance of such duties is incumbent upon all State jurisdictions (such as States acting in their port State, coastal State or even market State capacities) inclusive of flag States.¹⁴⁷ Flag States therefore

¹⁴³Fisheries and Agriculture Department, *Illegal, Unreported and Unregulated (IUU) Fishing* (FAO Website, 2010)< <http://www.fao.org/fishery/topic/3195/en>>.

¹⁴⁴Mary Ann Palma, ‘*Analysis of the Legal Adequacy of the Philippines Legal, Policy and Institutional Framework To Combat Illegal, Unreported and Unregulated Fishing* (Ph.D Thesis, University of Wollongong, 2006) 66.

¹⁴⁵Palma *op.cit.* p.74.

¹⁴⁶Palma, Tsamenyi, and Edeson, *op.cit.*p.111.

¹⁴⁷IPOA-IUU Article IV paragraphs 10 to 32.

have a bigger role, with duties specified under the ‘all states’ category and duties allocated to flag States per se, under the framework.

On the whole, the fisheries framework reiterates a number of key duties for flag States in the interests of the management of straddling and highly migratory stocks and other high seas species. These flag State duties are, the duty to observe international fisheries standards through the ratification the relevant international fisheries instruments, the duty to enact the necessary domestic fisheries framework, the duty to cooperate with other States and fisheries bodies, the duty to maintain a register of fishing vessels, the duty in relation to the issuance of authorization to fish, and the duty to maintain a record of fishing vessels. These duties are designed to enable the flag State to exercise better control of the activities of its fishing vessels, in the context of the conservation and management of high seas fisheries. These duties are discussed in detail in the succeeding paragraphs.

7.5.1 The Duty to Observe International Fisheries Standards and the Ratification of the Relevant International Instruments

The IPOA-IUU calls upon all States to ‘give full effect to the relevant norms of international law’ in the efforts to prevent, deter and eliminate IUU fishing. This obligation is identified under the IPOA-IUU as an ‘all State responsibility’, and as such responsible flag States are expected to ratify at least, the 1982 LOSC, the FAO Compliance Agreement, and the 1995 UN Fish Stocks Agreement, to better equip themselves in the global effort to conserve and manage high seas fish stocks. The FAO Code of Conduct and the IPOA-IUU, though, non-binding, contain principles and standards that have already been rendered mandatory under the 1982 LOSC, the FAO Compliance Agreement and the 1995 UN Fish Stocks Agreement, and support

the implementation of these binding instruments. As such, it is likewise apposite to incorporate into domestic framework, or to adhere to the principles, standards and management mechanisms adopted under these instruments. Flag States, as much as port states, coastal States and even market States, are obliged under the framework to observe such principles and standards by acceding to the relevant international instruments.

The duty of flag States to observe international standards is critical particularly to fisheries governance on the high seas. In this regard, flag States are obliged to take the necessary steps to ensure that their vessels do not engage in activities that undermine conservation measures on the high seas, or engage in any fishing activities on the high seas, unless expressly authorized to do so. Furthermore, flag States must refrain from granting any authorization to fish to any fishing vessels, unless it is able to effectively control the activities of the fishing vessel(s) concerned. But in order to be able to effectively discharge its duties in this regard therefore, flag States must ratify the relevant international fisheries instruments. The IPOA-IUU also anticipates that responsible flag States whose vessels fish under areas managed by Regional Fisheries Management Organizations (RFMOs) must either become members of such RFMO(s) by ratifying the relevant RFMO agreement, or at the very least, apply to their vessels, conservation and management measures consistent with the measures adopted by the relevant RFMO(s).

7.5.2 The Duty to Enact an Effective Domestic Legal Framework

Needless to say, ratification is but the first step in the laying the legal foundation for the effective implementation of fisheries measures at the national level. To properly ensure the health of high seas fisheries, flag States must follow the ratification of

international fisheries instruments with the enactment of national laws that will provide for the effective implementation and enforcement of such instruments at the national level. Ratification alone as a means of participation in a convention may be inadequate, but incorporating international requirements in domestic legislation, enables the flag State to act with authority, to ensure that its fishing vessels are conducting fishing activities on the high seas and in areas under other national jurisdictions, in accordance with international law.

In regards to the Marshall Islands in particular, the requirement to enact domestic legislation is a constitutional requirement. Article V Section 1 paragraph (4) of the Constitution of the Republic of the Marshall Islands prescribes that no treaty or international agreement finally accepted on behalf of the Republic of the Marshall Islands, shall of itself, have the force of law in the Marshall Islands, unless enabling legislation is enacted to incorporate the Treaty of agreement.¹⁴⁸ In accordance with the international legal framework, and the international measures to properly conserve and manage high seas fisheries, such domestic legislation must incorporate measures that would enable flag States to, control its nationals, and fishing vessels, deal with vessels without nationality, eliminate economic incentives and subsidies, and to perform effective monitoring, control and surveillance. Furthermore, national legislation must provide for effective enforcement measures, incorporating penalties with the severity to discourage IUU fishers.¹⁴⁹ Domestic law must in addition, address the issue of IUU fishing comprehensively, by providing for measures such as national plans of action to combat IUU fishing, and lay down the standards of admissibility of

¹⁴⁸Constitution of the Republic of the Marshall Islands, Article V Section (1) (d).

¹⁴⁹IPOA-IUU Article IV paragraph 21.

evidence, bearing in mind the use of electronic evidence and new technology, amongst others.¹⁵⁰

A. *Control of Vessels and Nationals fishing on the High Seas*

The duty of States to control their nationals again cuts across the different exercise of States jurisdictions, and is not one that is peculiar to flag States exclusively. The 1982 LOSC accords all States the right to have their nationals engage in fishing activities on the high seas.¹⁵¹ However, like all other rights and privileges accorded under the convention, the right to have nationals fish on the high seas is a qualified right. This right is exercised, subject to a State's own treaty obligations, and the due regard rule' under the convention. Article 117 of the 1982 LOSC also imposes upon all States, the duty to take measures, acting alone, or in cooperation with other States, over their nationals in the interests of the conservation of living resources in the high seas. To this end, States may impose measures such as, discouraging their nationals from flagging fishing vessels to States that fail to meet their duties under international law. Flag States are obliged to incorporate in national legislation measures that allow for the effective control over their nationals and fishing vessels on the high seas.

B. *Eliminate Economic Incentives and Subsidies.*

States are also urged to implement measures in their national laws to prohibit economic support, including subsidies, to companies, fishing vessels and persons that engage in IUU fishing.¹⁵² Economic incentives and subsidies contribute excess fishing capacity thereby undermining the effectiveness of conservation and management

¹⁵⁰IPOA-IUU paragraph 16 and 17.

¹⁵¹1982 LOSC Article 116

¹⁵²IPOA-IUU paragraph 23.

measures.¹⁵³ Flag States likewise have a duty not to encourage excessive fishing by the implementation of incentives and subsidies, and must provide for the prohibition of such inducements under national law.

7.5.3 The Duty to Cooperate With Other States, and Fisheries Bodies

The duty to cooperate with other States and Fisheries bodies is a critical duty of States in general, but more so, for flag States, in the context of high seas fisheries. In this regard, flag States have a duty to cooperate with other States in promoting fisheries conservation and management measures and to bring to an end the activities of IUU fishers. Although this duty is categorized under the IPOA-IUU as an ‘all-State’ duty, the management of high seas fisheries relies to a large extent, on the jurisdiction of the flag State, and flag State jurisdiction in this regard, in turn, can only be effective if with the support of other States and the relevant RFMOs.

Article 118 of the 1982 LOSC implores, amongst others, flag States, to cooperate in the conservation and management of living resources in the high seas and States whose nationals target fisheries in the same areas must cooperate either directly or through the establishment of the appropriate regional or subregional bodies.¹⁵⁴ Cooperation is an indispensable mechanism in international efforts to rationally conserve and manage fisheries on the high seas, given the fact that IUU vessels are quite mobile and slip in and out of areas under jurisdictions of multiple States and the high seas.¹⁵⁵ Additionally fisheries being an international venture, owners and operators of fishing vessels often do not have the same nationality as the fishing

¹⁵³FAO, ‘All State Responsibilities (2010) FAO Website <
<http://www.fao.org/DOCREP/005/Y3536E/y3536e06.htm#bm06.2.4>.

¹⁵⁴1982 LOSC, Article 118.

¹⁵⁵FAO ‘All State Responsibilities (2010) FAO Website <
<http://www.fao.org/DOCREP/005/Y3536E/y3536e06.htm#bm06.2.4>.

vessels themselves, as such, cooperation as anticipated under the 1982 LOSC and the IPOA-IUU, is critical in identifying the actual perpetrators of IUU fishing activities.¹⁵⁶ Flag States must also cooperate to prevent IUU fishers from benefiting from the activities by preventing the trade of fish harvested during IUU activities. Cooperation also requires flag States to become members of the relevant RFMOs, and to share and exchange relevant data and information.¹⁵⁷

7.5.4 The Duty in Regards to the Registration of Fishing Vessels

In order to deter and eliminate the incidences of IUU fishing activities, the international legal framework imposes upon flag States the duty to ensure that fishing vessels flying their flags do not engage in IUU fishing activities.¹⁵⁸ Therefore, when making a decision on whether or not to register a fishing vessel, international law reminds flag States to be mindful of their obligations under the framework, particularly, the FAO Compliance Agreement, to discourage fishing vessels from the practice of re-flagging as a means to circumvent conservation efforts under the relevant RFMO convention, or the fisheries framework, generally. Accordingly, a flag State's decision must be influenced by the following considerations, namely, the history of the fishing vessel, and secondly, the flag State's own ability to exercise effective control over the said fishing vessel.¹⁵⁹

When considering the history of the fishing vessel the flag State must inquire into factors such as, the previous flag, the names of the owners, the names of any previous owners, the previous names of the fishing vessel, the reasons for re-flagging, and the

¹⁵⁶FAO, 'All State Responsibilities (2010) FAO Website <
<http://www.fao.org/DOCREP/005/Y3536E/y3536e06.htm#bm06.2.4>.

¹⁵⁷IPOA-IUU paragraphs 28-31.

¹⁵⁸Ibid., paragraph 34.

¹⁵⁹Ibid., paragraphs 34 through to paragraph 31.

number of times the fishing vessel has moved to a new flag. The flag State must also attempt to establish whether an applicant vessel has a history of IUU related violations. Such examination is indispensable, and must be undertaken in order for the flag State to inform itself fully on the motives of the applicant. Where a fishing vessel has a history of IUU fishing, the flag State should normally avoid registering the fishing vessel unless satisfied otherwise. Likewise, flag States should refrain from registering any fishing vessel where the flag State determines that it is not in a position to exercise effective control over such fishing vessel.¹⁶⁰

Subsequent to the registration, a fishing vessel, in accordance with Article 91 of the LOSC, assumes the nationality of the flag it is entitled to fly, and as such, is subject to the exclusive jurisdiction of such State.¹⁶¹ Accordingly, the flag State is obligated under fisheries framework to issue the fishing vessel with the relevant certification, which must be carried on board at all times.¹⁶² Flag States are also obligated to take the necessary measures to ensure the seaworthiness of fishing vessels in terms of construction and equipment, and to ensure that fisherman employed on these fishing vessels are employed under terms and conditions consistent with the labour conditions set out in ILO maritime labour related conventions and recommendations. The minimum technical standards of safety at sea, and the standards for the certification and employment of personnel on fishing vessels are set out in the 1993 Torremolinos Protocol and 1995 STCW-F and the Fishing Vessel Code, as well as the Work in Fishing Convention 2007 and the Work in Fishing Recommendation 2007. These instruments however, are yet to enter into force.¹⁶³ Furthermore, in the exercise of its exclusive jurisdiction, flag States have the responsibility to ensure that their fishing

¹⁶⁰ IPOA-IUU paragraph 35

¹⁶¹ 1982 LOSC, Article 92.

¹⁶² FAO Code of Conduct paragraph 8.2.2

¹⁶³ Palma, Tsamenyi, and Edeson, *op.cit.* p.113.

vessels and gears are marked in accordance with internationally recognized marking specifications. With fishing vessel markings in particular, such vessels must be marked in accordance with the FAO Standard Specifications for the Marking and Identification of Vessels.

7.5.5 The Duty in Regards to the Issuance of Authorization to Fish

Flag States are required under the fisheries framework to adopt necessary measures to ensure that no fishing vessel registered under their flags is allowed to fish on the high seas or areas under the jurisdiction of other States unless such fishing vessels have been duly issued valid ‘authorization to fish.’¹⁶⁴ An authorization to fish, like the issuance of a *Certificate of Registry*, represents yet another tool available to flag States to control the activities of fishing vessels, and to ensure that such fishing vessels are discouraged from engaging in IUU fishing activities. In making a decision on whether or not to grant an authorization to fish, flag States must be mindful of their duty under the fisheries framework to implement measures to eliminate IUU fishing, and the guidance laid down under the provisions of Article III(5)(a) of the FAO Compliance Agreement.¹⁶⁵ Article III (5) (a) of the FAO Compliance Agreement in brief, discourages flag States from issuing an authorization to fish to fishing vessels that have a history of IUU fishing unless satisfied to the contrary. However, it is acknowledged that the issuance of the authorization to fish per se, may not be the critical factor, but rather, the fishing vessels readiness to comply with the conditions attached to the authorization to fish, and the flag States ability to effectively enforce such conditions, is the important consideration.¹⁶⁶

¹⁶⁴The IPOA-IUU paragraph 44.

¹⁶⁵Palma, Tsamenyi, and Edeson, *op.cit.*p.121.

¹⁶⁶*Ibid.*,p.122.

The authorization to fish, should at a minimum reflect, the name of the vessel and the persons authorized to fish, the areas, scope and duration of the authorized fishing, the species targeted, and the fishing gear authorized, for instance. In fact, Flag States may, in addition, impose their own terms and conditions as prerequisites for the issuance of an *authorization to fish*. Some flag States have indeed, imposed the requirement that, fishing vessel install VMS systems on board, fishing vessels provide catch reports and transshipment reports, the requirement to provide fishing location reports, the requirement to have observers on board, and the requirement for maintenance of log books, to name a few.¹⁶⁷

Flag States also have the duty to ensure that support and supply vessels do not engage or assist in IUU fishing activities and the flag State must take the necessary steps to ensure that such vessels are likewise issued the proper authorization to carry out any such support activities.¹⁶⁸ In doing so, the flag State could impose additional requirements on such support vessels. These additional requirements may include conditions such, as requiring such support vessels to provide specific information, such as the date and location of transshipments, the weight by species and catch, the name of the vessel, the flag and the port the catch was landed, amongst others.¹⁶⁹ If the flag State is not in a position to exercise effective control and enforcement of these conditions, then it is obliged under the IPOA-IUU to refrain from issuing the authorization to fish.¹⁷⁰

¹⁶⁷ IPOA-IUU paragraphs 46 and 47.

¹⁶⁸ Ibid., paragraphs 48 and 49.

¹⁶⁹ Ibid., paragraph 49.

¹⁷⁰ IPOA-IUU.

7.5.6 The Duty to Maintain a Record of Fishing Vessels

Another critical duty imposed on flag States under the fisheries framework is the obligation to maintain a record of fishing vessels that they have authorized to fish.¹⁷¹ At the minimum, this record should contain, the name of the fishing vessel, the registration number, previous names and the name of the port of registry, the previous flag, the international Radio Call-Sign, name(s) and address(es) of owner(s), date and place where fishing vessel was built, the type of vessel and the measurements of the vessel.¹⁷² Flag States are also required, where permissible, to transmit to the FAO, in regard to each fishing vessel on their record, information on the operator(s), the type of fishing method(s), the moulded depth, the beam, gross registered tonnage, and the power of engines.¹⁷³ The IPOA-IUU Paragraphs 42 and 43 on the other hand urges flag States to enter into their records additional information such as the name, street address and nationality of the person or entity in whose name the fishing vessel is registered, the name, street address and the nationality of the operators or managers of the fishing vessel, the name address, nationality of the beneficial owners of the fishing vessel, a history of the vessel, and the dimensions and measurements of such vessel.¹⁷⁴ Such information allows an insight into the history of fishing vessels, and is intended to aid the flag State in ascertaining whether an application is consistent with efforts to avoid responsibility for conservation and measures. Paragraph 43 of the IPOA-IUU further encourages flag States to collect and maintain such information in relation to fishing vessels that do not fish on the high seas.

¹⁷¹The FAO Compliance Agreement Article IV, the FAO Code of Conduct Paragraph 8.2.1 and the IPOA-IUU paragraphs 42 and 43.

¹⁷²FAO Compliance Agreement Article VI paragraph 1.

¹⁷³FAO Compliance Agreement Article VI paragraph 2. See also the 1995 UN Fish Stocks Agreement, Annex I Article 4.

¹⁷⁴IPOA-IUU paragraphs 42 and 43.

Article 8.2.1 of the FAO Code of Conduct, and paragraphs 42 and 43 of the IPOA-IUU, also require RFMOs to impose a requirement on their members, to maintain records of all fishing vessels that are licensed to fish in each convention area. In fact, the High Seas Fishing Vessel Authorization Record (HSVAR) database was developed in 1995 on the basis of Article VI of the FAO Compliance Agreement. The database is maintained as a central database at the FAO, and fed by reports from States that have accepted the FAO Compliance Agreement. *‘The database contains distinctive and descriptive elements of high seas fishing vessels as well as information on registration and authorization status, and infringements.’*¹⁷⁵ However, Palma, Tsamenyi and Edeson contend that the HSVAR does not provide adequate data to allow for effective control as the data base does not record the actual activities of fishing vessels.¹⁷⁶ The Global Record of Fishing vessel proposed by the FAO is another significant development, but may similarly be inadequate if it is not properly implemented.¹⁷⁷

7.6 CONCLUSION

Although the 1982 LOSC was touted as a major international law success, the failure of the fisheries framework under the convention to effectively address the conservation and management of high seas fisheries highlighted the gaps and weaknesses of the regime. As a result, the international community rallied to strengthen the framework, particularly for the conservation and management of straddling and highly migratory stocks. In particular the series of post UNCED

¹⁷⁵FAO Fisheries and Aquaculture Department, *Fishery Records Collection: High Seas Vessel Authorization Record* (Food and Agriculture Organization of the United Nations, 2010) <<http://www.fao.org/fishery/collection/compliance-agreement/en>>.

¹⁷⁶Palma, Tsamenyi, and Edeson, *op.cit.*p.127.

¹⁷⁷*Ibid.*, p.128.

international fisheries instruments adopted by the FAO were intended to supplement the 1982 LOSC fisheries framework, and to enhance the framework for the management and conservation of high seas stocks. Recognizing the unique place of the flag State in the framework, these instruments impose a number of key duties on flag States per se, designed to enable the flag States themselves to exercise better controls on their nationals, their fishing vessels, and to elimination of IUU fishing activities. The duty to comply with international fisheries standards, the duty to enact effective national fisheries laws, the duty to cooperate with other States through RFMOs, the duty to issue authorization to fish, the duty to in regards to the registration of fishing vessels and the duty to maintain a record of fishing vessels are mandatory flag State duties, imposed under under this emerging fisheries framework. Flag States are therefore obligated to carry out these duties effectively.

As a flag State, and a party to the relevant international instruments, the Marshall Islands is similarly obligated to discharge these obligations in the manner prescribed under the framework. The Marshall Islands as such not only has the obligation to discharge these duties, but it has the obligation to discharge these duties, effectively. The analysis of the performance of the Marshall Islands of these duties is undertaken in Chapter 8 below.

CHAPTER 8

ANALYSING THE PERFORMANCE OF THE MARSHALL ISLANDS UNDER THE INTERNATIONAL LEGAL FRAMEWORK FOR THE CONSERVATION AND MANAGEMENT OF FISHERIES

8.1 INTRODUCTION

Chapter 7 above analysed the international legal framework for the conservation and management of fisheries, and identified a number of important duties and obligations that the framework imposed on flag States such as the Marshall Islands. These duties are imposed on flag States to ensure that such States are able to control the activities of their fishing activities of their fishing vessels in regard to the conservation and management of fish stocks, particularly high seas fish stocks. As it was also detailed in Chapter 7 above, these duties emerged mostly from a series of post-UNCED international fisheries instruments – which instruments recognised that a comprehensive conservation and management framework required the proper participation of flag States. This is particularly important in light of the unique status of flag States under international law, in regard to the exercise of jurisdictional authority of vessels. As a flag State therefore, the Marshall Islands is duty bound under these instruments to carry out such duties in accordance with the requirements of the framework.

Accordingly, the aim of this chapter is therefore to analyse the discharge by the Marshall Islands of its fisheries related duties as a flag State. To this end, the chapter

examines each duty, and then tests the performance of the Marshall Islands of such duties against the requirements of the relevant international fisheries instruments.

8.2 OVERVIEW OF THE PERFORMANCE

Before delving into this analysis, however, it is necessary as an overview, to briefly discuss the capability of the Marshall Islands to discharge its flag State duties under the fisheries framework. In this regard, the discussions look at certain areas, such as performance in areas such as maritime policy,¹ legislative and institutional frameworks for fisheries conservation and management, and the administrative and enforcement arrangements in place at the national level. The proper performance of the Marshall Islands of its flag State duties under this framework is critical given that the Marshall Islands is home to a number of fishing vessels.

To a large extent, oceanic fisheries in the Marshall Islands is still dominated by purse seine fleets by distant waters fishing nations (DWFNs) such as Japan and the United States purse seine fleets fishing particularly for skip jack tuna.² The fleet however also includes a number of Marshall Islands flagged purse seine vessels and pole and line vessels (particularly Japan) that are also operating in the Marshall Islands fishery waters and the approved to fish or operate in the WCPO.³ As a flag State, the challenge for the Marshall Islands is therefore to ensure that these fishing vessels do not engage in fishing activities that contravene its laws, and other fisheries

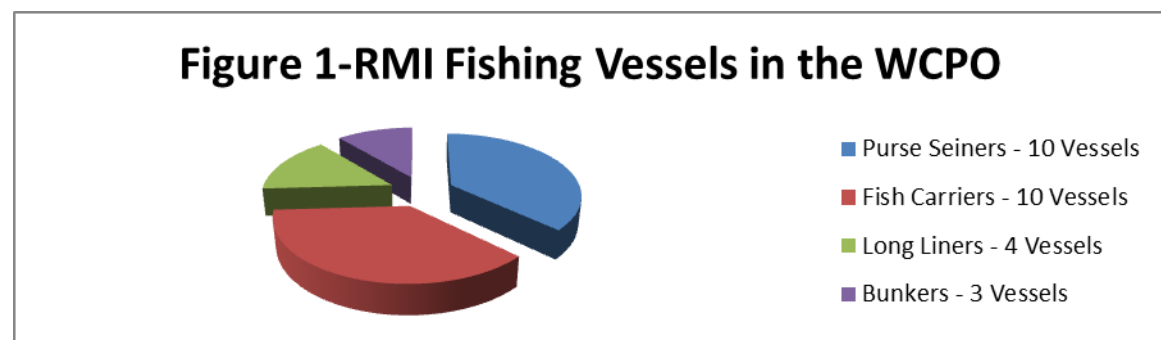
¹See Annex 10 below.

²MIMRA, Annual Report 2007/08 (2009) p.5.

³WCPFC, *Vessels on the WCPFC 'Record of Fishing Vessels' (RFV)* (2012) WCPFC
<<http://intra.wcpfc.int/Lists/Vessels/Stats.aspx>>

conservation and management measures adopted under international regional and sub-regional instruments.

Although Figure 3 in Chapter 2 above did not specify the number of fishing vessels registered under the Marshall Islands laws, it is noted that ‘fishing vessels’ as a category is subsumed under the larger category ‘Miscellaneous’ in Figure 3. The exact data on the fishing vessels flagged to the Marshall Islands however can be accurately ascertained from the WCPFC *Record of Fishing Vessels*.⁴ In accordance with the filings and reporting by the Marshall Islands under the WCPF Convention, 27 fishing vessels are recorded with the WCPFC as flagged to the Marshall Islands, and operating in the WCPO area. These vessels have as registered home port of Majuro, Marshall Islands.⁵ As demonstrated in *Figure 1* below, this fleet consists of ten (10) *fish carriers*, three (3) *bunkers*, ten (10) *purse seiners*, and four (4) *long-liners*. The majority of these vessels mostly long-liners and purse seiners are owned or operated by domestic based foreign owners, such as Pan Pacific Foods, Marshall Islands Fishing Company, and Koos Fishing Company. The rest are recorded as being owned by foreign persons and entities in Norway, Panama and South Korea.⁶



⁴WCPFC, *Vessels on the WCPFC 'Record of Fishing Vessels' (RFV)* (2012) WCPFC
<<http://intra.wcpfc.int/Lists/Vessels/Stats.aspx>>

⁵Ibid.

⁶Ibid.

Source: WCPFC Record of Fishing Vessels< <http://intra.wcpfc.int/Lists/Vessels/Stats.aspx>>

The challenge for the Marshall Islands is therefore, not only to effectively manage its fisheries, and to enforce fisheries conservation and management measures as a coastal State, but furthermore, the Marshall Islands is saddled with another burden, i.e the burden of ensuring that its nationals, and fishing vessels flying its flag, do not engage in fishing activities that contravene international, regional or sub-regional fisheries conservation and management measures. To be able to accomplish such an important undertaking however, the Marshall Islands must set itself up to do so in the best and most competent manner. A comprehensive policy framework, a robust domestic legal framework, competent personnel and experts, an efficient institutional framework and effective enforcement arrangements are key components of the competence of the competence of the Marshall Islands, if it is to discharge its duties as a flag State under the fisheries framework, in the proper manner. The ensuing paragraphs examine a number of these key components, particularly, the policy framework, the domestic legal framework, the institutional and administrative framework, and the enforcement framework to determine the effectiveness of the Marshall Islands in carrying out its flag State duties.

8.2.1 Fisheries Policy Framework

Unlike the Marshall Islands' other maritime sectors, the Marshall Islands has adopted a policy framework to guide its activities in the fisheries sector. The policy has three main goals: (i) to improve economic benefits from the fisheries sector; (ii) to promote responsible, private sector led fishery development; and (iii) to strengthen the

Marshall Islands institutional capacity to facilitate the responsible development and management of fisheries resources. Although the decision to formulate a policy for the fisheries sector is to be applauded, it must be noted that the policy was written in 1997. It is proposed that the time has come for the Marshall Islands to review the policy to ensure that it reflects its current priorities. In particular, the policy should take into account the obligations of the Marshall Islands under international law, particularly its flag State obligations, as well as the importance of these obligations being discharged in an effective manner.

8.2.2. Fisheries Legislative Framework

In order for the Marshall Islands to properly implement fisheries conservation and management measures adopted under international instruments at the national level, it must first ratify or accede to such instruments.⁷ Following ratification, the Marshall Islands can then proceed to enact national laws incorporating relevant portions of these international instruments into their domestic legal framework. If it is to play a meaningful role in the international effort to properly manage and conserve the world's fisheries, particularly in eliminating IUU fishing, then it is reasonable to expect the Marshall Islands to have acceded to, or ratified the 1982 LOSC, the FAO Compliance Agreement, and the 1995 UNFSA, and further, to have incorporated the principles and fisheries conservation measures enshrined in these international instruments into domestic law. Indeed, it does appear, on the basis of Table 1 below, that the Marshall Islands has achieved this goal, having ratified the 1982 LOSC, and the 1995 UNFSA. Additionally, the Marshall Islands is also a party to a number of regional and sub-regional fisheries instruments that promote stringent fisheries

⁷Constitution of the Republic of the Marshall Islands, Article V Section 1(4).

conservation and management measures. The *WCPF Convention* and the *Nauru Agreement Concerning Cooperation In The Management Of Fisheries Of Common Interests*, are such examples.

In 1987, and in recognition of its obligations under the international legal framework for fisheries, the Marshall Islands enacted several pieces of legislation to support the international effort to conserve and manage the world's fish stocks. Ten years later, in 1997, the Marshall Islands Parliament enacted a modernised fisheries law that was intended to incorporate provisions of the 1995 UNFSA. This piece of legislation was later codified as five separate Acts, comprising the *Marshall Islands Marine Resources Authority Act 1997*⁸ (MIMRA Act), the *Fisheries Act 1997*⁹, the *Development of Local Fisheries Act 1997*, the *Fishing Access and Licensing Act 1997*¹⁰ and the *Fisheries Enforcement Act 1997*¹¹. In 2011, the Marshall Islands decided to take comprehensive action to modernize its fisheries laws. In the intervening fourteen years since the enactment of the *Marine Resources Act, 1997*, the Marshall Islands had ratified a number of international, regional and sub-regional fisheries instruments and further, agreed to important fisheries conservation and management measures. Nevertheless, Nitijela failed over the course of the fourteen years to take legislative action to modernize the Marshall Islands fisheries laws and to take into account the new developments in the area of fisheries. In late 2011 the Nitijela finally enacted amendments to the Marshall Islands fisheries laws. The Marshall Islands is now one of only a handful of countries in the region with a modernised fisheries legislation.

⁸See Annex 6 below.

⁹See Annex 7 below.

¹⁰See Annex 8 below.

¹¹See Annex 9 below.

8.2.3 Institutional and Administrative Arrangements: MIMRA

The administration of Marshall Islands fisheries laws is a responsibility vested primarily in MIMRA.¹² This Authority is empowered to take enforcement action within Marshall Islands fishery waters, and to cooperate with other States in regard to high seas fisheries. Under the Marshall Islands' fisheries laws, both foreign and domestic based fishing vessels are prohibited from engaging in fishing activities in Marshall Islands fishery waters unless permission has been granted from MIMRA. In this regard, MIMRA is empowered under the Act to make a determination whether to grant access to fishing vessels, taking into account the considerations set out under Section 414 of the *Fishing Access and Licensing Act 1997*. Under Section 414 of the Act, MIMRA may deny an application for a licence in circumstances where the fishing vessel is not properly marked, has a history of fisheries violations, or where in the opinion of the MIMRA's Executive Director, issuing the licence would not be in the interests of the Marshall Islands.¹³ MIMRA is administratively organised into three main divisions - the Office of the Executive Director, the Coastal and Community Affairs Division (CCAD) and the Oceanic and Industrial Affairs Division (OIAD). The Coastal and Community Affairs Division and the Oceanic and Industrial Affairs Division are both answerable to the Office of the Executive Director, who in turn is answerable to MIMRA's Board of Directors.

The powers and functions of MIMRA are exercised by a Board of seven members, acting through the Executive Director, the Deputy Directors and the staff of MIMRA.¹⁴ The seven members of the Board include the responsible Minister, the

¹²51 MIRC Chapter 2, *Fisheries Act 1997*, Section 1.

¹³51 MIRC Chapter 4, *Fishing Access and Licensing Act 1997*, §414(3).

¹⁴51 MIRC Chapter *MIMRA Act, 1997* Section 112.

Secretary for Foreign Affairs, the Attorney-General, and four other members knowledgeable in the area of fisheries and appointed by the President. The Executive Director of MIMRA is an *ex-officio* member of the Board.¹⁵ In discharging its responsibilities under the Act, the Board is expected to give effect to policy directions from Cabinet.¹⁶

A. The Executive Director

The Office of the Executive Director is established under Section 116 of the MIMRA Act. The Director, who is the head of MIMRA, is responsible for the day to day management and operations of the Authority. The Director is vested with certain powers under the Act to enable the office and MIMRA as a whole to carry out their functions effectively. The Director is an *ex-officio* member of the MIMRA Board and is supported in his functions by two Deputy Directors -, the Deputy Director for Oceanic and Industrial Affairs Division, and the Deputy Director for Coastal and Community Affairs. In addition to these Deputy Directors, the Director is authorised to employ personnel that will enable the Authority to carry out its functions effectively.

B. The Oceanic and Industrial Affairs Division

The Oceanic and Industrial Affairs Division (OIAD) is responsible to the Director for the implementation and enforcement of fisheries conservation and management measures within the Marshall Islands EEZ. In this regard, the OIAD is responsible for the implementation and enforcement of the provisions under the *Fisheries Act 1997*, the *Licensing and Access Agreements Act 1997*, and the *Fisheries Enforcement Act*

¹⁵Ibid., Section 113.

¹⁶Ibid.

1997. The provisions of these Acts regulate the issuing of fishing licences to fishing vessels and scientific research vessels, the collection of fisheries data, the monitoring, control and surveillance of fishing activities at the national level, regional and international vessel monitoring, various control and surveillance schemes, port sampling, as well as observer programs.¹⁷ Indeed, the OIAD is the division primarily responsible for implementing the provisions of Marshall Islands fisheries laws, and to a lesser extent, flag State functions in regard to fishing vessels. The Coastal and Community Affairs Division (CCAD) deals primarily with community based projects relating to sustainable coastal and inland fisheries.

8.2.4 Enforcement Arrangements: MIMRA

The enforcement of Marshall Islands fisheries laws is an obligation imposed primarily upon MIMRA, acting through its Executive Director and the Authority's various divisions and officers. The Director is vested with certain enforcement powers, including the power to: (i) determine the total level of fishing and the allocation of fishing rights; (ii) designate fishery areas; (iii) design conservation and management measures; (iv) enter into fishing access agreements; (v) issue fishing licences; (vi) deny applications for fishing licences; (vii) withdraw or modify terms of fishing licences in relation to fishing, transshipment, mariculture or aquaculture; (viii) regulate trade in fishery products and fish processing; (ix) regulate marine scientific research; (x) maintain a record of fishing vessels; (xi) cooperate with other States in regard to high seas fishing issues; (xii) impose fees and charges; (xiii) request fishing plans from fishers; (xiv) seize fishing vessels caught violating Marshall Islands fisheries laws (along with the fishing gear, catch and all appurtenances of such vessels); and (xv)

¹⁷MIMRA, 'About MIMRA/The Mission of MIMRA' (MIMRA Website) <http://www.mimra.com/aboutmimra.html>

institute legal proceedings against violators (upon the advice of the Attorney-General).

The Director is assisted in this enforcement function by ‘authorised officers’ and ‘authorised observers’ appointed under the *Fisheries Enforcement Act 1997*. Authorised officers may perform surveillance and enforcement functions while on board another State’s vessel, while a foreign appointed authorised officer may perform surveillance and enforcement functions while on board a foreign vessel. Authorised officers are also empowered to stop, board and search any fishing vessel within the fishery waters of the Marshall Islands, any fishing vessel flagged to the Marshall Islands that is found in waters outside the jurisdiction of the Marshall Islands, as well as any other vessel, craft or vehicle engaged in any fishing activity. When boarding vessels, authorised officers may inquire into the details and history of a vessel, take samples of the vessel’s catch, examine licences and logbooks, examine the fishing gear and other appliances on board the vessel, endorse licences, as well as arrest any person that obstructs the search.¹⁸ Authorised officers may also seize any fishing vessel, fishing gear, logbook or chart that may have been used in the commission of an offence under national fisheries laws.¹⁹

In addition to appointing ‘authorised officers’ the Director is also authorised to appoint ‘authorised observers’ for enforcement purposes. Authorised observers are permitted to board fishing vessels to monitor compliance with Marshall Islands fisheries laws, and are entitled under the Act to gain full access to equipment and

¹⁸51 MIRC Chapter 5, *Fisheries Enforcement Act, 1997*, Section 504.

¹⁹*Ibid.*, Section 504.

facilities on board vessels, including bridges, navigation charts, catch, records, logbooks, fishing gear, as well as navigation and radio communication equipment.²⁰

8.3 ANALYSING THE PERFORMANCE OF THE MARSHALL ISLANDS

Having briefly reviewed the fisheries policy and legislative framework, as well as the Institutional and enforcement arrangements in place at the national level, this part analyses the actual performance of the Marshall Islands of its duties as a flag State under the international legal framework for fisheries. The key duties of the Marshall Islands as a flag State, as identified in the previous chapter, comprise the duty to observe international fisheries standards and ratify relevant international instruments, the duty to enact an effective domestic legal framework, the duty to control vessels and nationals fishing on the high seas, the duty to cooperate with other states and fisheries bodies, the duty in regard to the registration of fishing vessels and issuing authorisations to fish, as well as the duty to maintain a record of fishing vessels.

8.3.1 Performance of the duty to Observe International Fisheries Standards, and to Ratify Relevant International Instruments

The duty to observe international fisheries standards, and to ratify relevant international fisheries instruments, requires flag States to implement and enforce fisheries conservation and management measures that are consistent with those standards set out under the core international fisheries instruments. Such an obligation is classified under the IPOA-IUU as an ‘all State’ responsibility, and thus flag States such as the Marshall Islands must ensure that the enforcement of their fisheries laws,

²⁰Ibid., Section 508.

particularly with respect to high seas fisheries, is undertaken in a manner consistent with international law. For the duty to be discharged in the proper manner, responsible flag States participating in the relevant international agreements must accede to or ratify such agreements, and then proceed to incorporate the relevant parts of the agreements into their national laws.²¹ In this regard, the core international fisheries laws comprise the *1982 LOSC*, the *1993 FAO Compliance Agreement* and the *1995 UN Fish Stocks Agreement*. Flag States are also encouraged to observe and apply the policies and standards advocated under the voluntary FAO fisheries instruments, such as the FAO Code of Conduct and the IPOA-IUU.

A. Ratification of International Fisheries Instruments

That the Marshall Islands has participated in the international effort to conserve and manage fish stocks is commendable, particularly in respect of its ratification of the relevant international instruments. Indeed, the Marshall Islands is a party to the *1982 LOSC*, the *1995 UN Fish Stocks Agreement*, and a number of important regional and subregional fisheries agreements. These regional and sub-regional instruments include the *Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean 2000*, the *Nauru Agreement Concerning Cooperation In The Management Of Fisheries Of Common Interest*, and the *Pacific Islands Forum Fisheries Agency, 1979*. Furthermore, as noted in the tables below, that the Marshall Islands is also a signatory to a number of no-binding international fisheries instrument The ratification of these instruments signals the commitment of the Marshall Islands to the implementation and enforcement of fisheries conservation and management measures that are consistent with international

²¹Ocean Law Information and Consultancy, ‘Evaluating Flag State Performance’ (Report prepared for the High Seas Task Force, February 2006) 6.

standards. However, it should be noted that the mere act of ratifying an international instrument, or gaining membership to an international fisheries body, does not by itself indicate compliance. Indeed, real compliance is best measured by State performance at the national level.

Table 1: Status of Key International Fisheries Instruments in the RMI

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

Source: MRAG, Republic of the Marshall Islands Comprehensive Fisheries Legislation Review (CU/PE1/SI/10/001) Report Prepared for ACP Fish II) 2011, p.11

As is too often the case with small developing countries such as the Marshall Islands, the ratification of international instruments is rarely supported by effective implementation at the national level. Issues with resources, expertise and political support, as well as problems with “*coordinating the roles, policies and agendas of functional ministries*”, tend to compromise the ability of States to meet their obligations under international law.²² If the Marshall Islands was beset by these problems, then its avid participation in international fisheries conventions and instruments would be of no useful consequence. Indeed, as a party to the fisheries instruments referred to above, the Marshall Islands has an obligation to effectively implement and enforce the flag States duties called for under the framework if it is to make any meaningful contribution to the global effort to manage fish stocks.

²²ESCAP, ‘Adhering to International Instruments (2010) ESCAP Virtual Conference http://www.unescap.org/drrpad/vc/orientation/M3_intcomm.htm.

In a 2006 report, the High Seas Task Force (HSTF)²³ recommended that in assessing whether a flag State is responsibly discharging its duties, the State's performance ought to be reviewed under three broad categories. They are: (i) the State's participation in global fisheries agreements; (ii) the State's participation in regional fisheries agreements and organisations; and (iii) the effectiveness of the State in incorporating the measures called for under the relevant international instruments into its domestic legal framework.²⁴ If the performance of the Marshall Islands under the fisheries framework were to be analysed against these three categories, one would be justified in concluding that the Marshall Islands has been very successful in discharging its various obligations, at least in relation to the first two categories. Analysing performance in the third category requires further inquiry, as the implementation of international measures at the national level it is often dependent upon, and therefore influenced by, policy, legislative and institutional frameworks, as well as administrative and enforcement arrangements. If these frameworks and arrangements are robust and effective, the Marshall Islands has the opportunity to perform its implementation responsibilities in an effective manner.

B. Incorporating International Instruments under Domestic Law.

For many small developing States, implementation at the national level continues to be the 'Achilles heel' in their attempt to contribute to the global effort to conserve and manage fisheries resources. This predicament is not confined to any one region, but is common throughout the developing world, with governments and their responsible agencies constrained by a lack of resources (both financial and human), expertise and

²³Ocean Law Information and Consultancy, 'Evaluating Flag State Performance' (Report prepared for the High Seas Task Force, February 2006) 6.

²⁴Ibid.

political support.²⁵ Indeed, a lack of financial resources, and thus a lack of infrastructure, technology, training and expertise, continues to challenge small developing countries such as the Marshall Islands in their efforts to fulfil international obligations, including flag State obligations, under the international framework for fisheries.

As discussed in 8.2 above, the proper discharge of flag State duties under the fisheries framework depends on a number of factors, including a sound domestic legal base, a comprehensive policy framework, efficient fisheries-related institutions and officers, personnel with the requisite expertise, and the necessary financial resources and enforcement tools, to name a few. It does appear that the Marshall Islands extensive participation in international, regional and subregional fisheries agreements has provided the Marshall Islands with the necessary legal platform for its national fisheries framework. Indeed, the Marshall Islands has put in place a domestic legal framework which incorporates the core international fisheries instruments and vests enforcement powers in key domestic institutions. The *Marshall Islands Marine Resources Authority Act 1997*, the *Fisheries Act 1997*, the *Development of Local Fisheries Act 1997*, the *Fishing Access and Licensing Act 1997*, and the *Fisheries Enforcement Act 1997*, provide the legal framework for the local enforcement of fisheries conservation and management measures. These pieces of legislation establish the necessary institutions and offices, as well as setting out the duties and responsibilities of such institutions and offices in terms of their general powers, licensing requirements, compliance management measures and enforcement capabilities.

²⁵Judith Swan, 'The Role of National Fisheries Administrations and Regional Fisheries Bodies in Adopting and Implementing Measures to Combat IUU Fishing' (Report Prepared for the Fisheries and Aquaculture Department, FAO, 2000) (2010) FAO Website <http://www.fao.org/DOCREP/005/Y3274E/y3274e0c.htm>.

Of particular significance is the *Fisheries Act 1997*, which incorporates conservation and management measures adopted under international law. Section 203 of the Act incorporates *verbatim* the measures and principles codified under the 1995 UN Fish Stocks Agreement, calling for the long term conservation and sustainable use of fishery resources, as well as the optimum utilisation of such resources. The provision also requires that the measures adopted be based on the best scientific research aimed at restoring stocks to their maximum sustainable yield, and that in carrying out these measures, the Marshall Islands adopt the precautionary approach codified under the 1995 UN Fish Stock Agreement.

It is also worth noting that in September of 2011, the Marshall Islands amended its fisheries laws, in particular, the *Marshall Islands Marine Resources Act 1997*, the *Fisheries Act 1997*, the *Fishing Access and Licensing Act 1997* and the *Fisheries Enforcement Act 1997*. The bulk of the amendments were achieved under *Fisheries Enforcement Act 1997*. The amendments aimed at modernizing the fisheries laws by making such laws responsive to new developments in fisheries sector, post 1997. Detailed discussion of these amendments is undertaken herein below, in the analysis portion of this chapter. As mentioned earlier, having in place a modernized comprehensive fisheries law does not necessarily mean that there has been successful implementation of the relevant international instruments at the national level. It must be borne in mind that enacting a comprehensive fisheries legislation is one thing, and the successful implementation of the provisions of such legislation, is quite another, and the true test of effective implementation must be judged on the performance of the Marshall Islands alone. Nonetheless, with the amendments of 2011, the Marshall

Islands now has one of the most comprehensive and robust fisheries laws in the region. It could thus be argued that the duty of the Marshall Islands to incorporate international measures under its national laws has been performed to an acceptable level.

8.3.2 Performance of The Duty to Enact an Effective Domestic Legal Framework

As previously stated, the duty to enact an effective domestic legal framework is closely connected to the duty to observe international standards and ratify international instruments. This is because the implementation of international measures and standards is unlikely to carry any weight unless such measures are rooted in a State's domestic law. Indeed, in the case of the Marshall Islands, the need for enabling legislation is mandated by Article V Section (1) paragraph (4) of the Constitution of the Republic of the Marshall Islands.

The duty to enact an effective domestic legal regime requires flag States to put in place effective measures, such as those that enable States to: (i) control the activities of their vessels and nationals that fish on the high seas; (ii) deal with vessels without nationality; (iii) eliminate economic incentives and subsidies; and (iv) perform effective monitoring, control and surveillance activities.²⁶ The duty also requires flag States to address the issue of IUU fishing by implementing national plans of action and laying down rules concerning the admissibility of electronic evidence, bearing in mind the use of new technology in the maritime sector.²⁷ To support the implementation and enforcement of international fisheries conservation and

²⁶ IPOA-IUU

²⁷ IPOA-IUU

management measures at the national level, the Marshall Islands enacted the *Marine Resources Act 1997*. The Act however has since been re-codified into four different Acts, namely, the *Marshall Islands Marine Resources Authority Act 1997*, the *Fisheries Act 1997*, the *Development of Local Fisheries Act 1997*, the *Fishing Access and Licensing Act 1997*, and the *Fisheries Enforcement Act 1997*. The following paragraphs provide an overview of these legislations and their focus in the larger task of fisheries conservation and management.

A. Marshall Islands Marine Resources Authority Act 1997²⁸

The *Marshall Islands Marine Resources Authority Act 1997* (MIMRA Act) establishes the Marshall Islands Marine Resources Authority (MIMRA) as the chief entity responsible for the implementation and enforcement of fisheries laws. The Authority is set up as a statutory corporation with perpetual succession, capable of suing and being sued in its own corporate name. Like other corporations, the powers, duties and obligations of MIMRA are vested in a Board of Directors consisting of seven members. These members include the Minister for Resources and Development, the Attorney-General (or his designee) and the Foreign Secretary.²⁹ The day to day functions of the Authority are carried out through the Office of the Executive Director, acting through the staff of MIMRA. The main functions of the Authority are to “...conserve, manage and sustainably develop all resources in the Fishery Waters and seabed and subsoil there-under, in accordance with the principles and provisions in this Title and in sub-regional, regional and international

²⁸See Annex ‘5’. An electronic version of this Law is also available on the Pacific Islands Legal Information Institute website <paclii.org> under Marshall Islands-Consolidated Legislation Revised-2004.

²⁹51 MIRC Chapter 1, *MIMRA Act 1997*, Section 113.

instruments to which the Republic of the Marshall Islands is party.”³⁰ To this end, the Act vests in MIMRA the power to establish fisheries management plans, issue fishing licences, negotiate and conclude fishing access agreements, coordinate fisheries monitoring and control activities, appoint observers, as well as regulate the processing and marketing of fish (among others). MIMRA also has the power to promulgate regulations on: (i) the catching, loading, landing, handling, transportation, possession, inspection, disposal and export of fish; (ii) the operation of vessels in Marshall Islands Fishery Waters; (iii) the use and protection of fishing gear and equipment; (iv) licensing requirements; (v) fisheries monitoring, control and surveillance; (vi) the prevention of marine pollution; (vii) the powers of MIMRA employees; and (viii) the fishing activities of nationals and fishing vessels on the high seas and in areas managed by RFMOs.³¹

B. Fisheries Act 1997.³²

The *Fisheries Act 1997* on the other hand, sets out the duties obligations, powers and functions of MIMRA in regard to the conservation and management of fisheries within its fishery waters. The Act imposes upon MIMRA the duty to ensure the long term conservation and management of such fisheries through a number of measures. Indeed, MIMRA is required under the Act to implement measures based on the best available scientific evidence and the precautionary approach,³³ and to maintain or restore stock levels so as to produce maximum sustainable yields. In addition, MIMRA is empowered under the Act to determine fishing levels and the allocation of fishing rights and participatory rights (including total allowable catch). MIMRA may

³⁰Ibid., Section 119.

³¹51 MIRC Chapter 1, MIMRA Act, 1990, Section 120.

³² See Annex ‘6’ An electronic version of this Law is also available on the Pacific Islands Legal Information Institute website <paclii.org> under Marshall Islands-Consolidated Legislation Revised-2004.

³³51 MIRC Chapter 2, Fisheries Act 1997, Section 203

allocate participatory rights which are conditional upon such issues as vessel type, gear type, open fishing seasons, as well as particular marine areas and fishing zones, to name a few.³⁴ MIMRA may also inquire into issues such as the history of a vessel (and in particular whether a vessel has complied with Marshall Islands fisheries laws), as well as the need for investment in the Marshall Islands.³⁵ Furthermore, the Act authorises MIMRA to take measures such as closing off certain fishing areas, prohibiting fishing and the taking of fish of a certain size, prohibiting the landing, sale, display, offering for sale, transportation, receipt or possession of fish, designating marine parks and reserves, designating Fisheries Exclusion Zones, and cooperating with other States in the management of highly migratory fish stocks.³⁶

C. The Fishing Access and Licensing Act 1997³⁷

The *Fishing Access and Licensing Act 1997* vests in MIMRA the power to regulate fishing activities of both foreign and domestic fishing vessels in the fishery waters of the Marshall Islands. The Act imposes a general prohibition on vessels entering and remaining within the fishery waters of the Marshall Islands without the permission of MIMRA, unless such vessels are exercising the right to innocent passage or are under duress from a *force majeure* event. The Act prohibits foreign and domestic-based fishing vessels from engaging in fishing activities within the fishery waters of the Marshall Islands unless such activities are being carried out under an access agreement and the necessary statutory licences have been issued.³⁸ This licensing requirement extends to all fishing activities, including transshipment, mariculture, aquaculture, the marketing of fish taken from Marshall Islands fishery waters, fish

³⁴Ibid., Section 206.

³⁵Ibid., Part I.

³⁶51 MIRC Chapter 2, *Fisheries Act*, 1997, 208

³⁷See Annex '7' below

³⁸51 MIRC Chapter 4, *Fishing Access and Licensing Act*, 1997, Section 403.

processing, commercial pilot fishing, marine scientific research and the exploration of non-living resources.³⁹ Importantly, all licences must incorporate the minimum terms set out under the Act. These terms govern: (i) the sovereign rights of the Marshall Islands in its fishery waters; (ii) the need for vessels and their crew to comply with the terms of each agreement; (iii) the need for vessels and their crew to allow and facilitate the duties of on-board observers; (iv) the need for vessels to display their licence numbers; (v) the installation of VMS capability on board vessels; and (vi) the need for vessels to comply with vessel and gear marking specifications.

Additionally MIMRA may require periodic reporting from vessels engaging in fishing activities in the nation's fishery waters. The types of matters that may require reporting include the type of gear being used, the position of the vessel at given times, as well as the species of fish being targeted.⁴⁰ Where a fishing vessel is found to have violated the terms of the access agreement or its license, MIMRA may revoke, suspend or impose additional conditions on the licence. All licences issued under the Act remain valid for a period of 12 months.⁴¹

D. Fisheries Enforcement Act 1997⁴²

The *Fisheries Enforcement Act 1997* is a vital tool in the Marshall Islands fisheries regime, vesting the enforcement of the nation's fisheries laws in MIMRA. The Act consists of three main parts which focus on the monitoring, control and surveillance powers of MIMRA and its authorised officers,⁴³ as well as the jurisdiction of the High

³⁹ Ibid., Section 411.

⁴⁰ 51 MIRC Chapter 4, *Fishing Access and Licensing Act, 1997* Section, 420.

⁴¹ Ibid., Section 416.

⁴² See Annex '8'

⁴³ 51 MIRC Chapter 5, *Fisheries Enforcement Act, 1997* Part I.

Court of the Marshall Islands to enforce fisheries laws⁴⁴ and dispose of seized or confiscated property.⁴⁵

The Act allows for the appointment of ‘authorised officers’ to assist the Executive Director and the Authority in general to carry out enforcement activities in the fishery waters of the Marshall Islands. Officers serving in the Marshall Islands Police Force are, by virtue of their employment, deemed for the purposes of the Act to be ‘authorised officers.’⁴⁶ The powers and functions of MIMRA and authorised officers under the Act are quite extensive, and include the power to stop, board and inspect fishing vessels within the fishery waters of the Marshall Islands, as well as the power to stop, board, and inspect fishing vessels flying the Marshall Islands flag on the high seas. Authorised officers have the right to request certain information from vessels in the fishery waters of the Marshall Islands, to inspect the vessel’s licences, logbooks and any other records, to examine the vessel’s fishing gear, and to arrest any person obstructing such enforcement procedures.⁴⁷ Where a vessel is seized by MIMRA, MIMRA and any authorised officer may remove parts from the fishing vessel in order to render it immobile.⁴⁸

Furthermore, all fishing vessels licensed to fish in the fishery waters of the Marshall Islands must assist ‘authorised observers’ in the performance of their (the observers) functions. This includes allowing such observers to board a vessel for compliance monitoring, granting authorised observers full access to the vessel’s bridge, navigation charts, catch, fish processing areas, records (including log-books), fishing gear and navigation equipment. Observers are also authorised to take samples from

⁴⁴Ibid., Part II.

⁴⁵Ibid., Part III.

⁴⁶Ibid., Section 503.

⁴⁷51 MIRC Chapter 5, *Fisheries Enforcement Act, 1997* Section 504.

⁴⁸Ibid., Section 506.

fishing vessels, take photographs and pictures of fishing operations, fishing gear, equipment, charts and records, and to send and receive messages via the communication equipment on board the fishing vessel. In this respect, the master and crew of fishing vessels are under a legal duty to cooperate and comply with the instructions of authorised officers and observers. The obstruction, assault, resistance or refusal by a master or crew member in relation to an authorised observer (or to a request made by an authorised observer) is an offence under the Act, punishable by a maximum six month prison term or a fine not exceeding \$100,000 (or both).⁴⁹ Furthermore, fishing vessels not authorised to fish in a particular area within Marshall Islands fishery waters are required to stow their gear when passing through the area.⁵⁰ Importantly, the Act was recently amended to codify, among other things, the duties and obligations of the Marshall Islands as a flag State.

