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UNDP-JOINT MANAGEMENT AREA (JMA) DEMONSTRATION PROJECT

Terms of Reference for the Appointment of a Legal Expert (Law of the Sea) to Support the JMA Demonstration Project Marine Spatial Planning (MSP) Phase II Process

SECTOR:	Climate and Disaster Resilience (UNDP)
LOCATION:	Republic of Mauritius
DUTY STATION:	Home Based with Travel
DURATION:	25-person-days spread over six months (1 field mission) until February 2021
STARTING DATE:	September 2020 ¹

A. PROJECT TITLE

Demonstrating Innovative Ocean Governance Mechanisms and Delivering Best Practices and Lessons for Extended Continental Shelf Management within the Western Indian Ocean Large Marine Ecosystems (UNDP-Joint Management Area Demonstration Project).

B. OVERVIEW

B (i) Background

On 30 March 2011, the United Nations Commission on the Limits of the Continental Shelf (CLCS) adopted recommendations confirming the outer limits of the continental shelf of the Republic of Mauritius and the Republic of the Seychelles beyond 200 nautical miles in the Mascarene Plateau region. Subsequently, in March 2012 the two coastal States agreed, through the adoption of a bilateral Treaty instrument, to the creation of a Joint Management Area (JMA) where the two States will exercise sovereign rights jointly for the purpose of exploring the continental shelf and exploiting its natural resources (the Joint Zone Treaty).² A further bilateral Treaty instrument was also signed which details the administrative and management functions, powers and duties for the JMA (the JMA Management Treaty).³

The JMA covers an area of 396,000 sq. km extending seaward to the east beyond the existing EEZs of both coastal States and is the largest joint maritime zone to have been established anywhere in the

¹ Note that this is subject to change due to the ongoing Coronavirus pandemic.

² *Treaty concerning the Joint Exercise of Sovereign Rights over the Continental Shelf in the Mascarene Plateau Region between the Government of the Republic of Seychelles and the Government of the Republic of Mauritius (with annexes), Vacoas, 13 March 2012.*

³ *Treaty Concerning the Joint Management of the Continental Shelf in the Mascarene Plateau Region between the Government of the Republic of Seychelles and the Government of the Republic of Mauritius (with annexes), Vacoas, 13 March 2012 ('JMA Management Treaty').*

world. The creation of the JMA thus represents a ground-breaking precedent for cooperative management of the ocean, placing the JMA in a 'cutting-edge' position to take the lead in piloting new mechanisms and strategies for future ECS management.

Under the JMA Management Treaty, a formal three-tiered joint institutional structure has been defined, consisting of: (i) a Ministerial Council; (ii) a Joint Commission; and (iii) a Designated Authority. To date, all decision pertaining to the implementation of the JMA Management Treaty and management of the JMA have been taken by the Joint Commission, since the Designated Authority is yet to be formally established.

B (ii) Project Description

Recognizing that this represents the first 'transboundary' management agreement for an ECS scenario, UNDP is supporting the GEF funded "JMA demonstration project" being implemented by the Governments of Mauritius and Seychelles.

The JMA Demonstration project is assisting Seychelles and Mauritius in the development and demonstration of new management approaches for such extended continental shelf areas, which can provide lessons and management techniques that could be replicated both within the western Indian Ocean and other similar maritime zones globally.

The UNDP JMA Demonstration Project aims at achieving its objectives through the delivery of four components.

1. Building technical and management capacity in support of Marine Spatial Planning (MSP) and effective management of the Joint Management Area.
2. Development of a data and information system along with a programme of data capture and gap-filling as a foundation for an adaptive management strategy.
3. Elaboration and implementation of a MSP approach with the objective of improving and implementing effective decision-making for activities within the Joint Management Area.
4. Monitoring, evaluation, adaptive feedback and sustainability using UNDP and GEF tracking tool for both annual progress and terminal evaluation.

