



Soufriere Marine Management Association Inc.  
SAINT LUCIA

## TERMS OF REFERENCE

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Expert support to develop By-Laws for the Soufriere Marine Management Association Incorporated (SMMA Inc.).

### 1. Scope

The SMMA Inc. under the Global Environmental Facility Small Grants Programme (GEF SGP) funded project entitled “*Improved Policy, Technological, Monitoring and Regulatory Interventions for Addressing Water Quality Issues in the Soufriere Watershed and the Soufriere Bay*” is seeking, 1) to enhance the success of Soufriere Marine Management Association Incorporated (SMMA Inc.) through the revision of its by-laws required under the Companies Act Cap 13.01 of the Revised Laws of Saint Lucia to guide its operations, and 2) the preparation of by-laws as per Section 19 of the Fisheries Act Cap. 7.15 of the Revised Laws of Saint Lucia. The consultant will also be required to identify legislative gaps and make recommendations to strengthen capacity to regulate the conduct of operations in the Soufriere Marine Management Area.

The work to be undertaken by the consultant will focus on reviewing the existing relevant national legislation and policies such as the Fisheries Act, Companies Act, Shipping (Marine Pollution) Bill, Shipping Act, Waste Management Act, Physical Planning Act, Customs Control and Management Act, Maritime Areas Act, SMMA Inc. Corporate by-laws, other legislation guiding the operations of the SMMA Inc. and operations within Soufriere Marine Management Area, the “*Agreement to manage the Soufriere Marine Management Area (SMMA)*”, interviews with the SMMA Inc. Board of Directors, visitors and stakeholders of the Soufriere Marine Management Area, relevant environmental management agencies and other key informants as well as the inclusion of best practises in corporate governance and marine protected area management.

The revised by-laws should be consistent with the requirements of by-laws as defined in the Companies Act and the Fisheries Act. They should also reflect the legal authority of the SMMA Inc. to manage the SMMA and the expectations of the SMMA agreement and Cabinet Conclusions; all gaps, weaknesses and recommendations should be identified.

### 2.0 The Soufriere Marine Management Association Incorporated (SMMA Inc.)

In the late 1980s, marine and coastal areas along the West Coast of St. Lucia were under increasing pressure from competing human activities. In fact, prior to the formation of the Soufriere Marine Management Area (SMMA), fishers often found themselves in conflict with other users. Yachtsmen and fishers competed for the use of marine space for both anchoring and seining activities, respectively, and divers were often accused of deliberately damaging fish pots found during dive

expeditions. Tourism vessels further compounded the issue by interrupting fishing and damaging fishing gear by passing too close to the fishing grounds or directly in the path of deployed fishing gear.

Due to the need for conflict resolution and the unsuccessful management of existing Marine Reserves were deemed necessary by the Department of Fisheries for:

1. The conservation and protection of marine resources and the scenic beauty of the coastal and marine environment of that area
2. The protection of the livelihoods and rights of fishermen, which were being threatened by competing interest groups for the same marine space
3. The reduction of user conflicts that had become a major problem in the area.

In response to these issues, local fishermen, hoteliers, divers, yacht operators, government agencies, and community groups came together and through consultations and subsequent Cabinet Conclusions No. 1671 of 1995 the Soufriere Marine Management Area (SMMA) was established. The SMMA is an eleven kilometer length area of coastline extending to the 75m bathymetric contour which was apportioned into several zones, catering to various users and use. The areas include:

**Marine Reserves:** These areas are declared for the purpose of protecting the natural resources they contain. No extractive activity is allowed. Entry into a Reserve (for diving, snorkelling, or research) is by permit and for a fee.

**Fishing Priority Areas:** These areas are declared for the purpose of maintaining and sustaining fishing activities, which take precedence over any other use of the area.

**Multiple Use Areas:** Activities that may take place in these areas include fishing, diving, snorkelling and other recreational activities, under the guidance of existing regulations.

**Recreational Areas:** These are terrestrial (beaches) and marine (swimming and snorkelling) areas, which are reserved for public access and recreation. Public access must be maintained.

