



FSM National Oceanic
Resource Management
Authority

Federated States of Micronesia
Pacific Islands Regional Oceanscape Program Second Phase for Economic
Recovery and Resilience (FSM PROPER)
(P178237)

Labor Management Procedures

DRAFT FOR DISCLOSURE PURPOSES ONLY

This document is based upon the original Concept project design for FSM PROPER. Amendments to the Project after the Concept phase are not assessed in this document, and will be assessed in an updated set of instruments (ESMP, SEP, LMP, ESIA) per the ESCP. Therefore, this document does not reflect the full set of Project activities, and includes discussion of activities that are no longer included in the Project, or activities that have been amended. For the current set of Project activities, please refer to the PAD. This document will be replaced by the updated version within 6 months of the Project Effective Date.

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Document Control

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Abbreviations

CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CESMP	Contractors Environmental and Social Management Plan
CIU	Central Implementing Unit
COC	Code of Conduct
CRC	Convention on the Rights of Children
CRPD	Convention on the Rights of Persons with Disabilities
DoFA	Department of Finance and Administration
EHS	Environmental Health and Safety
E&S	Environmental and Social
ESF	Environmental and Social Framework
ESS	Environmental and Social Standard
FSM	Federated States of Micronesia
GBV	Gender Based Violence
GEWD	Gender Equality and Women's Development
GRM	Grievance Redress Mechanism
GRS	Grievance Redress Service
HT	Human Trafficking
IDA	International Development Association
ILO	International Labor Organization
LMP	Labor Management Procedures
M&E	Monitoring and Evaluation
NORMA	National Oceanic Resource Management Authority
OHS	Occupation Health and Safety
PDO	Program/Project Development Objective
PICs	Pacific Island Countries
PIU	Project Implementation Unit
PROPER	Pacific Islands Regional Oceanscape Program Second Phase for Economic Recovery & Resilience
SEA	Sexual Exploitation and Abuse
SH	Sexual Harassment
TIN	Tax Identification Number
UNDP	United Nations Development Program
VAC	Violence against Children
WB	World Bank
WGRM	Workers Grievance Redress Mechanism

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1 Introduction

The Federated States of Micronesia (FSM) has received financing from the World Bank (WB) International Development Association (IDA) for the preparation of the second phase of the Pacific Islands Regional Oceanscape Program (PROP). PROP comprised a series of Programs, which included separate national Programs in the Federated States of Micronesia (FSM), the Republic of the Marshall Islands, Tuvalu and the Solomon Islands, and a separate but complementary regional Program implemented by FFA. Programs in Kiribati, Tonga and Samoa have also recently joined. The second phase is now called the FSM Pacific Regional Oceanscape Program – Economic Resilience (FSM PROPER). FSM PROPER is envisaged to maintain and expand on the gains achieved through the first phase, PROP.

The FSM PROPER development objective (PDO) is to strengthen regional collaboration and national capacity for the management and the sustainable development of the oceanic and coastal fisheries sector *and the critical habitats on which they depend* in FSM.

The preparation phase of FSM PROPER is currently being progressed by the National Oceanic Resource Management Authority (NORMA) in conjunction with the national and state agencies within the FSM with a Project Preparation Advance (PPA) from the World Bank. FSM PROPER is scheduled to start implementation in 2024.

FSM PROPER will be prepared under the Environmental and Social Framework¹ (ESF) which came into effect from October 2018. All Environmental and Social (E&S) instruments will be prepared in compliance with the ESF.

These Labor Management Procedures (LMP) have been prepared to meet the requirements for FSM PROPER appraisal and approval under the World Bank's ESF to satisfy requirements under the ESF's Environmental and Social Standard (ESS) 2, Labor and Working Conditions. This LMP document is one of the E&S instruments developed to support management of the E&S aspects of the FSM PROPER. Other key E&S documents prepared as part of this package of documents include:

- Environmental and Social Commitment Plan (ESCP)
- Environmental and Social Management Plan (ESMP)
- Stakeholder Engagement Plan (SEP)

The LMP document is a “live document” that can be updated to meet the demands of the FSM PROPER throughout implementation.

¹ <https://www.worldbank.org/en/projects-operations/environmental-and-social-framework>

2 Objectives of the LMP

The LMP document has been prepared to facilitate proper working conditions and management of worker relationships, occupational health and safety (OHS), and to address Program related issues associated with workforce-related gender based violence (GBV), and/or Sexual Exploitation and Abuse and Sexual Harassment (SEA/SH) and violence against children (VAC).

The WB ESF ESS2 recognizes the importance of employment creation and income generation in the pursuit of poverty reduction and inclusive economic growth. Borrowers can promote sound worker-management relationships and enhance the development benefits of a project by treating workers in the project fairly and providing safe and healthy working conditions. These LMP's provide the measures to manage risks associated with employment under the FSM PROPER in terms of meeting national labor requirements as well as the objectives of the WB ESF, specifically the objectives of Environmental and Social Standards 2.

(ESS2) "Labor and Working Conditions and Occupational Health and Safety".

ESS2 objectives state:

- To promote safety and health at work.
- To promote the fair treatment, non-discrimination and equal opportunity of FSM PROPER workers.
- To protect FSM PROPER workers, including vulnerable workers such as women, persons with disabilities, children (of working age, in accordance with this ESS) and migrant workers, contracted workers, community workers and primary supply workers, as appropriate.
- To prevent the use of all forms of forced labor and child labor.
- To support the principles of freedom of association and collective bargaining of FSM PROPER workers in a manner consistent with national law.
- To provide FSM PROPER workers with accessible means to raise workplace concerns.

3 Overview of FSM PROPER

The FSM PROPER seeks to strengthen the management of both oceanic and coastal fisheries, and the critical habitats upon which they depend and is divided into three components:

1. Strengthening the institutional capacity, governance, and sustainable management of oceanic fisheries in the FSM
2. Strengthening the sustainable management of and socio-economic benefits from coastal fisheries
3. Coastal Fisheries Management.

A full list of the projects/activities proposed under each component is provided as Appendix 1. FSM PROPER is being administered in-country by NORMA and the Department of Finance and Administration (DOFA), managed by the Project Implementation Unit (PIU) with the assistance of the DOFA Central Implementing Unit (CIU) who are responsible for the overall administration and implementation of all World Bank projects within FSM.

Key National/State administrative and implementation agencies for the FSM PROPER include:

- FSM Department of Finance & Administration
- FSM NORMA
- FSM Department of Health & Social Affairs,
- FSM Department of Resources & Development,
- FSM Department of Environment, Climate Change & Emergency Management,
- FSM Department of Transportation, Communication & Infrastructure,
- Chuuk State Department of Marine Resources (DMR).
- Chuuk State Environmental Protection Agency (EPA).
- Kosrae State Department of Resources and Economic Affairs (DREA) Division of Fisheries & Marine Resources.
- Kosrae Island Resource Management Authority (KIRMA).
- Kosrae Conservation and Safety Organization (KCSO).
- Pohnpei State Department of Resources and Development (DRD).
- Pohnpei State Office of Fisheries and Aquaculture (OFA).
- Pohnpei State Department of Public Safety, Division of Fish and Wildlife (F&W).
- Pohnpei State Environmental Protection Agency (EPA).
- Yap State Department of Resources & Development, Marine Resources Management Division (MRMD).
- Yap Fishing Authority (YFA).
- Yap State Environmental Protection Agency (EPA).

3.1 Overview of Labor Use on the FSM PROPER

The World Bank ESS2: Labor and Working Conditions, categorizes workers into four categories:

1. **Direct workers:** People employed or engaged directly to work specifically in relation to the FSM PROPER.

2. **Contracted workers:** People employed or engaged by third party contractors to perform work related to core function of the FSM PROPER, regardless of location.
3. **Primary supply workers:** People employed or engaged by the primary suppliers.
4. **Community workers:** People employed or engaged in providing community labor. (This category of workers is not expected to be engaged by the FSM PROPER and is not discussed in this LMP.)

Labor needs for the FSM PROPER will include the establishment of a PIU, utilization of the CIU, consultants and firms to undertake professional services for the preparation, design, development and implementation of the technical components, contractors to undertake civil works and various Government employees within FSM National and State agencies to assist and facilitate implementation. Individual consultants are considered as “direct workers” as per ESS2, while engaged firms are considered “contracted workers”. The engagement of supply chain may be undertaken.

NORMA and other National and State Government staff will be involved in some administrative and approval roles for activities undertaken under the FSM PROPER and ESS2 in this instance will not apply to them. Government civil servants involved in FSM PROPER will remain subject to the terms and conditions of their existing public sector employment agreement or arrangement.

The number of workers to be engaged is not currently known and will depend on the technical advice required and the scope of any civil works.

3.2 Direct Workers

NORMA will engage a PIU staffed by a core team of specialists including, but not limited to:

- Project Manager
- Project Officer
- Project Assistant
- Communications Officer
- Monitoring and Evaluation (M&E) Officer
- Marine and Coastal Engineer
- Technical Expert -Waste
- Chuuk State Coordinator
- Pohnpei State Coordinator
- Yap State Coordinator
- Kosrae State Coordinator.

3.3 Contract Labor

Contracted labor requirements are not likely to be fully determined until FSM PROPER implementation commences and detailed designs and scope of works have been completed. Contractors or firms will be contracted for technical assistance, capacity development, design and modelling (Appendix 1 activities labelled TA), and for civil works (Appendix 1 activities labelled IN). Appendix 1 lists the activities to be undertaken in each component and identifies if it will be in the form of technical assistance, capacity development, design and modelling, labelled as TA – Technical Assistance, or civil works, labelled IN – Infrastructure. Procurement of equipment is labeled TA/IN.

4 Assessment of Key Potential Labor Risks

Activities will generally be undertaken in the capitals of each of the main islands of the nation's four states (Chuuk, Kosrae, Pohnpei and Yap States) including the nation's capital, Palikir located in Pohnpei state. Activities on lagoonal islands, outer island atolls may be undertaken. Locations of work requirements will be Component/Subcomponent projects and activity specific and detailed in bidding documents and terms of references (TOR).

FSM PROPER will demonstrate high standards of human resource management and adhere to FSM national labor and Occupation Health and Safety (OHS) legislation and any international conventions ratified by FSM (Section 5).

The key labor risk that are associated with the FSM PROPER include:

- Failure to recruit and retain staff. The FSM PROPER will not be able to recruit or retain suitable professionals without consistent and reasonable employment terms and conditions.
- Injuries or death of direct workers while undertaking their duties. Staff and visiting consultants may be stranded, injured or killed without the implementation of OHS for travel to and failure to manage staff social and cultural risks such as; ignoring traditional fisheries, lack of consultation and information on FSM PROPER projects and activities, overzealous enforcement of fisheries regulations and policies and civil works workers causing local social disruption.

Despite the gaps in formal legislation on terms and conditions, non-discrimination and child/forced labor the FSM PROPER risks are considered to be low given the dominance of professional work to be undertaken. Direct and Contracted workers should have clear contract terms and conditions, including clear information on rates of pay and any deductions and timeframe for delivery. No workers under 18 will be engaged. A summary of the key labor risks and the risk mitigation strategy is presented in Table 4.1.

