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The Marshall Islands and Micronesia: Amendments to the Compact of Free Association with the United States

May 3, 2004

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RL31737

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SUMMARY

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May 3, 2004

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The Marshall Islands and Micronesia: Amendments to the Compact of Free Association with the United States

On April 30, 2003 and May 15, 2003, the United States signed agreements with two Freely Associated States (FAS), the Republic of the Marshall Islands (RMI) and the Federated States of Micronesia (FSM), to amend provisions of the Compact of Free Association. The Compact of Free Association, along with the *Compact of Free Association Act of 1985* (P.L. 99-239), has governed the political, economic, and military relationships between the United States and the FAS since 1986. The Compact, as amended, provides for continued U.S. financial and program assistance to the RMI and FSM and payments for U.S. military use of Kwajalein Atoll totaling approximately $3.5 billion over a twenty-year period. Several changes were made to the way that grants and programs are administered in order to ensure greater accountability, oversight, and effectiveness. Furthermore, the Compact, as amended, establishes trust funds for the purpose of providing revenues to the RMI and FSM beyond 2023. The agreements were approved by Congress on November 30, 2003, and signed into law on December 17, 2003 (P.L. 108-188). Related issues include the RMI petition for additional compensation for past U.S. nuclear testing on the Marshall Islands (the *changed circumstances petition*) and the impact of FAS migration on Guam, Hawaii, and other U.S. jurisdictions.

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In April and May 2003, the United States and two Freely Associated States (FAS)—the Republic of the Marshall Islands (RMI) and the Federated States of Micronesia (FSM)—signed, *ad referendum*,[1] agreements to amend the Compact of Free Association.2 The Compact, along with the *Compact of Free Association Act of 1985* (P.L. 99-239), governs the political, economic, and military relationships between the United States and the FAS. The Compact, as amended, extends economic assistance worth an estimated $3.5 billion to the RMI and FSM over a 20-year period beginning in FY2004 (including grants, trust fund contributions, federal programs, payments for U.S. military use of Kwajalein Atoll in the Marshall Islands, and inflation adjustments).3 Several changes were made to the way that grants and programs are administered in order to ensure greater accountability, oversight, and effectiveness. The amendments establish trust funds for the purpose of providing revenues to the RMI and FSM governments beyond 2023.

Legislative Developments

On July 8, 2003, Representative Leach introduced H.J.Res. 63, the *Compact of Free Association Amendments Act of 2003*, which was referred to the Committees on International Relations, Resources, and the Judiciary. On July 14, 2003, Senator Domenici introduced a companion measure, S.J.Res. 16, and referred it to the Committee on Energy and Natural Resources. On October 28, 2003, the House of Representatives passed H.J.Res 63. On November 6, 2003, the Senate passed its version of H.J.Res. 63, which was very similar to the House version. The House approved the Senate's amendments on November 20, 2003. President Bush signed the bill into law on December 17, 2003 (P.L. 108-188). The legislation extends eligibility for the following programs and services that were due to expire under various "sunset" provisions: Pell Grants, programs under the Individuals with Disabilities Education Act (IDEA), Job Corps, and the Federal Emergency Management Agency (FEMA). In lieu of eligibility for other educational programs that are not to be renewed, such as Head Start and No Child Left Behind, P.L. 108-188 authorizes supplemental education grants of $6.1 million and $12.2 million for the RMI and the FSM, respectively, (plus inflation adjustments) for each of fiscal years 2005-2023.

Background

History

The Republic of the Marshall Islands (RMI) and the Federated States of Micronesia (FSM) were districts of the U.S.-administered United Nations Trust Territory, established in 1947. In 1986, the Marshall Islands and Micronesia each entered into a Compact of Free Association with the United States and thereby became sovereign, "freely associated" states (FAS).[4] The Compact agreements were negotiated and agreed to by the governments of the United States, the Marshall Islands, and Micronesia, and approved by plebiscites in the Trust Territory districts and by the U.S. Congress

[1] Subject to congressional approval.

