

COMPACT OF FREE ASSOCIATION

Military Use and Operating Rights

**Agreement between
the UNITED STATES OF AMERICA
and the MARSHALL ISLANDS**

Signed at Majuro April 30, 2003

with

Agreed Minutes and Annexes

and

Related Agreement

Effected by Exchange of Letters
March 23, 2004



NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89—497, approved July 8, 1966
(80 Stat. 271; 1 U.S.C. 113)—

“ . . .the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof.”

MARSHALL ISLANDS

**Compact of Free Association: Military Use and
Operating Rights**

*Agreement signed at Majuro April 30, 2003;
Entered into force May 1, 2004.
With agreed minutes and annexes.
And related agreement.
Effected by exchange of letters
March 23, 2004;
Entered into force March 23, 2004.*

**Agreement Regarding the
Military Use and Operating Rights
of the Government of the United States in
the Republic of the Marshall Islands
Concluded Pursuant to Sections 321 and 323 of the
Compact of Free Association, as Amended**

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**Agreement Regarding the
Military Use and Operating Rights
of the Government of the United States in
the Republic of the Marshall Islands
Concluded Pursuant to Sections 321 and 323 of the
Compact of Free Association, as Amended**

This agreement sets forth the military use and operating rights of the Government of the United States in the Republic of the Marshall Islands, and is concluded pursuant to Sections 321 and 323, Title Three of the Compact of Free Association (the Compact), as amended.

Article I

Definitions

The Definition of Terms set forth in Article VI of Title Four of the Compact, as amended, and the Definitions set forth in paragraph 2 of Article I of the Status of Forces Agreement Concluded Pursuant to Section 323 of the Compact (the Status of Forces Agreement), as amended, are incorporated in this Agreement.

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Article II

Applicability of Status of Forces Agreement

The provisions of the Status of Forces Agreement, as amended, shall apply.

Article III

Provision of Defense Sites

1. The Government of the Republic of the Marshall Islands shall provide to the Government of the United States the defense sites identified in Annex A to this Agreement. Specific arrangements for the establishment and use by the Government of the United States of defense sites in addition to those set forth in Annex A shall be in accordance with Section 321 of the Compact, as amended.

2. Pursuant to section 321(b) of the Compact of Free Association, as amended, the Government of the Republic of the Marshall Islands shall give favorable consideration to the request of the Government of the United States for additional defense sites. These defense sites shall be mutually agreed between the two Governments and incorporated by Annexes which shall become integral parts of this Agreement. In connection with the provision of the additional defense sites, any compensation, other use charges or other consideration due to persons with interests in land in the Republic of the Marshall Islands, and all legal arrangements related thereto, shall be provided by, and are the responsibility of, the Government of the Republic of the Marshall Islands.

Article IV

General Military Use and Operating Rights

1. Consistent with Section 352 of the Compact, as amended, the Government of the United States has free access to and unrestricted control of the defense sites, including the right to control entry to and exit from any or all defense sites and the right to take necessary measures for their establishment, use and operation. The Government of the United States may take, within the defense sites and within the sea beds, water areas and air space adjacent to or in the vicinity of the defense sites, such measures as are necessary for the use, security and defense of the defense sites. These measures include the right:

(a) To maintain the defense sites and to construct structures and improvements thereon;

(b) To improve and deepen the harbors, channels, entrances, and anchorages, to dredge and fill and generally to fit the premises to their intended use;

(c) To control anchorages and moorings adjacent to or within the vicinity of the defense sites, and movements of ships and waterborne craft, to, from and within the defense sites;

(d) Subject to the provisions of paragraph 2 of Article V of this Agreement, to control aircraft operations to, from and within the defense sites and to control aircraft movement in the air space adjacent to or in the vicinity of the defense sites;

(e) To regulate and control all official communications of the Government of the United States and its contractors to, from and within the defense sites subject to the separate agreement between the Government of the United States and the Government of the Republic of the Marshall Islands on communications referred to in Article III of Title One of the Compact, as amended;

(f) To prevent interference from any source whatsoever with all official communications of the Government of the United States and its contractors;

(g) To install, maintain, use and operate defense-related oceanographic, aeronautical, space communications, and other military or scientific systems and equipment; and

(h) To advise and assist, by means of visual and radio vectoring, safe passage of ships and aircraft through areas made hazardous by periodic missile and other test operations after, or concurrent with, notification to the Government of the Republic of the Marshall Islands.

2. In conducting its activities in the defense sites, the Government of the United States shall use its best efforts to:

(a) Avoid interference with commercial activities including the exploitation of living and non-living resources of the sea;

(b) Avoid interference with navigation, aviation, communication and land or water travel in the Republic of the Marshall Islands;

(c) Minimize damage to the terrain and to reef areas;

(d) Minimize unnecessary adverse effects to the environment, including water areas;

(e) Avoid activities which would adversely affect the well-being of the residents of the Republic of the Marshall Islands; and

(f) Notify the Government of the Republic of the Marshall Islands of non-routine activities so that the Government of the Republic of the Marshall Islands may take steps to assist the Government of the United States in executing its responsibilities to minimize any adverse impact of such activities.