E. Gaps in the Legal Framework and the 2011 Amendments

Notwithstanding these laws, enforcement of fisheries laws remained a challenge to the Marshall Islands Marine Resources Authority and the Marshall Islands as whole. As alluded to above, this predicament was due to a number of reasons. First, these laws were enacted in 1997, purposely to enable the Marshall Islands to enforce the provisions of the then newly adopted 1995 UN Fish Stocks Agreement. As such one would notice that the 1997 Marshall Islands fisheries laws incorporated the core conservation principles adopted under that convention. As important as that may be, the fact of the matter was that since the enactment of these laws in 1997, new developments in the conservation and management of fish stocks have been adopted at the international level, the regional level and sub-regional levels. Despite these

⁴⁹Ibid., Section 509.

⁵⁰Ibid., Section 522

developments and prior to September 2011, the Marshall Islands Parliament had failed to take legislative action to take into account at the national level, new developments in the intervening fourteen years, and as such, the Marshall Islands fisheries laws were, until September 2011, weak and non-responsive to the new challenges.

In the gaps analysis that precipitated the formulation of new amendments, the Marshall Islands domestic legal framework for fisheries was tested against the key international fisheries instruments, such as the 1982 LOSC, the FAO Compliance Agreement, the FAO Code of Conduct, as well as regional and sub-regional fisheries instruments, such as the WCPF Convention, and the Nauru Agreement.⁵¹ In the analysis that followed, the Marshall Islands legislation compared poorly in key areas under these instruments.⁵² Some of the major gaps in the Marshall Islands fisheries legislation include for instance, the MCS provisions do not fully implement Article 73 of the 1982 LOSC, the lack of provisions dealing with the control of nationals fishing on the high seas, as anticipated under Article 117 of the 1982 *LOSC*, the absence of a domestic legal framework governing flag State duties, as required under the *FAO Compliance Agreement*, in regards to issuance of authorization to fish, and the maintenance of a record of fishing vessels. Furthermore the absence of any law on flag State duties, and port state measures, to address much of the IUU related activities was identified as one of the major obstacles to the ability of the Marshall Islands to enforce international fisheries conservation and management measures effectively. The 2011 amendments to the fisheries laws therefore to a large extent,

⁵¹MRAG, Republic of the Marshall Islands Comprehensive Fisheries Legislation Review (CU/PE1/SI/10/001) Report Prepared for ACP Fish II) (2011).

⁵²*Ibid.*, pp.67-88.

sought to close these gaps and to bring the Marshall Islands fisheries framework in line with new developments in international law regarding the conservation and management of fisheries.

In addition to inserting clarifications under the law, the 2011 amendments incorporated key provisions to close the gaps identified in the gaps analysis. Some of these key provisions include (a) measures to prevent IUU fishing, and incorporated provisions on the duties of the Marshall Islands as a flag State, viz-a-viz, its obligations under international law in regards to matters such as the control of its nationals on the high seas, issuance of authorization to fish, the maintenance of a record of fishing vessels, the registration of fishing vessels, and cooperation with other States and RFMOs.⁵³ Other key additions to the law provisions on port state measures, the requirement for *Mobile Transceiver Units*, ownership of Vessel Monitoring System information, the admissibility of evidence procured through *Mobile Transceiver Units*, new requirements on *catch retention*, provisions on powers of authorized officers outside the Marshall Islands fisheries waters, and provisions on fish processing establishments.

Clearly, with these amendments the Marshall Islands has achieved a major overhaul of its fisheries laws, and today, is perhaps, one of only a handful of States in the region with a comprehensive legislation on the conservation and management of fisheries. So, although the Marshall Islands failed to take any meaningful steps to modernize its fisheries laws in the last fourteen years, such failure has now been overtaken by the legislative activities in 2011. As such, it is justifiable to assert that in

⁵³51 MIRC Chapter 5, *Fisheries Enforcement Act 1997*, Sections 503, 504, 505 and 506.

regards to the performance of this duty, i.e the duty to enact effective domestic legislative framework, the Marshall Islands as a flag State, has performed the duty well. However, by the same token, it must be noted that having in place a robust legal framework does not necessarily mean effective implementation, and in the case of the Marshall Islands, it may be a matter of months yet, before MIMRA is able to organize itself to begin enforcing the new provisions of the law. Nevertheless, the commitment of the Marshall Islands to push the amendments through Parliament, and to do so successfully, is highly worthy of note.

8.3.3 Performance of the Duty in Regards to the Registration of Fishing Vessels

The duty in regards to the registration of fishing vessels is one that is imposed on flag States under the core international fisheries instruments.⁵⁴ The *FAO Compliance Agreement* and the *1995 UN Fish Stocks Agreement* both impose upon flag States the duty to ensure that vessels on their register do not engage in illegal fishing activities on the high seas,⁵⁵ or to ensure that fishing vessels with dubious histories do not enter the registry as a means to circumvent conservation measures.⁵⁶ In this regard, flag States have an obligation to look into the history of a vessel in consideration of a vessel's application for registration.⁵⁷ Furthermore, these instruments require flag States to refrain from authorising vessels to fish unless they (the flag States) are able to maintain effective control over the activities of such vessels.⁵⁸ However, it is argued, that these obligations are really incidental to the fundamental right of a State to register fishing vessels and to attribute nationality to such vessels – and thus the duty to refrain from registering fishing vessels with dubious histories. After all, the main

⁵⁴ *FAO Compliance Agreement* Article III and the *1995 UN Fish Stocks Agreement* Article 18.

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*

⁵⁸ *FAO Compliance Agreement* Article III

objective of the *FAO Compliance Agreement* for instance, is to discourage vessels from re-flagging as a means to circumvent international, regional and sub-regional fisheries conservation and management measures. Furthermore, although the IPOA-IUU is not mandatory, the plan also calls upon flag States to refrain from registering fishing vessels unless they are able to exercise effective control over such vessels. Flag States are also encouraged to eschew the registration of vessels that have a history of IUU fishing activities.⁵⁹

Under existing law, the registration of fishing vessels in the Marshall Islands is a function of the Maritime Administrator, under Section 279 of the *Documentation and Identification of Vessels Act 1990*. MIMRA, the primary entity charged under the fisheries laws with the obligation to enforce the Marshall Islands fisheries laws does not have a formal role in the registration of fishing vessels or in the decision making process. The registration of fishing vessels and the decision making is left solely to the Maritime Administrator and undertaken exclusively under Section 279 of the *Documentation and Identification of Vessels Act 1990*.

This situation can become an issue given that ‘licensing’ of fishing vessels continues to be a function of MIMRA under the *Fishing Access and Licensing Act*, and where these two functions are vested in different agencies, it is utterly important that there exists a mechanism that will allow the agencies concerned to coordinate their activities. However, pursuant to the *Documentation and Identification of Vessels Act 1997*, the Maritime Administrator only has to consider two factors in deciding whether or not to register a fishing vessel. First, whether the fishing vessel is owned

⁵⁹ IPOA-IUU paragraphs 34 – 41.

by a national or a qualified foreign entity, and second, whether the vessel is seaworthy. Aside from these issues, the Maritime Administrator is not required under the Act to inquire into the history of a fishing vessel, or its owners or operators, in the context of IUU fishing. The issue is further exacerbated by the fact that no formal mechanism has been established to ensure that the Maritime Administrator and the Executive Director of MIMRA coordinate their activities to ensure that registry is not taken advantage of by those with unscrupulous motives. So, herein lies a gaping hole, in the framework to ensure that the registration of fishing vessels comply with international law.⁶⁰ Indeed, if the Maritime Administrator is authorised to register fishing vessels without having to inquire into the history of such vessels, or that of their owners or operators, the opportunity for unscrupulous vessels to enter the Marshall Islands registry is quite high. The existing ad-hoc arrangements for consultations between the two entities regarding the registration of fishing vessels is inadequate. The situation requires a legislative directive to the Maritime Administrator to consult with the Director of MIMRA and to take into account the history of a fishing vessel and its owners or operators, in the context of IUU fishing, prior to making a decision on an application.

Accordingly, and as an assessment of the performance of the Marshall Islands in this context, it is clear that additional work is still required in order for the Marshall Islands to be in a position to be able to properly manage the registration of fishing vessels and to comply with its obligations under the 1995 UN Fish Stocks Agreement. It is important that such work be commenced sooner rather than later, to ensure that

⁶⁰Particularly, the relevant provisions of the *FAO Compliance Agreement* and the *1995 UN Fish Stocks Agreement*.

the Marshall Islands continues to live up to its obligations as a flag State under the international fisheries framework.

8.3.4 Performance of the Duty in Regards to the Issuance of an Authorisation To Fish

The duty in regard to issuing licences and authorisations to fish is found under international fisheries instruments - namely, the *FAO Compliance Agreement* and the *1995 UN Fish Stocks Agreement*.⁶¹ These instruments require flag States to take necessary steps to ensure that fishing vessels on their registers do not engage in IUU fishing activities.⁶² Furthermore, these instruments require that flag States refrain from permitting their vessels to fish on the high seas unless: (i) such vessels have been authorised to do so by the relevant government agency; and (ii) the flag State concerned is able to control the activities of the fishing vessels. By contrast, the IPOA-IUU recognises the difficulty of this duty and adopts a more nuanced approach, calling upon flag States whose registration and licensing processes are carried out by different entities to ensure that there is proper coordination between the agencies concerned. The 1995 UN Fish Stocks Agreement requires flag States to formulate regulations, licensing systems, as well as relevant terms and conditions which attach to licences, in order to enforce this duty.

Reflecting on the performance of the Marshall Islands in this regard, it is again noted that since the Marshall Islands fisheries regime was enacted in 1997, the domestic fisheries laws have failed to provide for this specific flag State duty. Indeed, although the fisheries laws provide for a licensing system and enforce a set of minimum terms and conditions, up until September 2011, these laws only provided for enforcement by

⁶¹*FAO Compliance Agreement*, Article III, *IPOA-IUU* paragraph 34, *1995 UN Fish Stocks Agreement*, Article 18.

⁶²*Ibid.*

the Marshall Islands in its capacity as a coastal State, and not as a flag State. As such the Marshall Islands was not effective in discharging this duty, as there were no provisions under the law to enable it to effectively monitor the activities of its fishing vessels on the high seas and other areas outside its fishery waters.

However in the 2011 amendments discussed above, the Marshall Islands was able to put in place the legislative authority for the performance of this duty. The authority to require from fishing vessels an authorization to fish on the high seas and other areas outside the Marshall Islands fisheries waters is found under Section 504 of the *Fisheries Enforcement Act*. Under Section 504 of that Act, the owners, operators, charterers, or lessees of any fishing vessel flying the Marshall Islands flag are now required to first obtain from the Director of MIMRA, an authorization to fish, in order to operate or fish in any area subject to the jurisdiction of a foreign State, in any RFMO convention area, on the high seas, and in areas that are subject to international conservation and management. This provision requires owners, operators, charterers, and lessees of fishing vessels flying the Marshall Islands flag to submit applications for an authorization to fish in the areas enumerated above. Section 504 prohibits vessels from fishing in these areas, and the Marshall Islands will not issue any authorization to fish, unless the vessel concerned is listed on the Marshall Islands Record of Fishing Vessels, or that of a relevant international, regional or sub-regional fisheries management organization to which the Marshall Islands is a party.

In terms of the performance of this duty, it is acknowledged the Marshall Islands has since signing up to the 1995 *UN Fish Stocks Agreement*, has failed to follow through with implementation in the course of the last fourteen odd years. This inaction was due primarily to the lack of legislative authority under Marshall Islands laws to enable

the Marshall Islands to fully carry out its flag State duties under the fisheries framework. As a result of such inaction, no infrastructure, nor administrative arrangements were put in place to allow for the efficient discharge of this duty. However, as noted in the discussions above, the situation has improved somewhat with the enactment of Section 504 under the *Fisheries Enforcement Act*. On the basis of that provision, the Marshall Islands has placed itself in a far better position to control the activities of its fishing vessels in areas outside the Marshall Islands fishery waters. To be successful however, it is important for the Marshall Islands to give practical meaning to these provisions. In reality however, given that the amendments were recently adopted, full implementation of this duty may not be practicable until MIMRA has organized itself. Nevertheless, providing the legal basis for the Marshall Islands to carry out this duty is a major step forward by the Marshall Islands in the discharge of its fisheries related duties as a flag State.

8.3.5 Performance of the Duty to Maintain a Record of Fishing Vessels

As discussed in Chapter 7 above, the duty of flag States to maintain a record of fishing vessels is found under the *FAO Compliance Agreement* and the *1995 UN Fish Stocks Agreement*. The duty is also promoted under the IPOA-IUU.⁶³ The duty to maintain a record of fishing vessels requires flag States to create a record of all the fishing vessels they have registered and authorised to fish on the high seas and in other areas outside national fisheries waters. The record must provide information such as the name of the fishing vessel, its registration number, the vessel's previous name(s), port of registry and flag (if applicable), the vessel's International Radio Call Sign (if any), the names and addresses of the vessel's owners, where and when the

⁶³*FAO Compliance Agreement* Article III, and 1995 UN Fish Stocks Agreement.

vessel was built, the vessel type, as well as its length.⁶⁴ Where available, flag States are also encouraged to provide to the FAO the names and addresses of the operators, owners, and managers of the vessel, the fishing methods to be used, as well as the vessel's moulded depth, beam, gross registered tonnage and the power of its engines.⁶⁵

As highlighted above, although the fisheries laws of 1997 incorporated important fisheries conservation and management measures and principles, the legislation was lacking in a number of areas, and in particular, the lack of legislative action since 1997 meant that the Marshall Islands fisheries laws did not take into account new developments in fisheries laws. One of the major gaps in the legislation was language on the Marshall Islands duties and obligations as a flag State, the importance of which have been ushered to the fore under international law, with the onset of IUU and other illegal fisheries activities. As such, prior to September 2011, the Marshall Islands had no legal basis to maintain a *record of fishing vessels*, as a means to maintain control over the activities of fishing vessels flying its flag, a weakness in the Marshall Island fisheries framework. However, again, the issue was resolved in the 2011 amendments to the *Fisheries Enforcement Act 1997*.

The new Section 503 of the *Fisheries Enforcement Act 1997* now provides for the establishment of a *Marshall Islands Record of Fishing Vessel* that records Marshall Islands flagged vessels authorized to operate outside Marshall Islands fishery waters. Section 503 makes it clear that the *Marshall Islands Record of Fishing Vessels* must contain the necessary information and that MIMRA where necessary may require additional information. Further, that an application for registration in the *Marshall*

⁶⁴FAO Compliance Agreement Article VI.

⁶⁵Ibid.

Islands Record of Fishing Vessels will be denied unless the fishing vessel concerned is marked in accordance with the FAO marking specifications. On the basis of the above, it can therefore be said that at least, at the legislation level, that the Marshall Islands has taken positive steps to enable itself to fully discharge this duty. However, the extent of the Marshall Islands success in carrying out this duty as a flag State depends entirely on the effectiveness of its implementation. That is yet to be determined. Nonetheless, by putting in place the necessary legal framework, the Marshall Islands as a flag State has moved closer to successfully discharging its duty as flag State, to maintain a record of fishing vessels.

8.3.6 Performance of the Duty to Cooperate With Other States and Fisheries Bodies

The duty to cooperate is categorised under the IPOA-IUU as an ‘all State’ duty, and therefore extends to flag States. The duty of States to cooperate with other States and fisheries bodies derives from Article 118 of the 1982 *LOSC*. Under Article 118 of that convention, States must cooperate in the conservation and management of living resources on the high seas. In particular, States whose nationals fish on the high seas must cooperate in the establishment of conservation and management measures through subregional and regional organisations. There is no doubt that the legal status of the high seas requires the cooperation and participation of flag States. The IPOA-IUU also reiterates the need for State cooperation in eliminating and deterring IUU vessels, and requires responsible flag States to take the necessary measures to ensure maximum cooperation with other States in fighting IUU fishing activities. The notion of cooperation in the conservation and management of high seas fisheries is entrenched in the fisheries laws of the Marshall Islands. These laws confer upon the Marshall Islands Marine Resources Authority the power to cooperate with other

States in the conservation and management of high seas fisheries. Section 212 of the *Fisheries Act 1997* comprehensively addresses such cooperation, empowering the Authority to cooperate with other States to ensure that conservation measures consistent with those adopted under the 1995 UN Fish Stocks Agreement are put in place to manage high seas fisheries. In addition, Section 213 of the *Fisheries Act 1997* authorises the Minister responsible for fisheries issues to consult with other States who share interrelated stocks in order to harmonise conservation measures, particularly with respect to the collection of data, surveys and procedures for assessing the stocks, as well as the formulation of regional measures for monitoring, control and surveillance.

From an implementation perspective the Marshall Islands participates in a number of regional and sub-regional fisheries organisations, including the Forum Fisheries Agency (FFA). The FFA functions as an advisory body to member countries of the Pacific Islands Forum (PIF), assisting these countries in managing their fisheries resources. Indeed, the FFA is comprised of all 14 members of the Pacific Islands Forum.

The Marshall Islands is also a party to the *Nauru Agreement Concerning Cooperation In The Management Of Fisheries Of Common Interest*, a subregional body that regulates terms and conditions for tuna purse seine fishing.⁶⁶ The Agreement has eight members, who are often referred to as the Parties to the Nauru Agreement (PNA). They include the Federated States of Micronesia, Kiribati, the Marshall Islands, Nauru, Palau, Papua New Guinea, the Solomon Islands and Tuvalu. On a larger scale,

⁶⁶ Forum Fisheries Agency, Nauru 'Agreement' (FFA Website, 2011)
<http://www.ffa.int/nauru_agreement>

the Marshall Islands is a member of the Western and Central Pacific Commission, a regional fisheries body established pursuant to the 1995 UN FISH Stocks Agreement. The Commission promotes cooperation among member States in the Western and Central Pacific Ocean for the conservation and management of highly migratory fish stocks. Members of the Commission include Australia, China, Canada, the Cook Islands, the European Union, the Federated States of Micronesia, Fiji, France, Japan, Kiribati, Korea, the Marshall Islands, Nauru, New Zealand, Niue, Palau, Papua New Guinea, Philippines, Samoa, the Solomon Islands, Chinese Taipei, Tonga, Tuvalu, the USA and Vanuatu.

The Marshall Islands regularly attends meetings, workshops, training programs and other courses sponsored by the above organisations with the aim of improving the management of its fisheries. Indeed, the Marshall Islands has benefited tremendously from the assistance provided by these organisations, particularly in terms of achieving the goals propounded by each body. The Marshall Islands thus appears to be doing well in the discharge of this duty, putting in place the necessary provisions under its domestic legal framework to allow for more effective cooperation, and secondly, actually participating and cooperating with other States, both at the sub-regional and regional level, to ensure the proper conservation and management of high seas fisheries. In fact, taking into account all its duties and obligations as a flag State under the fisheries framework, the Marshall Islands discharge of this duty deserves the most accolades, and one may be justified in asserting that as a flag State, the Marshall Islands has been and continues to, discharge this duty appropriately.

8.4 CONCLUSION.

As the world's population continues to grow, the sustainable use of the world's fish stocks will become critical to the issue of food security. As studies have shown, approximately 80% of fish stocks are either depleted or overfished, a situation that requires effective global cooperation in order to implement and enforce conservation and management measures. Although the management of fisheries around the world was expected to improve with the advent of the 1982 LOSC, this goal never came to fruition. As a result, much work was undertaken in the decade following the adoption of the convention to put in place a fisheries regime to supplement and support the fisheries provisions of the 1982 LOSC, especially in regard to the management of high seas fisheries. The emergence of IUU fishing also drew the international community together to adopt measures to protect the sustainability of the world's fish stocks. This international effort culminated in the adoption of the post-UNCED international fisheries instruments under the auspices of the FAO. The role of flag States (and their effective control over fishing vessels) is an important component of this emerging fisheries framework, precipitated by studies that showed that lack of effective flag State control is the root cause of illegal fishing. Indeed, it was previously thought (on the basis of anecdotal evidence) that open registries and 'flags of convenience' were the worst performers when it came to exercising effective control over their fishing vessels, particularly in regard to high seas fisheries management.

The *FAO Compliance Agreement*, the *1995 UN Fish Stocks Agreement*, and the *FAO Code of Conduct* form the core instruments on the conservation and management of

highly migratory fish stocks under the emerging fisheries framework. Indeed, these instruments were adopted to enhance the ability of flag States to control their fishing vessels by imposing a number of specific duties on such States (among other things). As a flag State and party to the core fisheries instruments mentioned above, the Marshall Islands must carry out its duties and obligations under the framework effectively and in good faith. In order to do so, however, the Marshall Islands must participate in the relevant international, regional and sub-regional fisheries agreements, and put in place effective domestic fisheries laws to allow for the effective discharge of these duties.

As previously noted, the Marshall Islands participation in the relevant international, regional and sub-regional fisheries agreements is impressive, with the nation having ratified or acceded to the core fisheries instruments. In this way, the Marshall Islands has established the proper legal platform for the implementation of international fisheries measures at the national level. The Marshall Islands has also: (i) enacted domestic laws incorporating key international fisheries instruments; (ii) established various fisheries entities and institutions; (iii) allocated certain conservation and management related powers, duties and functions to these entities and institutions; and (iv) made provision for penalties to discourage violators. However, as suggested earlier, participation in the relevant fisheries agreements does not necessarily translate into the effective discharge by the flag State concerned of its duties under the fisheries framework. Rather, implementation at the national level is the best test of compliance.

Generally speaking, the successful implementation of international rules at the national level tends to pose a challenge for small developing States such as the

Marshall Islands. Indeed, such States are often beset by a lack of infrastructure, financial resources and expertise, as well as having an ineffective legislative framework. Although the Marshall Islands has done very well in terms of acceding to the key international fisheries instruments, the effective implementation of these international instruments at the national level remains somewhat elusive. Indeed, the ability of the Marshall Islands to control the activities of fishing vessels flying its flag was non-existent until 2001, when a raft of legislative amendments were made to its fisheries laws. As a result, the Marshall Islands was unable to discharge its flag State duties (as mandated under the FAO Compliance Agreement and the 1995 UN Fish Stocks Agreement) for a period of 14 years. Nevertheless, the decision to finally insert provisions into its domestic legal regime providing for the exercise of control over its fishing vessels must be applauded. Indeed, this will provide the Marshall Islands with the necessary legal basis to carry out its flag State duties under the international fisheries framework.

However, the major issue that could potentially derail the performance of the Marshall Islands, if not attended to in a timely fashion, is the disconnect between the Maritime Administrator and the Marine Resources Authority in terms of the process for registering fishing vessels and issuing the relevant authorisations to fish. A far more effective mechanism is required to ensure that fishing vessels with a history of IUU activities, as well as those vessels intent on circumventing conservation measures, are neither registered nor receive authorisation to fish. Indeed, the current *ad hoc* arrangement is ineffective and subject to manipulation. Although the Marshall Islands has not been able to discharge its flag State duties under the fisheries framework for the last 14 years, it is anticipated the recent legislative enactments will

enable the Marshall Islands to carry out its flag State duties in an effective manner. It is hoped that with the promulgation of the relevant fisheries regulations and the organisation of certain administrative matters in the next few months, the Marshall Islands will soon be able to start exercising effective control over the activities of its fishing vessels and nationals on the high seas and in other areas outside of the Marshall Islands waters.

CHAPTER 9

CONCLUSION

Obtaining access to government documentation on the Marshall Islands Ship Registry has been difficult at times, as the entire management of the registry (and thus most of the records pertaining to the registry) is conducted from IRI's offices in the USA. Access to the Joint Venture Agreement has also been problematic, with IRI and the Marshall Islands Government claiming commercial confidentiality over the document. Nevertheless, the research has proceeded on the basis of available material and the questions posed by the thesis have been addressed in a comprehensive manner. Indeed, important records and data on the ship registry have been obtained through secondary sources such as government documents, reports by international bodies and internet articles. Such material has substantially contributed to the thesis questions and fulfilled the objectives of the research. While Chapters 1 and 2 of the thesis laid down the relevant introductory and background information, Chapters 3 to 8 embarked on the more substantive task of reviewing the relevant international instruments. In doing so, these chapters ascertained the duties of the Marshall Islands as a flag State under international law, and then analysed the performance of the Marshall Islands of such duties against the expectations under the relevant international instruments.

The primary role of the flag State in maintaining order in the maritime sector is undisputed. Whether the issue is one of safety at sea and the prevention of marine pollution, maritime security, or the conservation and management of fisheries, international law has long recognised the importance of 'effective' flag State

performance to the robust regulation of the maritime sector. Of course, the significance which international law accords to flag States and the effective exercise of flag State jurisdiction should come as no surprise. The application of cornerstone principles of international law, such as the right of States to enjoy certain freedoms on the high seas, as well as the exercise of exclusive jurisdiction by flag States, means that the cooperation of flag States is central to any framework which seeks to maintain order in the maritime sector. For this reason, the international frameworks governing maritime security, the conservation and management of fish stocks, as well as safety at sea and the prevention of marine pollution, all emphasise the fundamental role of the flag State. Indeed, the recognition that flag States play an integral role in enforcing international obligations is evident in the allocation of key duties and obligations to flag States under international law.

The international legal framework on flag State duties is found under a number of international instruments, as discussed and analysed in Chapters 3-8 above. The review and analysis in Chapter 3 demonstrated that the starting point for articulating the ‘general duties’ of flag State duties is Article 94 of the 1982 LOSC, with such duties being further elaborated in the codes, rules, regulations and standards adopted under the core IMO conventions. The international framework regulating safety at sea and the prevention of marine pollution requires flag States to exercise effective control and jurisdiction in regard to the administrative, technical and social matters of vessels that fly their flag. While the administrative and technical duties of flag States are predominantly set out under the IMO conventions, the social aspect of the duty is regulated under the series of ILO maritime labour-related conventions and recommendations.

The regime for flag State duties in the context of maritime security is also built upon the 1982 LOSC, and further elaborated under the SUA treaties and the 2002 security measures adopted under SOLAS 1974. A key maritime security instrument introduced under the 2002 amendments is the ISPS Code. The Code sets out functional requirements that both flag and port States must perform in order to prevent or minimise the risk of terrorist attacks on ships, as well as on the port facilities that serve such ships. The implementation of the ISPS Code is supplemented by the LRIT regulations, the 2005 SUA Protocols, and to a lesser extent, the provisions of the SID Convention (as amended in 2003). As the review in Chapter 5 demonstrates, the framework imposes upon flag State a number of key duties aimed at ensuring that the maritime security measures mandated under the relevant security instruments are being properly implemented and effectively enforced.

In the fisheries sector, global concerns over the effectiveness of the framework imposed by the 1982 LOSC led to the development of an international fisheries regime, with the role of flag States again taking centre stage. Indeed, this framework emerged in response to discoveries made in the 1992 UNCED – namely, that a lack of control by flag States over the activities of their fishing vessels was a major factor contributing to the crisis in the fisheries sector, especially in relation to high seas fisheries. Accordingly, the post-UNCED international fisheries instruments attempted to resolve the issue by charging flag States with a number of duties aimed at compelling such States to exercise better control over the activities of their fishing vessels on the high seas, thus discouraging IUU fishing activities.

The focus on the flag State as the architect for enforcing international standards in the maritime sector is influenced by the fact that such States, by virtue of their exclusive jurisdiction over vessels flying their flag, are uniquely placed to undertake enforcement measures. However, the application of this principle has been called into question, on the basis that focusing solely on flag State jurisdiction has the potential to create gaps in the framework, particularly where flag States fail to perform their duties as expected and no other entity has been granted the right to intervene.. Thankfully, international law has developed secondary lines of defence to ‘fill the void’ left by ineffective flag States, such as the port State regime, coastal State jurisdiction, and even ‘market State’ jurisdiction (in the context of trade in fisheries).

It must be borne in mind, however, that the legal recognition of these other forms of jurisdiction in no way diminishes the primacy of flag State jurisdiction as the predominant enforcement mechanism in the maritime sector. Furthermore, the fact that a flag State may be a small developing State with limited infrastructure, resources and expertise in the administration of flag functions, does not relieve the flag State from the obligation to perform its duties under international law in an effective manner. Indeed, international law dictates that all States that decide to grant nationality to ships, regardless of their size or capacity, are obligated under international law to effectively carry out the concomitant duties and obligations established under the frameworks for: (i) safety at sea and the prevention of marine pollution; (ii) maritime security; and (iii) the conservation and management of fish stocks. As such a (flag) State, the Marshall Islands is bound under international law to carry out its flag State duties effectively and in accordance with the expectations under international law. The fact that the Marshall Islands is a small developing State

– one which operates both an open registry and a flag of convenience, makes it imperative that the it not only carries out its international law duties in the due and proper way, but more importantly, that it carries out such duties ‘effectively’. The thesis has examined and analysed the performance of the Marshall Islands of its duties in all three maritime sectors, assessing the Marshall Islands level of compliance in each sector against the requirements of international law.

In Chapters 3 and 4, the thesis analysed the performance of the Marshall Islands under the framework for safety at sea and the prevention of marine pollution. In this regard, Chapter 3 commenced by establishing the international legal framework, and then proceeded to ascertain from the framework the duties and obligations incumbent upon the Marshall Islands as a flag State. It established that the framework for safety at sea and the prevention of marine pollution by ships is rooted in the provisions of the 1982 LOSC, and is further elaborated under the IMO framework (particularly in the codes, rules, regulations and standards adopted under the core IMO conventions). The social aspect of such duty, on the other hand, is explained under the series of ILO maritime labour related conventions and recommendations. While recognising the autonomy of the IMO and the ILO, Chapter 3 also highlighted the importance of the interplay between the UN, IMO and ILO regimes in maintaining safety in maritime shipping as well as the prevention of marine pollution. This interplay is exemplified, for instance, in the 1982 LOSC, which provides the enforcement platform for the IMO conventions, while at the same time being dependent on the IMO (as the competent international organization), for the formulation and adoption of the necessary international rules and standards propounded by the 1982 LOSC. The difference between ensuring safety at sea and the prevention of marine pollution on the one

hand, and subjecting the maritime sector to anarchy on the other, lies in how effectively flag States carry out their duties and obligations under the framework. The duty of flag States to conduct surveys and inspections, issue the necessary certificates, and conduct investigations and marine inquiries, is the key to such States achieving the objective of the framework.

The performance of the Marshall Islands under the framework for maritime security was analysed in Chapters 5 and 6. These chapters discussed the codification of the offence of piracy, the debate surrounding the *Achille Lauro* hijacking, as well as the adoption of the SUA Convention 1988 and its Protocol on Fixed Platforms. Chapter 5 also concluded that the September 11, 2001 terrorist attacks were the major impetus for the international community formulating new maritime security measures under the SOLAS Convention 1974 regulations.

The adoption of the 1988 SUA Convention and its Protocol on Fixed Platforms was designed to address the gaps left by the codification of the offence of piracy (as highlighted in the *Achille Lauro* incident). Even so, the SUA Convention 1988 lacked the requisite ‘security’ posture, while simultaneously failing to provide an adequate enforcement mechanism. Indeed, these were fundamental flaws in the effort to contain sea robberies, hijackings and acts of terrorism in the maritime sector. Accordingly, the IMO adopted further measures, passing the SOLAS 1974 regulations, expanding the list of offences under the SUA treaties to cover terrorism related activities, and providing a mechanism for effective enforcement under the SUA convention (by way of Article 8 *bis* of the 2005 SUA Protocol). To a large extent, the SUA treaties (including the 2005 SUA Protocol), and the December 2002

SOLAS security measures, form the crux of the international framework for maritime security. Indeed, it is under this framework that the maritime security related duties of flag States such as the Marshall Islands are prescribed.

The duty to prosecute or extradite offenders under the 1988 SUA Convention, as well as the duty to approve SSPs, set security levels on ships, and issue ISSC certificates under the ISPS Code, are all duties that international law requires flag States such as the Marshall Islands to carry out in an effective manner. The fact that these duties are routinely delegated to classification societies and recognised security organisations does not diminish the responsibility of the Marshall Islands as a flag State to discharge such duties in an effective manner. Indeed, given the substantial tonnage trading under the Marshall Islands flag, the Marshall Islands must act quickly to uphold and effectively discharge its State flag functions under the security framework. Moreover, if the hijacking incidents involving Marshall Islands flagged vessels in the Gulf of Aden and in the Red Sea are any indication, the Marshall Islands must work harder to ensure that maritime security measures are being properly implemented on its vessels. However, it can only be successful in ensuring compliance by shipowners if it is in a position to carry out its flag State duties effectively.

Finally, Chapters 7 and 8 examined the performance of the Marshall Islands of its flag State duties under the emerging international framework for the conservation and management of fish stocks. The examination established that this emerging framework is constituted primarily of the international fisheries instruments adopted under the auspices of the FAO following the UNCED conference in Rio de Janeiro in 1992. These instruments – which comprise the 1993 FAO Compliance Agreement,

the 1995 UNFSA and the FAO Code of Conduct, aim to enhance the fisheries conservation and management framework established under the 1982 LOSC.

Indeed, in the decade following the adoption of the 1982 LOSC, it was discovered that the convention's fisheries framework was inadequate in ensuring the effective conservation and management of fish stocks. These concerns galvanised the FAO and the international community to put in place measures to supplement and give effect to the fisheries conservation and management provisions under the 1982 LOSC. As a lack of adequate flag State control was identified as a major factor contributing to the crisis in the fisheries sector, the emerging fisheries framework made certain that the issue of control was addressed, attributing a number of specific duties to flag States. These duties related to the registration of fishing vessels, the issuing of fishing licences and authorisations to fish, the maintenance of records pertaining to fishing vessels, and the effective enforcement of fishing laws, to name a few. As a flag State, the Marshall Islands is likewise obligated under this emerging framework to carry out these duties effectively. However, despite these noble efforts, the fisheries framework under the UNCED instruments began to experience challenges, with unscrupulous fishing vessels engaging in activities prohibited under the framework. Indeed, this was the start of what has now become known as IUU fishing. Open registries and FOC were quickly identified as the weakest links under the framework. The IPOA-IUU was therefore adopted under the FAO Code of Conduct to provide States with a set of tools which they could incorporate into their own domestic legal regimes to combat the surge of IUU fishing activities.

Overall, the record of performance of the Marshall Islands as a flag State appears to be a mixed one. Although no data on the ship registry is available for the period

between 1990 and 1997, the Marshall Islands Ship Registry suffered a string of serious maritime casualties between 1998 and 2004. Since 2004, the Marshall Islands appears to have taken the necessary steps to improve the quality and seaworthiness of the vessels on its registry, having maintained a perfect safety record. Indeed, the Marshall Island has obtained ‘white flag’ classification under the Paris and Tokyo regional MOUs, and maintained consecutive annual enrolment in the US Coast Guard QualShip 21 Program. It must be noted, however, that although the Marshall Islands appears to be performing its ‘general duties’ and ‘maritime security related duties’ at internationally acceptable standards, the discharge of its duties under the fisheries framework has not quite risen to the same level.

By international law standards, the performance of the Marshall Islands over the last eight years may be described as exemplary (except for a number of lingering issues). Given that the Marshall Islands is a small developing State, and a so-called flag of convenience, this is indeed a tremendous achievement. Its success over the last eight years is no doubt attributable to its association with IRI - perhaps the most experienced entity in the area of flag administration and maritime matters in general. IRI’s management of the Marshall Islands Ship Registry has enabled the registry to gain access to a level of resources and technical expertise that it would not otherwise be able to obtain. Indeed, IRI, along with its global network of offices, classification societies, recognised organisations, recognised security organisations, service providers and other experts, appear to performing to acceptable standards. The issue, however, is whether the registry is able to sustain this record into the future. If the problems requiring the attention of the Marshall Islands (as canvassed in the thesis)

are left unattended, there is a real risk that its impeccable safety record over the last eight years may be jeopardised.

The failure of the Marshall Islands to develop and implement a comprehensive policy to guide its activities in the maritime sector is certainly a fundamental weakness in its administrative regime. More than twenty years have elapsed since the ship registry was established, and yet the Marshall Islands has not developed relevant policies in relation to its flag State obligations under international law. Indeed, to rely solely on legislative text in the administration of flag State duties can be cumbersome, as legislative instruments often contain technical language that is open to interpretation. Moreover, the practical effect such instruments may need to be explained or clarified to officers and other relevant personnel so that they can carry out their functions in the proper manner. The advantage of putting in place a policy framework is that it serves as a guide to relevant officers, explaining why certain actions must be undertaken in the discharge of particular flag State duties. For this reason, it is easier to implement and enforce measures called for under each of the three different regimes when a guiding policy is in operation, rather than having to rely on the text of the applicable legislation alone. Accordingly, the Marshall Islands must act swiftly to develop a comprehensive policy framework to guide its activities in the maritime sector. Such a framework must address all types of transactions in the maritime sector, whether it be international shipping, safety at sea, marine pollution, maritime security, or conservation and management of fisheries.

Another fundamental issue that must be addressed is the level of oversight that the government is able to exercise over the activities of the registry, and for that matter,

the activities of IRI (as manager of the ship registry) and TCMI (as Maritime Administrator). From a practical perspective, this issue concerns the management structure of the ship registry. The delegation of flag State administration duties to IRI and various classification societies, the decision to move the management of the ship registry (along with its records) to the United States, the appointment of TCMI as the Maritime Administrator, the practice of incorporating international rules into domestic legal framework through the subordinate rule-making authority of TCMI, as well as the delegation of ministerial functions to TCMI, results in a loss of effective oversight by the Marshall Islands Government over the activities of the ship registry. This is indeed an important point, given that it is the Marshall Islands that bears the ultimate responsibility to abide by international legal requirements. As such, it is recommended that the government revise the management structure of the ship registry by incorporating proper oversight mechanisms into its arrangements with IRI, TCMI and other relevant entities. This can easily be achieved by negotiating amendments to the Joint Venture Agreement itself, or by passing amendments to the *Maritime Administration Act 1990*.

The third issue concerns the Marshall Islands domestic legal regime for maritime security. Although the Marshall Islands is a member of the IMO and a party to SOLAS 1974, the SUA Convention, 1988 (including its Protocol on Fixed Platforms), the 2005 SUA Protocols and the various UN Conventions relating to terrorism, it has yet to enact comprehensive legislation to enforce the provisions of the SUA treaties. The implication of this failure is that, as a flag State, the Marshall Islands does not have the authority to enforce the provisions of these instruments at the national level. Indeed, the successful implementation and enforcement of the SUA Conventions depends largely on the cooperation of State parties. Accordingly, if no steps are taken

to close this gap, the Marshall Islands will be failing its duty as a flag State under the maritime security framework. As such, it is recommended that the government take the necessary legislative action to incorporate the provisions of the SUA treaties under Marshall Islands law.

The fourth issue concerns the implementation and enforcement of international instruments under the emerging fisheries framework, especially the coordination between MIMRA and TCMI in relation to the registration of fishing vessels and the issuing of fishing licences. While MIMRA has a statutory obligation to inquire into the background of fishing vessels and their owners (in the context of IUU fishing activities) when considering an application for a fishing licence, TCMI is authorised under the *Documentation and Identification of Vessels Act 1990* to register fishing vessels without making such inquiries. Indeed, Section 279 of the *Documentation and Identification of Vessels Act 1990* authorises TCMI to register fishing vessels “..in the same manner as other merchant vessels”.

This problem is exacerbated by the fact that neither TCMI nor MIMRA are directed by any legislative provision to work together in registering fishing vessels and issuing licences. As such, there is no guarantee that TCMI will refrain from registering vessels with a history of IUU fishing activities, which would no doubt undermine the work of MIMRA and the discharge of Marshall Islands flag State duties. Accordingly, it is recommended that steps be taken to ensure that there is effective coordination between MIMRA and TCMI in regard to the registration of fishing vessels, fish carrier reefers, bunker vessels, and the issuing of licences by MIMRA.

Finally, the analysis in the thesis has shown that since the establishment of the registry, the Marshall Islands Government has not taken the appropriate steps to train and develop its own expertise in the area of ship registration and the discharge of flag administration duties. Indeed, this is due to the failure to develop appropriate policies and long term plans. Without the necessary expertise being locally available, the government will continue to ‘rubber stamp’ the activities of TCMI and IRI without proper scrutiny. To the contrary, developing such expertise within its own ranks equips the government with the ability to properly scrutinise, analyse and critique the initiatives of TCMI and IRI in regard to the operation of the ship registry. Indeed, this enables the Marshall Islands Government to better oversee the management of the ship registry.

As reiterated throughout the thesis, flag States such as the Marshall Islands are not only obligated under international law to carry out certain duties, but must carry out such duties ‘effectively.’ Therefore, where a flag State falls short of being “effective” (within the meaning of Article 94(1) of the 1982 LOSC), the State concerned has failed to discharge its obligation under international law. Although the analysis in the thesis supports the notion that the Marshall Islands has taken steps in the right direction over the last eight years, and is performing its flag State duties at an acceptable level, more work is required in a number of areas (such as the registration and licensing of fishing vessels) in order to perform at the expected level. However, real progress is unlikely to be made unless the Marshall Islands takes the necessary steps to address the issues identified above. Indeed, the time is ripe for the Marshall Islands Government to conduct a comprehensive review of the ship registry, both in terms of its management structure and operations.

That flag States must “effectively” carry out their duties is not only a requirement under international law, but critical to the international community being able to meet the serious challenges it faces in the maritime sector. As a flag State, the Marshall Islands is duty bound to perform its duties under the relevant instruments in the due and proper way. The failure to do so not only places the Marshall Islands in an unfavourable light on the world stage, but also adversely impacts upon the wider international effort to maintain order and security in the maritime sector. International law may very well embrace further exceptions to the ‘exclusive jurisdiction’ rule in order to close enforcement gaps, particularly if the flag State regime proves ineffective against new challenges. Holding flag States liable for the activities of their vessels may also be a way of ensuring effective flag State performance. Of course, it must be recognised that these are drastic measures, not yet accepted under the corpus of international law. However, given the gravity of the issues at hand, it may not be premature to begin looking at the implications of such measures, if they were to become recognised under international law. The thesis in no way advocates this position, taking into consideration standing principles of international law, and any discussion to that end is clearly beyond the scope of this research. The point however is that perhaps, international law must recognize the gravity of today’s challenges, and must itself be innovative, in ensuring that flag States carry out their international obligations effectively.

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ANNEX ‘1’

TITLE 47. – MARITIME

CHAPTER 1.

MARITIME ADMINISTRATION

ARRANGEMENT OF SECTIONS

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[The Chapters in this Title were originally codified in 34 MIRC 3. They have been re-codified in this Title for ease of use and to conform to the style of the Code. No substantive changes were made in the re-codification. This Chapter 1 contains Parts I, VI, VII, VIII and XI of old 34 MIRC 3.]

Commencement: 13 September 1990

Source: P.L. 1990-92

P.L. 1990-94

P.L. 1992-32

P.L. 1997-33

P.L. 2001-27

P.L. 2005-36

PART I - GENERAL

§101. Short title.

This Chapter shall be known and may be cited as the [Maritime Administration Act. \[P.L. 1990-92, § 1. Short title changed by Reviser to reflect the re-codification of the original Act into separate chapters of this Title.\]](#)

§102. Statement of policy; application.

(1) This Title is intended, and shall be construed, to encourage and foster the growth and development of the foreign and domestic commerce; to promote and protect the national defense and security of the Republic of the Marshall Islands (hereinafter sometimes referred to as 'the Republic'); to preserve and protect the marine environment; and to regulate a uniform national program of marine safety, inspection and documentation.

(2) Vessels engaged in foreign trade and not exclusively owned by natural persons who are citizens or nationals of the Republic shall be registered solely under Chapters 1 through 8 of this Title.

(3) Chapter 9 of this Title shall apply to any vessel operating exclusively within the waters of the Republic which is not duly and properly documented or registered elsewhere.

(4) All matters affecting the internal order and economy of vessels registered under the laws of the Republic engaged in foreign trade and domestic commerce, including labor relations, shall be governed by this Title. **[P.L. 1990-92, § 2; amended by P.L. 1990-94 § 2(1), which repealed subsection (4) of this Section.][Amended by P.L. 2001-27]**

§103. Administration of the law: Maritime Administrator - Rules and Regulations.

There is hereby created the Republic of the Marshall Islands Maritime Administrator (hereinafter sometimes referred to as 'the Maritime Administrator') which shall be appointed by the Cabinet. In addition to the authority conferred upon the Maritime Administrator under the Maritime Act, and subject to the provisions of this Title, the Minister of Transport and Communications, with the approval of Cabinet, may by a written instrument generally or specifically delegate his authority, power, functions under this Title to the Maritime Administrator to administer all matters pertaining to vessels of the Republic that are subject to the provisions of this Title; promulgate Rules and Regulations to carry out the provisions of this Title; and ensure the seaworthiness and proper manning conditions of such ships, yachts and fishing vessels registered under the laws of the Republic. **[P.L. 2001-27, §103.]**

An Act to provide for a comprehensive modernization of the maritime laws of the Republic of the Marshall Islands.

§104. Commissioner of Maritime Affairs. There shall be a Commissioner of Maritime Affairs (hereinafter sometimes referred to as 'the Commissioner') who shall be appointed by the Maritime Administrator and who shall have such authority as may be conferred upon him by the Maritime Administrator and/or this Title. [P.L. 1990-92, § 4.]

§105. Deputy Commissioners of Maritime Affairs. There shall be Deputy Commissioners of Maritime Affairs (hereinafter sometimes referred to as 'Deputy Commissioners') who shall be appointed by the Maritime Administrator and who shall have such authority as may be conferred upon them by the Maritime Administrator and/or this Title. [P.L. 1990-92, §5.]

§106. Special Agents. The Maritime Administrator, the Commissioner or any Deputy Commissioner may from time to time appoint one or more special agents (hereinafter sometimes referred to as 'the Special Agents') to act on its or his behalf in connection with the registration and documentation of vessels, the formation and maintenance of corporations or other entities and the recordation of instruments in relation thereto. The signature of the Special Agents will have the same status as a notarial act or acknowledgment. The Special Agents acknowledgment shall be admissible as evidence in the High Court of the Republic. [P.L. 1990-92, §6] [amended by P.L. 2005-36]

§107. Records relating to vessels. There shall be maintained at the central office of the Maritime Administrator in the United States of America a public register consisting of appropriate indexes where there shall be recorded or filed in, properly allocated and accessible form, all documents of the following nature:

- (a) bills of sale and other instruments of conveyance of vessels;
- (b) mortgages of vessels;
- (c) assignments of mortgages;
- (d) certificates of permanent and provisional registry;
- (e) licenses and certificates of officers and members of ship's crew;
- (f) all other documents relating to vessels and which are entitled to recordation. [P.L. 1990-92, § 7; repealed and replaced by P.L. 1992-32, §4(7).]

§108. Authority to administer oaths and take acknowledgments. The Commissioner, each Deputy Commissioner and each Special Agent is authorized to administer all oaths, take all acknowledgments and make all proofs of due execution required by this Title either in or outside of the Republic. [P.L. 1990-92, §8.]

§109. Authority to Issue Licenses, Certificates and Other Documents.

(1) The Commissioner, each Deputy Commissioner or their duly authorized agents on behalf of the Maritime Administrator are authorized to issue all such licenses, certificates, or other documents for officers and ship's personnel on vessels of the Republic engaged in foreign trade that are subject to the International Convention on Standards of Training, Certification and Watchkeeping, 1978, as amended and revised from time to time (STCW Convention), necessary or proper for carrying out the purposes of this Title, and any Rule or Regulation promulgated in furtherance hereof or of any International Convention, Code or Agreement to which the Republic is or may become a party.

(2) In aid of licensing, certificating and upgrading of ship's officers and personnel, the Maritime Administrator shall, from time to time, establish such standards, Rules and Regulations as shall be deemed by it to be necessary and appropriate to carry out such purposes and maintain the high standards of the Merchant Marine of the Republic.

(3) Failure of an owner of a vessel of the Republic to file any required report relating to officers and other ship's personnel employed on the vessel shall result in an automatic fine of one thousand five hundred dollars (US \$1,500) for each offense, and until paid each such fine shall constitute a maritime lien on the vessel.

(4) Failure of an owner of a vessel of the Republic to ensure that each officer employed on the vessel is the holder of a valid license of competence of the Republic to fill the position held by him shall subject the owner to a fine of seven hundred fifty dollars (US \$750) for each officer so employed who is not the holder of such license of the Republic. Where such failure is admitted or is established by any required report, the fine shall be automatic. If, however, a proper license of the Republic for each such officer is obtained within thirty (30) days of notice from the Maritime Administrator, the fine with respect thereto shall be remitted. Until paid or remitted, each fine shall constitute a maritime lien on the vessel. [P.L. 1990-92, §10[subsection (1) amended by P.L. 2001-27]

§110. Suspension and revocation proceedings. The Maritime Administrator shall have power to suspend or to revoke any licenses, certificates, permits or documents issued under the provisions of this Title, and it may from time to time make such Rules and Regulations as are deemed by it necessary and appropriate to the conduct of suspension and revocation proceedings. [P.L. 1990-92, § 11.][subsection (1) amended by P.L. 2001-27]

§111. Fees. The Maritime Administrator is authorized to establish by regulation all necessary and proper fees, except in cases where the fee is already provided for in this Title. [P.L. 1990-92, §12.]

§112. Definitions.

(1) The words 'document' and 'enroll' or any of their derivatives, as used throughout this Title, shall have the same meaning as the word 'register' or its derivatives.

(2) The words 'commercial yacht(s)', as used throughout this Title, shall mean a yacht engaged in trade, commerce or on charter for hire.

(3) The words 'private yacht(s)', as used throughout this Title, shall mean any yacht not for hire, not engaged in trade or commerce, and used solely for private use, pleasure or recreational purposes by its owner.

(4) The words 'vessel of the Republic engaged in foreign trade', as used throughout this Title, shall mean any vessel not exclusively operated or engaged in coastwise trade or transportation between atolls, islands and/or ports within the waters of the Republic.

(5) The words 'waters of the Republic', as used throughout this Title, shall mean the Exclusive Economic Zone, territorial waters and internal waters of the Republic as defined in the [Marine Zones \(Declaration\) Act 1984](#). [P.L. 1990-92] [Subsections (2), (3) (4) and (5) added by P.L. 2001-27 §112.]

§113. Adoption of American general maritime law. Insofar as it does not conflict with any other provisions of

this Title or any other law of the Republic, the non-statutory general maritime law of the United States of America is hereby declared to be and is hereby adopted as the general maritime law of the Republic. [P.L. 1990-92, §14.]

§114. Separability. If any provision of this Title, or the application of any such provision to any circumstances or persons, natural or corporate, shall be held invalid, the validity of the remainder of this Title and the applicability of such provisions to other circumstances, or to persons individual or corporate, shall not be affected thereby. [P.L. 1990-92, §15.]

§115. General penalty for violation. Any person who is convicted by a court of competent jurisdiction of a violation of any of the provisions of [Sections 154, 216, 221, 223, 230, 232, 704, 804, 826, 837, 843, 846, 854, 855](#) or [858](#) of this Title or of any Rules and Regulations promulgated in accordance with this Title shall, upon conviction, be subject to a fine not exceeding twenty-five thousand dollars (US \$25,000) or imprisonment for a term not exceeding ten (10) years, or both. [PL 2001-27] P.L. 1990-92, 16. **Penalty provision modified to be consistent with the format and style of the Code.**

§116. Jurisdiction. All causes of action arising out of, or under, this Title are hereby declared to and shall be cognizable before the High Court of the Republic, sitting in Admiralty; but, except as otherwise specifically provided in this Title, the provisions of this Section shall not be deemed to deprive other Courts, of the Republic or elsewhere, of jurisdiction to enforce such causes of action. [P.L. 1990-92 § 17.]

§117. Appeal from Commissioner's, Deputy Commissioner's or Special Agent's decision.

Appeal from any decision of the Commissioner or any Deputy Commissioner or any Special Agent pursuant to any Section of this Title or any Rules and Regulations there-under, may be taken to the Maritime Administrator. Upon exhaustion of administrative remedies, appeal may be taken to the High Court of the Republic, sitting in Admiralty. [P.L. 1990-92, §18.]

§118. Immunity from liability and suit. In the performance of their duties, the Maritime Administrator, any Commissioner, Deputy Commissioner, and/or any agent appointed, authorized, recognized, and/or designated by the Maritime Administrator, or any Commissioner, Deputy Commissioner, Special Agent, or by any person acting on their behalf for the administration of the provisions of this Title or any Regulation promulgated pursuant to Section 109 of this Chapter or for the performance of statutory certification or classification services together with any affiliate of any such agent, their stockholders, members, directors, officers and employees, wherever located, shall have full immunity from liability and from suit with respect to any act or omission or thing done by any of them in good faith in the exercise or performance, or in the purported exercise or performance, of any power, authority or duty conferred or imposed upon any of them under or in connection with this Title or any Regulation, as amended, or any other law or rule applicable to the performance of any of their said duties. [added by P.L. 1997-33, §2.] [Section amended by P.L. 2001-27, §118.]

§119-129. Reserved.

PART II- RADIO AUTHORITY

§130. Authority to issue radio station licenses. The Commissioner, each Deputy Commissioner and their duly authorized agents on behalf of the Maritime Administrator are authorized to issue ship radio station licenses in respect of radio transmitting apparatus located on board ships and fishing vessels engaged in foreign trade and yachts registered under the laws of the Republic. The Maritime Administrator may, from time to time, make such Rules and Regulations as are deemed by him necessary and appropriate to implement this provision. [P.L. 1990-92, § 9.][P.L. 2001-27 §130.]

