

ANNEX 2: TERMS OF REFERENCE

Terms of Reference (TOR)

CONSULTANCY SERVICES TO STRENGTHEN THE LEGAL FRAMEWORKS FOR COASTAL FISHERIES MANAGEMENT IN THE FEDERATED STATES OF MICRONESIA

1. INTRODUCTION

The Federated States of Micronesia (FSM) is an island nation located in the western Pacific Ocean, consisting of four states: Yap, Chuuk, Pohnpei, and Kosrae. Fisheries are a vital economic resource for the FSM, with the country's extensive Exclusive Economic Zone (EEZ) covering over 2.9 million square kilometers of ocean. The FSM government has made efforts to develop its fisheries sector through the implementation of policies and regulations aimed at sustainable fisheries management, and most recently through the World Bank Pacific Islands Regional Oceanscape Program (PROP), which focused on the management of oceanic fisheries and was completed in 2021.

The PROP included an assessment of the current state of fisheries in the FSM through stakeholder interviews and an examination of the supporting institutions, laws, regulations, and research on fisheries. This resulted in a proposal for the Sustainable Development of the Inshore Fisheries and Resources of the FSM and the publication of a detailed Situation Analysis Report (SAR). The main finding of the SAR is that there is overfishing occurring in all four states, with the many negative impacts detailed in the SAR. Key activities in fisheries management and development were proposed which will contribute to a better understanding of the fisheries, the fishers, and biology of the target species, leading to better overall management and a reduction in overfishing.

Key shortfalls identified include:

- A. Data:** Most of the coastal fisheries data in FSM is out of date, non-existent or incorrect. Thus, it is an inappropriate baseline from which to measure any changes occurring from future management activity. Where data is available it is often not comparable with past work, as no protocols for data collection and collation are in force. Similarly, there are few time series, and very few country and/or state overviews.
- B. Capacity:** There is a lack of capacity amongst staff and severe basic skills shortages in some areas. In communities involved in fisheries-related issues, there is a marked lack of comprehension of what is going on, why conservation and management is important, and how to enforce and control fisheries activities.
- C. Enforcement:** Management of inshore fisheries resources requires enforcement of regulations and management plans. Currently, enforcement is poor throughout the nation. Rules regarding closed seasons, illegal fishing methods, size limits and closed areas are generally ignored. Fishers are aware that there is no sanction for breaking the rules, so they continue to ignore them. The enforcement agencies are under-equipped, under-trained, and unmotivated.
- D. Safety at sea:** Safety equipment is rarely carried by small, powered fishing boats in FSM and incidents of people drifting away are reported regularly. Fishers do not buy safety equipment, of which some are quite expensive (EPIRBs, radios, flares, spare engines).

The SAR details the 10 Investment Project Profiles (IPPs) prepared to realize the aims of reducing overfishing and assisting fishers in basic safety at sea and provides advice on priority activities and initiatives for future funding.

1.1. CURRENT CONTEXT

FSM has now received additional financing from the World Bank (WB) toward the cost of the Pacific Islands Regional Oceanscape Program – Second Phase for Economic Resilience (PROPER). FSM PROPER seeks to strengthen the management of both oceanic and coastal fisheries, and the critical habitats upon which they depend. As such, the program is being implemented both at the national level (by the National Oceanic Resource Management Authority, (NORMA) and national partners) and at the state level (e.g., by various state fisheries

departments and environmental protection agencies). The coastal component of PROPER seeks to implement the IPPs detailed in the coastal fisheries SAR.

In the fisheries sector responsibility for the oversight and management of nearshore and coastal resources to 12 miles is vested in State Governments with the management of offshore oceanic resources retained as a National Government function. Coastal and nearshore marine and fisheries resources comprise inshore fisheries (those taking place in mangroves, reef areas, and lagoons), nearshore fisheries for large pelagic species (including tunas) and bottom fisheries (for snappers, groupers and other demersal species). In the main islands of each state small-scale fishers sell catch in excess of their own requirements through various outlets. A few fishers and traders also ship small quantities of fish to other parts of FSM and elsewhere although commercial activity in the export of reef fish is controlled in Kosrae, Yap and Pohnpei due to concerns as to resource depletion. (FSM 2023 Action Plan).