Table 4.1 Key Labor Risks

ESS 2	Activities	Risks	Mitigation
Direct workers	General FSM PROPER administration and implementation (hiring of consultants, monitoring and reporting, financial management, audits, coordination, conducting trainings, M&E)	Terms of employment (employment period, remuneration, tax and insurance payments etc.) set out in ESS2 not secured by contractual agreements.	Contractual terms to specify employment period, remuneration, tax and insurance payments etc. covered under DoFA/NORMA contracts.
		Workers suffer discrimination and lack of equal opportunity in employment.	Procurement processes are transparent and reflect equal opportunity employment pursuant to the FSM Labor Code. Access to workers GRM (Section 8)
	CIU administration and implementation support	Travel accidents travelling to and from work and to and from works sites	All staff who drive must be licensed. Staff to obey all FSM road rules
		COVID transmission	Office, meetings and site visits to operate under FSM COVID 19 directives
		General workplace OHS	PIU to maintain safe office working conditions and implement OHS minimum operating guidelines as detailed in Section 7.3
		Workplace GBV/SEA/SH/VAC	All workers to sign and adhere to the Code of Conduct (COC). Training on SEA, SH, and VAC to be undertaken by a suitable local NGO.
Meetings and training activities	Travel to meetings	All travel in vehicle must be in registered vehicles operated by a licenses drivers and adherence to all FSM road rules	
Contracted workers	Civil works and/or construction works, marine surveys and marine monitoring	Terms of employment (employment period, remuneration, tax and insurance payments etc.) are not secured by contractual agreements.	Bidding documents and contracts clearly articulate expectations around adhering to FSM regulations and WB requirements stipulated in this LMP DoFA/NORMA to ensure contracts for construction workers include details on pay and working conditions in line with FSM law and ESS2 requirements. Contractual terms for construction contractors to specify employment period, remuneration, tax and insurance payments etc.

ESS 2	Activities	Risks	Mitigation
		Workers suffer discrimination and lack of equal opportunity in employment.	Contracted workers must have access to a worker's GRM and in the absence of fair treatment by their employer which is not addressed workers can file a grievance directly to FSM PROPER through the GRM or the World Bank Grievance Redress Service (Section 8)
		Workplace accidents leading to injury or death	Contractors to operate under then guidelines for OHS outlined in their CESMP ² and Section 7.3. This will include specific guidance for any works requiring extensive marine or underwater activities.
		Exposure to people who have COVID 19	Contractors to operate under FSM COVID 19 directives and any addition directives outlined in the CESMP
		Use of child labor contravenes national legislation and international conventions ratified by FSM	Verify that all personnel are aged 18 or over prior to employment Requirements outlined in contractors CESMP
		Workplace SEA/SH, GBV and VAC	All workers to sign COC and receive GBV, SEA/SH and VAC training as a part of the workplace induction Requirements outlined in contractors CESMP
Primary ³ supply workers	Third party supply or transportation of material and equipment	Traffic accidents, workplace OHS risks and COVID 19 transmissions	The contract entity will be expected to be responsible for providing management oversight to facilitate compliance with ESS2 requirements. Subcontractors to comply with the primary contractors CESMP
All activities		Risk of harm to workers due to civil unrest or natural disasters	PIU to develop office based emergency response actions. CESMP to provide direction for contractors to establish emergency response protocols

² Contractors Environmental and Social management Plan, this will be a requirement for all civil works activities undertaken by contractors under the Program. A template for the CESMP is contained within the Environmental and Social Management Plan (ESMP) for the Program

³ Primary suppliers' are those suppliers who, on an ongoing basis, provide directly to the project goods or materials essential for the core functions of the project.

5 Labor Legislation

FSM's national laws, incorporating its Constitution and Annotated Code 2014 (The Code), provide some important protections safeguarding employees' labor and working conditions. These include Constitutional prohibitions on slavery and involuntary servitude, a guarantee of equal protection under the law, freedom from discrimination on various grounds, and freedom of expression and association. Further, the prohibition since 2012 of human trafficking under Title 11 (Crime) of the Code is a significant development.

However, there are many areas where FSM's national laws are inconsistent with international standards and ESS2 including laws and practice regarding child labor. Despite the introduction of anti-trafficking laws, human (and child) trafficking, commercial sexual exploitation and forced labor remain major issues that the Government is yet to address effectively in practice. Likewise, discrimination and harassment in employment, particularly of women and persons with a disability, appear to be persistent and ongoing issues.

While FSM has ratified some international human rights treaties on labor and working conditions, including Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of Children (CRC), the Convention on the Rights of Persons with Disabilities (CRPD) and the Convention for the Suppression of the Trafficking in Persons and of the Exploitation of the Prostitution of Others, it has not ratified any International Labor Organization (ILO) Conventions to date. This creates a governance gap in FSM compared to many other PICs where the World Bank Group operates. The lack of any ILO oversight of, and accounting for, labor and working conditions in FSM adds additional risks and challenges for the World Bank Group operating projects in FSM. There are also no trade unions operating in FSM currently, and no laws dealing specifically with trade unions, the right to collective bargaining, or anti-union discrimination.

The Code of the FSM 2014 edition Title 51 Labor chapter III Hiring of Non Residential Workers (pages 131-139) sets out various requirements of workers including the need to hold work visas by foreign (other than USA) contractors and workers including fly-in fly-out consultants who are restricted by the 30 day entry visa limit, unless previously arranged. No other Labor Legislation constraints apply to workers potentially engaged on FSM PROPER activities.

There is no OHS legislation in FSM. For all potential FSM PROPER based occupational health and safety (OHS) risks, the DoFA has adopted World Bank Group EHS Guidelines for all staff and contractors.

There are no trade unions currently operating in FSM, and no laws dealing specifically with trade unions, the right to collective bargaining, or anti-union discrimination. The absence of workers' organizations has not diminish the Government accountability for workers' rights and as such greatly reduces any potential risks for the World Bank.

5.1 FSM Workers Rights

FSM has national legislation that outlines worker's rights. The Code of the FSM 2014 edition Title 51 Labor chapter III Hiring of Non Residential Workers (pages 131-139) sets out various requirements of workers including the need to hold work visas by foreign (other than USA) contractors and workers including fly-in fly-out consultants who are restricted by the 30 day entry visa limit, unless previously arranged.

No other Labor Legislation constraints apply to workers potentially engaged on FSM PROPER activities. The Labor Code (last updated in 2014) outlines hiring of non-resident workers, labor development, and other requirements. The Code requires:

- a) Non-resident workers to obtain health certificates and a police clearance, and have a minimum of two years of related work experience.
- b) Any benefits provided to non-resident construction workers, such as housing, transport, etc. will also be provided to any national contractor who is required to leave their principal place of residence for work.
- c) Applications for foreign workers are needed, unless the foreign workers will be in the country less than 90 days.
- d) Minimum employment conditions outlined in the Code apply to all foreign workers.
- e) Title 52 (Public Employment) provides for a grievance mechanism under the regulations whereby public service employees (or a group of employees) can raise complaints re: their working conditions, status, pay, and related matters, for hearing and adjudication. In doing so, the regulations provide those employees must be free from coercion, discrimination, and reprisals and that they may have representatives of their choice: sub chapter 144. Public sector employees are subject to national legislation, which is consistent with ESS2. However, for nonpublic sector employees, there is no internal grievance mechanism mandated under national law.

5.2 Relevance of FSM Employment Conditions to ESS2

5.2.1 Freedom of Association and the Right to Collective Bargaining

Although FSM law does not specifically provide for the right of workers to join a union, under the constitution citizens have the right to form or join associations, and the FSM Public Employment Code 2014 provides that national government employees by law can form associations to "present their views' to the government without being subject to coercion, discrimination, or reprisals. No workers, including foreign workers, were prohibited from joining unions. No law deals specifically with trade unions or with the right to collective bargaining. There is no specific right to strike, but no law prohibits strikes.

5.2.2 Prohibition of Forced or Compulsory Labor.

The constitution prohibits forced or compulsory labor. Prohibition of Child Labor and Minimum Age for Employment. National and State laws do not establish a minimum age for employment of children.

5.2.3 Acceptable Conditions of Work.

The FSM Public Employment Code 2014 addresses the public services system and sets out various provisions for the employment conditions of FSM public service employees including development of regulations for grievance mechanisms. The FSM Labor Code 2014 focuses on Trust Territory citizen workers being given preference in employment in occupations and industries in the Trust Territory, and that the public interest requires that the employment of noncitizen workers in such occupations and industries not impair the wages and working condition of Trust Territory workers.

As noted above, “*Direct workers – Government*” are required under ESS2 to only follow occupational health and safety measures adopted by the Project (ESS2 paragraphs 24 to 30); as well as measures to protect the workforce in terms of child labor and forced labor (ESS 2 paragraphs 17 to 20). The following evaluation applies to these matters as they affect “*Direct workers – Government*” on the FSM PROPER.

6 Responsible Staff

This LMP may be updated to include additional details about the workforce of the FSM PROPER including contractors as necessary or required by the NORMA/DoFA.

6.1 Project Implementation Unit

The PIU will be responsible for FSM PROPER management, implementation and coordination with other stakeholders. The CIU will provide technical support for procurement financial management, monitoring and evaluation (M&E) and environmental and social (E&S) management. The Project Manager will lead day-to-day FSM PROPER management and implementation, supported by a Project Officer and Project Assistant. The Project Manager, with support from other PIU staff, will be responsible for the following within their responsibility area:

- Implementing this LMP
- Ensuring that all FSM state Coordinators and agencies/departments are aware of and implement this LMP with regards to any works or activities associated with the FSM PROPER
- Ensuring that contractors comply with this LMP
- Monitoring to verify that contractors are meeting labor and OHS obligations toward contracted workers as required by national legislation and ESS2
- Monitoring contractors’ implementation of this LMP
- Monitoring compliance with OHS standards at all workplaces in line with the national occupational health and safety legislation
- Monitoring and implementing training on LMP and OHS
- Ensuring that all direct workers have health insurance that includes treatment for COVID-19 infections

- Ensuring that a GRM for FSM PROPER workers is established and implemented and that workers are informed of its purpose and operation
- Have a system for regular monitoring and reporting on labor and OHS performance; and data collection, monitoring, and analysis of the LMP as part of the FSM PROPER's M&E activity.

6.2 CIU Implementation Support

The already established CIU within DoFA, is a functional unit that supports the implementation of the WB portfolio in FSM and includes an environmental and social safeguards team, consisting of three positions.

In order to provide strong and efficient support throughout FSM, the CIU provides support to core implementation functions needed for all WB portfolio projects in FSM including, but not limited to, procurement, financial management, social and environmental safeguards, monitoring and evaluation, as well as outreach and communications. The CIU team members responsible for these functions report to the CIU Program Manager and will provide services and support to the PIU for Program preparation, implementation, monitoring and capacity building activities.

CIU specialists will undertake the following activities relevant to the LMP in assisting the FSM PROPER PIU:

- Undertake periodic monitoring checks for compliance with LMP along with other E&S risk management instruments
- Review TOR and contracts for compliance with matters raised in the LMP and other E&S instruments
- Have an overview role for the LMP Grievance redress Mechanism (GRM) process
- Assist the PIU with monitoring matters covered in the CESMP where applicable.

6.3 Contractors

Contractors are responsible for management of their workers and subcontracted workers in accordance with this LMP.

Contractors will be responsible to:

- Comply with the requirements of FSM legislation and this LMP.
- Maintain records of recruitment and employment of workers.
- Communicate clearly job description and employment conditions to workers.
- Provide workers with evidence of all payments made, including benefits and any valid deductions.
- Provide all workers with health insurance that includes treatment for COVID-19 infections.

- Maintain records regarding labor conditions and workers engaged under the FSM PROPER, including contracts, registry of induction of workers including Code of Conduct (COC), hours worked, remuneration and deductions (including overtime)
- Assign a designated OHS officer, conducting training on and implementing OHS measures, recording safety incidents and corresponding Root Cause Analysis (lost time incidents, medical treatment cases), first aid cases, high potential near misses, and remedial and preventive activities required (for example, revised job safety analysis, new or different equipment, skills training, etc.) in accordance with the FSM PROPER's Environmental and Social Management Plan (ESMP) and the CESMP if applicable.
- Ensure no child or forced labor is involved in the FSM PROPER.
- Maintain records of training/induction dates, number of trainees, and topics.
- Implement a GRM for workers, maintaining records of any worker grievances including occurrence date, grievance, and date submitted; actions taken and dates; resolution (if any) and date; and follow-up outstanding.
- Establish a system for regular review and reporting on labor, and occupational safety and health performance.

