

Annex 1| ***Historic Preservation  
Legislations***

Ministry of Internal Affairs  
Historic Preservation Office

REPUBLIC OF THE MARSHALL ISLANDS

The full text of all  
Acts and Regulations  
Pertaining to Historic Preservation Matters  
in the Republic of the Marshall Islands

with a Foreword by  
The Hon. Brenson S. Wase

a Preface by  
Carmen M. Bigler  
and an Introduction by  
Dirk H>R. Spennemann

MAJURO ATOLL  
MAY 1992

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## **Foreword**

The people of the Republic of the Marshall Islands can be proud of their unique national heritage and of the achievements of their ancestors. Their efforts in systematic land Improvement and subsequent management made these atolls as productive as they are. For over 2500 years they maintained a level of sustainable development for the benefit of their children's generations.

These ancestors left behind a wealth of cultural and historic properties, of oral traditions, and technology and skills.

These cultural and historic resources are a legacy, which we, the present generation, need to safeguard for the benefit of our children's children.

As the Republic of the Marshall Islands enters the world community as a recent new member of the United Nations, there is a strong need for development in this country, if the Republic of the Marshall Islands shall be a truly independent nation.

However, the restrictions in space on the atolls making up our Republic are so that what constitutes prime settlement and development land today, also constituted prime settlement land today, also constituted prime settlement land some 2000 years ago. thus old and new are superimposed on each other, and to a degree in competition. Any new large scale development is likely, one way or the other, to impair the heritage we have been given to manage for the benefit of our children's children.

In addition, western modification brings about wholesale abandonment of the traditional techniques of land management and over time, gradual, but systematic abandonment of customary practices.

In the same way as this country cannot afford that all development be stopped for the sake of its cultural and historical heritage, it cannot afford that all heritage be destroyed without adequate documentation and mitigative efforts.

The Historic Preservation Act of 1991 recognises the need for development and provides for a balance between the need for preservation and the need for development. A series of regulations has been drafted pursuant to his act, providing for the implementation of the provisions of the Act

I am proud to present this compilation of Historic Preservation legislation as it embodies the above and provides our country with the tool to ensure that the past will around for the economic and spiritual benefit of future generations.

The Hon. Brenson S. Wase

Minister of Internal Affairs&

Chairman, Advisory Council for Historic Preservation

Majuro Atoll

May 1992

## **Preface**

The new Historic Preservation Legislation, as compiled in this volume, represents over two years of continuous efforts by the Republic of the Marshall Islands Historic Preservation Office dedicated to the preservation of our magnificent heritage.

The legislation represented in this volume has been prepared by a number of people, whose efforts are hereby acknowledged: we are indebted to the former Legislative Counsel to the Nitijela, Mr. Mark Rosen, and to the Assistant Attorney General and temporary Legislative Counsel to the Nitijela, Mr. Bob Eelkema for working on the bill for the Historic Preservation Act and the subsequent draft regulations. Ms. Elizabeth Harding, Legal Counsel to the RMI Environmental Protection Authority, provided invaluable assistance in commenting on draft legislation. She also deserves unqualified credit for having drafted the EPA Earthmoving regulations with provisions for cultural heritage preservation at a time when the R.M.I Historic Preservation Office was not able to provide such legal protection to the country's heritage.

Our main gratitude goes to Dr. Do Ɔ H.R. Spennemann, Chief Archaeologist of the HPO, who furnished the drafts of the Nitifela Resolution, the Historic Preservation Act and all regulations promulgated pursuant to that Act and who in close collaboration with the above mentioned legal authorities saw all documents through the legal approval process. He also prepared the present compilation of legislation and drew up the index.

The Advisory Council on Historic Preservation and here especially the previous and present Ministers for Internal Affairs, The Hon. Luckner K. Abner and The Hon. Brenson S. Wase, Supported the legislative efforts and introduced the resolution and the act to the Nitijela and tabled the regulations in Cabinet.

Our final and most important thanks go to the Nitijela of the Republic of the Marshall Islands for considering and passing the Historic Preservation Act 1991 and to the Cabinet for passing the regulations promulgated pursuant to that Act.

Carmen M. Bigler  
Secretary for Internal Affairs  
& Historic Preservation Officer

Majuro Atoll  
May 1992

## Introduction

The history of cultural resource management in the Republic of the Marshall Islands falls into four main phases, the German Colonial Administration (1885-1914), the Japanese Administration under the League of Nations Mandate (1914-1945), the U.S. Administration under the United Nations Mandate (1945-1986), and the management by the Republic of the Marshall Islands (1986-).

During the German colonial Administration (1885-1994) the archaeological profession was still in its infancy, even in Germany itself. Although some excavations were undertaken by interested ethnographers, these were very unsystematic. The German missionaries and colonial administrators collected a number of oral traditions and established a grammar and dictionary of the Marshallese language. Missionaries and ethnographers alike, frequently complained about the decrease in knowledge about traditional customs, but undertook not positive action and concerted efforts to preserve the heritage apart from recording it in various degrees of detail.

We are almost uninformed about the period of the Japanese Administration (1914-1945). Several studies were undertaken on the ethnography, but- apparently- no archaeology was conducted and the Japanese did not utilise the potential for research given to them. It appears that there was a west-east gradient of research effort, with most work focusing on Palau and Yap. As far as historic preservation work is concerned, little, if any was done with the exception of the fostering of traditional "handicraft" production. New techniques had been introduced by the Japanese in order to make handicraft another export product in order to increase the economic exploitation of the mandated area.

After the end of World War II the United Nations gave the administration of the Marshall Islands to the U.S. Administration (1945-1986) as a strategic trust. The Marshall Islands formed, together with the Carolines, Truk, Palau and the Northern Marianas (except for Guam) the Trust Territory of the Pacific Islands (T.T.P.I). Given the Japanese incentives during the pre-war era, handicraft production and canoe building were very much alive during and immediately after the war, and the U.S. administration used the handicraft production to allow Marshallese to gain income and to create a new market economy. The U.S. Navy commissioned or supported a number of studies into the contemporary and traditional Marshallese culture in order to understand the cultural implications for their administrative work. Apart from this work, however, no systematic approach to their study and protection Cultural heritage of the Marshall Islands was undertaken, which

contrasts well with the extensive effort put into research of the natural history of the area.

Historic Preservation as a formal concept was introduced in 1967, following the establishment of the U.S. National Historic Preservation Act of 1966 and was handled by the Historic Preservation Office located at Saipan, the administrative centre of the T.T.P.I., while local offices, commonly called Historic Preservation Committees existed in all districts. Thus, a local Historic Preservation Committee existed in Majuro. U.S. legislation extended to the T.T.P.I. and a great amount of contact work was conducted.

For all practical purposes the activities of the head HPO office were concentrated on the western parts of the T.T.P.I. In reviewing the files and available data, there appears to be a distinct gradient of support – or a gradient of local activity and demand for support- running towards the east. During the T.T.P.I. period, the Marshall Islands District received only four major research studies, while the western districts, such as the Marianas received over 15 such studies.

Each of the individual districts, among them the Marshall Islands District had a District Historic Preservation Office, organised as a Historic Preservation Committee. Following the example set by the T.T.P.I. as such, the Marshall Islands District Historic Preservation Office was originally administratively under the Division of Lands and Surveys, Department of Resources and Development and was later placed organisationally under the Department of Island Affairs.

The Marshall Islands were given self-government in 1979, and the dissolution process of the T.T.P.I. with it all administrative structures began, culminating in the Compact of Free Association.

Some Historic Preservation measures started during the first term of the Nitijela: In 1983 the Nitijela had passed the Language Commission Act, which set up a Marshallese language Commission with the brief.

“ to investigate methods of preserving, developing and encouraging the use of the Marshallese language, ... to report on such matters to the Cabinet and to the Nitifela... and to recommend action to be taken by the Government.” A National Archives Act followed in 1989 (amended in 1992). Neither of these Acts, however, provided any tools for and enforceable protection of the heritage.

One of the major concerns aired at the time the T.T.P.I. was being dismantled was the fear of a legal vacuum which might render any effective historic preservation work impossible. Fears expressed were that

- i) the existing historic preservation programs would no longer qualify for categorical grants from the U.S. Department of the Interior; this was



seen likely to result in at least serious erosion in the quality of the programs, if not in their demise.

ii) The standards and guidelines of the Department of the Interior would no longer apply to the Micronesian historic preservation programs; this would probably result in a loss of program quality even if funds can be found for the programs.

iii) Historic preservation would no longer have to be considered in advance of land- modifying activities under the authority of section 106 of the (U.S.) National Historic Preservation Act and the U.S. Advisory Council for Historic Preservation's regulations.

After the signing of the Compact of Free Association between the Governments of the United States of America and the Republic of the Marshall Islands the Historic Preservation Program of the R.M.I. entered a new phase. The administration was located in Majiro and could now focus on the needs of the Republic.

At the same time, however, the limited legislative protection the cultural and historic resources enjoyed under the T.T.P.I. was withdrawn. Although the T.T.P.I. code was still in force unless replaced by other national legislation, the provision of the U.S. legislation no longer applied. The T.T.P.I. Code was particularly lacking serious safeguards for the tangible archaeological and historical heritage.

Legal assistance came from the Environmental Protection Authority. Established by act of the Nitijela in 1984 the Republic of the Marshall Islands in 1984 the Republic of the Marshall Islands Environmental Protection Authority's main role is the protection of the natural heritage of the Republic. The Environmental Protection Act of 1984 stipulates that

“ The primary purpose of the Authority shall be to preserve and improve the quality of the environment, and to that end, the following shall be the objectives of the authority:.....to preserve important historical, cultural and natural aspects of the nation's culture and heritage, maintaining at the same time an environment which supports multiplicity and variety of individual choice” (Environmental Protection Act P.L. 1984-31 §19[gl]).

Subject to the act, the Environmental Protection Authority “may in consultation with the [Environmental Protection] Council and any other person or organisation in the Republic or abroad, make regulations with respect to ... the preservation of important historical, cultural and natural aspects of the nation's heritage, and other aspects of the environment which,

in the opinion of the Authority, require regulation” (Environmental Protection Act P,L, 1984-31 §21[2][f]).

The Environmental Protection Authority earthmoving regulations of 1989 include a section on the preservation of the cultural and historic resources of the Republic ( see Appendix 4, Target ‘96, volume 4). Until the passage of the Historic Preservation Act in 1991, the Environmental Protection Authority had been the only government agency with a legal handle to protect the cultural and historic heritage in the Republic. Un closely with the Alele Museum.

In 1990 the Nitijela in its 11<sup>th</sup> Constitutional Session passed resolution 100N<sup>o</sup>, “to provide for the preservation of the cultural and historic heritage of the Republic of the Marshall Islands, with a mandate to set up a Historic Preservation Office and related legislation.

In February 1991 the first ever Republic of the Marshall Islands Historic Preservation Act 1991 was passed by Nitijela in its 11<sup>th</sup> Constitutional Session. The Act provided the necessary protection for the heritage, set up and office and set out the duties and powers of the office. A series of regulations were drafted pursuant to this act and were proposed for public hearing in October 1991 all of which were approved without alteration by the Republic of the Marshall Islands Cabinet in January 1992:

Regulations Regarding The Conduct Of Archaeological And Anthropological Research In The Republic 1992.

Regulations Governing The Taking And Export Of Arte facts 1992

Regulations Governing The Disposition Of Archaeologically Recovered Human Remains 1992

Regulations Governing Access To Prehistoric And Historic Submerged Resources 1992

The Historic Preservation Act of 1991 and these regulations provide the Republic of the Marshall Islands Historic Preservation Office with the tools needed to manage the rich and unique heritage of the Republic on behalf of our children’s children.

Majuro Atoll

Dirk H.R. Spennemann, PHD

Chief Archaeologist of the HPO

& Actiong Deputy Historic Preservation Of

May 1992

NITIJELA OF THE MARSHALL ISLANDS

11th CONSTITUTIONAL REGULAR SESSION, 1990

RESOLUTION № 100

## **RESOLUTION**

To provide for the preservation of the cultural and historic heritage of the Republic of the Marshall Islands.

WHEREAS, the Cultural heritage of the Republic represents both the foundations upon which rests modern Marshallese society and the identity of the Marshallese people; and

WHEREAS, the cultural and historic properties and resources of the Republic, which include submerged resources, form a fragile, finite and unrenowable resource that are subject to damage and destruction by patterns of modern land use, development and foreign impact, and which are therefore in need of preservation and proper management; and

WHEREAS, although there is a need for the protection of all cultural and historic properties, such protection in place and unchanged could seriously impede the wise use and development of lands in the public interest, frustrate scientific research, unduly restrict the cultural use of such properties and allow them to fall into disrepair through disuse; and

WHEREAS, such cultural and historic properties may coexist with modern development, and preservation of such properties may involve creative activities other than static protection, including adaptive use, rehabilitation and data recovery: now therefore

BE IT RESOLVED by the people of the Republic of the Marshall Islands through their Nitijela in its Eleventh Constitutional Regular Session, 1990, that the Nitijela request, and it hereby requests, that the Cabinet provide for the creation of a Historic Preservation

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**Nitijela of the Marshall Islands 12th Constitutional  
Regular Session, 1991  
An Act**

To promote the preservation of the historic and cultural heritage of the Republic of the Marshall Islands.

BE IT ENACTED BY THE NITIJELA OF THE MARSHALL ISLANDS:

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**PART I - PRELIMINARY**

§ 1. Short Title

This Act may be cited as the Historic Preservation act 1991.

§ 2. Declaration of intent

- (1) The Nitijela finds and declares the following:
  - (a) the identity of the Republic is provided by the cultural heritage of the Marshallese people, consisting of the heritage of all of the atolls and islands comprising the Republic;
  - (b) it is the duty of each Marshallese citizen to encourage and actively promote the nation's cultural heritage for the benefit of future generations;
  - (c) the cultural and historic properties of the Republic, including submerged resources, form a fragile, finite and unrenewable resource of the cultural heritage of the Republic in need of preservation and proper management;
  - (d) cultural and historic properties can in most cases co-exist with modern development, and preservation of such properties may involve creative activities other than static protection in place and unchanged, including but not limited to adaptive use, rehabilitation and data recovery; and
  - (e) protection of all cultural and historic properties in place and unchanged could seriously impede the wise use and development of lands in the public interest, frustrate scientific research, unduly restrict the cultural use of such properties, and allow such properties to fall into disrepair through disuse.
- (2) It is the intent of the Nitijela that this Act be implemented in a manner that balances the preservation of cultural and historic properties against the needs of development and continuing use of land and other resources.

- (3) The guiding principle to be used in the implementation of this Act shall be to foster conditions under which modern society and prehistoric and historic resources in the Republic can exist in productive harmony and fulfill the social, economic and other requirements of present and future generations.

### §3 Interpretation

In this Act, unless the context otherwise requires:

- (1) "Agency" means any agency of the Government or Local Governments of the Republic, including any independent board or commission.
- (2) "Artifact" means any object related to, derived from, or contained in a cultural and historic property that is important in the study, interpretation or public appreciation of such property.
- (3) "Council" means the Advisory Council for Historic Preservation created by Section 9 of this Act.
- (4) "Cultural and historic property" means any site, structure, district, landmark, building, object, or combination thereof, that:
  - (a) is included in the Republic of the Marshall Islands National Register of Historic Places;
  - (b) is determined by the Historic Preservation Office to be eligible for the National Register; or
  - (c) meets any of the criteria set forth in regulations promulgated in accordance with Section 7(e) of this Act.
- (5) "cultural exchange" means the exchange of artifacts, information, practices, ideas, arts, or crafts between the Republic and any other political entity, organization, or institution.
- (6) "Cultural heritage: means any aspect of the culture of the Republic as expressed in the oral traditions.
- (7) "Cultural Resource Officer" means the local government liaison between the HPO and a local government appointed pursuant to Section 28 of this Act.
- (8) "Culture" means the traditions, beliefs, traditional practices. arts, crafts and other social institutions of the people of the Republic, or of a particular community within the Republic.
- (9) "Data recovery" means the study of a cultural and historic property, by or under the supervision if qualified scholars with expertise appropriate to the property, and including appropriate analysis and dissemination of study result, in order to recover, understand, and make available information about the property.

- (10)"Development" means the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining or extraction of any materials, change in the density or intensity of use of land, including, but not limited to, subdivision of land and any other division of land including lot parcelling; change in the intensity of the size of any structure, including any facility of any private, public, or municipal government or utility, and the removal of any significant vegetation.
- (11)"Donation" means the provision of artifacts or other material derived from or related to a cultural and historic property, either permanently or for a fixed period of time, to a nonprofit organization recognition recognized by the Historic Preservation Office on the basis of its cultural significance to the Republic of the Marshall Islands.
- (12)"Fund" means the Historic Preservation Fund established under Section 14 of this Act.
- (13)"Historic sites" means those cultural resources and terrestrial, intertidal and submarine sites and landscapes that were produced since the advent of written records in the Marshall Islands and that are of archaeological or historical interest.
- (14)"HPO" or "Office" means the Historic Preservation Office established under Section 4 of Act.
- (15)"Human remains" means any part of the human body which has been part of a burial site, or any other site , and which has been encountered or uncovered in the process of scientific investigations or construction work or otherwise.
- (16)"Impact" means any modification in an element of a cultural and historic property that tends to damage or reduce the integrity of that element, and includes both direct and indirect impacts.
- (17) "Landmark" means any geographical or geomorphological feature associated with oral traditions or historic events of the Republic.
- (18)"Minister" means the Minister having responsibility over the subject matter of Interior and Outer Islands Affairs.
- (19)"Mitigation" means the alleviation of an impact on a cultural resource by the means of restoration, rehabilitation or data recovery.
- (20) "Oral traditions" means that body of knowledge of the indigenous people of the Marshall Islands about their pas, including their beliefs, traditional practices(including traditional medicine and medical practices), skills, environment, and their spiritual world,



which has been handed down, primarily in spoken form, from generation to generation.

- (21) "Permitting" means issuance of a written license or warrant, including any condition, to any person, empowering such person to do some act not forbidden by law, but otherwise not allowed without such authority, or the modification or amendment of any permit or condition thereof subsequent to its issuance.
- (22) "Person" means the national government or a local government of the Republic of the Marshall Islands or any agency or department thereof; the Government of the United States of America or any agency or department or any municipality thereof; any sovereign state or nation; any public or private institution; any public or private corporation, association, partnership, joint venture or other legal entity; any lessee or other occupant of property; or any individual, acting singly or as part of a group.
- (23) "Plan", depending on the context, means:
- (a) the design, specifications, and schedule of a development action;
  - (b) a national or local cultural and historic preservation plan, developed in accordance with regulations promulgated under Section 7(a) of this Act, designed to ensure that cultural and historic properties are wisely integrated into contemporary land uses and development; or
  - (c) a plan for treatment of a particular cultural and historic property or group of such properties subject to impact by a development action or actions.
- (24) "Prehistoric sites" means those cultural resources and terrestrial, intertidal and submarine sites and landscapes that were produced by the pre-literate, indigenous people of the Marshall Islands and that are of archaeological interest.
- (25) "Preservation" means the identification, evaluation, recording, documentation, curation, acquisition, protection, management, rehabilitation, restoration, stabilization, maintenance, or reconstruction of a cultural and historic property, or any combination of the foregoing activities.
- (26) "Private domestic use" includes the construction of a privately owned restaurant or take-out eating establishment in which less than five hundred(500) square meters of ground space.
- (27) "Rehabilitation" means the process of returning a property to a state of utility, through repair or alteration, which makes possible an efficient contemporary's significant historical or cultural elements.