3. Except for Meck, Illeginni, Gagan and Legan, the islands and the area of the Mid-Atoll Corridor defined in Annex A shall be open to visitation unless closed temporarily on orders of the United States Army Kwajalein Atoll Commander in order to avoid interference with operations of the defense sites or to avoid posing safety hazards to individuals in the area. Notice of these periods of closure shall be given to the Government of the Republic of the Marshall Islands in a timely manner. In no event will there be less access to the Mid-Atoll Corridor than 126 days each calendar year. Unless mutually agreed, no new construction will be permitted on the Mid-Atoll Corridor Islands. The Commander, United States Army Kwajalein Atoll, shall designate the periods of temporary closure, and shall establish the basis for visitation to Omelek, Gellinam and Eniwetak Islands. This basis shall include temporary habitation by up to 19 persons on Omelek, who can fish from Gellinam and Eniwetak. Consistent with United States activities, on Eniwetak, the Commander, United States Army Kwajalein Atoll, shall allow temporary habitation on that island as well. The Governments of the United States and the Republic of the Marshall Islands may, from time to time, consult regarding such modifications to visitation arrangements as may be mutually agreed.

4. The Government of the United States may invite members of the armed forces of other countries to use defense sites pursuant to this Agreement, in conjunction with and under the control of the United States Armed Forces. Use by units of the armed forces of other countries of such defense sites, other than for transit and over flight purposes, shall

be subject to consultation with and, in the case of major units, approval by the Government of the Republic of the Marshall Islands.

5. The provisions of Section 173 of the Compact, as amended are incorporated by reference into, and become a part of, this Agreement. The Signatory Governments may, from time to time, consult regarding the implementation of this paragraph.

Article V

Shipping and Aviation

1. The Government of the United States may place or establish in the defense sites and the water areas adjacent thereto or in the vicinity thereof, lights and other fixed and floating aids to navigation of vessels and aircraft necessary for operations pursuant to this Agreement. The Government of the United States shall consult with the Government of the Republic of the Marshall Islands on the position or characteristics of and any alterations to such aids to navigation.

2. Aircraft owned or operated by the Government of the Republic of the Marshall Islands and aircraft of Air Marshall Islands or its successor shall have access to and use of the airfield and related facilities located on the Kwajalein Island defense site, subject to United States military requirements and security interests. The Government of the United States shall give sympathetic consideration to requests by the Government of the Republic of the Marshall Islands for access to and use of this airfield and related facilities by other aircraft. This access and use shall be subject to agreement between the Government of the United States and the Government of the Republic of the Marshall Islands. Aircraft may also land at other defense sites with the prior consent of the Government of the United States.

Article VI

Law Enforcement and Security

1. Regularly constituted military units of the Armed Forces of the United States and civilian security guards of the Armed Forces of the United States or security personnel under contract to or employed by the Government of the United States shall have the right to police the defense sites, and may take all appropriate measures to ensure the maintenance of law and order on the defense sites. United States military police or civilian security guards shall not be used outside the defense sites for law enforcement purposes, except as may be agreed with the Government of the Republic of the Marshall Islands.
2. The Government of the Republic of the Marshall Islands shall take all reasonable measures within its power to ensure the safety and security of United States military and civilian personnel and property in the Republic of the Marshall Islands, as well as the protection of such property from seizure by or conversion to the use of any entity or Party other than the Government of the United States, without the prior consent of the Government of the United States. The Armed Forces of the United States are authorized to provide internal security of those facilities and areas assigned to their exclusive use. External security for the defense sites will be conducted by the Government of the Republic of the Marshall Islands in close coordination with U.S. forces. If the Government of the Marshall Islands cannot provide adequate external defense of the defense sites, United States forces will be permitted to exercise their inherent right of self-defense.
3. The Government of the United States and the Government of the Republic of the Marshall Islands shall cooperate on the suspension of innocent passage during missile testing operations and on the enforcement of such suspensions in accordance with Annex C. References in Annex C to the Lomor would include successor vessels.

Article VII

Community Relations Council

The Government of the Republic of the Marshall Islands and the Government of the United States shall each designate representatives to a Community Relations Council, the purpose of which will be to identify and consider all matters, with the exception of those pertaining primarily to issues of labor relations addressed by the Joint Labor Relations Board under Article VIII of this Agreement, affecting relations between the defense sites and local Marshallese communities and to recommend actions as appropriate.

Article VIII

Joint Labor Relations Board and Employment of Labor

1. The Government of the Republic of the Marshall Islands and the Government of the United States shall each designate representatives to a Joint Labor Relations Board, the purpose of which will be to identify and consider issues of labor relations arising out of the operations of the defense sites, and to recommend actions as appropriate. The Board shall:

(a) meet no less than annually to review, evaluate, and make recommendations concerning wages and other terms and conditions of employment for local hire personnel who are in the employment of United States contractors;

(b) provide an annual report to the Government of the United States (the U.S. Kwajalein Military Commander responsible for the defense sites and the United States Ambassador to the Republic of the Marshall Islands) and the Government of the Republic of the Marshall Islands on the status of the local hire personnel work force and local contractors;

(c) consider other matters as may be mutually agreed.

2. In the employment of local hire personnel, the Armed Forces of the United States and United States contractors shall comply with laws of general applicability in the Republic of the Marshall Islands regarding minimum wages, provided that such minimum wages do not exceed the minimum wage prevailing in the United States.

3. In the employment of local hire personnel, the Armed Forces of the United States and United States contractors shall provide equal pay for equal work. In carrying out this provision, due consideration shall be given to relevant recommendations of the Joint Labor Relations Board.

