



NATIONAL ENVIRONMENT SERVICE
TU'ANGA TAPOROPORO
COOK ISLANDS

EXTENSION TO CLOSING DATE TO WEDNESDAY 4TH OCTOBER 2017

POLICY ANALYST AND LEGISLATIVE CONSULTANT

For the Project on **Strengthening the Implementation of the Nagoya Protocol on Access to Genetic Resources and Benefit Sharing (ABS) in the Cook Islands**

NATIONAL ENVIRONMENT SERVICE (NES) HAS TWO SHORT TERM CONSULTANCY OPPORTUNITIES ON OFFER and seeks expressions of interest (EOI) from qualified persons to provide the following **consecutive** services for the ABS project.

1. POLICY ANALYST for review of an enabling environment for ABS and development of a National Policy;
2. LEGISLATIVE CONSULTANT for review of the legislative framework and the development of a National ABS Bill.

Refer to the Terms of Reference below and for more information please contact the ABS project coordinator Emily Pierre on phone 21256 | email emily.pierre@cookislands.gov.ck

Please submit EOI, CV & proposed Work plan by **Wednesday 4th October 2017** marked CONFIDENTIAL to:

Mr Joseph Brider
Director - National Environment Service
Tupapa, Rarotonga

Email: joseph.brider@cookislands.gov.ck and cc: emily.pierre@cookislands.gov.ck

Terms of Reference:

NATIONAL CONSULTANT/S TO IDENTIFY, DRAFT AND VALIDATE NATIONALLY APPROPRIATE POLICY, LEGAL AND INSTITUTIONAL FRAMEWORK ON ACCESS AND BENEFIT SHARING FOR THE IMPLEMENTATION OF THE NAGOYA PROTOCOL IN THE COOK ISLANDS

9 September 2017

About this document

This document specifies the terms of reference for the **Policy Analyst** and **Legislative Consultant** to identify, assess, draft and validate nationally appropriate policy, legal and institutional framework for Access and Benefit Sharing for the implementation of the Nagoya protocol in the Cook Islands.

Background and Objective

The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (ABS), a supplementary agreement to the Convention on Biological Diversity, was adopted on 29 October 2010 in Nagoya, Japan, and entered into force on 12 October 2014. It provides for greater legal certainty and transparency for both provider and user of resources for the effective implementation of the 3rd objective of the Convention on Biological Diversity (CBD).

The Protocol applies to genetic resources that are covered by the CBD and to the benefits arising from their utilization; it also covers traditional knowledge (TK) associated with genetic resources held by indigenous and local communities.

The UNDP-GEF Project “Strengthening the Implementation of the Nagoya Protocol on Access to Genetic Resources and Benefit Sharing in the Cook Islands” (CKI ABS Project) is a 3-year project that specifically aims to develop and implement a national Access and Benefit Sharing (ABS) legal framework, build national capacities and support an ABS Agreement based on Traditional Knowledge and Public-Private Partnership. The project seeks to achieve this through its three Outcomes namely:

- **Outcome 1:** Strengthen National Regulatory and Institutional Framework on ABS;
- **Outcome 2:** Capacity building and awareness raising for the implementation of the National ABS Framework; and
- **Outcome 3:** Bio-discovery and Benefit-sharing based on the Traditional Knowledge on Bone and Cartilage Regeneration

This consultancy is divided into two parts and aims to support the identification, drafting and validation of a national policy and legislative framework on ABS in the Cook Islands. The national policy and legislative instruments to be adopted should be compliant with the Nagoya Protocol and the Convention on Biological Diversity and complement the

The national policy and legislative instruments shall also complement the Cook Islands Government’s Kaveinga Nui Cook Islands National Sustainable Development Plan 2016 – 2020, specifically:

- Goal 2.6: Growth in non-tourist related industries - strengthening these other industries and diversifying our economic base will reduce our economic vulnerability and reliance on a single industry.
- Goal 15.5 – Improve research on the Cook Islands and advance traditional knowledge for the purpose of enhancing our social and economic development, and safeguarding our natural assets.
- Goal 11.0 - The need for sustainable land management practices, conservation and protection of our biodiversity which is a national, cultural and moral responsibility that our Government has also committed to through international agreements (e.g.: Nagoya Protocol on ABS).
- Goal 14.3 – The Ministry of Cultural Development’s (MoCD) ongoing programme to increase and improve the digital archiving of our heritage and history including our traditional knowledge, for development of creative, cultural (and also economically viable) endeavours.