7 Labor Policies and Procedures

All FSM PROPER funded activities will be compliant to FSM legislation and regulations and WB Environmental Health and Safety General Guidelines⁴ (EHSG) for all staff and FSM PROPER worker/contractors working under the FSM PROPER. These will be applicable to all workers and will be included as a contract requirement for all contracted workers. All FSM PROPER workers will be expected to understand and ensure compliance to these standards.

7.1 Terms and Conditions of Employment

Terms and conditions of direct workers are determined by their individual contracts. Permanent FSM PROPER staff will have individual agreements (labor contract or service contract) with fixed monthly wage rates. Recruitment procedures will be documented and filed in accordance with the requirements of national labor legislation and the ESS2. A standard forty hours per week employment should be practiced. Requirements and conditions of overtime and leave entitlements are agreed as part of individual contracts.

The Project Manager will ensure that contractors are aware of, and comply with, labor management and OHS policies and procedures outlined in this LMP. Each civil works contractor will be required to submit a CESMP (where applicable) associated with their activities and risk mitigation measures in accordance with the FSM PROPER's environmental and social requirements.

⁴ <https://www.ifc.org/wps/wcm/connect/29f5137d-6e17-4660-b1f9-02bf561935e5/Final%2B-%2BGeneral%2BEHS%2BGuidelines.pdf?MOD=AJPERES&CVID=jOWim3p>

7.2 Age of Employment

The minimum age of employment for the FSM PROPER will be 18. To ensure compliance, all employees will be required to produce a Social Security number as proof of their identity and age. Contractors and subcontractors will be required to receive approval for the specific procedures they will use to verify the ages of job applicants.

7.3 Occupational Health and Safety

There is minimal Occupational Health and Safety (OHS) legislation in FSM. For all potential Project based OHS risks, FSM PROPER has adopted World Bank Group EHS Guidelines for all staff and contractors. The Project Manager and the DoFA CIU will facilitate OHS guideline training for staff and establish a system for regular monitoring and reporting on OHS performance including documentation and reporting of occupational accidents, diseases and incidents.

For PIU staff and Project Manager will ensure effective methods are put in place for responding to identified hazards and risks, establishing priorities for taking action and evaluating outcomes. Operating the PIU office and undertaking meetings and trainings will require compliance and training in:

- Workplace OHS standards in full compliance with FSM law and ESS2
- Provisions for safe operations within their designated workspace, including evacuation and emergency response to natural hazards and civil unrest
- Provisions for safe site visits, all workers to be equipped with all necessary PPE when undertaking construction site visits and/or travelling by boat. Minimum standards for travel or working from a boat are detailed in Appendix 2
- Basic safety awareness training to be provided to all persons as well as on COVID-19 prevention and related measures
- All FSM PROPER vehicle drivers to have appropriate licenses.
- All workers (irrespective of contracts being full-time, part-time, temporary or casual) to be covered, where possible, by insurance against occupational hazards and COVID-19, including ability to access medical care and take paid leave if they need to self-isolate as a result of contracting COVID-19.

For workers that work for contractors the following will be the minimum standards for compliance and training:

- Compliance with FSM legislation, WB's ESS2 requirements and other applicable requirements which relate to OHS hazards, including any FSM COVID directives.
- At least one supervisory staff trained in safety procedures to be present at all times on site when construction work is in progress.
- Secure scaffolding and fixed ladders to be provided for work above ground level.

- First aid equipment and facilities to be provided in accordance with labor legislation.
- Adequate provision of hygiene facilities (toilets, hand-washing basins) and resting areas etc.
- All workplace OHS incidents to be properly recorded in a register detailing the type of incident, injury, people affected, time/place and actions taken.
- All workers (irrespective of contracts being full-time, part-time, temporary or casual) to be covered by insurance against occupational hazards and COVID-19, including ability to access medical care and take paid leave if they need to self-isolate as a result of contracting COVID-19.
- All work sites to identify potential hazards and actions to be taken in case of emergency, including in event of civil unrest in vicinity of workplace.
- Any on-site accommodation to be safe and hygienic, including provision of an adequate supply of potable water, washing facilities, sanitation, accommodation and cooking facilities.
- Workers residing at site accommodation to receive training in prevention of infection through contaminated food and/ or water, COVID-19 prevention and avoidance of sexually transmitted diseases.
- Signs of relevant safe working procedures to be placed in a visible area on work sites, including on COVID-19.
- Fair and non-discriminatory employment practices.
- Under no circumstances will contractors, suppliers or sub-contractors engage forced labor.
- Construction materials to be procured only from suppliers able to certify that no forced labor or child labor (except as permitted by employment legislation) has been used in production of the materials.
- All employees to be aware of their rights under the Labor Law, including the right to organize.
- All employees to be informed of their rights to submit a grievance through the FSM PROPER Worker Grievance Mechanism (Section 8). All employees to be provided training on appropriate behavior with communities, GBV/SEA/SH/VAC.

FSM PROPER workers will receive OHS training at the work site induction with records of the training kept on file. Contractors are responsible for worksite inductions and the PIU/CIU will be responsible for any FSM PROPER staff. Training will cover the relevant aspects of OHS associated with daily work, including the ability to stop work without retaliation in situations of imminent danger (as set out in paragraph 27 of ESS2) and emergency arrangements.

All parties who employ or engage workers under the FSM PROPER will actively collaborate and consult with their workers in promoting understanding of, and methods for, implementation of OHS requirements, as well as in providing information to workers, training on occupational safety and health, and provision of personal protective equipment without expense to the workers. The CESMP will provide individual contracts site specific OHS measures related to the activity.

7.4 Workers' Rights

Workplace processes will be put in place for FSM PROPER workers to report work situations that they believe are not safe or healthy. Workers can remove themselves from a work situation which they have reasonable justification to believe presents an imminent and serious danger to their life or health. Workers who remove themselves from such situations will not be required to return to work until an investigation has been conducted and necessary remedial action to correct the situation has been taken. Workers will not suffer retaliation or otherwise be subject to reprisal or negative action for such reporting or removal.

7.5 Gender Based Violence (GBV), Sexual Exploitation and Abuse (SEA), Sexual Harassment (SH) and Violence Against Children (VAC)

Gender-based violence (GBV) rates are high in FSM and women are vulnerable to trafficking, illegal sex work, unwanted pregnancies, harassment and violence (FSM Department of Health and Social Affairs, 2014 A prevalence Study on violence against women⁵). Imported and transient workforces such as those required for the construction industry are known to contribute to these issues. For women in FSM there are multiple barriers to having equal opportunities as well as a life free from violence and coercion. Priority areas of the FSM national gender planning include addressing female unemployment and a gender-stratified labor market, teenage pregnancy, violence against women and girls and limited access to justice and protection for women.

Sexual Exploitation and Abuse (SEA) and Sexual Harassment (SH) is prevalent in FSM with approximately one in three women (32.8%) having experienced physical and/or sexual violence by an intimate partner in their lifetime. A specific SEA/SH Grievance Redress Mechanism including pathways and direct contacts at the national and states is detailed in the Workers GRM Section 8.

The FSM have ratified the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW). By ratifying CEDAW, it has made a commitment to ensure that the principles of equality are adhered to and that discriminatory practices including sexual exploitation and abuse and sexual harassment are abolished. Provisions to prevent GBV, SEA, SH and VAC will be included in the Code of Conduct (COC) for FSM PROPER staff (Appendix 4)

⁵ https://asiapacific.unfpa.org/sites/default/files/pub-pdf/FSM_family_health_safety_survey_report_2014.pdf

and a similar COC to be included in the CESMP⁶ for contracted workers in line with relevant international standards and national legislation.

8 Workers' Grievance Redress Mechanism (WGRM)

A WGRM must be accessible for all FSM PROPER workers. The WGRM are not an alternative or substitute for the legal system for receiving and handling grievances and does not preclude access to other judicial or administrative remedies that might be available under the law or through existing arbitration procedures. While all employees always have the right to access the legal system, the purpose of establishing a WGRM is to provide an accessible and practical means to mediate and seek appropriate solutions, wherever possible.

8.1 Direct Workers

This includes all PIU staff engaged on the FSM PROPER. The WGRM will be available for raising workplace related concerns including about the terms of employment, rights at work, unsafe or unhealthy work situations, among others. During employee induction the employee must be made aware of the WGRM. The following provides the steps for direct workers for grievances.

STEP 1 Lodgment and initial informal process

- The PIU Project Manager and staff are encouraged to use informal methods of resolving disagreements or disputes. If staff have a reasonable grievance or complaint regarding their work they should, wherever possible, start by talking it over with their manager. It may be possible to agree a solution informally before elevating to a formal grievance.
- If discussions with PIU Project Manager fails to resolve the issue, it is still may be possible to pursue an informal approach without triggering a formal procedure utilizing an independent senior FSM NORMA or DoFA official hosting an informal meeting or discussion.
- Grievances from new employees about recruitment practices will need to be made to NORMA or DoFA.

STEP 2 Lodgment a Formal Grievance

- If all informal discussion fail the worker may lodge a formal grievance utilizing the Public Service Regulations Part 15 detailed as Appendix 3.
- The worker retains the ability to refer the complaint or grievance to the court for arbitration within the laws of FSM if the complaint is not resolved.
- The World Bank Grievance Redress Service (GRS) is also available if the grievance cannot be resolved (Appendix 5).

⁶ A template of the CESMP including workers COC is included in the Environmental and Social Management Plan for the FSM PROPER

8.2 Contracted Workers

All contractors' contracts with the FSM PROPER will be required to include workers having access to a WGRM within their own organization based on the FSM National public service regulations. All contracts as part of the FSM standard development process will be assessed by the CIU team, the safeguard team will ensure all contracts are aligned and compliant with ESS2 requirements.

During site inductions, workers must be advised that there is a WGRM where workers can raise complaints and have them processed. Contractors should also seek to resolve the issue informally in the first instance. The following provides the steps for contracted workers for grievances.

STEP 1 Informal

- The Contractor Manager and workers are encouraged to use informal methods of resolving disagreements or disputes. If workers have a reasonable grievance or complaint regarding their work they should, wherever possible, start by talking it over with their site manager. It may be possible to agree a solution informally before elevating to a formal grievance.
- If discussions with the site manager fails to resolve the issue, it is still may be possible to pursue an informal approach without triggering a formal procedure utilizing a more senior Contractor Manager hosting an informal meeting or discussion.

STEP 2 Lodgment a Formal Grievance

- If all informal discussion fail the worker may lodge a formal grievance utilizing the WGRM outlined in the contractors' contractual agreement that has been reviewed and agreed to by the CIU.
- Where there is a failure of the contractor to sufficiently deal with the grievance the worker may submit a grievance to the FSM PROPER GRM as detailed in Stakeholder Engagement Plan (SEP) and briefly described in Appendix 6.
- The worker retains the ability to refer the complaint or grievance to the court for arbitration within the laws of FSM if the complaint is not resolved.
- The World Bank Grievance Redress Service (GRS) is also available to contracted workers if the grievance cannot be resolved (Appendix 5).

9 Conclusion

This document should be considered in conjunction with the other E&S requirements of the FSM PROPER including:

- Environmental and Social Commitment Plan (ESCP).
- Stakeholder Engagement Plan (SEP).

- Environmental and Social Management Plan (ESMP) – which includes a template for the CESMP.

10 Monitoring and Evaluation

The PIU and the CIU are responsible for the monitoring implementation of the LMP and its requirements. Any issues relevant to the LMP should be included in the E&S Section of the FSM PROPER six monthly Report.