4. The wages of local hire personnel who were in the employment of the Armed Forces of the United States or United States contractors on October 21, 1986, shall not be reduced by reason of the cessation of the applicability of the United States law in the Republic of the Marshall Islands as of October 21, 1986.

5. The Government of the United States and the Government of the Republic of the Marshall Islands shall consult with regard to the creation of training projects designed to provide for greater utilization of local hire personnel and to improve their job skills.

Article IX

Miscellaneous

1. Section 351 of the Compact, as amended, between the Government of the United States and the Government of the Republic of the Marshall Islands is incorporated by reference into, and becomes a part of this Agreement. Unless otherwise provided, all issues or disputes that may arise under this Agreement which cannot be resolved locally shall be referred to the Joint Committee established by section 351 and resolved in accordance with that section.
2. Except as otherwise provided, all minerals, including oil, antiquities and treasure trove in a defense site and all rights relating thereto are reserved to the Government of the Republic of the Marshall Islands, but any exploitation thereof shall require the prior concurrence of the Government of the United States. Sunken warships and military aircraft in a defense site, (except for warships captured before they sank, title to which belongs to the capturing state), remain the property of the flag State until affirmatively abandoned or transferred in accordance with the law of the flag State.
3. The Government of the United States, pursuant to section 234 of the Compact, transferred title to the Prinz Eugen, the former German warship now located in the Kwajalein Atoll area, to the Government of the Republic of the Marshall Islands. It is understood that unexpended ordnance and oil remains within the hull of the Prinz Eugen, and that salvage or any other use of the ship could be hazardous. The Government of the Republic of the Marshall Islands shall hold the Government of the United States harmless for any loss, damage or liability associated with the Prinz Eugen, including any loss, damage or liability that may result from any salvage operation or any other activity that the Government of the Republic of the Marshall Islands takes or causes to be taken concerning the Prinz Eugen. Any such operation or activity undertaken by or on behalf of the Government of the Republic of the Marshall Islands shall be conducted at a time and in a manner to be agreed to between the Government of the United States and the Government of the Republic of the Marshall Islands so as not to interfere with the operation of the defense sites.
4. Consistent with the laws and regulations of the United States, and to the extent that emergency medical services can be made available, the Government of the United States at its Kwajalein Island defense site contractor-operated medical facility shall undertake to provide such emergency services to citizens and nationals of the Republic of the Marshall Islands on a reimbursable basis under terms and conditions agreed upon between the Signatory Governments.

Article X

Economic Assistance, Effective Date, Amendment and Duration

1. The amendments to this Agreement shall come into effect simultaneously with the Compact, as amended.
2. This Agreement may be amended or terminated at any time by mutual consent.
3. This Agreement shall remain in effect until the end of Fiscal Year 2066. The Government of the United States shall have the right to extend this Agreement for twenty additional years beyond the initial term. If Title Three of the Compact, as amended, is still in effect when the Government of the United States terminates its use of Kwajalein in accordance with this Article, this Agreement (except for Article IV(3), Article V(2), Article VI(3), Article X(4), (5) , and (6), and Annexes A,B, and C) shall continue in force as long as Title Three continues in force.
 - a. Not later than the end of Fiscal Year 2060, the Government of the United States shall elect whether to exercise the twenty year extension. Such election shall be made in writing to the Government of the Republic of the Marshall Islands.
 - b. If the Government of the United States elects to exercise the twenty year extension , the Government of the United States shall provide to the Government of the Republic of the Marshall Islands in the first year of the extension, an additional payment equal to the section 212 Kwajalein use payment (as inflated under section 218 of the Compact, as amended) for that year (Fiscal Year 2067).
- 4.. In reaffirmation of its continuing interest in promoting the long-term economic advancement and self-sufficiency of all the people of the Republic of the Marshall Islands:
 - a. Of the total grant assistance made available under section 211 of the Compact, as amended, the amounts specified therein shall be allocated annually from FY-2004 through FY-2023, and thereafter for as long as this agreement remains in effect, to advance the objectives and specific priorities set forth in subsections 211 (a) and (b) and the Fiscal Procedures Agreement, to address the special needs of the community at Ebeye, Kwajalein Atoll and other Marshallese communities within Kwajalein Atoll. This United States grant assistance shall be made available, in accordance with the medium-term budget and investment framework described in subsection 211(f), to support and improve the infrastructure and delivery of services and develop the human and material resources necessary for the Republic of the Marshall Islands to carry out its responsibility to maintain such infrastructure and deliver such services. The amount of this assistance shall be \$3.1 million, with an inflation adjustment as provided in section 218, from FY 2004 through FY 2013, and the FY 2013 level of funding, with an inflation adjustment as

provided in section 218, will be increased by \$2 million for FY 2014. The FY 2014 level of funding, with an inflation adjustment as provided in section 218, will be made available from FY 2015 through FY 2023, and thereafter for as long as the agreement remains in effect.

b. The Government of the United States shall also provide to the Government of the Republic of the Marshall Islands, in conjunction with section 321(a) of this Compact, as amended, an annual payment from FY 2004 through FY 2023, and thereafter for as long as this agreement remains in effect, in the amount of \$1.9 million. This grant assistance will be subject to the Fiscal Procedures Agreement and adjusted for inflation under section 218 provided the Government of the Republic of the Marshall Islands controls the payment of the \$1.9 million (as adjusted) and ensures that these funds are properly accounted for and used to address the special needs of the community at Ebeye, Kwajalein Atoll and other Marshallese communities within Kwajalein Atoll and will be for the benefit of the Kwajalein landowners as described in the Fiscal Procedures Agreement.