§131. Regulations. The Maritime Administrator may, from time to time, make such Rules and Regulations as may be deemed necessary and appropriate to the efficient administration of maritime mobile radio stations. [P.L. 1990-92, § 133.][P.L. 2001-27 deleted the words 'by him']

§132. Point of Service Activation. The Maritime Administrator, through its duly authorized agents shall be the sole provider of Point of Service Activation (PSA) for all Inmarsat maritime mobile stations established on vessels registered under the laws of the Republic. [New provision inserted by P.L. 2001-27]

§§133-139. Reserved.

PART III - VESSEL INSPECTION

§140. Marine safety inspection. In order to promote the safety of life and property at sea, vessels registered under this Title shall be required to undergo inspection and shall at all times carry on board such proof of inspection as may be required by Law or Regulation. [P.L. 1990-92, §134.]

§141. Regulations. The Maritime Administrator shall, from time to time, make such Rules and Regulations as may be deemed necessary and appropriate to the efficient administration of inspections on board vessels registered under the laws of the Republic. [P.L. 1990-92, §135.] [P.L. 2001-27, §141]

§§142-149. Reserved.

PART IV - RULES OF NAVIGATION

§150. Regulations for preventing collisions. The International Regulations for Preventing Collisions at Sea, 1972, as amended, and such changes therein as in the future shall be made by any International Convention to which the Republic of Marshall Islands becomes a State Party, shall be followed by all vessels and seaplanes navigating all harbors, rivers, and inland waters of the Republic; and shall be followed by all vessels of the Republic and seaplanes upon the high seas and in all waters connected therewith navigable by seagoing vessels except as provided in Rule 1 of the foregoing Regulations; and the foregoing Regulations, as may be amended from time to time, shall have effect as if specifically enacted by statute and fully set forth herein. [P.L. 1990-92, §136.][P.L. 2001-27 §150.]

§151. Vessel under oars. The term 'vessel under oars' as set forth in Rule 25 of the foregoing Regulations shall be interpreted to include canoes and various nondescript local craft. [P.L. 1990-92, §137.]

§152. Penalty for violation of rules by pilot, engineer, mate or Master. Every pilot, engineer, mate, Master or other person in charge of any vessel, yacht, boat, canoe, or nondescript local craft who neglects or refuses to observe the provisions of this Part shall be liable to a penalty of not more than one thousand dollars (US \$1000), and for all damages sustained by any passenger in his person or baggage resulting from such neglect or refusal; provided, that nothing herein shall relieve any vessel, owner, corporation, or other person from any liability incurred by reason of such neglect or refusal. [P.L. 1990-92, §138.][Penalty increased by P.L. 2001-27 §152.]

§153. Penalty for violation by vessel. Every vessel that shall be navigated without complying with the provisions of this Part shall be liable to a penalty of not more than two thousand dollars (US \$2000), for which sum the vessel so navigated shall be liable and may be seized and proceeded against before any Court of competent jurisdiction in this Republic and until paid, each such fine shall constitute a maritime lien on the vessel. [P.L. 1990-92 § 139.][P.L. 2001-27, §153.]

§154. Assistance in case of collision. In every case of collision between two vessels it shall be the duty of the Master or person in charge of each vessel, if and insofar as he can do so without serious danger to his own vessel, crew, and passengers (if any), to stand by the other vessel until he has ascertained that it needs no further assistance; to render to the other vessel, and to its Master, crew, or passengers (if any), such assistance as may be practicable and necessary to save them from any danger caused by the collision; and to report to the Master or person in charge of the other vessel the name of his own vessel, its port of registry or the port to which it belongs, and the names of the ports from which and to which it is bound. If he fails to do so without reasonable cause for such failure, the collision shall, in the absence of proof of the contrary, be deemed to have been caused by his wrongful act, neglect, or default. [P.L. 1990-92, §140.]

PART V - INTERNATIONAL CONVENTIONS AND AGREEMENTS

§155. Implementation and Compliance. The International Conventions and Agreements to which the Republic of Marshall Islands is or may become a State Party, shall be complied with by all vessels documented under the laws of the Republic which are engaged in foreign trade and, to the extent determined applicable, to domestic water-craft as defined in Chapter 9 of this Title, fishing vessels and yachts. The foregoing International Conventions and Agreements, as may be amended, shall have effect as if specifically enacted by statute and fully set forth herein. [section added by P.L. 2001-27, §155.]

§156-159 Reserved.

PART VI - TRANSITION AND EFFECTIVE DATE

§160. Transition and effective date. The [Maritime Act 1987](#) is hereby repealed, except for rights and duties that matured, penalties that were incurred, and proceedings that were begun before the effective date of this Title, which date shall be upon the certification of this Act pursuant to Article IV, Section 21 of the Constitution (the 'Effective

Date'). A vessel duly registered under the laws of the Republic on the Effective Date shall be deemed to be duly registered hereunder. Nothing contained herein shall impair or otherwise affect the status, including but not limited to, the validity and enforceability of any instrument or document issued, filed or recorded or any act taken prior to the date hereof in respect of a vessel duly registered under the laws of the Republic on the Effective Date. Every instrument or document so issued, filed or recorded shall have the same status hereunder as it had immediately prior to the Effective Date hereof, i.e., a vessel mortgage which was a Preferred Mortgage under the laws of the Republic in effect immediately prior to the Effective Date shall be deemed a Preferred Mortgage hereunder. Every instrument or document issued, filed or recorded and every act taken after the Effective Date in respect of a vessel duly registered under the laws of the Republic shall be in accordance with the terms and provisions of this Title. [P.L. 1990-92, §204; amended by P.L. 1990-94, 2(2), which changed the effective date from thirty calendar days from the date of enactment, to the date of certification.] [Renumbered as Part VI to reflect the new Part V inserted by P.L. 2001-27, §155.]

ANNEX ‘2’

TITLE 47– MARITIME

CHAPTER 2.

DOCUMENTATION AND IDENTIFICATION OF VESSELS

ARRANGEMENT OF SECTIONS

Section

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- §201. Short Title.
§202. General provisions.
§203. Vessels eligible to be documented and redocumented.
§204. Vessels not to be documented.
§205. Registration fees.
§206. Annual tonnage tax.
§207. Title of ship’s document.
§208. Conditions precedent to Issuance of Permanent Certificate of Registry.
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§PART II - VESSEL MEASUREMENT

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PART III - BARE-BOAT CHARTER – REPUBLIC OF THE MARSHALL ISLANDS REGISTRATION

- §260. Recording of bareboat charter party.
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- §270. Bareboat charter registration in foreign State
§271. Consent of mortgagee.
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§279. Fishing Vessel Documentation.
§280. Refusal and Termination of Registration.

[The legislation in this Chapter 2 was originally codified as Part II of 34 MIRC 3.]

Commencement: 13 September 1990

Source: P.L. 1990-92

P.L. 1992-32

P.L. 2000-8

P.L. 2001-27

P.L. 2003-95

PART I - VESSEL REGISTRATION

§201. **Short title.**
This Chapter may be cited as the Documentation and Identification of Vessels Act.
[Short title supplied by Reviser during recodification of the original Act.]

§202. **General provisions.**
No vessel engaged in foreign trade shall be documented under the laws of the Republic or be accorded the rights and privileges of a vessel of the Republic unless such vessel shall be registered in accordance with the provisions of this Part. The home port of every vessel so registered shall be Majuro, with the exception of fishing vessels, which shall have a home port of Jaluit, and yachts which shall have the home port of Jaluit or Bikini, and the name of the home port shall be shown on the Certificate of Registry. [P.L. 1990-92, §19; P.L. 2001-27, § 202; P.L. 2003-81, §202.]

§203. **Vessels eligible to be documented and re-documented.**

Vessels of the following classes are eligible to be documented or re-documented under the provisions of this Chapter:

(a) any sea-going vessel engaged in foreign trade, wherever built, owned by a citizen or national of the Republic, or a foreign maritime entity qualified in the Republic.

(b) any decked commercial fishing vessel of 24 meters or more in length, engaged in foreign trade, wherever built, owned by a citizen or national of the Republic, or a foreign maritime entity qualified in the Republic.

(c) any commercial yacht of 24 meters or more in length owned by a citizen or national of the Republic, or a foreign maritime entity qualified in the Republic.

(d) any private yacht of 12 meters or more in length owned by a citizen or national of the Republic, or a foreign maritime entity qualified in the Republic.

(e) vessels referred to in paragraphs (a), (b), (c) or (d) of this Section will not be eligible for initial documentation or re-documentation if, on January 1 of the year in which initial documentation or re-documentation is sought, such vessels are over 20 years of age, computed from completion of first construction.

(f) anything in this Section to the contrary notwithstanding, the ownership requirement referred to in Paragraphs (a), (b), (c) and (d); the minimum length restrictions referred to in Paragraphs (b), (c) and (d); and the 20-year maximum age limitation in Paragraph (e) of this Section, may be waived at the discretion of the Maritime Administrator and may be documented or re-documented where:

(i) the vessel meets all other applicable requirements for registration; and

(ii) it has been satisfactorily demonstrated that there is an absolute and genuine need for such waiver.

(g) for vessels entering the registry or flag of the Republic, the Maritime Administrator, or its duly authorized agent, may for good cause shown, including but not limited to cases of international, civil, political or military crisis, temporarily suspend or modify the requirements of this Chapter with respect to registration as well as related requirements for recordation of instruments under Chapter 3, and for good cause shown, permit such vessels to be documented under this Chapter or cause such instruments to be recorded under Chapter 3. [P.L. 1990-92, §20; repealed and replaced by P.L. 1992-32, §4(20); and amended by P.L. 2000-8, §203(e) and P.L. 2001-27, §203.]

§204. Vessels not to be documented.

(1) Any vessel engaged solely in domestic commerce shall not be documented under the provisions of this Chapter. Vessels operated exclusively within the waters of the Republic shall be documented under the provisions of Chapter 9, Domestic Watercraft Act.

(2) Notwithstanding that any ship in respect of which an application for registration has been made is entitled to be documented, the Maritime Administrator, or its duly authorized agent, may refuse registration to a vessel if satisfied that after due consideration it would be detrimental to the interests of the Republic or of international shipping for the vessel to be documented. [P.L. 1990-92, §21; P.L. 2001-27, §204.]

§205. Registration fees.
With respect to vessels registered under this Chapter, the Maritime Administrator shall establish by Regulation all necessary and proper registration fees. [P.L. 1990-92, §22.]

§206. Annual tonnage tax.
With respect to vessels registered under this Chapter, the

Maritime Administrator shall establish by Regulation all necessary and proper annual tonnage taxes. [P.L. 1990-92, §23.]

§207. Title of ship's document.
The ship's document shall be called the 'Certificate of Registry'. [P.L. 1990-92, §24.]

§208. Conditions precedent to issuance of Permanent Certificate of Registry. Upon receipt of the written application of an owner of a vessel eligible for documentation under the laws of the Republic and requesting the issuance of a Certificate of Registry for the vessel, accompanied by the oath or oaths required by Section 209 of this Chapter, the Maritime Administrator, by the Commissioner or any Deputy Commissioner, upon payment of the prescribed fees, may issue a Permanent Certificate of Registry for the vessel provided that the owner furnish proof satisfactory to the issuing officer:

(a) as to its ownership of the vessel;

(b) that any foreign marine document for the vessel has been surrendered with the consent of the government that had issued it, or has been legally canceled or otherwise terminated;

(c) that the vessel is in a seaworthy condition;

(d) that the owner has paid to the Maritime Administrator or its designee a sum equal to the initial registration fee and tonnage tax;

(e) that the markings of name, official number, home port and draft required by Section 230 of this Chapter have actually been made;

(f) that a Certificate of Measurement as required by Section 251 has been issued. [P.L. 1990-92, §25; P.L. 2001-27, §208.]

§209. Oaths.

(1) In order to document a vessel, the owner, managing owner, part owner, or his agent, authorized by power of attorney where such vessel is owned by individuals, or in the case of a corporate-owned vessel by the president, vice president, secretary or assistant secretary of the corporation or other officer or agent as authorized in writing, shall take an oath declaring the name of the vessel, its net tonnage or tonnages, the place where built, the date when built, the name and residence of any other owner and his citizenship, each owner's proportion, and the name of the affiant and his citizenship.

The oath may be taken before the Commissioner, a Deputy Commissioner, a Special Agent or before a notary public or other officer authorized to administer oaths by the laws of the place where the oath is administered or before any other person designated by the Commissioner or a Deputy Commissioner for the administration of such oaths. Nothing contained in this section shall be construed to require the administration of an oath by a Marshall Islands or foreign consul.

The names of the persons owning shares in an incorporated company owning such vessel need not be stated. The oath of any other person interested and concerned in the vessel shall not be required. An agent or attorney who purchases any vessel shall take oath to the ownership of the vessel

and that he is the agent or attorney for the owner and in such capacity has made such purchase in good faith.

(2) Whenever the document of any vessel is lost or destroyed, the Master, or other person in command, may take the following oath before the Commissioner or a Deputy Commissioner or a Special Agent or before a notary public or other officer authorized to administer oaths by the laws of the place where the oath is administered or before any other person designated by the Commissioner or a Deputy Commissioner for the administration of such oaths at or nearest to the port where the vessel is first located after such loss or destruction:

'I, (insert the name of the person swearing) being Master or in command of the (insert type of vessel) or vessel called the (insert the name of the vessel), Official No. (insert No.) owned by (insert the name of the owner) of (insert domicile of the owner) do swear (or affirm) that the said vessel has been, as I verily believe, registered according to the law of the Republic of the Marshall Islands by the name of (insert again name of vessel), and that a Permanent (or Provisional) Certificate of Registry bearing No. (insert No. of lost Certificate) was issued for such vessel pursuant to the laws of the Republic of the Marshall Islands at (insert place of issuance of lost Certificate) on (insert date of issuance of lost Certificate), which Certificate has been lost (or destroyed); and that the same, if found, and within my power, will be delivered up to the Maritime Administrator.'

When an oath is taken in the foregoing form, the officer or person administering such oath shall grant to the vessel a temporary Provisional Certificate of Registry and insert therein that it is issued in lieu of the one lost or destroyed. Said officer or person shall forthwith send to the Maritime Administrator a written notice, accompanied by a copy of the oath, advising that such oath has been taken and such temporary Provisional Certificate issued. Upon receipt of such notice the Maritime Administrator, Deputy Commissioner or Special Agent upon being satisfied that the vessel is entitled to a Certificate of Registry, may grant a new Certificate of Registry, identical with that which was lost or destroyed. As soon as practicable after the issuance of such a Certificate of Registry, the temporary Provisional Certificate hereinbefore referred to must be surrendered to the Maritime Administrator for cancellation. [P.L. 1990-92, §26; P.L. 2001-27, §209.]

§210. Reserved.

§211. Forms of documents. (1) The Maritime Administrator or its duly authorized agent may prescribe and furnish forms of Provisional and Permanent Certificates of Registry. A vessel's documents shall be in the _____ form _____ prescribed.

(2) The Maritime Administrator or its duly authorized agent may prescribe endorsements that may be made on vessel documents from time to time, with or without issuance of a new document or surrender of the old document. [P.L. 1990-92, §32; P.L. 2001-27, §211.]

§212. Numbering of Registry Certificates. The Maritime Administrator or its duly authorized agent shall progressively number the Registry Certificates granted by it, beginning anew at the commencement of each year, and shall make a record thereof in a book kept for that purpose. It shall also retain permanently copies of all such

documents issued by or surrendered to him. [P.L. 1990-92, §33.]

§213. Provisional Registry Certificates to vessels abroad.

(1) Upon compliance with the requirements of Sections 214, 262 or 274 of this Chapter, a Provisional Certificate of Registry may be issued by the Maritime Administrator, by the Commissioner or any Deputy Commissioner or any Special Agent, to vessels abroad which are to be documented _____ under _____ this _____ Chapter.

(2) Unless sooner revoked or suspended, a Provisional Certificate of Registry shall entitle the vessel to the privileges of a vessel of the Republic in the foreign trade for a period not exceeding two (2) years, as endorsed thereon.

(3) The Maritime Administrator or its duly authorized agent shall prescribe the conditions in accordance with which Provisional Certificates of Registry shall be issued and renewed and the manner in which they shall be surrendered in exchange for Permanent Certificates of Registry. [P.L. 1990-92, §34.]

§214. Conditions precedent to issuance of Provisional Certificate.

(1) Upon receipt by the office of the Maritime Administrator of the written application of an owner of a vessel eligible for documentation under the laws of the Republic and requesting the issuance of a Certificate of Registry for the vessel, accompanied by the oath or oaths required by Section 209 of this Chapter, and upon payment of the prescribed fees to the officer receiving said application, the Maritime Administrator or any issuing official listed in Section 213 of this Chapter, may issue a Provisional Certificate of Registry for the vessel, provided the owner shall furnish proof satisfactory to the officer receiving said application:

(a) as to his ownership of the vessel;

(b) that if there is an outstanding foreign marine document for the vessel the government that had issued it has consented to its surrender and that either said marine document has been surrendered for cancellation or that the owner has issued orders to the Master of the vessel to surrender said foreign marine document for cancellation immediately upon receipt of the Provisional Certificate of Registry of the Republic on board the vessel; or that the outstanding document has been legally cancelled;

(c) that the vessel is in a seaworthy condition;

(d) that the owner has paid to the Maritime Administrator a sum equal to the initial registration fee and tonnage tax, and

(e) that the markings of names, official number, home port, and draft required by Section 230 of this Chapter, have either actually been made or that the owner has issued orders to the Master of the vessel to have said markings made immediately upon receipt of the Provisional Certificate of Registry of the Republic on board the vessel.

(2) Unless the owner within thirty days after issuance of the Provisional Certificate of Registry shall furnish satisfactory proof to the officer to whom the application for documentation has been presented, showing that the

vessel's outstanding foreign marine document has actually been surrendered for cancellation and that the markings required by Section 230 of this Chapter, have actually been made, or if before such thirty (30) day period it is established that any of the obligations hereunder will not or cannot be complied with said officer may declare said Provisional Certificate of Registry to be null and void.

(3) As soon as reasonably practicable after a measurement of the vessel and the surrender for cancellation of any outstanding foreign marine document of the vessel and the making of the markings required by Section 230 of this Chapter, a Permanent Certificate of Registry shall be issued in place of any Provisional Certificate theretofore issued, and such Provisional Certificate shall be surrendered as promptly as circumstances permit to the Maritime Administrator. When the Permanent Certificate is issued after the issuance of a Provisional Certificate, the charges originally paid shall be adjusted in accordance with the tonnage established by the Certificate of Measurement.

(4) For good cause shown the Maritime Administrator by the Commissioner or any Deputy Commissioner may, from time to time, issue a new Provisional Certificate of Registry for a period not exceeding two years. [P.L. 1990-92, §35; P.L. 2001-27, §214.]

§215. Denial of document. There shall be no documents granted or papers issued to any vessel until all applicable provisions of this Part have been complied with. [P.L. 1990-92, §36.]

§216. Sale of document forbidden. A document shall be used solely on the vessel to which it is granted, and it shall not be sold, lent, or otherwise disposed of to any person. [P.L. 1990-92, §37.]

§§ 217-219. Reserved.

§220. Sale or transfer abroad. A registered vessel sold or transferred in whole or in part while without the Republic, but without change of Flag, shall comply with the provisions of this Part relating to the documentation of vessels and a new document shall be obtained. [P.L. 1990-92, §38.]

§221. Transfer foreign. The owner of a documented vessel which desires to transfer the vessel to foreign registry may do so provided that there are no unfulfilled obligations to the Republic in respect of the vessel. Before such transfer is accomplished the registered owner shall surrender the ship's document to the Maritime Administrator. [P.L. 1990-92, § 39.]

§222. Application for surrender of documents. Before a Certificate of Registry shall be accepted for surrender, the registered owner shall submit to the Maritime Administrator a written application specifying the name of the vessel, the reasons for the proposed surrender, the name and nationality of the proposed new owner, if any, and, if a transfer to foreign registry is contemplated, the name of the country to whose registry transfer is desired. [P.L. 1990-92, §40.]

§223. Surrender and cancellation of Registry.
(1) If a registered vessel is lost, taken by an enemy, burned, broken up, or otherwise prevented from returning

to the port to which she may belong, the Registry Certificate, if preserved, shall be delivered within eight (8) days after the arrival of the Master or person in command, to the Maritime Administrator.

(2) If a registered vessel is lost, broken up or transferred from the registry, the Maritime Administrator may, subject to the provisions of this Chapter, strike or delete the vessel from the Registry of the Republic.

(3) When the application is made for new registry of a vessel, its former Registry Certificate shall be delivered to the Maritime Administrator.

(4) Where a Registry Certificate is granted in lieu of one lost, the lost Certificate, if found, shall be delivered up to the Maritime Administrator, which shall thereupon cancel it.

(5) The continued validity of the Registry Certificate of a vessel is subject to:

(a) the payment of tonnage taxes when due,

(b) the good standing of the owning entity, and

(c) verification for safety compliance. If an owner or vessel is deemed to be non-compliant, the Certificate shall be delivered immediately to the Maritime Administrator, which shall thereupon cancel it. [P.L. 1990-92, §41; P.L. 2001-27, §223.]

§224. Surrender of document of vessel subject to Preferred Mortgage.

The Certificate of Registry of a vessel subject to a Preferred Mortgage shall not be accepted for surrender without the consent of the mortgagee, except in the case of a Provisional Certificate surrendered for the purpose of issuance of a Permanent Certificate. [P.L. 1990-92, §42.]

§225. New document.

(1) Whenever a documented vessel is sold or transferred wholly or partly without change of flag, or is altered in form or burden, by being lengthened or built upon, or from one denomination to another, by the mode or method of rigging or fitting, she shall be documented anew, by her former name. Every such sale or transfer shall be evidenced by a written instrument in the nature of a bill of sale to which is attached a true copy of the vessel's latest Certificate of Registry. Otherwise the vessel shall not be documented anew. In cases of a combination vessel that can be used either for the carriage of liquid cargo in bulk or dry cargo in bulk, if the Certificate of Registry shows the vessel in the condition or use providing the greater net and gross tonnage and has attached thereto an appendix showing the vessel in the other or use with the lesser gross and net tonnage, then a change of a vessel from one condition or use to the other would not require the vessel to be documented anew.

(2) When the Maritime Administrator determines that any vessel has been sold or transferred by process of law, and that her document is retained by the former owner, he may grant a new document under such sale upon the owner complying with the requirements of this Part, excepting only the delivering up of the former document. This Subsection shall not remove the liability of any person to any penalty for not surrendering the papers belonging to any vessel on a transfer or sale of the same.

(3) Any vessel required by this Part to be documented anew, which is not so documented, shall not be deemed a vessel of the Republic. If a former document has not been delivered up, except where it has been lost or destroyed

and the oath thereto has been taken, the owner of such vessel shall be liable to a penalty of not more than five hundred dollars (US\$500) and until paid each such penalty shall constitute a maritime lien on the vessel. [P.L. 1990-92, § 43; P.L. 2001-27, §225.]

§226. Builder's Certificate. In order for the first time to register a vessel newly built and previously undocumented under any flag, the builder, by whom or under whose direction the vessel has been built, shall certify as follows:

- (a) that it was built by him or under his direction;
- (b) the place where built;
- (c) the date delivered;
- (d) the person for whom built;
- (e) build;
- (f) number of decks and masts;
- (g) length;
- (h) breadth;
- (i) depth;
- (j) tonnage or tonnages; and
- (k) such other circumstances as are usually descriptive of the identity of a vessel.

[P.L. 1990-92, § 44; P.L. 2001-27, § 226.]

§§ 227-229. *Reserved.*

§230. Names, numbers and marks on vessels.

(1) Every documented vessel shall have her name marked upon each bow and upon the stern. The home port of the vessel shall also be marked upon the stern. These names shall be painted or gilded upon beaded or cast Roman letters in light color on a dark background, or in a dark color on a light background, permanently affixed and distinctly visible. The smallest letters used shall not be less than six inches in height.

(2) Each vessel of the Republic, in addition to having her name painted on her stern, shall have the same conspicuously placed in distinct, plain letters of not less than six inches in height, on each outer side of the pilot house.

(3) The Maritime Administrator may prescribe a system of numbering and marking documented vessels. The designated number(s) of each vessel shall be marked permanently on her main beam.

(4) The draft of every registered vessel shall be marked upon the stem and stern post, in English feet or in decimeters, in Arabic numerals. The bottom of each numeral shall indicate the draft to that line. [P.L. 1990-92, §45; P.L. 2001-27, §230.]

§231. Numbering of vessels.

Upon the initial registration of a vessel, the Maritime Administrator or its duly authorized agent shall assign to the vessel an official number. [P.L. 1990-92, §46; P.L. 2001-27, §231.]

§232. Change in name of vessel.

(1) The Maritime Administrator may change the name of a vessel of the Republic on application of the owner.

(2) The Maritime Administrator shall establish necessary Rules and Regulations and procure necessary evidence as to age, condition, where built, and pecuniary liability of the vessel so as to prevent injury to public or private interests. Upon granting permission the Maritime Administrator shall cause the order for changing of name to be published in at least four (4) issues of a newspaper at the place of documentation. The person desiring the change of name shall pay the cost of procuring evidence and advertising.

(3) The owners of the vessel shall pay the fee prescribed by the Maritime Administrator for securing such changes in name. These fees shall be based on the tonnage of the vessel.

(4) Whenever the name of a vessel of the Republic is changed, or any device advertisement, or contrivance is used with intent to deceive as to its true name or character such vessel shall be forfeited. [P.L. 1990-92, § 47; P.L. 2001-27, §232.]

§233. Inspection of document.

Any officer designated by the Maritime Administrator, the Commissioner or a Deputy Commissioner, or who within the Republic is concerned in the collection of government revenue, may at all times inspect the Certificate of Registry and tonnage tax receipt of a vessel of the Republic. A Master who fails to exhibit the same, when required by such officer, shall be liable to a penalty of one hundred dollars (US\$100), and if his failure is wilful shall be liable to a penalty of not more than one thousand dollars (US\$1000) or imprisoned for not more than one year, or both. [P.L. 1990-92, §48.]

§234. Display of ship's papers.

(1) Upon arrival during customary business hours of a documented vessel at any foreign port where there is an agent appointed by the Maritime Administrator, the Master, ship's agent or other authorized person shall, upon request thereof, display to him on board during customary business hours, without payment of any fee, the vessel's Certificate of Registry and Annual Tonnage Tax Receipt.

(2) Only the Certificate of Registry and Annual Tonnage Tax Receipt shall be required to be so displayed, and this requirement shall be waived when the vessel's papers have been so displayed in the same port within ninety (90) days previously.

(3) Where a request has been made and the ship's papers have not been properly displayed, the vessel shall not be detained by the agent appointed by the Maritime Administrator making the request, but such non-compliance shall be immediately reported to the Maritime Administrator.

(4) Whether local port regulations do or do not require clearance of a vessel from an agent appointed by the Maritime Administrator, it shall not be required in relation to such clearance that the signing on or off of crew or the execution of any ship's papers or documents be done before an agent appointed by the Maritime Administrator, or that any ship's papers or documents be witnessed, visaed, stamped or otherwise legalized by a representative appointed by the Maritime Administrator. [P.L. 1990-92, §49; P.L. 2001-27, §234.]

§235. Perjury.

(1) If any owner, agent, attorney-in-fact or other party

(except for the Master) commits perjury in an oath or affirmation taken to obtain documentation of a vessel, such vessel, her tackle, apparel and furniture shall be forfeited, or the value thereof recovered from such person.

(2) A Master who commits perjury in taking such oath or affirmation shall be liable to penalty of one thousand dollars (US\$1,000) or imprisoned for a term not exceeding one year, or both; but the vessel shall not thereby be forfeited. [P.L. 1990-92, §50; P.L. 2001-27, §235. **Penalty provisions increased.**]

§236. Rules and Regulations. The Maritime Administrator is hereby authorized, in keeping with the provisions of Section 103 of this Title to make such Rules and Regulations, not inconsistent with the provisions of this Title, for the registration, identification and regulation of transfers of vessels as it may deem in the best interests of the Merchant Marine of the Republic. [P.L. 1990-92, § 51.]

§237. Standards of seaworthiness. The Maritime Administrator may from time to time establish by Regulation standards of seaworthiness required for the registration of vessels under this Chapter and may appoint Classification Societies or others to determine any questions involved. [P.L. 1990-92, § 52; P.L. 2001-27, § 237.]

§238. Collection of fees and taxes; penalties and liens. (1) Except for yachts, fishing vessels and as otherwise provided therein, the tonnage tax imposed by Section 206 of this Part, while payable in advance and due on the first day of January in each year, may be paid without penalty in instalments as follows:

(2) There shall be no rebate or proration of tonnage tax and the entire annual tonnage tax shall be due in respect of a vessel which remains on the Register of the Republic for any portion of any calendar year. Any and all annual fees payable under the Maritime Regulations shall be paid in advance by January 1 of the year in respect of which such fees are due. A penalty at a rate established by Maritime Regulation shall be imposed for late payment of such fees and tax; such Regulation shall be promulgated before November 1 to take effect as of January 1 of the succeeding year, and the penalty rate thereby established shall be effective until altered by subsequent Regulation. If payment is delayed beyond July 1 of the year in respect of which such fees and tax are due, the Certificate of Registry of the vessel in question may be suspended and confiscated until all outstanding fees, taxes and penalties are paid, or, in the alternative, the Certificate of Registry may be cancelled by the Maritime Administrator.

(3) The Maritime Administrator is authorized to issue official receipts for annual tonnage taxes, annual fees, and any penalties relating thereto.

(4) All unpaid tonnage taxes, fees, penalties and other charges arising under this Act or Regulations made thereunder shall constitute a maritime lien on the vessel in respect of which such amounts are due, and anything in Section 316 of this Title to the contrary notwithstanding, such lien shall have priority over all others save those for wages and salvage.

(4) No Certificate of Registry shall be returned to the Master of a vessel by an officer of the Maritime Administrator with whom it may have been deposited until proof is furnished that the annual tonnage tax and annual fees for the then current year have been paid. [P.L. 1990-92, §53; P.L. 2001-27, §238.]

§239. Jurisdiction and control of the Republic exclusive.

From the time of issuance of a Certificate of Registry under this Chapter and until its expiration, termination, revocation or cancellation, whichever first occurs, the vessel shall be granted and shall enjoy the right to fly the Flag of the Republic exclusively, unless its Certificate of Registry is specifically endorsed so as to withdraw that right. At all times during the period that a vessel has the right to fly the Flag of the Republic, the vessel shall be subject to the exclusive jurisdiction and control of the Republic as the Flag State, in accordance with the applicable international conventions and agreements and with the provisions of this Act and any Regulations or Rules made thereunder. [P.L. 1990-92, §54.]

§§ 240-249. Reserved.

PART II - VESSEL MEASUREMENT

§250. Measurement. A vessel shall not be permanently registered until measured by a person appointed by the Maritime Administrator. [P.L. 1990-92, § 27.]

§251. Certificate of Measurement. The person or agent appointed under Section 250 of this Chapter, to measure a vessel shall certify, specifying the building of the vessel, number of decks and masts, length, breadth, depth, tonnage or tonnages, and such other particulars usually descriptive of the identity of a vessel, and that the markings required by Section 230 of this Chapter have actually been made. [P.L. 1990-92, § 28.]

§ 252. Measurement of vessels.

The Maritime Administrator shall by Regulation prescribe the method of measurement for all vessels registered under this Chapter. [P.L. 1990-92, §27.]

§253. Reserved. [P.L. 2001-27, § 253. Terminated, no longer statutorily applicable.]

§254. Tonnage statements in Registry Certificate.

(1) Each ship's permanent document shall state the gross and net tonnage or tonnages determined in accordance with such Rules and Regulations as the Maritime Administrator may prescribe.

(2) Upon application by the owner or Master of a vessel of the Republic in foreign trade, the Maritime Administrator or its duly authorized agent may attach to the document an appendix stating separately, for use in foreign ports, the measurement of such space or spaces as are there permitted to be deducted from gross tonnage or tonnages. [P.L. 1990-92, § 31.]

§§ 255-259. Reserved.

PART III - BAREBOAT CHARTER REPUBLIC OF THE MARSHALL ISLANDS REGISTRATION

§260. Recording of bareboat charter party.

(1) A citizen or national of the Republic or a foreign maritime entity that qualifies in the Republic, desiring to obtain provisional registration under this Act of a vessel which such citizen or national or foreign maritime entity possesses by bare-boat charter, and which in all respects other than ownership complies with the requirements of Part I of this Chapter, must cause a true copy of the charter party to be duly recorded in books to be kept for that purpose and indexed to show:

(a) the name of the vessel;

(b) the names of the bareboat charterer, the shipowner and the holders of any registered mortgages, hypothecations or similar charges;

(c) the time and date of recording of the charter party;

(d) the period of duration of the charter party; and

(e) the foreign State of registration of the vessel.

(2) The following documents must be filed with the Office of the Maritime Administrator:

an official certificate from the foreign State of registration setting forth the ownership of the vessel and any recorded encumbrances;

(b) the written consents of the shipowner and of the mortgagee(s), if any, to the provisional registration of the vessel in the Republic under this Part; and

(c) satisfactory evidence that the foreign State of registration will withdraw from the vessel the right to fly the flag of that State while the vessel is subject to the bareboat charter recorded under Subsection (1) of this Section.

(3) Any subsequent amendments or addenda to the charter party recorded under Subsection (1) of this Section and any and all present or subsequent bareboat subcharter parties shall be submitted for recording within thirty (30) days of execution. [P.L. 1990-92, §55; P.L. 2001-27, §260.]

§261. Undertaking of bareboat charterer. The bareboat charterer shall execute under oath or affirmation an undertaking that while the vessel is granted the right to fly the Flag of the Republic she will not fly any other flag nor show any home port other than Majuro, and that the bareboat charterer will without delay notify the Office of the Maritime Administrator if any foreign State shall accord the vessel the right to fly its flag. [P.L. 1990-92, §56.]

§262. Bareboat charter; Certificate of Registry.

(1) When the charter party has been recorded and an application for registration of the vessel has been executed and filed by the bareboat charterer together with all necessary documents and payment of all taxes and fees, the Maritime Administrator shall issue to the vessel a Provisional Certificate of Registry, valid for a period not exceeding two (2) years or until the date of termination of the bareboat charter, whichever first occurs.

(2) Prior to the expiration of the current Provisional Certificate of Registry, the bareboat charterer may obtain a new Provisional Certificate of Registry, valid for a period not exceeding two (2) years. In no case may a Provisional Certificate of Registry reissued under this Subsection bear an expiration date later than or remain valid beyond the date of termination of the bareboat charter. [P.L. 1990-92, §57; P.L. 2001-27, §262.]

§263. Penalty for flying foreign flag; termination of Marshall Islands registration.

(1) If the bareboat charterer breaches the undertaking given under Section 261 of this Chapter, or if a vessel while registered under any provisions of this Chapter shall be found flying or pretending entitlement to fly the flag of a foreign State without first complying with Sections 270 and 271 of this Chapter, the owner and/or bareboat charterer shall be liable to pay an administrative penalty not to exceed fifty thousand dollars (US\$50,000), which shall until paid constitute a maritime lien upon the vessel. Such penalty may be imposed without regard to any other penalties for perjury or fraud.

(2) The bona-fide grant by a foreign State of the right to fly the flag of that State shall, from the time of such grant, terminate provisional registration of a vessel in the Republic under Section 262 of this Part, but shall not terminate registration of a vessel of the Republic under any other Section of this Chapter. [P.L. 1990-92, § 58.]

§264. Recognition and recordation of notice of foreign ship mortgage.

(1) Without prejudice to the continuing foreign legal status of a ship mortgage, hypothecation or similar charge made and registered in accordance with the laws of a foreign State, a notice may be recorded in the central office of the Maritime Administrator in the United States of America, that such mortgage exists.

(2) No notice in respect of a ship mortgage, hypothecation or similar charge, or any other instrument related thereto shall be accepted for recording under this Section unless it has first been duly and validly executed and registered in the foreign State of registration of the vessel. If there is more than one such mortgage, hypothecation or similar charge, then notices in respect of all such instruments may be recorded under the provisions of this Section in the same order as they are registered in the foreign State of registration.

(3) If notice in respect of a foreign mortgage, hypothecation or similar charge has been recorded pursuant to Subsection (1) of this Section, then any subsequent mortgage, hypothecation or similar charge and any other instrument related thereto which is subsequently registered in accordance with the laws of the foreign State of registration of the vessel shall also be recorded forthwith in accordance with the provisions of Chapter 3 of this Title. [P.L. 1990-92, §59. Reference to New York clarified. P.L. 2001-27, §264.]

§§ 265-269. Reserved.

PART IV - BAREBOAT CHARTER - FOREIGN REGISTRATION

§270. Bareboat charter registration in foreign State.

No vessel registered under the provisions of this Chapter may obtain valid bareboat charter registration in a foreign State unless the owner first applies for and receives the permission of the Maritime Administrator or its duly authorized agent. [P.L. 1990-92, §60; P.L. 2001-27, §270.]

§271. Consent of mortgagee. In the event that the vessel is subject to one or more Preferred Ship Mortgages of the Republic, the written consent of each mortgagee to the foreign bareboat charter registration shall be duly filed prior to issuance of a Certificate of Permission under Section 272 of this Chapter. [P.L. 1990-92, §61.]

§272. Certificate of Permission. Upon granting permission under Section 270 of this Part, for a vessel of

the Republic to obtain bareboat charter registration in a foreign State, the Maritime Administrator or its duly authorized agent shall issue a Certificate of Permission to obtain such registration. [P.L. 1990-92, § 62; P.L. 2001-27, § 272.]

§273. Right to fly the flag of the Republic withdrawn.

(1) The Certificate of Permission for bareboat charter registration in a foreign State shall declare that the right to fly the Flag of the Republic and to show the home port of Majuro is withdrawn while the vessel is subject to the bareboat charter identified in the Certificate. The Certificate shall also state that the Republic recognizes the named foreign State as the competent authority to exercise exclusive jurisdiction and control over the vessel in accordance with the applicable international conventions and agreements.

(2) Notwithstanding that the right to fly the Flag of the Republic shall have been withdrawn during the period of bareboat charter registration in the foreign State, in the event that the vessel remains subject to one or more Preferred Ship Mortgages recorded under this Title, such mortgage shall, unless satisfied, released or discharged of record, remain in full force and effect and be governed solely and exclusively by the laws of the Republic of the Marshall Islands. [P.L. 1990-92, § 63.]

§274. Restricted Certificate of Registry.

(1) Once a Certificate of Permission has been issued under Section 272 of this Part, the owner of the vessel shall surrender her current Certificate of Registry, and a new Provisional Certificate of Registry shall be issued to the vessel, boldly endorsed to show that the right to fly the Flag of the Republic has been withdrawn. The endorsed Provisional Certificate of Registry, together with all other documents and certificates issued by the Republic to the vessel, shall be surrendered to and retained by the Maritime Administrator.

(2) Prior to the expiration of the current Provisional Certificate of Registry, the owner may obtain a new Provisional Certificate of Registry valid for a further period not exceeding two (2) years. In no case may a Provisional Certificate of Registry issued under this Subsection bear an expiration date later than or remain valid beyond the date of termination of the bareboat charter. [P.L. 1990-92, § 64; P.L. 2001-27, § 274.]

PART V - YACHT REGISTRATION

§275. Documentation of yachts.

A private or commercial yacht is entitled to be registered if:

(a) it is owned, to the prescribed extent, by a citizen or national of the Republic, or a foreign maritime entity qualified in the Republic;

(b) such other conditions are satisfied as are prescribed under Part I and Part II of this Chapter;

(c) a certificate of survey, statement of compliance or similar document, is received from the yacht owner; and

(d) an application for yacht registration is duly made. [P.L. 2001-27, New yacht provision.]

§276. Yacht Certificate of Registry.

Upon receipt by the office of the Maritime Administrator of the written application of an owner of a yacht eligible for documentation under the laws of the Republic and

requesting the issuance of a Yacht Certificate of Registry for the vessel, accompanied by the oath or oaths required by Section 209 of the Chapter, and upon payment of the prescribed fees to the officer receiving said application, the Maritime Administrator or its duly authorized agent, may issue a Yacht Certificate of Registry for the yacht. [P.L. 2001-27. New yacht provision.]

§277. Continuing validity of Yacht Certificate of Registry.

All Private and Commercial Yacht Certificates of Registry issued under this Chapter, although issued without an expiration date, shall be subject to annual revalidation. The continued validity of the Yacht Certificate of Registry shall be contingent upon:

(a) the good standing of the owning entity,

(b) the payment of tonnage taxes and all outstanding fees and penalties when due, and

(c) the completion of annual safety inspections, if applicable, by the anniversary date of initial issue verifying compliance with the relevant requirements of this Chapter and the applicable Rules and Regulations established by the Maritime Administrator. [P.L. 2001-27. New yacht provision.]

§278. Refusal and termination of registration.

(1) The Maritime Administrator may, nevertheless, refuse to register or terminate the registration of a yacht if, taking into consideration the relevant requirements of this Chapter and the applicable Rules and Regulations, it is considered inappropriate for the yacht to be or remain to be registered under the laws of the Republic.

(2) Registration shall automatically terminate with the failure to maintain the continued validity of the Yacht Certificate of Registry. [P.L. 2001-27. New yacht provision.]

PART VI - FISHING VESSEL REGISTRATION

§279. Fishing vessel documentation.

(1) A fishing vessel is entitled to be registered if:

(a) it is owned, to the prescribed extent, by a citizen or national of the Republic, or a foreign maritime entity qualified in the Republic;

(b) such other conditions are satisfied as are prescribed under Part I and Part II of this Chapter;

(c) a certificate of survey, statement of compliance or similar documentation, is received from the owner; and

(d) an application for fishing vessel registration is duly made.

(2) The Maritime Administrator shall document fishing vessels in the same manner as any other vessel engaged in foreign trade subject to the Rules and Regulations established by the Maritime Administrator, and to the laws and treaty obligations of the Republic. [P.L. 2001-27, New fishing vessel provision.]

§280. Refusal and termination of registration.

(1) The Maritime Administrator may, nevertheless, refuse to register a fishing vessel if, taking into consideration the

relevant requirements of this Chapter and the applicable Rules and Regulations established by the Maritime Administrator, it is considered inappropriate for the fishing vessel to be registered under the laws of the Republic.

(2) The Maritime Administrator may terminate a fishing vessel's registration if:

(a) having given regard to matters relating to subsection (1) above, it would be detrimental to the interests of the Republic or of international shipping for a registered fishing vessel to continue to be registered;

(b) a penalty imposed on the owner of a registered fishing vessel in respect of a contravention of this Title, or of any instrument in force under this Title, has remained unpaid for a period of more than three (3) months;

(c) the annual tonnage tax has remained unpaid for a period of more than one (1) year; or

(d) the vessel becomes a total or constructive total loss.

[P.L. 2001-27, New fishing vessel provision.]

ANNEX ‘4’

TITLE 47. – MARITIME

CHAPTER 8.

MERCHANT SEAFARERS

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- §859. Protection of labor contract.
- §860. Strikes, picketing and like interference.
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- §864. Maritime Administrator to make Rules and regulations.
- §865. Uniformity of Application and Construction.

An act to govern generally, the rights duties responsibilities and treatment of merchant seafarers.
(Rev2003) [The legislation in this Chapter 8 was previously codified as Part X of 34 MIRC 3].

Commencement: 13 September 1990
Source: P.L. 1990-92
P.L. 2000-8
P.L. 2001-27

PART I – GENERAL

§801. Short title.

This Chapter may be cited as the [Merchant Seafarers Act](#).
[Short title supplied by Reviser during the recodification of the original Act.]

§802. Application.

(1) The rights and obligations of every person employed on any vessel registered under this Title, and any person employing such person shall, with respect to terms and conditions of employment and other matters relating to employment and the internal order of such vessel, be governed by this Chapter.

(2) The provisions of this Chapter shall not apply to:

- (a) persons employed solely in ports in repairing, cleaning, stevedoring and loading or unloading the vessels;
- (b) persons employed on private yachts; and
- (c) pilots. [P.L. 1990-92, §150; P.L. 2001-27, § 802.]

§803. Definitions.

For the purpose of this Chapter, the following expressions have the meaning hereby assigned to them:

- (a) 'Master' means any person having command of a vessel;
- (b) 'seafarer(s)' means any or all members of the crew and officers other than the Master and pilots, employed or engaged in any capacity on board any vessel;
- (c) 'crew' means collectively the persons, other than officers and the Master, serving in any capacity on board a vessel;
- (d) 'shipowner' includes the charterer of any vessel where he mans, victuals and navigates such vessel at his own expense or by his own procurement;
- (e) 'vessel' means any vessel registered under this Title;

(f) 'fishing vessel' means a decked vessel used for catching fish, whales, seals, walrus and other living creatures at sea;
 (g) 'processing vessel' means a vessel used exclusively for processing fish and other living resources of the sea;
 (h) 'foreign trade' means trade between foreign countries or between the Republic and foreign countries;
 (i) 'domestic commerce' means any vessel exclusively engaged in coastwise trade or transportation between atolls, islands and/or ports within the waters of the Republic;
 (j) 'overriding operational conditions', in the context of hours of rest, means essential shipboard work which cannot be delayed for safety reasons and which could not reasonably have been anticipated at the commencement of a voyage; and
 (k) 'accommodations' means sleeping rooms; mess rooms; sanitary, hospital, recreation, store room and catering accommodations provided for the use of seafarers and the Master but does not include any accommodation which is also used by or provided for the use of passengers. [P.L. 1990-92, §151; P.L. 2001-27, § 803. Additional definitions for clarification.]

§804. Full complement required.

A vessel of the Republic shall not be navigated unless it has in its service and on board such complement of officers and crew as is necessary for safe navigation. The Maritime Administrator may, from time to time, make such Rules and Regulations as are deemed by him necessary and appropriate to ensure compliance with this requirement. [P.L. 1990-92, §152.]

§805. Officers' licenses.

Except when prevented by *force majeure*, all officers of vessels of the Republic subject to compliance with the International Convention on Standards of Training, Certification and Watchkeeping, 1978, as amended and revised from time to time, shall obtain licenses to fill their relative positions from the Maritime Administrator authorized to issue licenses. [P.L. 1990-92, §153; P.L. 2001-27, §805.]

§806. Penalty for misuse of licenses or certificates.

Any person who shall receive or shall have in his possession any Republic license, certificate or document issued to officers or crew by the Maritime Administrator, or any certificate or document issued pursuant to Chapter 9 of this Title, to which he is not lawfully entitled, or any false license, certificate or document, with intent to use the same unlawfully; or who without lawful authority shall alter or change any genuine license, certificate or document; or who shall in any manner transfer or arrange for the transfer of any such license, certificate or document; or who shall aid or abet the perpetration of any of the foregoing acts shall, for each offense, be liable to a fine of not more than ten thousand dollars (US\$10,000), or imprisonment for not more than one year, or both, and forfeit the right to continued possession of or any future seafarer certification and documentation for service aboard vessels of the Republic. [P.L. 1990-92, § 154; P.L. 2001-27, §806.]

§§807-809. *Reserved.*

PART II - RIGHTS AND DUTIES OF THE MASTER

§810. Termination of employment.

Any contractual provision to the contrary notwithstanding, the shipowner, with or without good cause, may at any time terminate the employment of and dismiss the Master. [P.L. 1990-92, § 155.]

§811. Duties of the Master.

The Master shall, among others, have the following duties:

- (a) to enter into Shipping Articles with seafarers as hereinafter provided;
- (b) to maintain discipline on board the vessel and to take all such steps as are necessary and appropriate in connection therewith;
- (c) to assume responsibility for the receipt of cargo by the vessel, stowage of cargo on board the vessel insofar as such stowage affects the safety or navigability of the vessel, and for the discharge of cargo from the vessel;
- (d) to assume full responsibility for the safety of the members of the crew and passengers, if any, and to take all necessary and appropriate steps in connection therewith;
- (e) to assume full responsibility for the navigation of the vessel at all times;
- (f) to assume full responsibility for the vessel's funds and the disbursement thereof;
- (g) to see that the vessel's log books are properly and accurately kept;
- (h) to keep in his custody all of the vessel's documents;
- (i) to make all reports required by laws of the Republic or Regulations or by the regulations of any ports at which the vessel may call; and
- (j) to render assistance in the saving of life and property at sea. [P.L. 1990-92, §156; P.L. 2001-27, § 811.]

§812. Special powers of Masters.

When a vessel is at sea, the Master is authorized to:

- (a) marry passengers or other persons aboard;
- (b) issue birth certificates for children born at sea; and
- (c) bury persons who have died on board the vessel while at sea. [P.L. 1990-92, § 157.]

§813. Certain seafarer's rights provided for Master.

Except as otherwise provided, the Master of a vessel of the Republic shall enjoy the same rights and shall have the same liens upon the vessel in respect of wages, maintenance and cure and repatriation as are provided for seafarers. [P.L. 1990-92, §158.]

§814. Master's wrongful death.

The personal representative of the Master of a vessel of the Republic shall enjoy the same rights and shall have the same liens upon the vessel in case of the Master's wrongful death as are provided in respect of seafarers. [P.L. 1990-92, §159.]

§§ 815-819. *Reserved.*

PART III - RIGHTS AND DUTIES OF SEAFARERS

§820. Shipping Articles required.

Before the Master of any vessel of the Republic engaged in foreign trade shall sail from any port, there shall be in force Shipping Articles (sometimes referred to as Articles) with every seafarer on board his vessel, except with persons who are apprenticed to, or servants of, himself or the vessel's owner. The Shipping Articles shall be written

or printed and shall be subscribed by every seafarer shipping on the vessel and shall state the period of engagement or voyage or voyages and the term or terms for which each seafarer shall be shipped, and the rate of pay for each, and such other items as may be required by Regulation. [P.L. 1990-92, §160; P.L. 2001-27, § 820.]

§821. Penalty for alteration of Shipping Articles.

If any person fraudulently alters or makes false entry in any Shipping Articles, and if any person aids in committing or procures to be committed any such offense, he shall, in respect of each offense, be liable for a fine not exceeding five hundred (US\$500). [P.L. 1990-92, §161.]

§822. Penalty for shipment without Shipping Articles.

If any person shall be carried to sea as an officer or one of the crew on board any vessel making a voyage as hereinbefore specified, without entering into Shipping Articles with the Master of such vessel in the form and manner and at the place and times in such cases required, the vessel shall be held liable for such offense to a penalty of not more than two hundred dollars (US\$200). But the vessel shall not be held liable for any person carried to sea, who shall have secretly stowed himself away without the knowledge of the Master, mate or of any of the officers of the vessel, or who shall have falsely personated himself to the Master or officers of the vessel, for the purpose of being carried to sea. [P.L. 1990-92, §162.]

§823. Duration and extension of Shipping Articles.

(1) Shipping Articles for the duration of a single voyage terminate as soon as unloading of the cargo is completed at the last port of destination, or, if the vessel carries ballast only, upon the arrival at the last port of destination.

(2) Shipping Articles for the duration of a round voyage terminate as soon as unloading of any cargo is completed at the port where the seafarers were engaged.

(3) If the voyage is extended to a port other than that port designated in the Shipping Articles as the end of the voyage, the Articles shall be extended and the wages shall be continued accordingly. If the voyage be shortened, the wages shall be paid to the date of termination of the voyage.

(4) Where Shipping Articles are not for a stated period they shall be deemed to be for a period of not less than one year and shall terminate at the expiration of the one year period, provided that at least five (5) days prior notice has been given. In the absence of such notice the agreement shall continue but shall be terminable thereafter upon at least five (5) days notice by either party. Nothing in this Subsection (4) shall apply to or preclude Shipping Articles for a stated period of time.

(5) When Shipping Articles expire while the voyage is still incomplete, they shall be extended until the vessel arrives at the port of her destination, and the wages shall be continued accordingly. [P.L. 1990-92, §163.]

§824. Termination of Shipping Articles. Where the Shipping Articles have terminated because of:

- (a) transfer of registry;
- (b) transfer of ownership;

(c) abandonment of vessel; or

(d) loss of vessel, the seafarer shall be entitled to compensation equal to fifteen (15) days base wages, or the base wages until the expiration of the period for which he was engaged, whichever shall be least; provided however that the seafarer is not employed as a seafarer during such period and provided further that during such period the seafarer has not refused substantially equivalent seagoing employment. [P.L. 1990-92, §164.]

§825. Required documents for seafarers.

(1) The Maritime Administrator shall by Regulation require identification books, sea service records, medical fitness certificates, certificates of proficiency or competence, or other official certification and documentation to be obtained and carried on board vessels of the Republic subject to compliance with the requirements of the International Convention on Standards of Training, Certification and Watchkeeping, 1978, as amended and revised from time to time.

(2) If any seafarer forges or fraudulently alters or procures the forgery or fraudulent alteration of any such official document he shall forfeit to his employer all wages above the amount payable to an ordinary seafarer for the period during which he was employed in reliance upon such forged or altered document and shall be subject to the penalties provided for in Section 806 of this Chapter. [P.L. 1990-92, §165; P.L. 2001-27, §825.]

§826. Minimum age at sea.

(1) Notwithstanding any other provision of this Chapter, persons under the age of fifteen (15) years shall not be employed or work on vessels of the Republic registered under this Title, except on vessels upon which only members of the same family are employed, school-ships or training ships.

(2) The Master shall keep a register of all persons under the age of fifteen (15) years employed on board his vessel, as required by Regulation.

(3) Provided, that such persons may occasionally take part in the activities on board such vessels during school holidays, subject to the conditions that the activities in which they are engaged:

- (a) are not harmful to their health or normal development;
- (b) are not such as to prejudice their attendance at school; and
- (c) are not intended for commercial profit.

(4) Persons under the age of eighteen (18) years shall not be employed or work on coal-burning vessels as trimmers or stokers. [P.L. 1990-92, §166.]