- (28) "Restoration" means the process of accurately recovering the form and details of a property as it appeared at a particular period of time by removing later work and replacing missing original work.
- (29) "Scientific identification" means the study of artifacts other material, and information derived from or relating to a cultural and historic property or properties, for purposes of increasing knowledge about such properties or about topics of scientific or humanistic research. Such study may include destructive activities such as the gassification of samples for radiometric age determination, where appropriate.
- (30) "Significance level" means the classification of the significance of a resource for the cultural heritage of the Republic.
- (31) "Submerged resources" are those prehistoric or historic sites and artifacts located in the intertidal or subtidal zone within the internal, archipelagic or territorial waters of the Republic as defined in Sections 5, 6 and 7 of the Marine Zones(Declaration) Act 1984(Title 33, Chapter 2 of the Marshall Islands Revised Code).
- (32) "Survey" means a systematic, planned effort to identify, record, and evaluate cultural and historic properties, in a manner consistent with applicable professional standards, or the act of conduction such a survey.
- (33) "Traditional sites" means those sites, landmarks and locations to which oral traditions of the indigenous people of the Marshall Islands are attached.
- (34) "Use" of a cultural and historic property means its use for traditional cultural purposes, for scientific or humanistic study, or for productive contemporary purposes.

## **PART II - HISTORIC PRESERVATION OFFICE**

### **§4. Establishment of Office**

There is hereby established within the Ministry of Interior and Outer Islands Affairs a Historic Preservation Office(hereinafter, "HPO").

### **§5. Historic Preservation Officer and Staff**

- (1) The HPO shall consist of the following persons:
- (a) a Historic Preservation Officer, who shall be the head of the HPO, and who shall be the Secretary of Interior and Outer Islands Affairs;

- (b) a Deputy Historic Preservation Officer who shall be appointed by the Historic Preservation Officer, and who shall be a member of the public service and qualified either by training, experience or education to carry out the purposes of this Act; and
- (2) The Historic Preservation Officer may hire such staff, including technical or other advisors, as may be necessary to assist in the performance of the functions of the Office.
- (3) The Historic Preservation Officer may divide the Office into such divisions as may be necessary to perform the functions of the Office.

#### §6. Power and duties of the Historic Preservation Office

The Historic Preservation Office shall:

- (1) be responsible for the implementation of this Act, and carry out all laws of the Republic of the Marshall Islands pertaining to cultural and historic preservation and all other applicable laws of the Republic;
- (2) issue or deny permits, after review by the Council, for use, access, and development of land containing cultural and historic properties, and for the taking of any artifact of cultural or historical significance from the Republic of the Marshall Islands for cultural exchange, scientific identification, or donation to a bona-fide non-profit organization recognized on the basis of its cultural significance to the Republic;
- (3) be responsible for the identification and recording of cultural and historic properties throughout the Republic;
- (4) conduct a survey and identification of cultural and historic properties in advance of development;
- (5) be responsible for the formulation of national and local cultural and historic preservation plans; and prepare and periodically update the national cultural and historic preservation plan in accordance with regulations promulgate under Section 7(a) of this Act;
- (6) develop a program of recording and archiving the body of oral traditions of the atolls of the Republic of the Marshall Islands;
- (7) develop an educational program and service for the purpose of making available to the public facts and information pertaining to historic and archaeological sites, buildings, structures and other properties as well as oral traditions significant to the cultural heritage of the Republic;
- (8) develop a policy and program for the utilization of cultural and historical properties and information deriving from a study of those properties for the benefits of tourism;

- (9) encourage the adoption of measures to ensure that new buildings and infrastructure improvements adapt harmoniously to the spatial organization and setting of cultural and historic properties, and that they take into account the social and cultural activities, ways of life and social relationships, and land tenure practices of the occupants and other user of such properties;
- (10) develop, in cooperation with the National Archives, the Council of Iroij and the Ministry of Education, a comprehensive list of items of the traditional material cultural prohibited for export from the Republic;
- (11) develop, in cooperation with the National Environmental Protection Authority, historic preservation guidelines for earth-moving contractors and drivers of heavy excavating equipment;
- (12) develop rules of conduct and licensing procedures for archaeological and anthropological contractors intending to work in the Republic;
- (13) cooperate with the Tourism Office within the Ministry of Resources and Development and with individual tourist agencies and operators to ensure that the local cultural is adequately and accurately represented;
- (14) administer this Act in a manner that minimizes paperwork and redundant permit requirements;
- (15) seek to coordinate implementation of this Act with the implementation of historic and cultural preservation laws in the United States of America and the Pacific region;
- (16) take such measures as are necessary to control the export of artifacts from the Republic in cooperation with other applicable government agencies, and cooperate with authorized officials of other governments in the control of such exportation; and
- (17) upon notification by the Historic Preservation Officer or comparable position from another country, take such measures as are necessary to secure and confiscate those artifacts which have been exported illegally from other countries and have been imported to the Republic in cooperation with other applicable government agencies, and cooperate with authorized officials of other governments in the control of such exportation.

#### §7. Identification of Cultural and Historic Properties

The Minister or his designee shall promulgate regulations, upon the advice and consent of the Advisory Council for Historic Preservation and in accordance with the Marshall Islands Administrative Procedure Act 1979, for

the identification of cultural and historic properties. These regulations shall include, but not be limited to, the following:

- (a) establishing national and local cultural and historic and historic properties;
- (b) providing for a comprehensive inventory of cultural and historic properties;
- (c) recording cultural and historic properties;
- (d) providing for survey and identification in advance of development;
- (e) establishing criteria for recognition as a cultural and historic property;
- (f) classifying the significance levels of prehistoric, historic and traditional sites; and
- (g) all other regulations which are necessary with respect to the identification of cultural and historic properties.

#### 8. Use of cultural and historic properties

The Minister or his designee shall promulgate regulations, upon the advice and consent of the Advisory Council for Historic Preservation and in accordance with the Marshall Islands Administrative Procedure Act 1979, for the use of cultural and historic properties. These regulations shall include, but not be limited to, the following:

- (a) establishing a permitting procedure for the protection of cultural and historic properties on public and private lands, and delineating activities exempt from that procedure;
- (b) establishing a schedule for the conduct of surveys;
- (c) providing for the disposition of archaeologically recovered human remains;
- (d) providing for permits for access to prehistoric and historic submerged resources;
- (e) providing for the taking and export of artifacts and for their seizure and confiscation;
- (f) providing for archaeological and anthropological investigations, and for a schedule governing the conduct of archaeological and anthropological research' and
- (g) all other regulations which are necessary with respect to the use of cultural and historic properties.

### **PART III. ADVISORY COUNCIL FOR HISTORIC PRESERVATION**

#### **§9. Establishment of Council**

There is hereby established the Republic of the Marshall Islands Advisory Council for Historic Preservation (hereinafter the "Council").

#### **§10. Membership; terms; vacancies; compensation**

- (1) The Council shall consist of the following seven(7) voting members:
  - (a) the following five(5) ex officio members:
    - ( i ) the Minister of Interior and Outer Islands Affairs, who shall serve as the Chairman of the Council;
    - ( ii ) the Secretary of the Ministry of Education or the Secretary's designee;
    - ( iii ) the Secretary of the Ministry of Social Services or the Secretary's designee;
    - ( iv ) the Secretary of the Ministry of Resources and Development, or the Secretary's designee; and
    - ( v ) the Chairman of the Republic of the Marshall Islands Environmental Protection Authority or the Chairman's designee; and
  - (b) two(2) members of the general public, who shall be appointed by the President after consultation with the Minister, and who shall be sufficiently qualified in the area of historic and cultural preservation.
- (2) The Council shall also consist of two(2) regular nonvoting members, who shall be the Historic Preservation Officer and the Chairman of the Council of Iroij or the Chairman's designee, and who shall serve in an advisory capacity.
- (3) The Council shall select from among its voting members a Vice-Chairman.
- (4) The Council may seek such assistance from technical or other advisors or government agencies as necessary to assist in the performance of the functions of the Council.
- (5) The five ex officio members shall serve for the duration of their tenure in office. The two members of the general public shall each serve for a term of four(4) years, and may be reappointed for one additional term only. Vacancies among the members of the general public shall be filled for the remainder of the unexpired term in the same manner as the original appointment.
- (6) The members of the Council shall serve without compensation but shall be reimbursed for all reasonable and necessary expenses

incurred for all reasonable and necessary expenses incurred in the performance of their duties. Members traveling on official business shall receive per diem compensation at established Republic rates.

#### §11. By-laws and procedures

Subject to this Act and any other law, the Council shall determine its own by-laws, which shall provide for:

- (a) the number of meetings per year to be held by the Council;
- (b) the quorum at and the conduct of meetings of the Council;
- (c) the appointment and duties of a Secretary of the Council; and
- (d) any other matters relating to the Council and its operations and procedures which it deems appropriate.

#### §12. Disclosure of, and disqualification for, interest

- (1) If a member of the Council has any personal interest in the subject matter of any question before a meeting of the Council, that member:
  - (a) shall disclose such interest at the meeting; and
  - (b) shall not participate in the deliberations (except as directed by the Council) or in the decision of the Council on the question.
- (2) A disclosure under Subsection (1) of this Section shall be recorded in the minutes.
- (3) Failure to comply with the requirements of Subsection (1) or (2) of this Section shall invalidate any act or proceeding of the Council taken in relation to the subject matter.

#### §13. Powers and Duties of the Council

The Council shall:

- (1) advise the Minister and the HPO on all matters pertaining to this Act or on any matters referred to the Council by the Minister or the HPO;
- (2) determine whether particular properties, groups of properties, or classes of properties should be designated as cultural and historic properties;
- (3) review and approve the national cultural and historic preservation plan and revisions of that plan as provided in accordance with regulations promulgated under Section 7(a) of this Act;
- (4) subject to Section 31 of this Act, review requests for permits and proposed land uses, monitor exempt activities and review findings of the HPO pursuant to regulations promulgated under Section 8(a) of this Act;

- (5) review and approve any and all regulations promulgated under this Act;
- (6) review and approve loans and leases under this Act;
- (7) participate in the development of curation facilities pursuant to this Act;
- (8) from time to time and in consultation with local governments and the HPO, recognize local advisory committees to assist it in its work; and
- (9) prepare and publish a written annual report summarizing its activities and reporting on the status of cultural and historic preservation in the Republic of the Marshall Islands, and furnish copies to the President, the Chief Secretary, and the Speaker of the Nitijela.

#### **PART IV - FINANCE**

##### **§14. Historic Preservation Fund**

- (1) There shall be established a fund which shall be known as the Historic Preservation Fund, hereinafter referred to as "the Fund".
- (2) The Fund shall be a fund other than the Marshall Islands General Fund within the meaning and for the purposes of Article VIII, Section 3 of the Constitution of the Republic of the Marshall Islands.

##### **§16. Payments out of the Fund**

- (1) Payment may be made out of the Fund only for:
  - (a) carrying out of the powers and duties of the HPO for the purpose of cultural and historic preservation in accordance with this Act, and regulations promulgated under this Act, and all other applicable laws,
  - (b) the costs and expenses of the HPO, including administration;
  - (c) working capital and petty cash, and for similar purposes; and
  - (d) giving effect to the provisions of this Act and any regulations made under this Act.
- (2) The salaries of the Historic Preservation Officer and the Deputy Historic Preservation Officer shall not be made available from the Fund, but shall be a charge upon the Marshall Islands General Fund.
- (3) No money may be withdrawn from the Fund except with the authority of the Secretary of Finance together with the Minister, or the Minister's designee, who shall be satisfied that the withdrawal



is made in accordance with this Act and regulations promulgated under this Act, and any other applicable law.

#### £17. Bank Accounts

The HPO shall open a bank account or accounts with a bank approved by the Minister of Finance for the purposes provided for in this Act.

#### £18. Accounts and records.

- (1) The HPO shall maintain proper accounts and records, to the satisfaction of the Secretary of Finance, of The Historic Preservation Fund
  - (a) the disposition of monies made out of the Fund; and
  - (b) the property and financial transactions of the HPO generally.
- (2) The accounts to be laid before the Nitijela by the Minister of Finance under Article VIII, section 5(4) of the Constitution shall include accounts relating to the HPO.
- (3) The accounts and records referred to in Section 8 of this Act and Subsections (1) and (2) of this Section shall be audited by the Auditor-General as provided of in Article VIII, Section 15 of the Constitution.
- (4) Before the end of the month of June of each year, the HPO shall submit to the Minister a report of the work of the HPO including its property and financial transactions during the previous financial year.
- (5) Before submitting the report referred to in Subsection (4) of this section of the Minister, the HPO shall submit the report to the Auditor-General, who shall report to the Minister:
  - (a) whether the financial statements in the report are based on proper accounts and records;
  - (b) whether the statements in the report are in agreement with the accounts and records and show fairly the financial operation and the state of the affairs of the HPO;
  - (c) whether the receipt and expenditure of monies, the acquisition and disposal of assets, and the operations of the HPO during the financial year have been in accordance with this Act; and
  - (d) with respect to such other matters arising out of the report as the Auditor-General considers should be reported to the Minister.
- (6) The Minister shall cause the report and financial statement of the HPO, together with the report of the Auditor-General and the Minister's own comments, to be laid before the Nitifela within

fifteen (15) days after their receipt by him, or if the Nitifela is not in session, within fifteen (15) days after the commencement of the next session of the Nitijela.

- (7) Notwithstanding the provisions of this Section, the Minister may at any time require the HPO to submit to the Minister a report in such form and as to such matters as the Minister deems necessary.

#### §19. Exemption

The income, property and transactions of the HPO shall not be subject to any tax, rate, charge or impost under any other law.

### **PART V- ENFORCEMENT**

#### §20. Seizure and confiscation authorized

Airport security personnel, customs officers and any other person authorized by the Minister of Transportation and Communications to make seizures on aircraft or vessels shall have the right to:

Search all luggage and goods leaving the Republic; and

Seize all items that he has reasonable cause to believe to be prohibited for export in accordance with regulations promulgated under Section 8(e) of this Act.

The HPO shall make a determination in writing within thirty (30) days of the seizure of any item seized in accordance with Subsection (1) of this Section as to whether the Seized item was prohibited from export.

Any item found not to be prohibited from export shall be returned to or forwarded to its owner. Any item found to be prohibited from export shall be confiscated by the HPO, and shall remain in the custody of the HPO the await disposition in accordance with this Section.

If an item is confiscated by the HPO, the owner of the item shall have the right to appeal the decision of the HPO th the council within ninety (90) days of the date of the decision of the HPO. The Council shall issue its decision within thirty (30) days of the date of the filing of the appeal, which shall be binding on each of the parties.

The ownership of any item rightfully seized and confiscated pursuant to this Section shall vest in the Government of the Republic, which may deliver the item to the HPO or to any museum or other institution that it deems appropriate, provided that such delivery shall not act to divest the Government of ownership in any item so delivered.

### §21. Violation and penalties

Any person who violate this Act, or any regulations, by-laws, permits, requirements or orders issued or made under this Act, shall be liable upon conviction to a fine of not more than ten thousand dollars(\$10,000) for each separate offense, or to a term of imprisonment not exceeding six (6) months or both. If the violator directly or indirectly has caused the loss of, or damage to, registered historic sites or tangible cultural property, the violator shall be fined an additional amount of money determined by the court to be equivalent to the value of the lost or damaged historic site of tangible cultural property. Each day of continued violation of this provision shall constitute a distinct and separate offense for which the offender may be punished. Equipment used by the violator for the knowing , intentional or willful taking, appropriation, excavation, injury, destruction, or for the transportation of the violator to or from the historic site or the location of the tangible cultural property shall be subject to seizure and disposition by the Republic without compensation to its owners.

Any person who violates this Act, or any regulations, by- laws, permits requirements or orders issued or made under this Act, to the extent that an entire cultural or historical resource is destroyed or impaired to such a degree that it cannot be fully rehabilitated shall be fined the cost of the study and data recovery program which would have been conducted if the violator had complied with the law, which shall be imposed in addition to any other fines imposed under this Act.

If a construction applied for as a private domestic use has in fact not been built for such use, the applicant shall be liable for an amount not exceeding ten thousand dollars (\$10,000) but not less than five thousand dollars (\$5,000), regardless of whether or not cultural or historic property has been damaged.

All fees and fines, as well as proceeds resulting from the sale of seized equipment, shall be deposited into the Historic Preservation Fund.

### §22. Misconduct in public office

A failure to comply with Section 12 of this Act regarding disclosure of and disqualification for interest shall be deemed to be misconduct in office within the meaning of Section 46 of the Criminal Code.

### §23. Application of bribery laws

Every member and employee of the Council or HPO shall be subject to the provisions of Section 18 of the Criminal Code with respect to every act in the performance of his duties under the Council or HPO, and any such act shall

be deemed to be an official act within the meaning of the Section 18 of the Criminal Code.

#### §24. Protection for actions taken

No suit prosecution shall lie:

Against the Council or HPO for any act which in good faith is done or purported to be done by the Council or HPO under this Act or any regulation made under this Act; or

Against any member, officer, servant or agent of the Council or HPO for any act which in good faith is done or purported to be done by him under this Act or any regulation made under this Act or under the direction of the Council or HPO.

Any expenses incurred by the Council or HPO in any suit or prosecution brought by or against the Council or HPO before any court shall be paid out of the Historic Preservation Fund and any costs, fines or damages paid to or recovered by the Council or HPO in any such suit or prosecution shall be credited to that fund.

Any expenses incurred by any such person referred to in Subsection (1)(b) of this Section in any suit or prosecution brought against him before any court with respect to any act which is done or purported to be done by him under this Act, any regulation made under this Act, or under the direction of the Council or HPO shall, if the court holds that such act was done in good faith, be paid out of the Historic Preservation Fund unless such expenses are recovered by him in such suit or prosecution.

#### §25. Immunity

No writ against person or property shall be issued against a member of the Council or HPO in any action brought against the Council or HPO.

#### §26. Attorney-General

The Attorney-General may provide legal assistance and representation to the Council or HPO in any suit or prosecution brought by or against the council or HPO or against any member, officer, servant or agent of the Council or HPO, and may, upon the request of the Council or HPO, advise them on matters of law.

## **PART VI- MISCELLANEOUS**

### **§27. DriKabeel**

There is hereby created the title of “Drikabeel” as an official recognition of persons possessing traditional knowledge and skills.

The title shall be bestowed upon Marshallese men and women who are widely acclaimed to be the unsurpassed masters in their fields.

There shall not be two DriKabeel having the same profession, traditional knowledge or skill, until most of the traditional crafts and skills are represented.

The selection process shall be free of any influence by creed, age, birth place or political or genealogical affiliation of the person.

The selection process shall ensure that the number of male and female DriKabeel is approximately the same.

The person shall bear this title until his or her death.

The determination of DriKabeel shall be as follows:

The public shall be invited to make recommendations for people to be considered eligible for the title.

The HPO shall review these recommendations in conjunction with members of the Council of Iroij and other authorities knowledgeable in the field.

The HPO shall prepare a list of candidates eligible for the title, from which the Council shall elect candidates.