c. Of the total grant assistance made available under subsection (a) of this section, and in conjunction with section 321(a) of the Compact, as amended, \$200,000, with an inflation adjustment as provided in section 218, shall be allocated annually from FY 2004 through FY 2023 (and thereafter for as long as this Agreement remains in effect) to support increased participation of the Government of the Republic of the Marshall Islands Environmental Protection Authority in the annual U.S. Army Kwajalein Atoll Environmental Standards Survey and to promote a greater Government of the Republic of the Marshall Islands capacity for independent analysis of the Survey's findings and conclusions.

d. The Government of the United States shall provide to the Government of the Republic of the Marshall Islands in conjunction with section 321(a) of the Compact, as amended, a payment in FY 2004 of \$15 million, with no adjustment for inflation. In FY 2005 and through FY 2013, the annual payment will be the FY 2004 amount (\$15 million) with an inflation adjustment as provided under section 218. In FY 2014, the annual payment will be \$18 million (with no adjustment for inflation) or the FY 2013 amount with an inflation adjustment under section 218, whichever is greater. For FY 2015 through FY 2023 (and thereafter for as long as this agreement remains in effect), the annual payment will be the FY 2014 amount, with an inflation adjustment as provided under section 218. The United States will make the annual payments described in this paragraph quarterly, in advance.

e. Grant assistance provided pursuant to section 222 of the Compact, as amended, may be used for the purposes described in this paragraph, or otherwise for the benefit of the Kwajalein landowners and community. The Fiscal Procedures Agreement shall apply to such assistance only as provided in the Fiscal Procedures Agreement.

5. The Government of the United States may terminate this Agreement at any time after 2023 by giving written notice, not later than seven years prior to the date it intends to terminate, of its intention to terminate. Upon notice of termination pursuant to this paragraph, the Government of the United States shall make a termination payment to an escrow account, provided that there are adequate protections in the terms of the escrow account to guarantee quiet enjoyment and use by the United States during the remaining seven years. This termination payment would be based on the anticipated amount of the annual payment in the year that termination would be effective and would be computed by multiplying by a designated factor the estimated annual grant pursuant to section 212 of the Compact, as amended, adjusted in accordance with section 218 of the Compact, as amended. This termination payment would be calculated as follows:

(i) If termination were to occur between 2024 and 2033, the termination payment would be three times the estimated annual grant amount for the year that termination would be effective (based on section 212 of the Compact, as amended, and adjusted in accordance with section 218 of the Compact, as amended).

(ii) If termination were to occur between 2034 and 2043, the termination payment would be twice the estimated annual grant amount for the year that termination would be effective (based on section 212 of the Compact, as amended, and adjusted in accordance with section 218 of the Compact, as amended).

(iii) If termination were to occur between 2044 and 2053, the termination payment would be the estimated annual grant amount for the year that termination would be effective (based on section 212 of the Compact, as amended, and adjusted in accordance with section 218 of the Compact, as amended).

(iv) If this Agreement is terminated after 2053, no termination payment shall be made.

6. The assistance the Government of the United States provides the Government of the Republic of the Marshall Islands pursuant to this Agreement is to ameliorate any adverse impact on economic and social conditions from the activities of the Government of the United States in the area of the defense sites. The Government of the Republic of the Marshall Islands shall initiate projects utilizing the funds provided under paragraph 4(a and b) of this Article to this end. After consultation, the Government of the United States shall provide such technical and planning assistance to the Government of the Republic of the Marshall Islands in its implementation of such projects as is mutually agreed.

7. Pursuant to Section 224 of the Compact, as amended, the Government of the United States shall work closely with the Government of the Republic of the Marshall Islands in developing plans and programs to reduce any adverse social and economic impact of United States defense activities in the Republic of the Marshall Islands, and will seek to provide, within existing resources, technical assistance required for the implementation of these plans and programs. In addition, the United States is prepared to seek, on a matching basis to be determined by mutual agreement, priority funding to ameliorate any adverse impact caused by changes in defense programs.

8. The Government of the United States and the Government of the Republic of the Marshall Islands may from time to time enter into contractual arrangement pursuant to Section 323 of the Compact, as amended. Such arrangements may include reimbursable services provided by the Government of the United States to the Government of the Republic of the Marshall Islands. The Armed Forces of the United States may furnish such services provided that payment for reimbursable services is made in accordance with the terms of such contractual arrangements.

9. This Agreement, as amended, supersedes the Second Supplementary Agreement Regarding the Military Use and Operating Rights of the Government of the United States in the Marshall Islands and Adjustment of the Mid-Atoll Corridor Concluded Pursuant to Section 321(b) of the Compact of Free Association.

DONE at Majuro, RMI, in duplicate, this 30th day
of April, 2003, each text being equally authentic.



FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA:



FOR THE GOVERNMENT OF THE
REPUBLIC OF THE MARSHALL
ISLANDS:

Agreement Regarding the
Military Use and Operating Rights
of the Government of the United States in
the Republic of the Marshall Islands
Concluded Pursuant to Sections 321 and 323 of the
Compact of Free Association, as Amended

AGREED MINUTES

Article IX, Miscellaneous paragraph 1: It is the understanding of the Government of the United States and the Government of the Republic of the Marshall Islands that paragraph 1 of Article IX of this agreement shall be implemented in a manner consistent with the Constitution of the Republic of the Marshall Islands and shall not be interpreted as impairing, limiting or altering any rights or interests in mineral rights, or the benefits derived from exploitation thereof, as established by or arising under the Republic of the Marshall Islands Constitution.

Article X, Economic Assistance, Effective Date and Duration, paragraph 8: It is the understanding of the Signatory Governments that contractual arrangement for provision of reimbursable services pursuant to paragraph 8 or Article X of this Agreement may include, in addition to services, provision of such supplies and equipment, on a reimbursable basis, as may be mutually agreed.

ANNEX A

**Defense Sites Provided by the Government
of the Republic of the Marshall Islands Pursuant to Article III**

1. The Government of the Republic of the Marshall Islands shall provide to the United States the following land areas. The Government of the United States may, upon request of the Government of the Republic of the Marshall Islands, grant limited access to these areas.

(a) Outside Mid-Atoll Corridor

<u>Island</u>	<u>Approximate Acreage</u>
Kwajalein	748 (Includes 205 acres land-fill constructed by U.S. Government)
Roi-Namur	398 (Includes 40 acres land-fill constructed by U.S. Government)
Ennugarret	6 (of 24 total acres)
Ennylabegan	71 (of 124 total acres)

(b) Within the Mid-Atoll Corridor

Meck	55 (includes 18 acres land-fill constructed by U.S. Government)
Eniwetak	15
Omelek	8
Gellinam	5
Gagan	6
Illeginni	31
Legan	18

2. The Government of the United States shall have control of entry and movement of personnel within the Mid-Atoll Corridor Area of the Kwajalein Atoll.

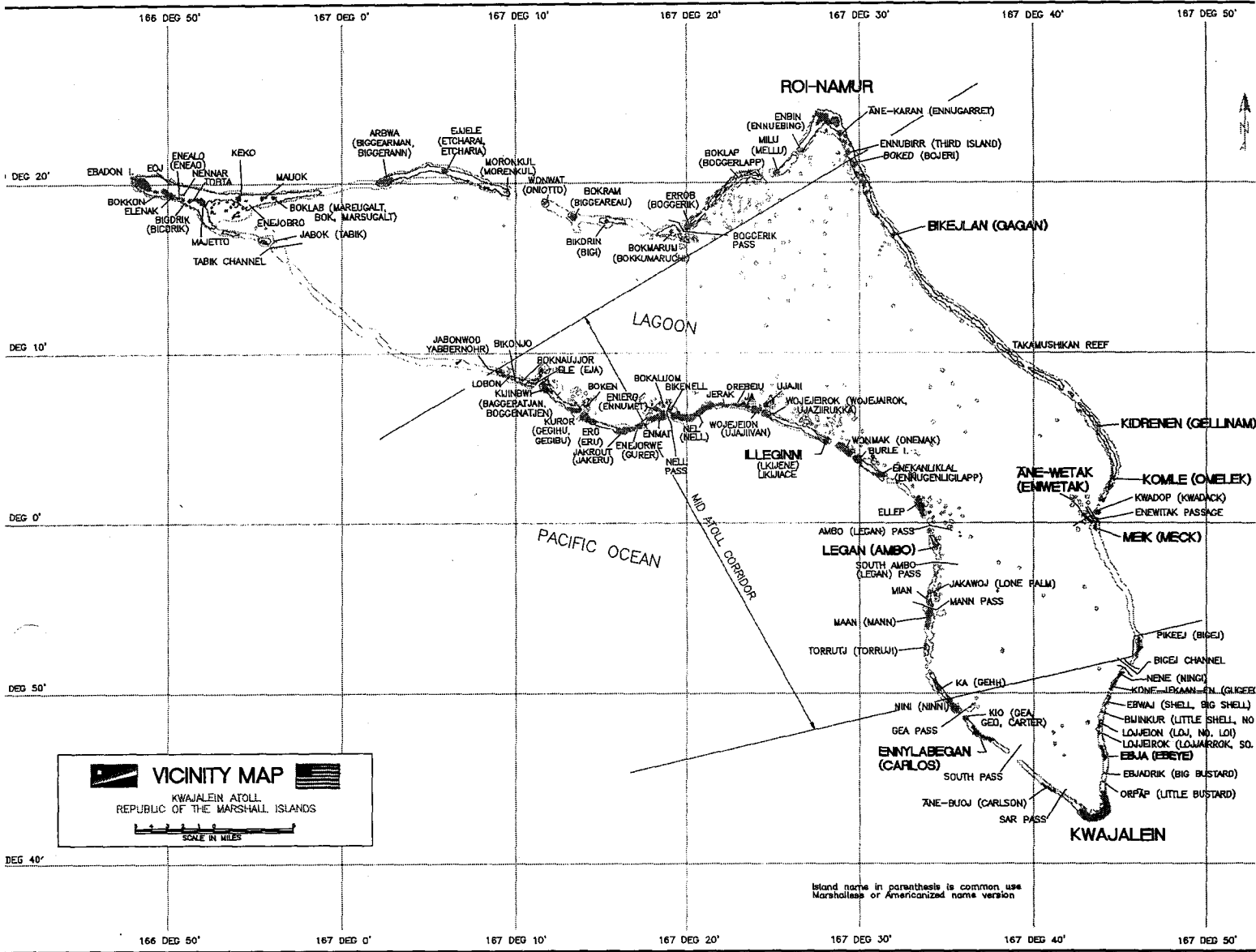
(a) The Mid-Atoll Corridor is defined as the area within the Kwajalein Atoll bounded on the north by a line drawn north of Boked Island on the east reef and Yabbernohr Island on the west reef and bounded on the south by the line drawn north of Bigej Island on the east reef to a point at latitude 08 54.2N, longitude 167 45.8E, then to a point at latitude 08 52.8N, longitude 167 45.8E, and then to a point north of the high tide mark on Ninni Island on the west reef. Bigej Island, including the inner reef, is specifically excluded and is not part of the Mid-Atoll Corridor. A map of the area is attached as Annex B. (Revised map TBP.)