§827. Payment of wages.

(1) Wages shall commence on the day specified and agreed to in the Shipping Articles or at the time of presence on board the vessel for the purpose of commencing work, whichever first occurs, and shall terminate on the day of discharge or termination of the Articles.

(2) In the absence of any agreement to the contrary the

shipowner or the Master of the vessel shall pay to every seafarer his wages within two (2) days after the termination of the Articles, or at the time when the seafarer is discharged, whichever is first.

(3) A seafarer is entitled to receive in local currency, on demand, from the Master one-half of his wages actually earned and payable at every intermediate port where the vessel shall load or deliver cargo before the voyage is ended, but not more than once in any ten (10) day period. In case of wrongful failure to pay a seafarer wages on demand, the seafarer becomes entitled to a payment of full wages earned.

(4) Every Master shall deliver to the seafarer, before paying off, a full and true account of his wages and all deductions to be made therefrom on any account whatsoever, and in default shall, for each offense, be liable to a penalty of not more than twenty-five dollars (US\$25).

(5) In lieu of subsections (1) through (4) above, the shipowner may implement a fixed salary plan which establishes a practical, modern salary system that will ensure a regular monthly income to the seafarer whilst on active service and during leave periods. For the purpose of the penalty provision in the preceding Section 827(4), it shall be deemed that no default has occurred provided that such arrangements are agreed between the Master and the seafarer and are reflected as an addendum to the Articles of Agreement between the Master and seafarers. [P.L. 1990-92, §167; P.L. 2001-27, §827. Provision to accommodate modern payroll systems.]

§828. Wages for unjustifiable discharge.

Any seafarer who has signed Shipping Articles and is afterward discharged before the commencement of the voyage or before one month's wages are earned, without fault on his part justifying such discharge and without consent, shall be entitled to receive in addition to his earned wages a sum equal in amount to one month's wages as compensation. [P.L. 1990-92, §168.]

§829. Stowaway entitled to wages, if there is an agreement.

A stowaway signing the vessel's Articles is entitled to wages, but not to maintenance and cure as herein provided. The Master shall discharge him at the first convenient port of call. Nothing in this Section shall require a stowaway to be signed on Shipping Articles. [P.L. 1990-92, §169.]

§830. Grounds for discharge.

The Master may discharge a seafarer for justifiable cause, including any of the following grounds:

- (a) unjustified failure to report on board at such times and dates as may be specified by the Master;
- (b) incompetence to perform duties for which the seafarer has represented himself as qualified;
- (c) theft, embezzlement or willful destruction of any part of the vessel, its cargo or stores;
- (d) serious insubordination or willful disobedience or willful refusal to perform assigned duties;
- (e) mutiny or desertion;
- (f) habitual intoxication, quarreling or fighting;
- (g) possession of dangerous weapons, narcotics or contraband articles;
- (h) intentional concealment from the shipowner or Master at or prior to engagement under the Shipping Articles of a condition which resulted in sickness or injury;

(i) assistance to stowaways; and

(j) willful violation of the laws of the Republic or applicable local criminal laws. [P.L. 1990-92, §170.]

§831. Advances and allotment of wages.

(1) It shall be unlawful to pay any seafarer wages in advance of the time when they are actually earned, or to pay such advance wages or make any order or note or other evidence of the indebtedness therefor to any other person, or to pay to any person for the shipment of any seafarer when payment is deducted or to be deducted from a seafarer's wages. Any person violating any of the provisions of this Section shall be punished with a fine of not more than fifty dollars (US\$50).

(2) It shall be lawful for the Master and any seafarer to agree that an allotment of a portion of the seafarer's earnings may be payable to a spouse, children, grandchildren, parents, grandparents, brothers or sisters, or to a bank account in the name of the seafarer.

(3) The provisions of this Section shall not apply to, or render unlawful:

(a) deductions from the wages of a seafarer pursuant to the laws of the country at whose port the seafarer signed on or of which he is a national;

(b) requirements of a labor organization of which the seafarer is a member if such deductions represent dues or other obligations to a labor organization of which the seafarer is a member and are remitted to such organization; or

(c) the written consent of the seafarer, if such deductions are paid into a fund established for the exclusive benefit to seafarers and their families and dependents or for the purpose of providing medical or hospital care, pensions on retirement or death of the seafarer, life insurance, unemployment benefits or compensation for illness or injuries. [P.L. 1990-92, §171.]

§832. Wages and clothing exempt from attachment.

The wages and clothing of a seafarer shall not be subject to attachment or arrestment from any Court; and any assignment or sale of wages or of salvage made prior to the accruing thereof shall not bind the seafarer, except for allotments. [P.L. 1990-92, §172.]

§833. Vacation allowance and holidays.

(1) Every Master and seafarer shall be entitled, after 12 months of continuous service on a vessel or for the same employer, to receive an annual vacation allowance equivalent to:

(a) not less than 12 days base wages, in the case of Masters and officers; and

(b) not less than 8 days base wages, in the case of other members of the crew.

(2) Every seafarer shall be entitled to a minimum of five (5) paid holidays per year. [P.L. 1990-92, §173.]

Modification made to Subsection (1)(a) and (b).]

§834. Agreements as to loss of lien or right to wages.

No seafarer shall by any agreement forfeit his lien upon the ship or be deprived of any remedy for recovery of his wages to which he would otherwise have been entitled; and every stipulation by which any seafarer consents to abandon his right to his wages in the case of the loss of the ship or to abandon any right which he may have obtained in the nature of salvage, shall be wholly void and inoperative. [P.L. 1990-92, §174.]

§835. Wages not dependent on freight earned.

No right to wages on the part of any seafarer shall be dependent on the earning of freight by the vessel. Nothing in this Section, however, shall be construed to prevent any profit-sharing plan by which the officers and crew are to be compensated with profits in addition to their established wages. [P.L. 1990-92, §175; P.L. 2001-27, §835.]

§836. Wages, maintenance and cure for sick and injured seafarer.

(1) In the event of disabling sickness or injury, while a seafarer is on board a vessel under signed Shipping Articles, or off the vessel pursuant to an actual mission assigned to him by, or by the authority of the Master, the seafarer shall be entitled to:

(a) full wages, as long as he is sick or injured and remains on board the vessel;

(b) medical and surgical treatment and supply of proper and sufficient medicines and therapeutical appliances, until medically declared to have reached a maximum cure or to be incurable, but in no event more than thirty (30) weeks from the day of the injury or commencement of the sickness;

(c) an amount equal to board and lodging up to a maximum period of thirty (30) weeks, and one-third of his base wages during any portion of such period subsequent to his landing from the vessel but not to exceed a maximum period of sixteen (16) weeks commencing from the day of injury or commencement of the sickness; and

(d) repatriation as provided in Section 843 including, in addition, all charges for transportation, accommodation and food during the journey and maintenance up to the time fixed for his departure.

(2) The shipowner or his representative shall take adequate measures for safeguarding property left on board by a sick, injured or deceased seafarer.

(3) The seafarer shall not be entitled to any of the foregoing benefits:

(a) if such sickness or injury resulted from his willful act, default or misconduct;

(b) if such sickness or injury developed from a condition which was intentionally concealed from the employer at or prior to his engagement under the Articles;

(c) if he refuses medical treatment for such sickness or injury or is denied such treatment because of misconduct or default; or

(d) if at the time of his engagement he refused to be medically examined.

(4) The seafarer shall have a maritime against the vessel for any wages due him under this Section. [P.L. 1990-92, §176.]

§837. Benefit of compensation for loss of life.

In addition to wages, maintenance and cure under Section 836 of this Chapter, and in addition to any liability for wrongful death under Section 836 of this Chapter, a seafarer on board a vessel under signed Shipping Articles or off the vessel pursuant to an actual mission assigned to him by, or by the authority of the Master, shall be entitled as provided by Regulation to the benefit of a direct compensation for loss of life, payable to his designated beneficiary or beneficiaries. It shall be the shipowner's obligation to provide such benefit free of any charge to the seafarer. [P.L. 1990-92, §177.]

§838. Wrongful death.

Notwithstanding any provision of law to the contrary, whenever the death of a seafarer, resulting from an injury, shall be caused by wrongful act, omission, neglect or default occurring on board a vessel, the personal representative of the deceased seafarer may maintain a suit for damages, for the exclusive benefit of the deceased's wife, husband, parent, child or dependent relative, against the vessel, person or corporation which would have been liable if death had not ensued. [P.L. 1990-92, §178.]

§839. Death on board.

In the event of a death on board a vessel, an entry shall be made into the vessel's logbook by the Master and one of his officers. He shall also report the death to the authorities at the first port of arrival and shall submit a statement signed by him to the Maritime Administrator for vessels engaged in foreign trade; or to the Minister of Transport and Communications for vessels engaged in domestic commerce pursuant to Chapter 9 of this Title. The logbook entry and statement shall contain the first and last name, sex, nationality, year and place of birth of the deceased person, the cause of death, place of death (latitude, longitude), date and time of death and the names of next-of-kin, if known, and name of the vessel. If the deceased person is a seafarer, the entry and statement shall contain, in addition, his rank or rating, place and address of his residence or domicile and the number of his license with date of issuance. The statement submitted by the Master shall be countersigned by any attending physician aboard, otherwise by one of the ship's officers. A list of personal effects and amounts of money left on board the vessel shall be attached. [P.L. 1990-92, §179; P.L. 2001-27, § 839.]

§840. Issuance of death certificate.

Upon the request of anyone having a legal interest, and where a death has been reported in accordance with the requirements of the preceding Section, the Maritime Administrator or the Minister of Transport and Communications, as the case may be, shall issue a death certificate containing the particulars set forth in the preceding Section. Where the deceased was a citizen or a resident of the Republic said certificate shall be recorded in the Republic as required by law. [P.L. 1990-92, §180; P.L. 2001-27, §840.]

§841. Burial expenses.

In the case of death of a seafarer occurring on board the vessel or in case of his death occurring on shore, if at the time he was entitled to medical care and maintenance at the shipowner's expense, the shipowner shall be liable to defray reasonable local funeral expenses and make payment of the base wages of the deceased seafarer up to the end of the month in which the death occurs. [P.L. 1990-92, §181.]

§842. Working hours, rest hours and overtime.

In relation to members of the crew on a vessel engaged in foreign trade:

- (a) the normal hours of work in port and at sea shall be eight per day;
- (b) work performed over and above the eight-hour period shall be considered as overtime and shall be compensated for at overtime rates;
- (c) a sufficient number of men shall be employed to promote safety of life at sea and to avoid excessive overtime;
- (d) whenever the Master of any vessel shall fail to comply with this Section, he shall be liable to a penalty not exceeding one hundred dollars (US\$100). [P.L. 1990-92, § 182; P.L. 2001-27, § 842.]

§843. Repatriation.

(1) Nothing contained herein shall be deemed to abridge or diminish a seafarer's right to repatriation under generally accepted international rules and agreements, including those administered by the International Labor Organization (ILO).

(2) Any seafarer who is put ashore at a port other than the one where he signed the Shipping Articles and who is put ashore for reasons for which he is not responsible, shall be returned as a crew member or otherwise, but without expense to him:

(a) at the shipowner's option, to the port at which he was engaged or where the voyage commenced or to a port of the seafarer's own country; or

(b) to another port, agreed upon between the seafarer and the shipowner or the Master. However, in the event that the seafarer's contract period of service has not expired, the shipowner shall have the right to transfer him to another of the shipowner's vessels to serve thereon for the balance of the contract period of service.

(3) Any seafarer whose period of employment is terminated by reason of completion of the voyage for which he was engaged or by expiration of his contract period of employment shall be entitled to repatriation, at no expense to him, to the port at which he was engaged or to such other port as may be agreed upon. [P.L. 1990-92, § 183; P.L. 2001-27, § 843. Provision to assure repatriation rights of crew.]

§844. Loss of right of repatriation.

A seafarer shall forfeit his right of repatriation in case of:

- (a) desertion;
- (b) entering into a new agreement with the same owner after his discharge;

- (c) entering into a new agreement with another owner within one week after his discharge;
- (d) criminal offenses under Sections 847, 849, and 850 of this Chapter; or
- (e) unjustifiable repudiation of the Shipping Articles.

(f) failure of the seafarer to request repatriation within one week from the time that he is in condition to be repatriated. [P.L. 1990-92, §184; P.L. 2001-27, § 844.]

§845. Offenses against the internal order of the vessel.

(1) Any seafarer on a vessel of the Republic who commits any of the following offenses may, in addition to any criminal penalties provided herein, be punished by the Master as follows:

(a) for neglecting or refusing without reasonable cause to join his vessel or to proceed to sea in his vessel, or for absence without leave at any time within 24 hours of the vessel's sailing from any port, either at the commencement or during the progress of the voyage, or for absence at any time, without leave and without sufficient reason from his vessel and from his duty, not amounting to desertion, by forfeiture from his wages of not more than two (2) days wages or the amount sufficient to defray any expenses which shall have been properly incurred in hiring a substitute;

(b) for quitting the vessel without leave before she is placed in security, by forfeiture from his wages of not more than one month's wages;

(c) for intoxication or willful disobedience to any lawful command by being placed in restraint until such intoxication or disobedience shall cease, and by forfeiture from his wages of not more than four (4) days wages;

(d) for continued intoxication or willful disobedience to any lawful command or continued willful neglect of duty being placed in restraint until such intoxication, disobedience or neglect shall cease, and by forfeiture, for every 24 hours' continuance of such intoxication, disobedience or neglect, of a sum of not more than twelve (12) days wages;

(e) for willfully damaging the vessel or embezzling or willfully damaging any part of the stores or cargo, whether on board the vessel, in boats or ashore, by forfeiture out of his wages of a sum equal in amount to the loss thereby sustained;

(f) for any act of smuggling, whereby loss or damage is occasioned to the Master or shipowner, by payment to such Master or shipowner of such a sum as is sufficient to reimburse the Master or shipowner for such loss or damage, and the whole or any part of his wages may be retained in satisfaction or on account of such liability;

(g) for assaulting any Master, pilot or officer, by forfeiture from his wages of not more than three (3) months pay; or

(h) for mutiny or desertion, by forfeiture of all accrued wages.

(2) All earnings forfeited as a result of penalties imposed by the Master pursuant to this Section shall be applied to reimburse the Master or shipowner for any loss or damage resulting from the act for which the forfeiture was imposed; and any balance, with an accounting thereof, shall thereupon be forwarded to the Maritime Administrator. [P.L. 1990-92, §185.]

§846. Prohibition of corporal punishment.

Flogging and all other forms of corporal punishment are hereby prohibited on board any vessel. [P.L. 1990-92, §186.]

§847. Barratry; drunkenness; neglect of duty.

Whoever, being a Master, seafarer, or other person on any vessel, by willful breach of duty or by reason of drunkenness, does any act tending to the immediate loss or destruction of, or serious damage to, such vessel or her cargo, or tending immediately to endanger the life or limb of any person belonging to or on board such vessel, or by willful breach of duty or by neglect of duty or by reason of drunkenness refuses or omits to do any lawful act proper and requisite to be done by him for preserving such vessel and her cargo from immediate loss, destruction or serious damage or for preserving any person on such vessel from immediate danger to life or limb, shall be subject to imprisonment and a fine of not more than two thousand five hundred dollars (US\$2,500). [P.L. 1990-92, §187.]

§848. Desertion.

(1) Any seafarer who deserts from his vessel with the intention of not returning to duty and who remains unlawfully in a foreign country shall be guilty of desertion and shall be liable to answer for any damages or losses suffered by the shipowner as a consequence of such desertion.

(2) The Master shall make an entry of all desertions in the logbook and file a report with the Maritime Administrator. The local authorities of the port shall be notified and requested to apprehend and deliver the deserter. [P.L. 1990-92, §188.]

§849. Incitement of seafarer to revolt or mutiny.

Whoever, being of the crew of a vessel of the Republic, endeavors to make a revolt or mutiny on board such vessel, or combines, conspires or confederates with any other person on board to make such revolt or mutiny, or solicits, incites or stirs up any other of the crew to disobey or resist the lawful orders of the Master or other officers of such vessel, or to refuse or neglect his proper duty on board thereof, or betray his proper trust, or assemble with others in a tumultuous and mutinous manner, or makes a riot on board thereof, or unlawfully confines the Master or other commanding officer thereof, shall be fined not more than one thousand dollars (US\$1,000) or imprisoned for not more than five (5) years, or both. [P.L. 1990-92, §189.]

§850. Revolt or mutiny of seafarer.

Whoever, being of the crew of a vessel of the Republic, unlawfully and with force, or by fraud or intimidation, usurps the command of such vessel from the Master or other lawful officer in command thereof, or deprives him of authority and command on board, or resists or prevents him in the free and lawful exercise thereof, or transfers such authority and command to another not lawfully entitled thereto, is guilty of a revolt and mutiny and shall be fined not more than two thousand dollars (US\$2,000), or imprisoned for not more than ten (10) years or both. [P.L. 1990-92, § 190.]

§851. Entry of offenses in Log Book.

Upon the commission of any offense, an entry thereof shall be made in the official Log Book of the vessel of the day on which the offense was committed, and any penalty or fine imposed, and shall be signed by the Master and by the mate or one of the crew; and the offender, if still on the vessel, shall, before her next arrival at any port or, if she is at the time in port, before her departure therefrom, be furnished with a copy of such entry and have the same read over distinctly and audibly to him, and may thereupon make such a reply thereto as he thinks fit; and a statement

that a copy of the entry has been so furnished or the same has been so read over, together with his reply, if any, made by the offender, shall likewise be entered and signed in the same manner. [P.L. 1990-92, §191.]

§852. Abandonment of seafarer.

(1) Whoever, being Master or in charge of a vessel of the Republic, maliciously and without justifiable cause forces any member of the crew of such vessel on shore in order to leave him behind in any foreign port or place, or refuses to bring to such place as is required under the Articles any member of the crew of such vessel, in condition and willing to proceed when the Master is ready to proceed, shall be fined not more than five thousand dollars (US\$5,000).

(2) The abandoned seafarer shall retain his right to repatriation. [P.L. 1990-92, §192; P.L. 2001-27, §852. Penalty provisions increased.]

§853. Contracts for seafaring labor.

(1) The following clause shall appear, or be by force of law included, in all contracts for seafaring labor on board vessels of the Republic:

'The parties to this contract hereby stipulate that the terms and conditions laid down herein shall be subject to the applicable provisions of the Maritime Law and Regulations of the Republic of the Marshall Islands. Any dispute as to the terms and conditions of this contract shall be resolved in accordance with the Maritime Law and Regulations of the Republic of the Marshall Islands.'

(2) All contracts relating to service aboard a vessel registered under this Title shall be governed in interpretation and application by the Laws of the Republic, including this Chapter and any Regulations thereunder. [P.L. 1990-92, §193.]

§854. Freedom of association.

Seafarers and their employers, without distinction whatsoever, shall have the right to establish, and to become members of, organizations of their choosing, always subject to jurisdiction of the Republic. [P.L. 1990-92, §194.]

§855. Protection of freedom of association.

It shall be unlawful for any employer, employer organization or labor organization to coerce any seafarer in the exercise of his choice whether to establish, become a member of or participate in any labor organization, provided that any provision in a labor contract entered into pursuant to Section 857 of this Chapter shall not be deemed to be violative of this Section. [P.L. 1990-92, §195.]

§856. Bargaining and execution of labor contract.

(1) It shall be lawful for any employer or employer organization and any labor organization representing seafarers to bargain and enter into a labor contract concerning wages and other terms and conditions of employment; provided, that no labor contract provisions may be contrary to the laws of the Republic or deprive the Republic of any jurisdiction over labor relations.

(2) A copy of any labor contract between the employer and

an organization representing seafarers employed on a vessel shall be placed on board the said vessel and shall be made available to maritime or judicial authorities when requested. [P.L. 1990-92, §196.]

§857. Provisions authorized in labor contracts.

It shall be lawful for any employer or employer organization and any labor organization to agree to be bound by any provisions in entering into a labor contract, provided that such provisions are not prohibited by the Laws or Regulations of the Republic. [P.L. 1990-92, §197.]

§858. Provisions prohibited in labor contracts.

It shall be unlawful for any employer or employer organization or employee or labor organization to attempt to bargain for, or to enter into, any labor contract containing any provision which attempts to set aside the application of or is inconsistent with or is violative of the laws of the Republic, or which prescribes terms or conditions of employment less favorable to seafarers than those set forth in this Chapter, or which discriminates as to terms and conditions of employment on the basis of race, color, gender or creed; and any such prohibited provisions shall be deemed null and void. [P.L. 1990-92, §198; P.L. 2001-27, §858.]

§859. Protection of labor contract.

Whenever an employer or employer organization and a labor organization have entered into a labor contract providing that such labor organization shall be sole bargaining representative of seafarers pursuant to Section 857 of this Chapter, it shall be unlawful:

- (a) for the employer or employer organization to bargain with or enter into a labor contract pertaining to such seafarers with any other labor organization; or
- (b) for any other labor organization to attempt to bargain with or enter into a labor contract pertaining to such seafarers with the employer or employer organization; prior to thirty (30) days before the termination of such agreement or before the expiration of three (3) years from the effective date of such agreement, whichever event shall first occur. [P.L. 1990-92, §199. Format was modified for consistency with the format and style of the Code.]

§860. Strikes, picketing and like interference.

(1) It shall be unlawful for any person or labor organization to promote or to engage in any strike or picketing, or any boycott or like interference with the internal order or operation of a vessel, unless:

- (a) a majority of seafarers on the vessel involved have voted by secret ballot that such action be taken; and
 - (b) at least thirty (30) days written notice of intention to take such action has been given to the employer or the Master; and
 - (c) the procedures of conciliation, mediation and arbitration under Section 861 of this Chapter, have been followed to conclusion.
- (2) Nothing contained in Subsection (1) hereof shall be deemed to permit any strike or picketing, or any boycott or like interference with the internal order or operation of a vessel contrary to the provisions in any existing labor

contract or any contract for seafaring labor. [P.L. 1990-92, § 200.]

§861. Conciliation, mediation and arbitration of labor disputes, differences or grievances.

(1) It is declared to be the policy of the Republic to place upon employers and employer organizations and employees and labor organizations the primary responsibility for avoidance of any interruption in foreign or domestic maritime commerce.

(2) In the event that an agreed settlement between the parties to any dispute, difference or grievance is not effected, the following conciliation, mediation and arbitration procedures, as may be further implemented by Regulation, shall apply:

(a) if the dispute is not resolved, crew members shall present their case to the employer through the Master or his appointee, or, if the matter is to the prejudice of the Master, then directly to the employer. Crew members may be represented in the matter by a labor organization which is a party to a labor contract entered into pursuant to Section 856 of this Chapter, and which covers the crew members. Efforts shall be made to conciliate the matter and to find an agreeable solution thereto;

(b) if a conciliation acceptable to both parties cannot be made at this stage, either party may call upon the Maritime Administrator, or an agent appointed by the Maritime Administrator, to act as mediator to endeavor to find a solution to the matter satisfactory to the parties;

(c) in the event that the dispute cannot be resolved by conciliation or mediation, either party may submit the matter to an independent arbitrator or arbitrators for a final determination, as provided by Regulation. If the parties cannot agree upon a choice of arbitrator or arbitrators, the matter shall be finally determined by the Maritime Administrator or his appointed agent, acting as sole arbitrator.

(3) Any arbitration award may be enforced, if necessary, by any Court of competent jurisdiction. [P.L. 1990-92, § 201; P.L. 2001-27, §861.]

§862. Time-bar.

(1) Claims arising out of the Shipping Articles are subject to a one year's prescription.

(2) The following rights of action are subject to a two (2) year prescription;

- (a) the right of action for death of a seafarer caused by wrongful act, neglect or default on the high seas;
 - (b) claims of the shipowner against the Master for acts committed during the performance of his duties; and
 - (c) all other tort claims.
- (b)
- (3) All other claims are subject to a three (3) year prescription.
- (4) The period of prescription of the claims laid down in the preceding Subsections runs from the time when the right of action accrues. [P.L. 1990-92, §202. Subsection (1) was altered for style purposes.]

§863. Accommodations.

(1) The Maritime Administrator may make Rules and Regulations with respect to the accommodations to be provided in vessels of the Republic taking into consideration the different types of vessels, dates of construction and seafarers of different stature and rank.

(2) If the provisions of any Rule or Regulation made under this section are contravened in the case of a ship, the owner or Master shall be subject to a penalty of not more than one thousand dollars (US\$1,000). [P.L. 2001-27, §863.]

§864. Maritime Administrator to make rules and regulations.

The Maritime Administrator may make Rules and Regulations not contrary to the provisions of this Chapter relating to conditions and terms of employment, wages, vacations and leave, hours of work and rest, repatriation, minimum age, compensation for sickness, injury or death of masters, seafarers, and seagoing laborers employed on vessels engaged in foreign trade and documented under the laws of the Republic. [P.L. 1990-92. § 203; P.L. 2001-27, § 864.]

§865. Uniformity of application and construction.

In this Title unless the context otherwise requires:

(a) words in the singular number include the plural, and in the plural include the singular.

(b) words of the masculine gender include the feminine and the neuter, and when the sense so indicates words of the neuter gender may refer to any gender. [P.L. 2000-8,

effective March 22, 2000. P.L. 2001-27, §865.]

ANNEX ‘5’

15 MIRC CHAPTER 1.

COUNTER-TERRORISM

ARRANGEMENT OF SECTIONS

Section

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- §102. Commencement.
- §103. Purpose.
- §104. Application etc.
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PART II – PROHIBITION, PUNISHMENT.

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- §113. Duty to take measures.
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PART IV – OFFENSES AGAINST INTERNATIONAL CONVENTIONS

Division 1-Suppression of financing of terrorism

- §120. Financing of terrorism prohibited.
- §121. Measures to suppress terrorism.
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Division 3-Weapons of Mass Destruction

- §125. Weapons of Mass destruction; offenses.

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- §126. Internationally protected persons offenses.

Division 5-Hostage Taking

- §127. Hostage-taking; offenses.

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- §128. Terrorist Bombing; offenses.

Division 7 - Plastic Explosives

- §129. Prohibition on plastic explosives; offenses.

Division 8 - Safety of Civil Aviation

- §130. Civil Aviation; offenses.
- §131. Power to take reasonable measures.
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- §133. Power to deliver alleged offenders.
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- §135. Maritime Offenses.
- §136. Nuclear Material; offenses.
- §137. Other rights obligations and responsibilities not affected; no liability for action taken in good faith.

§138. Resolution of Disputes.

§139. Implementing Regulations.

An Act for the prevention and combating of terrorism in the Republic of the Marshall Islands, for international cooperation to combat threats to international peace and security caused by terrorist acts, and for related purposes. **[This Title was previously “Reserved” in the 98 Revision , assigned here to this Act. Section numbering style modified to conform to new Code format (Rev.2003)]**

Commencement: November 11, 2003

Source: P.L. 2002-65

PART I - PRELIMINARY

§101. Short Title.

This Act may be cited as the Counter-Terrorism Act, 2002. **[P.L. 2002-65, §1.]**

§102. Commencement.

This Act shall come into effect on the date of certification in accordance with Article IV, section 21 of the Constitution. **[P.L. 2002-65, §2.]**

§103. Purpose.

The purpose of this Act is to implement the United Nations Security Council Resolution 1373 and other international obligations of the Republic of the Marshall Islands for the prevention, repression and elimination of terrorism, and for related matters. **[P.L. 2002-65, §3.]**

§104. Application, jurisdiction and enforcement.

(1) The Attorney-General shall have primary enforcement authority for this Act.

(2) This Act shall apply in respect of any crime established by this Act when the offense is committed:

- (a) in the Marshall Islands;
- (b) by a citizen of the Marshall Islands;
- (c) on board an aircraft or ship:
 - (i) registered under the laws of the Marshall Islands at the time the offense was committed;
 - (ii) operating under or flying the Marshall Islands flag;
 - (iii) which lands in the territory of the Marshall Islands with the alleged offender on board;
 - (iv) leased or chartered without a crew to a lessee who has his principal place of business in the Marshall Islands, or who is a habitual resident of the Marshall Islands;
- (d) against or on board a fixed platform while it is located on the Marshall Islands’ continental shelf;
- (3) This Act shall apply in respect of any crime established by this Act when the offense:

- (a) was directed toward or resulted in the carrying out of a crime against a citizen of the Marshall Islands, or during the commission of which a citizen of the Marshall Islands was threatened, injured or killed;
- (b) was directed towards or resulted in the carrying out of a crime against the government of the Marshall Islands or a facility, diplomatic or consular premises of the government of the Marshall Islands abroad;
- (c) was directed towards or resulted in a crime committed in an attempt to compel the Marshall Islands to do or abstain from doing any act;
- (d) was committed by a stateless person who has his or her habitual residence in the

Marshall Islands.

(4) Where a person is suspected to have engaged in terrorism and the alleged offender is present in the Marshall Islands, in a case where the Marshall Islands has jurisdiction, and the alleged offender is not extradited to a foreign country that has established jurisdiction over the offense or the alleged offender, the Attorney-General shall whether or not the offense was committed in the Marshall Islands, have authority to prosecute the person in accordance with any law that is for the time being in force in the Marshall Islands.

(5) Application of any provisions of this Act, relating to or implementing the provisions of any international terrorism convention or protocol, shall conform to and meet the requirements of the particular convention or protocol, and shall be subject to the exclusions and jurisdictional requirements contained therein. [P.L. 2002-65, §4.]

§105. Interpretations.

In this Act, unless the contrary intention appears:

(1) "alleged offender" means a person as to whom there is sufficient evidence to determine prima facie that such person has engaged in terrorism;

(2) "Attorney-General" means the Attorney-General of the Marshall Islands, and includes the Deputy Attorney-General or any Assistant Attorney-General to whom the Attorney-General delegates authority to carry out the duties and responsibilities of the Attorney-General established under this Act;

(3) "biological agent" means any micro-organism, virus, infectious substance, or biological product that may be engineered as a result of biotechnology, or any naturally occurring or bioengineered component of any such micro-organism, virus, infectious substance, or biological product, capable of causing:

(a) death, disease, or other biological malfunction in a human, an animal, a plant, or another living organism; or
(b) deterioration of food, water, equipment, supplies, or material of any kind; or
(c) deleterious alteration of the environment;

(4) "biological weapon" means the following, together or separately, a:

(a) biological agent; and/or
(b) toxin; and/or
(c) delivery system;

that has been developed, produced, transferred, acquired, retained, or possessed for use as a weapon; provided, however, for purposes of this section, the term "for use as a weapon" does not include the development, production, transfer, acquisition, retention, or possession of any biological agent, toxin or delivery system for prophylactic, protective, or other peaceful purposes;

(5) "chemical weapon" means, together or separately:

(a) A toxic chemical and its precursors, except where intended for a purpose not prohibited by law as long as the type and quantity is consistent with such a purpose;

(b) A munition or device, specifically designed to cause death or other harm through toxic properties of those toxic chemicals specified in paragraph (a), which would be released as a result of the employment of such munition or device;

(c) Any equipment specifically designed for use directly in connection with the employment of munitions or devices specified in paragraph (b);

(6) "crime(s) established by this Act" means and includes:

(a) any crime punishable under Part IV of this Act; or
(b) any act or activity punishable under subsection 107 (3) of this Act;

(7) "delivery system" means, with respect to biological weapons:

(a) any apparatus, equipment, device, or means of delivery specifically designed to deliver or disseminate a biological agent, toxin, or vector; or

(b) any vector;

(8) "destructive device" means any explosive, incendiary, poison gas, or projectile-expelling weapon, capable of causing serious bodily injury or death, that has been developed, produced, transferred, acquired, retained, or possessed for use as a weapon, or any combination of parts or pieces thereof which could be used or converted for such purposes;

(9) "engage(s) in" with respect to terrorist acts, terrorism offenses and terrorism, means and includes, in an individual capacity or as a member of an organization:

(a) to perpetrate, commit or carry out, or to incite to commit or carry out; or

(b) to threaten, attempt, solicit, or conspire to carry out or commit; or

(c) to prepare or plan; or

(d) to gather information on potential targets for; or

(e) to solicit, collect or provide funds or other things of value, with the knowledge

or intention that the funds or other things of value will be used:

(i) for terrorism; or

(ii) by a terrorist organization;

(f) to solicit, recruit, or train any person:

(i) to engage in terrorism;

(ii) to engage in conduct otherwise described in this section; or

(iii) for membership in a terrorist organization;

(g) to commit or carry out an act that the actor knows, or reasonably should know, affords material support, including a safe house, transportation, communications, funds, transfer of funds or other material benefit, false documentation or identification, weapons (including, without limitation, chemical, biological, or radiological weapons), explosives, or training;

(i) for terrorism; or

(ii) to any individual who the actor knows, or reasonably should know, engages in terrorism; or

(iii) for a terrorist organization.

(10) "fixed platform" means an artificial island, installation or structure permanently attached to the sea-bed for the purpose of exploration or exploitation of resources or for other economic purposes;

(11) "foreign country" means

(a) any country other than the Marshall Islands;

(b) every constituent part of such country, including a territory, dependency, or protectorate which administers its own laws;

(12) "foreign national" means a natural person who is a citizen of a country other than the Marshall Islands;

(13) "funds" means property and assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such property or assets, including, but not limited to, bank credits, travelers checks, bank checks, money orders, shares, securities, bonds, debt instruments, drafts, letters of credit, and currency;

(14) "in flight" means, with respect to aircraft, at any time from the moment when all the external doors are closed following embarkation until the moment when any such door is opened for disembarkation; provided, however, in the case of a forced landing, the flight shall be deemed

to continue until the competent authorities take over the responsibility for the aircraft and for persons and property on board;

(15) "in service" means and includes, with respect to aircraft, from the beginning of the preflight preparation of the aircraft by ground personnel or by the crew for a specific flight until twenty four hours after any landing; and, the period of service shall, in any event, extend for the entire period during which the aircraft is in flight;

(16) "international terrorism conventions" includes the conventions that are referred to in the Schedule to this Act, or any other convention that the Minister may, after consultation with the Minister of Foreign Affairs, by public notice in writing declare a convention for the purposes of this Act;

(17) "internationally protected person" means and includes: (a) a Head of State, or any member of a collegial body performing the functions of a Head of State under the constitution of the State concerned, a Head of Government or a Minister of Foreign Affairs, whenever any such person is in a foreign State, as well as members of such person's family who accompany him or her;

(b) any representative or official of the Marshall Islands or of a foreign country, or any official or other agent of an international organization of an intergovernmental character who, at the time when and in the place where a crime against such person, the person's official premises, private accommodation or means of transport is committed, is entitled pursuant to international law to special protection from any attack on his or her person, freedom or dignity, as well as members of such person's family forming part of the person's household;

(18) "infrastructure facility" means any publicly or privately owned facility providing or distributing services for the benefit of the public, such as water, sewage, energy, fuel or communications;

(19) "key component of a binary or multi-component chemical system" means, with respect to precursors and chemical weapons, the precursor that plays the most important role in determining the toxic properties of the final product and reacts rapidly with other chemicals in the binary or multi-component system;

(20) "Marshall Islands" means the Republic of the Marshall Islands, and the marine areas, the air space above the territory of the Marshall Islands and includes the government of the Marshall Islands;

(21) "Minister" means the Minister of Justice of the Marshall Islands;

(22) "Nuclear material" has the same meaning as defined in the Convention on Physical Protection of Nuclear Material

(23) "person" means and includes both natural and legal persons and any foreign government or nation or any agency, instrumentality or political subdivision of any such government or nation, whether or not it is engaging in legal activities or is operating legally and in a lawful manner;

(24) "place of public use" means those parts of any building, land, street, waterway or other location that are accessible or open to members of the public, whether continuously, periodically or occasionally, and encompasses any commercial, business, cultural, historical, educational, religious, governmental, entertainment, recreational or similar place that is so accessible or open to the public;

(25) "plastic explosive" means an explosive material in flexible or elastic sheet form

formulated with one or more high explosives which in their pure form has a vapor pressure less than 10-4 Pa at a temperature of 25 degrees Celcius, is formulated with a binder material, and is as a mixture malleable or flexible at normal room temperature;

(26) "precursor" means, with respect to chemical weapons, any chemical reactant that takes part at any stage in the production by whatever method of a toxic chemical, and includes any key component of a binary or multi-component chemical system;

(27) "proceeds" means any funds derived from or obtained, directly or indirectly, through or from terrorism;

(28) "public transportation system" means all facilities, conveyances and instrumentalities, whether publicly or privately owned, that are used in or for publicly available services for the

transportation of persons or cargo;

(29) "purpose not prohibited by law" means, with respect to chemical weapons:

(a) any peaceful purpose related to an industrial, agricultural, research, medical, or pharmaceutical activity or other activity;

(b) any purpose directly related to protection against toxic chemicals and to protection against chemical weapons;

(c) any military purpose of the Marshall Islands that is not connected with the use

of a chemical weapon or that is not dependent on the use of the toxic or poisonous properties

of the chemical weapon to cause death or other harm;

(d) any law enforcement purpose, including any domestic riot control purpose;

(30) "ship" means a vessel of any type whatsoever not permanently attached to the sea-bed, including dynamically supported craft, submersibles, or any other floating craft;

(31) "serious bodily injury" means physical pain, illness or any impairment of physical condition that creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ;

(32) "serious offense" means any offense, for which the maximum penalty is imprisonment for a period of not less than one year;

(33) "state or government facility" means any permanent or temporary facility or conveyance that is used or occupied by representatives of a country, members of government, the legislature or the judiciary or by officials or employees of a country or any other public authority or entity or by employees or officials of an intergovernmental organization in connection with their official duties;

(34) "substantial property damage" means damage in an amount exceeding \$10,000;

(35) "terrorism" means and includes terrorism offenses and terrorist acts;

(36) "terrorism offense" means:

(a) any crime established by this Act;

(b) any crime established by the laws of the Marshall Islands and declared to be a terrorism offense by the Nitijela;

(c) any crime established by an international terrorism convention;

(d) any crime recognized under international humanitarian law as a terrorism offense; and

(e) any crime established under the law of a foreign State, where such crime, if committed in the Marshall Islands, would constitute a terrorism offense under the laws of the Marshall Islands ;

(37) "terrorist" means a person who engages in terrorism;

(38) "terrorist act" means and includes any act that is intended, or by its nature or context can be reasonably regarded as intended, to intimidate the public or any portion of the public, or to compel a government or an international or regional organization to do or refrain from doing any act, and:

- (a) involves the seizing or detaining, and threatening to kill, injure, harm, or continue to detain, another person;
- (b) endangers the life of any person;
- (c) creates a risk to the health or the safety of the public, or to any portion of the public;
- (d) endangers the national security or national defense of any country;
- (e) involves substantial damage to property;
- (f) involves the hijacking, seizure or sabotage of any conveyance (including an aircraft, vessel, ship, or vehicle), or of any fixed platform attached to the continental shelf;
- (g) involves any act that is designed to disrupt or destroy an electronic system, including, without limitation:
 - (i) an information system;
 - (ii) a telecommunications system;
 - (iii) a financial system;
 - (iv) a system used for the delivery of essential government services;
- (v) a system used for, or by, an essential public utility;
- (vi) a system used for, or by, a transport system;
- (h) involves any act that is designed to disrupt the provision of essential emergency services such as the police, civil defense and medical services;

(39) "terrorist organization" means a group composed of two or more persons, whether organized or not, that engages in terrorism;

(40) "toxic chemical" means any chemical which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm to humans or animals, and includes all such chemicals, regardless of their origin or of their method of production, and regardless of whether they are produced in facilities, in munitions or elsewhere;

(41) "toxin" means the toxic material of plants, animals, microorganisms, viruses, fungi, or infectious substances, or a recombinant molecule, whatever its origin or method of production, including:

(a) any poisonous substance or biological product that may be engineered as a result

of biotechnology produced by a living organism; or

(b) any poisonous isomer or biological product, homolog, or derivative of such a substance;

(42) "vector" means, with respect to delivery systems and biological weapons, a living organism, or molecule, including a recombinant molecule, or biological product that may be engineered as a result of biotechnology, capable of carrying a biological agent or toxin to a host;

(43) "weapon of mass destruction" means, any:

- (a) destructive device;
- (b) chemical weapon or any other weapon that is designed or intended to cause death or serious bodily injury through the release, dissemination, or impact of toxic or poisonous chemicals, or their precursors;
- (c) biological weapon, or any other weapon involving a disease organism;
- (d) nuclear material, weapon or device, and any other weapon that is designed to release radiation or radioactivity at a level dangerous to human life. [P.L. 2002-65, §5.]

PART II- PROHIBITION, PUNISHMENT OF TERRORIST ACTIVITIES

§106. Prohibition of terrorist acts.

Any person who knowingly, directly or indirectly, engages in terrorist act is guilty of an offence against this Act, and shall unless otherwise punishable under any other section be

punishable, under section 107 of this Act. [P.L. 2002-65, §6.]

§107. Criminal penalties; criminal complicity and inchoate offenses; no time limitation on prosecution; detention of suspected terrorists.

(1) Unless otherwise provided, any person convicted of an offence against this Act ;

(a) shall, where no other punishment is prescribed in respect of that offense, be punishable by a term of not less than 30 years and not more than life imprisonment, or a fine of not more than \$100,000,000.00; or both.

(b) shall not be entitled to probation for an offense committed or have the term of imprisonment imposed on him run concurrently with any other term of imprisonment; and

(c) shall not be entitled to bail pending his trial or his appeal against conviction for the offense.

(2) In lieu of the amount of the fine otherwise authorized by this Act, and in addition to any term of imprisonment, a defendant who derived profits or other proceeds from a crime established by this Act may be liable to a fine of not more than twice the gross profits or other proceeds, where the profits or proceeds from the offense exceed the maximum assessable fine.

(3) A person commits a crime, punishable under subsection (1), if that person knowingly:

(a) attempts, conspires, or threatens to commit;

(b) participates as an accomplice in;

(c) organizes or directs others to commit;

(d) contributes to the commission of;

any crime established by this Act.

(4) Notwithstanding any provision of any other law, statute of limitation shall not apply in respect of a crime established under this Act.

(5) Where there is reasonable ground to believe that detention of any person is necessary for the purpose of preventing such person from engaging in acts of terrorism; or to prevent any person from interfering with an investigation relating to suspected terrorism, any law enforcement officer, immigration officer, or customs official in the Marshall Islands shall have the powers to detain such person for a period of 48 hours for purposes of investigation; provided, however, such period of detention may be extended by court order for an additional 7 days, without the filing of criminal charges against such person.

(6) The court, in imposing sentence on any person convicted of a terrorism offense, shall order, in addition to any other sentence imposed, that the person forfeit to the Marshall Islands all property described in section 108.

[P.L. 2002-65, §7.]

§108. Criminal forfeiture.

(1) Any person convicted of a terrorism offense shall be liable to forfeit to the Marshall Islands, irrespective of any other provision of law:

(a) any property, real or personal, owned, possessed, or used by a person involved in the offense;

(b) any property constituting, or derived from, and proceeds the person obtained, directly or indirectly, as the result of such offense; and

(c) any of the property used in any manner or part, to commit, or to facilitate the commission of, such offense;

(2) Weapons of mass destruction, plastic explosives, and nuclear material shall be seized, confiscated and forfeited to the Marshall Islands; and the Attorney-General shall provide for their destruction or other appropriate disposition.

(3) For the purposes of forfeiture proceedings under this section, a temporary restraining order and seizure warrant may be entered upon application of the Attorney-General without notice or opportunity for a hearing when an information or complaint has not yet been filed with respect

to the property, where there is probable cause to believe that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section and exigent circumstances exist that place the life or health of any person in danger.

(4) The provisions of this section shall be implemented without prejudice to the rights of third parties acting in good faith.

(5) The owner or possessor of any property seized under this section shall be liable to the Marshall Islands for any expenses incurred incident to the seizure, including any expenses relating to the handling, storage, transportation, and destruction or other disposition of the seized property. [P.L. 2002-65, §8.]

§109. Liability of corporations and other legal persons.

(1) Legal persons, including any foreign government or nation or any agency, instrumentality or political subdivision of any such government or nation, shall be liable in the same manner and to the same extent as any natural person for any terrorism offense.

(2) The maximum assessable fine for legal persons shall be increased by ten times the amount assessable in the case of a natural person.

(3) Where in proceedings for a violation of this Act it is necessary to establish the state of mind of a corporation or other legal person, it is sufficient to show that a director, officer or agent who engaged in the conduct within the scope of his or her actual or apparent authority had that state of mind.

(4) Any conduct engaged in by:

(a) a director, officer or agent of a corporation or other legal person within the scope of his or her actual or apparent authority; or

(b) any other person at the direction or with the consent or agreement (whether express or implied) of a director, officer or agent of the corporation or legal person, where the giving of such direction, consent or agreement is within the scope of the actual or apparent authority of the director, officer or agent; shall be deemed, for the purposes of this Act, to have also been engaged in by the corporation or legal person. [P.L. 2002-65, §9.]

§110. Civil penalties; reimbursement.

(1) The Attorney-General may bring a civil action in the Marshall Islands against any Person who commits a crime established by this Act, and upon proof by a preponderance of the evidence that such person committed the offense, the person shall be subject to pay a civil penalty in an amount not exceeding \$25,000,000 for each such offense.

(2) The imposition of a civil penalty under subsection (1) shall not preclude any other criminal or civil statutory, common law, or administrative remedy, which is available by law to the Marshall Islands or any other person.

(3) The court shall order any person convicted of a crime established by this Act to reimburse the Marshall Islands for any expenses incurred by the Marshall Islands incident to investigation and prosecution for the offense, including, without limitation, the seizure, storage, handling, transportation, and destruction or other disposition of any property that was seized in connection with an investigation of the commission of the offense by that person.

(4) A person ordered to reimburse the Marshall Islands pursuant to subsection (3) shall be jointly and severally liable for such expenses with each other person, if any, who is ordered under subsection (3) to reimburse the Marshall Islands for the same expenses. [P.L. 2002-65, §10.]

§111. Private causes of action for terrorism.

(1) Any citizen of the Marshall Islands injured in his or her person, property, or business by reason of terrorism, or his or her estate, survivors, or heirs, may sue therefor in the

High Court of the Marshall Islands and shall be entitled to recover threefold the damages he or she has sustained, and the cost of the suit, including attorney's fees.

(2) A final judgment or decree rendered in favor of the Marshall Islands in any criminal proceeding relating to a terrorism offense shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding under this section.

(3) A final judgment or decree rendered in favor of any foreign country in any criminal proceeding relating to a terrorism offense shall, to the extent that such judgment or decree may be accorded full faith and credit under the law of the Marshall Islands, estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding under this section.

(4) No action shall be maintained under subsection (1) for injury or loss by reason of an act of war.

(5) No action shall be maintained under subsection (1) against the Marshall Islands, an agency of the Marshall Islands, or an officer or employee of the Marshall Islands or any agency thereof, acting within his or her official capacity or under color of legal authority. [P.L. 2002-65, §11.]

§112. Injunctions.

The Marshall Islands may obtain in a civil action an injunction against:

(1) any conduct prohibited by this Act;

(2) the development, production, stockpiling, transferring, acquisition, retention, or possession of any:

(a) biological agent, toxin, or delivery system of a type or in a quantity that under the circumstances has no apparent justification for prophylactic, protective, or other peaceful purposes;

(b) toxic chemical, or precursor, of a type or in a quantity that under the circumstances has no apparent justification for a purpose not prohibited by law or the United Nations Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction. [P.L. 2002-65, §12.]

PART III - MEASURES TO COMBAT TERRORISM

§113. Duty to take measures.

The Attorney-General shall take appropriate measures, in accordance with the Constitution and the laws of the Marshall Islands:

(1) as may be necessary to establish jurisdiction over and prosecute in the Marshall Islands any crime established by this Act;

(2) to investigate terrorism, and upon receiving information that an alleged offender may be present in the Marshall Islands, take the person into custody and take other appropriate measures so as to ensure the alleged offender's presence for the purpose of prosecution;

(3) to take into custody and extradite any alleged offender who is present in the Marshall Islands, and who is subject to arrest and detention for purposes of extradition pursuant to any law in force in the Marshall Islands;

(4) to provide early warning and furnish any relevant information in the possession of Marshall Islands to those countries which the Attorney-General believes would have jurisdiction, where there is reason to believe that a terrorism offense has been or will be committed;

(5) to identify, detect, freeze, seize, and obtain forfeiture of any funds used or allocated for the purpose of committing any terrorism offense as well as the proceeds derived from such offenses;

(6) to implement, conform to, and abide by the express requirements of any international terrorism convention to which this Act relates, and to ensure that any person regarding whom the measures referred to in this section are being taken shall be afforded the protections to which such person is expressly entitled under the relevant international terrorism convention;

(7) to prevent the cross border movement of terrorists, and to track the movement of such persons, and of persons who are members of terrorist organizations;

(8) to prevent the admission terrorists into the Marshall Islands, except as may be necessary to secure that person's presence for the purpose of extradition or prosecution for a terrorism offense;

(9) to prevent attacks on the person, freedom, or dignity of internationally protected persons;

(10) to prevent the movement into or out of the territory of the Marshall Islands, of unauthorized plastic explosives (especially, unmarked plastic explosives), and to prevent their manufacture;

(11) to provide timely notification, directly or through the depositary of the relevant international terrorism convention, when the Marshall Islands has taken a person into custody or has taken other measures with respect to any person pursuant to this section:

(a) to the appropriate authorities of the country of which the detained person is a citizen or national, if the person is not a citizen or national of the Marshall Islands;

(b) to the States Party to the relevant international terrorism convention that have established jurisdiction over the person or the offense in question in accordance with the convention, and to the depositary of the convention;

(c) to the country of registration of the aircraft, in cases involving aircraft;

(d) to the country whose flag the ship was flying, in cases involving ships;

(e) to any other foreign country or interested person, if the Minister considers it advisable; of the fact that such person is in custody and of the circumstances which warrant that such person is in custody and of the circumstances which warrant that person's detention. [P.L. 2002-65, §13.]

§114. Extradition.

(1) Terrorism offenses are hereby declared to be extraditable offenses.

(2) Extradition for terrorism offenses shall be carried out pursuant to and in accordance with any law for the time being in force in the Marshall Islands.

(3) For the purpose of extradition, a terrorism offense shall be treated, as if it had been committed not only in the place in which it occurred but also in the territory of any country Party to an international terrorism convention that is required to establish jurisdiction over the offense in accordance with that convention. [P.L. 2002-65, §14.]

(1) The Attorney-General may make a request on behalf of the Marshall Islands to the appropriate authority of a foreign country, or grant requests of a foreign country, for legal assistance in any investigation or proceeding relating to terrorism, or a terrorist organization.

(2) Mutual legal assistance provided under this Act shall be carried-out pursuant to and in accordance with the Mutual Assistance in Criminal Matters Act, 2002. [P.L. 2002-65, §15.]

§116. Intelligence sharing.

The Attorney-General, and other law enforcement authorities and officers of the Marshall Islands designated by the Attorney General shall have the authority to share and disclose intelligence information relating to terrorism, terrorist organizations, transnational organized crime, illicit drugs, money-laundering, illegal arms-trafficking, and illegal movement of nuclear, chemical, biological and other potentially deadly materials, and to provide early warning of such matters to the competent law enforcement authorities of:

(1) any foreign country, that is a Party to an international terrorism convention in respect of which the Marshall Islands is also a Party;

(2) any foreign country that is a member of the Pacific Islands Forum;

(3) the United States, in accordance with the duties and responsibilities of the Marshall Islands under the Compact of Free Association with the United States;

(4) any other foreign country that is a member of the United Nations. [P.L. 2002-65, §16.]

§117. No asylum.

The Republic of the Marshall Islands shall not grant refugee status or provide asylum or safe haven to any terrorist, or to any alleged offender. [P.L. 2002-65, §17.]

§118. Prevention.

(1) The Marshall Islands shall cooperate with the competent authorities of the United States and other members of the United Nations and the Pacific Islands Forum in the prevention of terrorism by taking all practicable measures to prevent and counter preparations in the Marshall Islands for the perpetration of terrorism within or outside the territory of the Marshall Islands, including measures to prohibit illegal activities of persons and organizations that knowingly encourage, instigate, organize, finance, or engage in terrorism.

(2) The Marshall Islands shall cooperate in the prevention of terrorism by exchanging information to provide early warning of possible terrorism, in particular by:

(a) establishing and maintaining channels of communication to facilitate the secure and rapid exchange of information concerning all aspects of terrorism and terrorist organizations;

(b) exchanging entry and exit data and information for ports of entry into the Marshall Islands, including airports and seaports, and coordinating administrative and other measures taken, as appropriate, to prevent the cross border movement of terrorists, and to track their movement and the movement of members of terrorist organizations;

(c) conducting inquiries, with respect to terrorists and members of terrorist organizations, concerning:

(i) the identity, whereabouts and activities of persons in respect of whom reasonable suspicion exists that they engage in terrorism or are members of a terrorist organization;

(ii) the movement of funds linked to persons who engage in terrorism or are members of a terrorist organization; and

(d) participation in research and development and exchange of information regarding methods of detection of cross border movement of terrorists and members of terrorist organizations, including detection of forged or falsified travel documents, traffic in arms, explosives, illicit drugs, contraband, or sensitive materials, and cross-border movement of nuclear, chemical, biological and other potentially deadly materials, or use of communications technologies by terrorist groups. [P.L. 2002-65, §18.]

§119. Transfer of persons.

(1) Transfer of any person who is being detained or is serving a sentence in the territory of the Marshall Islands or a foreign country, whose presence is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for the investigation or prosecution of a terrorism offense, shall be authorized and allowed, where the person consents to the transfer, and the countries agree on the conditions.

(2) Transfer of persons referred to in subsection (1) shall be carried-out pursuant to and in accordance with requirements of any law that is for the time being in force in the Marshall Islands

for convicted persons, whether or not the person to be transferred has already been convicted of an offense. [P.L. 2002-65, §19.]