[2] In congressional hearings and elsewhere, RMI and FSM leaders indicated several "outstanding issues" or demands for further consideration, including a fully indexed inflation adjustment on Compact funding; the continuation of some U.S. federal programs and services that were due to terminate when the Compact was amended; and higher "use fees" for U.S. defense operations on Kwajalein Atoll. See Statement of Gerald M. Zackios, Foreign Minister, Republic of the Marshall Islands before the House International Relations Committee, Subcommittee on Asia and the Pacific, June 18, 2003.

[3] See Susan S. Westin, United States General Accounting Office, "Compact of Free Association: An Assessment of the Amended Compacts and Related Agreements," Testimony before the House Committee on Resources, July 10, 2003.

[4] The Republic of Palau became a Freely Associated State in 1995.

in 1985 (P.L. 99-239). Some portions of the Compact expired after a 15-year term in October 2001. The Compact provided that economic assistance provisions would be extended for two years (2002-03) if negotiations to renew them were not concluded by 2001. In addition, P.L. 106-504 (*To Amend the Organic Act of Guam*) extended eligibility for U.S. grant assistance, federal programs, and other services during the period in which the Compact amendments were negotiated and Congress considered legislation to approve them. Between November 1999 and November 2002, the Department of State Office of Compact Negotiations and the governments of the Marshall Islands and Micronesia completed formal negotiations for renewing portions of the Compact.

Compact Objectives

The Compact of Free Association established the RMI and FSM as sovereign states that conduct their own foreign policy.[5] The Compact was intended to establish democratic self-government for each country, advance economic development and self-sufficiency through U.S. grants and program assistance, and ensure or promote the national security of the Freely Associated States and the United States in light of Cold War geopolitical concerns. Many U.S. policy makers have agreed that the goals of democratic self-government and mutual security have largely been achieved. However, economic development and self-sufficiency have remained elusive.

Major Provisions

Principal terms of the Compact of Free Association and subsidiary agreements provide:

- The United States shall support the FAS economically with the goal of making them self-sufficient. FAS citizens residing in their own countries are eligible for many U.S. federal programs. (Title Two)
- The United States is obligated to defend the FAS against attack or threat of attack. The United States may block FAS government policies that it deems inconsistent with its duty to defend the FAS, the so-called "defense veto." (Title Three)
- The United States has the prerogative to reject the strategic use of, or military access to, the FAS by third countries, the so-called "right of strategic denial." (Title Three)
- The United States may establish military facilities in the FAS. Through the Military Use and Operating Rights Agreement (MUORA) with the RMI, the United States operates military facilities on Kwajalein Atoll.
- Citizens of the Freely Associated States have the right to reside and work in the United States and its territories as lawful non-immigrants or habitual residents and are eligible to volunteer for service in the U.S. armed forces. (Title One)

Expiring Provisions

Grant assistance (Title Two, Article I of the Compact), representing about 75% of all economic assistance, the "defense veto," and the right to establish additional military bases in the RMI and FSM were limited by the Compact to a 15-year term subject to negotiation and renewal in 2001 (automatically extended to 2003). U.S. defense obligations, the "right of strategic denial," the

[5] The RMI and FSM were admitted to the United Nations in 1991.

agreement to use the Kwajalein Missile Range, and immigration privileges were not among the expiring provisions. In 2000, the RMI and FSM governments agreed to extend the security provisions of the Compact—the defense veto and additional base rights. Most of the bilateral negotiations for renewing portions of the Compact involved grant assistance and FAS eligibility for U.S. federal programs.

Oversight and Administration

Although Compact assistance as a percentage of government revenue has been decreasing, particularly in Micronesia, the RMI and FSM remain heavily dependent upon U.S. grants. In 2000, the General Accounting Office (GAO), in two reports examining U.S. assistance to the Marshall Islands and Micronesia, found that poor government and local management in the RMI and FSM and insufficient U.S. oversight had contributed to slow economic progress in the two countries.[6] In response to many of these findings, the Compact, as amended, provides for greater oversight and control over U.S. assistance to the RMI and FSM. Some experts also have cited other, inherent obstacles to economic development in the two atoll nations, including lack of natural resources and arable land, poor business environments, limited and isolated markets, minimal opportunities for economies of scale, and inadequate infrastructures.

