

TERMS OF REFERENCE

Legal Expert to Assist in Strengthening the Capacity of National and Local Government to Improve China's Compliance with International and Regional Treaties and Programs

Consultancy: national
Estimated start of work: September, 2017
Duty Station: Home-based

Background and Justification

UNDP/GEF is providing assistance through UNOPS to countries bordering Yellow Sea in support of their efforts to address among others the increasing trends of depleting fishery stocks, loss of coastal wetland, land and sea-based pollution and implementation of the Yellow Sea Large Marine Ecosystem Strategic Action Programme (YSLME SAP) adopted by China and RO Korea with support of DPR Korea. One of the assistance programs to implement the SAP is the UNDP/GEF/UNOPS project entitled Implementing the Strategic Action Programme for the Yellow Sea Large Marine Ecosystem: Restoring Ecosystem Goods and Services and Consolidation of a Long-term Regional Environmental Governance Framework, or the UNDP/GEF YSLME Phase II Project. The project was launched in July 2017.

The objective of this regional project is to achieve adaptive ecosystem-based management of the Yellow Sea Large Marine Ecosystem bordered by China, RO Korea and DPR Korea by fostering long-term sustainable institutional, policy and financial arrangements for effective ecosystem-based management of the Yellow Sea in accordance with the YSLME SAP.

There are four components of the project:

1. Sustainable national and regional cooperation for ecosystem based management.
2. Improved Ecosystem Carrying Capacity with respect to provisioning services.
3. Improved Ecosystem Carrying Capacity with respect to regulating and cultural services.
4. Improved Ecosystem Carrying Capacity with respect to supporting services.

The key outcomes sought are:

1. Establishment of a self-sustaining cooperative mechanism for ecosystem-based management.
2. Recovery of depleted fish stocks and improved mariculture production and quality.
3. Improved ecosystem health;
4. improved inter-sectoral coordination and mainstreaming of ecosystem based management principles at the national level, maintenance of habitat areas, strengthened stakeholder participation in management and improved policy making.
5. Skills and capacity significantly developed for region-wide ecosystem-based management.

In Component 1 of the Project, the project seeks to improve the compliance with regional and international treaties, agreements and guidelines by participating countries in Yellow Sea. During the governance analysis stage, it is recognized that lack of adequate legal instruments, and weak or non-existing enforcement of existing rules and laws with a lack of compliance among stakeholders

constitute the major legal challenges to restoring the ecosystem carrying capacity of the Yellow Sea. In response, the YSLME SAP has identified the following actions to strengthen the legal framework and successful enforcement of laws and regulation:

1. Development a protocol to control dumping at sea (Action 4.2);
2. Effectiveness implementation of MARPOL 1973/78 for control of oil pollution (Action 4-3);

In the proposed actions to improve effectiveness of legal instruments of the YSLME SAP, it is suggested to improve the implementation of international and regional treaties and guidelines and improve the scope of coverage and enforcement of legal instrument. In the regard, the following additional actions are proposed:

3. Ensure full ratification of the treaties;
4. Developing regional guidelines to incorporate suggested guidelines of the FAO Code of Conduct for Responsible Fisheries into YSLME's context;
5. Developing regional guidelines on matters not covered by UNCLOS, CBD, RMSAR, including reducing pollution discharge from sea-based (e.g. mariculture) and atmospheric deposition of pollutants, and marine litter (in particular microplastics).

In the GEF Global International Waters Assessment conducted in 2005, the following legal reforms are suggested to be included in the YSLME SAP:

6. Enhancement of laws and enforcement mechanisms related to pollution prevention and wastewater treatment practices;
7. Development, harmonization and enforcement of a legal framework to control the use and disposal of fertilizers and pesticides;
8. Development and enforcement of suitable laws and regulations to promote good practices in agriculture and to restrict the introduction of alien and invasive species for aquaculture;
9. Development and implementation of policy and law enforcement mechanisms to restrict destructive fishing practices;
10. Enhancement of laws, regulations and enforcement mechanisms to restrict the entry of excessive fishing fleets and fishermen into the fishing industry

In the governance analysis, the following are also highlighted as critical to improvement enforcement:

11. Enhance the skills and qualifications of managers and technical through adequate training.

With regards to the scope of implementation and enforcement, the Project Documents defines the scope of the assessment as the following:

- UNCLOS
- CBD
- 1972 Convention on the Prevention and of Marine Pollution by Dumping of Wastes and Other Matter
- 1973 International Convention for the Prevention of Marine Pollution from Ships and its 1978 Protocol
- RAMSAR

- FAO Code of Conduct for Responsible Fisheries
- UNFCCC

Objectives:

The development objective underlying the proposed consultancy is the improvement of implementation of international and regional treaties and guidelines in participating countries of the Yellow Sea. In particular, the aim is to strengthen the national and local capacity in compliance with international and regional treaties and guidelines and enhance the capacity of law enforcement. The consultancy will also be devoted to improve education of ecosystem-based management of LMEs in marine affairs, marine policy and law at appropriate institutions.

