

# CLIMATE-INDUCED MIGRATION AND THE COMPACT OF FREE ASSOCIATION (COFA):

## LIMITATIONS AND OPPORTUNITIES FOR THE CITIZENS OF THE REPUBLIC OF THE MARSHALL ISLANDS

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### POLICY BRIEF

MORRIS, K., BURKETT, M., &  
WHEELER, B. (2019)

THE MARSHALL ISLANDS  
CLIMATE AND MIGRATION  
PROJECT (MICMP)

 ENVIRONMENTAL LAW PROGRAM  
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CLIMATE ADAPTATION SCIENCE CENTER

 MICS  
*Marshall Islands Conservation Society*







Source: Kees van der Geest

# Climate-Induced Migration and the Compact of Free Association (COFA): Limitations and Opportunities for the Citizens of the Republic of the Marshall Islands

## *Policy Brief*

The Marshall Islands Climate  
and Migration Project (MICMP)

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# Introduction: Climate, Migration, and COFA

Well-documented ecological realities face the Republic of the Marshall Islands (“RMI”). The RMI is acutely vulnerable to sea level rise and flooding, heat, drought, storms, hurricanes, and the associated impacts on freshwater supplies. As such, many discussions concerning climate-induced migration (“CIM”) and the RMI have centered upon the risks associated with relatively near-term uninhabitability and the disruption of ecosystem services. At times, these have been discussed in tandem with socio-economic factors influencing the island’s fiscal dependencies and reconfiguring its citizens’ internal and international mobilities. The first segment of the Marshall Islands Climate and Migration Project (“MICMP”/“Project”), for instance, sought to better understand Marshallese perceptions of the linkages between such climatic stressors and their migration within the RMI and to destinations in the United States (“US”).

*The Marshall Islands Climate and Migration Project (MICMP)<sup>i</sup> studied how climate change affects the ecosystems and well-being of Marshallese migrants and communities in the RMI and in destinations in the US. The Project aimed to provide a nuanced account of environmental migration by triangulating current research on Marshallese migration with participatory research methods, the Q methodology for determining shared views within a population, and a statistical analysis of correlations between environmental factors and migration propensities. The respondents’ local expertise regarding their socio-economic and environmental experiences provide initial indicators of needed policy interventions on both local and broader levels of governance in light of climate change.*

While environmental dynamics are crucial to understanding Marshallese migrants’ decision-making, these factors also interact with a historical and contemporary legal landscape. This “lawscape” provides necessary context for achieving a more comprehensive understanding of the potential future(s) of climate-induced migrants, as well as enacting appropriate policies to meet the material and other needs along their full trajectory of possible migration decisions, including staying in place. The contamination and obliteration of Marshallese atolls, the long-term environmental dispossession and

*Source: Kees van der Geest*

displacement of islanders, and the impact of the US military presence and foreign aid in the region—together with the legal frameworks that have facilitated these events and processes—are key to understanding the current state of migration and the future well-being of the Marshallese under conditions of climatic change. Of particular importance is the Compact of Free Association (“COFA”/“Compact”), the major bilateral agreement governing the relationship between the RMI and the US.

This policy brief explores the relationship between COFA and the Marshallese experience under the conditions of a changing climate and a documented increase in migration. It begins by providing a legal overview of the **History of the Strategic Trust Territories of the Pacific and Nuclear Tests**, as well as the **COFA Compact Negotiations and the Nuclear Legacy**. Following this, it focuses on key **Migration Status** information found within COFA, coupled with more general comments on **Recent Migration Trends**. The brief then reviews **COFA and MICMP Research Findings**, presenting the challenges and opportunities the Marshallese currently face within the RMI and in destination states (Hawai’i, Washington, and Oregon) with respect to three indicators of well-being (**Economic Conditions, Health and Health Care**, and **Education**). This review is situated within the broader legal, policy, and academic literature. The brief concludes with comments on evolving legal provisions for the Marshallese and suggestions for further research.



Source: Kees van der Geest

# History of the Strategic Trust Territories of the Pacific and Nuclear Tests

The legal relationship between the RMI and the United States, underwritten by the Compact of Free Association, speaks to decades of social, environmental, and political history. Following World War II, when the Charter of the United Nations established the International Trusteeship System to aid economic development and governance, promote peace, and prevent international conflict in Africa and the Pacific, the United States began to administer the Marshall Islands as a Strategic Trust Territory<sup>ii</sup>. The islands under the Strategic Trust included the modern-day nations of Palau, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Northern Mariana Islands<sup>iii</sup>, which together constitute an area of land and sea roughly the size of the continental US.

