



**CALL FOR PROPOSALS FOR A STUDY ON AN ENVIRONMENTAL COMPENSATION FUND IN THE
CONTEXT OF EXPLOITATION OF MINERALS IN THE AREA**

5 February 2020

1. The International Seabed Authority (the Authority) is an autonomous international organization established under the United Nations Convention on the Law of the Sea of 10 December 1982 and the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea. The Authority is the organization through which States Parties to the Convention shall, in accordance with the Convention, organize and control activities in the Area, particularly with a view to administering the resources of the Area.
2. Draft regulations on exploitation of mineral resources in the Area are currently under development at the Authority (ISBA/25/C/WP.1). The draft regulations provide for the establishment of an environmental compensation fund.
3. The Authority is seeking a consultant to undertake a study as outlined in the annex below. Proposals to undertake the study must be submitted via email to ola@isa.org.jm on or before **6 March 2020**.
4. Proposals should not exceed 1,500 words and should thoroughly and sufficiently demonstrate the competence and expertise of the applicant to meet the requirements contained in the Annex. Proposals should equally reflect a clear methodology on the deliverables for the study as well as proposed costs. The outcome of the selection will be communicated to applicants using the contact details provided in the proposals.

Annex

Terms of reference

For a consultancy to undertake a study on the rationale, purpose and funding of an environmental compensation fund for activities in the Area

Background

1. The United Nations Convention on the Law of the Sea (UNCLOS) provides for the responsibility and liability of States with regard to the protection and preservation of the marine environment (article 235).
2. Article 235 (3), in particular, stresses the importance of assuring prompt and adequate compensation in respect of all damage caused by pollution of the marine environment. It places the obligation on States to co-operate in the implementation of existing international law and the further development of international law relating to responsibility and liability for the assessment of and compensation for damage as well as the settlement of related disputes, as well as, where appropriate, the development of criteria and procedures for payment of adequate compensation, such as compulsory insurance or compensation funds.
3. In the context of activities in the Area, article 139 and Annex III to the Convention further elaborate on the responsibility of States Parties to ensure that activities in the Area, whether carried out by States Parties, or state enterprises or natural or juridical persons which possess the nationality of States Parties or are effectively controlled by them or their nationals, shall be carried out in conformity with Part XI of UNCLOS. They provide for liability for damage caused by the failure of a State party or international organization to carry out their responsibilities under Part XI. Annex III to the Convention further provides that a contractor shall have responsibility or liability for any damage arising out of wrongful acts in the conduct of its operations, account being taken of contributory acts or omissions by the Authority.
4. The Seabed Disputes Chamber (SBDC) of the International Tribunal for the Law of the Sea, in its Advisory Opinion on the responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area,¹ recognized that situations may arise where a contractor does not meet its liability in full and the sponsoring State is also not liable under article 139, paragraph 2, of UNCLOS, and suggested that the Authority may wish to consider the

¹ *Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area* (Advisory Opinion) [2011] ITLOS Rep 10).

establishment of a trust fund to compensate for the damage not covered. The Chamber drew attention to article 235, paragraph 3, of the Convention in that regard.

5. The Draft Regulations on Exploitation of Mineral Resources in the Area (ISBA/25/C/WP.1) currently under development at the International Seabed Authority (ISA) provide, in section 5 of Part IV, for the establishment of an environmental compensation fund. Discussions are on-going within the Council of the Authority on the purpose and modalities of such a fund.

Objective and scope of work of the consultancy

6. The ISA secretariat is seeking to engage a consultant with the objective of preparing a study clarifying the rationale, purpose and funding of an environmental compensation fund, and how to ensure the adequacy of funding. The study will serve as supporting documentation for the deliberations of the Legal and Technical Commission at the 26th session of the Authority in July 2020.

7. In particular, the consultant will be required to review existing funds related to compensation for environmental damage, including in the context of the law of the sea, maritime law and the mining sector, with a view to assessing the adequacy of the existing models for environmental compensation for damage arising from exploitation in the Area, and making recommendations on the following non-exhaustive questions:

- a) the type of loss or damage usually covered by such funds as compensable damage, including thresholds, as well as possible exclusions;
- b) the parameters for compensation from the fund, including determining the entities that would have access to the fund, the standard of proof required and the amount of compensation;
- c) the parameters for contributions to the fund, including sound projections on percentages of potential contributions, and the entities that would be required to contribute to the fund, taking into consideration the work of the Open-ended Informal Working Group of the Council in respect of the development and negotiation of the financial terms of a contract under article 13, paragraph 1 of Annex III to the United Nations Convention on the Law of the Sea and under section 8 of the Annex to the Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982;
- d) the modalities of administration of the fund, including how the funds (and interests generated) might be collected, managed and disbursed and by whom;

- e) the appropriate size of the fund, based on projections of the magnitude of potential damage from exploitation activities in the Area, and potential contributors and beneficiaries; and
- f) the relationship between an environmental compensation fund and insurance.

Deliverables

- 8. The consultant will be required to produce:
 - a) a report on the findings related to the questions stated above of no more than 15,000 words; and
 - b) propose draft text establishing the environmental compensation fund for consideration in the context of the Draft regulations, including an identification of additional subsidiary regulations and/or guidelines required to implement the fund.

Timelines

- 9. The work will be undertaken based on the following anticipated timeline:
 - a) Start date: upon signature of the contract
 - b) First drafts: 6 April 2020
 - c) Review of first drafts by Secretariat: 20 April 2020
 - d) Final drafts: 8 May 2020

Modalities of work

- 10. This is a home-based consultancy. However, if necessary, the consultant may be required to travel to Kingston, Jamaica, on issues related to the deliverables. For that purpose, a round trip airline ticket (economy) as per prevailing ISA policies on official travel and DSA at the prevailing ICSC rates established on the travel days would be provided to the consultant.
- 11. The Secretariat will make practical efforts to facilitate the production of timely, accurate and useful reports by promptly responding to the consultant's queries and by providing necessary reference material as identified by the consultant, where feasible.