**Yacht Mooring Sites:** Specific areas are designated to facilitate pleasure boats and yachts, without damaging bottom substrate, such as coral reefs and seagrass beds. A coral conservation fee is charged for the use of the mooring.

The Soufriere Marine Management Authority was established as a semi-autonomous, self-financing institution as mandated by Cabinet Conclusion No. 1671 of 1995 to manage the SMMA and in May 2003 the Authority was established as a body corporate, the Soufriere Marine Management Association Inc.

Despite some setbacks which are common during the establishing of marine protected and marine managed areas, the designation of the SMMA has been very beneficial to the Soufriere community and to Saint Lucia as a whole.

The SMMA, Inc. had within the first 10 years, met to a large extent, the initial objectives for which it had been established. User conflicts have, to a great extent been addressed; fishermen have not been marginalized by other interests and the marine resources are being protected. However, since the establishment of SMMA Inc., the main sources of revenue generation within the community, and for Saint Lucia as a whole almost completely shifted from mainly agricultural and fishing, to tourism. The steep increase in coastal tourism, water-based tourism activities, growing level of new entrants into fishing and a significant increase in yacht arrivals, has led more severe conflicts among users.

### 3.0 Context

The by-laws of a company provide a detailed set of rules adopted by a corporation's board of directors after the company has been incorporated. They are an important legal document for a corporation to have in place as they specify its internal management structure and how it will be run. From May 3, 2003, when the SMMA Inc. was incorporated, the organisation had not formally adopted by-laws consistent with the Companies Act. Since the inception of the SMMA Inc. reference was made to by-laws in its operations; however, the document was not signed and it had not been filed at the Registry of Companies and Intellectual Property Office in Saint Lucia. On October 4, 2010 based on a resolution of the Board, the draft by-laws were signed with the requirement to revise and update to ensure it is consistent with the *Agreement to manage the Soufriere Marine Management Area*.

Further, Section 19 of the Fisheries Act gives the SMMA Inc. the power to make by-laws regulating the conduct of fishing operations. To date, the by-laws has not been drafted and gazetted as required under the Fisheries Act.

In 2017, the SMMA Inc. by-laws in question was assessed and reviewed by the Board of Directors against other governance documents for the corporation as well as notable challenges faced by the Board in carrying out its operations. There were immediate shortfalls identified; namely:

1. The area governed, the purpose and objective of the corporation is not defined in the by-laws.
2. There is a lack of synergy and cohesion between the by-laws and other legal and governing documents. Key documents, including the “*Agreement to manage the Soufriere Marine management Area*” (i.e. SMMA Agreement), cabinet conclusions and gazette notices which gives the SMMA Inc. its authority and mandate, are not referenced in the by-laws.
3. The text of the by-laws does not provide adequate detail to guide the Board on its governance arrangements to ensure transparent and accountable processes; for example, it indicates that the approval of work plan is done at an Annual General Meeting (AGM) but there is no clear process for its development or the members that should form part of an Annual General Meeting.
4. Further, the SMMA Agreement states that the workplans and budgets which are prepared by THE ASSOCIATION must be submitted to the Stakeholder Committee for review and approved by the Board. Additional, in some cases the information provided is contradictory such as new membership procedures, the participants at an Annual General Meetings and voting procedures, and membership of the stakeholder committee.

Overall, the by-laws needs to incorporate other key documents guiding the operations of the SMMA Inc. and the SMMA and provide clearer processes to guide the operations of the Board of Directors. This will increase the robustness of the by-laws, broaden its scope of impact on the functions of the Board and increase its responsiveness to the operational issues while avoiding challenges of conflict of interest.

The goal of this service consultancy is 1) to provide support for the successful redraft of the SMMA Inc. by-laws to guide its procedures in an effort to ensure transparency, accountability, accuracy, consistency and responsiveness to key stakeholders including customers, stakeholders and regulators and 2) to prepare by-laws in accordance with the provisions of Section 19 of the Fisheries Act Cap. 7.15 of the Revised Laws of Saint Lucia.