Immediate Objectives

In order to improve the implementation of international treaties and guidelines in YS, the specific objective of the consultancy includes:

1. the compliance of national legal and regulatory framework in identified areas to international and regional treaties and guidelines shall be assessed, weakness and gaps identified and recommendations for improvement and strengthening and training proposed;
2. preparation of training module to synergize implementation of international environmental treaties and conventions using EBM approach in LMEs;

Expected Outputs

The Legal Expert is expected to deliver the following results:

- an assessment report of the weakness and gaps of China's legal framework in compliance with international and regional treaties and guidelines, and recommendations for improvement and strengthening;
- an assessment report of China's national and local capacity in implementing of existing international legal and regional treaties and guidelines and a capacity development plan with identification of partners, stakeholders whose capacities should be developed, availability of expertise and training modules;
- a training module on synergizing implementation of international environmental treaties and conventions in light of ecosystem-based management of YSLME

Activities

Activities include but not necessarily limited to the following tasks:

Output 1: an assessment report of the weakness and gaps of China's legal framework in compliance with international and regional treaties and guidelines, and recommendations for improvement and strengthening;

- synthesize the obligations of Parties to international agreements and conventions or global guidelines under the UNCLOS, CBD, UNFCCC, RMSAR Convention, 1972 Convention on the Prevention and of Marine Pollution by Dumping of Wastes and Other Matter, 1973 International Convention for the Prevention of Marine Pollution from Ships and its 1978 Protocol, and FAO Code of Conduct for Responsible Fisheries, Global Programme of Action to reduce pollution from land-based sources, Global Nutrient Partnerships, Global Marine Litter Program, FAO Code of Conduct for Responsible Fisheries, etc

- assess the level of compliance of China to the above agreements and conventions and guidelines and identify gaps and weakness in national legislation and regulatory framework;
- formulate recommendation for improvement to enable China to fully comply with obligations of international agreements and conventions and guidelines;

Output 2: an assessment report of China's national and local capacity in implementing of existing international legal and regional treaties and guidelines and a capacity development plan with identification of partners, stakeholders whose capacities should be developed, availability of expertise and training modules;

- review the capacity needs at institutional and individual levels for China to implement and enforce international agreements, agreements and guidelines and programs it has acceded to or ratified, and identify stakeholders for capacity development, partners to develop capacity, availability of expertise and training modules and materials;
- prepare a capacity development plan based on the review for consultation and adoption;
- present the results of legal gaps assessment with international agreements, conventions, programs and guidelines at regional workshops to be held in early November, 2017, and seek consensus among stakeholders from China and RO Korea in particular.
- Participate in capacity development and training of managers and officers at national and local levels to improve China's compliance and enforcement effectiveness of international agreements and conventions;

Output 3: a training module on synergizing implementation of international environmental treaties and conventions in light of ecosystem-based management of YSLME

- Based on identified environmental issues and challenges, synthesize the legislation, policy, mechanisms and capacities to be in place for participating countries to implement and enforce international environmental agreements and conventions;
- identify opportunities of synergizing efforts of national and local governments in implementation and enforcement of these international instruments in line with ecosystem-based management of LME based on the experiences of YSLME;
- Prepare a training module in English with the view of synergizing efforts of national and local governments in implementation and enforcement of international agreements, conventions, treaties, program and guidelines for effective implementation of the YSLME SAP in line with ecosystem-based management.

Inputs

UNDP/GEF YSLME Phase II Project Management Office (PMO) will provide the background information and documents, and will be responsible for providing financial support and the logistics in relation to participation of the consultant in workshops and meetings as deemed necessary by the PMO.

Timing

The consultancy will start in mid-September 2017.

Reporting and other services

The consultant will produce:

- A detailed assessment report the weakness and gaps of China's legal framework in compliance with international and regional treaties and guidelines, and recommendations for improvement and strengthening;
- An assessment report of China's national and local capacity in implementing of existing international legal and regional treaties and guidelines and a capacity development plan with identification of partners, stakeholders whose capacities should be developed, availability of expertise and training modules;
- A 100-page training module on synergizing implementation of international environmental treaties and conventions in light of ecosystem-based management of YSLME

The consultant will submit both electronically and in hard copy in the number of 2 copies to PMO and 2 copies to UNOPS. The reports will be submitted in English.

The consultant will deliver:

- At least two trainings in China in improving China's capacity to implement and enforce international agreements and conventions for the protection of the YSLME;
- At least two presentation of progress to the Management, Science and Technical Panel, or at regional working group on Governance or Habitat;

Competencies

- A good understanding of global ocean agenda, and policy, legal and institutional context of China;
- Advanced university education at MSc or PhD level with expertise in the area of law, policy and ocean governance;
- At least 10 years of professional experience
- Previous experiences in environmental policy making and legal reform and ecosystem-based management
- Ability to produce high quality reports;
- Excellent written and spoken Chinese and English

Payment and Submission

The consultant will be paid for a lump sum of USD22,000 for the consultancies. Costs for participation in workshops and meetings associated with the consultancies will be covered with separate project budget.