The election of candidates shall take into account:

Their knowledge in the skills to be honored;

The applicability of such skills in modern society; and

Their willingness to train young apprentices in such skills to the best of their ability.

If a person chosen to become a DriKabeel accepts that title, that person shall agree to train one apprentice for a minimum of one year and a maximum of five (5) years in those skills and that knowledge for which the person has received that title. After the apprentice has completed the training, the DriKabeel may take on an additional apprentice.

The selection of apprentices shall be conducted in the following manner:

The HPO shall publish advertisements for such apprenticeships inviting applications from young Marshallese men and women;

The HPO, in conjunction with the Council, shall draw up a list of five (5) candidates to serve as apprentices; and

The final decision for the selection of apprentices shall be the responsibility of the respective DriKabeel.

Upon accepting an apprenticeship of a DriKabeel, the apprentice agrees to:

Complete the apprenticeship; and

Use the skills learned for the benefit of the people of the Marshall Islands  
The DriKabeel shall receive an annual allowance of one thousand dollars (\$1000).

If the DriKabeel and the apprentice agree that the apprentice shall live with the family of the DriKabeel, the family of the DriKabeel shall in addition receive an annual allowance of two thousand dollars (\$2000) for each year of the apprenticeship.

#### §28. Local Government Liaison

There shall be within each local government of the Republic a Cultural Resource Officer who shall be appointed by the head of each local government council, with the advice and consent of each such council, and who shall serve as the liaison between the HPO and each local government. The Cultural Resource Officer shall work in cooperation with the Local Government Council, the Planning Commission established under the Planning and Zoning Act 1987, and any other national and local government agency as appropriate.

The Minister shall promulgate regulations, upon the advice and consent of the Advisory Council for Historic Preservation and in accordance with the Marshall Islands Administrative Procedure Act 1979, with respect to the functions and duties of Cultural Resource Officers appointed under Subsection (1) of this Section.

#### §29. Costs and Fees

Except in cases where undue hardship would result, it shall be the sole responsibility of the party or parties whose actions damage a cultural or historic property to bear the costs of avoiding, mitigation or satisfactorily reducing the level of damage to that property.

Except as provided under Subsection (3) of this Section, undue hardship may be claimed in those circumstances where:

The construction applied for is destined for private domestic use only;

The area affected by the construction is 0.5 acres or less; or

The costs of mitigation exceed five (5) percent of the total construction budget.

Undue hardship may not be claimed in circumstances where:

The construction is funded by United States government funds or other overseas aid;

The construction is funded by the national government or any local government of the Republic; or

The Construction is funded by companies with more than thirty (30) percent overseas capital.

If undue hardship is claimed under subsection 2 (e) of this Section, the contractor shall provide five (5) percent of the final and total construction budget to the HPO. The HPO shall conduct the mitigation using the funds provided and additional funds drawn from the Historic Preservation Fund. For purposes of this Subsection, the word “contractor” means the person or organization that has undertaken the construction activities subject to his Act.

#### §30. Rules and regulations

The Minister or the Minister’s designee may promulgate such rules and regulations, in accordance with the Marshall Islands Administrative Procedure Act 1979, as are necessary to carry out the purposes of this Act. In the promulgation of any rules or regulations in accordance with this Act, the Minister or the Minister’s designee shall work in cooperation with the Republic of the Marshall Islands Environmental Protection Authority with respect to its rulemaking powers under Section 21(2) (f) of the National Environmental Protection Act 1984 (Title 35, Chapter 1 of the Marshall Islands Revised Code).

#### §31. Land use

Before engaging in any land use activities as authorized under this Act, or any regulations, by- laws, permits, requirements or orders issued or made under this Act, the HPO and/or the Council, as appropriate, shall obtain the written approval of the Irijlaplap, Irojiedrik where necessary, Alap and the Senior DriFerbak of such land, who shall be deemed to represent all persons having an interest in that land.

The HPO and/ or the Council, as appropriate, shall work in cooperation and coordination with the following authorities and agencies with respect to any activities affecting the land or sea of the Republic:

The Republic of the Marshall Islands Environmental Protection Authority established under the National Environmental Protection Act 1984;

Local Government Planning Commissions established under the Planning and Zoning Act 1987;

The Republic of the Marshall Islands Marine Resources Authority established under the Marshall Islands Marine Resources Authority Act 1988;

The Republic of the Marshall Islands Visitors Authority established under the Tourism Act 1991; and

Any other national or local government ministry or agency, statutory authority or public corporation having been delegated any powers to control or otherwise manage land use or the use of resources within the territorial

sea of the Republic and any other waters in which the Republic, either through the national government or a local government, has jurisdiction.

Before the alienation or disposition of any land in the Republic to or by HPO and/ or the Council, as appropriate, whether by way of sale, mortgage, lease, license or otherwise, the approval of the Iroiylaplap, Iroiiedrik where necessary, Alap and the Senior DriJermal of such land shall be obtained in accordance with Article X, Section 1 (2) of the Constitution.

- (1) "Council" means the Advisory Council for Historic Preservation created by § 9 Historic Preservation Act 1991
- (2) "Cultural and historic property" means any site, structure, district, land mark, building, object, or combination thereof, that:
  - (a) is included in the Republic of the Marshall Islands National Register of Historic Places;
  - (b) is determined by the Historic Preservation Office to be eligible for the National Register; or
  - (c) meets any of the criteria set forth in § 5 of these regulations

Cultural and historic properties may be recognized as such individually or as members and locations can be specified, or as "classes" of like properties whose characteristics can be specified but whose precise total numbers and locations may not be specifiable.

- (3) "Cultural heritage" means any aspect of the culture of the Republic as expressed in the oral traditions.
- (4) "Cultural Resource Management" means those skills required to survey, classify and evaluate the cultural and historical properties and the cultural heritage of the Republic and to manage these properties and that heritage in accordance with the Historic Preservation Act 1991 and the applicable regulations.
- (5) "Cultural Resource Officer" means an individual who has a paraprofessional training in cultural Resource Management and who is a council member of one of the certified Local Government of the Republic as defined Article IX of the Constitution of Republic of the Marshall Islands.
- (6) "Culture" means the traditions, beliefs, traditional practices, arts, crafts and other social institutions of the people of the Republic, or of a particular community within the Republic.
- (7) "Data recovery" means the study of a cultural and historic property, by or under the supervision of qualified scholars with expertise appropriate to the property, and including appropriate analysis and dissemination of study results, in order to recover, understand, and make available information about the property.



- (8) “Development” means the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining or extraction of any materials, change in the density or intensity of use of land, including, but not limited to, subdivision of land and any other division of land including lot parcelling; change in the intensity of use of water, ecology related thereto, or alteration of the size of any structure, including any facility of any private, public, or municipal government or utility, and the removal of any significant vegetation.
- (9) “Historic sites” means those cultural resources and terrestrial, intertidal and submarine sites and landscapes that were produced since the advent of written records in the Marshall Islands and that are of archaeological or historical interest. These sites, mainly from the pre-German, German and Japanese periods preceding the build-up of the military installations for World War II, include but are not limited to the following: house sites, service structures (e.g., cisterns), historic middens, cemeteries, aircraft, shipwrecks, and harbor structures. Sites from World War II include but are not limited to the following: concrete structures (e.g., manshelters, command buildings, cisterns, bomb magazines), gun emplacements, tanks, aircraft, vehicles, harbor structures (e.g., piers, docks), revetments (both soil and concrete), runways (including aprons and taxi ways), concrete lined wells and water cisterns, and submerged resources such as shipwrecks, aircraft wrecks, vehicles, tanks and other war materiel.
- (10) “HPO” or “Office” means the Historic Preservation Office established under §4 of the Historic Preservation Act of 1991.
- (11) “Human remains” means any part of the human body which has been part of a burial site, or any other site, and which has been encountered or uncovered in the process of scientific investigations or construction work or otherwise.
- (12) “Impact” means any modification in an element of a cultural and historic property that tends to damage or reduce the integrity of that element. The includes:
- (a) “direct impacts”, which are caused by a given action and occur at the same time and place; and
  - (b) “indirect impacts”, which are caused by a given action and occur later in time or farther removed in distance, but are reasonably foreseeable. Indirect impacts may include, but are not limited to, the inducement of population growth, the inducement of changes

in the density or distribution of land uses, and changes in traffic patterns.

- (13) “Interpretation” means making understandable to the general public a cultural and historic property, or the information and artifacts it contains, for purposes of education and enlightenment.
- (14) “Landmark” means any geographical or geographical feature associated with oral traditions or historic events of the Republic.
- (15) “Oral traditions” means that body of knowledge of the indigenous people of the Marshall Islands about their past, including their beliefs, traditional practices (including traditional medicine and medical practices), sills, environment, and their spiritual world, which has been handed down, primarily in spoken form, from generation to generation.
- (16) “Parties” to consultation under the provisions of these regulations means the agency or agencies involved in the action subject to review, the HPO, and any other person, organization, or group with a financial, professional, or cultural interest in the action or property involved.
- (17) “Permitting” means issuance of a written license or warrant, including any condition, to any person, empowering such person to do some act not forbidden by law, but otherwise not allowed without such authority, or the modification or amendment of any permit or condition thereof subsequent to its issuance.
- (18) “Person” means the Government or a Local Government of the Republic of the Marshall Islands or any agency or department thereof; the Government of the United States of America or any agency or department or any municipality thereof; any sovereign state or nation; any public or private corporation, association, partnership, joint venture or other legal entity; any lessee or other occupant of property; or any individual, acting singly or as part of a group.
- (19) “Plan”, depending on the context in which it is used, means:
  - (a) the design, specifications, and schedule of a development action;
  - (b) the Marshall Islands Cultural and Historic Preservation Plan, or a local cultural and historic preservation plan, developed pursuant to §7 of the Historic Preservation Act 1991, designed to ensure that cultural and historic properties are wisely integrated into contemporary land uses and development; or
  - (c) a plan for treatment of a particular cultural and historic property or group of such properties subject to impact by a development action or actions.

- (20) “Predictive model” means an element of a cultural and historic preservation plan which, on the basis of existing information and extrapolation, predicts the distribution and density of various classes of cultural and historic properties over a given island or other area.
- (21) “Prehistoric sites” means those cultural resources and terrestrial, intertidal and submarine sites and landscapes that were produced by the preliterate, indigenous people of the Marshall Islands and that are of archaeological interest. These sites include but are not limited to the following: artifact scatters, buried gardening features, buried occupation layers, coral slab alignments, coral lined paths, fishtraps \weirs, fortifications, gardening features, house pavements, house platforms, platforms and enclosures, burials and cemeteries, shell middens and wells.
- (22) “Preservation” means the identification, evaluation, recording, documentation, curation, acquisition, protection, management, rehabilitation, restoration, stabilization, maintenance, or reconstruction of a cultural and historic property, or any combination of the foregoing activities.
- (23) “Project” means any structure, use, development or other activity subject to review under these regulations, or where the context so indicates, a preservation activity carried out pursuant to these regulations.
- (24) “Records” of a preservation activity mean the notes, other documents, photographs, forms, files, electronic records, maps, specifications, and other material describing the activity, its results, the property involved, and any data recovered from or pertaining to the property.
- (25) “Regulated activity on private lands” means any use of private lands that is subject to issuance of a permit by any agency, or that is wholly or partly dependent on financial, technical, or other forms of assistance by any agency, including but not limited to those activities requiring permits or assistance under the Coast Conservation Act 1988, the National Environmental Protection Act 1984, any regulations adopted under those Acts, or any other applicable law of the Republic.
- (26) “Rehabilitation” means the process of returning a property to a state of utility, through repair or alteration, which makes possible and efficient contemporary use, while preserving or restoring the property’s significant historical or cultural elements.

- (27) “Restoration” means the process of accurately recovering the form and details of a property as it appeared at a particular period of time by removing later work and replacing missing original work.
- (28) “Republic” means the Republic of the Marshall Islands.
- (29) “Scientific identification” means the study of artifacts, other material, and information derived from or relating to a cultural and historic property or properties, for purposes of increasing knowledge about such properties or about topics of scientific or humanistic research. Such as the gassification of samples for radiometric age determination, where appropriate.
- (30) “Significant element” of a cultural and historic property means an element integral to the property’s cultural or historical significance, the disturbance of which will impair such significance. where pertinent, a significant element may be present in the environment surrounding the property, or in its airspace, as well as or rather than in the property itself.
- (31) “Significance level” means the classification of the significance of a resource for the cultural heritage of the Republic. Resources shall be classified as ‘very significant’ ‘significant’, ‘less significant’, ‘insignificant’ and of ‘undermined significance’, the criteria for which are set forth in §6 of these regulations.
- (32) “Submerged resources” are those prehistoric or historic sites and artifacts located in the intertidal or subtidal zone within the internal, archipelagic or territorial waters of the Republic as defined in §§ 5, 6 and 7 of the Marine Zones (Declaration) Act 1984
- (33) “Survey”
- (a) When used as a noun, means a systematic planned effort to identify, record, and evaluate cultural and historic properties, in a manner consistent with applicable professional standard; and
  - (b) When used as a verb, means the act of conduction a survey as defined in paragraph a of this Subsection, whether at a general level, as in the survey of an entire island, or at the level of a particular parcel or tract of land.
- (34) “Traditional sites” means those sites, landmarks and locations to which oral traditions of the indigenous people of the Marshall Islands are attached. These sites include but are not limited to the following: places on the reef, patch-reefs, raised micro atolls, tidal pools, channels in the reef and stretches in the landscape. A prehistoric or historic site may also be traditional site.
- (35) “Use” of cultural and historic property means its use for traditional cultural purposes, for scientific or humanistic study, or for

productive contemporary purposes. Such use may, in the public interest, require the alteration of the property's significant elements or even its total destruction

- (36) "Wartime context", with reference to a cultural and historic property associated with World War II, means the context in which the property was made or used during World War II, as opposed to a context to which it may have been removed after World War II.

## **PART II- PURPOSE OF REGULATIONS**

### **§4. Survey and Identification in Advance of Development**

- (1) Public lands shall not be disposed of, nor activities permitted on public or private lands, that might damage cultural and historic properties without first complying with these regulations
- (2) Identification of cultural and historic properties in advance of development shall be conducted in a manner consistent with the standard promulgated by the HPO under these regulations.
- (3) The results of all surveys to identify cultural and historic properties shall be provided to the HPO for review and approval.
- (4) All surveys to identify cultural and historic properties in advance of development shall take into account the urban and regional social, cultural, customary, traditional, historical and environmental contexts of such properties and the economic, social, demographic, and land use effects that the subject development may have if any beyond the boundaries of the development site.

## **PART III- CRITERIA FOR CULTURAL AND HISTORIC PROPERTY**

### **§5. Criteria for Recognition as a Cultural and Historic Property**

In the absence of a formal determination by the HPO, a property shall be recognized as having cultural and historic value if it appears to meet one or more of the following criteria:

- (1) Possession of cultural value: the property is viewed by a group people as important in maintaining the group's cultural identity (e.g., a traditional site).
- (2) Possession of social value: the property plays and ongoing important role in the social life of a group (e.g., a traditional fishing location).
- (3) Possession of interpretive value: the property has current or potential use as an exhibit for educational purposes.

- (4) Possession of research archaeological value: the property contains important information pertinent to a significant archaeological research question or questions.
- (5) Possession of archival archaeological value: the property represents a class of properties identified in the Marshall Islands Cultural and Historic Preservation Plan, or in a local cultural and historic preservation plan, as containing information that should be preserved for archival purposes.
- (6) Possession of architectural excellence: the property is expressive of the work of a master designer or builder, or otherwise is a fine example of the architect's craft.
- (7) Possession of architectural representativeness: the property is representative of an important style or period in the Republic's architectural history.
- (8) Possession of historical ambience: the property conveys a "sense of place", a character that is perceived by local residents or others as being both "out of the past" and worth retaining.
- (9) Possession of aesthetic value: the property is perceived by local residents or others as both "out of the past " and pleasing to the eye.
- (10) Possession of particularistic historical value: the property is associated with a particular person or event important in the Republic's history (e.g., a place significantly associated with the 1994 invasion of the Marshall Islands)

#### §6. Classification of the Significance Level of Prehistoric, Historic and Traditional Sites

- (1) Prehistoric Sites. The levels of significance of prehistoric sites in the Marshall Islands shall be classified as follow:
  - (a) "Very significant". A prehistoric site is considered to be very significant if:
    - (i) the resource is the only one of its kind known on the atoll concerned;
    - (ii) the resource is part of an ensemble of sites, even if the individual sites as such would not be considered to be very significant;
    - (iii) the resource is rich in cultural artifacts and undisturbed by construction activities;
    - (iv) the resource is particularly well preserved; or

- (v) the resource is connected with oral traditions important beyond the limits of the individual atoll on which the resource is located.
  - (b) “Significant”. A prehistoric site is considered to be significant if:
    - (i) the resource is the only one of its kind known on the islet concerned;
    - (ii) the resource is rich in cultural artifacts and relatively undisturbed by construction activities;
    - (iii) the resource is well preserved; or
    - (iv) the resource is connected with oral traditions.
  - (c) “Less significant”. A prehistoric site is considered to be less significant if:
    - (i) the resource is one of many of similar kind on the islet concerned, but does not form part of an ensemble of sites or features; or
    - (ii) The resource is one of many of similar kind on the islet concerned, but does not form part of an ensemble of sites or features; or
    - (iii) the archaeological character of the resource is doubtful; and
    - (iv) the resource is not connected with any oral traditions.
  - (d) “Insignificant”. A prehistoric site is considered to be insignificant if:
    - (i) the resource is completely disturbed by construction activities or erosion;
    - (ii) the resource is already largely destroyed; or
    - (iii) the resource is abundant on the islet concerned, but does not form a part of an ensemble of sites or features, and sufficient well preserved examples of the resource will remain intact
  - (e) “Undetermined significance”. A prehistoric site is considered to be of undetermined significance if little or no detailed survey work has been undertaken. It is a rebuttable presumption that the significance level of any prehistoric site of undetermined significance is “significant”  
 In the event that a prehistoric site and a traditional site are identical, the traditional character of the site shall take precedence, and the site is automatically classified as “significant” even if the significance level determined on archaeological grounds only is lower.
- (2) Historic Sites. The levels of significance of historic sites in the Marshall Islands shall be classified as follow:

- (a) “very significant”. A historic site is considered to be very significant if:
  - (i) the resource is the only one of its kind known in the Republic;  
or
  - (ii) the resource is part of an ensemble of sites, even if the individual sites as such would not be considered to be very significant; or
  - (iii) the resource is considered to be a prime example of the workmanship of a particular architect, builder or craftsman;  
or;
  - (iv) the resource is rich in cultural artifacts and undisturbed by construction activities; or
  - (v) the resource is particularly well preserved and shows little or no alterations to the original appearance of the structure;  
or
  - (vi) the resource is connected with historic events or persons or oral traditions important beyond the limits of the individual atoll on which the resource is located.
- (b) “Significant”. A historic site is considered to be significant if:
  - (i) the resource is the only one of its kind known on the atoll or island concerned; or
  - (ii) the resource is considered to be a good example of the workmanship of a particular architect, builder or craftsman;  
or
  - (iii) the resource is rich in cultural artifacts and relatively undisturbed by construction activities; or
  - (iv) the resource is well preserved and shows only limited alterations to the appearance of the original structure; or
  - (v) the resource is connected with historic events or persons or oral traditions important for the individual atoll on which the resource is located.
- (c) “Less significant”. A historic site is considered to be less significant if:
  - (i) the resource is considered to be a reasonably good example of the workmanship of a particular architect, builder or craftsman; or
  - (ii) the resource is well preserved but shows substantial alterations to the appearance of the original structure; or
  - (iii) the resource is not well preserved but shows only limited alterations to the appearance of the original structure; or



- (iv) the resource is one of many of a similar kind on the atoll or island concerned, but does not form part of an ensemble of sites or features; or
  - (v) the historic character of the resource is doubtful; and
  - (vi) the resource is not connected with any oral traditions.
- (d) “Insignificant”. A historic site is considered to be insignificant if:
- (i) the resource is completely disturbed by construction activities or erosion; or
  - (ii) the resource is not well preserved and shows substantial alterations to the original appearance; or
  - (iii) the resource is already largely destroyed; or
  - (iv) the resource is abundant on the atoll concerned, but does not form part of an ensemble of sites or features, and sufficient well preserved examples of the resource will remain intact.
- (e) “Undetermined significance”. A historic site is considered to be of undetermined significance if little or no detailed survey work has been undertaken. It is a rebuttable presumption that the significance level of any historic site of undetermined significance is “significant”.
- (3) Traditional Sites. All traditional sites shall be classified as “significant”.