Joint Economic Management and Financial Accountability Committee (JEMFAC)

In order to provide better oversight of grant assistance, the Compact, as amended, establishes a Joint Economic Management Committee (JEMCO) for the RMI and FSM, each composed of a U.S. chair, two other members of the U.S. government, and two members of the FAS government. The establishment and operation of JEMCO is to be governed by the Fiscal Procedures Agreement. The governments of the RMI and FSM are required to report annually to the President of the United States on the use of grant and other assistance. JEMCO is to review and comment on the report and make recommendations.

Grants and Program Oversight

In contrast to the previous 15-year funding arrangement, in which the governments of the Marshall Islands and Micronesia were given wide discretion over spending,[7] U.S. grants under the amended Compact are targeted narrowly and conditionally. Grant assistance shall be extended to six sectors—education, health, infrastructure, public sector capacity building, private sector development, and the environment—with greater priorities placed on education and health programs. Grantees must provide detailed budgets and feasible plans before they are approved. Beginning in 2004, all federal agencies shall be required to report to the Department of the Interior (DOI) regarding their services in the RMI and FSM in order to avoid the duplication of benefits. In November 2003, the DOI opened an office in Honolulu, Hawaii, to monitor grant

[6] U.S. General Accounting Office, "Better Accountability Needed Over U.S. Assistance to Micronesia and the Marshall Islands," May 2000; U.S. General Accounting Office, "U.S. Funds to Two Micronesian Nations Had Little Impact on Economic Development," September 2000.

[7] The wide discretion given to the RMI and FSM by the United States was in part a gesture recognizing the sovereignty of the new Freely Associated States.

assistance, trust funds, and federal programs in the FAS and to administer "Compact impact" funds.[8]

Direct Funding

Since the Compact of Free Association was enacted in 1985, the United States has provided economic assistance to the Marshall Islands and Micronesia by way of mandatory or permanent funding (direct grants) through the Department of the Interior, discretionary or current federal program assistance through DOI and over 18 other federal agencies,[9] and economic assistance to the Marshall Islands for adverse effects of U.S. nuclear testing during the 1940s and 1950s. The DOI's Office of Insular Affairs has been responsible for administering, coordinating, and monitoring about 80% of Compact assistance.[10] According to one GAO estimate, between 1987 and 2001, U.S. direct payments to the RMI and FSM, excluding nuclear fallout-related assistance, totaled approximately $2 billion, making the two Freely Associated States among the largest recipients of U.S. assistance worldwide (See **Table 1**). Federal program assistance extended to the two countries was worth an additional $700 million.[11]

Grants

The Compact, as amended, provides to the Marshall Islands $629 million in sector grants over 20 years (excluding Kwajalein payments and inflation adjustments). In addition, the agreement extends to the RMI $7 million in trust fund contributions in 2004, increasing by $500,000 annually to $16.5 million in 2023 (for a total of $235 million). The Compact amendments provide $1.4 billion in sector grants to Micronesia over the same period (excluding inflation adjustments). In addition, the agreement extends to the FSM $16 million in trust fund contributions in 2004, rising incrementally to $29.6 million in 2023 (for a total of $442 million). For the RMI, yearly grant assistance for 2004-23 would average about $31.5 million, compared to an average $32.5 million per year in 1987-2001 (excluding inflation adjustments and nuclear fallout payments[12]). For the FSM, annual grant assistance for 2004-2023 would average about $70 million, compared to an average $67.5 million per year in 1987-2001 (excluding inflation adjustments).[13] The real value of grants per capita, however, are projected to decline for the RMI and FSM over the 20-year period. The Compact amendments as negotiated by the Bush Administration stipulate that annual grants and trust fund contributions shall be adjusted annually by 66% of the inflation rate

[8] "U.S. to Monitor Compact Compliance from Honolulu," *Pacific Islands Report*, November 6, 2003. For a summary of the accountability provisions of the compact, as Compact, as amended, see Testimony of David Cohen, Deputy Assistant Secretary for Insular Affairs, U.S. Department of the Interior before the House International Relations Committee, Subcommittee on Asia and the Pacific, June 18, 2003.