A checklist for worksite OHS is included and Appendix 6 for use by the PIU to audit OHS conditions on worksites.

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Appendix 1 List of Activities

TA – Technical Assistance IN – Infrastructure

ID	Activity	Type
1	Strengthening the institutional capacity, governance, and sustainable management of oceanic fisheries in the FSM	
1.1	Establishment of a Competent Authority	
1.1.1	<i>Institutional strengthening, including capacity and competency development of Competent Authority staff</i>	
1.1.1.1	Staff development: GHP, GMP, HACCP, vessel and facility inspection trainings and audits	TA
1.1.1.2	Hiring of additional Competent Authority staff	TA
1.1.1.3	Purchase of vehicles and boats for use by Competent Authority in Pohnpei, Yap and Kosrae States	TA/IN
1.1.2	<i>Competent Authority system strengthening and implementation</i>	
1.1.2.1	Implementation of the Competent Authority regulation, national control plan (NCP), & industry standards	TA
1.1.2.2	Consolidation of European Union (EU) process ready for Competent Authority	TA
1.1.3	<i>Improvement of Kosrae landing site, including installation of water purification system(s)</i>	
1.1.3.1	Improvement of the Kosrae fish landing site - concreting dock	IN
1.1.3.2	Water quality improvement at landing sites Kosrae	TA/IN
1.2	Establishment of a Reference Laboratory	
1.2.1	<i>Establishment of a Reference Laboratory</i>	
1.2.1.1	Feasibility study of establishing a Reference Laboratory	TA
1.2.1.2	Establishment of sampling and analysis procedures; lab capacity and procedure development including training of food analysts	TA
1.2.1.3	Design and construction of a new multi-purpose Reference Laboratory building	IN
1.3	Oceanic Fisheries Management: Data	
1.3.1	<i>Development and application of an effective information management system (IMS) to inform decision-making for oceanic fisheries</i>	
1.3.1.1	Continued development of an IMS that collects and houses fisheries and related data from industry and various databases	TA
1.3.1.2	Purchase and installation of data center equipment for IMS (e.g. data servers and cooling system)	TA/IN
1.3.1.3	Software registrations for and operationalization of IMS modules	TA
1.3.2	<i>Implementation of the Electronic Monitoring program</i>	
1.3.2.1	Procurement of software and/or subscriptions (Satlink) for the EM program	TA
1.3.2.2	Procurement of hardware (e.g. cameras, antenna, cables, computer, battery back-up) for the EM program	TA/IN
1.3.2.3	Procurement of desktop computer for the EM program Data Review Center	TA/IN
1.3.2.4	Review of EM Data Reviews and program cost recovery	TA
1.3.3	<i>Institutional strengthening of NORMA through improved facilities to enable expansion and remit to be carried out more effectively</i>	
1.3.3.1	Design consultancy for NORMA office building that includes a wet space (to be located on land at Pohnpei port)	TA
1.3.3.2	Construction of the new NORMA office building	IN
1.3.3.3	Creation of new satellite offices for NORMA in the States	IN
1.4	Maximize the value of oceanic resources to the FSM through the Implementation of the Fisheries Investment Policy and additional reviews	
1.4.1	<i>Institutional strengthening of NORMA through improved facilities to enable expansion and remit to be carried out more effectively</i>	
1.4.1.1	Creation of an Implementation Plan for the FSM National Oceanic Fisheries Investment Policy	TA
1.4.1.2	Review of how to enhance oceanic fisheries value through management using measures such as MCS, as well as how to leverage VDS days and value-adding	TA
1.4.1.3	Review of the legal framework for authorization of fishing vessels requesting to enter FSM ports	TA
1.4.1.4	Development of service provision at Weno Port: Feasibility study to assess potential for increased service provision at Weno Port	TA
2	Strengthening the sustainable management of and socio-economic benefits from coastal fisheries in the FSM	
2.1	Marina Developments	

ID	Activity	Type
2.1.1	Re-development of Chuuk marina (Weno) services and facilities	
2.1.1.1	Design consultancy to assess infrastructure needs at current Weno marina, Chuuk site and provide development plans	TA
2.1.1.2	Extension of dock at Weno marina, Chuuk to provide a suitable mooring area	IN
2.1.1.3	Re-development of landside facilities at Weno marina, Chuuk, including rehabilitation of existing market building and new public facilities unit	IN
2.1.1.4	Build of new piers at Weno marina, Chuuk, to provide additional safe moorings	IN
2.1.2	Development of a new marina and fisheries hub at Dehektik, Pohnpei	
2.1.2.1	Design consultancy to develop detailed plans for the new marina and offices/training center at Dehektik, Pohnpei	TA
2.1.2.2	Build of new marina at Dehektik, Pohnpei, including: land preparation and fill, marina facilities (floating pontoons), landing area, and office building	IN
2.1.3	Bottom-up fisheries development and local capacity building	
2.1.3.1	Assessment of marinas in Pohnpei - infrastructural needs and environmental impact, with the involvement of local associations	TA
2.1.3.2	Re-initiation of Pohnpei Menin Katengensed (Pohnpei Marine Council)	TA
2.1.3.3	Training of fishers on Quality Control and the cold chain carried out by a local NGO in all states	TA
2.1.4	Upgrades and improvements to marinas in Kosrae	
2.1.4.1	Consultancy to assess the feasibility of fish processing units and infrastructural needs (including boat ramps) at Lelu, Okat, and Utwe marinas, Kosrae	TA
2.1.4.2	Installation of boat ramp and floating pontoons/jetties at Okat marina, Kosrae	IN
2.1.4.3	Installation/improvement of boat ramp and floating pontoons/jetties at Lelu marina, Kosrae	IN
2.1.4.4	Installation of boat ramp and floating pontoons/jetties at Utwe marina, Kosrae	IN
2.1.5	Improve enforcement of fisheries regulations and environmental laws through institutional capacity enhancement	
2.1.5.1	Procure supplies and equipment to facilitate enforcement, and implement activities highlighted in management plans, in Chuuk	TA/IN
2.1.5.2	Procure supplies and equipment to facilitate enforcement in Kosrae	TA/ IN
2.1.5.3	Procure supplies and equipment to facilitate enforcement in Pohnpei	TA/ IN
2.1.5.4	Procure supplies and equipment to facilitate enforcement in Yap	TA/ IN
2.1.5.5	Planning and building of new guard houses at MPA sites in Pohnpei	TA/IN
2.2	Safety at Sea	
2.2.1	Improve safety and reduce losses at sea: training and awareness	
2.2.1.1	Sea safety training and awareness program in Chuuk for licensed fishing boat crews in communities	TA
2.2.1.2	Sea safety training and awareness program in Kosrae for licensed fishing boat crews in communities	TA
2.2.1.3	Sea safety training and awareness program in Pohnpei for licensed fishing boat crews in communities	TA
2.2.1.4	Sea safety training and awareness program in Yap for licensed fishing boat crews in communities	TA
2.2.2	Improve safety and reduce losses at sea: safety equipment for small powered fishing vessels, in exchange for vessel registration and/or data	
2.2.2.1	Safety packs (e.g., life jackets, EPIRBs, VHF radios, flashlights) for coastal fishers in Chuuk	TA/IN
2.2.2.2	Safety packs (e.g., life jackets, EPIRBs, VHF radios, flashlights) for coastal fishers in Kosrae	TA/IN
2.2.2.3	Safety packs (e.g., life jackets, EPIRBs, VHF radios, flashlights) for coastal fishers in Pohnpei	TA/IN
2.2.2.4	Safety packs (e.g., life jackets, EPIRBs, VHF radios, flashlights) for coastal fishers in Yap	TA/IN
2.2.4	Enhance Chuuk state NavAids (beacon markers for channels)	
2.2.4.1	Firm to assess NavAids needs, and procure and install NavAids in high traffic/danger areas in Chuuk state	TA
2.3	Coastal Fisheries Management: Data	
2.3.1	Assessment of existing data and development of new/revised protocols for fisheries and ecological data collection and storage	
2.3.1.1	Assessment of availability of fisheries data/research and identification of priority sites for marine ecological assessments in all states	TA
2.3.1.2	Development of appropriate data collection protocols (market and landing sites) for fisheries in FSM for use in all states	TA
2.3.1.3	Validation of new data collection protocols through a series of stakeholder workshops in all states	TA
2.3.2	Equipment for collection and storage of fisheries and environmental data	

ID	Activity	Type
2.3.2.1	Procurement and installation of hardware for data collection and storage in Chuuk	TA/IN
2.3.2.2	Procurement and installation of hardware for data collection and storage in Kosrae	TA/IN
2.3.2.3	Procurement and installation of hardware for data collection and storage in Pohnpei	TA/IN
2.3.2.4	Procurement and installation of hardware for data collection and storage in Yap	TA/IN
2.3.2.5	Vehicle for Chuuk DMR to enable data collection from fish markets in Weno	TA/IN
2.3.3	<i>Training for agencies and communities in new data collection (protocols, hardware and software)</i>	
2.3.3.1	Training of staff of fisheries departments and divisions, communities, community-based organizations and non-governmental organizations in the use of the new protocols	TA
2.3.3.2	Training of staff of fisheries departments and divisions, EPAs, and NGOs, in the use of new hardware and software for data management	TA
2.3.4	<i>Renovations of the DREA fisheries office in Kosrae</i>	
2.3.4.1	Contractor to carry out renovations of the current fisheries office	IN
2.3.4.2	Re-furnishing of the renovated fisheries office including storage for radio communications equipment and servers	IN
2.4	<i>Coastal Fisheries Management: Legislation and Policy</i>	
2.4.1	<i>Consultations to produce revised and updated fisheries, aquaculture, and environmental legislation, including deputization of Community Conservation Officers (CCOs)</i>	
2.4.1.1	Consultations in Chuuk state to produce revised and updated policies and development plans (e.g., Chuuk State Constitution Title 25)	TA
2.4.1.2	Consultations in Kosrae state to produce revised and updated policies and development plans (e.g., Kosrae State Code Title 19)	TA
2.4.1.3	Consultations in Pohnpei state to produce revised and updated policies and development plans (e.g., Pohnpei State Code Titles 26, 28, and 29)	TA
2.4.1.4	Consultations in Yap state to produce revised and updated policies and development plans (e.g., Yap State Constitution Titles 18, 26, and 29, and MPA-specific legislation)	TA
2.4.1.5	Consultancy to assist with the finalization of the boat registration bills in all states and development of the marina MOUs (e.g., safety equipment in return for vessel registration and/or data provision)	TA
2.4.1.6	Nationally-led validation workshop to discuss proposed legislative, regulatory and policy updates with stakeholders	TA
2.4.1.7	Consultancy to review results of ecological assessments and provide regulatory recommendations to governments	TA
2.4.2	<i>Dissemination of new inshore fisheries laws, regulations, policies and development plans</i>	
2.4.2.1	Community and government/organization workshops in Chuuk state	TA
2.4.2.2	Community and government/organization workshops in Kosrae state	TA
2.4.2.3	Community and government/organization workshops in Pohnpei state	TA
2.4.2.4	Community and government/organization workshops in Yap state	TA
2.4.3	<i>Facilitate enforcement and enhance safety through mandatory vessel registration and training</i>	
2.4.3.1	Materials (e.g., high-visibility paint and stickers) to registered boats in Chuuk	TA/IN
2.4.3.2	Materials (e.g., high-visibility paint and stickers) to registered boats in Kosrae	TA/IN
2.4.3.3	Materials (e.g., high-visibility paint and stickers) to registered boats in Pohnpei	TA/IN
2.4.3.4	Materials (e.g., high-visibility paint and stickers) to registered boats in Yap	TA/IN
2.4.3.5	Enforcement/deputization training to government agencies, NGOs, and CCOs in all states, based on new legislation	TA/IN
2.5	<i>Fish Aggregation Devices</i>	
2.5.1	<i>Development of fish aggregation device (FAD) management plans</i>	
2.5.1.1	Development of FAD management plans for all states including identification of appropriate locations for deployment	TA
2.5.2	<i>Support the installation of FADs for use by coastal communities to allow for more production from non-reef sources</i>	
2.5.2.1	Procurement of FADs with various technologies for Yap state large-scale FAD pilot project	TA/IN
2.5.2.2	Training in FAD operation and monitoring technologies in all states	TA
2.5.2.3	FAD deployment in Yap state with assistance and training from experts	TA/IN
2.5.2.4	FAD public awareness campaign across Yap state	TA
2.6	<i>Aquaculture Developments</i>	
2.6.4	<i>Feasibility assessments for community-focused aquaculture development</i>	