(b) The boundary lines, as stated above and as set out in the map attached as Annex B, shall be redrawn when the Government of the United States determines that the area needed for the safe operation of the defense sites can be reduced from that currently utilized. If the boundary lines are redrawn, the islands then outside the Mid-Atoll Corridor area, except those islands listed in paragraph 1 of this Annex, shall be relinquished.

3. The Government of the RMI agrees to coordinate with the Government of the United States through its Competent Authority on any new or expanded telecommunications operations on Bigej prior to their implementation.

4. Exclusive use by the Government of the United States of Bigen Island, Aur Atoll: 4.253 acres of land, per site surveys already conducted. During operational activities, the Government of the United States will have exclusionary rights to restrict temporarily access to all of Bigen Island, and immediately adjacent areas, to ensure safety and security. The Government of the United States will also have access to the airstrip on Tabal Island during operational activities, and to a small portion of land near the airstrip to store materials. The Government of the United States agrees to pay the Government of the Republic of the Marshall Islands the sum of \$17,012.00 annually in consideration for the use of the additional defense site above. Should any of the sites designated in this paragraph prove inappropriate for the intended purposes, other mutually agreed sites may be substituted upon request of the Government of the United States. The Government of the United States shall permit those who were landowners on June 16, 1995 to continue access and exploitation of the sites designated in this paragraph until the Government of the United States gives notice to the Government of the Republic of the Marshall Islands that operational activities preclude such use. The Government of the United States shall promptly notify the Government of the Marshall Islands when operational activities no longer preclude such use. On an annual basis, or as necessary, the Government of the United States will consult with the Government of the Republic of the Marshall Islands, in order to provide the respective landowners projected plans for United States activities

in the defense sites described in this paragraph. This paragraph may be amended by mutual agreement, to include additional defense sites, including their related operational and technical requirements and comparable terms of compensation.



ANNEX B

ANNEX C

UNDERSTANDING
BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA
ACTING THROUGH THE U.S. ARMY SPACE AND MISSILE DEFENSE
COMMAND
AND
THE REPUBLIC OF THE MARSHALL ISLANDS

C-1

ANNEX C

**UNDERSTANDING
BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA,
ACTING THROUGH THE U.S. ARMY SPACE AND MISSILE DEFENSE
COMMAND
AND
THE REPUBLIC OF THE MARSHALL ISLANDS**

SUBJECT: Suspension of Innocent Passage During Missile Testing Operations

Consistent with Title III of the Compact of Free Association, as amended between the United States (U.S.) and the Republic of the Marshall Islands (RMI); the Agreement Regarding the Military Use and Operating Rights of the Government of the United States in the Republic of the Marshall Islands Concluded Pursuant to Sections 321 and 323 of the Compact of Free Association, as amended; the international law reflected in Article 25(3) of the United Nations Convention on the Law of the Sea; and the exchange of Diplomatic Notes of 28 March 2001 and 03 July 2001 dates between the U.S. and the RMI, the Government of the United States of America, acting through the U.S. Army Space and Missile Defense Command/U.S. Army Kwajalein Atoll/Kwajalein Missile Range, and the RMI have reached the following understanding:

1. When the United States deems such action necessary during missile testing operations, the RMI, acting through its Secretary of Transportation and Communications, in consultation with the U.S. Army Kwajalein Atoll/Kwajalein Missile Range (USAKA/KMR) intends to announce the suspension of the innocent passage of foreign ships in the RMI waters, which shall, for the purposes of this Understanding, mean 12 nautical miles out from the low water mark of the outer reef of Kwajalein Atoll, as per the attached map ("RMI waters").
2. In such cases, the RMI and USAKA/KMR would publish notice of the suspension of innocent passage of foreign ships in the RMI waters. The notice of the suspension would be published in advance of missile testing operations in the Notice to Airmen and the Notice to Mariners and would be approximately ten days in duration.
3. In such cases, the U.S. and the RMI intend to coordinate on a case-by-case basis to ensure minimal interference with international shipping and transit.
4. The RMI and U.S. intend to take those actions necessary to enforce suspension of the innocent passage of foreign ships in the RMI waters.