While under the trusteeship, first administered by the US Navy and then by the US Department of the Interior, the United States erected a military base on Kwajalein. This base served as a command center for 67 atmospheric, ground, and underwater nuclear tests conducted between 1946 and 1958. The radiation from these tests had both ecological and human costs, the latter on account of the timing and distance associated with relocation efforts for Marshallese residents. The largest of the tests (Castle Bravo, in 1954) unleashed 15 megatons of power, or about 1,000 times that of the atomic bomb dropped on Hiroshima, obliterating three islands of the Bikini Atoll and dispersing fallout well beyond. During Castle Bravo, the US Navy left in place the Rongelapese and previously evacuated Bikinians (asked to temporarily relocate about a month before their evacuation), exposing them to radiation for over two days before evacuating them with nearby ships.<sup>iv</sup>

## COFA Compact Negotiations and the Nuclear Legacy

Though the nuclear tests ended in 1958, the US continued to search for ways to maintain its strategic control of the three US territories within Micronesia indefinitely. These included President John F. Kennedy's efforts to cultivate dependency through increased economic assistance<sup>v</sup> and President Richard Nixon's attempts to negatively influence the region's independence movements through annexation.<sup>vi</sup> After 17 years of challenging negotiations, the RMI signed the Compact of Free Association in 1986. For the Marshallese, this agreement effectively ceded "strategic control of their territory for a highly privileged relationship with the United States."<sup>vii</sup>

US gains from the Compact were significant, including defensive military control and veto power over a region considered critical to national security.<sup>viii</sup> For the RMI, aside from migration benefits (discussed in the next section), the Compact meant continued economic assistance from the US and recognition of the RMI's right to maintain sovereignty, self-determination, and self-governance.<sup>ix</sup> The legal impact of the nuclear legacy, relevant to both the discussion of MICMP findings and the continued influence of COFA on the Marshallese more generally, is also codified within the Compact. General compensation for nuclear damage is, for instance,

limited to four atolls and financially capped,<sup>x</sup> and it prevents the filing of claims in any court in the future.<sup>xi</sup> Medical benefits for those affected is limited to Section 177 of the Compact and its associated subsidiary agreement.<sup>xii</sup>

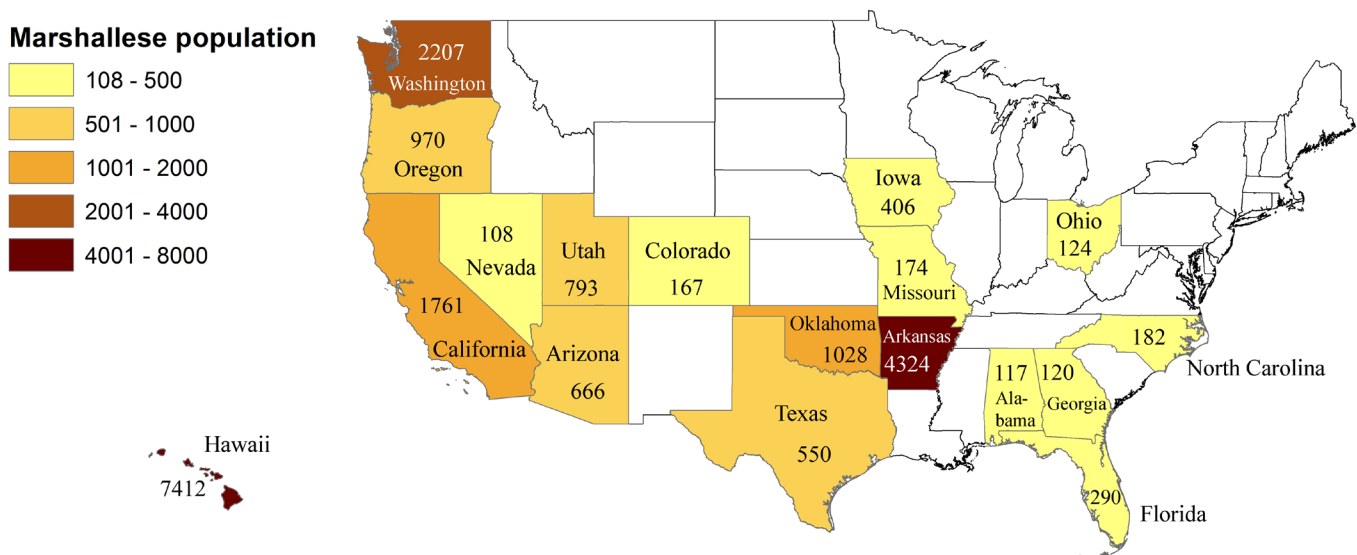
## Migration Status

The Compact allows the Marshallese to establish nonimmigrant residence status and obtain work under Article IV.<sup>xiii</sup> The Marshallese are not subject to certain limitations of the Immigration and Nationality Act (“INA”),<sup>xiv</sup> such as the need to meet “labor certification” requirements<sup>xv</sup> or to possess “a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document.”<sup>xvi</sup> The Compact does not, however, confer “the right to establish the residence necessary for naturalization” under the INA, or “to petition for benefits for alien relatives under that Act.”<sup>xvii</sup> Thus, the Marshallese do not automatically qualify for the benefits of legal permanent residency, as would a green card holder, but must apply for naturalization like other nonimmigrants to the US.