[9] Compact funding is not provided under the Foreign Assistance Act of 1961. RMI and FSM citizens are named beneficiaries to federal programs.

[10] The Department of State is responsible for government-to-government relations and Compact renewal negotiations. The Department of State also chairs the Interagency Group on Freely Associated States' Affairs, which provides policy guidance on matters related to the FAS.

[11] For information on Compact funding levels and the effectiveness of federal programs in the RMI and FSM, see U.S. General Accounting Office, "Effectiveness and Accountability Problems Common in U.S. Programs to Assist Two Micronesian Nations," January 2002. See also CRS Report RL30749, *The Marshall Islands and Micronesia: Negotiations with the United States for Renewing Provisions of the Compact of Free Association*, by Thomas Lum.

[12] Nuclear Claims compensation (Section 177 of the Compact), Bikini Resettlement, Rongelap Resettlement, Enewetak Operations, and other payments.

[13] Data from the U.S. Department of the Interior.

or 5%, whichever is less in any one year, using 2004 as a base. The RMI and FSM had requested a fully indexed inflation rate (100% of the rate of inflation).

Trust Fund

The Compact, as amended, establishes trust funds for the RMI and FSM, the corpuses of which shall be built up over 20 years through annual contributions by the United States, the Marshall Islands and Micronesia, and other donors. The trust funds are intended to provide government revenue for the RMI and FSM once U.S. grant assistance ends in 2023. Initial contributions shall be made by the Marshall Islands and Micronesia, using funds from the windfall in U.S. grant assistance in 2002-03.[14]

Program Assistance

To the extent that they remain available to state and local governments in the United States and to the extent that FAS citizens remain eligible through congressional authorizations, the vast majority of U.S. federal programs available to the RMI and FSM are expected to continue under the Compact, as amended. However, some program authorization and appropriations measures have terminated eligibility to FAS citizens. The statuses of the major categories of program assistance are as follows:

- Title Two, Article II, Section 221 of the Compact, as amended, extends the services and programs of the U.S. Weather Service, U.S. Postal Service, Federal Aviation Administration, U.S. Department of Transportation, and Federal Deposit Insurance Corporation (FDIC) for the FSM, with little change from the original Compact, pursuant to the *Federal Programs and Services Agreement.* The Compact amendments as negotiated by the Bush Administration terminated eligibility for disaster and rehabilitation services of the Federal Emergency Management Agency (FEMA). However, P.L. 108-188 continues FEMA services for the RMI and FSM.
- Title Two, Article II, Section 222 of the Compact, as amended, continues FAS eligibility for additional federal services and programs pursuant to the *Federal Programs and Services Agreement*. Congress has the prerogative to authorize or re-authorize specific programs under this provision. P.L. 108-188 continues eligibility for several programs that were due to expire under various "sunset" provisions, including Pell Grants, the Individuals with Disabilities Education Act (IDEA), and Job Corps. In lieu of other programs that are not to be renewed, such as Head Start and No Child Left Behind, P.L. 108-188 authorizes supplemental education grants. The *Compact Amendments Act* also authorizes continued USDA food donations for nuclear-affected areas (RMI).
- Special programs provided under Title Two, Article I, Sections 212, 214, 215, and 216 of the original Compact for Civic Action Teams (FSM), energy self-sufficiency, communications infrastructure, medical programs, and post-secondary education scholarships are not provided by the amended Compact.

[14] Although grant assistance expired in 2001, funding continued under an automatic extension, at a rate equal to the average annual direct assistance during the first Compact term (1986-2001). Since Compact aid was extended in decreasing increments during the first term, the grant assistance for 2002-03 represented an increase or "bump up" over the immediately preceding years. This additional income was expected to be used for the new trust funds.