5. Prior to missile testing operations, the U.S. may request assistance from the RMI in the enforcement of the suspension of the innocent passage of foreign ships in the RMI waters, including the participation of the RMI patrol boat, the Lomor.
6. The RMI intends to consider sympathetically any such request for assistance. USAKA/KMR intends to reimburse the RMI at the rate of \$3,500.00 per day for the participation of the Lomor in the enforcement of the suspension of innocent passage of foreign ships in the RMI waters. It is the understanding of the parties that extraordinary expenses may be incurred by the RMI and will also be considered for reimbursement by the U.S.
7. It is the intent of the U.S. and the RMI that the Lomor would depart in order to arrive in the Kwajalein Atoll two days prior to the going into effect of the suspension of innocent passage of foreign ships in the RMI waters. Transit time for the Lomor would be considered reimbursable time under paragraph 6 of this Understanding.
8. The U.S. and the RMI understand that, under these circumstances, the Commander, USAKA/KMR, would command the U.S. security and enforcement efforts and the Lomor Captain would retain command and control of the Lomor. A USAKA/KMR liaison officer would be present on the Lomor to facilitate coordination and communications with USAKA/KMR. The RMI may provide a Lomor liaison officer to the USAKA/KMR operations center for the duration of the participation of the Lomor in U.S. security and enforcement activities to facilitate coordination and communications with the Lomor.
9. It is the intent of the RMI that, under these conditions, the Lomor and her crew would be prepared to enforce the laws of the RMI including actions necessary to enforce the suspension of the innocent passage of foreign ships in the RMI waters.
10. The RMI, in consultation with the USAKA/KMR would, as soon as the area was deemed secure and safe for transit, endeavor to end the suspension of the innocent passage of foreign ships in the RMI waters, but in any event, the said suspension of the innocent passage of foreign ships shall not exceed the published period referred to in paragraph 2 above, unless such period is extended by the mutual consent of the RMI and the USAKA/KMR.
11. This Understanding is effective upon the date the parties hereto have signed this Understanding.
12. This Understanding may be modified at any time by the mutual consent of the U.S. and the RMI. Either participant may terminate cooperation under this Understanding upon written notice to the other participant.

ANNEX D

**Establishment of a Humanitarian
Assistance – Republic of the Marshall Islands (HARMI) Program**

On signature, this Annex becomes Annex D to the Military Use and Operating Rights Agreement concluded between the Government of the United States of America and the Government of the Republic of the Marshall Islands (the Parties) pursuant to their Compact of Free Association signed on October 1, 1982, approved by the Congress of the United States on January 14, 1986, and which took effect October 21st, 1986, concerning the provision of civic action teams. Civic action teams made available to the RMI pursuant to section 227 of the Compact will no longer be available after October 21, 2003. Instead, this capability will be replaced by the offer of a Humanitarian Assistance – Republic of the Marshall Islands (HARMI) Program under the terms and conditions laid out in this Annex.

A. The Government of the United States shall make available to the Government of the Republic of the Marshall Islands a HARMI for such activities as may be identified by the Government of the Republic of the Marshall Islands and mutually agreed by the Parties with emphasis on health, education and infrastructure, including transportation, projects, and such other projects as may be mutually agreed.

B. The Government of the United States shall make available to the Government of the Republic of the Marshall Islands HARMI Projects under the following provisions:

1. The establishment of an annually agreed work program, in accordance with Paragraph E of this Annex, designed to assist in the fulfillment of the national developmental goals of the Republic of the Marshall Islands; and
2. A HARMI Project may be terminated under any of the following conditions:
 - (a) At the request of the Government of the Republic of the Marshall Islands;
 - (b) United States military necessity;
 - (c) Failure of the United States Congress to appropriate the necessary funds; or
 - (d) Failure of the Government of the Republic of the Marshall Islands to provide access to Project sites or necessary permits for Project execution.

C. The entire costs of the HARMI Projects (excluding salaries of U.S. military personnel, hereinafter referred to as “cost of the Project(s)”) shall be funded in accordance with paragraph E.3 of this Annex. The Government of the Republic of the Marshall Islands shall accept the completed HARMI Projects in writing not later than 30 days after the United States gives notice of completion. Failure to respond to the notice of completion not later than 30 days after notice is given shall constitute acceptance of the HARMI Project. Costs of maintenance for the HARMI Projects upon completion shall be borne by the Government of the Republic of the Marshall Islands.

1. These HARMI Projects may be executed as:

- (a) Projects using military labor, including Reserve and Guard component units if possible;
- (b) Contracts with private firms, using military planning, design and oversight; or
- (c) A combination of military labor and private contractors.
- (d) The Government of the United States shall assume all responsibility associated with the execution of the HARMI Projects, with the exception that the Government of the Republic of the Marshall Islands shall provide:
 - (1) Suitable public or private land, as required, for HARMI Project Team base camps; and
 - (2) All necessary access and entry clearances into public and private land and all permits for HARMI Projects.

D. The Government of the Republic of the Marshall Islands may use the HARMI program, as needed, in years in which it desires to execute HARMI projects; and, shall fund projects from grant assistance in accordance with paragraph E.3 of this Annex. Projects shall be planned as far in advance as possible to allow sufficient time for planning, coordinating, and transferring of funds.

E. The Government of the United States and the Government of the Republic of the Marshall Islands shall review, on an annual basis, normally during the scheduled Joint Committee Meetings (JCM), or otherwise as may be mutually agreed, all matters relating to the execution and content of the HARMI Projects.