## Recent Migration Trends

The number of Marshallese residing in the US has risen sharply in the last two decades. The US Census Bureau (2010) reported that the population has tripled over the previous ten years, from 6,700 to 22,434, the majority of whom have moved to Hawai’i.<sup>xviii</sup> As this population grows steadily,<sup>xix</sup> destination states will continue to see an equivalent increase in expenditures,<sup>xx</sup> a cost sometimes referred to as the “Compact Impact.”

Figure 2: Marshallese population by U.S. state (2010)



Source: The 2010 Census Summary File 2, Profile of General Population and Housing Characteristics: 2010. Map by the authors.  
 Note: This map is for illustration purposes only. The boundaries and names shown and the designations used on this map do not imply official endorsement or acceptance by IOM.

In 2011, the US Government Accountability Office (GAO) published *Improvements Needed to Assess and Address Growing Migration* in order to offer guidance on “address[ing] compact migrants’ impact and needs” in so-called “affected jurisdictions” like Hawai’i, Guam, and the Northern Mariana Islands.<sup>xxi</sup> The report detailed impacts on educational, health, and social services that contribute to costs associated with increased migration. While the environment is referenced in regard to sector grants that partially mitigate the “Compact Impact,” climatic change impacts are not addressed.

The importance of the MICMP is notable here because it provides information on the first-hand experience of climatic change and the migration decisions of the Marshallese in the wider context of historical, legal, and environmental regulation under COFA. In the following section, MICMP research findings are addressed, supplemented with contextual background provided by expert interviews and broader literature on economic conditions, health and health care, and education pertaining to COFA migrants.

## COFA and MICMP Research Findings

The MICMP studied how climate change affects the ecosystems, livelihoods, and well-being of Marshallese migrants and communities in the RMI and in destinations in the US. The research team conducted fieldwork using mixed methods, including a household questionnaire, Q-Study<sup>xxii</sup> interviews (both undertaken in the RMI and destination states), and participatory research approaches (within the RMI). While the MICMP did not pose questions about COFA directly to interviewees, all respondents are subject to its provisions. Their expertise regarding conditions in the RMI and in destination states thus provides initial indicators of needed policy interventions on both local and broader levels of governance in light of climate change.

The Marshallese have shared their concerns regarding long-standing difficulties, such as infrastructural and environmental problems, disaster preparedness, and national relief strategies, all of which interact with climate change and the provision of ecosystem services. They have also identified the inadequacy of health care, employment, education, and social services in the RMI as central motivations of their migration. These findings also provide context that makes it clear that, despite COFA’s provisions for migration pathways, the Marshallese who have moved to the US face discrimination and an array of issues accessing services, and a high percentage report receiving government welfare.<sup>xxiii</sup>





# Economic Conditions and COFA Migrants

“We are in a state of emergency. The government relies on Japan, [the] US, Australia, and Taiwan for infrastructure support. Japan resurfaced roads. In this way, other countries are spoon-feeding RMI as opposed to maintaining resources and sustainable development.”

*Marshallese respondent living in Hawai'i, commenting on their Q-sort<sup>xxiv</sup> of the statement, 'In RMI we are quite able to deal with disasters, such as droughts, floods and storms.'*

COFA's broad economic imperative for the Marshallese is advancement and self-reliance, with its provisions on economic relations covering annual grant assistance on behalf of education, health, private sector development, capacity building in the public sector, environmental protection, humanitarian assistance, public infrastructure and disaster assistance, and budget and investment frameworks, among others. Despite this, numerous scholars have concluded that the United States has done little to assist with the economic development of the RMI over the intervening decades since COFA's passage,<sup>xxv</sup> in addition to the initial years of its trusteeship. This friction culminated in the 2003 amendments, such as authorizing appropriations for grants to affected jurisdictions (including Hawai'i), declaring that at least 30 percent of the US-RMI Compact would be "invested in infrastructure improvements and maintenance,"<sup>xxvi</sup> and adding a trust fund to aid self-reliance after 2023.<sup>xxvii</sup> These provisions continue to be criticized as woefully inadequate in their ability to achieve their stated goals.<sup>xxviii</sup> For example, a 2016 report from the GAO found that during the ten years following the amended compact (2003),<sup>xxix</sup> lack of reliable performance data and difficulties ensuring accountability for Compact funding continued to be the most significant weaknesses in achieving Marshallese self-reliance.<sup>xxx</sup> COFA required both the COFA nations and the US to conduct annual reports on expenditures, but those issuing from the COFA nations were often insufficient for establishing whether Compact funding was being put toward economic development.<sup>xxxi</sup> In addition, US consultation with Compact nations did not occur until eight years after adoption, due to disagreement as to which agency was generally responsible for oversight of the relationship.<sup>xxxii</sup> The Office of Insular Affairs ("OIA") blamed the problem on staffing shortages, budget constraints, and a lack of authority to enforce Compact requirements.<sup>xxxiii</sup> As such, development aid is still crucial to the economic survival of the Marshallese in the RMI.