Related Issues

Kwajalein Missile Base

The Marshall Islands government and Kwajalein landowners are bound by the Land Use Agreement (LUA), through which the RMI government pays the landowners for relinquishing their property. The United States regularly conducts missile defense tests and space surveillance activities from Kwajalein (Ronald Reagan Ballistic Missile Defense Test Site or RTS). RTS is currently the only site where the United States launches interceptors against long-range missiles. Some experts consider Kwajalein to be of critical importance to the Bush Administration's missile defense strategy.[15] In September 1999, the United States exercised its right to extend the Military Use and Operating Rights Agreement (MUORA) for Kwajalein Atoll from 2001 to 2016. Under the Compact, as amended, U.S. base rights are to continue to 2066, with the U.S. option to extend the arrangement for another 20 years (to 2086). The United States can terminate its use of the site after 2023, although if it withdraws before 2053, penalty fees would apply.

Marshall Islands leaders and Kwajalein landowners have expressed misgivings about the timetable and use fees. The RMI government favors a U.S. commitment of longer than 20 years (beyond 2023). The Compact, as amended, raises annual payments from $13 million to $15 million and then to $18 million in 2014, plus "Kwajalein impact" payments and adjustments for inflation. However, Kwajalein landowners reportedly have demanded higher use fees and argued that the U.S.-RMI agreements related to Kwajalein land use are not enforceable without their approval.[16]

The Changed Circumstances Petition

The Compact of Free Association set up a Nuclear Claims Tribunal and established a Nuclear Claims Fund of $150 million, the proceeds of which were to provide compensation for personal and property damages resulting from U.S. nuclear testing and fallout on Bikini and other atolls during the 1940s and 1950s. The Fund's investment returns were projected to generate $18 million annually for a total of $270 million after 15 years. However, by 2000, the corpus of the Fund had been nearly exhausted, and the Tribunal could not fully pay the awards that it had granted.

Although the Fund was intended to espouse or fully settle all nuclear claims against the U.S. government, the Compact entitles the RMI government to submit to the U.S. Congress a request for additional compensation, if loss or damage to persons and property arises or is discovered which could not reasonably have been identified as of the effective date of the agreement (1986) and if such injuries render the provisions of the Compact "manifestly inadequate" (the *changed circumstances clause*). In September 2000, the Marshall Islands submitted to the Senate Energy and Natural Resources Committee a nuclear claims petition worth up to $2 billion for medical care, radiological monitoring, personal injury, and property damages as allowed under the

[15] U.S. General Accounting Office, "Kwajalein Atoll is the Key U.S. Defense Interest in Two Micronesian Nations," January 2002.

[16] In addition, The Kwajalein Negotiation Commission (KNC) representing Kwajalein landowners proposed that a trust fund be set up to provide annual income to landowners if and when the United States withdraws from Kwajalein. According to this proposal, the trust fund would be capitalized with contributions from the United States, Kwajalein landowners, and the RMI government. See Statement of Senator Christopher J. Loeak (RMI), before the House International Relations Committee, Subcommittee on Asia and the Pacific, June 18, 2003. See also "Marshalls: $2 Billion Kwajalein Lease Not Enough," *Pacific Islands Report Briefs*, January 24, 2003.

changed circumstances clause. In March 2002, the Senate Energy and Natural Resources Committee and House Resources Committee requested that an interagency group (U.S. Departments of State, Energy, and Defense) evaluate the petition and provide Congress with an assessment of the legal merits of the petition. No date has been set for the completion of this assessment.

Immigration

Citizens of the FSM and RMI possess unrestricted access to the United States to study, work, and reside as "habitual residents." An estimated 11,500 FAS citizens have migrated to the United States and its territories since the Compact was enacted. Proof of citizenship, but no visa, is required for entry into the United States. Only FAS citizens seeking U.S. citizenship need a U.S. immigrant visa to acquire permanent residency status. The Compact exempts citizens of the Freely Associated States from normal documentation requirements—including those related to health, criminal background, and the likelihood of becoming a public charge—that can be used as grounds for inadmissibility under the Immigration and Nationality Act for most other non-U.S. citizens seeking to travel to the United States.