ID	Activity	Type
2.6.4.1	Feasibility assessment for development of infrastructure needs (landside and farms) for community-led commercial sea cucumber aquaculture in Pohnpei	TA
2.6.4.2	Feasibility assessment for a collaboratively-led commercial aquaculture production and community training center in Kosrae state	TA
3	Strengthening the sustainable management, protection, and resilience of marine habitats in the FSM	
3.1	Environmental Protection	
3.1.1	Community capacity building in waste management and coastal pollution	
3.1.1.1	Awareness campaigns in lagoon and outer island communities including schools in Chuuk state to inform about the new waste management system	TA
3.1.1.2	Capacity building program for Chuuk Women's Council to enable expanded outreach efforts	TA
3.1.1.3	Awareness campaigns in Yap state to minimize waste generation and increase proper disposal	TA
3.1.2	Improve protection and conservation of the coastal ecosystem	
3.1.2.1	Pilot restoration of existing dredging sites in Chuuk state	TA/IN
3.1.2.2	Pilot restoration of existing dredging sites in Yap state	TA/IN
3.1.2.3	Assess condition of the environmental mooring buoy system in Kosrae state, replace missing and upgrade damaged parts	TA
3.2	Waste Infrastructure	
3.2.1	Phase one (concurrent with phase two): Preparation of new landfill site at Nepukos village, Chuuk	
3.2.1.1	Vegetation strip, taking down to composting site (initial preparation)	IN
3.2.1.2	Build of new access road to Nepukos village site	IN
3.2.1.3	Preparation of new landfill site for public use (e.g., bays, parking, etc.)	IN
3.2.1.4	Liner and leachate installation at new landfill site	IN
3.2.2	Phase two (concurrent with phase one): Sorting and clearance of interim marina waste site in Weno, Chuuk	
3.2.2.1	Sorting and clearance of interim marina site, transport of pure landfill to new site	IN
3.2.3	Phase three: Build of new solid waste management facility at existing site (Neuou), Chuuk	
3.2.3.1	Renewal/upgrade of road to old landfill site (Neuou)	IN
3.2.3.2	Design of detailed plans for build of the new waste management facility	TA
3.2.3.3	Land preparation and preparation of sub-structure and fencing	IN
3.2.3.4	Installation of basic utilities (electricity and water) at site	IN
3.2.3.5	Build of steel framed, high-specification solid waste management building	IN
3.2.3.6	Climate-proofing of new building	IN
3.2.3.7	Purchase of the required machinery for the new building	IN
3.2.3.8	Technician and operational training for use of the new machinery	TA
3.2.4	Improve land and marine based collection and disposal of waste	
3.2.4.1	Install community bins/collection points including for lagoon and outer islands in Chuuk	
3.2.4.2	Procure equipment and advanced technologies for collection and disposal of marine waste in Kosrae	IN
3.2.4.3	Increase diversity of equipment to deal with marine oil and waste at landing sites in Pohnpei	IN
3.2.4.4	Improve collection and proper disposal of all waste streams (including e-wastes, hazardous waste) in Yap	IN
3.2.4.5	Shipping chemicals that are currently stored in Yap	IN
3.2.4.6	Support public landfill site maintenance and operations in Yap	IN
3.3	Marine Habitats Management: Data	
3.3.1	Prepare teams to conduct assessments for marine ecological health and monitoring	
3.3.1.1	Dive certifications and equipment to facilitate new and ongoing ecological surveys in Chuuk	TA
3.3.1.2	Dive certifications and equipment to facilitate new and ongoing ecological surveys in Kosrae	TA
3.3.1.3	Dive certifications and equipment to facilitate new and ongoing ecological surveys in Pohnpei	TA
3.3.1.4	Dive certifications and equipment to facilitate new and ongoing ecological surveys in Yap	TA
3.3.1.5	Procure equipment for monitoring of dredging in Chuuk	IN
3.4	Marine Habitats Management: Legislation and Policy	
3.4.1	Improve emergency response protocols, pollution laws, and waste management strategies in all states	
4	Project management	
4.1	Personnel for Project Implementation Unit (PIU)	
4.1.1	PIU staff salaries	
4.1.1.1	Project Manager (5 years full-time)	TA
4.1.1.2	Project Officer	TA
4.1.1.3	Project Assistant	TA
4.1.1.4	Marine Coastal Engineer	TA

ID	Activity	Type
4.1.1.5	Technical Expert: Waste	TA
4.1.1.6	Staff equipment / Furniture	TA
4.1.1.7	Chuuk State Coordinator	TA
4.1.1.8	Pohnpei State Coordinator	TA
4.1.1.9	Yap State Coordinator	TA
4.1.1.10	Kosrae State Coordinator	TA
4.1.1.11	Communications Officer	TA
4.1.1.12	M&E Officer	TA
4.1.1.13	National Consultation Meetings and facilitation	TA
4.1.1.14	Miscellaneous office costs	TA
4.1.1.15	CIU costs	TA
5.1.1	Project development consultancies	
5.1.1.1	Design Preparation Consultant - Design preparation work in collaboration with DOFA, DRD, NORMA, DECEM and other stakeholders	TA
5.1.1.2	Environment and Social Safeguards Consultant – development of an environmental and social management plan; training staff and stakeholders	TA
5.1.1.3	POM Consultant – development of the Project Operations Manual (POM) and training the PIU staff on the POM	TA
5.1.1.4	Gender Specialist Consultant – gender analysis of the fisheries sector and recommendations based on local context and what works on ground	TA
5.1.1.5	Legal Consultant – conduct legal assessment on UNCLOS Article 73 compliance COMPLETED	TA

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Appendix 2.FSM Public Service Regulations Related to Grievances

To be used as the Programs Direct Workers WGRM.

Annotations are marked up where there are aspects to be addressed to ensure consistency between the LMP and public service regulations.

PART 15 GRIEVANCES

- 15.1. **Employee Coverage.** The Public Service Grievance System covers all Public Service System employees.
- 15.2. **Grievance Coverage.** The grievance system will cover any matter of concern or dissatisfaction to an eligible employee. [except the following:]
 - a. [An adverse action appealable under Part 18.]
 - b. [A fitness-for-duty examination.]
 - c. [The content of published Government policy.]
 - d. Non-selection for appointment, promotion, or reassignment from a group of properly ranked and certified candidates.
 - e. [Disapproval of a merit increase, performance award, or other kind of honorary discretionary award.] *** All these exceptions need to be further detailed and clarified.
- 15.3. **By Whom Presented.** A grievance may be presented by an individual employee or by a group of employees acting jointly. For the purposes of this part, the word "employee" shall be understood to refer also to group of employees acting jointly. An employee has the right to be assisted by a representative of his choice in submitting a grievance.
- 15.4. **Grievance Procedure.**
 - a. Grievance may be presented either orally or in writing. An employee may present a grievance concerning a continuing practice or condition at any time. If his grievance is related to a particular act or occurrence, he must present it within [fifteen] calendar days of the date of that act or occurrence or the date when he became aware of it.
 - b. An employee shall ordinarily present a grievance first to his immediate supervisor. If the employee believes that he has a valid reason for not taking the grievance to his immediate supervisor, or if his immediate supervisor so authorizes, he may submit his grievance to a supervisory or management official of higher rank than the employee's immediate supervisor. If the employee believes that he has a valid reason for not taking the grievance to any official in his agency, or if his grievance is not settled to his satisfaction by officials in his agency, he shall submit his grievance to the [Personnel officer] Director of the Office of Administrative Services or his designee. The action of the [Personnel Officer] Director of the Office of Administrative Services shall be final unless the [Personnel Officer] Director of the Office of Administrative Services himself authorized referral of the grievance to another official.
- 15.5. **Obligation of Supervisors and Management Officials.** Supervisors and

other management officials have an obligation and a solemn duty to accept an employee's grievance and to act promptly, fairly, and in good faith in the issue or issues presented in the grievance. They also have the obligation to abstain from any restraint, interference, or reprisal against employees and their representatives who are exercising the right to present grievances. It is not enough for an official to abstain from overt threats or interference. He must also refrain from making any statement or taking any action that has the appearance of a threat, interference, or intimidation.

PART 16. TERMINATIONS OTHER THAN FOR CAUSE

16.1. **Resignation.** Resignations shall be in writing and shall be submitted at least fourteen (14) calendar days in advance of the effective date. The [Personnel officer] Director of the Office of Administrative Services may designate management and highly skilled technical classes for which this period may be extended to thirty (30) calendar days. The Department or Office Head shall submit a copy of the written resignation, together with the necessary terminating documents, to the [Personnel Officer] Director of the Office of Administrative Services or his authorized representative.

16.2. **Termination for Medical Reasons.** When the [Personnel Officer] Director of the Office of Administrative Services believes that an employee has incurred an illness, injury, or other physical defect which may cause long-lasting impairment of his ability to perform the duties of his position, or that the employee has become mentally incapacitated or has contracted an infectious or contagious disease which endangers the health of others, the [Personnel officer] Director of the Office of Administrative Services shall cause the employee to undergo medical examination as provided in [Sup-Part 3.12.] sub-part 3.23. The medical examiner shall be requested to determine whether the employee suffers from such a disqualifying condition and, if so, to provide the best possible estimate of how long the disability is likely to last.

If it is expected that the disability will have ceased no later than ten working days after the expiration of the employee's accrued sick leave, the provisions of Paragraphs 10.3.and 10.4.b. shall apply.

If it is expected that the disqualification will last beyond the period of the employee's accrued sick leave plus ten working days, or if at the end of that period a reexamination discloses that the employee is still unable to perform the duties of his position, the following procedure shall be followed:

- a. The employee will be retained [in any status] in pay status until he has exhausted his accrued sick leave.
- b. Thereafter, unless a reassignment is available which the [Personnel Officer] Director of the Office of Administrative Services deems suitable, the [Personnel officer] Director of the Office of Administrative Services may terminate the employee for medical reasons.

- 16.3. **Reduction-in-Force.** [Department and agency Heads] may terminate the service of an employee because of the condition of his position, for lack of work or funds, or for other reasons outside the employee's control which reflect no discredit on the services of such employee. When there is an impending reduction in-force [and] Department or agency concerned shall inform the [Personnel officer] OAS Director of this fact at least [sixty (60)] days in advance of the proposed action.
- a. **Reduction-in-Force Notice.** When the determination to abolish a position is made and all efforts to place the affected employee in another position within his competitive area have failed, the [Personnel Officer] OAS Director shall inform the employee, in writing, that he has been reached by reduction-in-force and that his services shall be terminated. The [Personnel officer's] OAS Director's letter shall be dispatched at least thirty (30) days before the effective date of termination and it shall inform the employee whether he is eligible for placement on the reemployment list. The employee shall sign a copy of the letter to acknowledge receipt and return it to the [Personnel Office] OAS.
 - b. **Reemployment List.** [Permanent] Regular employees terminated because of reduction-in-force shall be entitled to be placed on an appropriate reemployment list. Temporary employees shall not be entitled to these reemployment rights. It is the displaced employee's responsibility to request placement on the reemployment list, as outlined in [Sub-Part 4.4] of these Regulations.
- 16.4. **[Exit] Interview.** A Personal interview shall be provided each employee terminating his service, before the effective date of the termination action. The interview shall be conducted for the purpose of learning from the employee the reason for his termination and such other information as may be appropriate. Interviews shall be recorded in report form and be made a part of the employee's personnel folder. The interview shall be conducted by the [Personnel Officer] OAS Director or his delegation.