C. SCOPE OF WORK

While Mauritius and Seychelles exercise joint sovereign rights over the continental shelf, for the purposes of exploring and exploiting its natural resources, these rights do not extend to or affect the legal status of the superjacent waters. These jurisdictional limitations have implications for the scope, content and application of any spatial management framework for the JMA. It is important, therefore, that the spatial management framework recognises these jurisdictional limitations and that all parties fully understand the extent of their rights and obligations under the developing planning framework.

The *Strategic MSP Roadmap*, developed during Phase 1 of the JMA Demonstration Project and adopted by the Project Steering Committee in November 2019, recognizes the need to build the legal capacity and understanding of the Joint Commission and those officials who will provide legal advice to the Commission regarding the scope and limits of planned management interventions for the JMA. In this regard, the purpose of this consulting assignment is to provide members of the Joint Commission and senior government legal with robust legal analysis of their legal rights, obligations and options for future reference and to inform the development of the MSP framework.

C (i) Duties and Responsibilities

To achieve this objective, the following activities are proposed:

1. Prepare for and deliver a [2 or 3]-Day Capacity Building Workshop, to be delivered to members of the Joint Commission and senior government legal advisers (from Mauritius and Seychelles) on the legal regime of the extended continental shelf; and
2. Prepare a written “relevant legal advisory memorandum” setting out the scope for the Joint Commission to control, regulate and manage activities in the Joint Management Area, including transboundary and jurisdictional matters for those activities considered to be “high seas freedoms”.

D. EXPECTED DELIVERABLES/OUTPUTS

Table 1: List of deliverables of the Legal Expert

S/N	Outputs/Deliverables	Fee (%)	Time Schedule	Means of verification
1	• Submission of a draft assignment work-plan	5	Sep-20	Receipt of draft work-plan
	• Submission of final assignment work plan	5	Sep-20	Approved final work-plan
2	• Submission of a draft “workshop plan” defining <i>inter alia</i> the scope, outline, key questions to be addressed and method of delivery for the workshop	5	Sep-20	Receipt of draft workshop plan
	• Submission of final workshop plan	5	Sep-20	Approved final workshop plan
3	• Deliver the [2 or 3]-day capacity building workshop	40	Oct-20	Completion of capacity building workshop
4	• Submission of draft “Legal Advisory Memorandum”	20	Nov-20	Receipt of draft Legal Advisory Memorandum
	• Final Draft Legal Advisory Memorandum	20	Feb-21	Approved final Legal Advisory Memorandum
	Total	100		

The Legal Expert will be expected to work closely with the UNDP Project Coordination Unit, the National Project Director and the JMA Demonstration Project MSP Specialist during the preparation and delivery of the assignment and its deliverables. The Legal Expert will also be required to lead and participate in the capacity building workshop.

All deliverables shall be submitted in appropriate format, in MS Word, MS PowerPoint, PDF, and any required format as per requirement of UNDP to the address of the Project Manager Mr. Allen Cedras,

allen.cedras@undp.org and with copy to the National Project Director Dr. M. Rezah Badal mrbadal@govmu.org, as well as the UNDP Head of Environment Unit, Mr. Satyajeet Ramchurn, satyajeet.ramchurn@undp.org The project manager will be responsible for further distribution. The deliverables should be of high quality in form and substance and with the appropriate professional presentation. The Legal Expert should fully comply with the requirements of UNDP in terms of content and presentation and respect UNDP GEF visibility guidelines, since unsatisfactory performance may result in termination of the contract.

E. INSTITUTIONAL ARRANGEMENT

The selected service provider will provide service to the Joint Commission through Department for Continental Shelf, Marine Zones and Exploration in the Prime Minister's Office, and report to the National Project Director (NPD), Project Manager, and the Head of Environment Unit.

All deliverables shall be approved by the NPD, UNDP and the Project Steering Committee.

F. DURATION OF WORK

The Legal Expert's work schedule shall be for 25-person-days until 25 February 2021 with the following breakdown; 1 field mission to Mauritius (7 days, October 2020) and 18 days home-based.