Currently, the FSM is lacking in modern legal frameworks for coastal fisheries, and existing legislation is either not implemented (lack of regulations) or not enforced (lack of compliance). The situation in each state varies, considering factors such as the level of capacity within state fisheries/marine departments in relation to the maritime area covered. As part of the FSM PROPER project, efforts will be made to carry out comprehensive legislative assessments, consult with stakeholders and develop new regulations for coastal fisheries. To facilitate this, an initial assessment of current legislation on coastal fisheries in FSM must be undertaken, and priority policy areas for assessment identified. Then, the draft laws and regulations necessary to bring existing legislation up to date, addressing the needs of each state, will be provided to the necessary authorities in the states and in the national legislature.

2. ASSIGNMENT OBJECTIVES

The Consultancy will aim at strengthening the management of coastal fisheries through the review and gap analysis of legislative and regulatory frameworks governing the states' coastal fisheries. It also aims at developing draft legislation in each state, including legislation relating to small boat registration and safety, and community-based fisheries management. Under this Consultancy, stakeholder consultations will be conducted in all four states, will include municipalities and communities, and involve representatives from outer islands, to ensure broad stakeholder engagement in the legislative review process and to inform revision and updates to the legislative (inclusive of Acts and Regulations) framework.

The consultancy shall ensure that proposed legal reforms are inclusive from environment, social, health and safety (ESHS) standpoint and do not create disproportionate adverse impacts on subsistence fishers, women, youth, outer-island communities, persons with disabilities, or other vulnerable and disadvantaged groups.

The finalization of vessel registration and sea safety minimum standards legislation is important to improve safety at sea, compliance, and data collection among coastal fishers. The Consultancy will identify opportunities for improvement and support implementation of any reforms, including strategies for further stakeholder engagement, access to goods and equipment, as well as training and awareness activities. The dissemination of materials to registered vessels in all states will incentivize vessel registration.

There is also a critical need to review, revise, and update existing coastal fisheries legislation in each state to support the expansion of community-based fisheries management, as identified in the FSM 2023 Action Plan and in the Pacific Framework for Action on Scaling up CBFM 2021-2030. This may include devolving some co-management responsibilities to municipalities, where appropriate. The open access features of coastal fisheries are undesirable and need to be addressed further. Policies for fisheries are defined in National and State Development Plans.

The review shall also consider customary marine tenure, traditional governance, community access arrangements, community-based enforcement, and grievance or dispute resolution mechanisms relevant to coastal fisheries management.

3. SCOPE OF SERVICES

General

The consultancy will employ a participatory approach, combining clear and concise language with legal and scientific accuracy, to ensure the legislative review and consequent drafting are fit for purpose, practical, and needed in each state. The project will encompass 11 anticipated stages, each designed to contribute to the overarching goal of establishing fair and transparent coastal fisheries legislation that is complied with and that leads to safe and sustainable fishing in each state. The legal framework shall be aligned with the World Bank standards (including but not limited to) like ESS1 (Assessment and Management of Risks), ESS2 (Labor), ESS5 (Land Acquisition), and ESS7 (Indigenous Peoples) and international conventions, such as the UN Fish Stocks Agreement (UNFSA), Western and Central Pacific Fisheries Commission (WCPFC), UN Convention on the Law of the Sea (UNCLOS), and the FAO Compliance as FSM is signatory to both the agreements. In addition, the sub-regional agreements to which FSM is signatory are the Nauru Agreement (PNA), the FSM Arrangement for Regional Fisheries Access (FSMA), US South Pacific Tuna Treaty etc.

The Consultant will conduct a social, legal and institutional assessment under WB ESS1, in order to identify potential economic and social risks and impacts of the proposed framework, and appropriate measures to minimize and mitigate them, in particular those that affect poor and vulnerable groups.

Anticipated stages are as follows:

- Stage 1: Inception Phase and Inception Report
- Stage 2: Desk Review and Compilation of Laws and Policies
- Stage 3: Legal Analysis and Gap Identification
- Stage 4: Stakeholder Engagement and Site Selection (round 1)
- Stage 5: First Draft of Legislation Frameworks and Management Recommendations Stage
- Stage 6: Stakeholder Engagement and Site Selection (round 2)
- Stage 7: Second Draft of Legislation and Management Recommendations
- Stage 9: Final Report with Workshop Feedback
- Stage 10: Awareness Raising and Other Activities
- Stage 11: Final Consultancy Report

Stage 1: Inception Phase and Inception Report

Following contract signing, the Consultant shall mobilize and prepare an Inception Report setting out the proposed approach, detailed tasks, work plan, stakeholder engagement plan, coordination arrangements, staffing schedule, and timeline for delivery of all consultancy outputs. The Inception Report shall be submitted within two (2) weeks after contract signing and shall be reviewed and cleared by FSMR&D, NORMA, CIU, and relevant Working Groups before the Consultant proceeds with the substantive technical work.