PART 17 MINOR DISCIPLINARY ACTIONS

- 17.1. **Definition.** For the purposes of this Part, "minor disciplinary actions" means oral admonitions, written reprimands, and suspensions for no more than [three] working days.
- 17.2. **Oral Admonition.** An oral admonition may be directed to an employee by his immediate supervisor or by a supervisor of higher rank, except as the responsible management official may restrict this authority. [Oral admonition need not be reported to the Personnel office.]
- 17.3. **Written Reprimand.** A written reprimand may be addressed to an employee by his immediate supervisor or by a supervisor of higher rank, except as the responsible management official may restrict this authority. Written reprimands shall be subject to the following procedures:
- a. The language of the written reprimand must make clear the nature of the offense for which the employee is being reprimanded.

- b. A copy of the written reprimand will be sent through the responsible management official and to the [Personnel Office] OAS.
 - c. The [Personnel Office] OAS will retain the reprimand in the employee's Personnel Folder for a period [of] not to exceed [3] years from its date. If, during the [one-year period], the employee becomes subject to another minor disciplinary action (except an oral admonition) or to an adverse action, the reprimand shall be retained in the employee's Personnel Folder for a period of [one] year from that date to such subsequent action. While the reprimands are included in the Personnel Folder, it shall be taken into consideration in connection with performance evaluations, performance (within-grade) increases promotions, and action purposes.
 - d. Upon the expiration of the [one-year period] described in Paragraph c, the reprimand shall have no further force or effect for any purpose and shall be discarded from the Personnel Folder.
 - e. At any time before the expiration of the [one-year] period described in Paragraph c, the responsible management official may request the [Personnel Office] OAS Director to discard the reprimand from the employee's Personnel Folder. The [Personnel Officer] OAS Director shall carry out this request if he thinks that the best interest of the Public Service will benefit thereby.
- 17.4. **[Suspension for no more than Three Working Days.]** [All suspension, regardless of their duration, will be initiated submission of a request for Personnel Action, which will state the reason why the suspension is being effected. A copy of the respective Personnel Action Form, like all other Personnel Action Forms relating to a particular employee, shall be permanently included in the employee's Personnel Folder as part of his official record.]
- 17.5. **Recourse.** An employee who has been made subject to a minor disciplinary action and who is not in conformity therewith may have recourse to the grievance procedure.

PART 18 ADVERSE ACTION

- 18.1. **Definition.** For the purpose of this Part, "adverse actions" means dismissals, demotions for disciplinary reasons, and suspension for more than three working days.
- 18.2. **Authority to Take Adverse Action.** The authority to effect adverse actions is granted to management officials by [Chapters 1 & 2 of title 52 of the Code of the Federated States of Micronesia and further amended by Section 25(1) and 25(2). P.L. No 1-47, as amended.] For this purpose, management officials shall include;
- a. The Speaker of the Congress.
 - b. The Public Auditor
 - c. The President and Vice-President of the Federated States of Micronesia.
 - d. The heads of all executive Departments, Offices, and Agencies.
 - e. The Chief Justice.

- f. The chairman of each commission, authority, or similar body whose employees are included in the Public Service.

These persons may delegate in writing the power to effect adverse actions, to such other persons under their supervision as they deem appropriate. Copies of all such written delegations shall be sent to and retained by the [Personnel Office] OAS Director. In this part the expression "management official" will refer only to a person authorized to effect adverse actions in accordance with this Sub-Part.

- 18.3. **Employee Coverage.** This part applies to all [permanent] regular employees for the National Government of the Federated States of Micronesia not exempt under [section 8, P.L. No. 1-47]. [(Section 117,52 FSMC.)]
- 18.4. **Merit of Adverse Action.** An adverse action may not be taken against an employee covered by this part except for such cause as will promote the efficiency of the public service.
- 18.5. **Notification of Adverse Action.** A management official assisted by the [Personnel Officer] OAS Director shall effect an adverse action by delivering or causing to be delivered to the employee affected a notification containing at least the following information:
 - a. Nature of adverse action, which is being taken.
 - b. Its effective date.
 - c. A full and detailed statement of the reasons for which the action is being taken, specifying names, dates, and places.
 - d. A statement of the employee's right of appeal of the adverse action, including the statement that such an appeal must be filed with the [Personnel Officer] OAS Director within [fifteen] calendar days after the date of transmittal of the notification pursuant to Paragraph 18.6.(b) below.
- 18.6. **Delivery of Notification of Adverse Action.**
 - a. The notification of adverse action shall be delivered to the employee affected by one of the following means:
 - (1) Whenever possible, to the employee personally. His written acknowledgement of its receipt should be obtained; in the absence of such written acknowledgement, a certificate by the person who made the delivery may be substituted.
 - (2) When personal delivery is not possible, to the residence of the employee. Delivery at that location may be made to any person not less than eighteen years of age and of sound mind residing or employed there. Delivery in these circumstances shall be proved by means either of writing acknowledgement of receipt by the person accepting delivery, or of a certificate signed by the person who made the delivery.
 - (3) When neither personal delivery nor delivery to the residence is possible by registered mail with return receipt requested, to the employee's last known address.
 - b. The date of transmittal of the notification to the employee shall be:
 - (1) When personal delivery is made, the date of such delivery.
 - (2) When delivery is made to the employee's residence, the date of

such delivery.

(3) When the notification is sent by mail, the date of mailing.

c. The effective date of the adverse action shall not be earlier than the close of business on the date of delivery.

18.7. **Procedure for Filing Appeals.** An employee may appeal from an adverse action at any time during the period of [fifteen calendar days], counted from the date when the notification of the adverse action was transmitted to him. All appeals shall be in writing and shall be filed with the [Personnel Officer] OAS Director, by the employee personally or by his authorized representative. The appeal shall include or be accompanied by the following materials:

a. A statement of the employee's reasons for contesting the adverse action.

b. Any offer of proof or documentary evidence which the appellant then wishes to submit.

c. The names of witnesses and the description of documentary and other evidence that the appellant wishes to have at the hearing, with such explanation of their relevancy as may be appropriate.

d. Any request the appellant may wish to make for a delay in the date of his hearing, beyond the period of [fifteen] days from the date when the appeal is filed.

e. The designation of the employee's authorized representative, if any.

18.8. **[Ad Hoc Hearing Committee.]**

a. Appeals from adverse actions will be heard by an ad hoc hearing committee consisting of three members, selected from a panel of not less than seven officers or employees of the National Government, nominated by the [President] with the advice and consent of the Congress. Each committee shall comprise one member chosen by the appellant, one chosen by the [Personnel Officer] OAS Director, and a third chosen jointly by the other two members. If the first two members are unable to agree on the choice of a third member within [two] working days after they have been notified of their selection, the [Personnel Officer] OAS Director shall then select the third member by [lot] from among the remaining members of the panel.

b. No member of an ad hoc committee shall be an officer or employee of component of government to which the appellant is or was assigned, or a close relative of either the appellant or the responsible management official. For the purposes of this Sub- Part, the work "component" shall mean either:

(1) The legislative Branch;

(2) The Judicial Branch;

(3) Any Executive Department or Office; or

(4) Any board, commission, authority, or similar body.

c. At the time of filing his appeal with the [Personnel Officer] OAS Director, the appellant or his authorizing representative shall select from the panel a member of the ad hoc hearing committee. The [Personnel Officer] OAS Director shall immediately determine whether or not the

member named is prevented from serving in conformance with Paragraph b of this Sub-Part; If so, he shall inform the appellant's representative, who shall forthwith make another selection. The [Personnel Officer] OAS Director shall then choose the second member of [other] the committee and shall promptly notify the two persons of their selection, urging them to meet at the first opportunity to jointly select the third member.

- 18.9. **[Personnel Officer's] OAS Director's Responsibilities before Hearing.** In the period after the ad hoc hearing committee has been constituted, the Personnel Officer will have, among another responsibilities, the following:
- a. To inform the management official who authorized the adverse action that an appeal has been filed, and to obtain from him the names of witness and the description of tangible evidence for which [he wishes] subpoenas to be issued, if any;
 - b. To turn over to the ad hoc committee the original appeal, supporting documentation, and lists of subpoenas requested by the appellant and the management official concerned.
 - c. To ascertain from the committee the date and time of the hearing, and inform all interested parties. The hearing shall be held within [fifteen] days after the appeal is filed, unless the appellant requests a delay; if he does so, the date of the hearing shall be at the discretion of the ad hoc committee.
 - d. To serve as a channel of communication between the committee and the interested parties and to explain all legal, technical, and procedural requirements.
 - e. To arrange for a hearing room and other logistical needs.
- 18.10. **Subpoenas.**
- a. The ad hoc hearing committee may on its own motion or that of the [Personnel Officer] OAS Director, management, or the appellant subpoena witnesses and tangible evidence, when such witnesses and evidence are relevant and material to the hearing. The committee shall be the judge of relevancy and materiality.
 - b. The appellant shall be entitled to review all material relied on by the management official to support the reasons specified in the notification of adverse action, including material relevant to the appellant's past record if that record forms part of the basis for the action. This requirement means that management cannot use any material to support its reasons which, because of security or other considerations, cannot be disclosed to the appellant or his authorized representative. The appellant must be informed of his right to review the material relied upon.
- 18.11. **Representative.**
- a. An appellant has the right to present an appeal without representative, or to be accompanied, represented, and advised by a representative of his choice at any stage of the proceeding. The representative may be either an officer or employee of the National Government (provided that no conflict of interest would be produced) or a person from outside

the government. A representative who is a government officer or employee shall be allowed reasonable periods of Administrative Leave from his regular duties to attend his functions as such representative. To change his authorized representative, the appellant must give written notice to the ad hoc hearing committee through the [Personnel Officer] OAS Director.

- b. The representative of management in connection with the hearing shall be the Attorney General or his designee.
- 18.12. **Freedom from Reprisal or Interference.** An appellant and his representative must be free to use the appeal system without restraint, interference, coercion, discrimination, or reprisal. An employee, whether acting in an official capacity for the government or on any other basis, must not interfere with or attempt to interfere with another employee's exercise of his rights under this Part. It is not enough for an official to abstain from overt threats or interference. He must also refrain from making any statement or taking any action that has the appearance of a threat, interference, or intimidation.
- 18.13. **Conduct of Hearings.** All hearings shall be public [unless the appellant requests a closed hearing]. At the hearing, technical rules of evidence shall not apply and evidence shall be taken stenographically or by recording machine. The appellant and the management official who authorized the adverse action shall each have the right to be heard, to present evidence, and to be confronted by all adverse witnesses. The appellant may be represented by counsel of his own choosing. The [Personnel Officer] OAS Director or his qualified designee shall attend the hearing and all meetings of any ad hoc hearing committee and provide technical advice on request.
- 18.14. **Report of Ad Hoc Committee.** Within [seven] calendar days after the close of the hearing, the ad hoc committee shall prepare a full written statement of its findings of fact and its recommendation concerning the adverse action that was appealed. It may recommend that the action be affirmed, modified, or reversed. [The committee shall immediately deliver this statement, with such supporting documentation as it deems appropriate, to the highest management official responsible for the agency in which the appellant is or was employed, with a signed copy to the [Personnel Officer] OAS Director.] That management official, after considering the findings and recommendations, will personally give the final decision on the appeal. This management official shall be;
- a. For the Legislative Branch, the Speaker of the Congress.
 - b. For the Executive Branch, the President.
 - c. For the Judicial Branch, the Chief Justice.
 - d. For each commission, board, authority, or similar body, the Chairman thereof.
- 18.15. **Appeal File.** For every appeal which is submitted in connection with an adverse action, the [Personnel officer] OAS Director shall establish an appeal file, which shall be separated and distinct from the regular employee files. The contents of the appeal file shall include, but not necessarily be limited to, the following:

- a. Copy of the notification of adverse action.
- b. The appeal submitted by the employee, with all supporting documents.
- c. All Written statements, authorizations, requests, and other documents presented in connection with the appeal and the hearing.
- d. The lists of subpoenas requested by the appellant at the hearing.
- e. Copies of all documentary evidence introduced at the hearing.
- f. Transcript of the hearing, including original tapes or other recordings, if any.
- g. Signed copy of the report of the ad hoc committee.