#### **PART IV- USE OF CULTURAL AND HISTORIC PROPERTIES**

##### §7 Protection of cultural and Historic Properties

- (1) Land shall not be disposed of or used for any activity, without permit, that in the opinion of the Historic preservation Office and the Advisory Council for Historic Preservation might damage cultural and historic property significant to the cultural heritage of the Republic.
- (2) The willful removal of artifacts, and the destruction, removal, disturbance, displacement, or disfigurement of any cultural and historic property on public or private lands or in the waters of the Republic, without a permit issued by the HPO, is prohibited; provided that the cultural and historic property has been designated as such, or is eligible for designation as such, by the HPO.

#### §8. Land Use Activities

- (1) The following activities are exempt from the requirements of this section, except as provided in Subsection (2) below:
  - (a) clearing of vegetation using hand tools;
  - (b) agricultural activities on lands which have been historically used for such activities, providing such activities do not involve grading or excavation;
  - (c) hunting, fishing and trapping involving no development;
  - (d) preservation of scenic, historic, and scientific areas, including wildlife preserves, involving no development;
  - (e) expansion or improvement of an existing structure, unless the structure has been identified by the HPO as a cultural and historic property, as a contributing element of a cultural and historic property, or as lying within a cultural and historic property that could be damaged by the action;
  - (f) regarding or paving of already graded land surfaces; and
  - (g) replacement, acquisition, or improvement of non-structural capital equipment involving no development.
- (2) The Council may determine that an activity that would ordinarily be exempt from the requirements of this section must be reviewed in accordance with this section, where it finds after consideration of the activity and of public comments, if any, that the activity may do damage to a cultural and historic property.

#### §9. Permitting procedure

- (1) Any agency or person that may dispose of public lands use or permit use of public lands for a nonexempt activity, conduct or issue a permit for the conduct of a nonexempt activity on private lands, shall comply with the following procedures at the earliest possible stage in planning. Failure to comply until it is too late reasonably to consider alternatives to the action as planned shall constitute noncompliance with these regulations.
- (2) The agency or person responsible for undertaking, assisting, permitting, or reviewing a nonexempt activity (hereinafter, the "agency") shall:
  - (a) review the Marshall Islands cultural and Historic Preservation Plan and any applicable local cultural and historic preservation plan; and
  - (b) review the predictive model maintained by the HPO, in consultation with the HPO, to determine the need for and the scope of any survey.

- (i) where the HPO has completed a detailed survey of all lands subject to direct and indirect impact, no further survey shall be required except as may be needed to define relationships between any identified cultural and historic properties and the proposed activity.
- (ii) Where the predictive model indicates that cultural and historic properties will not be found on any lands subject to direct or indirect impact, no survey shall be required.
- (iii) Where the predictive model indicates that cultural and historic properties may be found on lands subject to direct or indirect impact, but a survey has not yet been conducted, a survey shall be required.
- (iv) Where there is insufficient information to serve as a reliable basis for predicting whether cultural and historic properties may be found, a survey shall be required.
- (v) IF a survey is not required, and no cultural and historic properties are known, the HPO shall so advise the agency in writing. The agency may then proceed, complying with Subsection 8 of this section where applicable.
- (vi) If a survey is not required, and cultural and historic properties are known on the lands subject to direct or indirect impact, the HPO shall so advise the agency in writing. The agency shall then comply with Subsection 7 or 8 of this section, whichever is applicable.
- (vii) If a survey is required, the agency shall:
  - (A) afford the HPO a reasonable opportunity to conduct a survey, in accordance with the schedule set forth in section 11;
  - (B) transfer funds, or where applicable require a permittee to transfer funds, to the HPO to conduct the survey in a shorter time period than allowed by section 11. Funds to be transferred include, where applicable, transportation costs, per diem, equipment rental and salaries; or
  - (C) conduct the survey itself, or where applicable require a permittee to conduct a survey, using supervisory personnel approved by the HPO and in a manner consistent with the standards promulgated by the HPO pursuant to the "Regulations Regarding The Conduct of Archaeological And Anthropological Research In the Republic 1991", and provide the report of the survey to

the HPO for review and approval. If a survey under this Subparagraph (C) is chosen, then the HPO may, at its discretion assign a member of the HPO staff to the survey, the expenses and salaries of whom shall be covered by the agency conducting the survey.

- (3) All surveys shall take into account pertinent Republic of the Marshall Islands National Standards, or where such standard have not yet been promulgated, United States Government standards and relevant international recommendations.
- (4) If a survey results in the identification of a cultural and historic property subject to direct or indirect impact, the survey report shall contain recommendations for the avoidance or mitigation of such impact, recommendations for the significance of the cultural and historic property in accordance with section 6 of these regulations and, where feasible, recommendations for enhancement of beneficial effects on the property.
- (5) If a survey results in the finding that no cultural and historic properties are subject to direct or indirect impact, the HPO upon approving the report shall so advise the agency in writing. The agency may then proceed, complying with Subsection 8 of this section where applicable.
- (6) If a survey results in the finding that cultural and historic properties are subject to direct or indirect impact, the HPO upon approving the report shall so comply with Subsection 7 or 8 of this section, whichever is applicable.
- (7) Where the HPO finds that a cultural and historic property will be directly or indirectly impacted by the disposal or use of public lands:
  - (a) The HPO shall report the finding, together with recommendations as to how the anticipated impacts can be avoided or mitigated, to the agency and the Council.
  - (b) The Council shall review the finding and recommendations of the HPO to determine their consistency with the policies set forth in section 3 of the Historic Preservation Act 1991.
  - (c) The Council shall request, receive and review the comments of the agency involved in the action, of any potential recipient or user of the lands, and of the public.
  - (d) The Council may modify the findings and recommendations, or direct of the HPO to do so, in order to make them be consistent with the policies set forth in section 3 of the Historic Preservation Act 1991.

- (e) Upon determining that the findings and recommendations are consistent with the policies in section 3 of the Historic Preservation Act 1991, the Council shall approve them and so advise the agency.
  - (f) Upon receipt of the findings and recommendations approved by the Council, the agency shall modify the proposed action to accommodate the recommendations, and shall include the findings, recommendations, and a description of the modifications in any planning and environmental document required for the action, or shall desist from the proposed action.
  - (g) Should the agency be unable or unwilling to comply with the recommendations, it may consult with the HPO to modify the recommendations, and request their resubmission to the Council. Such consultation shall be guided by the policies set forth in section 3 of the Historic Preservation Act 1991, and shall afford the public a reasonable opportunity to participate.
- (8) Where an agency proposes to issue a permit for, or assist, a nonexempt regulated activity on private land, upon receipt of the findings and recommendations of the HPO pursuant to this section, the agency shall:
- (a) include the report, or a synopsis thereof approved by the HPO, in any planning and environmental document required for the activity;
  - (b) make the full report, if any, available to the public at a convenient location; and
  - (c) publish notice of the availability of the report.
- (9) Within thirty (30) days after promulgation of a report or synopsis in an environmental document pursuant to this section, or after publication of notice pursuant to this section, whichever is later, any person may appeal the HPO's findings and recommendations to the Council. An appeal shall be made in writing, in English or in Marshallese, and a copy shall be provided to the HPO. Upon receipt of an appeal, the HPO shall consult with the appellant, the agency, and any other appropriate party, if any, to seek agreement on a course of action that will remove the objection.
- (10) Notwithstanding Subsection 9 of this section, the HPO may without consultation recommend to the Council that an appeal be rejected as frivolous, and the Council may reject the appeal as such, if the HPO finds and documents that the standards set forth in section 12 of these regulations are not met by the appeal.

(11) Where the HPO has determined that a cultural and historic property or properties will be directly or indirectly impacted by the proposed action, or if as the result of an appeal it is determined that such a property or properties will be impacted, the parties involved, including but not limited to the HPO, the agency responsible for the action, permit or assistance, and other persons with financial, professional, or cultural interests in the lands or properties involved, shall consult to determine feasible and prudent means, if any, to avoid, mitigate, or satisfactorily reduce the level of impact to the property or properties. Unless the parties mutually agree to a longer time, the consultation shall be completed within thirty (30) days after the close of the comment period provided for in Subsection 9 of this section. Consultation shall be carried out as follows:

- (a) The agency responsible for permitting or assisting the activity shall publish notice of the beginning of consultation, advising the public of the location and time of the first consultation meeting and inviting public participation.
- (b) The agency or the applicant for a permit or assistance shall provide the HPO with a plan for treating the cultural and historic property or properties subject to impact. This plan shall take into account the property's significance, with reference to section 6 of these regulations, and pertinent national, federal, and international standards and guidelines, and shall be consistent Preservation Act 1991 and the standards set forth in the "Regulations Regarding The Conduct of Archaeological And Anthropological Research In The Republic 1991", as applicable . The plan may include:
  - (i) provision for preservation of a property in place and unchanged;
  - (ii) provision for the adaptive use of a property;
  - (iii) provision for data recovery, including analysis, dissemination of results, and curation of artifacts and records;
  - (iv) provision for project design to ensure sympathetic treatment of a property's significant elements;
  - (v) such other provisions as may appropriate to the property and the activity; and
  - (vi) a rationale, based on the public interest and taking into account the policies set forth in section 3 of the Historic Preservation Act 1991, for destroying or damaging the

property without avoiding, mitigating, or satisfactorily reducing the level of damage.

- (c) The parties shall review the plan and consult to determine what changes may be needed, if any, in order to ensure its prudence, feasibility, and consistency with the policies in section 3 of the Historic Preservation Act 1991 and other provisions of law. Consultation shall be directed toward determining feasible and prudent means to avoid, mitigate or satisfactorily reduce the level of damage to the property. Should it be proposed not to pursue such means, the burden of proof shall be on those so proposing to demonstrate why such a proposal is in the public interest.
  - (d) The HPO shall consult with the Cultural Resource Officer of the local government and the appropriate Iroij, Alap and Drijerbal to solicit their opinions, which shall be incorporated into the plan.
  - (e) Subject to Paragraph (f) of this Subsection, once the parties have agreed on a plan, they shall indicate their agreement in writing. The plan shall become a binding part of the permitted or assisted activity, and shall be enforced by the agency responsible for issuing the permit or providing the assistance.
  - (f) If the historic or cultural property affected has a significance level of “significant” or “very significant”, the plan agreed upon by the parties shall be submitted to the advisory Council for Historic Preservation for final approval.
  - (g) The agency responsible for issuing the permit or providing the assistance shall publish the results of the consultation.
- (12) Should the parties be unable to agree on a plan, they shall submit a report to the Advisory Council for Historic Preservation. This report, which may contain separate sections prepared by parties holding different opinions, shall outline the consultation undertaken, identify the issues that separate the parties, and offer recommendations including options for the Councils action. The Council shall then decide on the course of action to be taken. The Council’s decision shall be binding.
- (13) If the HPO, after the completion of these proceedings, has reason to believe that the cultural or historic site is not only “very significant” but of national or international significance, the HPO may, through the Office of the Attorney General, initiate condemnation proceedings for the taking of that property for public use upon the payment of just compensation in accordance with Article II, section 5 of the Constitution.

- (14) During the course of construction or land use, should a cultural and historic property be discovered that was not previously identified and considered in accordance with this Act:
- (a) Work shall be halted by those responsible for the activity, in the immediate vicinity of the property. Work may continue on elements of the activity that do not threaten the property.
  - (b) Having halted work, the party responsible for the activity shall contact the HPO and cooperate with the HPO in an on-site inspection.
  - (c) The HPO shall consult with the party responsible for the activity, to establish interim measures to protect the property as needed with minimum impediment to the construction or land use activity.
  - (d) The party responsible for the activity shall contact known persons having financial, professional, or cultural interests in the property, if any, and arrange for prompt consultation with these persons and the HPO.
  - (e) If as a result of this consultation agreement is reached concerning the proper treatment of the property, this agreement shall become a binding part of the activity, which may then proceed in compliance with the agreement.
  - (f) Should the HPO determine during the on-site inspection that the property falls into a class determined by the Council not to be cultural and historic, or that immediate data recovery or other preservation actions can and should be undertaken and will be effective in preserving the property's significant elements, the HPO may waive the collective requirements of Paragraphs(d),(e) and (f) of this Subsection, contingent upon conduct of the preservation actions, if any, determined by the HPO to be appropriate.
- (15) The HPO may at its discretion or at the request of an agency elect to exercise its authorities and responsibilities under this Act on a programmatic basis rather than with reference to individual project. Programmatic consultation shall be carried out in the manner prescribed in this section, but with reference to an entire program rather than to individual actions and projects. Programmatic agreements between the HPO and other persons or agencies shall be submitted to the Council for review and approval, and shall become effective upon approval by the Council. Should agreement not be reached, individual actions under the subject



program shall be reviewed on an individual basis in accordance with this Act.

(16) Where both these regulation and §§106 or 110 of the United States National Historic Preservation Act of 1966, as amended, apply to an action, compliance with both authorities shall be coordinated to the extent feasible.

Cultural and historic properties shall be assumed to be eligible for the United States National Register of Historic Places unless the United States Keeper of the National Register otherwise determines. Where the Council determines that a property, group of properties, or class of properties is not cultural and historic, or the HPO determines that a property subjects to this determination and the objection is not rejected as frivolous pursuant to this section, a question shall be determined to exist and the Keeper of the National Register shall be asked to make a final determination of the property's eligibility for the National Register.

Reports, Plans, recommendations and decisions developed under these regulations shall be provided to responsible United States Federal agencies for submission to the United States Federal agencies for submission to the United States Advisory Council on Historic Preservation for review under section 106 or 110 (f) of the United States National Historic Preservation Act of 1966, as amended, whichever is applicable, in a manner consistent with the regulations of the United States Advisory Council on Historic Preservation.

To the extent feasible, parties consulting under these regulations on an activity or program in which a on United States Federal agency is involved shall coordinate their consultation with the involved United States Federal agency and the United States Advisory Council on Historic Preservation, and shall encourage the United States Federal agency to obtain the United States Advisory Council on Historic Preservation comments pursuant to §§106 or 110(f) of the United States Historic Preservation Act of 1966, as amended, during consultation and review pursuant to this section. Notwithstanding paragraphs (a) to 9d) of this subsection, the applicant has to comply with the provisions of these regulations as set out in subsections (1) to (18) of this section. Failure to comply with any of these provisions shall constitute a punishable offense.

#### §10. Results of investigations to remain in public domain

The information resulting from the survey, data recovery or any other mitigation process, including the scientific investigation of any artifacts, shall remain in the public domain. Such information, including all records of the survey, excavation and artifacts, shall be curated in accordance with accepted museum and laboratory practice, and published as appropriate.

#### §11. Schedule for the Conduct of Surveys

Where an agency or other person requests that the HPO conduct a survey under section 9 of these regulations, the HPO shall use the following schedule to determine the time needed to conduct the survey:

On Majuro Atoll: one (1) month per acre or fraction thereof subject to direct or indirect impact.

On other atolls or islands serviced by air transportation: two (2) months per acre or fraction thereof subject to direct or indirect impact.

On all other atolls or islands: three (3) months per acre or fraction thereof subject to direct or indirect impact.

Underwater: negotiable depending on weather conditions, turbidity, depth, location, danger of sharks, and other conditions.

All time limits are subject to extension on the event of typhoons, tidal waves or other natural disasters, or in the event of refusal of a landowner or tenant to grant access to that property.

The agency or person requesting that the HPO conduct a survey shall transfer funds to cover:

Travel costs, including air fare, boat hire, vehicle hire and equipment rental, where applicable;

Per diem if the survey area is not on Majuro Atoll or if the survey requires one or more overnight stays; and

Material expenses related to underwater survey.

#### §12. Criteria for Appeals

Where an appeal is filed pursuant to section 9 (9) of these regulations, the HPO may recommend to the Council that the appeal be rejected as frivolous if it does not meet the following criteria.

The appeal must present an allegation of fact that contradicts the finding, recommendation, or decision being appealed;

The appeal must present supporting evidence which would tend to establish the validity of the allegation of fact; and

The allegation presented in the appeal must be one that has not previously been received and addressed by the Council.

### §13. Costs

Except in cases where undue hardship would result, it shall be the sole responsibility of the party whose actions damage the subject cultural or historic property to bear the costs of avoiding, mitigating or satisfactorily reducing the level of damage.

Unless excluded under Subsection (3) of this section, undue hardship may be claimed in those circumstances where:

The construction applied for is destined for private domestic use only; or

The area affected by the construction is 0.25 acres or less; or

The costs of mitigation exceed five (5) percent of the total construction budget.

Undue hardship may not be claimed in circumstances where:

The construction is funded by United States Federal funds;

The construction is funded by overseas aid;

The construction is funded by the National Government or any local government of the Republic; or

The construction is funded by companies with more than thirty (30) percent overseas capital.

If undue hardship is claimed under Subsection 2 (c) of this section, the contractor shall provide five (5) percent of the final and total construction budget to the HPO. The HPO shall conduct the mitigation using the funds provided and additional funds drawn from the Historic Preservation Office Fund as established under § 14 of the Historic Preservation Act 1991.

Any application for a permit shall be accompanied by:

a statement where the funding for the construction originates. A signed, certified copy of an affidavit filed with the court of the Republic shall constitute such statement; and a receipt for a payment of one hundred dollars (\$100) payable to the HPO; or

proof that the intended construction is for private domestic use only. A signed, certified copy of an affidavit filed with the court of the Republic shall constitute such proof. For purposes of this section, "private domestic use" includes the construction of a privately owned restaurant / take out with less than five hundred (500) square meters of ground space; and less than thirty (30) percent overseas capital.

### §14. Violations

A person who violates any provision of these regulations or requirement thereunder, shall be subject to enforcement action by the Historic Preservation Office.

Any violation of these regulations constitutes a punishable offense under Section 21 of the Historic Preservation Act 1991.