With the economic provisions of the Compact due to expire in 2023, and the Marshall Islands' near complete dependence on foreign aid, the Asian Development Bank projected that the likelihood of the RMI trust funds maintaining their values through the planned goal of 2050 was less than half.<sup>xxxiv</sup> These funds have decreased each year since their establishment, and the GAO's most recent report on the Compact in 2016 found that "neither country had made significant progress in implementing reforms needed to improve tax income or increase private sector investment opportunities" in preparation for the change to trust fund payouts in 2023.<sup>xxxv</sup>

These reports on the inadequacies of future COFA economic assistance, coupled with the threat of compounding climate impacts, may prove to be the tipping point for further migration to US destinations. Additionally, while the current US administration continues to downplay the effects of climate change, the federal government, particularly the US military, is fully aware of the risks.<sup>xxxvi</sup> Kwajalein has already been fortified to withstand rising tides and so have many other bases around the US.<sup>xxxvii</sup> However, this same threat exists for nearby atolls the Marshallese currently inhabit. As such, legal questions about the safeguarding of these outer island communities are raised—for instance, in relation to honoring Compact Section 311, which notes the obligation to protect the RMI “and its people from attack or threats thereof as the United States and its citizens are defended.”<sup>xxxviii</sup>

The respondents of the MICMP contribute to such conversations via their testimony on the economic perils and possibilities of migration to the US under COFA, both broadly and on a more granular level. An instance of the former is interviewees’ comments that the pattern of sustained growth in the RMI following the amendment of the Compact was due to significant increases in grant assistance from the United States and the Republic of China. More granularly, roughly half of the migrant respondents currently living in each of the destination states cited “quite a positive” influence that migration had on the economic situation and well-being of family members in the RMI.<sup>xxxix</sup> Marshallese responses illustrate the economic tethering of the Marshallese who have migrated to those who remain in the RMI, with 70 percent of respondents sending remittances home from Hawai’i and roughly 85 percent from the Pacific Northwest. Despite this, the types of employment COFA migrants in destination states obtain are predominantly low-salary private employment in elder care and care for the disabled, or work in canning factories and supermarkets. Further, the high cost of living in Hawai’i has led to an estimated 1,150 homeless COFA migrants, information which has filtered into negative articles about Hawai’i’s homeless populations.<sup>xl</sup>

## Health, Health Care, and COFA Migrants

“People are very sick back home—we need hospitals, doctors, and medications. The majority of people are ill because of bombings, our water, the heat, and the fact we have no healthy fruits or vegetables.”

*Marshallese respondent living in Hawai’i, commenting on their Q-sort of the statement, ‘Seeking better healthcare is one of the main reasons the Marshallese move to US.’*

Issues of migration and health are intimately connected for the Marshallese. In the RMI, there are limited facilities to manage health care, and indicators that a significant portion of the government’s health-care budget is being used for off-island care.<sup>xli</sup> COFA addresses health-care provisions in numerous places—for instance, in the application of annual grant assistance, meant to “improve the delivery of preventative, curative, and environmental care and develop the human, financial, and material resources necessary for the Republic of

the Marshall Islands to perform these services,<sup>xliii</sup> and also within a discussion of humanitarian assistance for the “special development needs of the RMI.”<sup>xliii</sup> The original Compact of 1986 appeared during the negotiations as a way of ensuring that the US would continue to provide medical services to the COFA nations after the trust ended. In light of their immigration status as nonimmigrant “qualified aliens,” the Compact also entitled COFA citizens to Medicaid.<sup>xliiv</sup>

However, COFA migrants have not always been protected from broader US policy changes, such as previous exclusions from welfare programs, and they may also be subject to different services depending on their destination state. In 1996, for instance, the US passed the Personal Responsibility and Work Opportunity Reconciliation Act (“PRWORA”), which redesignated COFA nationals as “non-qualified aliens” and officially revoked their access to nearly all federal public assistance, including Medicaid.<sup>xlv</sup> The renegotiated Compact of 2003 did not address this issue. In Hawai’i, despite a five-year legal battle to ensure the state provided health care to COFA citizens, the state decided upon the removal of a high percentage of Marshallese from its Med-Quest roster.<sup>xlvi</sup> Further, COFA citizens that are receiving health care in Hawai’i are often not “formally referred by their government health services,” but obtain their own public health insurance, such as Medicaid.<sup>xlvii</sup> Such issues illustrate that access to affordable health care programs for the Marshallese is highly dependent upon the state to which they choose to migrate, and subject to the shifting provisions within them.