### 4.0 Objective

The objective of this service is to provide assistance to SMMA Inc. with 1) the assessment, redrafting/ reorganising of the corporate by-laws to strengthen in areas where it is weak and to include provisions

for its legal authority to implement the programmes outlined in the SMMA Agreement such as research and monitoring to effectively manage the SMMA and 2) develop by-laws which addresses the operations within the SMMA consistent with the requirements of the Fisheries Act.

## 5.0. Detailed description of scope of work

The Consultant is tasked with the responsibilities of the planning, coordination and execution of various inputs and activities required for the improvement of the by-laws. He/She is expected to work closely with the Directors of the SMMA Inc., resource user interests, relevant Government and non-Government agencies, Attorney General Chambers and relevant enforcement agencies. The main tasks under this consultancy are included but not limited to the following:

1. Develop a work programme with clear tasks and timelines for achieving the tasks
2. Hold discussions as necessary with key individual informants and key interest groups; as well as the Attorney General Chambers and the Board of Directors of SMMA Inc. as part of the analysis and process.
3. Hold at least 4 stakeholder workshops with key interest groups.
4. Prepare a stakeholder consultation workshop report and keep a register of all participants and informants.
5. Preparation of monthly progress reports
6. Review all governance documents and relevant material, including the Fisheries Act, guiding the operations of the SMMA Inc. vetting the compliance, compatibility and consistency with the *Agreement to manage the Soufriere Marine Management Area (SMMA)* and existing laws including Section 19 of the Fisheries Act Cap. 7.15.
7. Undertake the drafting and redevelopment of the by-laws from inputs generated in the consultative processes, literature review, and systemic elements of good corporate governance, especially with regards to the following:
  - (a) Communication of the purpose and objectives of the SMMA Inc. and the area being governed.
  - (b) Inclusion of the role of the Board of Directors and the rules to the population and users of the area under their governance.
  - (c) Measures to address new membership, stakeholder committee and conduct of an annual general meeting.
  - (d) Inclusion of by-laws to guide the conduct of fishing in the SMMA.
  - (e) Noting any legislative gaps.
8. Conduct at least one validation workshop with the membership of the Board of Directors, the Department of Fisheries, the Attorney General Chambers and other key stakeholders to gather comments and feedback on the final recommendations on the by-laws for follow-up actions.
9. Host a briefing meeting with the Attorney General Chambers, Minister responsible for Fisheries and Parliamentary representative for Soufriere on the drafted by-laws and gather comments and feedback for follow-up actions and finalization of the by-laws
10. Submit final draft by-laws, final stakeholder consultation report and end of contract report

## 6.0 Deliverables

The deliverables under this consultancy include:

1. Detailed Work Plan/ Briefing approved by the Project Team.
2. Final report on consultative meetings with stakeholders (pictures and gender considerations are required) to include the validation workshop and briefing of Ministers
3. Monthly progress reports to include draft by-laws submitted by the 5<sup>th</sup> of each month.
4. Finalised draft of the redeveloped corporate by-laws for the SMMA Inc.

5. Finalised draft of by-laws regulating the conduct of operations in the Soufriere Marine Management Area that conforms in style and formatting to Saint Lucia's legal culture and procedures
6. An end of contract report inclusive of legislative gaps found during the consultancy

## **7.0. Organisational Setting**

The activities to be completed under this Terms of Reference will be supervised by the Secretary of the SMMA Inc. Board of Directors and the Project Team.

## **8.0. Contract**

Duration of Engagement: Maximum of 4 months  
Expected Contract start: August 31, 2020

## **9.0. Payment Mode:**

- **20%** - deposit after submission of the approved detailed workplan and receipt of invoice
- **60%** - upon successful completion of consultancy to include the submission of deliverables No. 2 to 5 as listed in Section 6.0 of the Terms of Reference and receipt of invoice.
- **20%** - upon submission of the end of contract report inclusive of legislative gaps found during the consultancy and receipt of invoice.