# Republic of the Marshall Islands Historic Preservation Office

## REGULATIONS GOVERNING THE TAKING AND EXPORT OF ARTIFACTS

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### **PART I- GENERAL PROVISIONS**

#### §1. Authority

These regulations are promulgated by the Republic of the Marshall Islands Historic Preservation Office with the approval of the Minister of Interior and Outer Islands Affairs pursuant to §8(e) of the Historic Preservation Act 1991. These regulations supercede all previous publications

#### §2. Effective date

These regulations shall come into force one (1) day after their approval by the Cabinet.

#### §3 Interpretation

In these regulations, unless the context otherwise requires, The definitions given in section 3 of the Historic Preservation Act 1991 shall apply;

“Records” of a preservation activity mean the notes, other documents, photographs, forms, files, electronic records, maps, specifications, and other material describing the activity, its results, the property involved, and any data recovered from or pertaining to the property.

### **PART II – TAKING , CURATION AND OWNERSHIP OF ARTIFACTS**

#### §4. TAKING OF ARTIFACTS.

An action taken by any person or agency in compliance with these regulations shall be understood to be permitted by the HPO, and on separate permit shall be required pursuant to this section.

Any person proposing to take an artifact or artifacts from the Republic, or the disturb, displace, or disfigure any cultural or historic property on the land or under the water of the Republic, and who has not complied with the

provisions of the Historic Preservation Act 1991 the “Regulations Governing Access To Prehistoric And Historic Submerged Resource 1991”; the “Regulations Governing Land Modification Activities 1991”; and the “Regulations Regarding The Conduct Of Archaeological And Anthropological Research In The Republic 1991”, shall consult with the HPO well in advance of taking the proposed action, to negotiate the terms of a permit.

Upon agreeing on the terms of a permit, the HPO shall submit the terms to the Council for review. The Council shall review the terms in consultation with the HPO, the applicant, and other interested parties, if consistency with the requirements of these regulations and the policies set forth in §3 of the Historic Preservation Act 1991.

Upon approval by the Council, the HPO shall issue the permit, and the activity may proceed, subject to such other conditions as required by law.

Should the HPO propose not to issue a permit, the applicant may appeal to the Council, which shall review the appeal in consultation with the applicant, the HPO, and other interested persons, if any, guided by the requirements of this Act and the policies set forth in section 3 of the Historic Preservation Act 1991. The decision of the Council shall be final.

Should the Council decline to approve the terms of a permit, the applicant may negotiate with the HPO to modify the terms and resubmit them to the Council for review and approval.

Permits for the removal of artifacts from the Republic shall be issued only for purposes of cultural exchange, scientific identification, or donation to a non-profit organization whose activities have cultural significance to the Republic. Such organizations include scientific educational institutions and museums that undertake research or teaching in the Republic. Permittees must guarantee that artifacts removed, whether temporarily or permanently, will be properly curated in accordance with accepted museum and laboratory practice, except to the extent that scientific identification may require their modification. With the approval of the HPO and the Council, artifacts may be temporary loaned or leased outside the Republic to persons that are not non-profit organizations, for purposes other than cultural exchange or scientific identification, provided the recipient guarantees their proper curation in accordance with accepted museum and laboratory practice, and submits a firm schedule for their return.

#### §5. Curation and scientific identification of artifacts

The HPO and the Council shall work with other interested parties to develop appropriate curation facilities for artifacts and other material, records, photographs and documents relating to cultural and historic properties in the Republic of the Marshall Islands. As a rule, artifacts shall be curated as

close as their proper care allows to the community of their origin. Where it is not feasible to curate artifacts within the Republic, the HPO with the approval of the Council may enter into agreements with external organizations to provide curation services.

Scientific investigation of artifacts and specimens involving destructive or radio-metric techniques, including, but not limited to, gasification, thin-sectioning, and neutron activation, is permitted upon approval by the Advisory Council for Historic Preservation on recommendation by the HPO.

#### §6. Ownership of cultural and historic properties

Nothing in these regulations shall be construed to confer upon the Government of the Republic of the Marshall Islands ownership of artifacts occurring on private lands, or to forbid the maintenance of private artifact collections by residents of the Republic, provided that:

The acquisition of such a collection does not involve the willful destruction, removal, disturbance, displacement, or disfigurement of any cultural or historic property on public or private land or in the waters of the Republic; and

Artifacts in the collection are not removed from the Republic without a permit issued pursuant to this section.

Artifacts recovered from an archaeological excavation on private land pursuant to this section or §9 of the "Regulations Governing Land Modification Activities 1991" shall, at the request of the landowner, be returned to the landowner after their scientific identification is complete.

The information resulting from the excavation and scientific identification of such artifacts shall remain in the public domain. Such information, including all records of the excavation and artifacts, shall be curated in accordance with accepted museum and laboratory practice, and published as appropriate.

### **PART I II – EXPORT OFN ARTEFCATS**

#### §7. Export of artifacts

The export of artifacts and items of traditional material culture is permitted except for the following:

Any artifact for which a permit for removal is required under §4 of these regulation;

Any item found on, at or in archaeological sites;

Any item of traditional material culture over forty (40) tears old;

Any historical item over forty (40) tears old;

Any item the retention of which is considered to be in the national interest ;  
or

Human remains from archaeological or historic sites. If the scientific, medical or other study as specified in §4 (2) of the Regulations Governing The Disposition of Archaeologically Recovered Human Remains 1991 cannot be carried out in the Republic, then export may be permitted, provided that the remains be returned at the earliest possible date for re-interment under §4 of these regulations

§8. Export of artifacts.

A person who violates any provision of these regulations or requirement there under shall be subject to enforcement action by the Historic Preservation Office.

The enforcement of these regulations shall be made by in accordance with Section 20 of the Historic Preservation Act 1991.

Any Violation of these regulations constitutes a punishable offense under Section 21 of the Historic Preservation Act 1991.



## Republic of the Marshall Islands Historic Preservation Office

### REGULATIONS GOVERNING ACCESS TO PREHISTORIC AND HISTORIC SUBMERGED RESOURCES

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#### **PART I- GENERAL PROVISIONS**

##### §1. Authority

These regulations are promulgated by the Republic of the Marshall Islands Historic Preservation Office with the approval of the Minister of Interior and Outer Islands Affairs pursuant to Section 8 (d) of the Historic Preservation Act 1991.

These regulations supercede all previous publications.

##### §2. Effective Date

These regulations shall come into force one (1) day after their approval by the Cabinet.

##### §3. Interpretation

In these regulations, unless the context otherwise requires,

The definitions given in section 3 of the Historic Preservation Act 1991 shall apply;

“Instruction” or “instructed”, depending on context, means the conveyance of Historic Preservation information to the applicant by the means of a formal lecture or an educational video.

#### **PART II –LEGISLATIVE FINDINGS**

##### § 4. Legislative findings and Statement of Policy

These regulations shall be implemented in a manner that balances the preservation of cultural and historic properties against the needs for recreation and tourism. The Historic Preservation Office recognizes the following:

That the identity of the Republic is provided by the cultural heritage of the Marshallese people, which consists in equal parts of the heritage of all individual atolls and islands comprising the Republic, and that it is the duty



of each Marshallese citizen to encourage and promote the nation's cultural heritage for the benefit of future generation;

That the cultural and historic properties and resources of the Republic, including submerged resources, form a fragile, finite and unrenowable resource of the cultural heritage of the Republic in need of preservation and proper management;

That these cultural and historic properties are subject to damage and destruction, both accidental and intentional, by people visiting them, and once they are damaged or destroyed, a part of this finite resource will be lost forever at the expense of the cultural heritage of the Republic;

That, nevertheless, cultural and historic properties can in most cases coexist with recreation and tourism if the visitors abide by the regulations promulgated below.

That experiences in other parts of Micronesia have shown that if not wisely managed the submerged resources can undergo rapid deterioration in direct correlation with the number of people visiting them.

The guiding principle to be used in implementation of these regulations shall be to foster conditions under which our modern society and our prehistoric and historic resources can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations.

### **PART III- PERMITTING PROCEDURES FOR ACCESS TO SUBMERGED RESOURCES**

§5. Restrictions and permits of access to prehistoric and historic submerged resources

Notwithstanding the actual ownership of any submerged resource, access to prehistoric and historic submerged resources shall be permitted only to:

Individuals holding valid certification under these regulations; or

Individuals or groups of people accompanied by a person holding a valid license as an underwater cultural tour operator.

Any applicant meeting the standards promulgated in accordance with Section 6 of these regulations shall be issued a permit valid initially for one year, to be renewable annually, upon payment in accordance with the following fee schedule:

Fifty dollars (\$50.00) annually for an individual; and

One hundred and fifty dollars (\$150.00) annually for an underwater cultural tour operator.

§6. Standards for the certification of individuals and for the licensing of underwater cultural tour operators

The following minimum standards shall apply to the certification of individuals.

The individual has an understanding of the need for historic preservation of the preservation of the cultural and historic properties of the Republic;

The individual understands the relevant sections of the Historic Preservation Act 1991 and these regulation;

The individual has a specific understanding of the fragility of underwater resources and understands that no such resource or fraction thereof may be damaged, unpaired or removed.

The individual undertakes to be responsible for himself and the dive partner or dive partners.

Upon initial certification, as well as for each renewal the applicant signs an affidavit shown in Annex A.

The following minimum standard shall apply to the certification of tour operators.

The tour operator has an understanding of the need for historic preservation and the preservation of the cultural and historic properties of the Republic;

The tour operator understands the relevant sections of the Historic Preservation Act 1991 and these regulations;

The tour operator undertakes to inform the dive partners whom the tour operator accompanies about

The need for historic preservation and the preservation of the cultural and historic properties of the Republic; and

The relevant sections of the Historic Preservation Act 1991 and these regulations

The fragility of underwater resources and that no such resource or portion thereof may be damaged, impaired or removed.

The tour operator undertakes to be responsible for himself and all dive partners whom the tour operator accompanies

Upon initial certification, as well as for each renewal the applicant signs an affidavit shown in Annex B.

§7. HPO to administer certification

The HPO shall be the permitting agency and shall keep a register of all certifications and applications for certifications

The HPO shall provide the certification of tour operators.

§8. Local Government Councils may impose further restrictions

Any local government may, at its discretion, impose restrictions and permitting procedures for the submerged resources within its jurisdiction that are more restrictive but not less restrictive than those promulgated by the HPO.

§9. Cooperation of diving instructors and diving equipment operators required

Diving instructors residing or practicing in the Republic of the Marshall Islands, or persons operating equipment used to fill SCUBA tanks for rental to persons other than commercial fishermen are required

To post these regulations in a visible, accessible place; and

To inform customers of these regulations.

§10. Violations

The penalties as permitted under section 21 of the Historic Preservation Act 1991 shall apply.

Annex A:

Affidavit for Individual Certification

I (name inserted), resident of (place inserted) holding a valid diving certification (name of organization and number inserted), herewith certify that

I have the “Regulations Governing” The Taking And Export of Artefacts 1991” and the “Regulations Governing Access To Prehistoric And Historic Submerged Resources 1991”.

I have been instructed by HPO staff on the need for historic preservation and the importance of preservation of the cultural and historic properties of the Republic of the Marshall Islands.

I understand the fragility of underwater resources and understands that no such resource or fraction thereof may be damaged, impaired or removed.

I will not dive on a submerged resource with a partner not certified in accordance of these regulations

I will abide by the provisions of the “Regulations” Governing Access To Prehistoric And Historic Submerged Resources 1991”.

I undertake to do my best to restrain my dive partner from violating the provisions of these regulations.

(Signature and Date)

I (name and title inserted), employee of the HPO, herewith certify that (name of applicant inserted) has been instructed on the need for historic preservation and the importance of preservation of the cultural and historic properties of the Republic of the Marshall Islands. The “Regulations

Governing The Taking And Export of Artefacts 1991” and the “Regulations Governing Access To prehistoric And Historic Submerged Resources 1991” have been explained to the applicant.

(Signature and Date)

Permit №, (number inserted) has been issued on this date by authority of the HPO.

(signature and Date)

Annex B:

Affidavit for certification of a Tour Operator

I (name inserted), resident of (place inserted), being a dive instructor/ tour operator (delete inappropriate) of (name of company inserted), holding a valid diving certification (name of organization and number inserted), herewith certify that

I have understood the “regulations Governing The Taking And Export Of Artefacts 1991” and the “Regulations Governing Access To Prehistoric And Historic Submerged Resources 1991”.

I have been instructed by HPO staff on the need for historic preservation and the importance of preservation of the cultural and historic properties of the Republic of the Marshall Islands.

I undertake to inform the dive partners whom I accompany on

The need for historic preservation and the preservation of the cultural and historic properties of the Republic;

The relevant sections of the Historic Preservation Act 1991 and these regulations; and

The fragility of underwater resources and that no such resource or portion thereof may be damaged, impaired or removed.

I will abide by the provisions of the “Regulations Governing Access To Prehistoric And Historic submerged Resources 1991”.

I undertake to do my best to restrain my dive partner from violating the provisions of these regulations.

(Signature and Date)

I (name and title inserted), employee of the HPO, herewith certify that (name of applicant inserted ) has been instructed on the need for historic preservation and the importance of preservation of the cultural and historic properties of the Republic of the Marshall Islands. The “Regulations Governing The Taking And Export OfArtefacts 1991” and the “Regulations Governing Access To Prehistoric And Historic Submerged Resources 1991” have been explained to the applicant.

(Signature and Date)

Permit №. (Number inserted) has been issued on this date by authority of  
the HPO  
(Signature and Date)

# Republic of the Marshall Islands Historic Preservation Office Regulations Governing the Conduct of Archaeological and Anthropological Research in the Republic

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## PART I – GENERAL PROVISIONS

### §1. Authority

These regulations are promulgated by the Republic of the Marshall Islands Historic Preservation Office with the approval of the Minister of Interior and Outer Islands Affairs pursuant to section 8(f) the Historic Preservation Act 1991.

These regulations supercede all previous publications

### §2. Effective Date

These regulations shall come into force one (1) day after their approval by the Cabinet.

### §3. Interpretation

In these regulations, unless the context otherwise requires,

The definitions given in sections 3 of the Historic Preservation Act 1991 shall apply;

“Archaeologist” mans an individual whose training and experience, including receipt of a postgraduate degree of Master of Arts, Master of Science or Doctor of Philosophy, qualifies that person for the professional practice of architecture as recognized in the academic institutions of the United States, Japan, Australia, New Zealand, Canada, or the Countries of Western Europe.

- (1) “Architectural Historian” means an individual whose training and experience, including receipt of a postgraduate degree of Master of Arts, Master of Science or Doctor of Philosophy, Qulifies that person for the professional practice of architectural history as recognized in the academic institutions of the United States, Japan, Australia, New Zealand, Canada, or the Countries of Western Europe.
- (2) “Cultural anthropologist” means an individual whose training and experience conform with standards set out in §5 of these regulations.

- (3) “Historian” means an individual whose training and experience conform with standards set out in §6 of these regulations.
  - (a) “direct impacts”, which are caused by a given action and occur at the same time and place; and
- (4) “Interpretation” means making understandable to the general public a cultural and historic property, or the information and artifacts it contains, for purposes of education and enlightenment.
- (5) “Linguist” means an individual whose training and experience, including receipt of a postgraduate degree of Master of Arts, Master of Science or Doctor of Philosophy, qualifies that person for the professional practice of linguistics as recognized in the academic institutions of the United States, Japan, Australia, New Zealand, Canada, or the Countries of Western Europe.
- (6) “Physical anthropologist” means an individual whose training and experience, including receipt of a postgraduate degree of Master of Arts, Master of Science or Doctor of Philosophy, Qualifies that person for the professional practice of linguistics as recognized in the academic institutions of the United States, Japan, Australia, New Zealand, Canada, or the Countries of Western Europe.
- (7) “Project” means any structure, use, development or other activity subject to review under these regulations, or where the context so indicates, a preservation activity carried out pursuant to these regulations.
- (8) “Records” of a preservation activity mean the notes, other documents, photographs, forms, files, electronic records, maps, specifications, and other material describing the activity, its results, the property involved, and any data recovered from or pertaining to the property.

## **PART II- REQUIRED QUALIFICATIONS**

### **§4. Qualifications required for an archaeologist**

Any archaeologist requesting to work or conduct research in the Republic of the Marshall Islands needs to conform to the following standards.

Archaeologists in supervisory positions

Minimum requirements for any archaeologist in supervisory positions are

The receipt of a postgraduate degree of Master of Arts, Master of Science or Doctor of Philosophy in archaeology, historical archaeology or prehistory, which qualifies that person for the professional practice of archaeology as recognized in the academic institutions of the United States, Japan, Australia, New Zealand, Canada, or the countries of Western Europe.

One half year of full-time professional experience or equivalent specialized training in archaeological administration; and archaeological resource management.

One year of full-time professional experience in

Archaeological research and analysis ;

Archaeological fieldwork including survey, excavation and laboratory analysis.

Four months of full-time experience in a supervisory position in the study of archaeological resources of the Historic or prehistoric period.

Documented ability to carry out research to completion

Staff archaeologists are:

Archaeologists on staff of the Historic Preservation Office;

Archaeologists on staff of investigators on a contract bid under §10 of these regulations

(4) Notwithstanding subsection (1) of this section, archaeological research may be conducted under the supervision of a principal archaeologist, as governed by sections 10(1)(b) and 10(1)(c).

(5) Notwithstanding subsections (3)(a)(ii) to (3)(a)(v) of this section, citizens of the Republic of the Marshall Islands may on a case by case basis be employed as staff archaeologists if only parts of the requirements set out in subsections (3)(a)(ii) to (3)(a)(v) are met as determined by the council.

#### §5. Qualifications required for an anthropologist.

Any anthropologist requesting to work or conduct research in the Republic of the Marshall Islands needs to conform to the following standards.

Anthropologists in supervisory positions.

Minimum requirements for any anthropologist in supervisory positions are The receipt of a postgraduate degree of Master of Arts, or Doctor of Philosophy in cultural, social or behavioural anthropology, which qualifies that person for the professional practice of anthropology as recognized in the academic institutions of the United States, Japan, Australia, New Zealand, Canada, or the countries of Western Europe.

One year of full-time professional experience or equivalent specialized training in

Cultural resource management; and

Anthropological and ethnographic collections management, including but not restricted to traditional material culture, visual media, audio media and textual and pictographic records.

Two years of full-time professional experience in

One year of full-time experience in a supervisory position as an anthropologist.



Documented ability to carry out research to completion.

Anthropologists in supervisory positions are:

The Chief Anthropologist in the Republic of the Marshall Islands;

The principal investigator on a contract bid under §10 of these regulations.

Staff Anthropologists.

Minimum requirements for staff anthropologists are

The receipt of a postgraduate degree of Bachelor of Arts, Bachelor of Science in cultural, social or behavioural anthropology, which qualifies that person for the professional practice of anthropology as recognized in the academic institutions of the United States, Japan, Australia, New Zealand, Canada, or the countries of Western Europe.

One half year of full-time professional experience or equivalent specialized training in

Cultural resource management; and

Anthropological and ethnographic collections management, including but not restricted to traditional material culture, visual media, audio media and textual and pictographic records.

One year of full-time professional experience in

Anthropological research and analysis:

Anthropological field work.

Documented ability to carry out research to completion.

Staff anthropologists are:

Anthropologists on staff of the Historic Preservation Office;

Anthropologists on staff of investigators on a contract bid under §11 of these regulations;

Anthropologists on staff of principal investigators on anthropological research under §10 of these regulations.