Respondents of the MICMP reiterate some of these health-care related issues through their lived experience, reflecting upon both long-running and multiple-issue concerns, as noted in the quotation that opens this section of the brief. These findings are coupled with the perception by COFA migrants that, in all destination states, there has been a large improvement in health care (respondents in Hawai’i ranked it as the most improved indicator of well-being, and those in the Pacific Northwest ranked it second, after employment).

## Education and COFA Migrants

“Climate change was initially not a factor. We move for better education, but now I could not return. I am terrified of living on the atolls when you can hear the ocean pounding the reef.”

*Marshallese respondent living in Hawai’i commenting on sea level rise as a factor that would affect their decision to migrate back to the Marshall Islands*

COFA purports to “support and improve the educational system of the Republic of the Marshall Islands and develop the human, financial, and material resources necessary for the Republic of the Marshall Islands to perform these services” [Article 1, Section 211(a)]. Nonetheless, in the RMI, the scarcity of resources has led the Office of Insular Affairs to report that half of high-school graduates attending college do so with only the equivalent of a fourth- to sixth-grade education in the US.<sup>xlviii</sup> For the few who decide to attend college in the

RMI, there is one school available and it only offers a two-year program.<sup>xlix</sup> Pell Grants continue to cover nearly all of the students' tuition in the RMI, but only one-fifth of the students complete their course of study.<sup>l</sup> Pell Grants are thus limited when considered in the context of lacking elementary and secondary education,<sup>li</sup> as well as in regard to their frequent use in remedial classes that prevent funding for completing classes needed to graduate.<sup>lii</sup> This context may explain MICMP findings that the "relative absence of educational opportunities in the RMI" is a key driving motivator of migration.<sup>liii</sup>

Language skills among the Marshallese who arrive in the US are also a factor in educational support, and are a challenge for migrants and local governments. When considering the inadequacy of the education systems in the RMI, it is no surprise that many of the migrants arrive with limited job skills and low levels of proficiency in English.<sup>liv</sup> In Hawai'i and the Pacific Northwest, respectively, 75 percent and 62 percent of interviewees in the MICMP self-identified as English speakers. This need for specialized language services has caused states such as Hawai'i to spend, for instance, more than \$87 million in 2014 to educate 8,165 COFA students.<sup>lv</sup> Additionally, cultural and linguistic discrimination is in play, with COFA parents claiming that many of their children do not succeed in Honolulu's schools on this account.<sup>lvi</sup>

## Conclusion: COFA and the Future

COFA, and the experience of living under its evolving legal provisions and interpretations, is critical to understanding the past, present, and future migration from the Marshall Islands. The long relationship between the RMI and the United States, governed by the Compact of Free Association, has resulted in the complicated matrix of dependence and responsibility detailed in this brief. This relationship sets the scene for a future in which the climate-induced migration of COFA migrants may occur at an increasing rate, and may also be subject to limitations in support structures that can be explained, in part, through examining the various legislative acts that write the history of free association.

In response to these concerns, delegates from Hawai'i, Guam, and the Northern Mariana Islands<sup>lvii</sup> reintroduced the Compact Impact Relief Act in January of 2018,<sup>lviii</sup> which is meant to decrease burdens on Hawai'i by providing the state with federal funding to support health care, education, social services, public safety, and additional services.<sup>lix</sup> The bill similarly proposes the reestablishment of COFA migrant eligibility for federally funded programs and requires that this funding serve COFA migrants without removing benefits from US citizens.<sup>lx</sup> Hawai'i senators and representatives<sup>lxi</sup> have also introduced the Covering Our FAS Allies Act with the goal of allowing COFA migrants to obtain access to Medicaid coverage from the federal government.<sup>lxii</sup> This is of significance because it would also cover the Marshallese in other destination states,<sup>lxiii</sup> such as Arkansas and Oklahoma, neither of which currently cover COFA migrants within their Medicare programs.<sup>lxiv</sup>

As the RMI transitions to trust fund income, it is also crucial to understand the impact renegotiation of the Compact may have on migration. With 2023 quickly approaching, some have suggested that migration to Hawai'i will continue to grow due to misunderstandings concerning what the end of the Compact means and fears that the migration policy will be rescinded.<sup>lxv</sup> The 2018 GAO report adds to this uncertainty by making



*Source: Kees van der Geest*

no mention of migration in its discussion of actions needed for this transition, beyond the right to move that is mentioned in a footnote.<sup>lxvi</sup> Such factors may be compounded by the aforementioned ecological concerns, noted in the findings of the MICMP around changes to ecosystem services in several locations within the RMI.