During the period in which the Compact amendments were under negotiation, some community leaders and Members of Congress from areas impacted by FAS migration expressed concern about the lack of screening of FAS entrants, particularly those who may have arrived with communicable diseases, criminal records, or lack of education or employable skills. In addition, some Bush Administration officials voiced alarm about the possibility of international terrorists entering the United States via the FAS. The amended Compact preserves the basic terms of the immigration laws pertaining to the FAS, and adds minor changes. The new immigration provisions include FAS citizens are required to present a passport before being allowed to enter the United States; naturalized citizens of the FAS must demonstrate five years of actual residence in the FAS in order to gain the status of habitual resident in the United States; yearly Employment Authorization Documents are no longer required; adopted children shall apply for admission to the United States under the general immigration requirements for adopted children.

Compact Impact

Section 104(e) of the *Compact Act of 1985* (P.L. 99-239) requires the President to report annually to Congress on the impact of the Compact on U.S. territories and commonwealths in the Pacific and on the State of Hawaii, and to cover the costs "resulting from any increased demands placed upon education and social services" by migrants from the Marshall Islands and the Federated States of Micronesia. Guam and the Commonwealth of the Northern Mariana Islands (CNMI) received $41 million and $3.8 million, respectively, in Compact impact assistance during 1986-2001. For FY2002, Guam was appropriated $6.38 million in Compact impact assistance, the CNMI $2 million, and Hawaii $4 million.[17] Guam and the CNMI estimated the costs of FAS migration (spending on education, health care, public safety, and housing) at $180 million and $105-$133 million, respectively, in 1986-2000, though FAS migration to the CNMI has been decreasing. Hawaii assessed $86 million in Compact impact costs through 2000, though much of the 1986-95 period reportedly was not accounted for.[18]

[17] Department of the Interior and Related Agencies Appropriations Act, 2002 (P.L. 107-63).

[18] See U.S. General Accounting Office, "Migration from Micronesian Nations Has Had Significant Impact on Guam, Hawaii, and the Commonwealth of the Northern Mariana Islands," October 2001.

In June 2003, the Bush Administration pledged $15 million per year in mandatory funding from the Department of the Interior to be divided among Guam, the CNMI, and Hawaii for 20 years beginning in FY2004. Some leaders of the impacted areas argued that $15 million did not meet costs and should be viewed only as a minimum or baseline.[19] On June 19, 2003, Congresswoman Bordallo introduced H.R. 2522, the *Compact Impact Reconciliation Act*, which would amend the Organic Act of Guam[20] to authorize the Secretary of the Interior to reduce, release, or waive amounts owed by the government of Guam to the United States to offset unreimbursed Compact impact expenses. On July 14, 2003, Congresswoman Bordallo introduced H.R. 2716, the *Compact-Impact Reimbursement Act*, which would amend the *Compact Act of 1985* (P.L. 99-239) by authorizing $35 million per year from 2004 through 2023 to impacted U.S. jurisdictions, extending health care reimbursements, and ensuring eligibility to FAS migrants for food stamps and other federal services. The *Compact of Free Association Amendments Act, 2003* (P.L. 108-188) provides for $30 million per year in mandatory Compact-impact funding. The act also authorizes the President to reduce, release, or waive all or part of any amounts owed by the Government of Guam or the Government of the Commonwealth of the Northern Mariana Islands to the government of the United States.[21]

Table 1. Marshall Islands and Micronesia: Economic and Compact Assistance Data

	RMI	FSM
Area (land and sea)	750,000 sq. miles	1 million sq. miles
Population (2002 est.)	52,000	109,000
Per capita income, purchasing power parity (PPP) terms (2001, CIA)	$1,600	$2,000
Average yearly mandatory (grant) assistance [a b c] (DOI)	1987-1991: $89.1 mil. 1992-1996: $53.9 mil. 1997-2001: $46.0 mil.	1987-1991: $98.1 mil. 1992-1996: $91.6 mil. 1997-2001: $80.2 mil.
Est. mandatory (grant) assistance, 1987-2001 [a b c] (DOI)	$945 million	$1.345 billion
Est. mandatory (grant) assistance, 2002-2003 [a c] (DOI)	$97.1 million	$196 million
Projected mandatory (grant) assistance, 2004-2023 [a c] (DOI)	$734 million	$1.721 billion

[19] Scott Whitney, "Negotiating Compact Impact," *Pacific Magazine*, June 2003.