- **Deliverable:** Inception Report - A concise report confirming the Consultant's understanding of the assignment, methodology, implementation schedule, personnel inputs, consultation plan, reporting arrangements, and proposed timeline for completing the consultancy.

Stage 2: Desk Review and Compilation of Laws and Policies

Conduct an extensive review of existing legislation, policies and plans at national and state level on coastal fisheries. The review should also refer to relevant literature, reports (including SAR Report), and available databases related to coastal fisheries and legislation in FSM. Compile legislation on marine resources, fisheries, and aquaculture from across all four states, including in relation to the licensing, registration and safety of small boats. This stage will be conducted remotely by reviewing information available online, as well as any documents provided by FSM counterparts.

- **Deliverable:** Legislative Frameworks Review Report - A concise and organized report containing all legislation, policies and other relevant documents identified during the desk review, with a brief description of their relevance to coastal fisheries. The review should also identify the main priority areas identified in national and state policies on coastal fisheries, as well as relevant international commitments. These policy priorities and commitments, cleared by the FSM counterpart, will form the basis of the legal gap analysis.

Stage 3: Legal Analysis and Gap Identification

For each of the main priority areas and international commitments, analyse current legislation to identify gaps and inconsistencies that hinder policy implementation and enforcement of regulations. Based on a

comparative analysis with other countries' legislation, suggest areas for improvement and possible options for FSM to better regulate coastal fisheries, achieve its policy goals and meet international commitments.

The legal gap analysis shall identify potential environmental, social, health and safety (ESHS) implications of proposed legal framework, including impacts on livelihoods, access to marine and coastal resources, enforcement risks, affordability and compliance burden, gender considerations, and customary or community-based management arrangements.

- **Deliverable:** Legal Gap Analysis Report - An analytical report presenting findings from the reading of legislation and policies on coastal fisheries, highlighting gaps and opportunities for FSM and each of the four states. Each state will indicate, through stakeholder engagement in Stage 4, which legislations and/or regulations will be developed under this Consultancy.

Stage 4: Stakeholder Identification and Engagement– First Round

Based on the legislative review and the legal gap analysis report, engage with state fisheries/marine departments, legal departments, research institutions, non-governmental organizations (NGOs), and local communities to gather input on priority legal reform in each state. Leverage stakeholders' insights to guide identification of legislative and regulatory gaps to be addressed for sustainable coastal fisheries management. The selection of stakeholders and communities where consultations will be held will be agreed with the FSM counterpart.

Consultations shall include, as relevant, women, youth, elderly persons, persons with disabilities, subsistence and small-scale fishers, fish vendors and processors, traditional leaders, municipal representatives, outer-island representatives, and other groups likely to be affected by or interested in coastal fisheries reforms. Process will need to ascertain the environment, social risks assessment and management, gender inclusion, or community-based natural resource management where required to support meaningful consultations and social risk analysis.

- **Deliverable:** Stakeholder Engagement Summary - A summary of stakeholder engagement activities, including workshops, meetings, and consultations, outlining key insights, concerns, and suggestions gathered from state agencies, research institutions, NGOs, and local communities. It includes the list of participants and any documentation required for financial reporting.

Consultation records shall include participants disaggregated by state/island, gender and stakeholder group, key issues raised, responses provided, unresolved concerns, and how feedback was incorporated into the draft legal recommendations.

Stage 5: First Draft of Legislations and Management Recommendations

Where possible, provide a first draft of the legislations and/or regulations that was prioritised, as well as related preliminary management recommendations, based on the gap analysis and the outcomes of the first round of stakeholder consultations, and in agreement with FSM and state counterparts. If drafting of the Legislations cannot start for lack of information, drafting instructions should be prepared instead for review by stakeholders at the second round of consultations.