This brief articulates the “lawscape” upon which the MICMP will proceed with further research. It is crucial to explore questions regarding adequate process and funding to support the decisions made by the RMI in regard to its sovereignty and self-determination, and by the Marshallese who choose to migrate or stay in place. We must also insert the critical nature of climate change into pending legal questions, asking whether COFA’s provisions for current migration is applicable to future climate-induced migration. As the Marshallese face the possibility of the expiration of certain economic provisions in 2023, and continue to indicate the diversity of experience migrants have in US resettlement contexts, such questions will help us better engage with planning and legislating through uncertainty.

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works and researches at the moral-legal interfaces of migration in the field of geography. She holds an MA in Forced Migration (University of the Witwatersrand, South Africa) and is completing her PhD at the Graduate School of Geography at Clark University. Her previous work has focused most extensively on matters of human and object-based repatriation processes and dialogues, and the historical and social-environmental interpretation of materiality and cultural space. She has engaged her concern with matters of reparation, historical justice, death-and-dying work, and the future of environmental migration in various research, editing, teaching and project-based work.

# References (Endnotes)

- i van der Geest, K., Burkett, M., Fitzpatrick, J., M. Stege, and Wheeler, B. (2019). Marshallese migration: The role of climate change and ecosystem services. *Case study report of the Marshall Islands Climate and Migration Project*. University of Hawai'i at Mānoa. Available at [www.rmi-migration.com](http://www.rmi-migration.com)
- ii See Timothy H. Bellas, *The Northern Mariana Islands Judiciary: A Historical Overview*, Chapter 5, "The Trust Territory of the Pacific Islands," NORTHERN MARIANAS JUDICIARY HISTORICAL SOCIETY (2011), at 35.
- iii G.A. Res. 21, Apr. 2, 1947, UN Treaty Series Vol. 8, (originally published as S/318), at art. 2.
- iv *History of Failures*, *supra* note 1, at 26–28.
- v See Anthony Solomon, *The Solomon Report: America's Ruthless Blueprint for the Assimilation of Micronesia*, (1969), at 2. (The "Solomon Report" recognized the growing trend within the UN for fostering independence and promoting self-governance and noted that it would "become more than embarrassing" to be "the only nation left administering a trust territory.")
- vi Cameron Jack Andrews, *Micronesia in Modern Politics*, UT AUSTIN PLAN II HONORS PROGRAM, December 14, 2017, at 47, [hereinafter *Micronesia Politics*].
- vii *Micronesia Politics*, *supra* note 3, at 54.
- viii *History of Failures*, *supra* note 1, at 4.
- ix Compact of Free Association, U.S.–Micronesia & Marshall Islands, Pub. L. No. 99-239, 99 Stat. 1770 (1986). (COFA carried over the same major principle from the TTPI of "promoting the economic advancement and self-sufficiency of the peoples of the Trust Territory of the Pacific Islands.")
- x *Imagining the Marshalls*, at 353.
- xi Arthur John Armstrong et al., "The Negotiations for the Future Political Status of Micronesia (1980–1984)," THE AMERICAN JOURNAL OF INTERNATIONAL LAW, Vol. 78, No. 2 (April, 1984) at 493, summarizing Section 177(a), Pub. L. No. 108–188, 117 Stat. 2772 (2003).
1. A claims fund of \$150 million will be provided to the Marshall Islands Government and invested in interest-earning bonds, notes, or other redeemable instruments to create a potentially permanent endowment for payment of nuclear claims;
  2. the proceeds of the fund will be utilized for payments to persons known to be affected by the nuclear testing program (specifically, the people of Bikini, Enewetak, Rongelap, and Utirik), and to fund a Marshallese claims tribunal to pay unknown or currently unknowable claims, and for medical care and other assistance to the Marshall Islands; and
  3. in exchange for establishment of this settlement fund, the Marshall Islands Government espouses and settles all claims of its citizens arising from the nuclear testing program.
- xii Agreement Between the Government of the United States of America and the Government of the Republic of the Marshall Islands Implementing Section 216 and Section 217 of the Compact, as Amended, Regarding a Trust Fund, US DEP'T OF STATE.
- xiii Pub. L. No. 108–188, 117 Stat. 2772 (2003), at Section 141(a).
- xiv *Id.*
- xv 8 USC. 1182(a)(5).
- xvi 8 USC. 1182(7)(B)(i)(II).
- xvii Pub. L. No. 108–188, 117 Stat. 2772 (2003), at Section 141(h).
- xviii Pearl Anna McElfish et al., "Effect of US Health Policies on Health Care Access for Marshallese Migrants," AM. J. PUBLIC HEALTH Vol. 105, No. 4, 637–643, (April 2015), at 638. (The exact number of migrants is difficult to ascertain considering their ability to freely come and go from the US without a visa.)
- xix Dina Shek et al., "Health Care for Micronesians and Constitutional Rights," HAWAII MED J. (11 Suppl 2): 4–8 (Nov. 2011), at 4.
- xx US Gov't Accountability Office Testimony Before the Committee on Energy and Natural Resources and US Senate, COMPACTS OF FREE ASSOCIATION: ISSUES ASSOCIATED WITH IMPLEMENTATION IN PALAU, MICRONESIA, AND THE MARSHALL ISLANDS, GAO-16-550T (April 5, 2016), at 19. (The trust fund is capped at \$150 million, yielding \$270 million over the duration of the Compact.)
- xxi U.S. GOV'T ACCOUNTABILITY OFF., GAO-12-64, IMPROVEMENTS NEEDED TO ASSESS AND ADDRESS GROWING MIGRATION 41 (2011).
- xxii The Q methodology is a research process by which shared views within a target population can be identified. The respondents in the MICMP were presented with 40 statements regarding topics such as, the state of ecosystem services, impacts of migration, and expectations of future habitability (including, for instance, 'I will never leave my island' and 'High tides and storms [are] more frequent'). They were asked to sort (q-sort) these statements by their general level of agreement (agree, don't agree, neutral), and then to arrange these statements into a pyramid, where there are more 'neutral' locations in the center of the pyramid,