[20] 48 U.S.C. 1421 et seq.

[21] "$157 M Debt Write-off Ok'd," *Pacific Daily News*, December 19, 2003.

	RMI	FSM
Projected U.S. trust fund contributions, 2004-2023 (GAO)	$276 million	$517 million
U.S. economic assistance per capita, 1998 (GAO)	$1,085	$895
Other major foreign aid donors	Japan, ADB, Australia, Taiwan	Japan, ADB, Australia,

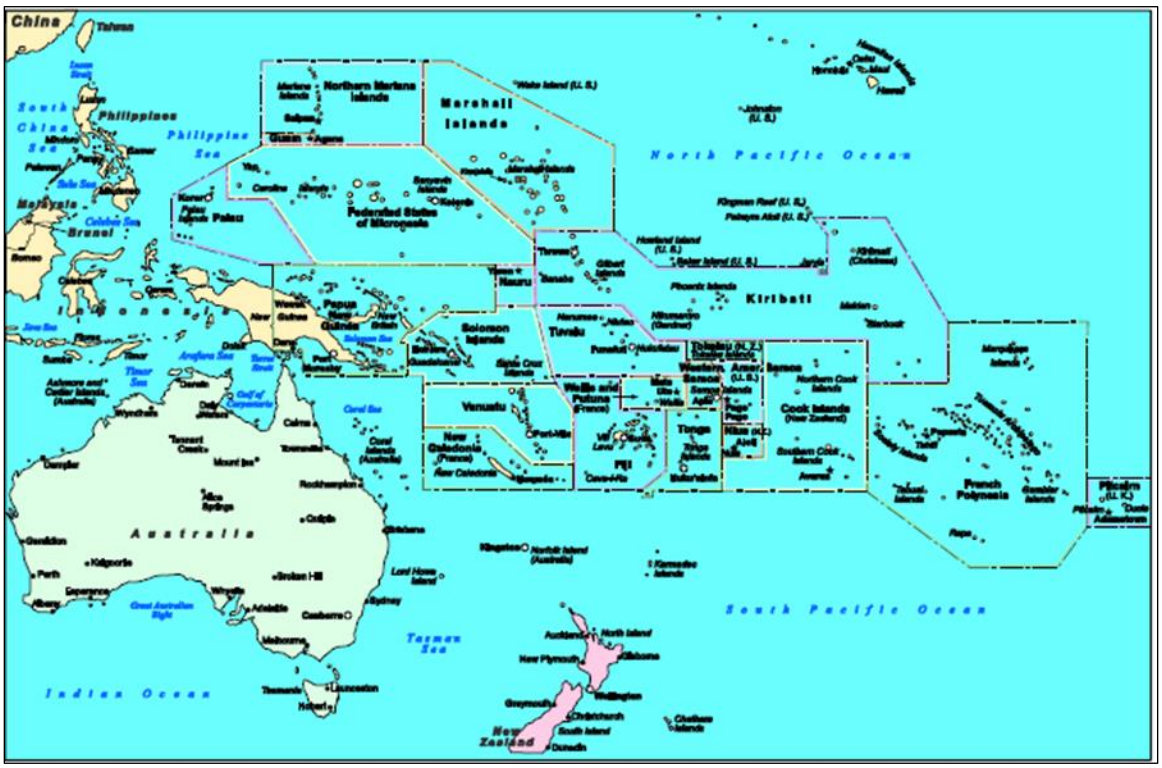
Note: ADB = Asian Development Bank; CIA = Central Intelligence Agency; DOI = Department of the Interior; GAO = General Accounting Office.

a. U.S. direct grants, including inflationary adjustments

b. Totals for the RMI include nuclear damages compensation

c. Includes funds for Kwajalein impact and development (Marshall Islands).

Figure 1. The Marshall Islands, Micronesia, and the Pacific Islands



Source: Magellan Geographix. Adapted by CRS. (M.Chin 02/03)

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