Notwithstanding subsection (1) of this section, anthropological research can be conducted under the supervision of a principal anthropologist, as governed by sections 10(2)(b) and 10(2)(c).

Notwithstanding subsections (3)(a)(ii) to (3)(a)(v) of this section, citizens of the Republic of the Marshall Islands may on a case by case basis be employed as staff anthropologists if only parts of the requirements set out in subsections (3)(a)(ii) to (3)(a)(v) are met as determined by the council.

#### § 6. Qualifications required for a Historian

Any historian requesting to be employed the historic Preservation Office must conform to the following standards.

Historians in supervisory positions.

Minimum requirements for any historian in supervisory positions are

the receipt of a postgraduate degree of Master of Arts, or Doctor of Philosophy in history, which qualifies that person for the professional practice of anthropology as recognized in the academic institutions of the United States, Japan, Australia, New Zealand, Canada or the countries of Western Europe

At least two years of full- time professional experience in research, writing or interpretation at an academic institution, historic organization or agency, museum or other professional institution;

Substantial contribution through research and publication to the knowledge in the field of Pacific History.

One year of full- time experience in a supervisory position in the study of as a historian.

Documented ability to carry out research to completion.

Staff Historian.

Minimum requirements for staff historians are

The receipt of a postgraduate degree of Bachelor of Arts, Bachelor of Science in history, which qualifies that person for the professional practice of history as recognized in the academic institutions of the United States, Japan, Australia, New Zealand, Canada, or the countries of Western Europe.

At least half a year of full- time professional experience in research, writing or interpretation at an academic institution, historic organization or agency, museum or other professional institution;

Substantial contribution through research and publication to the knowledge in the field of Pacific History.

Documented ability to carry out research to completion.

Notwithstanding subsections (3)(a)(ii) to (3)(a)(iv) of this section, citizens of the Republic of the Marshall Islands may on a case by case basis be employed as staff historians if only parts of the requirements set out in subsections (3)(a)(ii) to (3)(a)(iv) are met as determined by the council

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§7. Qualifications required for an Architect or Architectural Historian

Any Architect or Architectural Historian requesting to be employed the Historic Preservation Office must conform to the following standards.

Architects or Architectural Historians in supervisory positions.

Minimum requirements for any Architect or Architectural Historian in supervisory positions are

The receipt of a postgraduate degree of Master of Arts, or Doctor of Philosophy in architecture or architectural history, which qualifies that person for the professional practice of architecture or architectural history as recognized in the academic institutions of the United States, Japan, Australia, New Zealand, Canada, or the countries of Western Europe.

At least two years of full-time professional experience in research, writing or interpretation at an academic institution, historic organization or agency, museum or other professional institution;

Substantial contribution through research and publication to the knowledge in the field of traditional, European and Asian architecture in the islands of the Pacific Ocean.

One year of full-time experience in a supervisory position in the study of as a historian.

Staff Architects or Staff Architectural Historians.

Minimum requirements for staff architects or staff architectural historians are The receipt of a postgraduate degree of Bachelor of Arts Bachelor of Science in architecture or architectural history, which qualifies that person for the professional practice of architecture or architectural history as recognized in the academic institutions of the United States, Japan, Australia, New Zealand, Canada, or the Countries of Western Europe.

At least half a year of full-time professional experience in research, writing or interpretation at an academic institution, historic organization or agency, museum or other professional institution;

Substantial contribution through research and publication to the knowledge in the field of traditional, European and Asian architecture in the islands of the Pacific Ocean.

Documented ability to carry out research to completion.

Notwithstanding subsections (3)(a)(ii) to (3)(a)(iv) of this section, citizens of the Republic of the Marshall Islands may on a case by case basis be employed as staff historians if only parts of the requirements set out in subsections (3)(a)(ii) to (3)(a)(iv) are met as determined by the council.

### **PART III –ARCHAEOLOGICAL AND ANTHROPOLOGICAL RESEARCH**

#### **§8. Archaeological Investigations.**

Archaeological sites form a limited and unrenowable resource. It is recognized that any archaeological investigation other than survey potentially results in an impairment of this resource. Therefore all archaeological research other than survey is prohibited, unless the property to be excavated

Is threatened with destruction or damage through natural or human forces;  
or

Is demonstrated to advance the knowledge of the archaeology of the Marshall Islands in such a manner that the results likely to be obtained will advance the management or interpretation of the other resource; .and

Is demonstrated to be more appropriate for the study proposed than are any know available properties that are threatened with destruction or damage.

Permits for archaeological excavation, may be issued only if the following minimum standards are met:

The excavation shall be supervised by an archaeologist who is qualified in accordance with section 4 of these regulations;

The excavation shall be undertaken in a manner consistent with the Standards of Research Performance of the Society of Professional Archaeologists;

The permission of the person owing or controlling the land involved, and any required land use or have been applied for and are pending issuance of the permit;

The applicant's excavation plan is sensitive to any non- archaeological cultural or historic values the property may possess;

Analysis and curation of specimens shall occur at an institution or other entity meeting the Institutional Standards of the Society of Professional Archaeologists, unless the excavation is of such limited scope that a full range of curation facilities is not required;

The excavation is designed to address significant research topics in the natural or social sciences or the humanities, or the provide data that will advance the purposes of the Marshall Islands Cultural and Historic Preservation Plan or a local cultural and historic preservation plan;

An appropriate schedule is provided for the submission of a final report and copies of primary field data;

(h) the property to be excavated fulfils the criteria set out in subsection (1) of this section;

(i) the applicant agrees to the requirements set out in § of these regulations.

(3) The treatment of recovered artifacts and specimens shall be governed by the Regulations Governing The Taking And Export Of Artifacts 1991; and

(4) The treatment of human remains shall be governed by the Regulations Governing The Disposition Of Archaeologically Recovered Human Remains 1991.

#### §9. Anthropological investigations

Permits for anthropological research may be issued only if the following minimum standards are met:

(1) the research will be conducted by an anthropologist who has demonstrated pertinent experience conducting anthropological field research;

(2) the applicant certifies that he will be guided by the Professional Ethics of the American Anthropological Association;

- (3) the permission of the person owning or controlling the land involved, and any required land use or environmental permit, have been obtained, or have been applied for and are pending issuance of the permit;
- (4) the applicant's research plan is sensitive to any archaeological topic may possess;
- (5) analysis and curation of specimens of traditional and modern material culture collected during the research shall occur at an institution or other entity meeting the Institutional Standards of the Society of Professional Archaeologists, unless the collection is of such limited scope that a full range of curation facilities is not required;
- (6) the study is designed to address significant research topics in the natural or social sciences or humanities, or to provide data that will advance the purposes of the Marshall Islands Cultural and Historic Preservation Plan or a local cultural and historic preservation plan;
- (7) the applicant provides an appropriate schedule for the submission of a final report and copies of primary field data, and for the disposition of recovered specimens; and
- (8) The applicant agrees to the requirements set out in § 10 of these regulations.

#### § 10. Schedule Governing the Conduct of Anthropological and Archaeological Research

- (1) Any applicant for an archaeological research project shall meet and agree to the following requirements in additions:
  - (a) the principal investigator for archaeological research must conform with the standards set forth in Section 4(2) of these regulations;
  - (b) if part of the research is to be conducted by a person not holding at least a Bachelor of Arts of Bachelor of Sciences but not Master of Arts or Master of Science in the above fields, the presence of the principal investigator is required for at least seventy-five percent(75%) of the time;
  - (c) if part of the research is to be conducted by a person not holding at least a Bachelor of Arts of Bachelor of Sciences in the above fields, the presence of the principal investigator is required for the entire period;
  - (d) if the field work to be undertaken is largely of an ethnographic or anthropological nature, the full-time presence of the principal investigator may be reduce to the discretion of the Council,

- provided that the principal investigator shall be present for seventy-five percent (75%) of any archaeology component in the project; and
- (e) prior consent of the atoll community or communities studied or worked in has been obtained.
- (2) Any applicant for an anthropological research project shall meet and agree to the following requirements in addition to the requirements imposed under § 9 of these regulations:
- (a) the principal investigator for cultural anthropological research must conform with the standards set forth in Section 5(2) of these regulations;
  - (b) if part of the research is to be conducted by a person holding a Bachelor of Arts or Bachelor of Sciences but not Master of Arts or Master of Science in the above fields, the presence of the principal investigator is required for at least seventy-five percent (75%) of the time;
  - (c) if part of the fieldwork includes archaeological research, subsection (1)(d) of this section applies; and
  - (d) prior consent of the atoll community or communities studied or worked in has been obtained.
- (3) Any researcher applying for an archaeological or anthropological research permit under §§ 8 or 9 of these regulation shall furnish the following documents and undertakings:
- (a) upon application, the applicant shall submit the following:
    - (i) a detailed research proposal;
    - (ii) documentation that the applicant is financially capable of undertaking the research;
    - (iii) complete Curriculum Vitae with list of publications and photostats of any documents relating to degrees and photostats of any documents relating to degrees; and
    - (iv) letter from two references documenting the applicant's good academic standing and bona fide status, as well as stating the applicant's ability to conduct the proposed field work.
  - (b) The applicant shall sign an undertaking that the applicant:
    - (i) will report regularly to the HPO;
    - (ii) will submit an interim report no later than four weeks after the end of the field work, and that the applicant is prepared, if so asked, to report orally to the Council. this oral report shall not be in lieu of a written interim report;

- (iii) will submit two copies of the final research report and of any other report and publication deriving from the research to the Council; and
  - (iv) will hand over the originals of all field notes and plans to the HPO after completion of the research. If the notes are needed for a period exceeding one (1) year after the completion of field work, the applicant shall submit photostats; however, submission of the photostats shall not be in lieu of submission of the originals after the completion of the research. The applicant may impose a temporary ban on these photostats and originals, which is governed by §13 of these regulations.
- (c) If the application is approved by the Council, the successful applicant shall pay a deposit of US \$1,000, which shall be deposited into a separate savings account at a local bank, with the following specifications:
- (i) the deposit and any accrued interest is to be returned once the applicant has submitted two copies of his research to the Council. This deposit does not constitute a research fee but is required to ensure that researcher will comply with the obligation to submit copies of their reports and theses; and
  - (ii) if the researcher has not submitted copies of the report, thesis or publication within a reasonable period of time after the publication has appeared or the thesis has been accepted, then the Republic shall be entitled to utilize the money to obtain copies of the research. The remaining money shall be returned to the applicant.
- (4) Upon receipt of the two copies of the completed research, the Council shall make one copy immediately available to the National Archives. The other copy may be circulated among the members of the Council and shall finally reside in the office of the HPO.
- (5) Notwithstanding subsections (1) and (2) of this section, citizens of the Republic of the Marshall Islands acting on behalf of the Historic Preservation Office, may on a case by case basis, as determined by the council, be permitted to conduct archaeological or anthropological research if only parts of the requirements set out in subsections (1) and (2) of this section are met.
- (6) Citizens of the Republic of the Marshall Islands, or persons acting on behalf of the Historic Preservation Office, may on a case by case basis, as determined by the council, be permitted to conduct

archaeological or anthropological research without providing a \$1,000 bond as required under subsection (3)(c) of this section.

#### **PART IV: ARCHAEOLOGICAL AND ANTHROPOLOGICAL CONTRACT WORK**

##### §11. Contractors License required

- (1) Any archaeologist or anthropologist, not on permanent employ by the HPO and intending to work in the Republic needs to hold a valid contractors license as defined in section 12, if
  - (a) the work is part of a permitting process required under the "Regulations Governing Land Modification Activities 1991;" or
  - (b) determined on a case-by-case basis by the HPO.

##### § 12. Contractors License for archaeologists and anthropologists

- (1) Any archaeologist or anthropologist, applying for a contractors license shall be granted such license, if the following minimum standards are fulfilled
  - (a) the archaeologist or anthropologist complies with §4(2) or §5(2), whichever is applicable;
  - (b) complete Curriculum Vitae with list of publications and photostats of any documents relating to degrees are submitted;
  - (c) copies of five (5) different final reports of previously completed projects are submitted;
  - (d) addresses of at least two customers for whom the contractor has worked in professional capacity are furnished;
  - (e) the contractor provides an affidavit that originals all fieldnotes, photographs and plans will be surrendered to the HPO for archiving after completion of the contract;
  - (f) the application fee of US\$ 100.00 has been paid.
- (2) The contractors license shall be renewed annually.

Any archaeologist or anthropologist or anthropologist, applying for the renewal of a contractors license shall be granted such renewal, if the following minimum standards are fulfilled

  - (a) the contractor has been previously licensed as an archaeological or anthropological contractor in the Republic of the Marshall Islands;
  - (b) the previous valid license is not older than 5 years
  - (c) the renewal fee of US\$ 100.00 has been paid; and



(d) none of the clauses stated in subsection (4) of this section apply.

(3) If the contractor has not held a valid contractors license for 5 years, the contractor is required to apply as specified in subsection (1) of this section.

(4) Any contractors license may be revoked or temporarily suspended, and a renewal of a contractors license may be denied by the HPO, if the contractor

(a) is found in repeated breach of contract;

(b) in breach of ethical conduct as specified by the Society of Professional Archaeologists;

(c) the contractor has more than one uncompleted project outstanding beyond the project's deadline; or

(d) the contractor has not surrendered originals of fieldnotes to the HPO.

(5) The contractor has the right to appeal the HPO's decision to the Council. The Council's decision shall be final.

#### **PART V: OWNERSHIP AND CONTROL OVER FIELDNOTES AND RESEARCH RESULTS**

§ 13. Schedule Governing the Temporary Ban on Fieldnotes Deposited with the HPO

(1) Any researcher, required under §10(3)(b)(iv) of these regulations to hand over originals or photostats of fieldnotes and plans to the HPO, may impose a temporary ban on these documents, if the researcher believes that

(a) outside researchers may make use of the data before the researcher has had adequate time to analyse and publish the results;

(b) the fieldnotes need annotation without which the understanding of the notes may be unduly biased;

(c) if the information contained in these fieldnotes is sensitive with regard to the informants, either

(i) because the informants divulged traditionally restricted knowledge with the understanding that further dissemination of that knowledge be restricted;

(ii) because the information contained on the informants or their statements is reveals substantial aspects of their private lives not common to others.

- (2) If a temporary ban is imposed, then
  - (a) the information shall be placed in a sealed envelope, signed by the HPO. The envelope shall be kept in a locked cabinet;
  - (b) If the information thus lodged relates to archaeological sites, then
    - (i) the HPO shall not make available that information to persons outside of the HPO;
    - (ii) the HPO shall not make available that information to members of the HPO only for Historic Preservation management purposes on a strict need-to-know basis. Members of the HPO cogniscant of the contents of the envelopes shall not divulge the information to persons not indoctrinated;
  - (c) If the information thus lodged relates to anthropological observations, then
    - (i) the envelope shall not be opened and the HPO shall not make available that information to any person, unless provided with written authorisation from the researcher;
  - (d) the HPO shall keep an accurate log to document access to the envelope, documenting every separate access;
  - (e) The envelope shall be resealed and re-signed every time it has been opened.
- (3) Unless specified, the information contained in the envelope shall become public domain material five (5) years after deposition.
- (4) Notwithstanding subsection (3), the researcher may impose a longer ban on the material, not to exceed thirty (30) years, if the information contained conforms with subsection (1)(c) of this section.
- (5) If a ban longer than five (5) years is imposed, then the ban shall be reviewed every five (5) years in consultation with the researcher.
  - (a) To facillitate this, the researcher shall inform the HPO of any address changes and the HPO of any address changes and the HPO shall keep and accurate log of the researcher's address changes to be kept with the envelope.
  - (b) In case of the researcher's death the ban shall be reviewed every five (5) years by the HPO and shall be renewed upon his of her discretion.
- (6) Any citizen of the Republic of the Marshall Islands may, on his or her discretion, on any media, with the Historic Preservation Office for safekeeping.

- (a) the information shall be placed in a sealed envelope, signed by the HPO and the person lodging the material. The envelope shall be kept in a locked cabinet;
- (b) the envelope shall not be opened and the HPO shall not be opened and the HPO shall not make available that information to any person, unless provided with written authorisation from the person lodging the material;
- (c) the person lodging the material, or any person authorised in writing by the person originally lodging the material shall be provided with free access to the envelope;
- (d) the person lodging the material may at his or her discretion withdraw the envelope at any time;
- (e) The HPO shall keep an accurate log to document access to the envelope, documenting every separate access;
- (f) The envelope shall be resealed and re-signed every time it has been opened.

#### § 14 Violations

- (1) A person who violates any provision of these regulations or requirement thereunder, shall be subject to fines under section 21 of the Historic Preservation Act 1991.
- (2) Notwithstanding fines to be imposed under section 21 of the Historic Preservation Act 1991, any employee of the Historic Preservation Office who violates §12 (2)(b), (c), or (d) of these regulations shall be subject to disciplinary action under the Public Service Regulations 1984..

# Republic of the Marshall Islands HPO Regulations Governing the Disposition of Archaeologically Recovered Human Remains

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## **PART I - GENERAL PROVISIONS**

### §1. Authority

- 1) These regulations are promulgated by the Republic of the Marshall Islands Historic Preservation Office with the approval of the Minister of Interior and Outer Islands Affairs pursuant to §8(c) of the Historic Preservation Act 1991.
- 2) These regulations supercede all previous publications.

### §2. Effective Date

These regulations shall come into force one (1) day after their approval by the Cabinet.

### §3. Interpretation

In these regulations, unless the context otherwise requires, the definitions given in section 3 of the Historic Preservation Act 1991 shall apply.

### §4. Burials shall not be disturbed.

- (1) It shall be unlawful to disturb, damage or destroy known burials or cemeteries, regardless whether they are marked or not.
- (2) Notwithstanding subsection (1), burials may be disturbed if
  - (a) Permission has been obtained according to the provisions of the "Regulations regarding the Conduct of Archaeological and Anthropological Research in the Republic"; or
  - (b) Permission has been obtained according to the provisions of the "Regulations Governing land modification activities."

## **PART II - DISPOSITION OF ARCHAEOLOGICALLY RECOVERED HUMAN REMAINS**

### §5. Disposition of archaeologically recovered human remains.

- (1) Unmarked human remains which are recovered from time to time and salvaged in the course of development activities, unregulated land modification, or data recovery, or which are found exposed

due to natural erosion of the landscape, and which may be persons of different cultural associations shall be treated with dignity and respect consistent with the cultures of which they were members.

- (2) Scientific, medical or other study of human remains shall be conducted for the purpose of ascertaining their actual cultural associations as well as to gain knowledge of past cultures and events, but shall be restricted to the minimum necessary to ascertain cultural or ethnic associations and to address significant research questions.
- (3) Notwithstanding Subsection (2) of this section, burials shall be left in place undisturbed to the extent practical. If such burials cannot practically be left undisturbed, removal shall be done with proper archaeological methods and documentation.
- (4) In the absence of expressed alternate preferences by persons having ascertainable relationships to the specific remains involved or other justifying circumstances, re-interment in an appropriate and respectful manner shall be considered the normal treatment of human remains removed from their original burial locations. such re-interment shall normally be in a sealed container with information regarding the original location and circumstances marked on the outside of the container and included within the container.
- (5) All agencies or person who need permits as stipulated under section 9 of the Regulations Governing Land Modifications Activities 1991 shall make reasonable and good faith efforts in consultation with reasonable and good faith efforts in consultation with the HPO to locate such burials that may be affected by their actions or developments early in th planning process.
- (6) Any removal, examination and re-interment, including the costs for an appropriate memorial, shall be at the expense of the agency or person whose project necessitates removal.
- (7) The export of human remains is prohibited. If the scientific, medical or other study as specified in Subsection (2) of this section cannot be carried out in the Republic, then export may be permitted, provided that the remains be returned at the earliest possible date for re-interment under Subsection (4) of this section.
- (8) The purposed removal, re-interment, destruction or export of human remains by an agency or person from archaeological or historic sites for religious reasons shall require the prior express approval by the HPO.