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and fewer on the tapering ends, where respondents would place statements with which they had strong agreement or disagreement. Following this, the researcher asked the respondent questions about the statements they placed in the most extreme positions of the q pyramid. The MICMP identified three groups among respondents living in the RMI: migration critics, adaptation optimists, and island pessimists. Data for the destination states and further detail on this methodology can be found in the Case Study Report, accessible at <https://rmi-migration.com/full-case-study-report>.

xxiii See Forthcoming Case Study Report, (52.5% in the Pacific Northwest, and 42.5% in Hawai'i in this study).

xxiv See Endnote *xxi*

xxv See US Gov't Accountability Office Report to Congressional Requesters, US FUNDS TO TWO MICRONESIAN NATIONS HAD LITTLE IMPACT ON ECONOMIC DEVELOPMENT, GAO/NSIAD-00-216 (Sept. 2000), at 10. (According to a GAO report conducted before the renewal in 2003, the Compact funds "led to little improvement in economic development.")

xxvi Compact of Free Association Amendments Act of 2003, Pub. L. No. 108-188 (2003).

xxvii Agreement Between the Government of the United States of America and the Government of the Republic of the Marshall Islands Implementing Section 216 and Section 217 of the Compact, as Amended, Regarding a Trust Fund, U.S. DEP'T OF State, at art. 3. (States that the fund is "for assistance in education, health care, the environment, public sector capacity building, private sector development, and public infrastructure described in Section 211 of the Compact.")

xxviii *Id.*

xxix In contrast to the original Compact where annual lump sum payments were given to the RMI government, the amended Compact of 2003 provides economic assistance through "sector grants" that decrease annually from 2004 through 2023 and must be applied to the designated sector (i.e., education) directly.

xxx US Gov't Accountability Office Testimony Before the Committee on Energy and Natural Resources and US Senate, COMPACTS OF FREE ASSOCIATION: ISSUES ASSOCIATED WITH IMPLEMENTATION IN PALAU, MICRONESIA, AND THE MARSHALL ISLANDS, GAO-16-550T (April 5, 2016), at 16.

xxxi *Id.*

xxxii *Id.* at 12.

xxxiii *Id.* at 19.

xxxiv *Id.* at 17.

xxxv *Id.*

xxxvi See generally General Ronald Keys, US Air Force et al., *Sea Level Rise and the US Military's Mission*, THE CENTER FOR CLIMATE AND SECURITY (Sept. 2016), [https://climateandsecurity.files.wordpress.com/2016/09/center-for-climate-and-security\\_military-expert-panel-report2.pdf](https://climateandsecurity.files.wordpress.com/2016/09/center-for-climate-and-security_military-expert-panel-report2.pdf). ("To use military parlance, the theater is, in essence, flooding. Adjusting to that rapidly changing theater will be absolutely critical for the US military to maintain its ability to fulfill its mission, and for the United States to adequately pursue its national security interests.")

xxxvii See *Id.*

xxxviii Pub. L. No. 108-188, 117 Stat. 2772 (2003), at Section 311(b)(1).