The draft Legislations and management recommendations shall identify relevant environmental risks like;

- i. threat to biodiversity like conversion of natural habitat, introduction of alien, selectively bred, or genetically engineered species, contamination of aquatic ecosystem, impacts of harvesting on ecosystem functions, contamination of aquatic systems
- ii. hazardous material risks and management relevant to the fisheries in the FSM The aquaculture sector may involve the handling and use of hazardous materials (e.g. oil, fertilizers, and other chemicals). Recommendations for the safe storage, handling, and use of hazardous materials, including guidance on oil spills and containment in line with the World Bank General EHS Guidelines.
- iii. The occupational health and safety (OHS) like fishing boat safety and community health and safety (CHS) risks including effects on water resources, food safety impacts and management and other risks management consistent with the WB general EHS guidelines, WB ESS4 and applicable FSM regulations. The applicable and fishing boat safety guidelines will be integrated in the framework consistent with the UN's International Maritime Organization (IMO), the Food and Agriculture Organization (FAO) and other GIIPs.

The social risks associated with the proposed legal framework will be assessed risks consistent with the WB ESS2, ESS5, ESS7 and ESS10 as well as the EHS risks consistent with the WB ESS2 and WB ESS4.

- **Deliverable:** Preliminary Legal Recommendations Report - A report detailing the first draft of proposed Legislations and/or regulations and preliminary management recommendations, addressing key challenges and suggesting strategies for sustainable coastal fisheries management.

Stage 6: Stakeholder Engagement– Second Round

Engage with state fisheries/marine departments, legal departments, research institutions, NGOs and local communities on the first draft of the Legislations and/or regulations and management recommendations to gather input on priority legal reform. Leverage stakeholders' insights to guide feedback for legislative and regulatory drafting for sustainable coastal fisheries management.

- **Deliverable:** Stakeholder Engagement Summary - A summary of stakeholder engagement activities, including workshops, meetings, and consultations, outlining key insights, concerns, and suggestions gathered from state agencies, research institutions, NGOs, and local communities. It includes the list of participants and any documentation required for financial reporting.

Consultation records shall include participants disaggregated by state/island, gender and stakeholder group, key issues raised, responses provided, unresolved concerns, and how feedback was incorporated into the draft legal recommendations.

Stage 7: Second Draft of Legislations and Management Recommendations

Provide a second draft of the Legislations and/or regulations as well as related management recommendations, incorporating the outcomes of stakeholder consultations. Address compliance and enforcement issues through strategies that are adapted to coastal fisheries management challenges in the four states.

The second draft shall reflect stakeholder feedback and demonstrate how social risks, access restrictions, customary/community arrangements, equity, gender considerations, and grievance mechanisms have been addressed.

- **Deliverable:** Interim Legal Recommendations Report - A report detailing the second draft of the Legislations and/or regulations and management recommendations, addressing key challenges and suggesting strategies for sustainable coastal fisheries management.

Stage 8: Validation Workshop

Prepare and organise the validation workshop to present the second draft of the legislations and management recommendations for final feedback from all stakeholders. Prepare the agenda for clearance by the FSM counterpart as well as any information and communication material required for effective engagement by participants.

The validation workshop shall be planned to enable accessible participation, including appropriate language support, advance sharing of materials, and reasonable measures for participation by women, outer-island representatives, and vulnerable groups.

- **Deliverable:** Validation Workshop Report – A summary of suggestions and recommendations from the Validation Workshop. It includes the list of participants and any documentation required for financial reporting.

Consultation records shall include participants disaggregated by state/island, gender and stakeholder group, key issues raised, responses provided, unresolved concerns, and how feedback was incorporated into the draft legal recommendations.

Stage 9: Final Draft of Legislations with Workshop Feedback

Prepare a final draft of the Legislations and/or regulations and related management recommendations, incorporating feedback from the Validation Workshop and any other changes agreed with the FSM counterpart.

- **Deliverable:** Final Legal Recommendations Report – A report containing the Final Draft of Legislations/regulations and Management Recommendations, with stakeholders' feedback.

Stage 10: Awareness Raising/Dissemination and Other Activities

Prepare Terms of Reference (TOR) for subsequent consultancies aimed at developing awareness material and conducting awareness activities with dissemination of the new coastal fisheries legislation and or regulations, as well as at providing training to state agencies in implementing and enforcing the rules. The TOR will outline comprehensive guidelines for each consultancy phase

Awareness materials and activities shall be prepared in simple, culturally appropriate language and, where needed, translated or explained in local languages. They shall include information on rights and responsibilities, safe fishing, compliance requirements, grievance channels, and how reforms affect different user groups.