# **Republic of the Marshall Islands Existing Historic Preservation Legislation**

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# Republic of the Marshall Islands Environmental Protection Authority

## Earthmoving Regulation 1989

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### PART I- GENERAL PROVISIONS

#### §1. Authority

- a) These regulations are promulgated by the Republic of the Marshall Islands Environmental Protection Authority with the approval of the Minister of Health Services pursuant to Section 21 of the National Environmental Protection Act 1984.
- b) These regulations supercede all previous publications and repeal 63 Trust Territory code Chapter 13, Subchapter III, Regulations Concerning the Control of Earthmoving and Sedimentation in the Trust Territory of the Pacific Islands.
- c) These regulations have the force and effect of law.

#### §2. Effective date

These regulations shall come into force 30 days after their approval by the Cabinet.

#### §3. Interpretation

In these regulations, unless the context otherwise requires:

- a) "Accelerated Erosion" means the removal of the surface of the land through the combined action of human activities and natural processes, at a rate greater than would result through the action of natural processes alone.
- b) "Accelerated Sedimentation" means the sedimentation resulting from the combined action of human activities and the natural processes  
Resulting from storms, heavy rains, and high winds at a rate greater than would result through the action of natural processes alone.
- c) "the Authority" means the Republic of the Marshall Islands Environmental Protection Authority or its authorized representative.
- d) "conveyance Channel" means a channel other than an interceptor channel used for the conveyance of water through a project area.



- e) “Cultural resource” means an historical, architectural, Archeological or cultural site, remain, or artifact, including any place or object that enhances the knowledge or preservation of the environmental and cultural heritage of the Marshallese people.
- f) “Diversion Terrace” means a channel or dike constructed upslope of a project for the purpose of diverting storm water away from the unprotected slope.
- g) “Earthmoving” means any construction or other activity which disturbs or alters the surface of the land, a coral reef or bottom of a lagoon, including, but not limited to, excavations, dredging, embankments, land reclamation in a lagoon, land development, subdivision development, mineral extraction, ocean disposal, and the moving, depositing or storing of soil, rock, coral, or earth.
- h) “Embankment or Fill” means a deposit of soil, rock, or other material placed by human activity.
- i) “Erosion” means the natural process by which the surface of the land is work away by the action of water, wind or chemical action.
- j) “Excavation” means a cavity formed by, but not limited to, quarrying, dredging, uncovering, displacing, or relocating soil, coral, or rock.
- k) “Interceptor Channel” means a channel or dike constructed across a slope for the purpose of intercepting storm water, reducing the speed of water flow, or diverting it to outlets where it can be disposed.
- l) “Land Developer” means any person who is engaged in land development as a principal, rather than an agent or contractor.
- m) “Land Development” means the construction, installing, placing, placing, or building of surface structures, land reclamation, navigation channels, harbors, utility lines, piers, shopping centers and malls, causeways, recreational areas, apartment complexes, hotel, schools, roads, parking areas, or any other similar activity.
- n) “person” means any individual, corporation, company, association, partnership, agency, authority, commission, foundation, the Republic of the Marshall Islands government or its political subdivisions, or any local, state, or foreign government or municipality, or other institution or entity, whether public, whether public or private.
- o) “Sediment” means soils or other surface materials transported by water as the result of erosion, earthmoving activity on a reef or in a lagoon, excavation or fill.

- p) "Sedimentation" means the process by which sediment is deposited on the bottom of a body of water, including, but not limited to, rivers, streams, ponds, lakes, lagoons or the tops of reefs.
- q) "Sedimentation Retention Boom" means a watertight membrane suspended from floats and weighted to the bottom of water bodies arranged in a manner that will confine sediments to the local area of marine earthmoving activity.
- r) "Stabilization" means the proper placing, grading or covering of soil, rock or earth, including the use of vegetation, to ensure their resistance to erosion, sliding, or other movement.
- s) "Subdivision" means the division or redivision of a lot tract, or parcel of land by any means into two or more lots, tracts, parcels, or other division of land including changes in existing lot lines for the purpose, whether immediate or future, of lease, transfer of ownership, or building or lot development.

#### §4. Applicability

These regulations shall apply to all earthmoving activities as follows:

Ongoing activities or operations of a continuous nature such as dredging or quarrying in progress on the effective date of these regulations shall be in compliance with these regulations within three months from the effective date.

Construction operations in progress on the effective date of these regulations shall be in compliance with these regulations within three months from the effective date.

All new projects and new operations that begin on or after the effective date of these regulations shall be in compliance with these regulations.

#### § 5. General Requirement

All earthmoving activities within the Republic of the Marshall Islands shall be conducted in accordance with these regulations and in such a way as to prevent accelerated erosion, accelerated sedimentation, and disturbance of potential cultural resources. To accomplish this, all persons engaging in earthmoving activities shall design, implement and maintain erosion control, sedimentation control, and cultural preservation measures which effectively prevent accelerated erosion, accelerated sedimentation, and adverse impact on cultural resources.

## **PART II – EROSION AND SEDIMENTATION CONTROL PLAN**

### **£6. Plan required**

The erosion and sedimentation control measures referred to in regulation 5 of these regulations must be set forth in a plan, which must be available at all times at the site of the activity and must be filed with the Authority.

### **£7. Preparation**

The erosion and sedimentation control plan shall be prepared by a person trained and experienced in erosion and sedimentation control methods and techniques.

### **£8. Factors**

The erosion and sedimentation control plan shall be designed to prevent acceleration of erosion and acceleration of sedimentation and shall consider all factors which contribute to erosion and sedimentation, including, but not limited to, the following:

The topographic or hydrographic features, or both, of the project area.

The types, depth, slope and area of the soils, coral and reef.

The original state of the area as to plant and animal life.

Whether any coral reef which may be affected by the earthmoving is alive or dead.

The proposed alteration to the area.

The amount of runoff from the project area.

The staging of earthmoving activities.

Temporary control measures and facilities for use during earthmoving activity.

Permanent control measures and facilities for long-term protection.

A maintenance program for the control facilities including disposal of materials removed from the control facilities or project area.

### **£9. Project involving water**

If the project involves an earthmoving activity in a lagoon, or a reef, or any body of water, the Authority may require the plan to show existing marine life populations as well as maximum and minimum turbidities.

### **PART III – EROSION AND SEDIMENTATION CONTROL MEASURES AND FACILITIES**

#### **§10. Control measures and facilities required**

The erosion and sedimentation control measures and facilities set forth in regulations 11 and 12 of these regulations shall be incorporated into all earthmoving activities unless the designer of the erosion and sedimentation control plan shows that alteration of these measures or facilities, or inclusion of other measures or facilities, will prevent accelerated erosion and accelerated sedimentation.

#### **§11. Control measures**

All earthmoving activities shall be planned in such a manner so as to minimize the area of disturbed land, reef or lagoon.

All sedimentation resulting from underwater earthmoving activities shall be contained, confined and restricted by the best available means in such a manner that turbidities will be kept to a minimum.

All permanent facilities for the conveyance of water around, through or from the project site shall be designed to limit the velocity of flow on the facilities to a speed that will not contribute to erosion.

All slopes, channels, ditches or any disturbed area shall be stabilized as soon as possible after the final grade or final earthmoving has been completed within a section or area of the project.

Where it is not possible to permanently stabilize a disturbed area immediately after the final earthmoving has been completed or where the activity stops for more than 14 days, interim stabilization measures shall be promptly implemented.

Before filling or land development within a body of water or tidal zone, adequate seawalls or breakwater facilities, or both, shall be constructed to safely contain the fill without failure and to prevent accelerated sedimentation.

All runoff from a project area shall be collected and diverted to facilities for removal of sediment.

Runoff from a project area shall not be discharged into the waters of the Republic of the Marshall Islands without effective means to prevent sedimentation.

#### **§12. Control facilities**

Sedimentation retention booms shall be used to restrict accelerated sedimentation around earthmoving or earth disturbing activity on reefs or in lagoons in all cases, except when a finding has been made after actual

demonstration that no facilities are needed to prevent accelerated sedimentation. Approval of use of alternate facilities or a finding that no facilities are necessary shall be made in writing by the Authority.

Diversion terraces:

- ( i ) shall be constructed upgrade of a project area to convey runoff around the project area, and shall have sufficient capacity to convey such runoff without overflowing;
- (ii) shall be grassed or lined with erosion-resistant materials to prevent accelerated erosion within the channel; and
- (iii) shall be designed so that outlet structures reduce the discharge speed to a level that will not cause accelerated erosion and are stabilized before use.

Seawalls and breakwaters to contain fill or reclaimed land shall be sufficiently watertight to prevent accelerated sedimentation, well constructed on a solid foundation, and built to a level at least 2 feet above the highest tide flood level of historical knowledge. These facilities shall be planned, designed and constructed under the direction of a person trained and experienced in building seawalls and breakwater facilities.

Interceptor channels:

- ( i ) may be used within a project area to reduce the speed of flow and prevent accelerated erosion;
- (ii) shall convey collected waters to sedimentation basin or to vegetated areas but not directly to streams or other bodies of water; and
- (iii) shall be designed so that outlets to vegetated areas reduce the discharge speed to a level that will not cause accelerated erosion.

All conveyance channels shall be grassed or lined with erosion resistant materials or designed to reduce the speed of flow of surface runoff to a level that will not cause accelerated erosion.

Solids separation facilities:

- ( i ) shall have a basin for settling solids out of water that is structurally sound and has sufficient capacity to hold the water what drains into the basin until the solids have settled out;
- (ii) shall be designed so that outlet structures allow only adequately settled water to be discharged, and at a rate that will not cause accelerated erosion.

The discharge from construction of fills. Whether by pumps, hydraulic dredges, or any other means, used to construct fills shall be sufficiently treated and sufficiently retained with dikes, levees, seawalls, or other structures so that accelerated sedimentation will not take place in the waters

which receive the effluent. Transmission pipelines transporting fill material shall be maintained in a watertight condition at all times of excavation and fill operation.

Barges, scows, platforms, vessels, or anything used for hauling dredged material operating in the waters of the Republic of the Marshall Islands shall be sufficiently tight and secure that accelerated sedimentation will not occur by reason of leaking or premature dumping due to faulty mechanisms.

#### **PART IV – CULTURAL PRESERVATION MEASURES**

##### **§13. Cultural preservation measures required**

Any person who engages in an earthmoving activity shall prevent adverse impact on potential cultural resources by identifying and preserving all such resources.

##### **§14. Prior determination**

Any person who engages in an earthmoving activity, whether or not that activity requires a permit pursuant to regulation 22, shall first make every reasonable effort to determine if a cultural resource may be unearthed, disturbed, or in any way affected by the earthmoving activity.

Efforts to identify potential cultural resources pursuant to subregulation a) may include, but are not limited to, the following:

- ( i ) inquiries to surrounding traditional landowners;
- ( ii ) inquiries to the Secretary of Interior & Outer Island Affairs, appointed by Cabinet as the Republic of the Marshall Islands Historic Preservation Officer, or to any other officer so designated;
- ( iii ) inquiries to the Ministry of Interior & Outer Islands Affairs Division of Cultural Heritage, or Alele Museum; and
- ( iv ) inquiries to any recognized authority on historic, architectural, archeological or cultural preservation.

##### **§15. Declaration to Authority**

When investigation conducted pursuant to regulation 14 reveals that a potential cultural resource may be affected by an earthmoving activity, the person who wishes to engage in that activity shall immediately declare the results of the investigation in the following manner:

- ( i ) if the earthmoving activity requires a permit pursuant to regulation 22, declaration shall be made on the permit application form; or

- ( ii ) if the earthmoving activity does not require a permit pursuant to regulation 22, declaration shall be made my written instrument to the Authority before earthmoving begins.

#### £16. Adverse impact

If the Authority determines an earthmoving activity may adversely affect a cultural resource, the Authority shall, by written instrument attached to the earthmoving permit or, in the case where no permit is required, by written instrument alone, require the person engaging in the earthmoving activity to design, implement and maintain appropriate cultural preservation measures.

#### £17. Duty to inform

In the event a cultural resource is discovered during the earthmoving process, the person engaged in the earthmoving activity shall inform the Authority by the quickest means available, and in writing, of the discovery.

#### £18. Mitigation

When informed of a discovery pursuant to regulation 17, the Authority shall, in consultation with the person engaging in the earthmoving activity, develop mitigation procedures to limit potential damage to the cultural resource.

Mitigation procedures may include a requirement to stop work temporarily at the earthmoving site so that the full extent of the cultural resource and the potential damage to that resource may be assessed.

Mitigation procedures shall be:

- ( i ) reasonable;
- ( ii ) clearly described by the Authority by written instrument; and
- ( iii ) delivered to the person engaged in the earthmoving activity in a timely manner.

## **PART V - RESTORATION**

#### £19. Stabilization

Upon completion of the project shall be stabilized so that accelerated erosion and sedimentation control facility required or necessary to protect areas from erosion during the stabilization period shall be maintained until stabilization is completed.

#### §21. Final measures

On completion of stabilization, all unnecessary or unusable control facilities shall be removed, the areas shall be graded and the soils shall be stabilized.

### **PART VI – PERMITS**

#### §22. Permit required

Any person who engages in an earthmoving activity within the Republic of the Marshall Islands shall first obtain a permit from the Authority for the proposed activity except that no permit is required for:

- ( i ) earthmoving activity that involves plowing or tilling for agricultural purposes; or
- ( ii ) earthmoving activity for the purpose of erecting a one or two family residence, or for the purpose of erecting structures associated with them consistent with residential use.

Those persons who qualify under the provisions of subregulation a)

- ( i ) and ( ii ) to engage in earthmoving activities without a permit must otherwise comply with all of the provisions of these regulations.

#### §23. Application for permit

Application for permits shall be in a form approved by the authority and shall be submitted by the person undertaking the earthmoving activity. In the case of land development, the application shall be submitted by the land developer rather than the contractor or agent.

Applications shall be made no later than 1 month before the proposed earthmoving activity is scheduled to begin.

Applications shall be accompanied by an erosion and sedimentation control plan and such other documents as the Authority may require.

Applications shall be accompanied by a processing fee of \$100.00, which is not refundable, except that no fee is required by the government of the Republic of the Marshall Islands.

The Authority may, before issuing or denying a permit, hold a public hearing to determine the facts on which to base a decision.

#### §24. Special conditions

The Authority may, upon issuing a permit, impose any conditions or special requirements as it sees fit. All such conditions and requirements shall be listed on a written instrument attached to the permit.



## **PART VII – ENFORCEMENT**

### **§25. Violations**

A person who violates any provision of these regulations or any permit, requirement or order issued there under, shall be subject to enforcement action by the Authority.

The enforcement action may be any or all of the following:

- ( i ) revocation of an earthmoving permit;
- ( ii ) the making of a cease and desist order in relation to the subject matter of the violation;
- ( iii ) the imposition of a civil penalty, fixed by the Authority, not exceeding \$10,000.00 for each day on which the violation continues;
- ( iv ) the institution of civil proceedings to restrain the violation; and
- ( v ) any other action authorized by the National Environmental Protection Act 1984 or any other law.

### **§26. Public hearing**

When the Authority revokes a permit or a cease and desist order is made under regulation 25 b) ( i ) or ( ii ), or both, a public hearing shall be conducted by the Authority to determine the authenticity of the facts upon which the order was made.

Adequate notice of the hearing, and an adequate opportunity to appear and be heard at the hearing, shall be given to all interested persons.

### **§27. Penalty for lack of permit**

Any person required to have a permit and engaged in earthmoving activity without a permit shall be subject to a civil penalty of \$100.00 per day for each day the earthmoving activity is conducted without a permit.

**National Archives Act 1989  
(as amended 1992)**

§ 1. Short Title

§ 2. Interpretation

**PART I ADMINISTRATION**

§ 3. Office of National archives

§ 4. Archivist and officers of the National Archives

§ 5. Administration of the Act

**PART II POWERS AND FUNCTIONS**

§ 6. Functions of the Archivist

§ 7. Powers of the Archivist

§ 8. Selection and transfer of public records

**PART III CUSTODY & PRESERVATION OF ARCHIVES**

§ 9. Deposit of public records

§ 10. Documents relation to any public office to be close down

§ 11. Records of Commissions etc.

§ 12. Deposit of public records less than twenty five years old

§ 13. Documents in private possession

§ 14. Public Records not in Archives

§ 15. Transmission of certain copies or specimen of certain publications to the Archivist

**PART IV MISCELLANEOUS**

§ 16. Prohibition of export of certain documents

§ 17. Reproduction of public records

§ 18. Protection and preservation of public records

§ 19. Destruction of public records

§ 20. Deposit in the national Archives of public and Private Records

§ 21. Temporary transfer of records

§ 22. Qualifications of Contractor

§ 23. Copyright

§ 24. Funding

§ 25. Regulations

**NITIJELA OF THE MARSHALL ISLANDS**

**10<sup>TH</sup> CONSTITUTIONAL REGULAR SESSION, 1989**

**Amended**

**13<sup>TH</sup> CONSTITUTIONAL REGULAR SESSION, 1992**



## **An Act**

to provide for the establishment of an Office of National Archives to make provision for the custody and preservation of public records; and for matters connected therewith.

BE IT ENACTED BY THE NITIJELA OF THE MARSHALL ISLANDS:

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### § 1. Short Title

This Act may be cited as the National Archives Act 1989.

### § 2. Interpretation

In this Act unless the context otherwise requires:

“Archivist” means the Archivist appointed under Section 4 of the Act;

“Current Marshall Islands records” means records currently used for the purpose of the institution using such records, other than the purpose of the institution using such records, other than the purposes under this Act;

“Head of the public office” with reference to any public office, means the head of that office or the officer for the time being discharging the duties and functions of the head of the office;

“Historic Preservation Office” means the office established under Section 4 of the Historic Preservation Act 1991, P.L. 1991-111;

“Historic Preservation Officer” means the Secretary of the Ministry responsible for administration of the Historic Preservation Act 1991;

“Institution” includes any public office;

“Manuscript” means any hand written documents made of paper, copper, silver, gold or any other material except granite;

“National Archives” means the Office of National Archives established under this Act;

“public Archives” or “Archives” means all public records and any other manuscript, document or printed matter kept or deposited at the National Archives for permanent preservation;

“public office” means any ministry, department, office, agency or instrument of any kind of the Government of the Republic of the Marshall Islands and includes any public corporation whose capital is partly or wholly provided by the Government, office of any Local Government Council;

“public record” or “record” means any original or copy of any manuscript paper, letter, register, report, book, magazine, map chart, plan, drawing, picture, photograph, or any other record of part thereof either handwritten, drawn, printed, produced in any other material and officially received or

produced or prepared in any public office in the course of its official functions and includes any cinematograph, film, recording tape, tape, disc or production in any other media received in any public office;

“Printed matter: means any book, magazine, leaflet, newspaper, or any other paper containing information printed by any mechanical or any other process.

## **PART I ADMINISTRATION**

### **§ 3. Office of National Archives**

An office known as the Office of National Archives is hereby established. The Office of National Archives shall be a part of the Historic Preservation Office.

### **§ 4. Archivist and officers of the National Archives.**

- (1) The Historic Preservation Officer may appoint a person, by name or by office, to be or to act as the Archivist.
- (2) There may also be appointed such other officers and personnel as may be necessary for the purposes of the Office of National Archives.

### **§ 5. Administration of the Act.**

- (1) The Office of Historic Preservation is hereby authorized to contract for services to administer to the appointment of persons pursuant to Section 4.
- (2) The contractor shall be a person or corporation possessing the qualifications necessary to carry out the functions and duties of the Archivist as described in this Act.
- (3) In the exercise of general functions, powers and duties under this Act, the Archivist or any entity contracting to provide the services of Archivist, shall act in consultation with the Historic Preservation Office.

## **PART II POWERS AND FUNCTIONS**

### **§ 6. Functions of the Archivist**

- (1) The Functions of the Archivist shall be:
  - (a) to ensure the conservation and preservation of the existing and future archival resources of the Marshall Islands;
  - (b) to encourage and foster the preservation of all other archival resources relating to Marshall Islands;

- (c) to promote, by providing advice and other assistance to institutions, in the keeping of current records in an efficient and economical manner and in a manner that will facilitate their use as part of the archival resources of Marshall Islands;
  - (d) to seek to obtain, and to have the custody and management of, material not in the custody of a public office that forms part of the archival resources of the Marshall Islands and, in the opinion of the Archivist, ought to be in the custody of the Archives;
  - (e) to accept and have the custody and the management of material that, though not part of the archival resources relating to the Marshall Islands and, ought to be in the custody of the Archives in order to ensure its preservation or for other reasons;
  - (f) to encourage, facilitate, publicize and sponsor the use of archival material;
  - (g) to make archival records available or public access in accordance with this Act;
  - (h) to conduct research, provide advice, in relation to the management and preservation of records and other archival material;
  - (i) to develop and foster the co-ordination of activities relating to the preservation and use, of archival resources of the Marshall Islands and other archival resources relating to the Marshall Islands.
- (2) Nothing in this part derogates from the powers and functions of any institution in the Marshall Islands in relation to the keeping of current Marshall Islands records.

#### §7. Powers of the Archivist

- (1) The Archivist shall have charge of the National Archives and of Archives deposited therein and in addition to the specific functions conferred or imposed on him by this Act, he shall take all such measures as are necessary for the conservation of Archives.
- (2) The Archivist or any other officer of the National Archives authorized by him, shall have the power to do all such things as appear to him to be necessary or expedient for the purpose of the efficient administration of this Act and may, in particular:
  - (a) establish and control repositories or other facilities to house or exhibit material of the Archives;

- (b) undertake the survey, appraisal, accessioning, arrangement, description and indexing of records;
- (c) make available and publish lists, indices, guides, inventories, calendars, texts, translations and such other things as may be necessary as aids to the Archives in his custody;
- (d) provide for the restoration and conservation of Archives in a suitable manner and make photo-graphic reproductions or make copies, by micro-filming or otherwise, of Archives;
- (e) produce or cause to be produced any Archives open to public inspection;
- (f) arrange for the publication or sale of material forming part of the archival resources of the Marshall Islands or works based on such material including replicas and copies;
- (g) examine any record or any manuscript or document containing references to the Marshall Islands or which has its origin in the Marshall Islands with a view to securing either on loan or by purchase, the original or any copy thereof;
- (h) acquire by purchase, donation, bequest, contract, or otherwise or take on loan, any record, tract, or otherwise or take on loan, any record, manuscript or document or any other material which in his opinion should be deposited in the National Archives for permanent preservation;
- (i) examine any collection of records or printed material in private possession for purposes of listing and recording and render such technical aid or assistance as may be necessary for the conservation and preservation of such records printed material;
- (j) train, or assist in the training of persons, for work in connection with records and other archival material; and
- (k) hold public exhibitions or expositions of any class or description of Archives, private documents, manuscripts or printed material deposited in the National Archives.

§8. Selection and Transfer of public records.

- (1) The Archivist shall have access to any place of deposit of public records and shall have the power to examine such records with a view to listing and collecting information there from or to take such steps as are necessary for their transfer to the National Archives for permanent preservation.
- (2) It shall be the duty of the head of any public office or any other person for being having custody of public records:

- (a) to afford the Archivist or any officer authorised by him in writing, all facilities for the examination and selection of such public records for permanent preservation and for the transfer of such records to the National Archives;
- (b) to keep in safe custody in such office any class or description of public records selected by the Archivist or by any such other officer pending the transfer of such record to the National Archives; and
- (c) to perform such duties in connection with the election and listing of such public records in his custody for transfer to the National Archives as may be required by the Archivist.

### **PART III CUSTODY AND PRESERVATION OF ARCHIVES**

#### **§9. Deposit of public records**

- (1) All public records of the age of twenty-five years or over, other than those which are under enactment required to be held in custody of a specified or public office, which in the opinion of the Archivist are of sufficient value to warrant their preservation, shall be transferred to the custody of the Archivist and be deposited in the National Archives.

provided, however, that the transfer of any public records to the National Archives may be temporarily deferred and such records retained in the office of origin for administrative and other purposes for such period as may be agreed upon by the head of such public office and the Archivist, and in every such case a list of the records so retained shall be transmitted to the Archivist by the head of such office.

- (2) where the head of the office responsible for transferring any public records is of the opinion that such records are any public records is of the opinion that such records are of a confidential or secret nature or contains information the release of which may adversely affect the security of the Republic of the Marshall Islands, he may specify the conditions subject to which such records are kept in the National Archives or defer for such period as he may decide. It shall be the duty of the Archivist to comply with such conditions.

#### **§10. Documents relating to any public office to be close down**

Where any public office is to be closed down or wound up, the head of such public office shall transmit to the Archivist a complete list of all public records in that office and shall make arrangements to deposit in the National

Archives such records as the Archivist may select or require for permanent preservation in the National Archives.

£11. Records of Commissions etc.

It shall be the duty of the Secretary of any Commission of Inquiry, appointed under the commissions of Inquiry Act 1986 or any Committee of Inquiry appointed by a Minister or Government to deposit all records relating to such Commission or committee, as the case may be, at the National Archives within three months of the rendering of the final report of such Commission or Committee.

£12. Deposit of public records less than twenty five years old.

- (1) The Archivist may allow the deposit in the National Archives, public records of less than twenty five years of age if he considers that they are of sufficient value for deposit.
- (2) Any deposit of public records under the provisions of Subsection (1) may be subject to any special conditions imposed by the head of the office making the deposit.

£13. Documents in private possession.

- (1) Any private individual or the head of any institution in possession of any manuscript or document over twenty-five years of age, being a manuscript or document of historical, cultural or literary value may notify the Archivist of the existence of such manuscript or document.
- (2) Such individual or the head of the institution shall afford the Archivist all facilities to inspect such manuscript or document.
- (3) Such an individual or head of the institution shall if agreed upon by the Archivist, deposit at the National Archives such manuscript or document either on a permanent or temporary basis, and may specify the conditions subject to which such manuscript or document shall be made available for public inspection or extracts or copies therefrom shall be taken for publication or any other purposes.

£14. Public Records not in Archives

- (1) The Archivist may, from time to time, inspect any public records that are for the time being in possession or under the control of any public office and give such instruction as to their safe preservation and such advice as to their efficient and economical administration and management as he considers necessary.



- (2) Nothing in this section shall be deemed to authorized the Archivist to inspect the contents of any public record:
- (a) which by written law are forbidden to be communicated to him; or
  - (b) which are secret or confidential, except with the consent of the had of the office having the custody thereof.

§15. Transmission of certain copies or specimen of certain publications to the Archivist.

- (1) It shall be the duty of
- (a) the head of any public office to transmit to the Archivist a copy of every annual report, statement of account and any other publication issued by such office, within thirty days of such issue;
  - (b) Controller of Postal Services to transmit to the Archivist a specimen of each new postage stamp first day cover, postal or money order from, aerogram and post card issue by the Controller of Postal Services, within thirty days of such issue.
  - (c) the Secretary of Finance to transmit to the Archivist a cancelled specimen of any new currency note or coin of every denomination issued by the Government, within thirty days of such issue;
  - (d) the head of any public office in custody of such document to transmit to the Archivist a copy of every map, plan, chart of other publication issued by the government within thirty days of such issue;
  - (e) the printer and publisher of every book printed or published in the Marshall Islands to transmit to the Archivist a copy of such book free of charge, within one month from the first day of delivery out of the press or first publication.
- (2) For the purpose of paragraph (e) of Subsection (1) above “book” includes every part or division of a book, pamphlet, periodical, newspaper, journal, magazine, review, gazette, or any other publication available or open to inspection by the public.

#### **PART IV MISCELLANEOUS**

§16. Prohibition of export of certain documents

- (1) No person shall except on the written authority of the Archivist export out of the Marshall Islands any public record, document or

manuscript or any other printed matter which is over twenty five years old and which is of historical or cultural or literary value.

- (2) The Archivist may in his discretion refuse to issue written authority if he considers that such record, document or manuscript is of such historical, cultural or literary value that its export will not be in the national interest.
- (3) Any person aggrieved by the refusal of the Archivist to issue such written authority may appeal to the Resource Protection Officer against such refusal within fourteen days of the communication of such refusal. The decision of Resource Protection Officer shall be communicated within fourteen days of such appeal, and, shall be final and conclusive.

#### £17.Reproduction of public records

No person shall publish or reproduce whole or any part of the contents of any public record which is in the custody of the National Archives, without the written consent of the Archivist.

#### £18.Protection and preservation of public records.

- (1) No person shall destroy or otherwise dispose of, or authorise the destruction or disposal of any public record that is in his possession or his control except with the written consent of the Archivist given in accordance with this Act.
- (2) No person shall destroy or otherwise dispose of, or authorise the destruction or disposal of any public record that is in his possession or his control except with the written consent of the Archivist given in accordance with this Act.
- (3) No person shall deface, alter, mutilate or in any other way damage any public record except with the written consent of the Archivist.

#### £19.Destruction of public records.

The Archivist may authorise the destruction, or destruction after the expiry of such specified time as may be agreed between the Archivist and the head of the public office concerned, of any specified public records or classes of public records that:

- (a) by reason of their number, kind or routine nature do not in his opinion possess an enduring value for preservation in the National Archives; and
- (b) are not required for reference purposes in public office after action on them is completed, or after expiry of such particular period.

§20. Deposit in the National Archives of public and Private Records

All public and private records received for permanent preservation by the Archivist shall be deposited in the repositories of the National Archives.

§21. Temporary transfer of records.

Except as herein provided, public and private records deposited for permanent preservation shall not be removed from the National Archives to any other place for any purpose whatsoever.

Provided however where any public office which transmitted to the National Archives any record, document, manuscript or other thing requires the same for inspection by such office such record, document, manuscript or other thing may be forwarded to such officer by the Archivist for inspection and return within such period as may be specified by him.

§22. Qualifications of Contractor.

Any contractor proposing to undertake the administration of this Act must, either through a business plan if an individual or by-laws if a corporation, make such provisions as may be necessary to give effect to the principles of this Act. such provisions shall include, but are not limited to the following:

- (a) selection of public records and private documents and manuscripts for permanent preservation;
- (b) care and custody of public records in public offices and other institutions;
- (c) public access to the public archives the terms and conditions subject to which public archives are open to inspection;
- (d) prohibition or restriction of the disclosure of information obtained by the public from public archives;
- (e) maintenance of secrecy by officers of the National Archives in respect of any class or description of public archives in respect of which secrecy is required to be maintained by or under any written law; and
- (f) destruction of valueless records and documents in public offices.

§23. Copyright.

- (1) Nothing in this Act shall derogate from any provision of law relating to copyright in relation anything contained in any public records deposited in the Archives under the provisions of this Act.
- (2) Where any person publishes any work containing any passage from any public record deposited in the Archives, he shall in that

publication acknowledge the source from which that passage is taken.

§24.Funding.

Funds for the administration of this Act shall be provided through an appropriation to the Historic Preservation Office.

§25.Regulations.

The Historic Preservation Office may, in accordance with the Marshall Islands Administrative Procedure Act, promulgate regulations that will govern the administration of this Act.

# Language Commission Act 1983

NITIJELA OF THE MARSHALL ISLANDS 4TH CONSTITUTIONAL SESSION

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## AN ACT

to establish a Republic of the Marshall Islands Language Commission, to encourage the preservation, development and use of the Marshallese Language.

### Section 1. Short Title

This Act may be cited as the “Republic of the Marshall Islands Language Commission Act 1983”.

### Section 2. Reserved

### Section 3. The Commission

- (1) A Republic of the Marshall Islands Language Commission is hereby established.
- (2) The Commission shall consist of a Chairman and such other members as the Cabinet appoints, with the concurrence of the Nitijela expressed by resolution.
- (3) The members of the Commission shall be persons well versed in the Marshallese language and culture, and may include also persons with specialized knowledge of the science of linguistics or with experience elsewhere of the type of work that the Commission is established to do.
- (4) The commission shall determine its own procedure.
- (5) The compensation of the members of the Commission shall be specifically provided by Act.

### Section 4. Functions of the Commission

- (1) The functions of the Commission are:
  - (a) to investigate methods of preserving, developing and encouraging the use of the Marshallese language, and to report on such matters to the Cabinet and to the Nitijela through the Minister;
  - (b) to recommend action to be taken by the Government of the Marshall Islands or by any other person, organization or

- authority for the preservation, development and use of the Marshallese language;
- (c) to devise and, so far as it can, implement an educational program on the Marshallese language, and of the need form and the methods of, its preservation, development and use;
  - (d) to sponsor and approve standards for uniform spelling of Marshallese words and phrases;
  - (e) to prepare and publication of, dictionaries and other works on the Marshallese language;
  - (f) with the approval of a joint committee of the Nitijela and the Council of Iroij, to adopt and publish lists of new words, phrases and grammatical forms that appear to it to be required or desirable for the development and use of the Marshallses language; and
  - (g) any other functions that are necessary or desirable for the achieving the purpose of this Act.
- (2) The Commission may cooperate with, and seek assistance from, universities and other institutions and persons interested in the functions of the Commission and the achievement of the purposes of this Act.
  - (3) The Commission, with the approval the Cabinet, may solicit and accept grants, donations and other aid from any source for the purposes of this Act.
  - (4) Grants, donations or aid made or given subject to conditions, or for certain purposes, may be spent or used only in accordance with those conditions or for those purposes.

#### Section 5. Staff, etc.

- (1) There shall be a Secretary to the Commission, and such staff as the Commission needs to perform its functions.
- (2) The Secretary and the staff of the Commission shall be members of the Public Service, on either full-time secondment, as arrangement between the Minister and the Commission.
- (3) Out of money lawfully available for the purpose, or by arrangement with the Minister, the Commission may obtain the services of specialists and consultants on aspects of its works.

#### Section 6. Assistance and cooperation.

It is the national duty of the Government of the Marshall Islands (in particular the Ministry of Education), of the news media, of local governments, of

private and public organizations and authorities, and of the people generally to cooperate with the and assist the Commission in its works.

#### Section .Finance.

- (1) A Marshallese Language Trust Fund is hereby established for the specific purposes of this Act.
- (2) The Fund is a Fund other than Marshallese Islands General Fund, within the meaning and for the purpose of article VIII, Section 3(2) of the Constitution of the Marshall Islands.
- (3) There Shall be paid into the Fund:
  - (a) any grants, donations or aid in cash made or given for the purposes of this Act, in accordance with Section with 4(3) of this Act;
  - (b) any other amounts received for the purposes of the Commission or of this Act; and
  - (c) any amount appropriated by the Nitijela for the purpose.
- (4) Money may be paid out of the Fund only:
  - (a) for the purposes of the Commission and of this Act; and
  - (b) with the authority of the Secretary of Finance, who shall first satisfy himself that the payment is in accordance with this Act.
- (5) A delegation under Article VIII, Section 5(1) of the Constitution of the Marshall Islands to expend money out of the Fund is given to the Secretary of Finance.
- (6) The secretary of Finance shall maintain proper accounts and records of the Fund, and the accounts to be laid before the Nitijela by the Minister of Finance under Article VIII, Section 5(4) of the Constitution of the Marshall Islands shall include accounts relating to the Fund

#### Section 8 Reports.

- (1) Any report under Section 4(1) of this Act shall be presented by the Minister to the Nitijela, together with his comments or the comments of the Cabinet on it.
- (2) the Commission shall, at least once in each year, at such time as is fixed by the Minister, submit to the Minister, for presentation to the Nitijela, a report on progress in the preservation, development and use of the Marshallese language and on measures likely to ensure respect for it, and generally on the operations of the Commission and the administration of this Act, with such recommendations (if any), as it thinks proper.

- (3) The Commission may at any other time, and shall if so directed by the Nitijela or the Minister, submit to the Minister a report on all or any aspects of the matters referred to in Subsection (2) of this Section.
- (4) The Minister may present to the Nitijela any report under Subsection (3) of this Section, and shall do so if the report was directed by the Nitijela.



## **Legal History**

1966

United States of America Historic Preservation Act is passed.

1967

Trust Territory Code Title 67, Chapter 6 §§251-256

1983

Language Commission Act 1983 ( P.L 1983 –

1984

Environmental Protection Act 1984 ( P.L. 1984-31)

1986

Compact of Free Association between the Government of the United States of America and the Government of the United States of America and the Government of the Republic of the Marshall Islands.

1989

National Archives Act 1989 (P.L. 1989-47)

1990

A resolution to provide for the preservation of the cultural and historic heritage of the Republic of the Marshall Islands (H.R. 1990-100)

1991 Historic Preservation Act 1991 (P.L. 1991-111)

1992

Regulations Regarding The Conduct Of Archaeological And Anthropological Research In The Republic 1992

Regulations Governing The Taking And Export Of Artifacts 1992

Regulations Governing The Disposition Of Archaeologically Recovered Human Remains 1992

Regulations Governing Land Modification Activities 1992

Regulations Governing Access To Prehistoric And Historic Submerged Resources 1992

National Archives Amendment Act 1992(P.L. 1992-4)

## Index

The following is an index to the Republic of the Marshall Islands Historic Preservation Legislation as contained in this volume. The following abbreviations have been used to facilitate the location of the relevant act or regulation:

ARC— Regulations Regarding The Conduct Of Archaeological And Anthropological Research In The Republic 1992

EPA— Republic of the Marshall Islands Environmental Protection Authority Earthmoving Regulations 1989

EXP— Regulations Governing The Taking And Export Of Artefacts 1992

HPA— Historic Preservation Act 1992

HUM— Regulations Governing The Disposition Of Archaeologically Recovered Human Remains 1992

LAN— Regulations Governing Land Modification Activities 1992

LCA— Language Commission Act of 1983

NAA— National Archives Act 1989 ( as amended 1992)

RES— A resolution to provide for the preservation of the cultural and historic heritage of the Republic of the Marshall Islands (1990)

SUB— Regulations Governing Access To Prehistoric And Historic Submerged Resources 1992