xxxix See forthcoming Case Study Report, (53.85% of interviewees in the Pacific Northwest, and 77.5% in Hawai'i).

xl *Report for the Governor, supra* note 113, at 6.

xli Ann M. Pobutsky et al., "Micronesian Migrant Health Issues in Hawai'i: Part 1: Background, Home Island Data and Clinical Evidence," CAL. J. OF HEALTH PROMOTION, Vol. 7, 16-31 (2009), at 18.

xlvi Compact of Free Association Amendments Act of 2003, Pub. L. No. 108-188, 117 Stat. 2772 (2003), at Section 291(a).

xlvi *Id.* at 291(c). See also Section 314, which speaks to security and defense relations, explicitly states that the US will not, unless otherwise agreed, "test, dispose of, or discharge any other radioactive, toxic chemical or biological materials in any amount or manner that would be hazardous to public health or safety."

xlvi *Id.*

xlvi Personal Responsibility and Work Opportunity Reconciliation Act of 1996. Pub. L. No. 104-193, 110 Stat. 2105 (1996).

xlvi *Id.*

xlvi *Id.*

xlvi US Gov't Accountability Office Report to Congressional Requesters, FOREIGN ASSISTANCE: EFFECTIVENESS AND ACCOUNTABILITY PROBLEMS COMMON IN US PROGRAMS TO ASSIST TWO MICRONESIAN NATIONS, GAO-02-70 (Jan. 2002), at 30.

xlvi College of the Marshall Islands and College of Micronesia.

l See National Center for Education Statistics, College of Micronesia—FSM, accessed July 9, 2018, <https://nces.ed.gov/collegenavigator/?q=College+of+Micronesia&s=all&id=243638#retgrad>.

li US Gov't Accountability Office Report to Congressional Requesters, FOREIGN ASSISTANCE: EFFECTIVENESS AND ACCOUNTABILITY PROBLEMS COMMON IN US PROGRAMS TO ASSIST TWO MICRONESIAN NATIONS, GAO-02-70 (Jan. 2002), at 29.

li *Id.*

liii See Forthcoming Case Study Report.



- liv Ann M. Pobutsky et al., "Micronesian Migrant Health Issues in Hawai'i: Part 1: Background, Home Island Data and Clinical Evidence," CAL. J. OF HEALTH PROMOTION, Vol. 7, 16–31 (2009), at 18.
- lv David Ige, *FY2011–FY2014 Hawaii Compact Impact Report*, HAWAII GOVERNOR OF THE STATE OF HAWAII (Aug. 27, 2015), at 2.
- lvi Sheila M. W. Matsuda, "Drop-Out or Push-Out? Micronesian Students in Honolulu," PASS-USA (May 12, 2016), <http://www.pass-usa.net/micronesians-students-honolulu>.
- lvii Congresswoman Madeleine Z. Bordallo of Guam, Congresswomen Colleen Hanabusa and Tulsi Gabbard of Hawai'i, and Congressman Gregorio Kilili Camacho Sablan of the Northern Mariana Islands.
- lviii Compact Impact Relief Act, H.R. 4761–115th Congress. (Written to cover the additional costs borne by the state outside of just medical coverage.)
- lix *Marianas Variety News and Views*, "Bordallo, Hanabusa, Gabbard, Sablan Reintroduce Compact Impact Relief Act," accessed June 20, 2019, <http://www.mvariety.com/images/photos/2018/01-Jan/12/MV%2001-12-18/JAN12/page21.pdf>.
- lx *Id.*
- lxi Sens. Mazie Hirono and Brian Schatz, and Reps. Colleen Hanabusa and Tulsi Gabbard.
- lxii Covering our FAS Allies Act, H.R. 2982–115th Congress.
- lxiii *Id.*
- lxiv Pearl Anna McElfish et al., "Effect of US Health Policies on Health Care Access for Marshallese Migrants," AM. J. PUBLIC HEALTH Vol. 105, No. 4, 637–643 (April 2015), at 640; also See Zoe Carpenter, "The Fallout," NARRATIVELY (JULY 7, 2017), <http://narrative.ly/how-years-of-ruthless-nuclear-testing-in-the-south-pacific-forged-americas-most-impooverished-ethnic-group/>. (Story of the COFA communities in Oklahoma and their struggles in a state that chooses not to provide Medicare to them.)
- lxv Jacob Appel et al., *Hawaii's COFA Islanders: Improving Health Access and Outcomes—A report for the Governor of Hawaii, David Ige*, Princeton Univ. Woodrow Wilson School of Public and International Affairs, January 2017, at 14.
- lxvi U.S. GOV'T ACCOUNTABILITY OFF., GAO-18-415, Compact of Free Association, Actions Needed to Prepare for the Transition of Micronesia and the Marshall Islands to Trust Fund Income 9 n.13 (2018).



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