PART IV - OFFENSES AGAINST INTERNATIONAL TERRORISM CONVENTIONS

Division 1. Suppression of Financing of Terrorism

§120. Financing of terrorism prohibited.

(1) Any person who knowingly, by any means, directly or indirectly, solicits, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part:

- (a) for terrorism;
 - (b) for the benefit of persons who engage in terrorism, or for the benefit of entities owned or controlled, directly or indirectly, by persons who engage in terrorism; or
 - (c) for the benefit of persons and entities acting on behalf of or at the direction of any person referred to in subsection 1(b); commits a crime punishable by the penalties established by section 107 (1) (a) of this Act.
- (2) For an act to constitute an offense under this section it shall not be necessary that the funds were actually used to commit or carry out a terrorism offense, or terrorist act.
- (3) Citizens and nationals of the Marshall Islands and any persons and entities within the Marshall Islands are prohibited from making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, to any person referred to in subsection 1(b) or 1(c). [P.L. 2002-65, §20.]

§121. Measures to suppress financing of terrorism.

- (1) Any person, that provides a service for the transmission of money or value, including transmission through an alternative remittance system or informal money or value transfer system or network, or the agent of such person, shall be required to be licensed by the competent authorities of the Marshall Islands, and shall be subject to the disclosure requirements prescribed by the relevant authorities in relation to that type of business.
- (2) All credit and financial institutions and all persons, and their agents, that provide a service for the transmission of money or value by wire transfer, shall include accurate and meaningful originator information (including name, address and account number) on funds transfers and related messages that are sent, such information to remain with the transfer or related message through the payment chain.
- (3) No corporation, business, enterprise, partnership, association, or entity, shall be granted charitable or non-profit status in the Marshall Islands where there are reasonable grounds to believe that any funds solicited, collected, held, used, or owned by such corporation, business, enterprise, partnership, association, or entity, may be diverted to a terrorist or a terrorist organization. [P.L. 2002-65, §21.]

§122. Seizure and detention of suspicious funds.

- (1) Any law enforcement officer or customs official of the Marshall Islands may seize and, in accordance with this section detain, any funds, that the officer or official has probable cause to believe were derived from or intended for terrorism, including, without limitation, funds being imported into or exported from the Marshall Islands.
- (2) Funds of, or intended for, terrorist organizations shall be frozen, seized, and in accordance with this section detained, where the organization has been designated as a terrorist organization by the United Nations Security Council, or by the Minister pursuant to regulations promulgated pursuant to this Act, or where there is probable cause to believe that the entity involved is a terrorist organization.
- (3) Funds detained under subsection (1) or (2) shall not be detained for more than 48 hours after seizure, unless a judge of the High Court grants an order of continued

detention for a period not exceeding 3 months from the date of seizure, upon being satisfied that:

- (a) there is probable cause to believe that the funds were derived from terrorism, or are intended by any person for use in the commission of a terrorism offense or for a terrorist act; and
 - (b) the continued detention is justified while:
 - (i) its origin or derivation is further investigated; or
 - (ii) consideration is given to the institution in the Marshall Islands or elsewhere of criminal proceedings against any person for an offense with which the funds are connected; provided, however, upon request by the person from whom the funds were seized and detained, the court shall grant a hearing before entering an order of continued detention.
- (4) A judge of the High Court may subsequently order after hearing, with notice to all parties concerned, the continued detention of the funds if satisfied of the matters mentioned in subsection
- (3), but the total period of detention shall not exceed 2 years from the date of the order.
- (5) Subject to subsection (6), funds detained under this section may be released in whole or in part to the person on whose behalf the funds were imported or exported:
- (a) by order of a judge of the High Court that continued detention is no longer justified, upon application by or on behalf of that person and after considering any views of the Attorney-General to the contrary; or
 - (b) by an authorized officer or customs official, if satisfied that their continued detention is no longer justified.
- (6) No funds detained under this section shall be released where:
- (a) an application is made under this Act or other laws of the Marshall Islands for the purpose of:
 - (i) the confiscation and forfeiture of the whole or any part of the funds; or
 - (ii) their restraint pending determination of liability to confiscation and forfeiture; or
 - (b) proceedings are instituted in the Marshall Islands or elsewhere against any person for a terrorism offense with which the funds are connected; unless and until the proceedings relating to the relevant application or the proceedings for the offense, as the case may be, have been concluded.
- (7) Funds seized pursuant to this section shall be subject to confiscation and forfeiture pursuant to section 108 of this Act. [P.L. 2002-65, §22.]

Division 2. Cross-Border Movement of Terrorists

§123. Terrorists inadmissible.

- (1) The following persons shall be considered inadmissible to the Marshall Islands for purposes of immigration, or under a temporary visa of any kind, or otherwise, except for the purpose of prosecution or extradition for a terrorist offense:
- (a) A foreign national:
 - (i) convicted of a terrorism offense; or
 - (ii) who admits to having engaged in terrorism; or
 - (iii) as to whom there is probable cause to believe such person has engaged
- In terrorism;
- (iv) who the Attorney-General knows, or has reasonable ground to believe, is engaged in or is likely after entry, to engage in terrorism; or
 - (v) who has used his or her position of prominence within any country to endorse or espouse terrorism, or to persuade others to support terrorism or a terrorist organization, in a way that the Attorney-General has determined undermines the efforts of the Marshall Islands to reduce or eliminate terrorism;
 - (vi) who is a representative of a terrorist organization, specified as such in regulations promulgated by the Minister or designated as a terrorist organization by the United Nations Security Council; or

(vii) who is a representative of a political, social or other similar group whose public endorsement of terrorism, or terrorist organizations, the Attorney-General has determined undermines the efforts of the Marshall Islands to reduce or eliminate terrorism;

(b) A foreign national who the Minister, after consultation with the Attorney-General, determines has been associated with a terrorist organization or terrorism and intends while in the Marshall Islands to engage solely, principally, or incidentally in activities that could endanger the welfare, safety, or security of the Marshall Islands.

(2) A person who is the spouse or the child of an foreign national who is inadmissible under subsection (1), shall also be inadmissible, if the activity causing the foreign national to be found inadmissible occurred within the last 5 years.

(3) Except as otherwise provided in this section, foreign nationals who are inadmissible under this section, shall be ineligible to be admitted to the Marshall Islands for any purpose, except, when necessary for the purposes of prosecution or extradition for a terrorism offense. [P.L. 2002-65, §23.]

§124. Reports of cross-border movement of terrorists.

All airlines, ships, and other entities that provide transportation, conveyance or freight services to and from the Marshall Islands shall be authorized and required to immediately report to the Attorney General through disclosure of passenger manifests and any other available means, the intended movement of suspected terrorists into or out of the Marshall Islands, and information g possible forged or falsified travel documents, traffic in arms, explosives, illicit drugs, contraband, or sensitive materials, and cross-border movement of nuclear, chemical, biological and other potentially deadly materials. [P.L. 2002-65, §24.]

Division 3. Weapons of Mass Destruction

§125. Weapons of mass destruction offenses.

(1) Except as authorized by the Cabinet, any person who; (a) knowingly, directly or indirectly, develops, produces, ships, transports, transfers, receives, acquires, retains, possesses, imports, exports, or manufactures a weapon of mass destruction, commits a crime punishable by the penalties established by section 107(1) (a) of this Act; (b) undertakes the Act referred to in subsection (1) with the intention of engaging In terrorism or with knowledge that the weapon of mass destruction is intended to be used for terrorism, ommits an offense punishable by a term of not less than 30 years and not more than life imprisonment, or fine of not more than \$100,000,000.00; or both; (c)uses or deploys a weapon of mass destruction, commits an offense punishable by a term of not less than 30 years and not more than life imprisonment, or fine of not more than \$100,000,000.00; or both. [P.L. 2002-65, §25.]

Division 4. Internationally Protected Persons

§126. Internationally protected persons offenses.

(1) Any person who knowingly, by any means, directly or indirectly, perpetrates: (a) a murder, kidnapping or other attack upon the person or liberty of an internationally protected person; (b) a violent attack upon the official premises, the private accommodation or the means of transport of an internationally protected person, likely to endanger the person or

his or her liberty; commits a crime punishable by the penalties established by section 107 of this Act. [P.L. 2002-65, §26.]

Division 5. Hostage-Taking

§127. Hostage-taking offenses.

Any person who knowingly, directly or indirectly, seizes or detains or threatens to kill, or injure another person (the "hostage") in order to compel a third party, namely, the Marshall Islands, a foreign country, an international intergovernmental organization, a natural or legal person, or a group of persons, to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage, commits a crime punishable under section 107 of this Act. [P.L. 2002-65, §27.]

Division 6. Terrorist Bombing

§128. Terrorist bombing offenses.

Any person who knowingly, directly or indirectly, delivers, places, discharges, deploys, or detonates any explosive or incendiary weapon or lethal device that is designed, or has the capability, to cause death, serious bodily injury, or substantial property damage in, into or against a place of public use, a State or government facility, a public transportation system or an infrastructure facility:

(1)with the intent to cause death or serious bodily injury; or
(2) with the intent to cause extensive destruction of such a place, facility or system, where such destruction results in or is likely to result in major economic loss; commits a crime punishable by a term of a term of not less than 30 years and not more than life imprisonment, or fine of not more than \$1,000,000,000.00; or both. [P.L. 2002-65, §28.]

Division 7. Plastic Explosives

§129. Prohibition on plastic explosives; offenses.

(1) Unless expressly authorized by the Cabinet, plastic explosives shall be prohibited in the Marshall Islands; provided, however, where authorized by the Cabinet for legitimate needs, plastic explosives must contain a detection agent, as defined by the Convention on the Marking of Plastic Explosives for the Purpose of Detection, and as described in the "Technical Annex" to that convention.
(2)Any person who knowingly, by any means, directly or indirectly, develops, produces, ships, transports, transfers, receives, acquires, retains, possesses, manufactures, imports, or exports an unauthorized plastic explosive commits a crime punishable by a minimum of 10 years imprisonment and a maximum fine of US \$50,000,000.00.
(3)Where a person engages in the act referred to in subsection (2) with the intent to engage in terrorism, the person commits an offense and shall upon conviction be punishable under section 107 (1) (a).
(4)Where a person referred to in subsection (2) uses or deploys the plastic explosives, the person shall be guilty of an offense and shall upon conviction be punishable by a term of not less than 30 years and not more than life imprisonment, or a fine of not more than \$1,000,000,000.00 or both. [P.L. 2002-65, §29.]

Division 8. Safety of Civil Aviation

§130. Civil aviation offenses.

In any airspace or territory where any international civil aviation convention or protocol referred to in paragraphs 1,

2, 3, and 7 of the Schedule would apply, any person who knowingly, directly or indirectly:

- (1) performs an act of violence against a person on board an aircraft in flight if that act is likely to endanger the safety of that aircraft; or
- (2) by force or threat thereof, or by any other form of intimidation, seizes or exercises control of an aircraft in flight; or
- (3) destroys an aircraft in service or causes damage to such an aircraft which renders it incapable of flight or which is likely to endanger its safety in flight; or
- (4) places or causes to be placed on an aircraft in service, by any means whatsoever, a device or substance which is likely to destroy that aircraft, or to cause damage to it which renders it incapable of flight, or to cause damage to it which is likely to endanger its safety in flight; or
- (5) destroys or damages air navigation facilities used in international air navigation, or interferes with their operation, if any such act is likely to endanger the safety of aircraft in flight; or
- (6) communicates information which the person knows to be false, thereby endangering the safety of an aircraft in flight;
- (7) using any device, substance or weapon:
 - (a) performs an act of violence against a person at an airport serving international civil aviation, which causes or is likely to cause serious injury or death; or

- (b) destroys or seriously damages the facilities of an airport serving international civil aviation or aircraft not in service located thereon or disrupts the services of the airport; commits an offense punishable under section 107(1) (a) ; provide however that where in committing the offense, the person uses or deploys a weapon of mass destruction, the person shall be liable to a fine of up to \$1,000,000,000.00. [P.L. 2002-65, §30.]

§131. Power to take reasonable measures.

- (1) The aircraft commander may, when he or she has reasonable grounds to believe that a person has committed, or is about to commit, on board the aircraft:
 - (a) a criminal offense; or
 - (b) an act which, whether or not it is a criminal offense, may or does jeopardize the safety of an aircraft or of persons or property therein, or which jeopardizes good order and discipline on board an aircraft; impose upon such person reasonable measures, including restraint, which are necessary:
 - (c) to protect the safety of the aircraft, or of persons or property therein; or
 - (d) to maintain good order and discipline on board; or
 - (e) to enable the aircraft commander to deliver such person to competent authorities or to disembark the person in accordance with the provisions of this chapter.
- (2) The aircraft commander may require or authorize the assistance of other crew members and may request or authorize, but not require, the assistance of passengers to restrain any person whom the aircraft commander is entitled to restrain.
- (3) Any crew member or passenger may also take reasonable preventive measures without such authorization when the crew member or passenger has reasonable grounds to believe that such action is immediately necessary to protect the safety of the aircraft, or of persons or property therein.
- (4) Measures of restraint imposed upon a person in accordance with this section shall be imposed in accordance with and conform to the requirements of the Convention on Offenses and Certain Other Acts Committed on Board Aircraft. [P.L. 2002-65, §31.]

§132. Power to disembark certain passengers.

The aircraft commander may, in so far as it is necessary to protect the safety of the aircraft, or of persons or property therein or to maintain good order and discipline on board, disembark, in accordance with the Convention on Offenses and Certain Other Acts Committed on Board Aircraft, any person who the aircraft commander has reasonable grounds to believe has committed, or is about to commit, on board the aircraft an act contemplated by section 131(1)(b). [P.L. 2002-65, §32.]

§133. Power to deliver alleged offenders to competent authorities.

The aircraft commander may deliver to competent law enforcement authorities, in accordance with the Convention on Offenses and Certain Other Acts Committed on Board Aircraft, any person who the aircraft commander has reasonable grounds to believe has committed on board the aircraft an act which, in the commander's opinion, is a serious offense according to the criminal laws of the country of registration of the aircraft. [P.L. 2002-65, §33.]

§134. No liability for actions taken.

For actions taken in accordance with section 131, 132 or 133, neither the aircraft commander, any other member of the crew, any passenger, the owner or operator of the aircraft, nor the person on whose behalf the flight was performed shall be held responsible in any proceeding on account of the treatment undergone by the person in respect of whom the actions were taken. [P.L. 2002-65, §34.]

Division 9. Safety of Maritime Navigation and Fixed Platforms

§135. Maritime offenses.

In any waters where the convention and protocol referenced in paragraphs 8 and 9 of the Schedule to this Act would apply, any person who knowingly, directly or indirectly:

- (1) seizes or exercises unauthorized control over a ship or fixed platform by force or threat thereof or by any other form of intimidation: or,
- (2) injures or kills any person, or endangers the safe navigation of a ship or the safety of a fixed platform, by:
 - (a) committing an act of violence against a person on board the ship or fixed platform;
 - or
 - (b) destroying or damaging the ship, its cargo, or the fixed platform; or
 - (c) placing or causing to be placed any device or substance on the ship or fixed platform; or
 - (d) destroying or damaging maritime navigational facilities or interfering with their operation; or
 - (e) communicating information which the person knows to be false;
 commits a crime punishable under section 107(1) (a) of this Act; provided, however, where, in committing such crime, the person uses or deploys a weapon of mass destruction the person shall be liable to fine of up to \$1,000,000,000.00. [P.L. 2002-65, §35.]

Division 10. Nuclear Material:

§136. Nuclear material offenses.

- (1) Any person who intentionally, by any means, directly or indirectly:
 - (a) without lawful authority, receives, possesses, uses, transfers, alters, disposes of,

or disperses nuclear material, under circumstances which cause or are likely to cause death or serious bodily injury to any person or substantial damage to property;

(b) commits a theft or robbery of nuclear material;

(c) embezzles or fraudulently obtains nuclear material;

(d) makes a demand for nuclear material by threat or use of force or by any other form of intimidation;

(e) threatens:

(i) to use nuclear material to cause death or serious bodily injury to any person or substantial property damage; or

(ii) to commit a theft or robbery of nuclear material in order to compel a natural or legal person, or an international organization, or country to do or to refrain from doing any act; commits a crime punishable by a term of not less than 30 years and not more than life imprisonment, or a fine of not more than \$1,000,000,000.00; or both. [P.L. 2002-65, §36.]

§137. Other rights, obligations and responsibilities not affected; no liability for actions taken in good faith.

(1) Nothing in this Act shall affect other rights, obligations and responsibilities of the Marshall Islands and individuals under international law, in particular the purposes of the Charter of the United Nations, the Compact of Free Association with the United States, international humanitarian law and other relevant conventions.

(2) Nothing in this Act entitles the Marshall Islands or any other country to undertake in the territory of the other the exercise of jurisdiction or performance of functions that are exclusively reserved for the authorities of that country by its domestic law.

(3) Persons shall be immune from suit and civil liability for actions taken in good faith pursuant to and in accordance with this Act. [P.L. 2002-65, §37.]

§138. Resolution of disputes.

Any dispute between the Marshall Islands and any other Party to an international terrorism convention concerning the interpretation or application of this Act relating to

application of the convention shall be resolved in accordance with the provisions of the relevant international terrorism convention. [P.L. 2002-65, §38.]

§139. Implementing regulations.

The Minister may prescribe such rules and regulations, as the Minister deems reasonably necessary to implement the provisions of this Act

ANNEX ‘6’

TITLE 51. - MANAGEMENT OF MARINE RESOURCES¹

CHAPTER 1.

MARSHALL ISLANDS MARINE RESOURCES AUTHORITY

ARRANGEMENT OF SECTIONS **Section**

PART I - INTRODUCTION

§101. Short Title. Fund.

§102. Interpretation.

§103-110. *Reserved*

PART II - MARSHALL ISLANDS MARINE RESOURCES AUTHORITY

§111. Marshall Islands Marine Resources Authority.

§112. Management of the Authority.

§113. Board of Directors.

PART III – GENERAL

§114. Cabinet's policy direction to the Board.

§115. Meetings of the Board.

§116. Director and Staff.

§117. Employment of public servants

§118. Annual Report.

§119. Powers and Functions of the Authority.

§120. Power to make regulations.

§121. Compensation.

§122. Finance; Marshall Islands Marine Resources

§123. Payments into the Fund.

§124. Payments out of the Fund.

§125. Exemptions.

§126. Restrictions on borrowing.

§127. Accounts.

§128-140. *Reserved*

§141. Immunities.

§142. Severability.

§143. Exclusion of Administrative.

§144. Repeals.

§145. Transitional.

¹[Heading modified to correctly reflect the subject matters dealt with under this Title]

An Act to establish the Marshall Islands Marine Resources Act [Authority].

[This Chapter codifies Parts I, II and XI of P.L. 1997-60]

Source: P.L. 1997-60

P.L. 2001-22

PART I- INTRODUCTION

§101. Short Title.

This Chapter may be cited as the [Marshall Islands Marine Resources Act 1997](#). [P.L. 1997-60, §1.]

§102. Interpretation.

(1) 'Access agreement' means a treaty, agreement or arrangement entered into by the Authority pursuant to the Constitution and this Title in relation to access to the Fishery Waters for fishing by foreign or domestic-based fishing vessels, and includes bilateral and multilateral instruments applicable at the national, sub-regional, regional or international level;

(2) 'administrator' means the director of a regional fisheries agency or any other organization or person authorized to administer an access agreement or fisheries management agreement;

(3) 'agent' includes a person appointed or designated by a foreign fishing company or other entity or person to act as its legal representative within the Republic of the Marshall Islands, pursuant to Section 407 of Chapter 4 of this Title²;

² **Correct citation inserted [Rev2003]**

(4) 'aircraft' means any craft capable of self-sustained movement through the atmosphere and includes helicopters;

(5) 'artisanal fisheries' or 'artisanal fishing' means in-shore fishing by citizens using vessels powered by outboard engines, and which could include commercial fishing;

(6) 'atoll' means a naturally formed coral reef system forming a geographic and ecologic unit which is crowned by at least one island;

(7) 'Attorney-General' means the Attorney-General of the Republic of the Marshall Islands;

(8) 'Authority' means the Marshall Islands Marine Resources Authority established by Section 111 of this Chapter.

(9) 'authorized observer' means any person authorized in accordance with Section 507 Chapter 5 of this Title, to act as an observer on fishing vessels for the purposes of this Title, including any observer authorized pursuant to the provisions of an access agreement or a fisheries management agreement;

(10) 'authorized officer' means any person or category of persons designated pursuant to Section 503 as an authorized officer;

(11) 'based in the Republic of the Marshall Islands' means using land-based facilities in the Republic of the Marshall Islands to support fishing, including location of the home port of a vessel in the Republic of the Marshall Islands, landing or transshipping all fish harvested within the exclusive economic zone and/or operating under a joint venture arrangement in the Republic of the Marshall Islands, or under arrangements where the operator of a vessel is participating in shore based developments or is otherwise making a substantial contribution to the development of the domestic tuna industry;

(12) 'buy' includes:

(a) barter or attempt to barter;

(b) purchase or attempt to purchase;

- (c) receive on account or consignment;
- (d) purchase or barter for future goods or for any consideration of value;
- (e) purchase or barter as an agent for another person, and 'buyer' shall have a corresponding meaning;
- (13) 'citizen' means a person who is a citizen or legal resident of the Republic of the Marshall Islands, and 'non-citizen' shall have a corresponding meaning;
- (14) 'closed season' means a period of time during which fishing is prohibited;
- (15) 'commercial fishing' means any fishing resulting or intending or appearing to result in selling or trading any fish which may be taken during the fishing operation, and does not include subsistence fishing.
- (16) 'commercial pilot fishing' means any fishing for the purpose of testing the commercial viability of:
- (a) new fishing methods;
- (b) developing new stocks of fish: or
- (c) fishing in previously unexploited areas;
- (17) 'Court' means the High Court of the Republic of the Marshall Islands,
- (18) 'Director' means the Director of the Marshall Islands Marine Resources Authority;
- (19) 'domestic based fishing' means any fishing by foreign fishing vessels based in the Republic of the Marshall Islands, but not including commercial pilot fishing;
- (20) 'domestic based fishing vessel' means any fishing vessel based in the Republic of the Marshall Islands;
- (21) 'domestic fishing' means any commercial fishing by a local fishing vessel, but not including commercial pilot fishing;
- (22) 'drift-net' means a gill-net or other net or arrangement of nets which is more than 2.5 kilometers (1.56 miles) in length the purpose of which is to enmesh, entrap or entangle fish;
- (23) 'drift-net fishing activities' includes fishing with the use of a drift-net and any related activities including transporting, transshipping and processing any fish caught with the use of a drift-net, and the provisioning of food, fuel and other supplies for vessels used or outfitted for drift-net fishing;
- (24) 'exclusive economic zone' means the exclusive economic zone as defined in the Marine Zones (Declaration) Act 1984;
- (25) 'export' means to:
- (a) send or take out of the country;
- (b) attempt to send or take out of the country;
- (c) receive on account or consignment for purposes of (a) or (b);
- (d) act as an agent for another person for purposes of (a) - (c);
- (e) carry or transport any thing for purposes of (a) - (d), and 'exporter' shall have a corresponding meaning;
- (26) 'fish' means any living marine resource;
- (27) 'fish aggregating device' means any man-made or partly man-made floating or semi-submerged device, whether anchored or not, intended for the purpose of aggregating fish, and includes any natural floating object on which a device has been placed to facilitate its location;
- (28) 'fish processing' means the producing of any substance or article from fish by any method and includes the cutting up, dismembering, cleaning, sorting, loining, freezing, canning, salting, preserving and reduction of fish;
- (29) 'fisheries management agreement' means any agreement, arrangement or treaty in force to which the Republic of the Marshall Islands is party which has as its purpose cooperation in or coordination of fisheries management measures in all or part of the region, or implementation of a multilateral access agreement, including but not limited to fisheries monitoring, control and surveillance and establishing criteria or requirements for fishing and fisheries access but which does not include any access agreement;
- (30) 'fishery' or 'fisheries' means one or more stock of fish or any fishing operation based on such stocks which can be treated as a unit for purposes of conservation and management, taking into account geographical, scientific, technical, recreational, economic and other relevant characteristics;
- (31) 'Fishery Waters' means the exclusive economic zone, the territorial sea and internal waters, including lagoons, as described in the [Marine Zones \(Declaration\) Act, 1984](#), and any other waters within the jurisdiction of the Republic of the Marshall Islands;
- (32) 'fishing' means:
- (a) the actual or attempted searching for, catching, taking or harvesting of fish;
- (b) any activity which can reasonably be expected to result in the locating, catching, taking or harvesting of fish;
- (c) the placing, searching for or recovering of any fish aggregating device or associated electronic equipment such as radio beacons;
- (d) any operation at sea directly in support of or in preparation for any activity described in this paragraph except for operations defined as related activities in Subsection (50) of this Section;
- (e) the use of an aircraft in relation to any activity described in this paragraph except for flights in emergencies involving the health or safety of crew members or the safety of a vessel;
- (33) 'fishing gear' means any equipment, implement, or other thing that can be used in the act of fishing, including any fishing net, rope, line, float, trap, hook, winch, boat, beacon or locating device, aircraft or helicopter;
- (34) 'fishing trip' covers the time a vessel enters the Fishery Waters to begin fishing until such time as any fish which have been taken are offloaded;
- (35) 'fishing vessel' means any vessel, boat, ship or other craft which is used for, equipped to be used for or of a type

that is normally used for fishing;

(36) 'foreign fishing' means any fishing not defined as domestic fishing or domestic based fishing, and not including commercial pilot fishing;

(37) 'foreign fishing vessel' means any fishing vessel other than a local fishing vessel or a domestic based fishing vessel;

(38) 'foreign party' means a party to an access agreement other than the Authority;

(39) 'foreign recreational fishing' means fishing using a foreign fishing vessel for recreational or sport purposes;

(40) 'Fund' means the Marshall Islands Marine Resources Authority Fund established in accordance with this Title;

(41) 'Government' means the government of the Republic of the Marshall Islands;

(42) 'island' means a naturally formed area of land surrounded by water, which is above water at high tide;

(43) 'license' means any license issued in accordance with this Title;

(44) 'local fishing vessel' means any fishing vessel registered in the Republic of the Marshall Islands and wholly owned and controlled by:

(a) the Government of the Republic of the Marshall Islands, or any agency thereof;

(b) one or more natural persons who are citizens and permanently domiciled in the Republic of the Marshall Islands;

(c) any corporation, company, society, or other association of persons incorporated or established under the laws of the Republic of the Marshall Islands and which is wholly owned and controlled by one or more of the entities or persons described in paragraphs (a) or (b) of this Subsection;

(d) any combination of persons or entities described in paragraphs (a) through (c) of this Subsection; and shall exclude any fishing vessel which may be so owned and controlled which does not have a genuine and effective link with the Republic of the Marshall Islands, including where it is not based in the Republic of the Marshall Islands, and where a substantial portion of its financial and economic profits and other benefits arising from its operations in the Fishery Waters do not directly benefit the owners or the economy of the Republic of the Marshall Islands;

(45) 'master', in relation to any fishing vessel, means the person in charge or apparently in charge of that vessel;

(46) 'Minister' means the Minister of Resources and Development;

(47) 'multilateral access agreement' means an access agreement between a foreign party and one or more States in the region, to which the Republic of the Marshall Islands is party;

(48) 'officer' means any authorized officer or national police officer, and includes any officer of a vessel or aircraft used for the enforcement of this Title in accordance with its provisions, whether or not such officer is an official of the Government or whether or not such vessel or aircraft is registered in the Republic of the

Marshall Islands;

(49) 'operator' means any person who is in charge of or directs or controls a fishing vessel, or for whose direct economic or financial benefit a vessel is being used, including the master, owner, and charterer;

(50) 'owner' in relation to a fishing vessel means any person exercising or discharging or claiming the right or accepting the obligation to exercise or discharge any of the powers or duties of an owner whether on his own behalf or on behalf of another and includes a person who is the owner jointly with any other person or persons and any manager, director or secretary of any body corporate or company;

(51) 'person' means any natural person or business enterprise and includes but is not limited to a corporation. Partnership, cooperative, association, the government of the Republic of the Marshall Islands, or any subdivision or agency thereof, and any foreign government, subdivision or agency of such government or other entity;

(52) 'recreational fishing' means non commercial fishing for leisure or relaxation and may include sport fishing;

(53) 'region' means that area of land and ocean which falls substantially within the jurisdiction and sovereign rights of the member countries of the South Pacific Forum Fisheries Agency, whose headquarters are located in Honiara, Solomon Islands, and includes high seas areas within such area, and for the purposes of, inter alia, fisheries management and data collection also means that area of the Western and Central Pacific Ocean which falls within the jurisdiction and sovereign rights of the member countries of the South Pacific Commission located in Noumea, New Caledonia, and 'regional' shall have a corresponding meaning;

(54) 'regional access license' means a regional access license issued to any fishing vessel of a Party to a multilateral access agreement or fisheries management agreement, in accordance with such agreement;

(55) 'regulation' or 'regulations' means any regulation which may be promulgated by the Authority pursuant to this Title;

(56) 'related activities' in relation to fishing means:

(a) transshipment;

(b) refueling or supplying fishing boats selling or supplying fishing equipment or performing either activity in support of fishing;

(c) on-shore storing, buying or processing fish or fish products from the time they are first landed;

(d) attempting or preparing to do any of the above;

(57) 'sell' includes exchanging any fish or fish product or other thing for cash or for anything which has value or which can be exchanged for cash, and bartering;

(58) 'sport fishing' means the use or hiring out of a fishing vessel or services thereof for recreational fishing purposes, but does not include commercial fishing;

(59) 'stock of fish' means a species, subspecies or other category of fish identified on the basis of geographical, scientific, technical, recreational and economic characteristics which can be treated as a unit for purposes of conservation and management;

(60) 'subsistence fishing' means fishing by a citizen substantially for personal consumption, and does not include any fishing resulting or intending or appearing to result, directly or indirectly, in selling or trading for profit any fish which may be taken during the fishing operations;

(61) 'transshipment' means the transfer of any or all fish or fish products to or from any fishing vessel for the purposes of transporting such fish or fish products elsewhere, and 'transship' shall have a corresponding meaning;

(62) 'transponder' means any device or machine placed on a fishing or other vessel, which is designed to transmit, whether in conjunction with other machine or machines elsewhere or not, information or data concerning the position, fishing and other activities of the vessel as may be required, and shall include any automatic location communicator;

(63) 'United Nations Agreement' means the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1992 Relating to the Conservation and Management of Straddling Fish Stocks and highly Migratory Fish Stocks;

(64) 'United Nations Convention' means the United Nations Convention on the Law of the Sea, 1982;

(65) 'vehicle' means any car, truck, van, bus, trailer or other powered land conveyance;

(66) 'vessel' means any boat, ship, canoe or other water going craft. [P.L. 1997-60, §2.]

§103-110. Reserved.

PART II - MARSHALL ISLANDS MARINE RESOURCES AUTHORITY

§111. Marshall Islands Marine Resources Authority.

(1) There is established a Marshall Islands Marine Resources Authority ('the Authority').

(2) The Authority shall be a body corporate with perpetual succession and a common seal, and may sue and be sued in its own name.

(3) Article VII of the Constitution shall not apply to or in relation to the Authority. [P.L. 1997-60, §3.]

§112. Management of the Authority.

The powers and functions of the Authority shall be vested in and exercised by a Board of Directors ('the Board'), which shall consist of seven members. [P.L. 1997-60, §4][Number of Board members increased to 7 by P.L. 2001-22, §2.]

§113. Board of Directors.

(1) The Board shall consist of the following members:

(a) three members, consisting of the Minister of Resources and Development, the Secretary of Foreign Affairs and the Attorney-General;

(b) four other members appointed by the President, who have knowledge of and experience in the fisheries sector of

the Republic of the Marshall Islands;

(c) the Director, who shall be a member ex officio and shall serve as the Secretary of the Board.

(2) The Chairman shall be elected by the Board for a term of two years. The Authority shall meet at such time and place as may be designated by the Chairman or by the Authority. The Authority shall adopt its own rules of procedure and regulations by majority vote.

(3) The term of office of the members appointed under Subsection (1)(b) shall be two years.

(4) Upon the expiration of the term of an appointed member, his or her rights and powers of membership shall lapse and the Director shall declare the vacancy and notify the President in writing of such vacancy. Vacancies occurring before the expiration of a member's term shall be filled in the same manner as the original appointment for the remainder of the term of office of the vacancy.

(5) The Board may act notwithstanding any vacancy in membership, provided that there is a quorum in accordance with this Title.

(6) Notwithstanding the provisions of Subsection (3) of this Section, the President may, with the concurrence of Cabinet, remove any member appointed under Subsection 1(b) of this Section.

(7) The Authority may delegate any of its powers to the Chairman or the Director. [P.L. 1997-60, §5.] subsection (1) (b) amended by P.L. 2001-22 increasing the number to four.]

§114. Cabinet's policy direction to the Board.

The Cabinet may give to the Board in writing directions with respect to policy matters, and the Board shall give effect to such direction. [P.L. 1997-60, §6.]

§115. Meetings of the Board.

(1) The Board shall meet at such times and places as may be designated by the Chairman, provided that the Board shall meet at least once every quarter.

(2) The Board shall, by majority vote, adopt its own rules of procedure and regulations for transactions of business and for carrying out the purposes of this Title.

(3) The quorum for a meeting of the Board shall be four members. [P.L. 1997-60, §7][P.L. 2001-22 set quorum at four]

§116. Director and Staff.

(1) Subject to any direction by Cabinet, the Authority shall employ a full-time Director of Marine Resources, possessing such qualifications as may be established by the Authority, who shall be in charge of and responsible for the management and administration of the Authority.

(2) The Director may act for and on behalf of the Authority subject to any direction the Board may give.

(3) The Authority may employ up to two Deputy Directors, who shall be appointed taking into account the recommendation of the Director.

(4) Except as provided in Subsection (3), the Authority

may delegate to the Director the power to employ such other employees, consultants and advisers as he or she may deem necessary. Any employee, consultant or adviser employed under this Section shall be exempt from Article VII of the Constitution. [P.L. 1997-60, §8.]

§117. Employment of public servants.

At the request of the Authority, the Public Service Commission may make the services of members of the Public Service available to the Authority on such terms and conditions as the Commission may determine. [P.L. 1997-60, §9.]

§118. Annual Report.

(1) The Minister shall report to the Nitijela on the Authority's activities and planned programs on an annual basis, and may provide additional reports and information from time to time. [P.L. 1997-60, §10.]

§119. Powers and Functions of the Authority.

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

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

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

(c) issue licenses in accordance with this [sic]

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

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

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

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

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

(i) cooperate in the conservation and management of highly migratory fish stocks as appropriate with other coastal States in the region and States fishing in the region and high seas area and participate in appropriate sub-regional, regional and international organizations or arrangements relating to fisheries;

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

(k) regulate the processing, marketing and export of fish

and fish products;

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

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

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

(2) The Authority shall, in exercising its powers and functions, cooperate with other agencies of the Government with competence, given under authority of law, in any related area. [P.L. 1997-60, §11.]

§120. Power to make regulations.

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

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

(b) related activities in the Fishery Waters;

(c) the operation of fishing vessels or any other vessel which may enter the Fishery Waters for any purpose which falls within this Title;

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

(e) licensing for fishing and other activities falling within this Title;

(f) pollution or the environmental quality of the Fishery Waters;

(g) fisheries monitoring, control and surveillance;

(h) prescribing the powers and duties of persons engaged in the administration or enforcement of this Title and providing for the carrying out of those powers and duties;

(i) compliance by citizens and fishing vessels of the Republic of the Marshall Islands which engage in fishing outside the Fishery Waters with applicable laws of other States or regional fisheries management organizations or arrangements, and applicable access agreements or fisheries management agreements;

(j) prescribing any other matter to carry out the purposes and provisions of this Title.

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

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

(4) Any regulation promulgated by the Authority in

accordance with this Title shall form an integral part of this Title. [P.L. 1997-60, §12.]

§121. Compensation.

- (1) Members of the Board shall be compensated at such rate as may be set by decision of the Authority when actually on the business of the Authority.
- (2) All members of the Board shall receive per diem and travel expenses at established Government rates while on the business of the Authority.
- (3) The Director shall receive a remuneration for his or her services, the amount of which shall be fixed by the Authority.
- (4) The Director shall be appointed by the Authority. [P.L. 1997-60, §13.]

§122. Finance: Marshall Islands Marine Resources Authority Fund.

- (1) There shall be established a Marshall Islands Marine Resources Authority Fund.
- (2) The Fund shall be a fund other than the General Fund within the meaning and for the purposes of Article VIII, Section 3 of the Constitution. [P.L. 1997-60, §14.]

§123. Payments into the Fund.

- (1) There shall be deposited into the Fund:
 - (a) all monies appropriated by the Nitijela for the purposes of the Authority;
 - (b) all monies designated by the Compact for fisheries or related activities, including monitoring, control and surveillance;
 - (c) all monies received by the Authority by way of loans, grants, aid, advances, contributions, gifts or other assistance;
 - (d) all payments for fisheries access;
 - (e) in the case of goods and services received under any access agreement, all monies realized on such goods and services;
 - (f) all civil and criminal fines and administrative penalties and proceeds of forfeitures or settlements collected by the Government pursuant to violations of or offenses committed against this Title;
 - (g) the proceeds of sale of fish seized and forfeited pursuant to violations of or offenses against this Title;
 - (h) such other monies as may be generated or otherwise received by the Authority pursuant to this Title.
- (2) The Secretary of Finance shall keep within a separate account all monies referred to in Subsection 1(b) of this Section. [P.L. 1997-60, §15.]

§124. Payments out of the Fund.

- (1) Payment may be made out of the Fund only for:
 - (a) carrying Out the powers and functions of the Authority, and in particular but not to restrict the generality of the foregoing:
 - (i) fisheries monitoring, control and surveillance;
 - (ii) training;
 - (iii) research;
 - (iv) fisheries development;

(v) such other activities as the Director may designate in accordance with this Title;

(b) the costs and expenses of the Authority, including administration;

(c) where an individual provides the necessary information leading to a civil or criminal fine or forfeiture against a commercial fishing vessel pursuant to this Title, such individual or individuals shall receive, or where more than one individual is involved, share, five percent of the amount of the fine or \$2,000 whichever is lesser, and the necessary information required for such reward and the procedures for disbursement shall be provided for by rules and regulations promulgated by the Authority;

(d) the purposes of working capital and petty cash, and other related purposes;

(e) giving effect to the provisions of this Title and any regulations made under this Title.

(2) The Fund shall be administered by the Director and such Board member as the Board may designate in accordance with:

(a) financial regulations which may be adopted by the Authority; and

(b) a budget approved on an annual basis by the Secretary of Finance.

(3) The Director shall make quarterly financial reports to the Board. [P.L. 1997-60, §16.]

§125. Exemptions.

- (1) The income, property and transactions of the Authority shall not be subject to any tax. rates or charges imposed under any other law.
- (2) The Consolidation of Funds Act, 1944, shall not apply to this Title. [P.L. 1997-60, §17.]

§126. Restrictions on borrowing.

Where any money is borrowed or any advance, grant, aid or other assistance is received for a specific purpose or subject to any condition, it shall be expended or used only for that purpose or subject to those conditions. [P.L. 1997-60, §18.]

§127. Accounts.

(1) The Director shall maintain proper accounts and records of:

(a) the Fund; and

(b) the disposition of monies paid into or out of the Fund.

(2) The accounts and records of the Fund shall be audited annually by such auditor as the Authority shall appoint. [P.L. 1997-60, §19.]

§128-140. Reserved.

PART III – GENERAL

§141. Immunities.

No civil or criminal action shall lie against any member of the Board, the Director, any employee of the Authority, any authorized officer or authorized observer or any other person appointed pursuant to this Title with respect to anything done or omitted to be done by him or her in pursuance or intended pursuance of the powers or functions conferred on him or her by or under this Title, whether on the ground of want of jurisdiction, mistake of law or fact, or on any other ground, unless he or she has acted, or omitted to act, in bad faith without reasonable cause. [P.L. 1997-60, §121.]

§142. Severability.

If any provision of this Title or amendments or additions thereto, or the application thereof to any person, thing or circumstance is held invalid, the invalidity does not affect the provisions, application, amendments or additions that can be given effect without the invalid provisions or application, and to this end the provisions of this Title and the amendments or additions thereto are severable. [P.L. 1997-60, §122.]

§143. Exclusion of Administrative Procedures Act.

The provisions of the Marshall Islands Administrative Procedures Act 1979 shall not apply to this Title or to any actions taken or required to be taken under this Title. [P.L. 1997-60, §123.]

§144. Repeals.

The following Acts are repealed in their entirety:

- (a) The Marshall Islands Marine Resources Authority Act 1988;
 - (b) The Marine Resources (Trochus) Act 1983;
 - (c) The Marshall Islands Marine Resources Act 1966;
- [P.L. 1997-60, §124.]

§145. Transitional.

(1) All assets, liabilities, rights and obligations of the Marshall Islands Marine Resources Authority established under the Marshall Islands Marine Resources Authority Act.

ANNEX '7'

TITLE 51. - MANAGEMENT OF MARINE RESOURCES¹

CHAPTER 2.

FISHERIES

ARRANGEMENT OF SECTIONS

Section

PART I- FISHERIES CONSERVATION, MANAGEMENT AND DEVELOPMENT

§201. Short Title.

§202. Exclusive control and Management of marine resources.

§203. Conservation, management and sustainable use of the fishery resources.

§204. Objectives and Purposes.

§205. Authority may determine total level of fishing and allocations of fishing rights.

§206. Authority may determine participatory rights in fishery.

§207. Designated fisheries- fishery management and development plans.

§208. Conservation and management measures.

§209. Protection of certain species.

§210. Protection and promotion of artisanal fisheries.

§211. Fisheries Exclusion Zone.

§212. Cooperation on high seas fishing for highly resources.

§213. Consultation on international fisheries management.

§214. Fishing with poisons or explosives.

§215. Limitations on taking turtles.

§216. Control of sponges.

§217. Control of pintada margaritzfera (black-lip mother of pearl oyster shell).

§218. Prohibition of harvesting trochus except during Open season.

§219. Introduction of fish into Fishery Waters.

§220. Prohibition of removal of fish from nets, traps,

§221. Protection of fish aggregating devices, artificial Reefs mooring buoys, floats, trays etc.

§222. Protection of fishing vessel or gear.

§223. Use of possession of prohibited fishing gear

§224. Prohibition of driftnet fishing.

PART II - TRADE COMMERCIAL SALE AND EXPORT

§225. Prohibition of trade in fish, fish products, or other marine resources.

§226. Commercial sale of endangered species.

§227. Export of live fish, fish products or other marine migratory fish stocks.

Section numbers 225-240 of this Act were 'Reserved' in the '98 supplement, and are eliminated here. The provisions of Part II have been re-numbered to conform to the sequence. (Rev.2003)].

Commencement: 13 October 1997

Source: P.L. 1997-60

PART I - FISHERIES CONSERVATION, MANAGEMENT AND DEVELOPMENT

§201. Short Title.

This Chapter may be cited as the [Fisheries Act](#).

[Short title supplied by Commissioner during codification. This Chapter codifies [Parts III](#) and V of P.L. 1997-60]

§202. **Management.** Exclusive management and control over living and non-living resources within the Fishery Waters is vested in the Government. [P.L. 1997-60, §20.]

§203. Conservation, management and sustainable use of the fishery resources.

(1) The Authority shall ensure the long term conservation and sustainable use of the fishery resources, and to this end shall adopt management measures which promote the objective of optimum utilization.

(2) The Authority shall ensure that such management measures are based on the best scientific evidence available and designed to maintain or restore stocks at levels capable of producing maximum sustainable yield, as qualified by relevant environmental and economic factors, and taking into account fishing patterns, the interdependence of stocks and generally recommended international minimum standards.

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

(4) The Authority shall as appropriate adopt and apply the following general principles in relation to fisheries management:

(a) assess the impacts of fishing, other human activities and environmental factors on target stocks and species belonging to the same ecosystem or associated with or dependent upon the target stocks;

(b) adopt, where necessary, conservation and management measures for species belonging to the same ecosystem or associated with or dependent upon the target stocks, with a view to maintaining or restoring populations of such species above levels at which their reproduction may become seriously threatened;

(c) minimize pollution, waste, discards, catch by lost or abandoned gear, catch of non-target species and impacts on associated or dependent species, in particular endangered species, through measures including, to the extent practicable, the development and use of selective, environmentally safe and cost effective fishing gear and techniques;

(d) protect bio-diversity in the marine environment;

(e) take measures to prevent or eliminate over-fishing and excess fishing capacity and to ensure that levels of fishing effort do not exceed those commensurate with the sustainable use of fishery resources;

(f) take into account the interests of artisanal and

subsistence fishers;

(g) collect and share, in a timely manner and in accordance with fisheries management agreements and international law, complete and accurate data concerning fishing activities on, inter alia, vessel position, catch of target and non-target species and fishing effort, as well as information from national and international research programs;

(h) promote and conduct scientific research and develop appropriate technologies in support of fishery conservation and management;

(i) implement and enforce conservation and management measures through effective monitoring, control and surveillance. [P.L. 1997-60, §21.]

§204. Objectives and purposes for fisheries management and development. The Authority shall take into account the following objectives and purposes management decisions, including the approval of fisheries management and development plans in accordance with this Title:

(a) establish priorities for the utilization of the fisheries resources which will provide the greatest overall benefits to the country;

(b) ensure the proper conservation of the fishery resource through the prevention of over-fishing and the taking of a precautionary approach toward harvesting when information and data about the fishery resource are lacking;

(c) base management practices on sound management principles and the best scientific information available, to be gained through national and international research programs;

(d) minimize, to the extent practicable, fishing gear conflicts among users; and

(e) develop the fisheries sector in accordance with the best interests of the country. [P.L. 1997-60, §22.]

§205. Authority may determine total level of fishing and allocations of fishing rights.

The Authority may determine the total allowable level of fishing with respect to any stock of fish subject to the provisions of this Title or as provided in a fisheries management agreement and in so doing shall take into account the requirements of [Sections 203](#) and [204](#). [P.L. 1997-60, §23.]

§206. Authority

Authority may determine participatory rights in fishery.

(1) The Authority may determine participatory rights in the fishery, such as allocations of allowable catch or levels of fishing effort. Allocations of such participatory rights:

(a) shall favor domestic based fishing vessels;

(b) may include restrictions as to vessel type, gear type, seasons of operations, areas in which the fishing can take place, or any other restriction relevant to fisheries conservation and management.

(2) In determining the allocations of participatory rights in the fishery, the Authority shall take into consideration the following in addition to requirements of Subsection (2):

(a) the extent to which there has been compliance with the laws of the Republic of the Marshall Islands and any relevant access agreements;

(b) whether and the extent to which there has been cooperation with the Republic of the Marshall Islands in, and substantial contributions to, the conservation, management and development of fisheries and fishery research;

(c) whether there is an undertaking to invest in the fisheries sector in such a manner as to bring significant benefit to the Republic of the Marshall Islands;

(d) whether there has been cooperation with the Republic of the Marshall Islands in enforcement of the provisions of this Title and the regulations issued under its authority, including flag State enforcement and provision of information required for the conservation and management of fish;

(e) whether there has been compliance, while in the waters under national jurisdiction of any other State in the region, with the terms of any fisheries management agreement to which the Republic of the Marshall Islands is party and which is implemented in such other State; and

(f) such other matters as it may deem appropriate. [P.L. 1997-60, §24.]

§207. Designated fisheries - fishery management and development plans. (1) The Authority may authorize a fishery as a designated fishery where, having regard to scientific, economic, cultural, environmental and other relevant considerations, it is determined that the fishery:

(a) is important to the national interest; and

(b) requires management and development measures for effective conservation and optimum utilization.

(2) The Director shall prepare, keep under review and be responsible for the implementation of a plan for the management and development of each designated fishery in the fishery waters.

(3) The Director shall prioritize, prepare, keep under review and be responsible for the implementation of plans for the management and development of other fisheries in the fishery waters as may be practicable, with the objective of developing additional plans on an annual basis for all fisheries in the fishery waters.

(4) Each fishery plan shall:

(a) identify the fishery resource and its characteristics, including its economic and social value and interrelationship with other species in the ecosystem;

(b) assess the present state of exploitation of the fishery resource and potential average annual yields;

(c) specify the objectives to be achieved in the management and development of the fishery;

(d) determine the maximum sustainable yield, taking into account the best information on all relevant biological, social, economic and other applicable factors;

(e) determine conservation and management measures taking into account the advice of any Local Government Council in relation to fish within five miles of the baseline from which the territorial sea is measured, and information described in the preceding subparagraphs;

(f) where there is insufficient information and advice to determine conservation and management measures, identify a plan for determining such information and take appropriate interim measures, applying precautionary principles;

(g) specify the measures, if any, to be taken to promote the development of local fisheries;

(h) determine the amount of the fishery resource, if any, to be made available to licensed fishing vessels;

(i) specify the conservation and management measures to be enforced to protect the fishery resource from over-exploitation;

(j) specify the research necessary to enhance management of the fishery;

(k) specify the information and other data required to be given or reported for effective management and development; and

(l) take into account any relevant traditional fishing methods or principles.

(5) The Director shall, as appropriate, during the preparation of each fishery plan, carry out consultations.

(a) with Local Government Councils, organizations, authorities and persons affected by the fishery plan; and

(b) wherever practicable with the appropriate fisheries management authorities of other countries in the region, and in particular with those sharing the same or inter-related stocks, with a view to ensuring the harmonization of their respective fishery management and development plans.

(6) In order to assess and recommend appropriate management, development and conservation measures for any fishery plan, the Director may reasonably require any person to furnish all relevant data and information, including fishing time and effort, landing, processing, sales and other related transactions.

(7) Each fishery plan or review shall enter into force upon the written approval of the Authority.

(8) Upon the approval of each plan, such regulations as may be necessary for its implementation shall be promulgated. [P.L. 1997-60, §25.]

§208. Conservation and management measures. (1) The Authority may take measures for the conservation and management of fish in the Fishery Waters. Such measures shall be based on a precautionary approach consistent with national and international standards applicable in the Republic of Marshall Islands, and shall include:

(a) declaring an open or closed season for any specified area and for:

(i) any fish;

(ii) any period of time or all times;

(b) prohibiting the taking, from any area, of fish that are less or greater than a specified size or dimension;

(c) prohibiting the disturbance or interference with the breeding or nesting area of any fish in a specified area

during any specified period of time;

(d) prohibiting the taking of fish from any area.

(i) by a specified method, gear, equipment or instrument;

(ii) by a specified class of persons;

(iii) by a specified class of vessels;

(e) prohibiting the landing, sale, display or offering for sale, transporting, receiving or possession of fish;

(f) prohibiting any fishing operation or activity related to fishing which may, in his or her opinion, have an adverse effect on the marine or aquatic resources;

(g) declaring that any specified area is a protected area as a:

(i) marine park;

(ii) marine reserve;

(iii) site of special scientific or historic interest.

(2) The Director shall by written notice inform the relevant Local Government Council about any prohibition issued in respect of its waters.

(3) No person shall store or otherwise keep any fish taken in contravention of Subsection (1) paragraphs (a), (b), (d) or (f) unless:

(a) that person is in possession of a permit issued by the Director allowing such storage; or

(b) a period of 5 days has not yet elapsed from the end of an open season or start of a closed season. [P.L. 1997-60, §26.]

§209. Protection of certain species. (1) The Minister may, by proclamation, declare any fish as protected which are designated as endangered by international agreement on advice from the Director.

(2) The Authority may make regulations regarding the management of the species protected under this Section. [P.L. 1997-60, §27.]

§210. Protection and promotion of artisanal fisheries. The Authority may, in the implementation of this Title and after consultation with the appropriate Local Government Council, take such action as it deems necessary to protect and promote artisanal fisheries, including:

(a) exempting indefinitely, or for such period of time as it may specify, such fisheries from any requirement concerning licensing and the payment of fees under this Title;

(b) promoting the establishment and development of fishing, processing or marketing cooperative societies;

(c) establishing reserved areas for artisanal fishing;

(d) giving priority to artisanal fisheries in the allocation of fishing licenses or quotas; and

(e) such other action as it deems necessary for the protection and promotion of such fisheries. [P.L. 1997-60, §28.]

§211. Fisheries Exclusion Zone. (1) The Authority may declare by regulation Fisheries Exclusion Zones for the purposes of designating an area for the exclusive or predominant use for subsistence artisanal and/or sport fishing.

(2) In declaring a Fisheries Exclusion Zone under Subsection (1), the Authority shall have regard to the:

- (a) state of the resource;
- (b) sustainable use of the fishery;
- (c) benefits to the peoples of the Republic of the Marshall Islands; and
- (d) regional and international commitments.

(3) Any person who engages in prohibited fishing in a fisheries exclusive zone commits an offense and upon conviction shall be fined not more than \$100,000. [P.L. 1997-60, §29.]

§212. Cooperation on high seas fishing for highly migratory fish stocks. The Authority shall, in respect of highly migratory fish stocks which occur both in the Fishery Waters and in the high seas, and without prejudice to the sovereign rights of the Republic of the Marshall Islands within its Fishery Waters, have authority to cooperate with States fishing on the high seas in respect of such stocks for the purpose of achieving compatible conservation and management measures in accordance with the United Nations Agreement, and in so doing shall take into account:

- (a) the conservation and management measures adopted and applied in the Fishery Waters, and ensure that measures established in respect of such stocks for the high seas do not undermine the effectiveness of such measures;
- (b) previously agreed measures established and applied for the high seas in accordance with the United Nations Convention in respect of the same stocks by the Republic of the Marshall Islands and States fishing on the high seas;
- (c) previously agreed measures established and applied in accordance with the United Nations Convention in respect of the same stocks by a sub-regional or regional fisheries management organization or arrangement;
- (d) the biological unity and other biological characteristics of the stocks and the relationships between the distribution of the stocks, the fisheries and the geographical particularities of the region concerned, including the extent to which the stocks occur and are fished in areas under national jurisdiction;
- (e) the respective dependence of the Republic of the Marshall Islands and the States fishing on the high seas on the stocks concerned;
- (f) that such measures do not result in harmful impact on the living marine resources as a whole. [P.L. 1997-60, §30.]