1. The Government of the Republic of the Marshall Islands shall nominate prioritized projects through the U.S. Embassy in Majuro to the Commander, U.S. Pacific Command (CDRUSPACOM), according to a schedule established by CDRUSPACOM.
2. The annual review shall include review of the manner in which HARMI Projects are selected from those nominated, as well as review of the planning of the projects and of associated costs.
3. After the annual review, the Government of the Marshall Islands shall determine which new HARMI Projects it wants to pursue and make its request known through the U.S. Embassy to CDRUSPACOM. When a HARMI project(s) has been mutually agreed by the Parties pursuant to this Annex, the cost of the Project(s) shall be deducted from the applicable sector grant(s) awarded to the Government of the Republic of the Marshall Islands in the year the request is approved. The U.S. Department of Interior shall transfer funds in accordance with statutory and regulatory guidelines, to the Department of Defense, or a component thereof, in the amount requested by CDRUSPACOM for that project.



EMBASSY OF THE UNITED STATES OF AMERICA
MAJURO - REPUBLIC OF THE MARSHALL ISLANDS • 96960

March 23, 2004

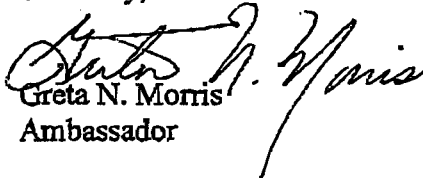
Dear Mr. Minister:

I have the honor to refer to recent discussions between our two governments regarding including in the final exchange of diplomatic notes by which our two governments will inform each other of the fulfillment of our respective requirements for entry into force of the Compact of Free Association, as Amended, the following provision:

“The provisions of Section 103(l)(3) of the Compact of Free Association Amendments Act of 2003, United States PL 108-188; subsection 5(2)(f) of the Compact of Free Association, As Amended Resolution of 2004, Nitijela Resolution No.2 (2004); and the Compact of Free Association, as Amended Implementation Act, 2004, Republic of the Marshall Islands PL 2004-1 shall apply with respect to payments made pursuant to section 4(d) of Article X of the ‘Agreement Regarding the Military Use and Operating Rights of the Government of the United States in the Republic of the Marshall Islands Concluded Pursuant to Sections 321 and 323 of the Compact of Free Association, as Amended’ (MUORA) through December 18, 2008, and thereafter for subsequent periods of five years, until such time as the Government of the Republic of the Marshall Islands certifies to the Government of the United States that the Government of the Republic of the Marshall Islands has obtained the use rights necessary to support the obligations of the Government of the Republic of the Marshall Islands under the MUORA.”

If inclusion of the foregoing provision in the final exchange of diplomatic notes is acceptable to the Government of the Republic of the Marshall Islands, the present letter and your affirmative reply thereto shall constitute an agreement between the Government of the United States and the Government of the Republic of the Marshall Islands, effective on the date of your reply.

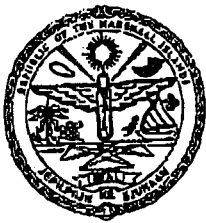
Sincerely,


Greta N. Morris
Ambassador

His Excellency

Gerald M. Zackios

Minister of Foreign Affairs of the Republic of the Marshall Islands
Majuro, Marshall Islands



REPUBLIC OF THE MARSHALL ISLANDS
MINISTRY OF FOREIGN AFFAIRS
P.O. BOX 1349
MAJURO, MARSHALL ISLANDS 96960

March 23, 2004

Her Excellency Greta N. Morris
Ambassador
United States Embassy
Majuro, MH 96960
REPUBLIC OF THE MARSHALL ISLANDS

Dear Ambassador Morris:

I have the honor to acknowledge receipt of your letter dated March 23, 2004, which reads as follows:

“Dear Mr. Minister:

I have the honor to refer to recent discussions between our two governments regarding including in the final exchange of diplomatic notes by which our two governments will inform each other of the fulfillment of our respective requirements for entry into force of the Compact of Free Association, as Amended, the following provision:

‘The provisions of Section 103(l)(3) of the Compact of Free Association Amendments Act of 2003, United States PL 108-188; subsection 5(2)(f) of the Compact of Free Association, As Amended Resolution of 2004, Nitijela Resolution No. 2 (2004); and the Compact of Free Association, as Amended Implementation Act, 2004, Republic of the Marshall Islands PL 2004-1 shall apply with respect to payments made pursuant to section 4(d) of Article X of the “Agreement Regarding the Military Use and Operating Rights of the Government of the United States in the Republic of the Marshall Islands Concluded Pursuant to Sections 321 and 323 of the Compact of Free Association, as Amended” (MUORA) through December 18, 2008, and thereafter for subsequent periods of five years, until such time as the Government of the Republic of the Marshall Islands certifies to the Government of the United States that the Government of the Republic of the Marshall Islands has obtained the use rights necessary to support the obligations of the Government of the Republic of the Marshall Islands under the MUORA.’

If inclusion of the foregoing provision in the final exchange of diplomatic notes is acceptable to the Government of the Republic of the Marshall Islands, the present letter and your affirmative reply thereto shall constitute an agreement between the Government

Her Excellency Greta N. Morris

March 23, 2004

Page 2

of the United States and the Government of the Republic of the Marshall Islands, effective on the date of your reply.

Sincerely,

Greta N. Morris"

I have the honor to inform you that my Government is in agreement with the foregoing.

A handwritten signature in black ink, appearing to read "Gerald M. Zackios", is written over a circular stamp or seal.

Gerald M. Zackios
Minister of Foreign Affairs