NOTE: Due to the ongoing global Coronavirus pandemic, the dates indicated in this Terms of Reference may change.

G. DUTY STATION

The Legal Expert will work primarily from their home-base, with regular contact being maintained with the NPD, Project Manager and the MSP Specialist.

During the field-based part of the assignment, the Legal Expert will be based at the PMU Office, Department for Continental Shelf, Maritime Zones Administration and Exploration, 2nd Floor Belmont Building, Port Louis and at the UNDP Office 5th Floor Anglo-Mauritius House Port Louis.

H. QUALIFICATIONS OF SUCCESSFUL INDIVIDUAL CONTRACTOR

Education:

- Minimum Master's in law (LLM) (or equivalent) in Public International Law, Law of the Sea, International Environmental Law or related fields. Preference will be given to holders of a PhD in the relevant field.

Experience:

- At least ten (10) years of proven professional experience in law of the sea and international maritime policy;
- Specific experience and expertise in the regime of the extended continental shelf;
- Demonstrate experience in developing and delivering capacity building related to international law of the sea;
- Working experience in SIDS particularly in Seychelles and Mauritius.

Skills:

- Good interpersonal and communication skill with the ability to effectively interact at senior levels of Government in a multi-disciplinary and multi-cultural environment;
- A good working knowledge of international best practices in conservation, sustainable use, and management of marine and coastal biodiversity is desirable;
- Demonstrated ability to take initiative and work independently while also having the skills to work effectively within teams;
- Strong drafting, presentation and reporting skills, excellent written communication skills with specific experience of delivering high quality written legal advice;
- Fluency in both written and spoken English is required; knowledge of French is an asset;
- Strong computer skills.

I. SCOPE OF PRICE AND SCHEDULE PAYMENT

The financial offer should be quoted as a lump sum amount, all-inclusive (professional fee, insurance, all travel costs, per diem, etc.). In general, UNDP should not accept travel costs exceeding those of an economy class ticket. Should the consultant wish to travel to a higher class he/she should do so using their own resources.

The contract price is fixed regardless of changes in the cost components. In the case of unforeseeable travel (additional mission for example), payment of travel costs including tickets, accommodation, and terminal expenses should be agreed upon prior to travel between UNDP and the Individual Consultant and will be reimbursed.

Payments will be effected based on deliverables as per Table 1 above.

J. RECOMMENDED PRESENTATION OFFER

The following documents are requested:

- a) Duly completed **Letter of Confirmation of Interest and Availability** using the template provided by UNDP;
- b) **Personal CV or P11**, indicating all experience from similar projects, as well as the contact details (email and telephone number) of the Candidate and at least three (3) professional references;
- c) **Financial Proposal** that indicates the all-inclusive fixed total contract price, supported by a breakdown of costs, as per template provided by UNDP.

K. CRITERIA FOR SELECTION OF THE BEST OFFER

Individual consultants will be evaluated based on the following methodology:

Cumulative analysis

When using this weighted scoring method, the award of the contract should be made to the individual consultant whose offer has been evaluated and determined as:

- a) Responsive/compliant/acceptable, and

The compliant criteria's is as per Table 2.

Table 2: Compliant criteria

Criteria	Percentage (%) Score
Education	15
Relevant professional experience in Law of the Sea and international marine policy	25
Expertise in the regime of the extended continental shelf	20
Experience in capacity-building activities related to the law of the sea	15
Demonstrable experience in equivalent GEF or other multilateral donor-funded projects	5
Working experience with national stakeholder institutions and agencies as well as international institutions	5
Working experience in SIDS particularly in Mauritius and Seychelles	5
Language (English mandatory)	5
Computer skills	5

L. APPROVAL

This ToR has been adapted into UNDP format with all technical inputs from the MSP Specialist.

Signature:

Name and Designation: Project Manager

This ToR is approved by:

Signature: _____

Name and Designation: Head of Environment Unit.

Date of signing: _____