Each appeal file shall be kept by the [Personnel Office] OAS for not less than [six] years from the date of final decision of the respective appeal, and thereafter for such additional period as the Attorney General may find appropriate.

TITLE 17 FSM Constitution

108. Hearings.

(1) Any person aggrieved by agency action is entitled to a hearing before the highest administrative official of the department or office of which the agency is a part. Hearings shall be initiated by the submission of a petition to such administrative official.

(2) Hearings shall be conducted and orders shall be made in accordance with section 109 of this chapter; provided, however, that in the event and to the extent that any other law establishes another procedure for administrative review of the particular matter the provisions of such other law shall be controlling.

Case annotations: Analysis of a claim of bias of an administrative decision-maker begins with a presumption that decision-makers are unbiased. The burden is on the challenger to show a conflict of interest or some other specific reason for disqualification. Specific facts, not mere conclusions, are required in order to rebut the presumption. *Heirs of Mongkeya v. Heirs of Mackwelung*, 3 FSM R. 92, 99 (Kos. S. Ct. Tr. 1987).

There is a presumption that a judicial or quasi-judicial official is unbiased. The burden is placed on the party asserting the unconstitutional bias. The presumption of neutrality can be rebutted by a showing of conflict of interest or some other specific reason for disqualification. Where disqualification occurs, it is usually because the adjudicator has a pecuniary interest in the outcome or has been the target of personal abuse or criticism from the party before him. *Suldan v. FSM (II)*, 1 FSM R. 339, 362-63 (Pon. 1983).

109. Conduct of hearings.

(1) All parties and all persons who have an interest in the controversy who are known to the agency or hearing officer, and any person requesting individual notice shall be entitled to personal notice of all hearings. Persons entitled to notice of a hearing shall be timely informed of:

- (a) the time, place, and nature of the hearing;
- (b) the legal authority and jurisdiction under which the hearing is to be held;
- (c) the particular sections of the statutes and regulations involved; and
- (d) the issues presented.

(2) If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished.

(3) Unless precluded by law, disposition without a hearing may be made of any contested matter by stipulation, agreed settlement, consent, order, or default.

(4) The hearing shall be held within 30 calendar days after the submission of the petition, unless the petitioner requests a delay. At the hearing, the petitioner, the management official responsible for the agency action which is the subject matter of the controversy, and such other persons as the hearing officer shall permit, shall each have the right to be heard, to present evidence, to confront all adverse witnesses, and to be represented by counsel of his own choosing.

(5) At the hearing, technical rules of evidence shall not apply. At the discretion of the hearing officer, evidence may be taken stenographically or by recording machine. The hearing officer is authorized to issue subpoenas for witnesses and tangible evidence at the request of any party or on his own motion. Hearings shall be public except when the petitioner requests a closed hearing.

(6) Within 15 days after the conclusion of a hearing, the hearing officer shall prepare a full written statement of his findings of fact and his decision. The hearing officer shall forthwith transmit his findings of fact and decision to all parties. The decisions of the hearing officer shall constitute final agency disposition of the action.

(7) The hearing officer may:

- (a) administer oaths and affirmations;
- (b) rule on the admissibility of evidence;
- (c) take dispositions or have dispositions taken when the ends of justice would be served;
- (d) regulate the course of the hearing;
- (e) hold conferences for the settlement or simplification of the issues by consent of the parties;
- (f) dispose of procedural requests or similar matters;

- (g) make or recommend orders or decisions in accordance with this chapter;
- (h) take such other action as would serve the ends of justice.

(8) Except to the extent required for the disposition of ex-parte matters as authorized by law, the hearing officer may not consult a person or party or representative of a person or party on a fact in issue unless notice and opportunity are given to allow all parties to participate.

- (9) The hearing officer may:
- (a) communicate with other members of the agency, except as limited by subsection (8) of this section; and
 - (b) have the aid and advice of one or more personal assistants, and of the Attorney General and his staff if such assistance would not be in violation of subsection (8) of this section. Such assistants shall be constrained in the same manner as the hearing officer as provided in subsections (8) and (9) of this section.

(10) Any oral or documentary evidence may be received, but the hearing officer as a matter of policy shall provide for the exclusion of irrelevant, immaterial, unreliable, or unduly repetitious evidence. Findings of fact shall be based exclusively on the evidence and on matters officially noticed. Except as otherwise provided by law, privileges relating to evidence in the courts of the Trust Territory and Federated States shall apply in the conduct of hearings. A sanction may not be imposed or order or decision issued except on consideration of the whole record supported by and in accordance with substantial evidence. A party is entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

Cross-reference: The statutory provisions on the Judiciary are found in title 4 of this code. The statutory provisions on Judicial Procedures are found in title 6 of this code.

Case annotations: The highest management officials cannot be said to be biased as a class and they cannot be disqualified, by virtue of their positions from final decision-making as to a national government employee's termination under section 156 of the National Public Service System Act, without individual consideration. *Suldan v. FSM (II)*, 1 FSM Intr. 339, 363 (Pon. 1983).

The FSM Rules of Civil Procedure do not apply to proceedings before administrative agencies. *Andrew v. FSM Social Sec. Admin.*, 12 FSM R. 101, 104 (Kos. 2003).

An agency action must be set aside when the action was without substantial compliance with the procedures required by law. *Ruben v. FSM*, 15 FSM R. 508, 516 (Pon. 2008).

When a letter does not set forth the agency's required findings of fact, it does not qualify as a full written statement of the hearing officer's findings of fact and his decision, and in the absence of a full written statement of findings of fact and an

explanation of how the hearing officer arrived at his decision, the court has no reasonable basis upon which to review the agency action. Because the agency failed to substantially comply with the procedural requirement, the court will set aside its administrative action. *Ruben v. FSM*, 15 FSM R. 508, 517 (Pon. 2008).

Although a hearing officer has the discretion to decide which recording method to use stenographic or recording machine the hearing officer does not have the discretion to altogether fail to make a record of the hearing and its failure to substantially comply with this procedural requirement is yet another reason an agency action must be set aside. *Ruben v. FSM*, 15 FSM R. 508, 517 (Pon. 2008).

When an agency failed to substantially comply with the procedures required by law through the hearing officer's failure to prepare a full written statement of his findings of fact and his decision and the agency's failure to make a record of the hearing proceedings, either stenographically or by recording machine, the court will set aside the agency order. *Ruben v. FSM*, 15 FSM R. 508, 517 (Pon. 2008).

When there are discrepancies in the evidence, which result in a dispute of material facts, the court will decline an invitation to conduct a de novo review and conclude the matter by summary judgment. *Ruben v. FSM*, 15 FSM R. 508, 517 (Pon. 2008).

Under the common law rule known as the doctrine of primary jurisdiction, courts may remand matters to administrative bodies that are familiar with the regulated activity at issue. Courts apply the doctrine of primary jurisdiction in the hope that by remanding matters to an administrative body, the administrative determination will obviate the need for further court action or will make possible a more informed and precise determination by the court. *Ruben v. FSM*, 15 FSM R. 508, 518 (Pon. 2008).

The doctrine of exhaustion of remedies requires that a potential plaintiff follow whatever procedures are in place to seek reconsideration of an agency's allegedly erroneous decision before bringing the dispute to the attention of the judiciary. It is incumbent on parties to exhaust administrative procedures concerning their disputes as designated by applicable state law before coming to court, unless and until the state law is judged invalid. *Smith v. Nimea*, 16 FSM R. 186, 190 (Pon. 2008).

Closely related to the requirement of exhausting all administrative remedies before seeking judicial redress is the doctrine of *res judicata*, which bars the re-litigation by parties or their privies of all matters that were or could have been raised in a prior action that was concluded by a final judgment on the merits that has been affirmed on appeal or for which time for appeal has expired. Once a plaintiff availed himself of the administrative remedies available for claims under Pohnpei state law, he was obligated to exhaust those remedies as provided by Pohnpei state law before filing suit in the FSM Supreme Court. When the plaintiff failed to exhaust these remedies by failing to appeal the Pohnpei administrative decision, his claims for unpaid wages, overtime, wrongful termination and criminal penalties are barred as a matter of law. *Smith v. Nimea*, 16 FSM R. 186, 190 (Pon. 2008).

Appendix 3 Code of Conduct to be signed by PIU Staff

The following Code of Conduct (COC) must be read, understood and signed by all PIU Staff.

I, **individual's name**, acknowledge that adhering to the provisions as detailed in this COC and following any of the FSM PROPER, Social and Health (ESH) or Occupational Health and Safety (OHS) provisions is important.

NORMA considers that failure to follow the COC, ESH or OHS standards, be it in an office, on a work site, office and work site surroundings, at workers' camps, in worker's homes, or the surrounding communities constitutes acts of gross misconduct and are therefore grounds for sanctions, penalties or potential termination of employment.

I agree that while working on the Subproject I will:

1. Attend and actively participate in any induction or training required for OHS, GBV/SEA/SH and VAC as requested by my employer.
2. Will wear my personal protective equipment (PPE) at all times when required.
3. Implement any OHS requirements.
4. Comply with all laws of the FSM, regulations and other requirements, including protecting the health, safety and well-being of other workers and any other persons.
5. Not drink alcohol or use narcotics or other substances which can impair faculties and potentially cause incidents, before or during work activities.
6. Consent to a Police background check if required.
7. Treat women, children (persons under the age of 18), and men with respect regardless of race, color, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
8. Not use language or behavior towards women, children or men that is inappropriate, harassing, abusive, sexually provocative, demeaning or culturally inappropriate.
9. Not engage in sexual harassment—for instance, making unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct, of a sexual nature, including subtle acts of such behavior (e.g., looking somebody up and down; kissing, howling or smacking sounds; hanging around somebody; whistling and catcalls; giving inappropriate personal gifts; making comments about somebody's sex life; etc.).
10. Not engage in sexual favors—for instance, making promises of favorable treatment dependent on sexual acts—or other forms of humiliating, degrading or exploitative behavior.
11. Not participate in sexual contact or activity with children (persons under the age of 18) including grooming, or contact through digital media. Mistaken belief regarding the age of a child is not a defense. Consent from the child is also not a defense or excuse.

12. Report to my manager any suspected or actual GBV/SEA/SH or VAC by a fellow worker, whether employed by my company or not, or any breaches of this COC.

With regard to children under the age of 18:

13. Wherever possible, ensure that another adult is present when in the proximity of children.
14. Not invite unaccompanied children unrelated to my family into my home, or the work sites unless they are at immediate risk of injury or in physical danger.
15. Not use any computers, mobile phones, video and digital cameras or any other medium to exploit or harass children or to access child pornography.
16. Refrain from physical punishment or discipline of children.
17. Refrain from hiring children for domestic or other labor below the minimum age of 14 unless national law specifies a higher age, or which places them at significant risk of injury.
18. Comply with all relevant local legislation, including labor laws in relation to child labor and World Bank's safeguard policies on child labor and minimum age.