- **Deliverable:** TORs for subsequent consultancy/ies.

Stage 11: Final Consultancy Report

Compile all deliverables into a single, well-structured and organised document for future reference and audit, including any financial reporting required.

- **Deliverable:** Final Consultancy Report – A report including the Legislative Review, the Legal Gap Analysis and the Final Legal Recommendations, as well as Stakeholder Engagement Summaries and the Validation Workshop Report.

4. CONSULTANT'S TEAM

The assignment will be undertaken by a Consulting Firm which will build a strong technical team to enable satisfactory execution of the assignment. The suggested team composition and qualifications are indicative. The Consulting Firm will be engaged through CQS in accordance with the Bank's Procurement Policy and Procurement Regulations, following the submission of full technical and financial proposals. Experience in the assessment of fisheries data in developing countries, particularly experience in Pacific Island nations / FSM is highly desirable.

The total length of the assignment is expected to be 14 months. Proposing entities will determine the number and the nature of experts they will require to achieve the objectives of the contract, in accordance with their proposed approach and methodology. Any one of the key experts can be designated as Project Manager, and such expert should have at least five years of experience in leading or managing relevant projects.

Table 1. Indicative Key Personnel Required for the required Consultancy

Description of Qualifications/Potential Inputs	Key Personnel/Expertise
An experienced legal professional with expertise in fisheries and maritime law, as well as legislative review and drafting. Familiarity with the Pacific Islands context preferred and at least 10 years experience with legal work in resource management, preferably fisheries.	Fisheries Legal Expert
An experienced fisheries management professional with expertise in coastal fisheries management and regulation. Possesses a deep understanding of Pacific Island fisheries contexts and 10 years general fisheries management and policy development experience.	Fisheries Management Specialist / Fisheries Policy and Development Planner
A local liaison with experience in FSM fisheries or natural resource management with community facilitation skills and knowledge of FSM.	National Local Liaison / Community Facilitator
An FSM lawyer with familiarity with the national and state legal systems and traditional practices.	National Legal Expert

In addition to the above required key experts, proposing entities should include non-key experts in their technical proposal, personnel work plan, and financial proposal. All other "non-key experts" required in accordance with their proposed approach and methodology should be thus identified and included. Proposing entities should also identify and provide details of any external resources that may be co-opted onto the delivery team.

5. LEVEL OF INPUT & DURATION

It is expected that this assignment will take 14 months to complete and will require a total of 25.5 person-months input by key experts to complete. They will all work part time on the project under the oversight of the PROPER Project Manager and Working Groups. Consultant will organize and undertake all consultations and workshops in whatever form necessary to effectively collect information and compile for deliverables called for under this assignment.

Table 2. Expected effort and number of personnel per stage.

Stage(s)	Number of personnel	Expected effort (per person, person months)
1. Inception Phase and Inception Report	2	0.25
2. Desk Review and Compilation of Laws and Policies	3	1
3. Legal Analysis and Gap Identification	3	1
4. Stakeholder Engagement and Site Selection (1)	4	1
5. First Draft of Legislation and Management Recommendations	2	1
6. Stakeholder Engagement and Site Selection (2)	4	1
7. Second Draft of Legislation and Management Recommendations	2	1
8. Validation Workshop	4	0.5
9. Final Report with Workshop Feedback	2	1
10. Awareness Raising and Other Activities	2	0.5
11. Final Consultancy Report	2	1

6. **REPORTING / DELIVERABLES**

The Consulting Firm will report to the PROPER Project Manager and Working Groups. Upon engagement, the Consulting Firm will be required to submit the following deliverables according to the below timeline. Deliverables will be submitted electronically to the clients.

Table 3. Expected deliverables and timeline.

No.	Deliverable	Latest date expected (weeks after contract signing)
1	Inception Report	2
2	Legislative Review Report	4
3	Legal Gap Analysis Report	16
4	Stakeholder Engagement Summary	24
5	Preliminary Recommendations Report	28
6	Stakeholder Engagement Summary	32
7	Legal Recommendations Report	36
8	Validation Workshop Report	44
9	Final Legal Recommendations Report	48