§213. Consultation on international fisheries management. (1) The Minister shall consult, as appropriate, with foreign governments and in particular with governments of countries sharing the same or interrelated stocks with a view to:

- (a) ensuring the closest practicable harmonization or coordination of their respective fisheries management and development plans and regulations;
 - (b) ensuring harmonization in the collection of statistics, the carrying out of surveys and procedures for assessing the state of the fisheries resource in the region;
 - (c) providing, as appropriate, for the formulation of regional fisheries management and development plans including monitoring, control and surveillance, for the allocation of fishing effort and catch among states sharing the same stocks, and for taking regional or joint conservation measures;
 - (d) establishing, on a bilateral or regional level as appropriate, arrangements regarding fishing rights with other States in accordance with the provisions of the relevant Fisheries Management and Development Plan.
- (b)
- (2) Consultations under this Section may be undertaken either directly with the Governments or persons concerned, or through existing appropriate regional or sub-regional organizations, or international agencies. [P.L. 1997-60, §31.]

§214. Fishing with poisons or explosives.

(1) No person shall:

- (a) use, permit to be used or attempt to use any:
 - (i) chemical, poison or noxious substance or material whether of manufactured or natural origin;
 - (ii) dynamite or explosive substance or device, for the purpose of killing, taking, stunning, stupefying or disabling fish or in any way rendering fish more easily caught;
- (b) carry, permit to be carried, possess or control any:
 - (i) chemical, poison or noxious substance or material whether of manufactured or natural origin;
 - (ii) dynamite or explosive substance or device, in circumstances which indicate the intention of its use for any of the purposes referred to in paragraph (a);
- (c) place in the water or assist in placing in the water any:
 - (i) chemical, poison or noxious substance or material whether of manufactured or natural origin;
 - (ii) dynamite, or any explosive substance or device, for any of the purposes referred to in paragraph (a).

(2) No person shall:

- (a) land, display for sale, sell, deal in, transport, receive or possess any fish or fish product taken by any means which contravenes this Section;
- (b) knowing or having reasonable cause to believe that any fish or fish product has been taken in contravention of this Section, fail or refuse to give, on request, to any authorized officer information regarding:

(i) any activity described in Subsection (1), or any support of or contribution to such activity;

(ii) the source of his supply of any fish or fish product referred to in subparagraph (a) of this Subsection.

(3) For the purposes of this Section, the terms 'poisonous', 'chemicals' and 'substance' include but are not limited to hypochlorous acid or any of its salts, including bleaches commonly sold under various trade names such as Clorox and Purex, and bleaching powders, preparations containing ratenone, tephrosin or plant material from *Barrington asiatica*, *coculuferrandianus*, *hura crepitans*, *piscidia erythrina*, *tephrosia purpurea* and *wikstremia*.

(4) A person who contravenes Subsection (1) or (2) commits an offense and upon conviction:

(a) in respect of Subsection (1)-(a)(i), (b)(i) and (c)(i) and Subsection (2):

(i) in respect of a citizen, shall be fined not more than \$10,000 or may be imprisoned up to three months, or both;

(ii) in respect of a non-citizen or a citizen acting on behalf of a corporate entity, shall be fined not more than \$250,000 or may be imprisoned up to six months, or both;

(b) in respect of Subsection (1)-(a)(ii), (b)(ii) and (c)(ii):

(i) in respect of a citizen, shall be fined not more than \$20,000 or may be imprisoned up to six months, or both;

(ii) in respect of a non-citizen or a citizen acting on behalf of a corporate entity, shall be fined not more than \$500,000 or may be imprisoned up to six months, or both.

(5) In any proceedings for any offense against this Section, a certificate in writing, issued under [Section 547](#) of Chapter 5 of this Title, stating the cause of death or injury of any fish, shall be prima facie evidence of that fact.

(6) For the purposes of this Section, any explosive, poison or other noxious substance found on board any fishing vessel shall be presumed to be intended for the purposes referred to in Subsection (1)(a) of this Section.

(7) All fish or fish products seized under this Section shall be confiscated, and any vessel or vehicle used to transport such fish or fish products may be confiscated, and disposed of in such manner as the Director determines. **[P.L. 1997-60, §32.]**

§215. Limitations on taking turtles. (1) No hawksbill turtles or sea turtles shall be taken or intentionally killed while on shore, nor shall their eggs be taken.

(2) No hawksbill turtle shall be taken or killed except for subsistence fishing and where its shell is at least twenty-seven inches when measured over the top of the carapace shell lengthwise.

(3) No green turtle shall be taken or killed except for subsistence fishing and where its shell is at least thirty-four inches when measured over the top of the carapace shell lengthwise.

(4) Notwithstanding any provisions of this Section, the taking of sea turtles and their eggs shall be allowed for scientific purposes when specifically authorized by the Authority.

(5) No person shall buy, sell, display for sale, offer for sale or otherwise market any turtle or turtle product.

(6) Any person who contravenes Subsections (1), (2), (3) or (5) commits an offense and upon conviction shall be fined not more than \$10,000 or may be imprisoned up to six months, or both. **[P.L. 1997-60, §33.]**

§216. Control of sponges. (1) No sponges artificially planted or cultivated shall be taken or molested, except by permission of the Authority.

(2) Any person who contravenes Subsection (1) commits an offense and upon conviction shall be fined not more than \$10,000 or may be imprisoned up to six months, or both. **[P.L. 1997-60, § 34.]**

§217. Control of *pinctada margaritifera* (black-lip mother of pearl oyster shell). (1) No *pinctada margaritifera*, commonly known as black-lip mother of pearl oyster shell, shall be taken from the first day of August to the thirty-first day of December inclusive; provided that at no time may any such shell be taken which is less than four inches in minimum diameter as measures across the nacre; and provided further that such shells of any size may be taken at any time for scientific purposes when specifically authorized by the Authority.

(2) Any person who contravenes Subsection (1) commits an offense and upon conviction shall be fined not more than \$10,000 or may be imprisoned up to six months, or both. **[P.L. 1997-60, §35.]**

§218. Prohibition of harvesting trochus except during open season. (1) Except as permitted by or under this Title, the taking or harvesting of trochus, or any intentional or reckless interference with the growth of trochus in the Fishery Waters is prohibited.

(2) The Authority may from time to time declare, in relation to any part of the Fishery Waters, an open season for trochus.

(3) A declaration under Subsection (2) of this Section shall be published widely in such ways as the Authority may direct.

(4) An open season with respect to any part of the Fishery Waters shall not exceed three months in any period of twelve months.

(5) The taking or harvesting of trochus is permitted in an open season only:

(a) by a citizen living in an area in which he or she has, in accordance with customary law, a right to fish;

(b) under a fishing license issued by the Authority that specifically authorizes the taking or harvesting of trochus;

(c) in respect of trochus whose shell is greater than three inches in diameter at the base, or such larger dimension as the Authority may require.

(6) The Director may at any time grant to any person a permit to remove and transport trochus from an area for the purpose of its introduction, transplanting or propagation in any other area, and no person shall remove or transport trochus for such purpose without a permit.

(7) If the Authority determines that any underwater

operations, or proposed underwater operations, that will or may interfere with a trochus bed are in the public interest, the Director may grant a permit for the removal and transplanting of the bed at the expense of the person conducting or desiring to conduct the underwater operations.

(8) No person shall acquire, accumulate or hold trochus or any part thereof for the purpose of sale, marketing or export without a permit issued by the Director which states the maximum tonnage to be sold or exported and the period of time during which such export is permitted.

(9) Any person who contravenes Subsection (1), (5), (6), or (8) commits an offense and upon conviction shall be fined not more than \$10,000 or may be imprisoned up to six months, or both, and in addition shall be liable for the market value of any trochus or part thereof held at the time of seizure, and such trochus or part thereof shall be forfeited. [P.L. 1997-60, §36.]

§219. Introduction of fish into Fishery Waters. (1) No person shall introduce any live fish into the Fishery Waters without a permit issued by the Director which includes quarantine approval.

(2) Any person who contravenes Subsection (1) commits an offense and upon conviction shall be fined not more than \$10,000 or may be imprisoned up to six months, or both, and in addition shall be liable for the extent of damage which may be caused by diseases in the Fishery Waters as a result of the introduction of live fish. [P.L. 1997-60, §37.]

§220. Prohibition of removal of fish from nets, traps, etc. (1) No person shall, within the Fishery Waters, remove a fish from a net, trap, pond, enclosure or storage device, unless he or she is the owner or is acting with the authority of the owner of such net, trap, pond, enclosure or storage device.

(2) No person shall destroy, damage or knowingly or intentionally impair the functioning of any net, trap, pond, enclosure or storage device which belongs to another person.

(3) A person who contravenes Subsection (1) or (2) commits an offense and upon conviction shall be fined not more than \$5,000, or be imprisoned up to 3 months, or both, and in addition a person who contravenes Subsection (2) shall be ordered to compensate the owner for the full amount of any such knowing or intentional impairment and lost fishing opportunity. [P.L. 1997-60, §38.]

§221. Protection of fish aggregating devices, artificial reefs, mooring buoys, floats, trays, etc.

(1) No person shall destroy, damage or take any part of a fish aggregating device, artificial reef, mooring buoy, float, tray or other device which belongs to another person or has been installed by the Authority or a Local Government Council.

(2) No person shall anchor or otherwise connect their vessel to a fish aggregating device, mooring buoy or float which belongs to another person or has been installed by the Government or a Local Government Council.

(3) No person shall, within the Fishery Waters, engage in fishing within 150 feet of a fish aggregating device or artificial reef belonging to another person unless he or she is a citizen resident in the area in which the fish aggregating device or artificial reef is deployed or located.

(4) Any person who contravenes Subsection (1) (2) or (3) commits an offense and upon conviction shall be fined not more than \$5,000 or be imprisoned up to three months, or both, and in addition may be ordered to pay full compensation for the destruction, damage or theft of a fish aggregating device, artificial reef, mooring buoy, float, tray or any part thereof. [P.L. 1997-60, §39.]

§ 222. Protection of fishing vessel or gear. (1) No person will recklessly, knowingly or intentionally take, damage or destroy any fish, fishing vessel or fishing gear belonging to another person.

(2) Any person who contravenes Subsection (1) commits an offense and upon conviction will be fined not more than \$5,000 or be imprisoned up to three months, or both, and in addition may be ordered to pay full compensation for the theft, damage to or destruction of such fishing vessels or gear. [P.L. 1997-60, §40.]

§223. Use or possession of prohibited fishing gear. (1) No person shall use for fishing or have on board a vessel in the Fishery Waters:

(a) any net, the mesh size of which does not conform to the minimum mesh size for that type of net as required or prescribed pursuant to this Title;

(b) any fishing gear which does not conform to standards required pursuant to this Title for that type of fishing gear;

(c) any fishing gear which is prohibited by this Title, including without limitation a driftnet.

(2) Any person who contravenes Subsection (1) commits an offense and upon conviction shall be fined not more than \$250,000, except in the case of a driftnet where the fine shall be not more than \$1,000,000. [P.L. 1997-60, §41.]

§224. Prohibition of driftnet fishing activities. (1) No vessel shall be used for driftnet fishing activities in the Fishery Waters.

(2) No vessel which holds a valid registration issued pursuant to the laws of the Republic of the Marshall Islands shall engage in driftnet fishing activities any place inside or outside the Fishery Waters.

(3) Where any fishing vessel is used in contravention of Subsection (1) or (2) the owner, charterer and master each commits an offense and upon conviction shall be fined not more than \$1,000,000.

(4) The operator of any vessel which contravenes Subsection (1) commits an offense and upon conviction shall be subject to a fine not exceeding \$500,000. [P.L. 1997-60, §42.]

PART II- TRADE, COMMERCIAL SALE, AND EXPORT

§225. Prohibition of trade in fish, fish products, or other marine resources.

(1) No person shall buy, sell, knowingly possess or otherwise trade in fish, fish products, or other marine resources obtained in contravention of this Title.

(2) Any person who contravenes Subsection (1) commits

an offense and upon conviction shall be fined not more than \$20,000, and in addition an amount equivalent to the current retail value of the fish, fish product or marine resource in the market for which it is destined, or be imprisoned up to six months, or both. [P.L. 1997-60, § 53.]

§226. Commercial sale of endangered species. (1) The Minister may, by proclamation, declare as endangered any fish which are designated as endangered by international agreement or by advice from the Board.

(2) No person shall land, display for sale, sell, deal in, transport, receive, buy or possess any fish declared as endangered in accordance with this Section.

(3) Any person who contravenes Subsection (2) commits an offense and upon conviction shall be fined not less than \$1,000 or not more than \$20,000, and in addition an amount equivalent to the current retail value of the fish or fish product in the market for which it is destined, or be imprisoned up to 6 months, or both. [P.L. 199 7-60, §54.]

§227. Export of live fish, fish product or other marine resources.

(1) No person shall:

(a) export any live fish, live rock or viable fish eggs or spawn taken from the Fishery Waters;

(b) export any fish or fish product caught in the Fishery Waters, unless it is exported for personal consumption by immediate family members, does not exceed a total of 100 pounds and is not intended for commercial resale;

without prior written permission of the Authority, or as may be otherwise required by the Authority or prescribed by regulation.

(2) Any person undertaking activities in contravention of Subsection (1) without written permission commits an offense and shall be fined not more than \$20,000, to which fine shall be added an amount equivalent to the current retail value of the fish or fish product in the market for which it is destined, or be imprisoned up to 6 months, or both. [P.L. 1997-60, §55.]

ANNEX ‘8’

TITLE 51.

MANAGEMENT OF MARINE RESOURCES

CHAPTER 4.

FISHING ACCESS AND LICENSING

ARRANGEMENT OF SECTIONS

Section

PART I - FOREIGN AND DOMESTIC BASED FISHING AND RELATED ACTIVITIES.

- §401. Short Title.
- §402. General Requirements. or restrictions on a license.
- §403. Access agreement required.
- §404. Fees for licenses for foreign fishing vessels and domestic based fishing vessels.
- §405. Access agreement; term of validity.
- §406. Access agreement; minimum terms.
- §407. Fisheries management agreements.
- §408. Implementation of multilateral access agreements, fisheries management agreements.
- §409. Transshipment.

PART II- LICENSES AND REGISTRATION

- §410. Licenses may be required.
- §411. Activities subject to licenses, authorization.
- §412. Fishing licenses required for domestic based and foreign fishing vessels.
- §413. License approval and issuance.
- §414. License Denial.
- §415. Suspension, revocation or imposition of conditions
- §416. Licenses- Period of Validity.
- §417. Licensing Period.
- §418. Fees and charges.
- §419. Observation of laws.
- §420. Reporting requirements.
- §421. Marine scientific research.
- §422. Fishing plans.
- §423. Mariculture and aquaculture
- §424. Registration of fishers and fishing vessels.
- §425. Fishing or other activity without or in Contravention of a license prohibited.

An Act to govern the issuance of fishing licensing, access agreements and matters related thereto.

Commencement: 13 October 1997
Source: P.L. 1997-60

PART I - FOREIGN AND DOMESTIC BASED FISHING AND RELATED ACTIVITIES

§401. Short Title.

This Chapter may be cited as the [Fishing Access and](#)

[Licensing Act.](#)

[Short title supplied by Commissioner during codification.]

§402. General Requirements.

(1) No person shall use a vessel for entering or remaining within the Fishery Waters in violation of any provision of this Title, any other law of the Republic of the Marshall Islands or an applicable access agreement unless the vessel is entering for innocent passage or force majeure in accordance with international law.

(2) Each foreign and domestic based fishing vessel in any place in the fisheries waters shall be operated in such a way that the activities of local and traditional fishermen and fishing vessels are not disrupted or in any other way adversely affected.

(3) Where any vessel is used in the contravention of Subsection (1), the operator of that vessel commits an offence and upon conviction shall be fined not more than \$1,000,000.

(4) Where any person contravenes Subsection (2), the operator of that vessel commits an offence, and shall be fined not more than \$500,000. [P.L. 1997-60, §56.]

§403. Access agreement required.

(1) No foreign or domestic-based fishing vessel shall be issued a license to fish in the Fishery Waters unless an applicable access agreement is in force, duly entered into by the Authority in accordance with this Title. [P.L. 1997-60, §57.]

§404. Fees for licenses for foreign fishing vessels and domestic based fishing vessels.

(1) Fees and other forms of compensation for the right to engage in fishing within the Fishery Waters by foreign and domestic based fishing vessels shall be established in access agreements entered into pursuant to [Section 403](#) of this Title.

(2) The Authority may accept all or a portion of the fee paid under an access agreement pending rebate under such conditions as the Authority may determine in writing or as may be prescribed by regulation, and when the Authority is satisfied that all conditions have been met.

(3) That portion of a fee that is subject to rebate shall be held in a separate trust account maintained by the Authority until the Authority determines whether the conditions have been met for rebate. [P.L. 1997-60, §58.]

§405. Access Agreement; term of validity.

(1) The term of validity of an access agreement shall not exceed ten years, and the length of the term shall be established taking into account the:

(a) likely compliance with the access agreement and this Title;

(b) potential economic benefits for the Republic of the Marshall Islands, and such term may be renewable subject to the approval of the Authority based on the performance of the other party based on the above criteria and such other requirements as the Authority may determine.

(2) Any access agreement whose validity exceeds one year shall include provision for annual review by the Authority.

(3) Any access agreement may be terminated by the Authority, according to its terms or upon substantial non-compliance by the other party with any requirement of the access agreement or this Title.

(4) Fishing under any access agreement may be suspended by the Authority upon a determination by the Authority, based on the best scientific information in the region, that continued fishing at current levels would seriously threaten the fish stocks.

(5) If fishing is suspended under Subsection (4), the Authority shall make every effort to accommodate the long-term interests of the party to the access agreement and shall rebate proportionately any fees paid for fishing during such suspension. [P.L. 1997-60, §59.]

§406. Access agreement; minimum terms.

All access agreements shall have the following minimum terms:

(1) The sovereign rights and exclusive fishery management authority of the Republic of the Marshall Islands within the Fishery Waters shall be recognized.

(2) The operator and each member of the crew shall comply with the applicable access agreement, this Title and all other applicable laws and regulations;

(3) The operator shall:

(a) provide an authorized observer, while on board the vessel, at no expense, with officer level accommodation, food and medical facilities;

(b) meet the following costs of the authorized observer:

(i) full travel costs to and from the vessel;

(ii) salary; and

(iii) full insurance coverage;

(c) display any license or license number issued for any such vessel pursuant to this Title or any other documentation as required by the Authority to be displayed under any access agreement in the wheelhouse of such vessel;

(d) ensure that such position-fixing and identification equipment as may be required by the Authority shall be installed and maintained in working order on each vessel:

(e) ensure that the vessel is marked and identified in accordance with the Food and Agriculture Organization of the United Nations (FAO) approved Standard Specifications for the Marking and Identification of Fishing Vessels;

(f) ensure the continuous monitoring of the international distress and calling frequency 2182 kHz (HF), or the international safety and calling frequency 156.8 MHz (channel 16, VHF-FM) to facilitate communication with the fisheries management, surveillance and enforcement authorities;

(g) ensure that a recent and up to date copy of the International Code of Signals (INTERCO) is on board and accessible at all times;

(h) ensure that the vessel is seaworthy and contains adequate life safety equipment and survival gear for each passenger and member of the crew;

(i) ensure that, promptly upon direction by the Authority, each vessel will have installed, maintained and fully operational at all times on board a vessel a transponder in accordance with Section 511 of this Title, and shall be responsible for all operational and maintenance costs of the transponder and cooperate fully with the Authority in their utilization;

(4) The party to the access agreement shall:

(a) for the duration of the access agreement, appoint and maintain an agent resident in the Republic of the Marshall Islands or establish and maintain a company registered in accordance with the laws of the Republic of the Marshall Islands, authorized to receive and respond to any legal process issued in the Republic of the Marshall Islands with respect to the owner or operator of the vessel, and shall notify the Republic of the Marshall Islands of the name and address of such agent, and any communication, information, document, direction, request or response to or from that agent or company shall be deemed to have been sent to, or received from such owner or operator;

(b) not exceed any allocation which may be established in any given licensing period in accordance with this Title;

(c) ensure compliance by each fishing vessel, its operator and crew members with the access agreement, all laws of the Republic of the Marshall Islands and the terms of the license;

(d) ensure compliance by each fishing vessel, its operator and crew members with sub-regional and regional conservation and management measures for highly migratory fish stocks;

(e) apply and enforce the relevant terms of any fisheries management agreement to which the Republic of Marshall Islands is party.

(5) Where the party to the access agreement is an association or other entity or person representing or otherwise acting on behalf of members or other persons, such association or entity or person shall be liable for the undischarged liabilities of its members or other persons arising out of:

(a) operations in the Fishery Waters under the access agreement; and

(b) the access agreement, including tees. [P.L. 1997-60, §60.]

§407. Fisheries management agreements.

(1) Fisheries management agreements may, at the Authority's discretion, include the following provisions, inter alia:

(a) authorization of a person, body or organization to perform functions required by a multilateral access agreement, including but not limited to the allocation, issuance and denial of fishing licenses valid in the region or part thereof, including the exclusive economic zone;

(b) an observer program;

(c) fisheries monitoring, control and surveillance;

(d) any other matter relating to fisheries management.
[P.L. 1997-60, §61.]

§408. Implementation of multilateral access agreements, fisheries management agreements.

(1) For the purpose of implementing a multilateral access agreement or fisheries management agreement the Authority may in writing:

(a) exempt any fishing vessel or class of fishing vessels holding a valid fishing license issued pursuant to a multilateral access agreement or fisheries management agreement from any requirement of this Title which is inconsistent with the terms of such agreement;

(b) implement the establishment of closed areas, closed seasons and such other management measures as may be agreed pursuant to a fisheries management agreement;

(c) authorize officers or observers designated pursuant to a fisheries management agreement to:

(i) enforce the provisions of this Title and any fisheries access agreement or fisheries management agreement on behalf of the Republic of the Marshall Islands; and

(ii) perform such duties and responsibilities as may be required by such agreement;

(d) prescribe or otherwise require the conditions to be observed by operators of fishing vessels exempted under paragraph (a) of this Subsection;

(e) prescribe or otherwise require the conditions to be observed by citizens and operators of fishing vessels registered in the Republic of the Marshall Islands for fishing outside the exclusive economic zone, in accordance with any access agreement or fisheries management agreement to which the Republic of the Marshall Islands may be party:

(3) Standing in the High Court of the Republic of the Marshall Islands shall be afforded to any authorized officer or authorized observer designated under a fisheries management agreement entered into pursuant to Subsection (1)(b) or (c) of this Section to bring action against any person or fishing vessel for any act or offense that is actionable under the law of the Republic of the Marshall Islands is a violation of an access agreement or fisheries management agreement pursuant to which the officer or observer was authorized which has occurred in the Fishery Waters or the high seas, notwithstanding the nationality of the authorized officer or authorized observer.
[P.L. 1997-60 §62.]

§409. Transshipment.

(1) The operator of a fishing vessel shall:

(a) not transship at sea under any circumstances;

(b) provide 72 hours notice to the Authority of a request to transship any or all of the fish on board and shall provide the name of the vessel, its international radio call sign, its position, the catch on board by species, the time and port where such transshipment is requested to occur and an undertaking to pay all fees required under the laws of the Republic of the Marshall Islands;

(c) only transship at the time and port authorized by the Director for transshipment; and

(d) submit full reports on transshipping on such forms as may be required by the Authority or prescribed by regulation.

(2) During transshipment in the Fishery Waters the foreign party and operator of each vessel shall comply with all applicable laws relating to protection of the environment, including without limitation, sewage holding tank requirements. [P.L. 1997-60, §63.]

[Section numbers 410-420 were 'Reserved' in the last revision. They have now been assigned to the succeeding provisions (sections) in Part II below.]

PART II- LICENSES AND REGISTRATION

§410. Licenses may be required.

(1) The Authority may require by decision of the Board or by regulation any person or class of persons or vessel, fishing vessel or class of fishing vessels to hold a license issued by the Authority for activities described in Section 411, in addition to the requirements in Section 412, but shall exempt from such requirement:

(a) any fishing vessel which holds a valid and applicable license issued pursuant to a multilateral access agreement to which the Republic of the Marshall Islands is party and which designates a licensing authority outside the Republic of the Marshall Islands;

(b) any citizen engaging in subsistence fishing.

(2) The Director shall by written notice inform a Local Government Council if a regulation promulgated pursuant to Subsection (1) applies to its waters.

(3) Any person who uses a vessel for which a license is required by the Authority under Subsection (1) without a valid and applicable license or in contravention of its terms or conditions, commits an offense and upon conviction shall be fined not more than \$100,000 or be imprisoned up to six months, or both. [P.L. 1997-60, §64.]

§411. Activities subject to licenses, authorization.

(1) The Director may issue licenses, in accordance with this Title, for the following activities in or associated with the Fishery Waters:

(a) fishing;

(b) transshipment, and other related activities;

(c) mariculture or aquaculture;

(d) the marketing and/or export of any fish or fish product taken from the Fishery Waters;

(e) fish processing;

(f) sport fishing;

(g) commercial pilot fishing;

(h) marine scientific research;

(i) exploration and exploitation of nonliving marine resources.

(2) The Director may issue licenses for fishing outside the Fishery Waters in respect of fishing vessels registered in

the Republic of the Marshall Islands, in accordance with this Title, international law and any international convention or other instrument having legal force to which the Republic of the Marshall Islands is party. [P.L. 1997-60, §65.]

§412. Fishing licenses required for domestic-based and foreign fishing vessels.

(1) No person may use a domestic-based or foreign fishing vessel for fishing in the Fishery Waters without a valid and applicable license issued in accordance with this Title.

(2) The operator or any fishing vessel which is used in the contravention of Subsection (1) commits an offense and upon conviction shall be liable to a fine not exceeding \$1,000,000. [P.L. 1997-60, §66.]

§413. License approval and issuance.

(1) The Authority shall be responsible for approving guidelines and/or promulgating regulations governing the issuance of licenses or authorizations pursuant to this Title.

(2) The Director or his designee shall be responsible for issuing all licenses or authorizations in accordance with this Title and guidelines issued under Subsection (1), except for licenses which may be required by a Local Government Council unless so requested in writing by such Council.

(3) The Director or his designee shall review each application submitted pursuant to this Title, and may, in his discretion, solicit views from appropriate persons in the Local Government Councils and other stakeholders in the fisheries sector, and hold public hearings where necessary.

(4) Applications for licenses shall be in such form as the Authority may require or as may be prescribed, and shall specify, inter alia:

(a) the name, call sign, country of registration number, regional register number, name and address of the operator, name of the vessel master, bank reference number;

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

(c) if applicable, the access agreement under which such license is sought; and such additional information as the Authority may require or as may be prescribed to implement and enforce the provisions of this Title.

(5) Licenses may be issued after application is made in accordance with this Title, and the required fee is paid.

(6) The Director may attach such conditions to a license as he thinks fit, and shall attach such terms and conditions as may be prescribed.

(7) The Authority may, by decision or regulation, require, inter alia:

(a) a form and procedures for application for a license;

(b) any conditions which may or shall be attached to a license;

(c) criteria for renewal, refusal, suspension or cancellation of a license;

(d) fees, royalties and other forms of payment for licenses;

(e) period of validity of licenses;

(f) requirements for the transfer of licenses;

(g) offenses, fines and penalties. [P.L. 1997-60, §67.]

§414. License Denial.

(1) The Director shall notify the applicant of the decision to issue or deny a license within a reasonable time of the date of receipt of the application.

(2) The Director may approve the application on such terms and conditions and with such restrictions as he or she deems appropriate.

(3) A license, or its renewal, may be denied where:

(a) the application is not in accordance with the requirements of this Title;

(b) the Director is satisfied that information required to be given or reported under this title is false, incomplete or misleading;

(c) the owner or charterer is the subject of proceedings under the bankruptcy laws of any jurisdiction or on reasonable grounds appears unable to meet any financial obligations which could arise from fishing activities and reasonable financial assurances determined by the Authority have not been provided;

(d) the fishing vessel required safety standards;

(e) the fishing vessel required markings;

(f) an operator of the vessel has contravened, or the vessel has been used for contravention of an access agreement, or has committed an offense against the laws of the Republic of the Marshall Islands,

(g) the Director determines that the issuance of a license would not be in the best interests of the Republic of the Marshall Islands.

(4) A license shall be denied:

(a) where the application is made in respect of a foreign fishing vessel, and such vessel does not have good standing on the Regional Register of Foreign Fishing Vessels maintained by the South Pacific Forum Fisheries Agency;

(b) where there has been a failure to satisfy a judgment or other final determination for breach of this Title or an access or fisheries management agreement entered into pursuant to this Title by the operator of the vessel in respect of which application for a license has been made, until such time as the judgment or other determination is satisfied, and provided that a subsequent change in ownership of a vessel shall not affect the application of this provision;

(c) where the Director determines it would be inconsistent with management measures implemented in accordance with this Title;

(d) where the required fees, royalties or other forms of compensation have not been paid in accordance with this Title and an applicable access agreement;

(e) where the Director determines that insurance requirements of this Title and/or any applicable access agreement are not fulfilled;

(5) No license shall be issued:

(a) authorizing fishing by foreign or domestic based vessels on, over or within one nautical mile of the edge of a coral reef that is wholly submerged at mean high tide within the Fishery Waters;

(b) authorizing fishing using a driftnet or other substantially similar method of catching fish;

(c) authorizing driftnet fishing activities.

(6) If the Director denies an application submitted by an applicant, he shall notify such applicant of the denial and the reasons therefor. The applicant may then submit a revised application taking into consideration the reasons for disapproval. The decision of the Director will then be final and binding. [P.L. 199 7-60, §68.]

§415. Suspension, revocation or imposition of conditions or restrictions on a license.

If any fishing vessel for which a license has been issued pursuant to this Title has been used in the commission of any act prohibited by this Title or other applicable law, an applicable access agreement, or any license issued in accordance with this Title, or if any fee or civil penalty, criminal fine or other determination imposed under this Title has not been paid within 30 days of the due date, the Director shall:

(a) revoke such license with or without prejudice to the right of any party involved to be issued a license for such vessel in any subsequent licensing period;

(b) suspend such license for a period of time it may deem appropriate; or

(c) impose additional conditions or restrictions on any such license. [P.L. 199 7-60, §69.]

§416. Licenses - Period of Validity.

(1) Subject to Subsection (2) and unless otherwise prescribed in accordance with this Title, every license issued or renewed under this Title shall, unless previously terminated, revoked or suspended in accordance with this Title, be valid for a period of one year, or such lesser period as may be specified, and shall not extend beyond the period of validity of an applicable charter agreement or access agreement.

(2) A license issued or renewed under this Title shall only be valid for the species of fish, the type of fishing gear or method of fishing, or such other activity in accordance with this Title, as may be specified in the license.

(3) Where a fishing vessel which is issued a license as a local fishing vessel or a domestic based fishing vessel becomes a foreign fishing vessel, the license shall automatically terminate.

(4) A license issued under this Title may be transferred in accordance with such conditions as may be prescribed by regulation or otherwise required by the Authority. [P.L. 1997-60, §70.]

§417. Licensing Period.

(1) The Authority shall establish an annual licensing period.

(2) The Authority shall determine the procedures for issuing and renewing licenses during such licensing period. [P.L. 1997-60, §71.]

§418. Fees and charges.

(1) There shall be payable in respect of every license issued under this Title fees, royalties or other forms of compensation, and a registration charge may also be payable upon application.

(2) The Authority shall determine the fees, royalties or other forms of compensation for licenses issued pursuant to this Title, and other charges it may require in relation to license administration.

(3) In determining the level of fees, royalties or other forms of compensation for licenses for fishing and related activities, the Board shall take the following, inter alia, into account:

(a) the value of the fish species being sought;

(b) the quantity of the species sought;

(c) the efficiency of the gear;

(d) alternative uses of the fishers resources;

(e) the cost of fishery management and development.

(f) the cost of observers;

(g) the development of the local fishery sector; and

(h) the cost of fisheries research, administration and enforcement.

(4) License fees may be classified, inter alia, according to the value of species sought, and the length overall, gross tonnage, type of gear or other method related to the harvesting potential of the vessel or fishing gear.

(5) In determining the fees for marine scientific research, the Authority shall take into account a research plan submitted by the applicant, and the long term value of such research to the management and development of any fishery in the exclusive economic zone.

(6) No license shall be issued pursuant to this Title unless the requisite fees, royalties, charges and other forms of compensation have been paid in accordance with this Title and an applicable access agreement. [P.L. 199 7-60, §72.]

§419. Observation of laws. Any license issued or authorization given under this Title shall not exempt a person from any legitimate requirement of a Local Government Council, or from any other law in force in the Republic of the Marshall Islands. [P.L. 199 7-60, §73.]

§420. Reporting requirements.

(1) The operator of each foreign and domestic based fishing vessel issued a permit or which is permitted to fish pursuant to an access agreement, and such other fishing vessels as the Authority may require, shall make such reports which may be required by the Authority, which shall include:

(a) at all times while the vessel is in the Fishery Waters, causing to be maintained in the English language in ink a fishing log in a form supplied or approved by the Authority, and shall enter the following information relating to the activities of the vessel on a daily basis:

(i) the gear type used;

(ii) the noon position of the vessel and, where applicable, the set position and time or the number of hooks and sea surface temperature;

(iii) the species of fish taken and the size and quantity of each species by weight or number as may be specified in the form;

(iv) the species of fish returned from the vessel to the sea, the reason for discard, the quantity of each species by weight or number as may be specified in the form;

(v) such other information as the Authority may require or prescribe by regulation, or as may be required by an applicable access agreement or fisheries management agreement;

(b) reporting information in a format approved or supplied by the Authority, by telex or facsimile relating to the position of, and catch on board, the vessel at the following times:

(i) at least 24 hours prior to the estimated time of entry into and departure from the exclusive economic zone;

(ii) each Wednesday while in the exclusive economic zone;

(iii) at least 24 hours prior to the estimated time of entry into or departure from port; and

(iv) upon entry and departure from a closed area;

(c) ensuring that any information or data which may be required to be transmitted by a transponder is transmitted continuously, accurately and effectively to the designated receiver;

(d) providing such daily information relating to high seas fishing during the course of a fishing trip involving fishing in the Fishery Waters as and in the form the Authority may require pursuant to any fisheries management agreement and to give effect to the duty in international law to cooperate in the conservation and management of highly migratory fish stocks;

(e) certifying that information provided pursuant to subparagraphs (a) -(c) is true, complete and accurate.

(2) The operator referred to in Subsection (1) shall provide reports required under subparagraphs (a) and (d) and post the requisite forms to the Authority by registered airmail within fourteen days following the date of completion of the off-loading operation.

(3) The Authority may require, by written notice or

regulation, such other reports in respect of any vessel as may be necessary:

(a) for the conservation and management of marine resources, including for related activities;

(b) to implement or enforce the provisions of this Title and any access agreement or fisheries management agreement.

(4) Any person who contravenes Subsection (1) or (2) commits an offense and upon conviction shall be fined not more than \$10,000 or be imprisoned up to six months, or both. [P.L. 1997-60, §74.]

§421. Marine scientific research.

(1) No person shall, without a license issued by the Director:(a) undertake marine scientific research in the Fishery Waters;

(b) rake samples from the Fishery Waters for the purposes of marine scientific research.

(2) A license for purposes described in Subsection (1) shall only be issued to a person or persons engaged in bona fide scientific research as demonstrated by their employment by, affiliation with or sponsorship by a duly constituted governmental agency, an accredited educational organization or other recognized scientific research institution.

(3) Any person or entity undertaking marine scientific research in the Fishery Waters shall:

(a) submit such information to the Director or his designee as may be requested or as may be prescribed by regulation, including a copy of all records and reports of activities of the vessel in the Fishery Waters, and a final report including full conclusions upon completion of the research;

(b) be accompanied by and train such observer, fisheries officer or other person or persons the Director may assign during the research at no expense to the Government.

(4) The harvest of any marine life from the Fishery Waters not required for further research purposes shall be donated to the Authority for distribution to government institutions or charitable organizations or otherwise disposed of pursuant to the terms of the license.

(5) Any person who contravenes Subsections (1), (3) or (4) commits an offense and upon conviction shall be fined not more than \$250,000. [P.L. 1997-60, §75.]

§422. Fishing plans. (1) The Authority may require fishing plans to be attached to the application for a license, and shall require plans in respect of applications for mariculture, exploratory fishing and marine scientific research licenses, including but not limited to the information required in Subsections (2), (3) and (4).

(2) The plan for mariculture or aquaculture shall include the following:

(a) a description of the site by reference to area, fish species and cultivation methods;

(b) the objectives to be achieved in the plan,

(c) the means by which these objectives are to be achieved by outlining the strategy to be followed:

(d) performance criteria or other means of evaluating the effectiveness of the plan;

(e) an Environmental Impact Assessment of the proposed development;

(f) evidence of consultation with all those who may be directly affected including the Local Government Council exercising jurisdiction over the area of the designated fishery;

(g) any applicable evidence of entitlement to the intended site, including ownership, a lease or the agreement of any resource owner, for the area to be used for mariculture;

(h) any applicable evidence of a license or agreement of any Local Government Council for mariculture or aquaculture within the area of its fishery.

(3) The plan for commercial pilot fishing shall include the following:

(a) a description of the fishery by reference to area, fish species, fishing methods and the present state of exploitation;

(b) the objectives to be achieved in the commercial pilot fishing or research plan;

(c) the means by which these objectives are to be achieved by outlining the strategy to be followed;

(d) performance criteria or other means of evaluating the effectiveness of the plan;

(e) the limitations, if any, to be applied to fishing operations;

(f) the schedule for regularly reporting its findings to the Director.

(4) The plan for marine scientific research shall include the following:

(a) a description of the marine scientific research to be undertaken, qualifications of each person involved and a description of the equipment to be used;

(b) the objectives to be achieved;

(c) performance criteria or other means of evaluating the effectiveness of the research plan;

(d) any effect the marine scientific research may have on the waters of a Local Government Council and resources therein, including any resources which may be taken during the course of the research;

(e) the limitations, if any, to be applied to the scope of the research;

(f) the schedule for regularly reporting its findings to the Director. [P.L. 1997-60, §76.]

§423. Mariculture and aquaculture.(1) Mariculture and aquaculture operations shall be carried out in accordance with such conditions as may be required by the Director or otherwise prescribed, including those relating to:

(a) the quality, control and use of water;

(b) land or marine use and siting of aquaculture or mariculture facilities;

(c) fish species to cultivate;

(d) construction of ponds;

(e) pollution and related matters;

(f) importation of live fish;

(g) protection against poaching;

(h) dangerous chemicals. [P.L. 1997-60, §77.]

§424. Registration of fishers and fishing vessels.(1) The Authority may, by regulation, require that any fisher or class of fishers, or any vessel or class of vessels be registered with the Authority.

(2) Where a regulation has been issued under Subsection (1), the Director shall maintain a register. [P.L. 1997-60, §78.]

§425. Fishing or other activity without or in contravention of a license prohibited.

(1) Where a person or vessel engages in fishing or any other activity described in this Chapter for which a license is required, without a license or in contravention of any of its terms or conditions, that person, or, in the case of a vessel, the operator commits an offense and upon conviction shall be fined:

(a) in respect of a citizen not acting on behalf of a business enterprise, not less than \$500 and not more than \$10,000, or imprisonment up to 3 months, or both;

(b) in respect of all others, or a person or persons acting for a business enterprise, not less than \$5,000 and not more than \$750,000, and such person shall not be permitted to engage in fishing or the relevant activity, or if a license has been issued it will be suspended, for a period of at least three months from the date of conviction.

(2) Each day of a continuing violation under this Section shall be considered a separate offense.

(3) Where an offense against this Title has been committed by any person or board or employed on a fishing vessel, the master of the fishing vessel shall also be guilty of the same offense and shall be subject to applicable fines and penalties.

(4) The provisions of this Section shall not apply to a person who is exempt from obtaining a license under this Title. [P.L. 1997-60, §79.]

ANNEX ‘9’

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CHAPTER 5.

FISHERIES ENFORCEMENT

ARRANGEMENT OF SECTIONS

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This Chapter codifies Parts VIII, IX, X and XI of P.L. 1997-60.

Commencement: 13 October 1997
Source: P.L. 1997-60

PART I - MONITORING, CONTROL AND SURVEILLANCE

§501. Short Title.
This Chapter may be cited as the [Fisheries Enforcement Act](#).
[Short title supplied by Commissioner during codification.]

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

- (a) monitoring, control and surveillance of all fishing operations within the Fishery Waters; and
- (b) the enforcement of this Title.

(2) The Authority shall, as appropriate, involve participation by relevant Government departments or offices in fisheries enforcement.

(3) The Authority may authorize other entities, officials or persons to perform fisheries enforcement functions. [P.L. 1997-60, §80.]

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

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

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

(4) Any person or class of persons appointed as authorized

officers pursuant to Subsection (2) may perform duties which include:

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

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

(5) Any authorized officer is deemed to be an authorized inspector for purposes of the United Nations Agreement. **[P.L. 1997-60, §812.] [The following parenthetical remarks were included in the Act following this Section: [Subsection (1) is similar to existing section 50(1). Subsection (2) is the same as existing 50(2), and subsection (3) implements Article VI (4) and (5) of the Niue Treaty. Subsection (4) clarifies subsection 2, and subsection (5) refers to Article 21 of the UN Agreement]**

§504. Powers of Authorized Officers. (1) For the purposes of enforcing this Title, any authorized officer may:

(a) stop, board, remain on board and search any vessel in the Fishery Waters he or she reasonably believes is a fishing vessel, and any fishing vessel registered under the laws of the Republic of the Marshall Islands outside the Fishery Waters, and stop and search any vessel, vehicle or aircraft he or she reasonably believes may be transporting fish or engaging in other activities relating to fishing;

(b) require the master or any crew member or other person aboard to inform him of the name, call sign and country of registration of the vessel and the name of the master, owner, charterer and crew members;

(c) examine the master or any crew member or other person aboard about the cargo, contents of holds and storage spaces, voyage and activities of the vessel;

(d) make such examination and inquiry as may appear necessary to him concerning any vessel, vehicle or aircraft in relation to which any of the powers conferred by this Subsection have been or may be exercised and take samples of any fish or fish product found therein;

(e) require to be produced, examine and take copies of any license, logbook, record or other document required under this Title or concerning the operation of any vessel, vehicle or aircraft;

(f) make an entry dated and signed by him or her in the logbook of such vessel, vehicle or aircraft;

(g) require to be produced and examine any fish, fishing gear or appliance or explosive, poison or other noxious substance;

(h) give directions to the master and any crew member of any vessel, vehicle or aircraft stopped, boarded or searched as may be necessary or reasonably expedient for any purpose specified in this Title or to provide for the compliance of the vessel, vehicle or aircraft, or master or

any crew member with the conditions of any license;

(i) endorse any license; and

(j) arrest any person who assaults him or her in the exercise of his or her duties under this Title.

(2) Where an authorized officer has reasonable grounds to believe an offense against this Title is being or has been committed, he or she may without a warrant:

(a) enter, inspect and search any premises, other than premises used exclusively as a dwelling-house, in which he or she has reasonable grounds to believe an offense has been or is being committed or fish taken illegally are being stored;

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

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

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

(e) seize;

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

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

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

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

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

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

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

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

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

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

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

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

(b) exercise any other lawful authority. [P.L. 1 997-60, §82.]

§505. Requirements for seized vessels, etc.

(1) Where any vessel is seized under this Title:

(a) the master and crew shall take it to such port as the authorized officer shall designate, being the nearest or most convenient port;

(b) the master shall be responsible for the safety of the vessel and each person on board the vessel, including the crew, himself and any authorized officer until the vessel arrives at the designated port.

(2) If the master fails or refuses to take the seized vessel to the designated port then an authorized officer or person called upon to assist him may do so.

(3) If a vessel is taken to port in the circumstances described in paragraph (2), no claim whatever may be made against any authorized officer or the Government of the Republic of the Marshall Islands in respect of any damage, injury, loss or death occurring while the vessel is being so taken, subject to the provisions of this Title.

(4) The provisions relating to vessels and masters described in Subsections (1)-(3) apply mutatis mutandis to vehicles and aircraft seized in accordance with this Title, and their drivers and pilots respectively.

(5) The authority which seized the vessel shall be responsible for its custody until final judgment or other determination, unless the Attorney-General directs otherwise. [P.L. 199 7-60, §83.]

§506. Removal of parts from seized vessels, etc. (1) An authorized officer may remove any part or parts from any seized vessel, vehicle or aircraft held in the custody of the Government for the purpose of immobilizing that vessel, vehicle or aircraft.

(2) Any part or parts removed under Subsection (1) shall be kept safely and returned to the vessel, vehicle or aircraft upon its lawful release from custody.

(3) No person shall knowingly possess or arrange to obtain any part or parts removed under Subsection (1) or knowingly possess or arrange to obtain or make any replacement or substitute part or parts for those removed under Subsection (1) or shall fit or attempt to fit any part or parts or any replacement or substitute part or parts to a vessel, vehicle or aircraft held in the custody of the Government of the Republic of the Marshall Islands.

(4) Any person who contravenes Subsection (3) commits an offense and shall be fined not more than \$20,000 or may be imprisoned up to six months, or both. [P.L. 1997-60, §84.]

§507. Appointment of Authorized Observers. (1) The Director may appoint in writing any person to be an authorized observer for the purposes of this Title.

(2) Any observer authorized pursuant to an access agreement or fisheries management agreement to which the Republic of the Marshall Islands is party, who is not a citizen or has not been appointed in accordance with Subsection (1), shall have such rights and privileges of a citizen as may be required for the performance of his or her duties, and all provisions of this Title relating to authorized observers shall be applicable to such persons. [P.L. 199 7-60, §85.]

§508. Duties to Authorized Observers. (1) Any person on board any vessel with a valid and applicable license issued or recognized pursuant to this Title shall permit any authorized observer to board and remain on such vessel for the purposes of carrying out his or her duties and functions.

(2) The operator and each member of the crew of such vessel shall allow and assist any authorized observer to carry out all his or her duties and functions, including to:

(a) board such vessel for scientific, compliance monitoring and other functions, at such time and place as the Director may require;

(b) have full access to and the use of facilities and equipment on board the vessel which the authorized observer may determine is necessary to carry out his or her duties, including:

(i) full access to the bridge, navigation charts, fish on board and areas which may be used to hold, process, weigh and store fish;

(ii) full access to the vessel's records, including its logbooks and documentation for the purposes of records inspection and copying;

(iii) full access to fishing gear on- board;

(iv) reasonable access to navigation equipment and radios;

(c) take and remove from the vessel reasonable samples for the purposes of scientific investigation, and other relevant information;

(d) take photographs of the fishing operations, including fish, fishing gear, equipment, charts and records, and remove from the vessel such photographs or film as he or she may have taken or used on board the vessel;

(e) send or receive messages by means of the vessels communications equipment;

(f) carry out all duties safely;

(g) disembark at such time and place as the Director may require or in accordance with an applicable access agreement.

(3) The operator shall provide the authorized observer, and any authorized officer forced by circumstances to stay on

board the vessel for a prolonged period of time, while on board the vessel, at no expense, with food, accommodation and medical facilities equivalent to that accorded to officers.

(4) In addition to the requirements of Subsection (3), the Authority may require the operator to pay in full the following costs of the authorized observer:

(a) travel costs to and from the vessel;

(b) such salary as may be notified by the Director, being the full amount of such salary;

(c) full insurance coverage.

(5) Any operator of any vessel with a valid license issued under this Title shall allow and assist any authorized observer to have full access to any place within the Republic of the Marshall Islands where fish taken in the fishery waters is unloaded or transshipped, to remove reasonable samples for scientific purposes and to gather any information relating to fisheries in the fishery waters.

(6) Any person who contravenes Subsection (1), (2), (3) or (5) commits an offense and upon conviction the shall be fined not more than \$50,000 or be imprisoned for up to six months, or both. [P.L. 199 7-60, §86.]

§509. Duties to Authorized Officers and Authorized Observers.

(1) The master and each crew member of any fishing vessel, the driver of any vehicle and the pilot and crew of any aircraft shall immediately comply with every instruction or direction given by an authorized officer or authorized observer as appropriate, and facilitate safe boarding, entry and inspection of the vessel, vehicle or aircraft and any fishing gear, equipment, records, fish and fish products.

(2) Every person commits an offense who:

(a) assaults, obstructs, resists, delays, refuses boarding to, intimidates or fails to take all reasonable measures to ensure the safety of or otherwise interferes with an authorized officer, or authorized observer in the performance of his or her duties;

(b) incites or encourages any other person to assault, resist or obstruct any authorized officer or authorized observer while carrying out his or her powers or duties, or any person lawfully acting under the authorized officer's orders or in his or her aid;

(c) uses threatening language or behaves in a threatening or insulting manner or uses abusive language or insulting gestures towards any authorized officer or authorized observer while in the execution of his or her powers of duties, or any person lawfully acting under an authorized officer's orders or in his or her aid;

(d) fails to comply with the lawful requirements of any authorized officer or observer;

(e) fails to take all reasonable measures to ensure the safety of an authorized officer or authorized observer as appropriate in the performance of his or her duties.

(f) furnishes to any authorized officer or authorized observer any particulars which, to his knowledge are false

or misleading in any respect;

(g) personates or falsely represents himself or herself to be an authorized officer or authorized observer or who falsely represents himself or herself to be a person lawfully acting under an authorized officer's orders or in his or her aid;

(h) personates or falsely represents himself or herself to be the master or other officer of a fishing vessel;

(i) resists lawful arrest for any act prohibited by this Title;

(j) interferes with, delays or prevents by any means, the apprehension or arrest of another person having reasonable grounds to believe that such person has committed an act prohibited by this Title;

(k) is in breach of any other duty to an authorized officer or authorized observer required under this Title; and upon conviction shall be fined not more than \$100,000 and may be imprisoned up to six months, or both.

(4) For the purposes of Subsection (2), any person who does not allow any authorized officer, or any person acting under his or her orders or in his assistance, or an authorized observer to exercise any of the powers conferred on such person by this Title shall be deemed to be obstructing that officer, person or observer.

(5) Every person who, being a master, owner, charterer, agent or company established under the laws of the Republic of the Marshall Islands of a fishing vessel which transports an authorized officer, inspector or observer outside the fishery waters and causes him or her to disembark outside the territory or jurisdiction of Republic of the Marshall Islands, commits an offense and shall be jointly and severally liable on conviction to a fine not exceeding \$50,000 plus all costs of repatriation including board and lodging while out of Republic of the Marshall Islands and direct transportation to Republic of the Marshall Islands. [P.L. 1997-60, §87.]

§510. Identification of Authorized Officers and Authorized Observers.

An authorized officer or authorized observer, when exercising any of the powers conferred by this Title, shall on request produce identification to show he or she is an authorized officer or authorized observer under this Title. [P.L. 1997-60, §88.]

§511. Transponders may be required.

(1) The Authority may require as a condition of fishing in the Fishery Waters that the operator of any vessel:

(a) installs on such vessel at its own expense a transponder designated by the Authority;

(b) maintains such transponder in good working order at all times while in the fishery waters or such other area as may be agreed or designated.

(2) Any machine:

(a) aboard a vessel automatically feeding or inputting position fixing information or data into a transponder shall be judicially recognized as notoriously accurate;

(b) used in conjunction with a transponder for the purpose of ascertaining or obtaining information or data need not be judicially recognized as notoriously accurate.

(3) All information or data obtained or ascertained by the use of a transponder, shall be presumed, unless the contrary is proved, to:

(a) come from the vessel so identified;

(b) be accurately relayed or transferred; and

(c) be given by the master, owner and charterer of the fishing vessel;

and evidence may be given of information and data so obtained or ascertained whether from a printout or visual display unit.

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

(5) Any person may give a certificate stating:

(a) his or her name, address and official position;

(b) he or she is competent to read the printout or visual display unit of any machine capable of obtaining or ascertaining information from a transponder;

(c) the date and time the information was obtained or ascertained from the transponder and the details thereof;

(d) the name and call sign of the vessel on which the transponder is or was located as known to him or her or as ascertained from any official register, record or other document; and

(e) a declaration that there appeared to be no malfunction in the transponder, its transmissions or other machines used in obtaining or ascertaining the information.

(6) [Section 548](#) shall apply to a certificate given under this Section as if it had been a certificate given under [Section 547](#) and any reference therein to [Section 547](#) shall be read as a reference to this Section.

(7) Any person who intentionally, recklessly or unintentionally destroys, damages, renders inoperative or otherwise interferes with a machine aboard a vessel which automatically feeds or inputs information or data into a transponder, or who intentionally feeds or inputs information or data into a transponder which is not officially required or is meaningless commits an offense and upon conviction shall be fined not more than \$100,000 or may be imprisoned up to six months, or both. **[P.L. 1997-60, §89.]**

§512-520. Reserved.

PART IX - MISCELLANEOUS

§521. Information and documentation to be true, complete and accurate.

(1) Every person shall promptly give any information required under this title, including records of any kind and information requested by an authorized officer or other

officer or official carrying out duties under this title.

(2) Any information required under this title shall be true, complete and accurate, and the Director shall be notified immediately of any change in circumstances which has the effect of rendering any such information or documentation false, incomplete or mislead.

