

**First questionnaire from the
CMI Mobile Offshore Renewables Unit International Working Group**

Fall 2024

Last year, the CMI established a new International Working Group (the “MORU IWG”) (combining it with the Ship Nomenclature IWG) to explore legal uncertainties and potential gaps in international maritime law impacting a new and expanding class of offshore mobile units being developed, built, and used for offshore renewable energy projects in the waters of coastal states around the world—mobile offshore renewables units (or “MORU”). The MORU IWG now seeks to understand how the laws of various countries regulate (or would regulate) MORUs in various contexts, in order to determine common ground and best practices for recommendations to be offered to the CMI. In that context, the MORU IWG requests the input of each National Maritime Law Association (“NMLA”) about the legal treatment of MORUs in several critical areas. Given the relative novelty of the technology in some jurisdictions, the MORU IWG has chosen to supplement this questionnaire with an attached Annex, which provides each NMLA with further background about MORUs generally, and additional context for the questions in the questionnaire more specifically.

Definition of Mobile Offshore Renewables Unit (“MORU”)

For purposes of answering this questionnaire about MORUs, the MORU IWG has defined the term as follows:

“Mobile Offshore Renewables Unit” or “MORU” means any non-self-propelled, floating offshore unit or facility consisting of:

(i) a ship-shaped hull, SPAR, semi-submersible, tension-leg platform, barge, or other buoyant hull concept; AND

(ii) all internal and topsides equipment permanently attached to that hull,

provided that such floating offshore unit or facility:

(a) is primarily designed for the purpose of directly or indirectly generating electric power or other form(s) of renewable energy by conversion of wind, wave, tidal, or solar energy, or differences in water temperatures or salinity, or a combination of any of the foregoing; OR

(b) is primarily dedicated to the conversion, transformation, conditioning, transmission, distribution, and/or temporary storage and subsequent release of electrical power or other form of renewable energy originally generated by one or more MORUs described in paragraph (a) above; OR

- (c) is primarily dedicated to the conversion of any electrical power or other form of renewable energy generated by one or more MORUs described in paragraph (a) above into chemical products; OR
- (d) is a hybrid unit combining the functions of two or more of the classes of units described in any of the paragraphs (a), (b), and/or (c) above.

Questions related to ownership and other property interests in MORUs

Treatment of Domestic MORUs as property

1. Would the courts in your jurisdiction, recognize any (or all) of the categories of MORU as a “vessel” or “ship” or other “marine equipment” or other special type of property? If so, please explain with reference to authorities.
 - a. Would the courts in your jurisdiction recognize any of the categories of MORU as a “vessel” or “ship” if it were equipped with an integrated dynamic positioning or other station-keeping system, (including any automated system, or remotely or autonomously directed system)?
2. Is it possible in your jurisdiction to record ownership interests in any (or all) of the categories of MORU in a public register?
 - a. If so, would it be registered as a “vessel” or “ship” or other “marine equipment” or other special type of property? If so, please explain with reference to authorities.
 - b. If so, would it be registered in your jurisdiction’s public register of ships, or in another public register?
 - c. If it is registered in your jurisdiction (whether as a “vessel” or “ship” or other “marine equipment” or other special type of property), would it be entitled to fly the flag of your jurisdiction and be deemed to have that nationality? If so, please explain with reference to authorities.
3. Assuming that a MORU is the subject of leases, subleases, or charters (including demise charters) or sub-charters in your jurisdiction, is it possible to record such lease interests in any (or all) of the categories of MORU in a public register in your jurisdiction? If so, please describe. If so, please also describe the procedure to file such agreements or notice thereof.
4. In your jurisdiction, is the acceptance by a registrar or other governmental body of a MORU (or type of MORU) as a “ship” or “vessel” or equivalent term dispositive of its legal status as a “ship” or “vessel” or equivalent term under your law for purposes other than registration under domestic law?

5. Is it possible in your jurisdiction to record liens, maritime liens, claims, encumbrances (e.g. mortgages or hypothèques) against any such category of MORU in a public register? If so, please explain details and limitations on such register.
6. Is there any priority given to a registered creditor in such property in your jurisdiction? If so, please explain.

Treatment of Foreign MORUs as property

7. Does your jurisdiction recognize ownership of any such property (i.e. any category of MORU) as evidenced by an entry in a public register of another jurisdiction?
8. If:
 - (i) a MORU (or any type thereof) is categorized as a “vessel” or “ship” or other “marine equipment” or other special type of property in another jurisdiction and is registered and/or flagged as such in that jurisdiction, BUT
 - (ii) the MORU would not be considered a “vessel” or “ship” under the domestic laws of your jurisdiction,

would the courts or relevant authorities in your jurisdiction nonetheless treat the foreign-registered MORU as a “vessel” or “ship” for:

- a. purposes of arrest of the MORU?
- b. purposes of foreclosure on a mortgage / hypothecation of the MORU?
- c. purposes of enforcement of maritime liens on the MORU?
- d. any or all other purposes?