These national instruments should be simple, efficient, adapted to national and local circumstances and coherent with other national and global ABS instruments such as the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA). These instruments should also be supportive to all of the outcomes of this Project.

The national consultant will report and work closely with the ABS Project Coordinator and the Manager – Island Futures Division of NES, and will seek advice from the regional and international ABS technical specialists.

Consultation with key national stakeholders will also be held to identify, draft and validate appropriate national frameworks and instruments on ABS in the Cook Islands.

The ABS technical specialists will assist by providing specific technical and legal advice on access and compliance measures, and monitoring, to guide the work of the national consultant/s throughout the

process of design, drafting and validation of nationally appropriate ABS instruments in compliance with the Nagoya Protocol.

PART ONE: Policy Analyst

Review of enabling environment for ABS and the development of a National ABS Policy

Timeframe and Report (commence by October 2017)

1. The Policy Analyst will carry out the assignment for a maximum of fifty (50) working days within a 4-month timeframe to be defined from the date of contract signing by the selected candidate
 - 10 days: Legal assessment and gap analyses (deliverable 1)
 - 30 days: Consultations and development of the National ABS Policy, drafted and submitted for validation at the national level (deliverable 2)
 - 10 days: Revision of the draft Policy to address comments from stakeholders and ensure compliance, submissions to NSDC and Cabinet for approval (deliverable 2 & 3)
2. The consultant will report to the ABS Project Coordinator and the Manager – Island Futures Division, NES and /or other staff as needed, and provide a progress report on dates as agreed with the ABS Project Coordinator
3. The consultant undertaking this work will also be guided by the ABS technical specialists (Regional Project Advisor from the UNDP Global ABS project and Regional Technical Advisor) in order to identify the most appropriate and efficient outcomes in line with national circumstances
4. This consultancy will require travel to other islands in the Cook Islands in order to facilitate national consultations. The number of islands and the duration of these visits will be negotiated in light of 1. above. Flights and meeting costs will be negotiated separate from this consultancy.

Scope of Work

The national consultant will consider the following indicative milestones:

1. Assessment and Gap Analysis - the national consultant will first proceed with an assessment of the national legal, policy and institutional frameworks related to ABS and to the implementation of the Nagoya Protocol, in order to identify existing gaps.
 - a. Undertake a gap analysis of ABS-relevant provisions in the constitution, legislations, administrative guidelines or orders, and policies including contracts/agreements;
 - b. Scope institutional arrangements to assess how different stakeholders and institutions coordinate/work together; identifies who is responsible, and how arrangements, procedures, and coordination are done;
 - c. Assess these vis-à-vis Nagoya Protocol on ABS, and identify legislative, policy and institutional gaps.

2. Consultations with national partners and stakeholders, including representatives of local communities across the Cook Islands.
 - a. Undertake a series of consultative meetings/workshops with the key stakeholders, to identify the gaps and how to address them in order to inform the development of the national ABS legislative, policy and institutional framework.
3. On the basis of these findings, draft the National ABS Policy including recommendations/way forward for the development of the ABS legislative instrument on and address any comments received from stakeholders.
4. Assist with the process of endorsement for the National ABS Policy including through the development of information briefs and Cabinet Submission for National Sustainable Development Commission (NSDC) and Cabinet approval.

Expected Deliverables

The Policy Analyst is expected to deliver the following key outputs before the end of the assignment

- A report based on the findings of the assessment of the national legal, policy and institutional frameworks related to ABS and analysis of gaps to address in order to apply the provisions of the Nagoya Protocol nationally.
- A final Draft National ABS policy, accepted and approved by NES, for submission to NSDC.
- Information briefs and Cabinet submission for endorsement by NSDC and Cabinet.