Sanctions

I understand that if I breach this COC, NORMA will take disciplinary action which could include:

- a) Informal warning.
- b) Formal warning.
- c) Additional Training.
- d) Loss of up to one week's salary.
- e) Suspension of employment (without payment of salary), for a minimum period of 1 month up to a maximum of 6 months.
- f) Termination of employment.
- g) Report to the Police if warranted.

I do hereby acknowledge that I have read the foregoing Code of Conduct and understand my role and responsibilities to support the FSM PROPER's, OHS, GBV/SEA/SH, VAC and any other E&S conditions determined by the FSM PROPER or the World Bank. I understand that any action inconsistent with this COC may result in disciplinary action and may affect my ongoing employment.

- **I have read and understand the contents and of the COC and my responsibilities**
- **I have attended the induction training and understand my responsibilities with regards to OHS, GBV/SEA/SH and VAC**

Signature:

Printed Name:

Date:

Appendix 4 FSM PROPER GRM Summary

NOTE: Full details of the GRM, GRM for Corruption and GRM for GBV/SEA/SH/VAC and HT are detailed in the Stakeholder Engagement Plan

General GRM

The process for the GRM is as follows:

- a) The aggrieved party can present their grievance to the FSM PROPER PIU, State Coordinators, relevant State Authority or Contractor, verbally (by phone or in person) by email or written format.
- b) The initial recipient of the grievance should endeavor to resolve any grievance immediately through informal discussion and/or provision of additional information.
- c) Where the aggrieved person has not submitted the grievance directly to the PIU and he/she/they, are not satisfied, the receiver of the grievance will refer the aggrieved person to the FSM PROPER PIU Project Manager who will (with support from the CIU) attempt to resolve the issue through further informal discussion. For grievances that were satisfactorily resolved informally the incident and resultant resolution will be logged and reported to the FSM Project Manager, and then copied to the CIU (Program Manager and Safeguard Team) to be entered into the Grievance Register (GR). Response to general enquires and low-level grievances should be responded to within 3 days.
- d) Where the grievance has not been resolved, the PIU Project Manager will coordinated with the relevant contractor, authority manager and Secretary of DoFA to develop a response and any actions that are required to resolve the grievance. A response from the PIU with proposed strategies to resolve the issue or with the required information will be sent to the person within 10 days of receipt.
- e) If the matter remains unresolved, or the aggrieved person is not satisfied with the outcome, the PIU Project Manager refers the matter to the Project Steering Committee for a resolution. The PIU Project Manager will take the proposed resolution back to the aggrieved person and log details of issue and resultant resolution status (copy CIU Program Manager and safeguard team). Discussions and resolution to be undertaken within 14 days of receipt.
- f) If it remains unresolved or the complainant is dissatisfied with the outcome proposed by the Project Steering Committee, the aggrieved person may refer the matter to the appropriate legal or judicial authority. A decision of the Court will be final.

Appendix 5 World Bank Grievance Redress System

What is the GRS?

The World Bank's **Grievance Redress Service (GRS)** provides an additional, accessible way for individuals and communities to complain directly to the World Bank if they believe that a World Bank-financed project had or is likely to have adverse effects on them or their community. The GRS enhances the World Bank's responsiveness and accountability by ensuring that grievances are promptly reviewed and responded to, and problems and solutions are identified by working together.



The World Bank is committed to ensuring that Bank-financed projects do not harm people or the environment. The objective of the Grievance Redress Service is to make the Bank more accessible for project-affected communities and to help ensure faster and better resolution of project-related complaints.

For more information: <http://www.worldbank.org/grs>
email: grievances@worldbank.org



GRIEVANCE REDRESS SERVICE

Helping individuals and communities
get faster and better resolution
of their complaints





Which complaints can the GRS handle?

The GRS accepts complaints that are:

- related to an active World Bank-supported project (IBRD or IDA)
- filed by a person or community who believes they have been adversely affected by a World Bank-financed project
- filed by a bidder or potential bidder about the procurement process on a World Bank-financed contract



What information is needed?

Complaints must:

- identify the project/subject of the complaint
- clearly state the project's adverse impact(s)
- identify the individual(s) submitting the complaint and whether confidentiality is requested
- specify if the complaint is submitted by a representative of the person(s) or community affected by the project
- if the complaint is submitted by a representative, include the name, signature, contact details, and written proof of authority of the representative

Supporting evidence is not necessary but may be helpful in reviewing and resolving the complaint. The complaint may also include suggestions on how the individuals believe the complaint could be resolved.

The identity of complainants will be kept confidential upon request.



How is a complaint handled?



How can I submit a complaint?

The GRS accepts complaints in English or the official language of the country of the person submitting the complaint. Submissions to the GRS may be sent by:

Email: grievances@worldbank.org

Fax: +1-202-614-7318

Letter: The World Bank
Grievance Redress Service (GRS)
MSN MC 10-1018
1818 H St NW
Washington, DC 20433, USA



What about other grievance mechanisms?

Affected citizens and communities should use existing project-level grievance mechanisms where possible.

The GRS does not replace other existing accountability mechanisms of the World Bank. Requests can be submitted to the Inspection Panel to determine compliance with World Bank policies (www.inspectionpanel.org).

If a project is funded by the World Bank as well as the International Finance Corporation (IFC) or the Multilateral Investment Guarantee Agency (MIGA), the GRS will refer complaints related to the IFC/MIGA portions of the project to the Office of the Compliance Advisor (OCA) (www.oac-ombudsman.org).

Complaints involving issues related to fraud or corruption in World Bank-financed projects should be reported to the Office of Institutional Integrity (OI) (www.worldbank.org/integrity).



Frequently Asked Questions

Why use the GRS?

The process established by the GRS helps affected individuals and communities engage with the World Bank and the project executing agency to address issues as they happen, for faster and better resolution of complaints.

Does filing a complaint stop a project?

Submitting a complaint does not in itself stop a project.

Is there a statute of limitations for making a complaint?

The GRS will attempt to help resolve every eligible concern in active projects. The GRS cannot review issues related to closed projects.

What is the relation of the GRS to project-level grievance mechanisms?

Project-level grievance mechanisms remain the primary tool to raise and address project-related grievances. The GRS seeks to help resolve issues that cannot be resolved at the project level or where there is no project-level grievance mechanism.

What outcomes can we expect from using the GRS?

Resolution of each complaint depends on the issues at hand. The World Bank will make every effort to resolve all issues in a timely manner, working with the project and affected individuals/communities.

What is the relationship to the Inspection Panel?

There is no sequential relationship between the GRS and the Inspection Panel. The GRS is an additional mechanism for individuals and communities to use. The use of the GRS does not restrict access to the Inspection Panel.

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Appendix 6 OHS Checklist

Add in any specific site risks

Manual Tasks	YES	NO	NA
Have you identified all tasks involving lifting, pushing, pulling and/or carrying, and assessed the risk of injury at your workplace?			
Have your risk assessments taken into account posture, movement, forces, duration, frequency and environmental factors?			
Are objects handled easy to grasp, have no sharp edges and are not hot, cold, slippery or bulky?			
Is lifting from ground level or above shoulder level avoided?			
Is the work area, equipment and system of work designed to eliminate sideways twisting of the body, excessive bending or reaching?			
Is the work area, equipment and system of work designed to minimize sustained repetitive movements?			
Are mechanical handling aids provided where possible?			
Is there enough space to allow free movement while doing the task?			
Is training provided about risk factors and the proper technique to do the task?			

Equipment, machinery and tools	YES	NO	NA
Is the correct equipment always used for each job?			
Are all tools and machinery properly guarded?			
Are stop/start switches clearly marked and positioned within easy reach of the operator?			
Are operators trained to use the tools, equipment and machinery safely?			
Do operators hold current licenses to perform work that requires certification?			
as provision been made to safely store or dispose of waste off-cuts?			
Is there enough work space around machinery?			
Are tools, equipment and machinery regularly maintained? (in accordance with manufacturer's instructions)?			
Is there a process to ensure that tools and machinery are switched off before maintenance and cleaning is carried out and cannot be inadvertently started by other workers during maintenance and cleaning?			
Are unsafe or faulty tools, equipment or machinery reported immediately?			
Are unsafe or faulty tools, equipment or machinery removed from use until they are repaired or replaced?			
Are repairs always carried out by authorized and competent persons?			
Are health and safety risks considered before modified or alteration of any tools, equipment or machinery?			

Moving around	YES	NO	NA
Have you made sure people cannot slip or trip when they move around? (e.g. on oil, grease, water, leads, hoses, cables)			
Have appropriate fall prevention methods been implemented for all tasks that are undertaken at height? (e.g. guard rails, scaffolds, harness systems)			
Can traffic and people move safely around the worksite? (e.g. walkways clearly marked, barriers to separate vehicles from walkways, unobstructed vision at intersections)			
Is it easy to get in and out of the workplace safely? (e.g. exits clearly marked and unobstructed)			
Are stairs, ladders and platforms safe? (e.g. fixed handrails, ladders secure when in use, anti-slip treads)			
Are vehicle drivers trained and aware of hazards?			
Do vehicle drivers have safe schedules?			
Are all loads safely secured?			

Chemicals and other hazardous substances	YES	NO	NA
Is there an up-to-date list of all chemicals used? (e.g. cleaning products, paints, solvents, degreasers, petrol, inks, toner, oil, adhesives, acids, acrylics, pesticides)			
Have you obtained Safety Data Sheets (SDS) for all chemicals and made these available to workers for information? (Refer to the Code of Practice – Managing Risks of Hazardous Chemicals in the Workplace for more information)			
Have you assessed the risk of exposure (e.g. via inhalation, skin contact, ingestion) during transport, storage and use of the chemicals?			
Are containers clearly labelled?			
Are chemicals and other hazardous substances stored safely? (e.g. in specific storage rooms or cabinets, separated from other reactive substances, away from ignition sources)			
Are workers trained in the safe use, handling, storage and transport of chemicals?			
Is there adequate ventilation and fume extraction?			
Have you ensured that chemicals and hazardous substances cannot spill, leak or otherwise escape into the environment during storage, handling and transport?			
Are gas cylinders stored upright, secure, away from heat and ignition sources and in a ventilated area?			
Is monitoring and health surveillance undertaken if required?			
Are chemicals and hazardous substances disposed of correctly?			
Is appropriate personal protective equipment provided? (e.g. gloves, respirators)			

Electricity	YES	NO	NA
Are electrical leads, plugs, sockets and switches in good condition? (e.g. not frayed or damaged)			
Have you ensured there are no electrical leads lying across floors?			
Have you ensured there are no double adaptors used?			
Have electrical leads and power boards been inspected and tagged where necessary?			
Is the location of powerlines and cables (overhead/underground/behind walls) checked before digging, drilling, using cranes or ladders, or erecting scaffolding?			
Is portable electrical equipment fitted with residual current devices?			

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Alcohol and drugs	YES	NO	NA
Is responsible alcohol or drug consumption an accepted part of the workplace culture?			
Does your work provide support for isolated workers who have extended separation from family or friends?			
Do you have a drug and alcohol policy and are staff familiar with it?			
At work functions, do you consider responsible provision of alcohol including food and non- alcoholic drinks?			
Do you promote safe consumption of alcohol messages and the use of support services such as the Alcohol and Drug Information Service (ADIS)?			
Is responsible alcohol or drug consumption an accepted part of the workplace culture?			
Does your work provide support for isolated workers who have extended separation from family or friends?			
Do you have a drug and alcohol policy and are staff familiar with it?			

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