(3) Any permit, registration or other document required to be obtained under this title shall be obtained and held in its original, complete and accurate form as required under this title, and no such document shall be altered after its issuance or used by any person other than its legal holder.

(4) Any person who contravenes Subsections (1) (2) or (3) commits an offense and upon conviction shall be fined not more than \$10,000, or be imprisoned up to six months, or both. **[P.L. 1997-60, §90.]**

§522. Stowage of Gear.

(1) All fishing gear on board any fishing vessel in any place the Fishery Waters where it is not permitted to fish or which has taken its allocation of fish, shall be stowed in such a manner as it shall not be readily available for use for fishing or as may be prescribed.

(2) The operator of any fishing vessel used in contravention of Subsection (1) commits an offense and upon conviction shall be fined not more than \$100,000. **[P.L. 1997-60, §91.]**

§522. Fish samples.

(1) Any person in possession or apparent possession of any fish or fish products shall, when requested by any authorized officer or authorized observer to take fish samples, immediately give such reasonable samples as may be required for the purposes of this Title without payment of any kind for such samples.

(2) Any person who contravenes Subsection (1) commits an offense and upon conviction shall be fined up to \$5,000 or be imprisoned up to three months, or both. **[P.L. 1997-60, §92.]**

§524. Contamination of the Fishery Waters.

(1) No person shall directly or indirectly contaminate the Fishery Waters in any way, including by the discharge of any substance or by any act or omission that is likely to cause damage to or deterioration in the quality of the marine resources.

(2) For the purposes of this Section, the following is presumed to cause damage to or deterioration in the quality of the marine resources:

(a) non-biodegradable trash or debris;

(b) the discharge of a poison, chemical or noxious substance, including but not limited to oil, petroleum, solvents, metals or sewage;

(c) the introduction of disease to the Fishery Waters.

(3) Any person who contravenes Subsection (1) commits an offense and upon conviction shall be fined up to \$500,000 and in addition the Court may order that such person shall be liable for the costs of any clean-up or

damage arising from such contamination. [P.L. 1997-60, §93.]

§525. Liability of Operator.

In any proceedings under this title, the act or omission of any crew member of a fishing vessel or in association with a fishing vessel shall be deemed to be that of the operator of that fishing vessel. [P.L. 1997-60, §94.]

§526. Civil liability of officers of companies.

(1) Except as further provided in this Section, each officer of a partnership, corporation, firm, company or any other business enterprise engaged in activities governed by this title shall be personally liable for any violation of or offense committed under this title by any member or employee.

(2) It shall be an affirmative defense to liability under this Section for the officer to prove by a preponderance of the evidence that he or she used due diligence to secure compliance with the title or that the violation or offense was committed without that officer's knowledge, consent, collusion or collaboration. [P.L. 1997-60, §95.]

§527. Application of other laws.

No permit issued under this title shall relieve any fishing vessel or its operator or crew of any obligation or requirement imposed by other laws, including those concerning navigation, customs, immigration or health, unless so indicated in those laws. [P.L. 1997-60, §96.]

§528. Application of laws of other States.

(1) It shall be unlawful for any person to import, export, transport, sell, receive, acquire or purchase any fish or fish product taken, possessed, transported or sold in violation of any law or regulation of another State upon implementation, on a reciprocal basis, of a fisheries management agreement between the Government and such other State or States, in which such activities are agreed to be unlawful.

(2) The Authority shall implement the fisheries management agreement described in Subsection (1) by regulation, and may require, inter alia, record keeping and reporting for each day of fishing activity, whether the fishing took place in the jurisdiction of the Fishery Waters or not. [P.L. 1997-60, §97.]

§529. Subsequent offenses.

Any person who commits the same offense against this Title more than once shall:

(a) be required to pay the maximum fine required under this Title for the second and any subsequent offenses;

(b) have any applicable license or permit suspended for a period up to six months. [P.L. 1997-60, §98.]

§530. Banning Order.

In addition to any other fine or penalty provided under this Title, the Court may order any person to be banned from fishing in the Fishery Waters for a period up to three years if that person has committed multiple offenses against this

Title. [P.L. 1997-60, §99.]

NB: [Section numbers 531-540 and 554-560 were 'Reserved' in the last revision. These numbers have now been assigned to the succeeding provisions of this Act, to conform to the sequence above (Rev.2003)]

PART X - JURISDICTION, LEGAL PROCEEDINGS AND EVIDENCE

§541. Jurisdiction of the Court.

(1) Any act or omission in contravention of any of the provisions of this Title committed:

(a) by any person within the Fishery Waters;

(b) outside the Fishery Waters by any citizen or person ordinarily resident in Republic of the Marshall Islands; or

(c) by any person on board any fishing vessel registered in the Republic of the Marshall Islands; shall be dealt with and judicial proceedings taken as if such act or omission had taken place in Republic of the Marshall Islands within the jurisdiction of the High Court of the Republic of the Marshall Islands.

(2) Where an authorized officer is exercising any powers conferred on him outside the fishery waters in accordance with this Title, any act or omission of any person in contravention of any of the provisions of this Title, shall be deemed to have been committed within the Fishery Waters.

(3) Notwithstanding any provision of any other law of Republic of the Marshall Islands, an information or complaint in respect of any offense against this Title may be filed at any time within two years of the commission of the offense.

(4) The Court may at any time enter restraining orders or prohibitions; issue warrants, process in rem or other processes; prescribe and accept satisfactory bonds or other security; and take such other actions as are in the interests of justice. [P.L. 1997-60, §100.]

§542. Civil Proceedings.

(1) Any person who contravenes this Title shall be liable for a civil penalty if the Attorney-General determines in writing that no criminal proceedings have been or will be instituted for the same contravention.

(2) The amount of the civil penalty shall not exceed the maximum amount of the fine prescribed in this Title, and each day of a continuing violation shall be considered a separate offense.

(3) In determining the amount of such penalty, the Court shall take into consideration the nature, circumstance, extent and gravity of the prohibited act or acts committed and, with respect to the violators, the degree of culpability, any history of previous offenses relating to fishing and such other matters which may be relevant.

(4) It shall be the duty of the Attorney-General to initiate all proceedings under this Section and to recover the amount imposed as a civil penalty. [P.L. 1997-60, §101.]

§543. Adjudication Proceedings.

(1) The Director may, after consultation with and the consent of the Attorney-General, proceed administratively against any person or business enterprise in violation of this Title.

(2) The decision to proceed administratively for any violation of this Title shall be made within 48 hours of the issuance of a notice of violation by the Director or his designee in consultation with the Attorney-General.

(3) If the person or business enterprise admits in writing to the violation, the Director may handle this matter under the Summary Administrative Proceedings provisions in Section 544.

(4) If the person or business enterprise denies the violation, the Director shall, after consultation with and the consent of the Attorney-General, proceed to determine the violation in an adjudicatory administrative procedure, provided that if the Attorney-General denies consent to the administrative handling of the violation the Director shall refer the matter for prosecution.

(5) If there is a decision to handle the matter in an adjudicatory administrative procedure, the person upon whom the notice of violation is served shall be given the notice of the adjudicatory hearing and shall have right to appear, be heard, produce evidence and to counsel retained at his or her own expense.

(6) The Director shall set an adjudicatory administrative hearing for the violation within 48 hours of the decision to proceed administratively.

(7) The Authority may promulgate regulations regarding the conduct of the proceedings. [P.L. 1997-60; §102.]

§544. Summary Administrative Proceedings.

(1) Subject to Subsection (4) the Director may, where:

(a) he or she has determined that any person has violated this Title; and

(b) such person has, in writing:

(i) admitted to having committed such violation; and

(ii) consented to summary administrative proceedings after being fully informed about these proceedings,

dispose of such violation by accepting on behalf of the Government from such person an Administrative Penalty, the amount of which shall not exceed the maximum fine or penalty required under this Title, plus the fair market value of any fish caught illegally.

(2) Where Summary Administrative Proceedings have been initiated under this Title, the person who admits to having committed the offense under Subsection (1)(b), shall:

(a) not engage in fishing or carry out any other activity in the fishery waters until the amount of the penalty has been paid in full;

(b) be deemed to have consented to any seizure which took place in accordance with this Title in relation to the offense subject to the Summary Administrative Proceedings, and to have waived any right to a probable cause hearing.

(3) Summary Administrative Proceedings shall be null and void if the full amount of the penalty as determined by the Director under Subsection (1) or (2) is not paid within 3 days of notification of such penalty assessment to the person subject to the proceedings, and the matter shall immediately revert to a court of competent jurisdiction.

(4) In Summary Administrative Proceedings for any violation, the Director shall take into account any report which may be prepared by the Attorney-General as to the details of the offense or offenses and applicable fine or penalty levels.

(5) On payment of the penalty in full under this Section, the Director may order the release of any article seized under this Title or the proceeds of sale of such article on such conditions as he or she may determine.

(6) Summary Administrative Proceedings for any violation shall, except as provided in this Title for subsequent offenses, be satisfied upon the payment of one half of the maximum fine set for such violation, and notified in writing, under the signature of all parties, to the Court.

(7) The Director may order that any item used or involved in respect of the offense be seized, confiscated or forfeited, but shall not impose a term of imprisonment in Summary Administrative Proceedings.

(8) Any decision taken or order given by the Director pursuant to this Section is final and binding.

(9) Any person who engages in fishing or other activity proscribed by Subsection (2) while prohibited from so doing commits an offense.

(10) Any person who violates a valid order pursuant to the terms of this Chapter commits an offense. [P.L. 1997-60, §103.]

§545. Liability for non-payment of penalties.

All pecuniary penalties not specifically designated as fines and all forfeitures incurred under or imposed pursuant to this Title, and the liability to forfeiture of any article seized under the authority thereof, and all rents, charges, expenses and duties and all other sums of money payable under this Title may be sued for, determined, enforced and recovered by suit or other appropriate civil proceedings in the name of the Director as the nominal plaintiff; and all such proceedings shall be deemed to be civil proceedings; and the fact that a bond or other security has been paid shall not be pleaded or made use of in answer to or in stay of any such proceedings. [P.L. 1997-60, §104.]

§546. Liability for loss or damage.

A person who commits an offense against this Title may, upon conviction, be liable for any loss or damage caused by the offense and the amount of the loss of such damage may be awarded by the court as restitution in addition to, and recovered in the same manner as a fine. [P.L. 1997-60, §105]

§547. Certificate evidence.

The Director or any person designated in writing by him may give a certificate stating that:

(a) a specified vessel was or was not on a specified date or dates a local fishing vessel or a foreign fishing vessel;

(b) a specified vessel or person was or was not on a specified date or dates the holder of any specified license, authorization or certificate of registration;

(c) an appended document is a true copy of the license or certificate of registration for a specified vessel or person and that specified conditions were attached to such document;

(d) a particular location or area of water was on a specified date or dates within the fishery waters, or within a closed, limited, restricted or in any other way controlled area of the fishery waters, or an area of the fishery waters subject to specified conditions;

(e) an appended chart shows the boundaries on a specified date or dates of the fishery waters, territorial sea, closed or limited areas or other areas or zones delineated for any specified purpose;

(f) a particular item or piece of equipment is fishing gear;

(g) the cause and manner of death of or injury to any fish,

(h) an appended document is a true copy of an approved charter agreement, an access agreement or fisheries management agreement;

(i) a call sign, name or number is that of or allotted under any system of naming or numbering of vessels to a particular vessel;

(j) a particular position or catch report, a copy of which is appended, was given in respect of a specified vessel. **[P.L. 1997-60, §106.]**

§548. Validity and procedures for certificates.

(1) Unless the contrary is proved, a document purporting to be a certificate given under Section 547 shall be deemed to be such a certificate and to have been duly given.

(2) Where a certificate issued under Section 547 is served upon a defendant seven or more days before its production in court in any proceedings under this Title, the certificate shall, unless the contrary is proved, be sufficient evidence of all the facts averred in it.

(3) Where a certificate issued under Section 547 is served upon a defendant fourteen or more days before its production in court and the defendant does not, within seven days of the date of service, serve notice of objection in writing upon the prosecutor, then the certificate shall, unless the court finds the defendant is unduly prejudiced by any failure to object, be conclusive proof of all the facts averred in it.

(4) Where any objection is notified under Subsection (3) the certificate shall, unless the contrary is proved, be sufficient evidence of all the facts averred in it.

(5) Any certificate issued under Section 547 shall be titled 'Certificate Made Under Section 547, Marine Resources Act'.

(6) Any omission from or mistake made in any certificate issued under Section 547 shall not render it invalid unless the Court considers such omission or mistake is material to any issue in the proceedings concerned, or the defendant is unduly prejudiced thereby.

(7) Where in any proceedings a certificate made under Section 547 is produced to the Court, the prosecution shall

not be obliged to call the maker of the certificate and the Court shall, where material, rely on the facts therein unless the contrary is proved. **[P.L. 1997-60, §107.]**

§549. Certificate as to the location of a vessel.

(1) Where in any proceedings under this Title the place or area in which a vessel is alleged to have been at a particular date and time or during a particular period of time is material to an offense charged then a place or area stated in a certificate given by an authorized officer or authorized observer shall be evidence, unless the contrary is proved, of the place or area in which the vessel was at the date and time or during the period of time stated.

(2) An authorized officer shall in any certificate made in Subsection (1) state -

(a) his or her name, address, official position, country of appointment and provision under which he or she is appointed;

(b) the name and, if known, call sign of the fishing vessel concerned;

(c) the date and time or period of time the vessel was in the place or area;

(d) the place or area in which it is alleged the vessel was located;

(e) the position fixing instruments used to fix the place or area stated in (d) and their accuracy within specified limits;

(f) a declaration that he checked the position fixing instruments a reasonable time before and after they were used to fix the position and they appeared to be working correctly; and

(g) if a position fixing instrument which is not judicially recognized as notoriously accurate or a designated machine is used, a declaration that he checked the instrument as soon as possible after the time concerned against such instrument.

(3) Section 548 shall apply to a certificate given under this Section as if it had been a certificate given under Section 547 and any reference therein to Section 547 shall be read as a reference to this Section.

(4) For the purposes of this Title 'authorized officer' shall include surveillance officers and those charged with similar responsibilities in other countries. **[P.L. 1997-60, §108.]**

§550. Photographic Evidence.

(1) Where a photograph is taken of any fishing or related activity and simultaneously the date and time and position from which the photograph is taken are superimposed upon the photograph, or the date, time and position are certified on the photograph by an authorized officer and observer, then it shall be presumed unless the contrary is proved that the photograph was taken on the date, at the time and in the position so appearing.

(2) The presumption set out in Subsection (1) shall arise only if:

(a) the camera taking the photograph is connected directly to the instruments which provide the date, time and

position concerned; and

(b) the photograph was taken by an authorized officer or an authorized observer.

(3) Any authorized officer or authorized observer who takes a photograph of the kind described in Subsection (1) may give a certificate appending the photograph stating:

(a) his or her name, address, official position, country of appointment and authority under which he or she is appointed;

(b) the name and call sign, if known, of any fishing vessel appearing in the photograph;

(c) the names of the camera, watch or clock or other instruments supplying the date and time and the position fixing instrument and a declaration that he checked those instruments a reasonable time before and after the taking of the photograph and that they all appeared to be working correctly;

(d) the matters set out in Subsection (2)(a);

(e) the accuracy of the fixing instrument used within specified limits;

(f) the maximum possible distance and the direction of the subject of the photograph away from the camera at the time the photograph was taken.

(4) Section 548 shall apply to a certificate given under this Section as if it had been a certificate given under Section 547 and any reference therein to Section 547 shall be read as a reference to this Section. [P.L. 1997-60, §109.]

§551. Presumptions.

(1) All fish found on board any fishing vessel which has been used in the commission of any offense under this Title shall be presumed to have been caught during the commission of that offense, unless the contrary is proved.

(2) Where, in any legal proceedings under this Title, the place in which an event is alleged to have taken place is in issue, the place stated in the relevant entry in the logbook or other official record of any enforcement vessel or aircraft as being the place in which the event took place shall be presumed to be the place in which the event took place, unless the contrary is proved.

(3) Prima fade evidence of an entry in a logbook or other official record of an enforcement vessel or aircraft may be given by the production of a written copy or extract of the entry certified by an authorized officer as a true copy of accurate extract.

(4) Where in any legal proceedings relating to an offense under this Title:

(a) an authorized officer gives evidence of reasonable grounds to believe any fish to which the charge relates were taken in a specified area of the fishery waters;

(b) the Court considers that, having regard to that evidence the grounds are reasonable: all the fish shall be presumed to have been so taken, unless the contrary is proved.

(5) Where in any legal proceedings for an offense under this Title:

(a) an authorized officer gives evidence of reasonable grounds to believe that any fish to which the charge relates were taken by the use of a driftnet;

(b) the Court considers that, having regard to the evidence, the grounds are reasonable; all the fish shall be presumed to have been so taken, unless the contrary is proved.

(6) Where any information is given in respect of a fishing vessel under this Title or an access agreement in relation to any fishing activity of a foreign fishing vessel, it shall be presumed to have been given by the master, owner and charterer of the vessel concerned, unless it is proved it was not given or authorized to be given by any of them.

(7) Any entry in writing or other mark in or on any log, chart or other document required to be maintained under this Title or used to record the activities of a foreign fishing vessel shall be deemed to be that of the master, owner and charterer of the vessel.

(8) Any position fixing instrument on board a vessel or aircraft used for the enforcement of this Title shall be presumed to be accurate.

(9) For the purposes of this Section, a position fixing instrument shall be deemed to be any device which indicates the location of a vessel, including but not limited to any satellite navigation system or global positioning system. [P.L. 1997-60, §110.]

§552. Burden of Proof.

(1) Where, in any proceedings under this Title, a person is charged with having committed an offense involving an act for which a license or other permission is required, the burden shall be on that person to prove that at the relevant time the requisite license or permission was held.

(2) Where a person is charged with the contravention of Section 521, the burden shall be on that person to prove that the information given was true, complete and correct. [P.L. 1997-60, §111.]

§553. Destruction of Evidence.

(1) No person shall destroy, throw over- board, conceal or abandon any fish, fish product, fishing gear, net or other fish appliance, record, document, electric shock device, explosive, poison or other noxious substance, or any other thing with intent to avoid seizure or the detection of an offense against this Title.

(2) Any person who contravenes Subsection (1) commits an offense and upon conviction shall be fined not more than \$50,000 or may be imprisoned up to six months, or both. [P.L. 1997-60, §112.]

§§ 554 -560. Reserved.

PART XI - FORFEITURE AND DISPOSITION OF SEIZED OR CONFISCATED PROPERTY

§561. Forfeiture of property.

(1) Any fishing vessel including its fishing gear, furniture, appurtenances, stores, cargo and aircraft, and all or part all or part of any fish, fish products, fishing gear, vehicle or aircraft used in or connected with the commission of any act prohibited by this Title, and where any fish seized in connection with the offense have been sold, the proceeds of the sale of the fish, shall be subject to forfeiture to the Government of the Republic of the Marshall Islands pursuant to a civil proceeding under this Section.

(2) The High Court of the Republic of the Marshall Islands shall have jurisdiction, upon application by the Attorney-General or the Director on behalf of the Republic of the Marshall Islands to order any forfeiture authorized under Subsection (1).

(3) If a judgment is entered for the Government of the Republic of the Marshall Islands in a civil forfeiture proceeding under this Section, the Attorney-General shall seize any property or other interest declared forfeited to the Government of the Republic of the Marshall Islands, which has not previously been seized pursuant to this Title.

(4) The forfeited item or items may be sold and the proceeds deposited in the Fisheries Enforcement and Development Fund in accordance with this Title, and any remainder may be deposited into the General Fund of the Republic of the Marshall Islands and distributed in accordance with Subsection (5).

(5) Fifty percent of the revenues from fines and forfeitures shall be distributed to the local government council affected.

(6) Pending completion of the civil forfeiture proceeding, the item or items subject to forfeiture, or any part thereof, may be released at the discretion of the court upon deposit with the court of a satisfactory bond, surety or other security at least equal to the fair market value of the seized property. Exoneration of such bond, surety or other security shall be conditional upon return of the released property to the appropriate court upon order, without any impairment of its value, or by paying the monetary value of the released property upon order of the Court. Such bond, surety or other security shall be forfeited in the event that any condition is breached as shall be determined by the Court, and judgment shall be recoverable by the Court against the principal of any surety for any such breach.

(7) In the event there is an appeal from an order for forfeiture, the Court may continue any such bond, surety or other security deposited in accordance with Subsection (6) during the pendency of the appeal and any retrial or rehearing on remand or may require additional security to be deposited with the Court. [P.L. 1997-60, §113.]

§562. Disposition of seized or confiscated fish or fish products.

(1) The Director or his designee may sell any perishable fish or fish products which have been seized or confiscated pursuant to this Title. If he or she made all reasonable efforts to sell them but was unable to do so, or where they are unfit to be sold, he or she may dispose of them as he or she may think fit. The proceeds of any sale shall be deposited in trust with the Court pending the final disposition of any civil forfeiture proceeding.

(2) The Director shall notify the owner or apparent owner of the perishable goods seized of the sale, and such owner or his or her nominee may be present at the sale. [P.L. 1997-60, §114.]

§563. Disposition of forfeited or seized goods.

(1) Notwithstanding any other provision of this Title, any vessel, vehicle, aircraft or other item ordered to be forfeited under this Title may be disposed of in such manner as the Director may decide after the expiration of the time provided for the filing of a Notice of Appeal.

(2) Any vessel, vehicle, aircraft or other item seized under this Title but not forfeited in any legal proceedings may be held by the Government of the Republic of the Marshall Islands until all fines, orders for costs and penalties imposed under this Title have been paid and failing payment within the time allowed be sold and the balance of the proceeds returned to the owner or apparent owner in accordance with this Title after deduction of all fines, orders for costs, penalties imposed under this Title and costs of sale. [P.L. 1997-60, §115.]

§564. Unlawful removal of item in custody.

(1) When any vessel, vehicle, aircraft or other item held or forfeited under this Title has been unlawfully removed from the custody of the Republic of the Marshall Islands, it shall be liable to seizure at any time within the jurisdiction of the Republic of the Marshall Islands.

(2) No person shall remove any vessel, vehicle, aircraft or other item held under this Title in custody whether or not he or she knew that the vessel, vehicle, aircraft or other item was held in custody.

(3) Any person who contravenes Subsection (2) commits an offense and upon conviction shall be fined not more than \$100,000 and shall be liable for the full market value of the vessel, vehicle, aircraft or other item. [P.L. 1997-60, §116.]

§565. Liability for property in custody.

(1) The Government shall not be liable to any person for any loss, damage or deterioration in the condition of any vessel, vehicle, aircraft, fishing gear or other property which is in its custody under this Title, and all costs of maintaining such property while in custody including full insurance coverage shall, unless otherwise provided, be borne by the operator upon a finding pursuant to this Title that such property was used in or connected with a violation of this Title.

(2) Any person who does not maintain properly in accordance with Subsection (1) commits an offense and upon conviction shall be fined not more than \$500,000. [P.L. 1997-60, §117.]

§566. Release of Seized Goods.

(1) The Court may, on application, order the release of any fishing vessel, vehicle, aircraft or other items seized under this Title on receipt of such bond or other form of security as it may determine.

(2) In determining the value of the bond or other form of security, the Court shall have regard to the aggregate amount of the value of the property to be released, an estimated total fine or other penalty provided for the offenses charged or likely to be charged and the costs the prosecution would be likely to recover if a conviction were entered, and may set the value at such aggregate amount.

(3) Notwithstanding the provisions of Subsection (2), the

amount determined by the Court under this Section shall not be less than the fair market value of the property to be released or the aggregate minimum fine or penalty for each offense charged, whichever is greater.

(4) Where any vessel, vehicle, aircraft or other item seized is released upon the lodging of a bond or other form of security under Subsection (1), the court shall in the order state separately the sums which are attributable to the property to be released, the total fine or fines and the likely costs.

(5) The release of any bond or other form of security under this Section shall be conditional upon:

(a) a finding by the Court that the vessel, vehicle, aircraft or other item has not been used in or connected with in the commission of an offense under this Title; or

(b) where the Court finds that the vessel, vehicle, aircraft or other item has been used in or connected with the commission of an offense under this Title:

(i) payment in full within 30 days of the judgment of the Court of any fine imposed by the Court and any costs ordered to be paid by the Court; and

(ii) where the Court so orders, delivery to the Court of the vessel, including its fishing gear, furniture, appurtenances, stores and cargo, and of any fish ordered to be forfeited without any impairment of their value, or payment of the monetary value thereof as determined by the Court.

(6) Nothing in Subsection (1) shall require a Court to release any vessel, vehicle, aircraft or other item if it might be required as an exhibit in court proceedings or is reasonably required for any further investigations of offenses against this Title. [P.L. 1997-60, §118.]

§567. Holding of seized goods.

(1) Any vessel, vehicle, aircraft or other item seized under this Title or any bond or other security or net proceeds of any sale in respect thereof shall be held by the Government pending the outcome of any legal proceedings under this Title or until it is decided not to file an information or complaint, and any penalties imposed under this Title have been fully paid.

(2) Where any vessel, vehicle, aircraft or other items seized under this Title, or any bond, security or net proceeds of sale in respect thereof is not forfeited or applied in the discharge of any fine, order for costs or penalty imposed under this Title, it shall be made available for collection by the registered owner or his or her nominee or, in the absence of such person, the person who appears entitled to it.

(3) Where any vessel, vehicle, aircraft or other item has been released upon the lodging of a bond or security an order for forfeiture shall, unless the court for special reasons fixes a smaller sum, operate as an order for forfeiture of the bond or security.

(4) Where any vessel, vehicle, aircraft or other items has been released upon the lodging of a bond or security, the Court may order any convicted defendant and the owner of the vessel, vehicle, aircraft or other item concerned, whether or not he is a defendant, to pay the difference

between the bond or amount lodged in respect of the forfeited property and the aggregate value of the forfeited property. [P.L. 1997-60, §119.]

§568. Application of bond, etc.

(1) Any bond, security or net proceeds of sale held in respect of any vessel, vehicle or aircraft or other item shall be applied as follows and in this order:

(a) the discharge of any forfeiture ordered under this Title;

(b) the payment of all fines or penalties for offenses against this Title or penalties imposed under this Title arising out of the use of or in connection with the vessel, vehicle, aircraft or other item;

(c) the full satisfaction of all costs involved in maintaining and keeping secure the vessel and its equipment during legal proceedings;

(d) the discharge of all orders for costs in proceedings under this Title arising out of the use of or in connection with the vessel, vehicle, aircraft or other item;

(e) return as provided in this Title. [P.L. 1997-60, §120.]



ANNEX '11'
REPUBLIC OF

Marine Notice

THE MARSHALL ISLANDS

No. 1-005-1

**OFFICE OF THE
MARITIME ADMINISTRATOR**

Rev. 12/09

**TO: ALL SHIPOWNERS, OPERATORS, MASTERS AND OFFICERS OF MERCHANT SHIPS,
AGENTS AND RECOGNIZED ORGANIZATIONS**

SUBJECT: Consolidated List of Fees and Charges for Official Documents and Services.

PURPOSE:

This notice updates the regulated publication of fee structure for Official Documents and Services rendered by the Administration under the authority granted to the Maritime Administrator in Sections 111, 205 and 206 of the Maritime Administration Act and in accordance with Regulation 1.05.1 of the Maritime Regulations. This Notice supersedes Rev. 3/09 and reflects a change to section 11.3 on the number of inspections for Passenger Vessels.

APPLICABILITY:

The Notice is for the information of all owners and potential owners and operators of Marshall Islands flag vessels and all seafarers having or intending to obtain Marshall Islands seafarers documentation for service aboard Marshall Islands flag vessels.

REQUIREMENTS:

The fees in the following Sections are to be remitted by check or bank draft payable to "*The Trust Company of the Marshall Islands, Inc.*" in U.S. dollars and drawn on a U.S. bank or the U.S. branch of an international bank. Wire transfers are also acceptable. The most convenient office of Marshall Islands Maritime and Corporate Administrators, Inc. may be contacted for wire transfer instructions. Fees may also be paid by credit card, using form TCMI-02M (attached to the end of this notice), or on-line at www.register-iri.com. Please send check or credit card information to the following address:

The Trust Company of the Marshall Islands, Inc.
P.O. Box 2095
Reston, Virginia 20195-0095 USA

For vessels coming into the registry, two (2) fee option schedules (A & B) are available. Schedule A fees are the standard fees payable for the registration of a vessel in the Marshall Islands provided the owner chooses to register the vessel based on this schedule. Schedule B fees are based on a sliding scale for various tonnage categories and also provides a fleet discount structure. Schedule B is not available for yacht registrations. There is a Tonnage Tax Calculator available on our website to assist owners in determining which option is better for their particular situation.

1.0 Initial Registration Fees – Schedule A

- | | | |
|-----|---|-----------|
| 1.1 | Initial Registration Fee per vessel | US\$2,500 |
| 1.2 | Bareboat Charter Registration Fee per vessel..... | US\$2,500 |

2.0 Initial Registration Fees – Schedule B

- | | | |
|-----|---|-----------|
| 2.1 | Initial Registration Fee per vessel (excluding yachts): | |
| .1 | For vessels of 2,500 Net Tons (NT) or less | US\$2,500 |

.2	For vessels of 2,501 NT to 15,000 NT	US\$5,000
.3	For vessels of 15,001 NT to 35,000 NT	US\$10,000
.4	For vessels of 35,001 NT to 50,000 NT	US\$15,000
.5	For vessels over 50,000 NT	US\$20,000
2.2	A discount of one-third (1/3) off the Initial Registration Fee will be available to owners under the following circumstances:	
a)	Registration of a vessel that is five (5) years of age or less from date of first construction or that has undergone a major conversion within the past five (5) years.	
b)	Registration of three (3) or more vessels at the same time that are fifteen (15) years of age or less or at least an irrevocable written commitment to register three (3) or more such vessels within a calendar year.	
c)	This discount will be increased to fifty percent (50%) for an owner registering ten (10) or more vessels that are fifteen (15) years of age or less at the same time or submitting an irrevocable written commitment to register ten (10) or more such vessels within a calendar year.	
3.0	<u>Initial Registration Fees – Commercial Yachts</u>	
3.1	Commercial Yachts	US\$1,500
4.0	<u>Re-Registration Fees</u>	
4.1	Re-registration Fee per vessel (irrespective of Schedule A or B)	US\$1,500
4.2	Yachts	US\$1,500
4.3	Annual fees for re-registered vessels remain the same as established at initial registration.	
5.0	<u>Annual Tonnage Taxes – Schedule A</u>	
5.1	Commercial Vessels, Annual Tonnage Tax per net ton	US\$0.20
•	The minimum Annual Tonnage Tax payable shall not be less than	US\$500
6.0	<u>Annual Tonnage Taxes – Schedule B</u>	
6.1	Annual tonnage tax per vessel (excluding yachts):	
.1	For vessels of 2,500 Net Tons (NT) or less	US\$500
.2	For vessels of 2,501 NT to 5,000 NT	US\$0.20 per NT
.3	For vessels of 5,001 NT to 25,000 NT	US\$0.17 per NT
.4	For vessels of 25,001 NT to 50,000 NT	US\$0.15 per NT
.5	For vessels over 50,000 NT	US\$0.125 per NT
7.0	<u>Annual Tonnage Taxes – Commercial Yachts</u>	
7.1	Commercial Yachts, Annual Tonnage Tax per net ton	US\$0.20
•	The minimum Annual Tonnage Tax payable shall not be less than	US\$500
8.0	<u>Marshall Islands International Participation (MIIP) – Schedule A</u>	
8.1	Annual MIIP fee per vessel (excluding private yachts):	
.1	All vessels engaged in commerce up to 4,000 gross tons (GT)	US\$1,660
.2	Commercial yachts of 400 GT or more up to 4,000 GT	US\$1,660
.3	All vessels engaged in commerce over 4,000 GT	US\$1,500 plus US\$0.04 per GT
9.0	<u>Marshall Islands International Participation (MIIP) – Schedule B</u>	
9.1	Annual MIIP fee per vessel (excluding yachts):	
.1	For vessels 5,000 Net Tons (NT) or less	US\$2,000
.2	For vessels of 5,001 NT to 25,000 NT	US\$1,750 plus US\$0.04 per NT
.3	For vessels of 25,001 NT to 50,000 NT	US\$1,500 plus US\$0.04 per NT

- .4 For vessels over 50,000 NT.....US\$1,250 plus US\$0.04 per NT

10.0 Private Yacht Fees

10.1 Annual One (1) Year Registration [Renewable]*

The following is the list of items to be paid when an owner opts for the Annual One (1) Year Registration Program:

- .1 For yachts 3,000 gross tons and under:
 - Registration Fee US\$1,500
 - Annual Tonnage Tax US\$500
 - Certificate of Registry valid for one (1) year US\$100
 - Radio Station License valid for one (1) year US\$100
- .2 For yachts over 3,000 gross tons add US\$0.10 for each gross ton over 3,000 gross tons.

Note: If the owning entity for the yacht is not in Good Standing with the Republic of the Marshall Islands any outstanding corporate formation fees, foreign maritime entity registration fees, or annual maintenance fees must also be paid at the time of registration.

10.2 Tri-Annual Three (3) Years Registration [Renewable]*

The following is the list of items that must be paid when an owner opts for the Tri-Annual Three (3) Year Registration Program:

- .1 For yachts 3,000 gross tons and under:
 - Registration Fee US\$1,500
 - Three (3) Years Annual Tonnage Tax (US\$500 x 3) US\$1,500
 - Certificate of Registry valid for three (3) years US\$100
 - Radio Station License valid for three (3) years US\$100
 - If owned by a Marshall Islands Corporation, payment of annual corporate maintenance fees thru the three (3) year yacht registration period.
 - If owned by a Foreign Maritime Entity, payment of annual maintenance fees thru the three (3) year yacht registration period.
- .2 For yachts over 3,000 gross tons add US\$0.30 (US\$0.10 x 3) for each gross ton over 3,000 gross tons

Note: If the owning entity for the yacht is not in Good Standing with the Republic of the Marshall Islands any outstanding corporate formation fees, foreign maritime entity registration fees, or annual maintenance fees must also be paid at the time of registration.

11.0 Marine Safety Services Fee – Schedules A & B

- 11.1 For routine service requests not otherwise specified and each inspection regularly due or otherwise required, as provided by Maritime Regulation 5.34, all vessels engaged in commerce, including fishing vessels and commercial yachts of 400 gross tons or more, shall pay an annual fee of..... US\$2,000
- 11.2 Subsequent to the required initial safety inspection, vessels under 400 gross tons, at cost, when requested of the Maritime Administrator by owner.
- 11.3 For Passenger Vessels that are inspected semi-annually, the mid-cycle inspection shall be invoiced additionally at cost.
- 11.4 For inspections outside a station area or outside normal working hours, or for release of a vessel from detention, restoration or collection of documents, examining rectification of a deficiency, etc., all actual costs will be charged in addition to the fee in sub-paragraphs 11.1 and 11.2 above.
- 11.5 Single Hull Tank Vessels and Bulk Carriers 15 years of age or more and any vessel granted a waiver on the age limitation for registration

* Fees are not pro-ratable or refundable irrespective of the length of time the yacht remains in the registry or under its current ownership.

* Fees are not pro-ratable or refundable irrespective of the length of time the yacht remains in the registry or under its current ownership.

- 11.6 **Pre-registration Inspections:** Any vessel being considered for registration may be subject to a pre-registration inspection as required for a waiver of the age limitation to registration or as deemed necessary by the Administration to adequately assess the condition of the vessel prior to acceptance into the registry. When so required or deemed necessary, it shall be pre-arranged and agreed. The direct costs of the inspection shall be for the account of the prospective registering owner/operator irrespective of the results and be included as part of the registration closing fees, if known by closing, or invoiced immediately after the inspection when the direct costs have been determined.
- 11.7 The said fee for Marine Safety Services shall be adjusted annually to be effective as of the first day of each year. The Maritime Administrator will make this adjustment by amendment to this Marine Notice, 1-005-1, Section 11.

12.0 Change of Name

- 12.1 For securing the change of name of a vessel of any size under Section 232 of the Maritime Act US\$250

13.0 Documentation of Vessels

- 13.1 For the issuance or reissuance of a Certificate of Registry
(Permanent, Provisional, or Restricted)..... US\$300
- 13.2 For the issuance of an extension to a Provisional Certificate of Registry:
- .1 For a vessel in navigation..... US\$450
 - .2 For a vessel in Laid-up Status US\$100
- 13.3 For the issuance of Continuous Synopsis Records:
- .1 For issuance of initial CSR Document US\$300
 - .2 For issuance of amended CSR Document US\$300
 - .3 For replacement or transfer of CSR File US\$450
- 13.4 For Bareboat Charter Registration:
- .1 For issuance of Letter of Consent..... US\$200
 - .2 For issuance of Certificate of Deletion..... US\$200
- 13.5 For issuance of a Certificate of Permission for Foreign Bareboat Charter
Registration..... US\$225
- 13.6 For the issuance of a Certificate of Permission to Sell for re-registration US\$200
- 13.7 For the issuance of a Certificate of Permission to Transfer a Marshall Islands Vessel:
- .1 For 90 days validity on Permission to Transfer US\$200
- 13.8 For issuance of Certificate of Cancellation US\$200

14.0	<u>Recording of Instruments</u>	
14.1	For recording a Bill of Sale of a vessel:	
.1	Vessels engaged in commerce and all yachts	US\$200
14.2	For the recordation of any other instrument, including a Mortgage, Amendment, Supplement or other instrument recordable under the Marshall Islands Maritime Act or Regulations, whether or not it provides for the addition of new security, or deals with an obligation unrelated to that described in the original Mortgage:	
.1	Vessels engaged in commerce and all yachts, each	US\$600
14.3	For the recording of a Mortgage Satisfaction, Release or Discharge:	
.1	Vessels engaged in commerce and all yachts	US\$300
15.0	<u>Radio Communications</u>	
15.1	For the issuance of a Temporary Authority to operate a Ship Radio Station:	
.1	Vessels engaged in commerce, including commercial yachts	US\$150
	• First Renewal	US\$150
	• Second and subsequent renewals	US\$350
15.2	For the issuance of a Ship Permanent Station License:	
.1	Vessels engaged in commerce, including commercial yachts –	
	Original issuance; amendment; endorsement; or renewal	US\$300
15.3	For renewal of Ship Permanent Station License that includes a Ship Earth Station	US\$400
16.0	<u>Merchant Marine Personnel Certification</u> (See publication MI-118 for full details.)	
16.1	For initial issuance of Officer Certificate of Competence upon qualification by endorsement, as follows:	
.1	All Management & Operational Officers (includes issuance of a Certificate of Receipt of Application (CRA))	US\$200
.2	Restricted and General Operator – GMDSS only	US\$50
16.2	For renewal of an Officer Certificate of Competence:	
.1	Prior to expiration	US\$100
.2	Within one (1) year after expiration	US\$150
16.3	For the issuance of a Temporary Authorization as Officer under:	
.1	Marshall Islands Maritime Regulation 7.39	US\$100
	(Must hold a valid Marshall Islands Endorsement in lower capacity)	
16.4	For the issuance of a Marshall Islands Seafarer's Identification and Record Book:	
.1	5-year issuance, renewal or replacement of Seafarer's Identification and Record Book	US\$60
16.5	For the issuance of Special Qualifications Certificates upon qualification by examination or endorsement:	
.1	Basic Training, Wiper, Junior Ordinary Seaman, GP-Trainee,	No Fee
.2	All others	US\$35
16.6	Examinations for Officer's Certificate of Competency	US\$300
.1	Requests from owner/agents or applicants to hold special group examinations or individual examinations away from the designated test centers will be honored, if possible, provided the requesting party undertakes the costs of all administrative out-of-pocket expenses, including the examiner's transportation, lodging and meals, exam facility rental, assisting proctors' fees, and related expenses as may be reasonably incurred, or a \$50 per day proctoring fee, whichever is greater.	
.2	Each re-take of failed officer examination	US\$150
16.7	For Urgent Authorization for an Officer to Serve on Assignment of Officer Certificate Number PRIOR to submission of completed application	US\$100
16.8	For replacement of a lost or destroyed certificate of competence	US\$100

- 16.9 For authentication of sea service and all Special Services/Expediting US\$50
- 16.10 Courier service fee required for secured delivery of seafarer documentation:
- .1 Courier fee for overseas delivery for one (1) to eight (8) Applicants US\$40
- plus for each Applicant over eight (8) US\$5

17.0 Miscellaneous

- 17.1 For the issuance of each Certificate of Ownership and Encumbrance of a vessel, in duplicate:
- .1 Vessels engaged in commerce and all yachts US\$150
- 17.2 For Certified Extract of Preferred Mortgage Index US\$100
- 17.3 For a Certificate of a Marriage, Birth, Death or Burial at Sea..... US\$150
- 17.4 For issuance of a waiver under Section 203 of the Marshall Islands Maritime Act:
- .1 20 year age limitation..... US\$500
- .2 Other allowances US\$150
- 17.5 For authentication of any document not otherwise specified US\$150
- 17.6 For providing certified copies of documents, for first copy of each document provided and certified (plus costs) US\$150
- Additional certified copies, each (plus costs) US\$150
- 17.7 For issuance of Minimum Safe Manning Certificate US\$300
- For re-issue of Minimum Safe Manning Certificate..... US\$150
- 17.8 Approving Cargo Securing Manuals, per vessel US\$400
- For each additional plan submitted by an owner based on the original approved manual, per vessel US\$200
- 17.9 Approving Passenger Vessel Emergency Plans, per vessel..... US\$2,500
- 17.10 Issuance of Civil Liability Certificate for Oil Pollution Damage, per vessel US\$200
- 17.11 Issuance of Civil Liability Certificate for Bunker Oil Pollution Damage, per vessel..... US\$200
- 17.12 Multiple Load Line Alteration Book..... US\$400
- 17.13 For issuance of any certificate or document not otherwise specified (plus costs) US\$150

18.0 Fees for Special Services

In addition to any applicable fees referred to in this Notice, the following fees for special services may also be payable to the Maritime Administrator:

- 18.1 Regional Office: The fees for services requiring the attendance of a representative of the Maritime Administrator during a transaction conducted outside the normal hours of business is as follows:
- First two (2) hours of transaction or any portion thereof..... US\$250
- Each additional two (2) hours of transaction or any portion thereof US\$250
- .1 If the above transaction commences after 1700 on Friday and before 0700 hours on Monday, or is scheduled on a holiday as follows:
- First two (2) hours of transaction or any portion thereof US\$350
- Thereafter, every additional two (2) hour increment, or portion thereof..... US\$350
- .2 Where such services are made available outside the normal business hours of the Maritime Administrator, the following additional charges shall apply:
- Meals (if applicable)..... US\$50
- Transportation US\$150
- 18.2 Fees for secretarial, cable, fax, photocopying and secure delivery expenses incurred for the convenience of the requesting party and/or for the secure delivery of “official documents” shall be charged as follows:
- Fixed fee for vessel registration transactions..... US\$100
- Delivery of any other official documents listed in Sections 13.0 thru 17.0.....Actual Cost

- 18.3 If a third party is involved in a transaction, there may be a 15% processing fee added to the total invoice. This processing fee is based on the costs associated with the transaction.
- 18.4 For methods of payment see publication MI-100, Annex 18.

19.0 Investigations or Formal Hearings

Regarding specific Investigations or Formal Hearings on casualties and contraventions, the Parties and interested persons may be required to pay certain actual costs incurred by the Administration in connection therewith.

MARSHALL ISLANDS
MARITIME/MISCELLANEOUS PAYMENT BY VISA, MASTERCARD OR AMERICAN EXPRESS



Please complete all boxes below. (Please print.)

☐ VISA
Express

☐ MasterCard

☐ American

Credit Card Number:

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Security Code:

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Expiration Date:

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Month Year

Card Holder
Name: _____

Card Holder
Billing Address: _____

Your Signature: _____ Date: _____

Your Telephone Number: _____ Fax Number: _____

Email: _____

Payment Details:

Agent Name	Invoice Number	Amount

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Total: _____

Please mail this form to the following address:

The Trust Company of the Marshall Islands, Inc.

P.O. Box 2095

Reston, Virginia 20195-0095

U.S.A.

Or fax this form to: +1-703-476-8522

Rev. 11/06

ANNEX 12

REGIONAL AGREEMENTS		
Nauru Agreement Concerning Cooperation on the Management of Fisheries of Common Interest (PNA)	Nauru 2/11/82	
South Pacific Regional Trade & Economic Cooperation	Tarawa 7/14/80	
South Pacific Forum Fisheries Agency Convention (FFA)	Honiara 7/10/79	
Treaty on Fisheries between the Government of Certain Pacific Island States and the Government of the United States of America (US Treaty)	Port Moresby 04/02/87	
US Treaty related Amendments - US Amendments (2002)	Kiribati 3/24/02	
US Treaty related Amendments - Consequential Amendment (2003)	Rarotonga, 09/26/03	
US Treaty related Amendments - Niue Amendment (2005)	Nuku'alofa, 3/23/05	
Convention for the protection of natural resources & environment in the South Pacific (Noumea Convention)	Noumea 11/25/86	
Protocol for the prevention of pollution in the South Pacific Region by dumping (Protocol on Dumping)	Noumea 11/25/86	
Protocol concerning co-operation in combating pollution emergencies in the South Pacific Region (Protocol on Pollution Emergencies)	Noumea 11/25/86	
Protocol on Oil Pollution Preparedness, Response and Cooperation in the Pacific Region (Oil Pollution Protocol)	Noumea, 9/10/06	
Protocol on Hazardous and Noxious Substances Pollution, Preparedness, Response and Cooperation in the Pacific Region (HNS Protocol)	Noumea, 09/10/06	
Convention on long drift nets in the South Pacific (Wellington Convention)	Wellington 11/24/89	
Niue Treaty on Cooperation in Fisheries Surveillance & Law Enforcement in the South Pacific Region (Niue Treaty)	Honiara 7/09/92	
Palau Agreement for Management of the Western Pacific Purse Seine Fishery (Palau Agreement)	Palau 10/28/92	
Agreement establishing the South Pacific Forum (SPF)	Pohnpei 7/29/91	
New Agreement establishing the Pacific Islands Forum	Suva, 10/4/05	
Agreement establishing the Pacific Islands Forum Secretariat (PIF Secretariat)	Kiribati 10/03/00	
Agreement establishing South Pacific Regional Environmental Programme (SPREP)	Samoa 6/16/93	
Amendments to the Constitution of the APT	New Delhi, 10/23/02	
Constitution of the Asia-Pacific Telecommunity (APT)	Bangkok, 3/27/76	
SPARTECA		
Agreement between the Solomon Islands, Australia, New Zealand, Fiji, PNG, Samoa and Tonga concerning the operations and status of the police and armed forces and other personnel deployed to the Solomon Islands to assist in the restoration of law and order and security (The Multilateral Agreement, RAMSI)	Townsville, Australia 07/24/2003	
Asia and the Pacific Coconut Community (APCC)	Manado, Indonesia 01/24/2003	

Name of Treaty	Date	Status	Done at
Convention on the Conservation & Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (MHLC)			Honolulu 9/05/00
Pacific Agreement on Closer Economic Relations (PACER)			Nauru 8/18/01
HEALTH			
WHO & RMI: Basic agreement establishing technical advisory cooperation relations			Manila 8/8/95
Constitution of the World Health Organization			New York 7/22/46
WHO, Amendments to art. 24 and 25			Adopted 5/28/59
WHO, Amendments to art. 24 and 25			Adopted 5/23/67
WHO, Amendments to art. 24 and 25			Adopted 5/17/76
WHO, Amendments to art. 24 and 25			Adopted 5/12/86
WHO, Amendments to art. 34 and 55			Adopted 5/22/73
WHO Framework Convention on Tobacco Control			Geneva 5/21/03
FOOD & AGRICULTURE			
FAO & RMI: Basic agreement establishing technical cooperation relations			
FAO membership			
International Treaty on Plant Genetic Resources for Food and Agriculture (2001)			Rome 2001
NARCOTIC & PSYCHOTROPIC SUBSTANCES			
Convention on Psychotropic Substances			Vienna 2/21/71

Name of Treaty	Date	Status	Done at
Single Convention on Narcotic Drugs			New York 3/30/61
Single Convention on Narcotic Drugs, 1961, as amended by the Protocol amending the Single Convention on Narcotic Drugs, 1961			New York 8/8/75
LAW OF SEA			
UN Convention on the Law of Sea			Montego Bay 12/10/82
Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982			New York 7/28/94
Implementing Agreement, UNCLOS Straddling Fish Stocks			New York 8/4/95

DIPLOMATIC & CONSULAR RELATIONS	
Vienna Convention on Consular Relations	Vienna 4/24/63
Vienna Convention on Diplomatic Relations	Vienna 4/18/61
Convention on Abolishing the Requirement of Legislation for Foreign Public Documents	UN/Hague 10/5/61

Name of Treaty **Date** **Status** **Done at**

ENVIRONMENT		
Convention on Biological Diversity (CBD)	Rio de Janeiro 6/5/92	
UN Convention to Combat Desertification (UNCCD)	Paris 6/17/94	
UN Framework Convention on Climate Change (UNFCCC)	New York 5/9/92	↓
Kyoto Protocol to the UNFCCC	Kyoto 12/11/97	
Montreal Protocol on substances that deplete the Ozone Layer	Montreal 9/16/87	
Amendment to the Montreal Protocol on Ozone depletion	London 6/29/90	
Vienna Convention for the Protection of the Ozone Layer	Vienna 3/22/85	
Amendment to the Montreal Protocol on Ozone depletion	Copenhagen 11/25/92	
Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer adopted by the Ninth Meeting of the Parties	Montreal 9/17/97	
Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer	Beijing 12/3/99	
Cartegena Protocol on Biosafety to the Convention on Biological Diversity	Montreal 1/29/00	
Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal	Basel 3/22/89	
Stockholm Convention on Persistent Organic Pollutants (POPs)	Stockholm 5/22/01	
Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade	Rotterdam 9/10/98	
HUMAN RIGHTS		
Convention on the Rights of the Child	New York 11/20/89	
Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)	New York 12/18/79	

Name of Treaty **Date** **Status** **Done at**

EDUCATION & CULTURAL MATTERS		
Constitution of the UN Educational, Scientific, and Cultural Organization	London 11/16/45	
United Nations Educational, Scientific and Cultural Organization Convention concerning the Protection of the World Cultural and Natural Heritage	Paris 11/23/72	

TRANSPORT & COMMUNICATIONS		
Constitution and Convention on the International Telecommunication Union	Geneva 12/22/92	
The Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations	Finland 6/18/98	
DISARMAMENT		
Convention on Chemical Weapons (CWC)	Paris 1/13/93	
Comprehensive Nuclear-Test-Ban Treaty (CTBT)	New York 9/10/96	
Convention on Anti-Personnel Mines (Ottawa Treaty)	Oslo 9/18/97	
Treaty for Non-Proliferation of Nuclear Weapons (NPT)	London, Moscow, D.C. 7/1/68	
Agreement between the RMI and the IAEA for the Application of Safeguards in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons	New York, 5/3/05	
Protocol Additional to the Agreement between the RMI and the IAEA for the application of Safeguards in connection with the Treaty on the Non-Proliferation of nuclear weapons	New York, 5/3/55	
INTERNATIONAL CRIMINAL COURT		
Rome Statute of the International Criminal Court	Rome 7/17/98	
Agreement between the Government of the U.S.A and the Government of RMI Regarding the Surrender of Persons to the International Criminal Court (ICC Article 98)	Majuro	

Name of Treaty
Date

Status

Done at

INTERATIONAL TRADE & DEVELOPMENT		
Cotonou Agreement (Agreement between EU-ACP)	Benin 6/23/00	
Revised Cotonou Agreement (EU and 77 Countries of Africa, Caribbean and the Pacific)	Brussels	
EMPLOYMENT AND LABOUR		
ILO (International Labour Organization)	New York	
Maritime Labour Convention	Geneva	
IMO (International Maritime Organization)		
Convention on the International Maritime Organization (IMO)	Geneva 3/6/48	
IMO Convention Amendments (1991)	London 11/7/91	
IMO Convention Amendments (1993)	London 11/4/93	
IMO, amendment to article 28	London 9/28/65	
<i>IMO, amendment to articles 17 and 18</i>	London 9/15/64	
<i>IMO, amendment to articles 10,16,17,18,20,28,31, & 32</i>	London 10/17/74	
<i>IMO, amendment to articles 17,18,20, and 51</i>	London 11/15/79	

<i>IMO, amendment to Committee on Technical Cooperation</i>	London 11/17/77
<i>IMO, amendments to the title & substantive provisions</i>	London 11/14/75 & 10/9/77
International Convention for the Safety of Life at Sea	London 11/1/74
Protocol of 1978 Relating to the International Convention for the Safety of Life at Sea (SOLAS)	London 2/11/78
Protocol of 1988 Relating to the International Convention for the Safety of Life at Sea (SOLAS)	London 11/11/88
International Convention on Load Lines (1966)	London 4/5/66
Protocol of 1988 Relating to the International Convention on Load Lines (1966)	London 11/11/88
International Convention on Tonnage Measurement of Ships (1969)	London 6/23/69
Protocol of 1996 relating to the Convention on Limitation of Liability for Maritime Claims, 1976	London 5/02/1996
Recognition and Enforcement of Foreign Arbitral Awards (New York Convention)	New York, 1958

Name of Treaty	Date	Status	Done at
Convention on the International Regulations for Preventing Collisions at Sea (COLREGS 1972)	London 10/20/72		
International Convention for Safe Containers (1972)	Geneva 12/2/72		
1993 Amendments to the International Convention for Safe Containers (1972)	London 11/4/93		
International Convention on the Standards of Training, Certification and Watchkeeping for Seafarers (STCW 1978)	London 7/7/78		
Convention on the International Mobile Satellite Organization, as amended (INMARSAT C)	London 1/19/89		
1998 Amendments (INMARSAT C)			
Operating Agreement on the International Mobile Satellite Organization (INMARSAT) as amended (INMARASAT OA)	London 1/19/89		
1998 Amendments Relating to the Operating Agreement on the International Mobile Satellite Organization, as amended (INMARSAT OA)			
Convention on Facilitation of International Maritime Traffic (FAL 1965)			
International Convention for the Prevention of Pollution from Ships (1973) as amended by the Protocol of 1978 (MARPOL 73/78)	London 2/17/78		
Annex III to MARPOL 73/78			
Annex IV to MARPOL 73/78			
Annex V to MARPOL 73/78			
MARPOL Protocol 1997 (Annex VI)	----- 9/26/97		
International Convention Relating to Intervention on the High Sea in Cases of Oil Pollution Casualties	Brussels 11/29/69		
Protocol relating to Intervention on High Seas in Cases of Pollution by Substances Other than Oil (1973)	London 11/2/73		
Convention Relating to the Carriage of Passengers and their Luggage by Sea (PAL 1974)	Athens 12/13/74		
International Convention for the Regulation of Whaling (ICRW)	Washington D.C 12/02/1946		

Name of Treaty	Date	Status	Done at
Protocol to the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea (PAL PROT 76)	London 11/19/76		
Convention on the Limitation of Liability for Maritime Claims (1976)	London 11/19/76		
*Convention for the Suppression of Unlawful Acts against the	Rome 3/10/88		

Safety of Maritime Navigation (SUA 1988)		
*Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (SUA PROT 1988)	Rome 3/10/88	
International Convention on Salvage (1989)	London 4/28/89	
International Convention on Oil Pollution Preparedness, Response and Cooperation (OPRC 1990)	London 11/30/90	
Protocol to the International Convention on Civil Liability for Oil Pollution Damage (1976)	London 11/19/76	
International Convention on Civil Liability for Oil Pollution Damage	Brussels 11/29/69	
Protocol amending International Convention on Civil Liability for Oil Pollution (1992)	London 11/27/92	
International Convention on the Establishment of an International Fund for Compensation for Oil Pollution	Brussels 12/18/71	
Protocol to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (FUND PROT 76)	London 11/19/76	
Protocol of 1992 to Amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (FUND PROT 92)	London 11/27/92	
Convention on the Statute on International Regime of Maritime Ports	Geneva 12/9/23	

Name of Treaty
Date

Status

Done at

NAVIGATION		
*Convention on Offences & Certain Other Acts Committed on Board Aircraft	Tokyo 9/14/63	
*Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation	Montreal 9/23/71	
Convention on International Civil Aviation	Chicago 12/7/44	
*Convention for the Suppression of Unlawful Seizure of Aircrafts	Hague 12/16/70	
*Protocol on the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against Civil Aviation	Montreal 2/24/88	
ANTI-TERRORISM CONVENTIONS (*)		
Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents	New York 12/14/73	
International Convention Against the Taking of Hostages	New York 12/17/79	
International Convention for the Suppression of the Financing of Terrorism	New York 12/9/99	
International Convention for the Suppression of Terrorist Bombings	New York 12/15/97	
Convention on Physical Protection of Nuclear Material	Vienna 10/26/79	
Convention on the Marking of Plastic Explosives for the Purpose of Detection	Montreal 3/1/91	

1949 GENEVA CONVENTIONS	
Geneva Convention for the Amelioration of the Condition of the wounded and sick in Armed Forces in the Field (the First Convention)	Geneva, 8/12/49
Geneva Convention for the Amelioration of the Condition of Wounded, Sick, and Shipwrecked members of Armed Forces at Sea (the Second Convention)	Geneva, 8/12/49
Geneva Convention relative to the Treatment of Prisoners of War (the Third Convention)	Geneva, 8/12/49
Geneva Convention relative to the Protection of Civilian Persons in time of War (the Fourth Convention)	Geneva, 8/12/04
UNITED NATIONS DEVELOPMENT PROGRAMME (UNDP)	
Basic agreement concerning assistance by UNDP to RMI Government	Majuro 1/14/94
U.S. BILATERAL AGREEMENTS	
Compact of Free Association, as Amended	Majuro, 4/30/03
Cooperation to Suppress the Proliferation of Weapons of Mass Destruction, Their Delivery Systems, and Related Materials by Sea	Honolulu, 8/13/04



ANNEX 13

REPUBLIC OF THE MARSHALL ISLANDS

OFFICE OF THE MARITIME ADMINISTRATOR

Marine Notice

No. 7-044-1

Rev. 2/12

**TO: ALL SHIPOWNERS, OPERATORS, MASTERS AND OFFICERS OF
MERCHANT SHIPS, AND RECOGNIZED ORGANIZATIONS**

SUBJECT: Accommodations, Recreational Facilities, Food, Catering and Water.