In the alternative, would your courts in such cases decline to enforce an asserted claim or mortgage if the (foreign) MORU is not recognized as a vessel or ship in your jurisdiction?

9. Would your jurisdiction accord the same priority of lienors and recorded creditors of a foreign-registered MORU as such lienors and creditors would have in the jurisdiction where the MORU was originally recorded or registered?
 - a. If your jurisdiction is party to the International Convention for the Unification of Certain Rules of Law relating to Maritime Liens and Mortgages 1926 or the International Convention on Maritime Liens and Mortgages 1993, would your jurisdiction recognize a MORU as a “vessel” or “sea-going vessel” (respectively) for purposes of that Convention?

10. What law would your jurisdiction apply to, or what law would it consider to govern, a sale or a change of ownership of a foreign-registered MORU which is operated in the EEZ of your jurisdiction?

Would your answer vary (and if so, how would it vary) if the MORU was:

- a. Foreign-owned but not registered, or
- b. operated in the territorial sea of your jurisdiction?

11. Are there any reported decisions in your jurisdiction which address the legal classification (as “ship”, “vessel” or other “marine equipment” or other special type of property) of:

- a. MORUs (of any type);
- b. Offshore wind turbines (fixed or floating);
- c. Mobile Offshore Drilling Units (“MODUs”);
- d. FSUs and FPSOs

If so, please attach copies.

Questions related to arrest

1. Would it be possible to arrest, seize, detain, or otherwise proceed *in rem* or otherwise against a MORU for a maritime claim in your jurisdiction (whether under domestic law or binding convention)?

- a. If so, on what grounds?
- b. Is the answer to this question determined by flag state law or the domestic maritime law of your jurisdiction?

2. Is it possible to arrest, seize, detain, or otherwise proceed against a MORU for *non*-maritime claims in your jurisdiction?

3. If a MORU were arrested, seized, detained, etc. in your jurisdiction, would it be possible to obtain a release of the MORU from such arrest/detention on posting of an adequate security?

- a. If so, please provide authority.

Questions related to limitations of liability

1. Assuming that a MORU was not used for the purpose of exploring or exploiting the natural

resources of the sea-bed or the subsoil thereof (cf. Art. 15(5) of Convention on Limitations of Liability for Maritime Claims, 1976), would the owner or salvor of a MORU benefit in your jurisdiction from the limitations of liability found in the Limitations of Liability for Maritime Claims, 1976 and/or its Protocols (“LLMC 1976/1996/2012?”)?

2. Assuming that a MORU is used to provide electrical power to *other* types of floating units or fixed or subsea facilities which were themselves exploring or exploiting the natural resources of the sea-bed or the subsoil thereof (cf. Art. 15(5) of LLMC), would the owner or salvor of that MORU benefit in your jurisdiction from the limitations of liability found in LLMC 1976/1996/2012?
3. Would a MORU benefit from any other (non-LLMC based) forms of limitations of liability under the domestic law of your jurisdiction? If so, please explain with reference to authorities.

Questions related to innocent passage and transit

1. Would a right of innocent passage be recognized in your jurisdiction for a foreign-registered MORU being towed through your jurisdiction’s internal waters (cf. UNCLOS Art. 8(2))?
2. Would a right of innocent passage be recognized in your jurisdiction for a foreign-registered MORU being towed through your jurisdiction’s territorial sea (cf. UNCLOS Art. 17, 24(1))?
 - a. Would your jurisdiction recognize its own criminal jurisdiction on board a foreign-registered MORU passing through your jurisdiction’s territorial sea other than in accordance with UNCLOS Art. 27?
 - b. Would your jurisdiction recognize its own civil jurisdiction on board a foreign-registered MORU passing through your jurisdiction’s territorial sea other than in accordance with UNCLOS Art. 28?
3. If there are straits used for international navigation in the waters adjacent to your jurisdiction, would a right of transit passage (or innocent passage) be recognized in your jurisdiction for a foreign-registered MORU being towed through that strait (cf. UNCLOS Art. 38, 45)?
4. If your jurisdiction is an archipelagic State (within the meaning of UNCLOS Art. 46), would a right of innocent passage be recognized in your jurisdiction for a foreign-registered MORU being towed through your jurisdiction’s archipelagic waters (cf. UNCLOS Art. 52))?

Question related to sovereign immunity and rights of owners or creditors to remove property from established MORU operations

1. In your jurisdiction, does the sovereign prohibit by law the arrest, repossession or seizure by a creditor of property under lease or contract with an organ of the state (such as a public utility)?

2. In your jurisdiction, may the sovereign/state waive immunity by contract for the benefit of creditors or lienors seeking to recover leased property (e.g. a leased MORU) or damages in the event of a default by the sovereign or another responsible party under a contract or lease to produce or supply energy to a sovereign- or state- owned entity?