## **10.0. Discretion**

The consultant agrees not to disclose any confidential information, neither before, during nor after the provision of services. The scope of possible disclosures will be discussed with the client and will be limited solely and exclusively to what is strictly necessary for the performance of work. However, the consultant will have the permission, if required, to use the work as a professional reference.

## **11.0 External Communication**

The consultant is committed to always use the logos of SMMA Inc. in the correct format. All official and external communication, before, during and after the consultancy, must be agreed with the project first.

The Language of the Contract is English Language

The currency of the Contract is \$EC

## **12.0. Administration of Contract**

The SMMA Inc. will issue the contract for the execution of this Terms of Reference to the selected consultant. Work done must be approved and signed off by the Board of Directors before payment is made to consultant. The contract to be issued will be a lump-sum, meaning that all costs associated with the programme are included. The SMMA Inc. will only provide refreshments for the validation workshop and other consultative meetings it deems necessary upon approval of the workplan.

### 13.0 Required Experience and Skills

Candidates should demonstrate:

- ✓ Qualifications to undertake the scope of works
- ✓ Good knowledge on the functioning and stewardship of Marine Managed Areas in Saint Lucia specifically in regards to programmes, policies and legislation, relating to, the environment, fisheries, maritime, marine and coastal zone management policy.
- ✓ Demonstrated experience to effectively interact with government (line agencies), non-government and private sector stakeholders
- ✓ Demonstrated competency in organisational development issues.
- ✓ Demonstrated competency in legislative drafting with experience drafting by-laws with few requirements for revisions, conducting legislative reviews.
- ✓ Demonstrated competency in facilitating multi-stakeholder processes and stakeholder analyses.
- ✓ Working experience with stakeholders in coastal, marine or ICZM projects would be advantageous
- ✓ Fluency in written and oral English; Fluency in Kweyol will be advantageous.
- ✓ Ability to produce clear and concise reports and documentation
- ✓ Skills in advocacy, tact, and versatility
- ✓ Strong analytical skills to summarize the documentation of work and analysis

### 14.0 Submissions

**The deadline for submission of the below listed, August 27, 2020 no later than 4 pm. Submissions received after the deadline date and time will not be considered or processed.**

- ✓ Proposal detailing how you meet the qualifications and experience outlined above and proposed work plan to undertake the scope of works
- ✓ An up to date CV (clearly responding to the above stated requirements to the position
  - If a company/NGO, a copy of the Certificate of Incorporation and a valid ID of the responsible person, e.g. Managing/Executive Director
- ✓ A separate Financial Proposal specifying the expected daily fee rate and the lump sum (cost for the contract in \$EC). If company/NGO, this must bear the signature and stamp of the company signed and stamped.

Note:

- 1) The financial offer/ quotation needs to specify the time frame for delivery and completion of services and
  - 2) The financial offer/quotation needs to be signed
- ✓ Evidence of similar work undertaken in the Saint Lucia or similar jurisdictions

**NOTE: The financial proposal shall not exceed XCD 30,000.00**

All submissions must be made electronically as a single file in PDF via email with the email subject titled: “**Development of SMMA Inc. By-Laws**” to: [smma.inc.sec@gmail.com](mailto:smma.inc.sec@gmail.com)

Any questions on the Terms of Reference should be sent to: [sarita.peter@govt.lc](mailto:sarita.peter@govt.lc) before: Friday, August 21, 2020.

## 15.0 Selection Process

The proposal should include:

- i. Clearly establish an understanding of the services required and separate out activities according to the areas of work listed above;
- ii. Describe how the company engages with its clients: what processes they follow and requirements they have regarding timelines, rates, requests, sign-off and payments;
- iii. Include names of the team/individual assigned to the work and a summary of each of their skill sets; and previous work experience undertaking similar tasks;
- iv. The timetable; and
- v. The financial proposal. Note: The budget should be broken down by activities.

## 16.0 Appendix

Appendix I - The agreement to manage the Soufriere Marine Management Area



SMMA Agreement