Expected Competencies

- It is expected that the candidate will have the following key competencies:
- Solid knowledge of core governmental policies and national systems, in relation to the Environment field
- Capacity to analyse and apply policies to projects and assignments
- Excellent oral and written command of the English language as well as fluency in Cook Islands Maori
- Experience in development projects/programmes in the Cook Islands or Pacific environment
- Excellent communication, facilitation and reporting skills to lead national consultations at all levels, particularly with the community
- Understanding of the socio-economic context of the Cook Islands
- Proven work experience in policy development and analysis
- Excellent analytical skills with demonstrated ability to analyse and interpret and make sound judgements
- Strong communications and interpersonal skills (written and verbal)

PART TWO: Legislative Consultant

Review of legislative framework and the development of a National ABS Bill

Timeframe and Report (commence by January 2018)

1. The Legislative Consultant will carry out the assignment for a maximum of twenty (25) working days within a 2-month timeframe following the completion of Part One above, to be defined from the date of contract signing by the selected candidate.
 - 5 days: Review of ABS Policy, assessment and gap analysis of legislative framework as well as the Nagoya Protocol and Biological Research and Benefits Bill (deliverable 1)
 - 15 days: Drafting of a national ABS Bill in line with the ABS Policy and presentation of drafts for consultation (deliverable 2)
 - 5 days: Revision of the ABS Bill to address comments, submissions to NSDC and Cabinet for approval (deliverable 2 & 3)
2. The consultant will report to the ABS Project Coordinator and the Manager – Island Futures Division, NES and /or other staff as needed, and when required this person will also provide a progress report.
3. The consultant will work with Crown Law for guidance in drafting the legislation in accordance with the *Solicitor General's Legislative Drafting Directives for the Cook Islands*.
4. The consultant undertaking this work will also seek advice of the Regional Project Advisor from the UNDP Global ABS project in order to identify the most appropriate and efficient outcomes in line with national circumstances, including other regional experts.
5. This consultancy will require consultations with key stakeholders. Meeting costs will be negotiated separate from this consultancy.

Scope of Work

The national consultant will consider the following indicative milestones:

1. Review the assessment of the national legal, policy and institutional frameworks related to ABS, the Gap Analysis and Draft ABS Policy developed under Part 1. Ensure that the Nagoya Protocol, draft Biological Research and Benefits Bill, Traditional Knowledge Act 2013, and other ABS-relevant instruments are considered with the development of a National ABS Bill.
2. Draft the legislative and regulatory instruments, taking into account national and local context that complement the *Cook Islands Government's Kaveinga Nui Cook Islands National Sustainable Development Plan 2016 – 2020*, while ensuring compliance with the provisions of the Nagoya Protocol and the CBD. The proposed instruments should provide a clear description of the operational mechanisms for monitoring the use of Traditional Knowledge associated with genetic resources, and compliance measures including penalties. It should also provide: a proposed model for Prior Informed Consent (PIC); standard contractual clauses for Mutually Agreed Terms (MAT); and guidelines on how to apply the regulations, clarifying both access procedures for applicants and user procedures for compliance measures. This component will be supported by technical advice from the UNDP Technical Assistant and other resources.
3. Undertake consultative meetings/workshops with key stakeholders to present the draft ABS Bill for comments and feedback
4. Validation - revise the proposed instrument as per comments received from key stakeholders and in line with the guidance of the advisors throughout the national validation process.

5. Assist with the process of endorsement of the Policy and National ABS Bill, including through the presentation of the Bill to Crown law and the development of an Information Brief and Cabinet Submission for National Sustainable Development Commission (NSDC) and Cabinet approval.

Expected Deliverables

The national consultant is expected to deliver the following key outputs before the end of the assignment

- A report on the process of developing legislative and regulatory instruments for ABS.
- A draft ABS instrument, adapted to national and local context, fully compliant with the Nagoya Protocol and the CBD and in line with the Bonn guidelines.
- A sound revision of the draft instrument in line with comments received and in line with the guidance of the international consultant to address compliance and other legal issues throughout the validation process, in order to produce the National ABS Bill.
- Information briefs and submissions for endorsement of the Policy and National ABS Bill by NSDC and Cabinet.

Expected Competencies

It is expected that the candidate will have the following key competencies:

- A proven national expertise in designing and drafting national environmental and biodiversity-related laws and regulations;
- Master degree in environmental law, multi-lateral environmental agreements or other related academic backgrounds;
- A proven track record of similar work related to drafting legal documents carried out in the last 5 years;
- Solid knowledge of core governmental policies and national systems, in relation to the Environment field
- Excellent oral and written command of the English language
- Excellent communication, facilitation and reporting skills to lead consultations on draft legislation
- Understanding of the socio-economic context of the Cook Islands
- Excellent analytical skills with demonstrated ability to analyse and interpret and make sound judgements