References: (a) Maritime Act, § 863

(b) Maritime Regulation 2.11.9

(c) Maritime Regulation 7.42

(d) Maritime Regulation 7.43

(e) Maritime Regulation 7.44

(f) ILO Accommodation of Crews (revised), 1949 (No. 92)

**(g) ILO Accommodation of Crews (Supplementary Provisions) Convention, 1970
(No. 133)**

(h) ILO Consolidated Maritime Labour Convention, 2006 (MLC, 2006)

(i) Marshall Islands Marine Notice 2-011-1 and Technical Circular 2 Rev. 1

**(j) Marshall Islands Marine Guideline 7-44-1, Food Handling, Storage and
Preparation**

(k) Marshall Islands Technical Circular 18

PURPOSE:

This Marine Notice establishes and describes the minimum standards for living conditions and arrangements on board every ship flying the flag of the Marshall Islands. Living conditions and arrangements are subject to examination and approval by the Office of the Maritime Administrator, or a recognized organization that is authorized to act for and on behalf of the Maritime Administrator. Such living conditions and arrangements shall be approved if they are not in conflict with the requirements of the Marshall Islands Maritime Act and Regulations and the applicable International Labour Organization (ILO) Conventions. This Notice supersedes Rev. 12/09 and reflects the addition of reference (k) above and the addition of an Index at the end of the Notice.

APPLICABILITY:

This Marine Notice applies to all Marshall Islands flag ships. The requirements of this Marine Notice that relate to ship construction and equipment shall apply, to the extent reasonably possible, to ships constructed after the coming into force of ILO Conventions No. 92 and No. 133 **Rev. 2/12 2 of 18 7-044-1** Republic of the Marshall Islands

(references (f) and (g), above), and to ships constructed on or after the coming into force of the Maritime Labour Convention, 2006 (reference (h), above).

Due to the fact that the Marshall Islands could not become a member of the International Labour Organization (ILO) until 2007, it was not possible to become party to Conventions No. 92 and No. 133. The Administration, however, has for some time recognized these Conventions as industry standards for which voluntary compliance is highly recommended and has so published this policy position in MI Marine Notice 2-011-1 and Technical Circular 2 Rev. 1, reference (i) above. The Administration has always strongly recommended that shipowner/operators voluntarily seek certification through their Classification Societies which have been authorized to accommodate such requests.

The term "constructed" shall be interpreted in accordance with Marshall Islands Technical Circular 18 (reference (k) above) referencing SOLAS Chapter II-1, Part A, Regulations 1.1 and 1.2 as where:

.1 the keel is laid; or

.2 construction identifiable with a specific ship begins; and assembly of that ship has commenced comprising at least 50 tonnes or 1% of the estimated mass of all structural material, whichever is less.

The Administration would not look very favorably toward any attempt to avoid compliance by laying keels or commencing 50 tons or 1 % of construction on a multitude of new ships prior to the effective date of coming into force of the Convention because of its policy toward compliance with ILO Conventions No. 92 and No. 133.

Unless expressly provided otherwise, any requirement under an amendment to the applicable ILO Conventions relating to the provision of seafarer accommodation and recreational facilities, food, catering and water shall apply only to ships constructed on or after the amendment takes effect.

REQUIREMENTS:

1.0 General

1.1 Each shipowner shall meet, provide and maintain minimum standards for safe and decent living accommodation and recreational facilities, food, catering and water for seafarers who are required to work or live on board, or both, on ships under their management flying the Marshall Islands flag consistent with promoting the seafarers' health and well-being.

1.2 Particular attention shall be given toward ensuring implementation of the requirements of the references of this Notice provided above as they may apply relating to:

- .1 the size of rooms and other accommodation spaces;
- .2 heating and ventilation;
- .3 lighting; **Rev. 2/12 3 of 18 7-044-1 Republic of the Marshall Islands**
- .4 sleeping rooms;
- .5 noise and vibration and other ambient factors;
- .6 mess rooms;
- .7 sanitary facilities;
- .8 hospital accommodation;
- .9 laundry facilities;
- .10 open deck spaces;
- .11 office spaces;
- .12 mosquito protection;
- .13 recreational facilities;
- .14 food, catering and drinking water.

1.3 External inspections shall be carried out by the ship's classification society when:

- .1 a ship is initially certified for compliance;
- .2 a ship is registered or re-registered in the flag; or
- .3 the seafarer accommodation on a ship has been substantially altered.

1.4 Each shipowner shall cause to be conducted periodical inspections to ensure initial and ongoing compliance with the referenced standards.

1.5 The minimum standards for on-board accommodation and recreational facilities are set out in the following paragraphs 2 to 15.

2.0 Living Accommodation

2.1 There shall be adequate headroom in all seafarer accommodation. The minimum permitted headroom in all seafarer accommodation where "full and free movement" is necessary shall be not less than 203 centimeters. Some limited reduction in headroom in any space, or part of any space, in such accommodation may be permitted where it is satisfied that such reduction:

- .1 is reasonable;
 - .2 will not result in discomfort to the seafarers; and
 - .3 will not cause a seafarer to inadvertently come in contact with it or be required to take any cautionary measure to avoid it.
- 2.2 The accommodation shall be adequately insulated.

2.3 In ships other than passenger ships, as defined in Regulation 2(e) and (f) of the International **Rev. 2/12 4 of 18 7-044-1 Republic of the Marshall Islands**

Convention for the Safety of Life at Sea (SOLAS), 1974, as amended, sleeping rooms shall be situated above the load line amidships or aft, except that in exceptional cases, where the size, type or intended service of the ship renders any other location impracticable, sleeping rooms may be located in the fore part of the ship, but in no case forward of the collision bulkhead.

2.4 In passenger ships and special ships constructed in compliance with the IMO Code of Safety for Special Purpose Ships, 1983, and subsequent versions ("the SPS Code"), the location of sleeping rooms may be permitted below the load line on condition that arrangements satisfactory to the Administration are made for lighting and ventilation. However, in no case shall sleeping arrangements be located immediately beneath working alleyways.

2.5 There shall be no direct openings into sleeping rooms from cargo and machinery spaces or from galleys, storerooms, drying rooms or communal sanitary areas; that part of a bulkhead separating such places from sleeping rooms and external bulkheads shall be efficiently constructed of steel or another approved substance and be watertight and gas-tight.

2.6 The materials used to construct internal bulkheads, paneling and sheeting, floors and joining shall be suitable for the purpose and conducive to ensuring a healthy environment.

2.7 Proper lighting and sufficient drainage shall be provided.

2.8 Accommodation and recreational and catering facilities shall meet the requirements in the relevant reference contained in this Notice above, on health and safety protection and accident prevention, with respect to preventing the risk of exposure to hazardous levels of noise and vibration and other ambient factors and chemicals on board ships, and to provide an acceptable occupational and on-board living environment for seafarers.

2.9 Design and Construction Guidelines:

.1 External bulkheads of sleeping rooms and mess rooms should be adequately insulated. All machinery casings and all boundary bulkheads of galleys and other spaces in which heat is produced should be adequately insulated where there is a possibility of resulting heat effects in adjoining accommodation or passageways. Measures also should be taken to provide protection from heat effects of steam or hot-water service pipes or both.

.2 Sleeping rooms, mess rooms, recreation rooms and alleyways in the accommodation space should be adequately insulated to prevent condensation or overheating.

.3 The bulkhead surfaces and deckheads should be of material with a surface easily kept clean. No form of construction likely to harbour vermin should be used.

.4 The bulkhead surfaces and deckheads in sleeping rooms and mess rooms should be capable of being easily kept clean and light in colour with a durable, non-toxic finish.

- .5 The decks in all seafarer accommodation should be of approved material and construction and should provide a surface impervious to damp and easily kept clean. **Rev. 2/12 5 of 18 7-044-1** Republic of the Marshall Islands
- .6 Where the floorings are of a composite material, the joinings with sides should be profiled to avoid crevices.
- .7 Where separate facilities for engine department personnel to change their clothes are provided, they should be:
 - .1 located outside the machinery space but with easy access to it; and
 - .2 fitted with individual clothes lockers as well as with tubs and/or showers and washbasins having hot and cold running potable fresh water.

3.0 Heating and Ventilation

- 3.1 Sleeping rooms and mess rooms shall be adequately ventilated.
- 3.2 Ships, except those regularly engaged in trade where temperate climatic conditions do not require this, shall be equipped with air conditioning for seafarer accommodation, any separate radio room, and any centralized machinery control room.
- 3.3 All sanitary spaces shall have ventilation to the open air, independently of any other part of the accommodation.
- 3.4 Adequate heat through an appropriate heating system shall be provided, except in ships exclusively on voyages in tropical climates.

3.5 Heating Guidelines:

- .1 The system of heating the seafarer accommodation should be in operation at all times when seafarers are living or working on board and conditions require its use.
- .2 In all ships in which a heating system is required, the heating should be by means of hot water, warm air, electricity, steam or equivalent. However, within the accommodation area, steam should not be used as a medium for heat transmission. The heating system should be capable of maintaining the temperature in seafarer accommodation at a satisfactory level under normal conditions of weather and climate likely to be met within the trade in which the ship is engaged.
- .3 Radiators and other heating apparatus should be placed and, where necessary, shielded so as to avoid risk of fire or danger or discomfort to the occupants.

3.6 Ventilation Guidelines:

- .1 The system of ventilation for sleeping rooms and mess rooms should be controlled so as to maintain the air in a satisfactory condition and to ensure a sufficiency of air movement in all conditions of weather and climate. **Rev. 2/12 6 of 18 7-044-1** Republic of the Marshall Islands
- .2 Air-conditioning systems, whether of a centralized or individual unit type, should be designed to:
 - .1 maintain the air at a satisfactory temperature and relative humidity as compared to outside air conditions, ensure a sufficiency of air changes in all air-conditioned spaces, take account of the particular characteristics of operations at sea and not produce excessive noises or vibrations; and
 - .2 facilitate easy cleaning and disinfection to prevent or control the spread of disease.
- .3 Power for the operation of the air conditioning and other aids to ventilation required by the preceding paragraphs in 3.6 should be available at all times when seafarers are living or working on board and conditions so require. However, this power need not be provided from an emergency source.

4.0 Lighting

- 4.1 Subject to such special arrangements as may be permitted in passenger ships, sleeping rooms and mess rooms shall be lit by natural light and provided with adequate artificial light.
- 4.2 Lighting Guidelines:
 - .1 In all ships, electric light should be provided in the seafarer accommodation. If there are not two independent sources of electricity for lighting, additional lighting should be provided by properly constructed lamps or lighting apparatus for emergency use.
 - .2 In sleeping rooms an electric reading lamp should be installed at the head of each berth.
 - .3 Suitable standards of natural and artificial lighting should be fixed by the classification societies recognized by the Administration.

5.0 Sleeping Rooms

- 5.1 In ships other than passenger ships, an individual sleeping room shall be provided for each seafarer. In the case of ships and yachts of less than 3,000 gross tonnage or special purpose ships, exemptions from this requirement may be granted by the Administration after consultation with the shipowner and the applicable seafarers' organization.
- 5.2 Separate sleeping rooms shall be provided for men and for women.
- 5.3 Sleeping rooms shall be of adequate size and properly equipped so as to ensure reasonable comfort and to facilitate tidiness.
- 5.4 A separate berth for each seafarer shall in all circumstances be provided.
- 5.5 The minimum inside dimensions of a berth shall be at least 198 centimeters by 80 centimeters. **Rev. 2/12 7 of 18 7-044-1** Republic of the Marshall Islands
- 5.6 In single berth seafarers' sleeping rooms, the floor area shall not be less than:
 - .1 4.5 square meters in ships of less than 3,000 gross tonnage;
 - .2 5.5 square meters in ships of 3,000 gross tonnage or over but less than 10,000 gross tonnage; and
 - .3 seven (7) square meters in ships of 10,000 gross tonnage or over.
- 5.7 However, the Administration may allow a reduced floor area for passenger ships, special purpose ships and yachts of less than 3,000 gross tonnage in order to provide single berth sleeping rooms.
- 5.8 On ships of less than 3,000 gross tonnage other than passenger ships and special purpose ships, sleeping rooms may be occupied by a maximum of two seafarers. The floor area of such sleeping rooms shall not be less than seven (7) square meters.
- 5.9 On ships routinely carrying cadets for training on board, sleeping rooms may be occupied by a maximum of two (2) cadets. The floor area of such sleeping rooms shall not be less than seven (7) square meters.
- 5.10 On ships routinely carrying coast pilots on board for passages of more than 24 hours, a separate sleeping room should be provided near the navigation bridge. The floor area of such a sleeping room shall not be less than 4.5 square meters.
- 5.11 On passenger ships and special purpose ships, the floor area of sleeping rooms for seafarers not performing the duties of ships' officers shall not be less than:
 - .1 7.5 square meters in rooms accommodating two (2) persons;
 - .2 11.5 square meters in rooms accommodating three (3) persons; and
 - .3 14.5 square meters in rooms accommodating four (4) persons.

5.12 On special purpose ships, sleeping rooms may accommodate more than four persons; however, the floor area of such sleeping rooms shall not be less than 3.6 square meters per person.

5.13 On ships other than passenger ships and special purpose ships, sleeping rooms for seafarers who perform the duties of ships' officers, where no private sitting room or day room is provided, the floor area per person shall not be less than:

.1 7.5 square meters in ships of less than 3,000 gross tonnage;

.2 8.5 square meters in ships of 3,000 gross tonnage or over but less than 10,000 gross tonnage; and

.3 10 square meters in ships of 10,000 gross tonnage or over. **Rev. 2/12 8 of 18 7-044-1 Republic of the Marshall Islands**

5.14 On passenger ships and special purpose ships, the floor area for seafarers performing the duties of ships' officers, where no private sitting room or day room is provided, the floor area per person for junior officers at the operational level shall not be less than 7.5 square meters and for senior officers at the management level shall not be less than 8.5 square meters.

5.15 The Master, the chief engineer and the chief navigating officer shall have, in addition to their sleeping room, an adjoining sitting room, day room or equivalent additional space; however, ships and yachts of less than 3,000 gross tonnage may be exempted by the Administration from this requirement after consultation with the shipowner and the applicable seafarers' organization.

5.16 For each occupant, the furniture shall include a clothes locker of ample space (minimum 475 liters) and a drawer or equivalent space of not less than 56 liters; however, if the drawer is incorporated in the clothes locker then the combined minimum volume of the clothes locker shall be 500 liters. It shall be fitted with a shelf and be able to be locked by the occupant so as to ensure privacy.

5.17 Each sleeping room shall be provided with a table or desk, which may be of the fixed, drop-leaf or slide-out type, and with comfortable seating accommodation as necessary.

5.18 Sleeping Room Guidelines:

.1 There should be adequate berth arrangements on board making it as comfortable as possible for the seafarer and any partner who may accompany the seafarer.

.2 Where the size of the ship, the activity in which it is to be engaged and its layout make this reasonable and practical, sleeping rooms should be planned and equipped with a private bathroom, including a toilet, so as to provide reasonable comfort for the occupants and to facilitate tidiness.

.3 As far as practicable, sleeping rooms of seafarers should be so arranged that watches are separated and that no seafarers working during the day share a room with watchkeepers.

.4 In the case of seafarers performing the duty of petty officers there should be no more than two persons per sleeping room.

.5 Consideration should be given to extending the facility referred to in paragraph 5.15 to the first engineer officer when practicable.

.6 Sleeping rooms should not be located adjacent to officer and/or crew lounges for reasons such as traffic in the passageway, noise transmitted through the bulkhead, deck or overhead, etc., and recreational facilities which may be located therein.

.7 Sleeping rooms should not be arranged adjoining a mess room, even though the high noise reduction type joiner bulkhead is installed between the mess room and sleeping room.

.8 A duty mess room shall be considered as a mess room to be located apart from the sleeping rooms. **Rev. 2/12 9 of 18 7-044-1 Republic of the Marshall Islands**

.9 Space occupied by berths and lockers, chests of drawers and seats should be included in the measurement of the floor area. Sanitary modules and small or irregularly shaped spaces which do not add effectively to the space available for free movement and cannot be used for installing furniture should be excluded.

.10 Berths should not be arranged in tiers of more than two. In the case of berths placed along the ship's side, there should be only a single tier where a sidelight is situated above a berth.

.11 The lower berth in a double tier should not be less than 30 centimeters above the floor. The upper berth should be placed approximately midway between the bottom of the lower berth and the lower side of the deckhead beams.

.12 The framework and the lee-board, if any, of a berth should be of approved material, hard, smooth, and not likely to corrode or to harbour vermin.

.13 If tubular frames are used for the construction of berths, they should be completely sealed and without perforations that would give access to vermin.

.14 Each berth should be fitted with a comfortable mattress with cushioning bottom or a combined cushioning mattress, including a spring bottom or a spring mattress. The mattress and cushioning material used should be made of approved material. Stuffing of material likely to harbour vermin should not be used.

.15 Clean bedding should be supplied by the shipowner to all seafarers for use on board during service on the ship, and such seafarers should be responsible for the return of the bedding at times specified by the master and on completion of service in the ship.

.16 Bedding should be of good quality and should be of approved material which can be easily cleaned.

.17 When one berth is placed over another, a dust-proof bottom should be fitted beneath the bottom mattress or spring bottom of the upper berth.

.18 The furniture should be of smooth, hard material not liable to warp or corrode and should not have sharp edges or corners.

.19 Sleeping rooms should be fitted with curtains or equivalent for the sidelights.

.20 Sleeping rooms should be fitted with a mirror, small cabinets for toilet requisites, a book rack and a sufficient number of coat hooks.

6.0 Noise and Vibration and other Ambient Factors

6.1 Accommodation, recreational and catering facilities should be located as far as practicable from the engines, steering gear rooms, deck winches, ventilation, heating and air-conditioning equipment and other noisy machinery.

6.2 Acoustic insulation or other appropriate sound-absorbing materials should be used in the construction and finishing of bulkheads, deckheads and decks within the sound-producing spaces as well as self-closing noise-isolating doors for machinery spaces. **Rev. 2/12 10 of 18 7-044-1 Republic of the Marshall Islands**

6.3 Engine rooms and other machinery spaces should be provided, wherever practicable, with soundproof centralized control rooms for engine-room personnel. Working spaces, such as the machine shop, should be insulated, as far as practicable, from the general engine-room noise and measures should be taken to reduce noise in the operation of machinery.

6.4 The limits for noise levels for working and living spaces should be in conformity with the international guidelines of the ILO on exposure levels, including those in the ILO Code of practice entitled Ambient Factors in the Workplace, 2001, and, where applicable, the specific protection recommended by the International Maritime Organization Code on Noise Levels on board Ships, 1981, and with any subsequent amending and supplementary instruments for acceptable noise levels on board ships. A

copy of the applicable instruments in English or the working language of the ship should be carried on board and should be accessible to seafarers.

6.5 No accommodation, recreational or catering facilities should be exposed to excessive vibration.

7.0 Mess Rooms

7.1 Mess rooms shall be located apart from the sleeping rooms and as close as practicable to the galley; however, ships of less than 3,000 gross tonnage may be exempted by the Administration from this requirement after consultation with the shipowner' and applicable seafarers' organization.

7.2 Mess rooms shall be of adequate size and comfort and properly furnished and equipped (including ongoing facilities for refreshment), taking account of the number of seafarers likely to use them at any one time; however, provision shall be made for separate or common mess room facilities as appropriate.

7.3 Mess Room Guidelines:

.1 Mess room facilities may be either common or separate. The decision in this respect should be taken after consultation with seafarers' and shipowners' representatives and subject to the approval of the Administration. Account should be taken of factors such as the size of the ship and the distinctive cultural, religious and social needs of the seafarers.

.2 Where separate mess room facilities are to be provided to seafarers, then separate mess rooms should be provided for:

.1 Master and officers; and

.2 petty officers and other seafarers.

.3 On ships other than passenger ships, the floor area of mess rooms for seafarers should be not less than 1.5 square meters per person of the planned seating capacity. **Rev. 2/12 11 of 18 7-044-1** Republic of the Marshall Islands

.4 In all ships mess rooms should be equipped with tables and appropriate seats, fixed or movable, sufficient to accommodate the greatest number of seafarers likely to use them at any one time. Shore workers need not be considered in this accommodation.

.5 There should be available at all times when seafarers are on board:

.1 a refrigerator, which should be conveniently situated and of sufficient capacity for the number of persons using the mess room or mess rooms;

.2 facilities for hot beverages; and

.3 cool potable water facilities.

.6 Where available pantries are not accessible to mess rooms, adequate lockers for mess utensils and proper facilities for washing utensils should be provided.

.7 The tops of tables and seats should be of damp-resistant material.

8.0 Sanitary Facilities

8.1 All seafarers shall have convenient access on the ship to sanitary facilities meeting minimum standards of health and hygiene and reasonable standards of comfort, with separate sanitary facilities being provided for men and for women.

8.2 There shall be sanitary facilities within easy access of the navigating bridge and the machinery space or near the engine room control center; however, ships and yachts of less than 3,000 gross tonnage may be exempted by the Administration from this requirement after consultation with the shipowner' and applicable seafarers' organization.

8.3 On all ships, a minimum of one toilet, one wash basin and one tub and/or shower for every six persons or less who do not have personal facilities shall be provided at a convenient location.

8.4 With the exception of passenger ships, each sleeping room shall be provided with a washbasin having hot and cold running potable fresh water, except where such a washbasin is situated in the private bathroom provided.

8.5 In passenger ships normally engaged on voyages of not more than four hours' duration, consideration may be given by the Administration to special arrangements or a reduction in the number of facilities required.

8.6 Hot and cold running potable fresh water shall be available in all wash places.

8.7 Sanitary Accommodation Guidelines:

.1 Washbasins and tub baths should be of adequate size and constructed of approved material with a smooth surface not liable to crack, flake or corrode.

.2 All toilets should be of an approved pattern and provided with an ample flush of water, available at all times and independently controllable. **Rev. 2/12 12 of 18 7-044-1** Republic of the Marshall Islands

.3 Sanitary accommodations intended for the use of more than one person should comply with the following requirements:

.1 floors should be of approved durable material, impervious to damp, and should be properly drained;

.2 bulkheads should be of steel or other approved material and should be watertight up to at least 23 centimeters above the level of the deck;

.3 the accommodation should be sufficiently lit, heated and ventilated;

.4 toilets should be situated convenient to, but separate from, sleeping rooms and wash rooms, without direct access from the sleeping rooms or from a passage between sleeping rooms and toilets to which there is no other access; this requirement does not apply where a toilet is located in a compartment between two sleeping rooms having a total of not more than four (4) seafarers; and

.5 where there is more than one (1) toilet in a compartment, they should be sufficiently screened to ensure privacy.

.4 Towels, soap and toilet paper for all seafarers should be provided by the shipowner.

9.0 Hospital Accommodation

9.1 Ships carrying 15 or more seafarers and engaged in a voyage of more than three days' duration shall provide separate hospital accommodation to be used exclusively for medical purposes.

9.2 The Administration may relax this requirement for ships engaged in coastal trade.

9.3 The accommodation shall, in all weathers, be easy to access, provide comfortable housing for the occupants and be conducive to their receiving prompt and proper attention.

9.4 Hospital Accommodation Guidelines:

.1 The hospital accommodation should be designed so as to facilitate consultation and the giving of medical first aid and to help prevent the spread of infectious diseases.

.2 The arrangement of the entrance, berths, lighting, ventilation, heating and water supply should be designed to ensure the comfort and facilitate the treatment of the occupants.

.3 The number of hospital berths required should be prescribed by the Administration or an organization authorized to act on its behalf.

.4 Sanitary accommodations should be provided for the exclusive use of the occupants of the hospital accommodation, either as part of the accommodation or in close proximity thereto. Such sanitary accommodation comprises a minimum of one toilet, one washbasin and one tub or shower. **Rev. 2/12 13 of 18 7-044-1 Republic of the Marshall Islands**

10.0 Laundry Facilities

10.1 Appropriately situated and furnished laundry facilities shall be available.

10.2 The laundry facilities provided for seafarers' use should include:

- .1 washing machines supplied with hot and cold fresh water;
- .2 drying machines or adequately heated and ventilated drying rooms; and
- .3 irons and ironing boards or their equivalent.

11.0 Open Deck Space

All ships shall have a space or spaces on open deck to which the seafarers can have access when off duty, which are of adequate area having regard to the size of the ship and of the number of seafarers on board.

12.0 Offices

All ships shall be provided with separate offices or a common ship's office for use by deck and engine departments; ships of less than 3,000 gross tonnage may be exempted by the Administration from this requirement after consultation with the shipowner' and applicable seafarers' organization.

13.0 Mosquito Protection

Ships regularly trading to mosquito-infested ports shall be fitted with appropriate devices. The World Health Organization provides International Health Regulations and Guide to Ship Sanitation within which are ship designer and constructor guidelines for the control of insects, more particularly for sleeping quarters, mess rooms, and dining rooms, indoor recreational areas, as well as all food spaces, where vessels are in transit in areas where flies and mosquitoes are prevalent. Control measures that may be employed by the master and crew are also provided.

14.0 Recreational Facilities

14.1 Appropriate seafarers' recreational facilities, amenities and services that take into account provisions on health and safety protection and accident prevention, as adapted to meet the special needs of seafarers that must live and work on ships shall be provided on board for the benefit of all seafarers.

14.2 Recreational Facilities, Mail and Ship Visit Arrangements Guidelines:

.1 Recreational facilities and services should be reviewed frequently to ensure that they are appropriate in light of changes in the needs of seafarers resulting from technical, operational and other developments in the shipping industry. **Rev. 2/12 14 of 18 7-044-1 Republic of the Marshall Islands**

.2 Furnishings for recreational facilities should as a minimum include a bookcase and facilities for reading, writing and, where practicable, games.

.3 In connection with the planning of recreation facilities, consideration should be given to the provision of a canteen.

.4 Consideration should also be given to including the following facilities at no cost to the seafarer, where practicable:

- .1 a smoking room;
 - .2 television viewing and the reception of radio broadcasts;
 - .3 showing of films, the stock of which should be adequate for the duration of the voyage and, where necessary, changed at reasonable intervals;
 - .4 sports equipment including exercise equipment, table games and deck games;
 - .5 where possible, facilities for swimming;
 - .6 a library containing vocational and other books, the stock of which should be adequate for the duration of the voyage and changed at reasonable intervals;
 - .7 facilities for recreational handicrafts;
 - .8 electronic equipment such as a radio, TV, video recorders, DVD/CD player, personal computer and software and cassette recorder/player;
 - .9 where appropriate, the provision of bars on board for seafarers unless these are contrary to national, religious or social customs; and
 - .10 reasonable access to ship-to-shore telephone communications, and email and internet facilities, where available, with charges for the use of these services being reasonable in amount.
- .5 Every effort should be given to ensuring that the forwarding of seafarers' mail is as reliable and expeditious as possible. Efforts should also be taken in order to avoid seafarers being required to pay additional postage when mail has to be readdressed due to circumstances beyond their control.
- .6 Measures should be considered to ensure, subject to any applicable national or international laws or regulations, that whenever possible and reasonable, seafarers are expeditiously granted permission to have their partners, relatives and friends as visitors on board their ship when in port. Such measures should meet any concerns for security clearances.
- .7 Consideration should be given to the possibility of allowing seafarers to be accompanied by their partners on occasional voyages where this is practicable and reasonable. Such partners should carry adequate insurance coverage against accident and illness; the shipowners should give every assistance to the seafarer to effect such insurance. **Rev. 2/12 15 of 18 7-044-1 Republic of the Marshall Islands**

15.0 Food, Catering and Drinking Water

15.1 Each shipowner shall ensure that ships they manage have a supply of sufficient food of good quality, drinking water and catering arrangements that secure the health and well-being of seafarers living on board, taking into account their differing cultural, religious and gastronomic backgrounds, the duration and nature of the voyage, and shall be suitable in respect of quantity, nutritive value, quality and variety.

15.2 Seafarers living on board a ship shall be provided with food free of charge during the period of engagement.

15.3 Each shipowner shall ensure that their ships meet the following minimum standards:

- .1 food and drinking water supplies, having regard to the number of seafarers on board, shall be suitable to their religious requirements and cultural practices as they pertain to food;

.2 the organization and equipment of the catering department shall be such as to permit the provision to the seafarers of adequate, varied and nutritious meals prepared and served in hygienic conditions; and
.3 catering staff shall be properly trained or instructed for their positions.

15.4 Any accommodation facility that may result in a seafarer ingesting the water intentionally or otherwise must be supplied with potable water.

15.5 No seafarer under the age of 18 shall be employed or engaged or work as a ship's cook.

15.6 Shipowners shall ensure that seafarers who are engaged as ships' cooks are trained, qualified and found competent for the position in accordance with requirements set out in the laws and regulations of the Marshall Islands.

15.7 The requirements under paragraph 15.6 shall include the completion of a training course approved or recognized by the Administration, which covers practical cookery, food and personal hygiene, food storage, stock control, environmental protection and catering health and safety.

15.8 On ships operating with a prescribed manning of less than ten which, by virtue of the size of the crew or the trading pattern, may not be required by the Administration to carry a fully qualified cook, anyone processing food in the galley shall be trained or instructed in areas including food and personal hygiene and handling and storage of food on board ship.

15.9 Food and Catering Guidelines:

.1 Clean mess utensils should be supplied by the shipowner to all seafarers for use on board during service on the ship. **Rev. 2/12 16 of 18 7-044-1** Republic of the Marshall Islands

.2 Plates, cups and other mess utensils should be of approved good quality material which can be easily cleaned.

.3 Seafarers should only be qualified as ships' cooks if they satisfy the following:

.1 General Requirements

.1 Age and Seetime

Applicants must be not less than 18 years of age with a minimum of 12 months seagoing service which may be varied to take into account existing relevant qualifications or experience.

.2 Medical

Applicants must meet the physical examination requirements for a certificated Deck/Navigational Officer.

.3 Training

Applicants must have successfully completed a legitimate training course or program covering practical cookery and food preparation, food and personal hygiene, galley sanitation, nutrition, food storage, stock control, environmental protection and catering health and safety.

.2 Certificate

A Cook certificate may be issued to a seafarer of 18 years of age or older who has successfully completed a legitimate training course or program, qualified and is found competent for the position. The Administration will recognize, where appropriate, certificates of qualification issued by other Member States which have ratified the MLC, 2006 or the Certification of Ships' Cooks Convention, 1946 (no. 69), or other approved body.

.3 Documentation of Qualifications

Special Qualification Certificates issued by the Administration to certify these qualifications will be optional. However, vessels are required to have on board documentation attesting to the satisfactory training and qualifications of the Cook or Cooks serving on board.

.4 MG 7-44-1, reference (j) of this Notice, provides guidance on food handling, storage and preparation to ensure the health of all persons on board a vessel. This Marine Guideline addresses the Maritime Labour Convention, 2006 requirements that foods meet minimum standards for quality and be prepared and served in hygienic conditions. The Guideline is intended to compliment this Marine Notice.

16.0 Inspections

16.1 Frequent documented inspections shall be carried out on board ships, by or under the authority of the master, to ensure that seafarer accommodations are clean, decently habitable and maintained in a good state of repair. **Rev. 2/12 17 of 18 7-044-1** Republic of the Marshall Islands 16.2 Frequent documented inspections shall be carried out on board ships, by or under the authority of the master, with respect to:

.1 supplies of food and potable drinking water;

.2 all spaces and equipment used for the storage and handling of food and potable drinking water; and

.3 galley and other equipment for the preparation and service of meals.

16.3 The date and results of each such inspection shall be recorded in the Master's official logbook and be available for review.

17.0 Diversity

In the case of ships where there is need to take into account the interests of seafarers having differing and distinctive religious and social practices, fairly applied variations in respect of these standards may be permitted on condition that such variations do not result in overall facilities less favorable than those which would result from the application of these minimum standards.

18.0 Exemptions

18.1 For ships of less than 200 gross tonnage and yachts of less than 500 gross tonnage, where it is reasonable to do so, in relation to the requirements of the provisions specified below, taking account of the size of the ship and the number of persons on board, shipowners may seek exemption by the Administration from compliance with:

.1 paragraphs 3.2, 8.4 and section 10; and

.2 paragraphs 5.6, 5.8 and 5.11 to 5.14, with respect to floor area only.

18.2 Any exemptions with respect to the requirements of these minimum standards may be made only where they are expressly permitted in these minimum standards and only for particular circumstances in which such exemptions can be clearly justified on strong grounds and subject to protecting the seafarers' health and safety. **Rev. 2/12 18 of 18 7-044-1** Republic of the Marshall Islands

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ANNEX '14'



REPUBLIC OF THE MARSHALL ISLANDS

Marine Notice

OFFICE OF THE MARITIME ADMINISTRATOR

No. 2-011-19

Rev. 6/10

TO: ALL SHIPOWNERS, OPERATORS, MASTERS AND OFFICERS OF MERCHANT SHIPS, AND RECOGNIZED ORGANIZATIONS

SUBJECT: Continuous Synopsis Record (CSR).

References: (a) Amendment to SOLAS Chapter XI-1, new Regulations 3.1 and 5
(b) IMO Resolution A.959(23) as amended by IMO Resolution MSC 198(80)
(c) Marine Notice 2-011-12, Implementation of IMO Unique Company and Registered Owner Identification Number Scheme

PURPOSE:

This Notice advises and provides to owners, operators, and Masters of Marshall Islands flag ships the Administrator's requirements for compliance with recently adopted amendments to SOLAS 1974. It provides the Marshall Islands National requirements for Companies, Masters, and vessels with respect to maintaining the required Continuous Synopsis Record (CSR). This Notice supersedes Rev. 4/10 due to the sequential re-numbering on the CSR documents.

Questions regarding these requirements or the authenticity of a CSR Document should be referred to the Office of the Maritime Administrator, Republic of the Marshall Islands, Vessel Administration, c/o Marshall Islands Maritime and Corporate Administrators, Inc., 11495 Commerce Park Drive, Reston, Virginia USA 20191-1506; telephone: +1-703-620-4880, fax: +1-703-476-8522, email: maritime@register-iri.com.

A copy of this Notice shall be placed in the CSR file on board the ship for ready reference.

BACKGROUND:

In an effort to increase the transparency of ship operations, amendments were made to SOLAS 1974 which require specific information to be maintained onboard ship and continuously updated as the information is changed. While some of the required information is duplicated in other records maintained aboard ship, this new record keeping requirement is mandatory and will be subject to review by port State control authorities. The initial CSR File will be issued by the Administrator. Detailed requirements for the maintenance and updating are provided herein. **Rev. 6/10 2 of 10 2-011-19** Republic of the Marshall Islands

1.0 Definitions

1.1 "Administrator" means the Office of the Maritime Administrator, Republic of the Marshall Islands, c/o Marshall Islands Maritime and Corporate Administrators, Inc., 11495 Commerce Park Drive, Reston, Virginia USA 20191-1506; telephone: +1-703-620-4880, fax: +1-703-476-8522, email: maritime@register-iri.com.

1.2 "Convention" means the International Convention for the Safety of Life at Sea, 1974 as amended (SOLAS).

1.3 "Company" means the owner of the ship or any other organization or person such as the Manager, or the Bareboat Charterer, who has assumed the responsibility for operation of the ship from the shipowner and who on assuming such responsibility has agreed in writing to take over.

1.4 "CSR Document" means the record form issued by the Administrator in a specified IMO format in accordance with reference (b) above.

1.5 "CSR Amendment Form" means a form utilized to update information contained in the CSR Document in a specified IMO format in accordance with reference (b) above.

1.6 "CSR Index of Amendments" means the record of amendments made to the CSR Document in a specified IMO format in accordance with reference (b) above.

1.7 "ISPS Code" means the International Ship and Port Facility Security Code.

APPLICABILITY:

2.0 Mandatory Compliance

The requirement became effective for ships affected as of 1 July 2004. For ships constructed before 1 July 2004, the CSR Document shall, at least, provide the history of the ship as from 1 July 2004.

3.0 Application of the Amendment

3.1 The amendment applies to:

- ☐ Passenger ships, including high-speed passenger craft;
- ☐ Cargo ships, including high-speed craft, of 500 gross tonnage and upwards; and

- ☐ Mobile offshore drilling units (MODUs) self-propelled by mechanical means.

3.2 It does not apply to:

- ☐ Government-operated ships used for non-commercial purposes;
 - ☐ Cargo ships of less than 500 gross tonnage as measured by the Administrator or the ITC 69, whichever is the lesser;
 - ☐ Ships not propelled by mechanical means;
 - ☐ Wooden craft of primitive origins;
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- ☐ Private pleasure yachts not engaged in trade; and
 - ☐ Fishing vessels.

However, the Administrator will be issuing a CSR Document to registered fishing vessels.

3.3 Vessels not subject to mandatory compliance with the ISPS Code may do so voluntarily. Owners of these vessels, however, must make a written request to the Administrator for the issuance of a CSR Document. Once issued, it must be maintained in accordance with SOLAS regulatory requirements.

4.0 Continuous Synopsis Record (CSR) File

4.1 A ship's CSR File comprises:

- .1 All CSR Documents issued by administration(s), numbered sequentially over the life of the ship;
- .2 All Amendment Forms attached to each individual CSR Document relating to changes made to that CSR Document; and
- .3 All Indices of Amendments listing all amendments (specified by Amendment Forms) relating to each CSR Document and attached to the CSR File.

4.2 The Administrator recommends that the CSR File be maintained in a binder, which will remain permanently with the vessel. The Administrator will be doing likewise so that a certified copy in accordance with SOLAS Chapter XI-1, Regulations 5.7 and 5.8 may be transferred intact to a new flag administration on change of flag or replaced if lost or destroyed. \

5.0 The CSR Document

5.1 Only the Administrator may issue a ship's CSR Document to a ship, a sample copy of which is in Annex 1 of this Notice. The first CSR Document issued to a ship is numbered "1," and subsequent CSR Documents are to be sequentially numbered. The sequential numbering continues across amendments and change of flag throughout the life of the ship.

5.2 Much of the information contained within a CSR Document is duplicated in other records maintained aboard the ship, however, this new mandatory record consolidates this information to facilitate review by port State control authorities.

5.3 *The CSR Document, as issued electronically by this Administrator, follows the prescribed format from reference (b) above. The document itself contains the electronic signature of Mr. William R. Gallagher or Mr. Guy E.C. Maitland as Senior Deputy Commissioner of the Republic of the Marshall Islands. Such CSR Documents that carry the Senior Deputy Commissioner electronic signature shall be considered originals. No special seal or chop shall be required on an electronically transmitted CSR Document.*

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5.4 *CSR Documents, as transmitted electronically by this Administrator, are encrypted to prevent any alteration or tampering and must be found to contain:*

- .1 *the Seal of the Republic of the Marshall Islands in the upper-left corner, and*
- .2 *the Seal of the Republic of the Marshall Islands as a watermark within the background of the document.*

5.5 *Should there be any question regarding the authenticity of the CSR Document, a request for verification should be addressed to the Administrator without delay.*

5.6 Whenever a CSR Document is issued to a ship, the Administrator will provide all information in rows 1 to 16. If the information is not applicable, it will be labeled N/A. The information in row number 8 on the CSR Document must be completed because the Administrator requires the registration or recordation of bareboat charters when the ship is actually bareboat chartered. Each original CSR Document shall be kept by the ship throughout its lifetime. The Administrator will keep a copy of each CSR Document issued by it to the ship. Row number 16 will be used to explain the bareboat charter arrangements.

5.7 The Administrator shall send all CSR Documents to the ship's Designated Person Ashore (DPA) by electronic means. The DPA may instruct the Administrator to send the CSR Document to another party; however, it shall be the ultimate responsibility of the DPA to assure electronic or courier delivery of the CSR Document to the ship in care of the Master. *No facsimiles are allowed.*

5.8 Although the Administrator has 90 days within which to issue a new CSR Document, the procedures established in this Marine Notice, if followed, will allow the Administrator to issue it within a far shorter period of time.

6.0 Amendments and Indices completed by the Company or the Master

6.1 When any change relating to the entries listed in the current CSR Document of the ship has taken place, this change shall be included without delay in the ship's CSR File. Pending the issue of a revised and updated CSR Document, the Company or Master shall be required to complete an Amendment Form, a sample form of which is in Annex 2 of this Notice, showing only those items being changed and attach the original to the current CSR Document. A copy of the completed Amendment Form shall be forwarded without delay to the Administrator.

6.2 Additionally whenever an Amendment Form is attached in date order to the ship's current CSR Document, details of the amendment shall be entered in the Index of Amendments, a sample form of which is in Annex 3 of this Notice, and attached to the current CSR File. A copy of the revised Index of Amendments Form shall be forwarded to the Administrator. This will allow the Administrator to confirm that it has a complete CSR File before issuing an amended or replacement CSR Document. **Rev. 6/10 5 of 10 2-011-19** Republic of the Marshall Islands

7.0 Action by Master when receiving an original or a revised and updated CSR Document

7.1 On receipt of an original or a revised and updated CSR Document, the Master shall check the sequential number and review the CSR Document to ensure that it covers all relevant Amendment Forms attached to the previous CSR Document.

7.2 Should this review establish that there are outstanding amendments not reflected in the latest CSR Document, the Master shall do the following:

- .1 Immediately notify the DPA and the Administrator;
- .2 Complete a new Amendment Form for each outstanding amendment, and attach it to the latest CSR Document on board;

- .3 List the amendment(s) referred to above in the Index of Amendments attached to the latest CSR Document; and
 - .4 Immediately forward copies of the Amendment Form(s) and the revised Index of Amendments to the Administrator with a request for the issuance of a revised CSR Document.
- 7.3 The Master, after having verified that the information on the CSR Document is correct, shall acknowledge its receipt and accuracy by countersigning and dating the CSR Document. The CSR Document shall then be placed in the ship's CSR File along with all previous documents, the latest Amendment Form and the revised Index of Amendments. This now is the original CSR Document for the vessel.

8.0 In case of loss of, or damage to, any Document in a ship's CSR File

In case of loss of, or damage to, a ship's CSR File, the Company or Master shall contact the Administrator in writing without delay, and list the papers lost or damaged. The Administrator will subsequently provide relevant duplicates to the ship of the CSR Documents, Amendment Forms and Index of Amendments that it holds, to replace such papers. Such papers will be marked as certified copy replacements.

9.0 Possibility of Inconsistencies

9.1 The primary purpose of the CSR is to provide a history of the ship, which can be inspected by Designated Authorities of Contracting Governments. Given the flexibility and timescales provided in SOLAS Chapter XI-1, Regulation 5, it is possible that the information contained in a ship's current CSR Document could lag behind that contained in the certificates issued in respect of the ship. As the Administrator is required to issue a new CSR Document within three (3) months of the date of change, the resulting time lag could be of that order.

9.2 In the case of a change of flag, the previous flag State has to issue a new CSR Document to the ship showing the date the ship ceased to be registered with that flag State. That flag State is required to send a copy of the ship's CSR File, as soon as possible and preferably not later than one (1) month from the date the ship ceased to be registered, to the Administrator.

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9.3 In instances where the previous flag State has not forwarded, within three (3) months from the date of change of flag, the CSR File of the ship covering the period during which the ship was entitled to fly its flag, to the Administrator, then the Administrator will issue to the ship a CSR Document based on the CSR information received from onboard the ship. The sequential number to be allocated to the CSR Document to be issued will be the second sequential number after the last sequential number shown on the CSR Document found (i.e., leaving the first sequential number unused). The new flag State should explain, in entry box 16, the reason for issuing the CSR document in such a manner. When the missing CSR Document is eventually delivered it will need only to be placed in the proper position in the CSR File.

9.4 When inspecting the CSR File of ships that have changed flag, those exercising control under SOLAS Chapter I, Regulation 19 or control and compliance measures under SOLAS Chapter XI-2, Regulation 9, should be guided by the amended provisions of sections 8, 9 and 9.1 of A.959(23), as well as the remarks shown in entry box 16 of the CSR Document. If inconsistencies are identified, the reasons for them should be considered before action is taken based solely on the view that an inconsistency exists.

9.5 The "Remarks" entry box of row 16 is only to be used by the Administrator when encountering difficulties with the implementation of the provisions of SOLAS Chapter XI-1, Regulation 5 or of Resolution A.959(23) as amended, such as in the case of bareboat charter registration and change of flag.

10.0 Change of Flag Requirements

Along with the Request for Permission to Transfer out of the Marshall Islands flag, a transferring owner shall be required to identify the gaining flag administration and to request that a certified copy of the vessel's CSR File be provided to the gaining flag administration. This must occur before the Administrator will issue a Deletion Certificate as required by SOLAS Chapter XI-1, Regulation 5.7. Details may be found in the publication MI-100.

11.0 Registration Requirements

11.1 Effective 1 July 2004, vessel registration procedures involving a change of flag shall require the submission of a copy of the vessel's current complete CSR File along with an Amendment Form and a new Index of Amendments reflecting the effects of the change of flag.

11.2 For transactions involving only a change of ownership and not a change of flag, the new owner need only submit an Amendment Form and a new Index of Amendments reflecting the effects of the change of ownership.

11.3 The Administrator shall in turn issue a new CSR Document after receiving the former flag administration's certified copy of the CSR File and Deletion Certificate. Details may be found in the publication MI-100. **Rev. 6/10 7 of 10 2-011-19** Republic of the Marshall Islands 11.4 For transactions involving only a change of vessel name, owner name or Classification Society the owner shall, in addition to the relevant required documentation, submit an Amendment Form and a new Index of Amendments. The Administrator shall in turn issue a new Certificate of Registry and a new CSR Document. Details may be found in the publication MI-100.

12.0 ISM Code and ISPS Code Requirements

12.1 In the event of a change in the Declared Company, Recognized Organization (RO) issuing the Document of Compliance (DOC) of a Company or the Safety Management Certificate (SMC) of a vessel or both with respect to the International Safety Management (ISM) Code, and/or the Recognized Security Organization (RSO) issuing the vessel International Ship Security Certificate (ISSC) with respect to the ISPS Code, the owner shall submit an Amendment Form and a new Index of Amendments. The Administrator shall in turn issue a new CSR Document.

12.2 RSO Auditors shall check the availability of the CSR Document at each ISPS Shipboard Verification audit. This check shall also include that the CSR Document's data is correct, i.e. the CSR reflects the actual situation on board. However, the "non-existence" or "non-correctness" of the CSR Document shall not prevent the issuance of an ISSC or Interim ISSC, especially in the case of new buildings, as this requirement is included in SOLAS Chapter XI-1 (special measures for maritime safety) and not in SOLAS Chapter XI-2 (special measures for maritime security). Availability and correctness shall be verified on the occasion of the next ISPS Shipboard Verification audit on board.

12.3 If an RO or RSO Auditor notices that the CSR Document is not available or the data contained therein is not correct, he or she shall note this, and the Auditor's Head Office shall inform the Company DPA accordingly for corrective action.

12.4 As part of the flag State Annual Safety Inspection program, MI Nautical Inspectors will be provided with a copy of a vessel's latest Index of Amendments on file for comparison with that found on board. Immediate corrective action will be required to rectify any inconsistencies not the result of a recent filing of amendments before the vessel will be allowed to proceed.

13.0 Marshall Islands CSR Forms

The CSR Amendment Form (MI-203) and associated Index of Amendments form (MI-204) in the annexes to this Notice will be available in IMO standard electronic format on the Administrator's website www.register-iri.com. Amendment Forms and associated Indices of Amendments may be submitted by email to maritime@register-iri.com for timely processing. Back-up copy files may be maintained electronically, but the original CSR Document and complete CSR File must be maintained on board the vessel with the Master. The CSR File must also be made available to any Designated Authority who may ask to review it. **Rev. 6/10 8 of 10 2-011-19** Republic of the Marshall Islands

ANNEX 1 REPUBLIC OF THE MARSHALL ISLANDS OFFICE OF THE MARITIME ADMINISTRATOR CONTINUOUS SYNOPSIS RECORD (CSR) DOCUMENT

DOCUMENT NUMBER

IMO NUMBER:

Dates should be in the format yyyy/mm/dd

1

2

3

4

5

6

Registered address(es):

7

8

Registered address(es):

9

Registered address(es):

Address(es) of its safety management activities:

10

11

12

Body which carried out audit (if different):

13

Body which carried out audit (if different):

14

Body which carried out verification (if different):

15

16

THIS IS TO CERTIFY THAT this record is correct in all respects.

Issued by the Administrator of the Republic of the Marshall Islands

at

Date of Issuance:

This original document was received on board the ship and attached to the ship's

CSR file by the Master on the following date (fill in):

Date:

This document applies from (date):

Marshall Islands

Date of registration with the State indicated in 2:

Name of ship:

Majuro

Name of current registered owner(s):

IMO Registered Owner #

If applicable, name of current registered bareboat charterer(s):

Name of Company (International Safety Management):

IMO Company #

Name of all Classification Societies with which the ship is classed:
Administration/Government/Recognized Organization which issued
Document of Compliance:

Administration/Government/Recognized Organization which issued Safety
Management Certificate:

Administration/Government/Recognized Security Organization which issued
International Ship Security Certificate:

Date on which the ship ceased to be registered with the State indicated in 2:
Remarks (*insert relevant information as appropriate*)

Guy E. C. Maitland
Senior Deputy Commissioner

Signature: