



# PROCEEDINGS OF THE FIRST EXECUTIVE COMMITTEE MEETING

**PEMSEA Office, Quezon City  
Philippines**

**14–15 September 2007**



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## **PROCEEDINGS OF THE FIRST EXECUTIVE COMMITTEE MEETING**

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### **A. INTRODUCTION**

- i. The First Executive Committee Meeting was held at the PEMSEA Office, Quezon City, Philippines on 14-15 September 2007.
- ii. The Meeting was attended by the Technical Session Chair, representatives from Philippines, RO Korea, United Nations Development Programme (UNDP) Country Office in Manila, and UNDP/GEF Regional Centre Bangkok. Policy and legal experts from the Philippines participated in the discussion of Agenda Item No. 2 on the Legal Personality and Partnership Fund. The PEMSEA RPO served as the Secretariat to the Meeting.
- iii. A full list of participants is attached as Annex 1.

### **B. OPENING MESSAGE and ORGANIZATIONAL MATTERS**

- i. The PEMSEA Regional Programme Director and Interim Executive Director, Dr. Chua Thia-Eng, welcomed the Technical Session Chair, Mr. Hiroshi Terashima and all the participants to the Meeting. Dr. Chua informed the Meeting that Dr. Li Haiqing who serves as the Acting Council Chair and Intergovernmental Session Chair of the Executive Committee could not participate in the Meeting in view of pressing concerns in China. In this regard, Mr. Terashima agreed to serve as the Presiding Chair of the Meeting. Dr. Chua reminded the Meeting of the decision during the 1<sup>st</sup> EAS Partnership Council Meeting to expand the First Executive Committee Meeting to involve other members of the Council and supporting agencies to participate in the discussion of critical items on PEMSEA operations. He emphasized that the Meeting will be an open discussion and encouraged all to share their thoughts and ideas.
- ii. Mr. Hiroshi Terashima assumed the position of Presiding Chair and welcomed all participants to the Meeting and requested the participants to introduce themselves to facilitate a more comfortable discussion.
- iii. Dr. Chua introduced the principal reference documents (Annex 2) and the agenda of the Meeting (Annex 3). Dr. Chua informed the Meeting that an agenda item on Proposed Guidelines for the Conduct of Executive Committee Meetings was added under Agenda Item 1.1 on Executive Committee Operations.

## **1.0 ADMINISTRATIVE/OPERATIONAL ISSUES**

### **1.1 EXECUTIVE COMMITTEE OPERATIONS**

#### ***Terms of References of the Executive Committee (EC)***

1.1.1 Draft Terms of References (TOR) of the Executive Committee were introduced, emphasizing that the TOR, particularly the functions identified were mainly based on the provisions of the Partnership Operating Arrangements (POA) and Guidelines for Conduct of Meetings adopted by the EAS Partnership Council. Key items, which were not covered by the POA and the Guidelines, included:

- frequency of Executive Committee Meetings;
- mode of conduct of Executive Committee business;
- the role of the Executive Committee in the implementation of the Sustainable Development Strategy for the Seas of East Asia (SDS-SEA) and in the sustainability of the PEMSEA regional mechanism;
- the functions and involvement of the Executive Committee in the selection/appointment of the PEMSEA Resource Facility (PRF) Executive Director; and
- the interactions of the Executive Committee with the PRF, EAS Partnership Council, and supporting agencies of PEMSEA.

1.1.2 The meeting raised a number of comments and inputs on the Draft TOR,:

- a. in line with the Guidelines for Conduct of Meetings (Para. 28), the immediate past Executive Director will not be a member of the Executive Committee but will sit ex-officio in the EC Meetings to provide advice and guidance.
- b. taking into consideration that PEMSEA is currently undergoing a transition phase, as well as the availability of the members of the EC, the EC would have to maintain frequent communication to discuss critical issues on PEMSEA operations and as such would meet at least twice during intersessional period and conduct their business through various media such as telephone conference, video conference, e-mails, etc.
- c. apart from its functions identified in the POA and Guidelines for Conduct of Meetings, the EC on behalf of the EAS Partnership Council will also be involved and be consulted in the selection of the PRF Executive Director
- d. In line with its overall role of overseeing the implementation of Partnership Council decisions, the EC will (a) provide policy guidance to the PRF as well as advising the Council pertaining to the implementation of the SDS-SEA, (b) facilitate decisions on policy issues related to the operation and sustainability of the PEMSEA regional mechanism
- e. the EC will play important role in the promotion of partnerships and cooperation in the governance of the Seas of East Asia, and represent PEMSEA in various regional and global activities as deemed necessary by the Partnership Council.
- f. The EC, on behalf of the Partnership Council, will evaluate the performance of the PRF Executive Director on an annual basis, which will be a separate evaluation from the Executing Agency.

1.1.3 The EC adopted the revised Draft TOR and will submit the same to the EAS Partnership Council for final approval. A copy of the Draft TOR is found in Annex 4.

**The EC recommended:**

- 1.1.4 The endorsement of the Draft TOR with amendments to the 2<sup>nd</sup> EAS Partnership Council Meeting.

***Proposed Guidelines for Conduct of Executive Committee Meetings***

- 1.1.5 The Proposed Guidelines for the Conduct of Executive Committee Meetings were introduced for the purpose of providing more explicit procedures for the conduct of EC Meetings, covering matters not included in the existing Guidelines for the Conduct of Meetings.
- 1.1.6 The meeting underscored the need to ensure the consistency of the Guidelines with some items identified in the TOR as well as with the provisions of the POA and Guidelines for Conduct of Meetings.
- 1.1.7 It was clarified whether the Partnership Council should be provided with the meeting agenda and documents of the Executive Committee prior to the scheduled Executive Committee Meeting. The EC agreed that the meeting documents need not be circulated to all Partners, however final Proceedings of the EC Meetings should be circulated to all PEMSEA partners to keep them informed of the actions or decisions undertaken by the Executive Committee.
- 1.1.8 The meeting finalized the Draft Guidelines (Annex 5) for the purpose of submitting the same to the 2<sup>nd</sup> EAS Partnership Council Meeting for approval.

**The EC recommended:**

- 1.1.9 The submission of the Proposed Guidelines for Conduct of EC Meetings to the EAS Partnership Council for final approval.

**1.2 EAS PARTNERSHIP COUNCIL OPERATIONS**

***Conduct of Council Meetings/Sessions***

- 1.2.1 A new meeting format for EAS Partnership Council meetings was introduced. Dr. Chua commented that in the past the Technical Session had served as venue to discuss all agenda items, leaving the Intergovernmental Session merely to approve the recommendations of the Technical Session. To ensure efficient and focused conduct of Partnership Council Meetings, the new format was proposed to give specific roles and responsibility on each Council session. In general, the Intergovernmental Session should focus more on policy, partnerships and sustainability, while the Technical Session will focus on current technical issues. The following were identified as the focus of each Council Session:

A. Council Session (participated by State and non-State Partners and observers) – focusing on policy, transboundary issues and regional cooperation:

- Adopt Council meeting agenda and associated working documents
- Receive reports on work progress during intersessional period by PRF and partners and identify areas for discussion at technical and intergovernmental session
- Receive progress reports on SDS-SEA implementation
- Discuss issues pertaining to partnership arrangements and sustainability and operation of the regional mechanism
- Provide advice and direction on emerging issues

B. Technical Session (participated by state and non-state partners and observers)– focusing on progress, problems and solutions regarding implementation of the SDS-SEA:

1. Progress

- Review PRF and Partners' reports on targets, progress and commitments, including achievements, resource expenditures, barriers and constraints
- Identify solutions to barriers / constraints affecting SDS-SEA implementation by participating state and non-state partners
- promote collaborative activities and develop strategic partnerships among partners relating to capacity development, environmental investments and joint implementation of international environmental instruments
- Monitor, evaluate and refine SDS-SEA targets and schedules including State of the Coasts reporting
- Prepare for EAS Congress

2. Specific Issues

- Current, new or emerging technical issues tabled for discussion among State and non-State Partners
- Promote joint planning or problem solving among the Partners with respect to common issues or concerns
- Facilitate and contribute to PEMSEA Partnership Fund development and management

3. PRF

- Review the Intersessional work programme of the PRF

C. Intergovernmental Session (participated by both state and non-state Partners, observers) – focusing on transformation, sustainability, partnerships and intergovernmental cooperation

- Address policy issues related to SDS-SEA
- Assess PEMSEA transformation, problems and impacts
- Identify PEMSEA leadership role in transboundary/sub-regional seas
- Develop and implement sustainability plan for PEMSEA and PRF beyond GEF support
- Prepare for Ministerial Forum
- Facilitate and contribute to PEMSEA Partnership Fund development and management
- Serve as tripartite for GEF/UNDP and GEF/WB projects, and other similar projects

- 1.2.2 The partnership fund was identified as a subject that may be discussed in both the technical and the intergovernmental sessions. The technical session must be involved in setting the targets.
- 1.2.3 It was also suggested that PEMSEA can serve as tripartite for GEF and World Bank projects and other similar projects.

**The EC recommended:**

- 1.2.4 The PRF Secretariat adopt the new format for the Partnership Council Meeting sessions for future EAS Partnership Council Meetings.

***Process of Election of Council Chairs by Consensus***

- 1.2.5 The Secretariat suggested additional procedures for the conduct of nominations and elections of Council Chairs as a supplement to Paragraph 3.3 on Elections of the Guidelines for Conduct of Meetings. Two options provided were:
- a. Option 1- confer the Executive Committee the responsibility to notify all nominees of their nominations, and confirm their acceptance of the nomination, before preparing and circulating a consolidated list of nominees to the members of the Partnership Council.
  - b. Option 2- confer the members of the Partnership Council the responsibility to inform and secure the confirmation of their nominees prior to the submission of nominations to the Executive Committee.
- 1.2.6 Issues and problems encountered employing the first option for the election processes were discussed at length. While reiterating the importance of transparency and process-led nomination, Dr. Chua and Mr. Terashima emphasized that the responsibility of consensus building is the role of the Executive Committee, with the PRF providing the secretariat support. A general consensus emerged that Option 1 should be adopted with the understanding that: (a) consensus building should lead to a single candidate for the vacant position to be presented to the Council; (b) candidates are encouraged not to accept nomination for more than one position of Council officers; and (c) only results of accepted nominations and final consultations among the Partners be disseminated.
- 1.2.7. Ms. Analiza Rebuelta-Teh underscored the need to have the various considerations and possible conditions that might arise during the process of nomination and consensus building be properly indicated in the election guide to avoid misunderstanding and misinterpretation. The Supplementary Document on the Guidelines for Conduct of Meetings Pertaining to the Election was therefore refined (Annex 6).

**The EC recommended:**

- 1.2.8 The adoption of Option 1 as this would lead to a more efficient process of consensus building among the Partners.



- 1.2.9 The inclusion of possible scenarios that might arise during the nomination process in a supplementary document to improve understanding among both State and non-State partners.
- 1.2.10 The submission of the clarified nomination/election procedure and Supplementary Document to the 2<sup>nd</sup> EAS Partnership Council Meeting for consideration.

### 1.3 **PRF OPERATIONS**

#### ***Recruitment of the PRF Executive Director***

- 1.3.1 The UNOPS' recruitment process for the PRF Executive Director was presented. The role of the Executive Committee in the recruitment process was discussed. It was emphasized that the EC, on behalf of the EAS Partnership Council, should be involved and consulted in the recruitment of the ED. The meeting was informed that UNOPS, as the new Executing Agency for the new GEF project, will ensure a transparent hiring process and proper consultation with the concerned governments through the EC. The immediate past ED might also be invited to be a member of the selection committee.
- 1.3.2 The assistance from UNDP/GEF was sought in relation to facilitating the GEF CEO's approval and endorsement of the Project Document. The implications of the delay in the project endorsement with regard to the recruitment process and project start up were raised. While the current project's funding would be able to cover the operations of the existing project including the staff until December 2007, further delays will significantly affect the project operations. It was agreed that advertisement of available positions will be made immediately after the CEO's approval using the current project's funding.
- 1.3.3 In view of Dr. Chua's various commitments from October to December 2007 and the possible delay in the appointment of the ED, Dr. Chua sought the agreement of the EC to assign Mr. Adrian Ross as the Acting Regional Programme Director and Interim Executive Director for the said period. Mr. Ross having efficiently served PEMSEA and its pilot phase over the past 12 years, was identified as the most suitable person to lead PEMSEA during this critical period.

#### **The EC recommended that:**

- 1.3.4 UNOPS be consulted regarding the EC's role/involvement in the process of recruitment and selection of the PRF Executive Director.
- 1.3.5 The UNDP/GEF Regional Centre in Bangkok be requested to facilitate the approval and endorsement of the GEF/UNDP Project Document by the GEF CEO.
- 1.3.6 PEMSEA be advised by UNDP/GEF Regional Centre in Bangkok as to when advertisements of available positions can be released so as to avoid further delays in the recruitment of staff for the PRF Technical Services.

- 1.3.7 The appointment of Mr. Adrian Ross as Acting Regional Programme Director and Interim Executive Director starting 1 October 2007 be confirmed with UNDP and IMO.

***Resource mobilization strategies and approaches to support the implementation of the SDS-SEA***

- 1.3.8 The EC discussed the establishment of a sustainable and long-term mechanism to support the implementation of the SDS-SEA. Keeping in mind that GEF will exit as a major sponsor of the project after 6 years, it was concluded that there is a need to identify strategies and plans to ensure the sustainability of the regional partnerships and its operating arrangements.
- 1.3.9 The PRF Secretariat was advised to work closely with the EC to secure funds and be forward looking. It was emphasized that the current members of the EC are credible, have strong linkages with donor agencies and institutions and are trusted by the participating countries. Their role in resource mobilization, networking and securing the commitments from countries and partners is therefore critical.
- 1.3.10 A number of ways were identified in securing the necessary funding to support project implementation and to sustain the PRF. In particular, it was suggested to use and build on PEMSEA's strength on integrated coastal management. There is huge potential demand for capacity development on ICM and PEMSEA should use this opportunity to sell its services.
- 1.3.11 The PRF Secretariat was advised to set up a task team to develop a strategy and a comprehensive business plan in support of SDS-SEA implementation and the promotion of PEMSEA. Among the issues that the PRF was requested to consider included: a) defining the services that it can offer and how these can be effectively promoted; b) identifying measures on how the countries should take ownership of and how they will benefit from the facility; c) determine what the countries need and want from the facility; d) forging partnerships with various agencies, depending on the similarity in objectives, to encourage co-financing for new initiatives, e) considering emerging opportunities such as hazard management and disaster risk reduction, where substantial resources are being put in; and f) developing PEMSEA into a "brand name" that can offer specific services.
- 1.3.12 The possibility for PEMSEA to implement donor's programmes in the region was raised. Since PEMSEA is tasked to implement the GEF project, technically, it is therefore not allowed to implement other projects. Instead, it was suggested that PEMSEA can develop bilateral agreements with donors with the involvement of individual countries.

**The EC recommended:**

- 1.3.13 The PRF Secretariat develop a team to draft the strategy and comprehensive business plan within one month. The business plan must also take into consideration of PEMSEA's current status regarding legal personality.

## **2.0 LEGAL PERSONALITY AND PEMSEA PARTNERSHIP FUND**

- 2.1 Dr. Chua chaired the discussion on Agenda Item 2.0 with the participation of invited resource persons. The purpose of the discussion was to gather inputs from the policy and legal experts on the need to establish the Legal Personality of PEMSEA and the actions required to develop the Partnership Fund. Lending their expertise were Professor Merlin Magallona, UP College of Law; Dr. Wilfrido Villacorta, former ASEAN Deputy Secretary-General and currently Advisor to the Asian Institute of Management; Dr. Tony La Viña, Dean of the Ateneo School of Government; and Asec. Annaliza Teh, DENR, Philippines.
- 2.2 Dr. Chua provided a brief background on the history and current status of PEMSEA. From a purely GEF-supported project in 1994, PEMSEA has grown over the past 14 years into a regional mechanism for the implementation of the regional marine strategy for the sustainable development of the seas of East Asia. With the establishment of the PEMSEA Resource Facility, PEMSEA is now partially supported by China, Japan and ROK to sustain its secretariat services and the GEF project resources for its technical services. The regional focus in marine pollution has broadened to include sustainable coastal and ocean development through the implementation of the regional marine strategy, the implementation of which enables PEMSEA countries to address many challenging issues arising from climate change, habitat degradation, pollution, water shortage, etc. and many other international commitments. PEMSEA has been playing a catalytic role in establishing strategic partnerships and stronger stakeholder collaboration for the sustainable development of the Seas of East Asia.
- 2.3 Given the global trends in the environment, and the developmental and operational targets of PEMSEA, a question was posed regarding what the future holds for PEMSEA. There was a general consensus that PEMSEA will remain relevant and significant in the Seas of East Asia region.

### *On PEMSEA Transformation*

- 2.4 The discussants stressed the important role of PEMSEA in providing a venue for stakeholder cooperation and were unanimous in stating that PEMSEA should now work towards a more formal, permanent sustainable arrangement. Dr. La Viña recognized that PEMSEA has accomplished the first necessary step in partnership, which is establishing the trust of partners and added that it is time for PEMSEA to consolidate its gains. Dr. Villacorta stressed the importance of developing the East Asian Seas region and defining its geographical scope. He added that there may be implications with the development of the ASEAN Charter.
- 2.5 Mr. Dong-Sik Woo, Director, Ministry of Maritime Affairs and Fisheries, RO Korea, said that RO Korea has experience in developing regional mechanisms. The exit of GEF support and Dr. Chua's retirement serves as pressure to prepare for the transformation. Mr. Naka recognized the need for PEMSEA's existence for environmental problems in the region. The establishment of a legal entity might be the transition phase before PEMSEA becomes fully independent. Asec. Teh pointed out that there is also a need for PEMSEA to align with ASEAN and other relevant organizations for that matter.

- 2.6 Prof. Magallona stressed that PEMSEA's plans and programs represent a system of cooperation and the transformation will provide the basis for a more permanent mode of institutionalizing the processes and programs identified by PEMSEA. PEMSEA should have a legal personality independent of the governments of the State Partners. The states may assign to PEMSEA the responsibility of tackling marine environmental issues in the region. It will represent a system of cooperation among states. It will have the legal capacity to own property, pursue remedies and enter into contracts with state and even the United Nations.

#### *Legal Personality*

- 2.7 By way of a background, the events that have taken place since the signing of the Haikou Partnership Agreement in December 2006, and how the issue on the legal personality of PEMSEA resurfaced, were presented. Pursuant to the Partnership Agreement, the Secretariat conducted a study on the various options on the establishment of the Partnership Fund, which was presented at the EAS Partnership Council in 2007. The major challenge faced by the Secretariat in setting up the Partnership Fund, a key operating mechanism of PEMSEA, is its lack of legal personality.
- 2.8 The study identified various options within and outside the UN Framework for the Partnership Fund. The UNOPS and UNDP options within the UN framework will both provide temporary recourse for the holding of the proceeds of the Trust Account. However, these options may not contribute towards the over-all goal of PEMSEA to be self-sustaining. While UNOPS can open a trust account on behalf of PEMSEA to receive all types of funds, UNDP is limited by state contributions by way of Cost-Sharing Agreements, both with overhead charges of between 8-10%.
- 2.9 There were three options identified outside the UN Framework: the formal convention type, the multilateral recognition of PEMSEA's legal personality and the non-stock non-profit organization (NGOs). The important policy issues (Annex 7) considered by the Secretariat were identified as well as the actions undertaken. The discussants were invited to provide inputs on how to go forward. Specifically, it was pointed out that the EAS Partnership Council members were hesitant to accept the NGO option because of the negative impact it might have on government support. It was also stressed that, based on the consultations during the formulation of the Haikou Partnership Agreement, State partners indicated that a regional convention may not be appropriate at this time.

#### *Options*

- 2.10 The first step in the PEMSEA transformation is establishing the legal personality of PEMSEA. Professor Magallona stated that State partners must express their consent to give legal personality to PEMSEA. In getting their consent, the Secretariat should clearly emphasize the value and significance of having a separate legal personality for PEMSEA.
- 2.11 Dr. La Viña was of the view that a regional convention may not be the practical approach. Balance should be weighed between what is optimum and what is

practical. He stated that the Haikou Partnership Agreement is already a mechanism, which can be the basis for the headquarters agreement. Ms. Lacerna stressed that the Haikou Partnership Agreement does not bind the Philippines as it was not ratified by the President. PEMSEA needs to have a legal personality to be able to conclude a host country or headquarters agreement with the Philippines. Dr. La Viña asked if this requirement is under a law or executive order of the Philippine government. Ms. Lacerna stressed that no country can enter into contract with a non-entity and this is confirmed by the Legal Department of the Department of Foreign Affairs. She noted that in the case of ASEAN, Indonesia unilaterally granted legal personality to the ASEAN secretariat in the headquarters agreement. In most constitutive documents, such as that of ASEAN Center for Biodiversity, ADB, IRRI and others, there is a specific provision granting personality to the organization with legal capacity to contract, hold property and to take remedial measures.

- 2.12 Dr. La Viña suggested that PEMSEA proceed with a headquarters agreement (like Indonesia) and just have a provision authorizing PEMSEA to enter into a headquarters agreement without necessarily establishing PEMSEA's legal personality. Dr. Villacorta explained that the ASEAN recognition is unique to Indonesian circumstances and may not be applicable under Philippine circumstances. Professor Magallona reminded that PEMSEA is already de-facto international organization; but this may not be sustainable and may even be questionable. Further, he said that PEMSEA does not need unilateral recognition. Since PEMSEA deals with many governments, it must have a legal personality and status as an international organization under the proper constitutional processes. It must be endorsed by at least three state partners under their own constitutional processes.
- 2.13 Mr. Kyo Naka, Deputy Resident Representative, UNDP Manila, inquired if some countries have expressed their intention to sign. He suggested that PEMSEA should go straight to the point and provide for a financial mechanism. Prof. Magallona said that the document can provide for annexation. For countries that will not sign, PEMSEA will not be binding.
- 2.14 Dr. Villacorta identified the four objectives of PEMSEA transformation. PEMSEA should: (a) transform into an international organization with its own legal personality; (b) be sustainable; (c) have accountability to donors and partners; and (d) have operational and administrative mechanisms. The fund or the trust account is not the main issue but the future of PEMSEA as an international organization headquartered in the Philippines with pertinent rights and privileges.
- 2.15 Prof. Magallona referred to an Executive Order relating to the processes of concluding treaties and executive agreements. Ms. Lacerna referred the discussants to the documents on Comparative Analysis (Appendices 7-C and 7-D), which presented the step-by-step process in concluding an executive agreement or a treaty as provided for under the Executive Order.
- 2.16 Following the processes, Prof. Magallona suggested that the Secretariat draft the following documents that can serve as working papers:
  - a. Concept Paper

- b. Draft constitutive instrument which will include the concepts, principles, objectives, purpose, administrative mechanism, programmes of action, etc.
  - c. Draft Headquarters' Agreement.
- 2.17 Dr. Villacorta added that PEMSEA can study the ASEAN model which was established through the Bangkok Declaration. Dr. Chua stated that PEMSEA and ASEAN have no conflict. PEMSEA can strengthen ASEAN in areas where sea is the focus of cooperation.
- 2.18 Prof. Magallona had reservations on the use of the name PEMSEA Resource Facility. The use of the term "Facility" may not be proper for an international organization. He suggested the use of PEMSEA as it is more recognized.

*Headquarters Agreement*

- 2.19 Prof. Magallona stated that the Headquarters' Agreement in the Philippines should contain provisions on several privileges and immunities such as taxation, customs duties, immunity from criminal, administrative and civil suits. The Vienna Convention identified privileges and immunities which may serve as useful reference in preparing the Headquarters Agreement.
- 2.20 On the question of the length of the Philippine process, Ms. Lacerna said that there is nothing definite. The Senate Committee on Foreign Relations or Environment may schedule hearings as often as they may deem necessary. She identified the need for meta legal processes (or non-traditional ways of generating pressure to achieve a desired outcome relating to an issue with legal dimensions).
- 2.21 Prof. Magallona emphasized the need for strategies. It is important to inform and involve key political leaders responsible for approval of the document. Dr. Chua recognized the need to improve the public perception of PEMSEA with the help of the DENR and other government agencies and the local governments, and the NGOs. Prof. Magallona offered to assist in the process of securing briefing with the chairs of the senate committees on environment and foreign relations on PEMSEA. Senator Pia Cayetano can be asked to deliver a privileged speech on environmental problems in the Philippines and mention PEMSEA in the process. There can also be a roundtable discussion involving Senior Executives and Senators. He also suggested that the hosting of the Congress in 2009 can be dramatized; PEMSEA can be launched in the 2009 Congress. Dr. Villacorta also suggested that the PEMSEA portfolio can be sent to all senators. Dr. Chua also mentioned that PRF can invite key people in the inauguration of the PEMSEA building.

*Task Force*

- 2.22 Dr. Chua proposed that PRF establish a task force or a working group that will move the transformation process forward. The task force shall be composed of key people and legal experts and shall develop a work plan. Ms. Lacerna suggested that a representative from the Philippine Department of Foreign Affairs (DFA) can be invited to join the working group. Asec. Teh confirmed that a representative of the DFA was part of the working group for the ASEAN Center for Biodiversity.

- 2.23 Dr. Chua inquired about the parallel processes in other countries. Dr. Terashima said that the draft documents can be sent to the countries to get a reaction on which country PEMSEA can work with. The Task Force can have initial consultation in Manila on the draft documents before sending them to the countries.

**The EC recommended:**

- 2.24 The PRF create a Task Force or Working Group of policy and legal experts to develop a work plan for the PEMSEA Transformation and establishment of PEMSEA's legal personality. The timeline to be set will target the EAS Congress 2009 as the launching of the PEMSEA with legal personality.
- 2.25 The PRF draft the following documents that can serve as working papers:
- a. Concept Paper
  - b. Draft constitutive instrument which will include the concepts, principles, objectives, purpose, administrative mechanism, programmes of action, etc.
  - c. Draft Headquarters Agreement.
- 2.26 The PRF to include key persons such as the Philippine legislature and the Department of Foreign Affairs of the Philippines in various PEMSEA activities so as to establish a good working relationship.

**3.0 PEMSEA TRUST FUND**

- 3.1 An update was provided on the status of the PEMSEA Trust Fund. The PEMSEA Trust Fund, a US\$ denominated account, was initially opened by IMO in 1996. To date, the fund has a net balance of about US\$ 400,000, which is targeted for capacity development in support of the SDS-SEA implementation. After 11 years, various revenue activities (i.e., sale of publications, registration fees from training workshops, conferences and EAS Congresses) have kept the fund afloat. However, the fund will be closed by the end of 2007, in view of the closure of the current phase of PEMSEA and the exit of the IMO as Executing Agency. Hence, the PRF explored the option for UNOPS to open a similar account under the name of PEMSEA Partnership Fund by way of an escrow arrangement. Further, the PRF is seeking agreement from GEF and UNDP regarding the transfer of any residual project funds to the PEMSEA Partnership Fund account amounting to US\$150,000 as seed money.
- 3.2 Ms. Anna Tengberg, Regional Technical Advisor, Land Degradation & International Waters, UNDP Regional Centre in Bangkok, reminded the Meeting that in line with GEF rules, once a project is closed, any funds left in the account will have to be closed. However, she would seek further clarification from UNDP/GEF New York to ensure the feasibility of the escrow account and the transfer of residual project funds as seed funding. She suggested that a formal request from PRF must be drafted which she will then forward to UNDP/GEF New York.

- 3.3 In addition, Ms. Tengberg suggested that PEMSEA discuss the details of the terms of the escrow account with UNOPS, particularly the terms of releasing funds as escrow accounts would usually require that particular amount of funds be identified for specific projects to facilitate releasing of funds.

**The EC recommended:**

- 3.4 The PRF send a request to the IMO regarding the transfer of the balance to the Trust Fund to the UNOPS Escrow account, under the name of PEMSEA Partnership Fund, once established.
- 3.5 The PRF seek GEF and UNDP's agreement to transfer the residual fund of the GEF Regional Programme as seed funding for the PEMSEA Partnership Fund.

**4.0 STATUS OF THE GEF/UNDP PROJECT DOCUMENT AND EXTENSION OF THE CURRENT PROJECT**

- 4.2 The Meeting was informed that the GEF/UNDP Project Document has been resubmitted to the GEF in July 2007 with the responses to some of the comments provided. However, based on recent information provided by UNDP/GEF Regional Centre Bangkok, further comments were received pertaining to the budget.
- 4.3 Ms. Tengberg assured the Meeting that her office will immediately address the said comments and resubmit the Project Document to the GEF CEO by the week of 24 September for endorsement. She also expressed optimism that the Project Document will be endorsed by the GEF CEO by October 2007.

**The EC recommended that:**

- 4.4 Further comments or questions on the budget be finalized by the UNDP/GEF Regional Centre in Bangkok as soon as possible so as not to further delay the endorsement of the Project Document.

**5.0 FRAMEWORK OF PARTNERSHIP PROGRAMMES 2007-2010**

- 5.1 Progress on the development of the Framework of Partnership Programmes was presented, including the objectives, relationship with the State of the Coasts, and history from its introduction during the 1<sup>st</sup> Partnership Council Meeting. A revised Template for the Framework of Partnership Programmes was introduced, which would require the listing of various efforts/programmes of Partners for sustainable coastal and ocean development and their linkage, if any, to the governance and sustainable development aspects identified in the PEMSEA's Sustainable Coastal Development Framework Thru ICM Implementation (SCDF). The Framework aims to collate information on projects/programmes of Partners contributing to the SDS-SEA implementation, as well as to serve as mechanism to identify gaps or possible redundancies in efforts.



- 5.2 Dr. Chua emphasized that the Framework of Partnership Programmes provides a general idea of the effort, or in some cases the level of effort for each of the sustainable development aspects.
- 5.3 A clarification was raised on whether the budget requested in the template would refer to the entire project budget, the government budget/allocation, donor's allocation, or would it include leveraged financing. It was suggested that co-financing could be captured in the Framework, but leveraged investments would occur only as a consequence of projects, and therefore may not be readily available.
- 5.4 Since the framework is still in the process of development, Dr. Chua emphasized that it is essential to keep it simple in the initial stages and then the system can be improved incrementally later. The Secretariat will initially apply the Framework in the Philippines as a case study for dissemination to other countries.

**The EC recommended:**

- 5.5 The PRF complete the Framework before the end of the year and to initially test the Framework using the Philippines as a case study.
- 5.6 The PRF present the revised Framework and the results of the case study of the Philippines at the 2<sup>nd</sup> EAS Partnership Council Meeting.

**6.0 STATE OF THE COASTS REPORTING SYSTEM**

- 6.1 Progress made on the State of the Coasts reporting was reported, taking into consideration the comments and recommendations from the 1<sup>st</sup> EAS Partnership Council Meeting.
- 6.2 The meeting was informed that the SOC reporting template, which consists of three major parts, will serve as guide for local governments and other interested groups to collect information that will allow them to identify gaps and assess their progress in achieving their sustainable development targets. In particular, the template, which was developed based on the SCDF thru ICM Implementation incorporates a set of simple and measurable indicators for each of the system of governance and the five issue-specific management systems that complement the indicators and targets of the UN MDGs, WSSD, Agenda 21 and SDS-SEA.
- 6.3 As agreed during the EAS Partnership Council Meeting, the SOC reporting will be initially built into the ICM programs at the site level. As such, it is considered as a unique endeavor since it is focused at the local level.
- 6.4 The perceived benefits of the reporting system were discussed including: a) systematizing the way local governments monitor their progress in relation to international targets; b) encouraging the local governments to undertake proper reporting of activities undertaken and assessing the impacts of management interventions; c) encouraging the local governments to document their procedures and processes which is a prerequisite in securing certification and recognition (e.g.,

ICM Code, ISO 9001 and 14001); and d) standardizing the monitoring process allowing cross-comparison across sites.

- 6.5 A number of challenges were identified which included: a) effectively informing the local governments of the benefits of the reporting system and enticing them to implement it; b) collection of relevant information to populate the template; c) analyzing and synthesizing the data collected; d) interpreting the information into something more meaningful – one that tells a story – not just a compilation of statistics; and e) how the information generated from the SOC would be utilized by other projects and strengthening their activities.
- 6.6 The development of the SOC reporting template was cited as still in its “evolutionary phase” as it is continuously being improved while testing of its applicability at the local level is ongoing. If proven to be working at the local level, the reporting system will be tested at the subregional level. If implemented at the regional level, the reporting system is seen as a unified information collection system for the preparation of the regional SOC. The Integrated Information Management System, which is in place in majority of the ICM sites, can provide support by verifying the data required by the SOC reporting.
- 6.7 It was suggested that the United Nations Convention to Combat Desertification (UNCCD) and the Stockholm Convention on Persistent Organic Pollutants (POPs) be included in the list of international instruments. It was also suggested to check the country reports on MDG compliance, which may provide additional information to further strengthen the SOC indicator framework.
- 6.8 Finally, the meeting was informed that the template will be tested using available information from Batangas/ Manila Bay, which will serve as case study for the preparation of SOC reports of other ICM sites. The PMO Director’s Workshop, which is being planned for 12-15 December 2007, will serve as a venue for the presentation of the Batangas/ Manila Bay case study as well as discussions on the application of the framework and template. It is anticipated that several sites will be testing the template and that their respective SOC reports would be ready by 2008.

**The EC recommended:**

- 6.9 The PRF incorporate the suggestions raised by the Meeting into the SOC reporting template.
- 6.10 The PRF conduct an initial test of the template using Batangas and Manila Bay information, and report the results to the 2<sup>nd</sup> EAS Partnership Council Meeting.

**7.0 EAS CONGRESS 2009**

- 7.1 The status of preparations for the East Asian Seas (EAS) Congress 2009 were reported. The Meeting was encouraged to provide suggestions and guidance on some of the major items and issues/challenges to be addressed, including:
- the proposed Congress theme: “Partnerships at Work: Local Implementation and Best Practices”

- confirmation from the new Secretary of the DENR
  - confirmation from the Committee on Budget of the Philippines
  - competition with other international events
  - securing the commitment of Ministers to participate in the Congress and the Third Ministerial Forum
  - putting concept of joint planning and implementation into action
  - sustainable operation of the Congress
- 7.2 Asec. Analiza Rebuelta-Teh informed the Meeting of the Special Order that has been drafted to create a Local Organizing Committee for the preparations and organization of the EAS Congress 2009. She further stated that a briefing has been scheduled with the new Department of Environment and Natural Resources (DENR) Secretary, Hon. Jose L. Atienza, Jr., on 19 September 2007, to brief him on the Manila Bay Project and other PEMSEA-related activities including the EAS Congress 2009.
- 7.3 Asec. Teh further informed the Meeting that budget allocation for the EAS Congress has been included in the DENR Budget for 2008, which is due for Budget Committee Hearing at the Congress this September and in November by the Senate Committee on Budget. As for the 2009 budget, DENR will submit a budget request on the first quarter of 2008. In line with this, Asec. Teh suggested that the draft MOA between DENR and PEMSEA indicate that DENR will commit budget for 2008 and 2009, subject to budget approval processes.
- 7.4 Bearing in mind that several regional and international events will be held in 2009 (i.e., 4<sup>th</sup> Global Conference on Oceans, Coasts, and Islands; World Ocean Conference), Dr. Chua emphasized the need for the Congress to develop a unique program and approach, including:
- by building on the strength or competitive advantage of PEMSEA, the EAS Congress 2009 will focus on the local government and good practices on-the-ground that addresses the international concerns and commitments.
  - the introduction of a new format whereby the International Conference will be merged with the Exhibition.
  - Daily Congress schedule will dedicate half-day sessions for plenary keynote addresses on specialized topics to provide time for discussions.

**The EC recommended:**

- 7.5 The conduct of further consultations with Partners regarding the theme of the EAS Congress.
- 7.6 The development of a strong promotional campaign to encourage the participation of various Partners and stakeholders in the Congress.

## 8.0 OTHER BUSINESS

### *Schedule for Future Executive Committee Meetings*

- 8.1 The Secretariat introduced a proposed schedule for Executive Committee Meetings, taking into consideration the draft Terms of Reference and the schedule of key PEMSEA activities particularly the EAS Partnership Council Meetings and EAS Congress 2009.

The EC adopted the following timetable:

<b>Date and Venue</b>	<b>Activities</b>
March 2008 Manila, Philippines	EC's Preparatory Meeting for the 2nd EAS Partnership Council Meeting
July 2008 Tokyo, Japan	2nd EAS Partnership Council Meeting and Meeting of the EC
July 2009 Manila, Philippines	EC's Preparatory Meeting for the EAS Congress and the 3rd EAS PC Meeting
23-27 November 2009 Manila, Philippines	3rd EAS Partnership Council Meeting/EAS Congress

### *Hosting of the 2<sup>nd</sup> EAS Partnership Council Meeting*

- 8.2 The Meeting was informed that Japan has not yet confirmed the hosting of the 2<sup>nd</sup> EAS Partnership Council.

The EC recommended:

- 8.3 The PRF Secretariat follow-up with the Government of Japan on the hosting of the 2<sup>nd</sup> EAS Partnership Council and finalize the date of the Meeting.

## C. CLOSING

Mr. Hiroshi Terashima thanked all the participants and declared the Meeting closed at 12:30 pm, 15 September 2007.

## **Annex 1**

### **LIST OF PARTICIPANTS**

**First Executive Committee Meeting  
Manila, Philippines  
14-15 September 2007**

**List of Participants**

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Technical Session Chair  
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### **PEMSEA Secretariat**

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Atty. Maria Teresita Lacerna  
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Ms. Magnolia Uy  
Technical Officer for Communications

**Annex 2**  
**List of Documents**



**First Executive Committee Meeting  
 Manila, Philippines  
 14-15 September 2007**

**List of Documents**

<b>Item No.</b>	<b>Agenda Item</b>	<b>Document/Presentation</b>
1.0	Administrative/Operational Issues	
1.1	Executive Committee Operations	Draft Terms of References of the Executive Committee (EC)
		Draft Guidelines for Conduct of Executive Committee Meetings
1.2	EAS Partnership Council Operations	Conduct of Council Meetings/Sessions
		Process of election of the Council Chairs by consensus
1.3	PRF Operations	Recruitment of the Executive Director
		Resource mobilization strategies and approaches to support the implementation of the SDS-SEA
2.0	Legal Personality and PEMSEA Partnership Fund	Examples of other multilateral agreements and possible option for PEMSEA; Study of issues related to the establishment of Legal Personality and PEMSEA Partnership Fund
3.0	PEMSEA Trust Fund	
4.0	Status of the GEF/UNDP Project Document and Extension of the Current Project	Status Report on the GEF/UNDP Project Document
5.0	Framework of Partnership Programmes 2007-2010	Short Information on the Framework of Partnership Programmes
6.0	State of the Coasts Reporting System	Status Report/Information on the State of the Coasts Reporting System
7.0	EAS Congress 2009	Status Report on the Preparations of the EAS Congress 2009
8.0	Other Business	Schedule for Future Executive Committee Meetings

## **Annex 3**

### **First Executive Committee Meeting Agenda**

**First Executive Committee Meeting  
PEMSEA Office, Quezon City, Philippines  
14-15 September 2007**

**Provisional Agenda**

**14 September, Friday**

- 09:00- 12:00 1.0 Administrative/Operational Issues:
- 1.1 Executive Committee Operations
    - Terms of References of the Executive Committee (EC)
    - Draft Guidelines for the Conduct of EC Meetings
  - 1.2 EAS Partnership Council Operations
    - Conduct of Council Meetings/Sessions
    - Process of election of the Council Chairs by consensus
  - 1.3 PRF Operations
    - Recruitment of the Executive Director
    - Resource mobilization strategies and approaches to support the implementation of the SDS-SEA
- 12:00-13:30 Lunch
- 13:30-18:00 2.0 Legal Personality and PEMSEA Partnership Fund

**15 September, Saturday**

- 09:00-09:30 3.0 PEMSEA Trust Fund
- 09:30-10:00 4.0 Status of the GEF/UNDP Project Document and Extension of the Current Project
- 10:00-10:30 5.0 Framework of Partnership Programmes 2007-2010
- 10:30-11:00 6.0 State of the Coasts Reporting System
- 11:00-11:30 7.0 EAS Congress 2009
- 11:30-12:00 8.0 Other Business
  - Hosting of 2<sup>nd</sup> EAS Partnership Council Meeting
  - Schedule for Future Executive Committee Meetings
- 12:00-12:30 9.0 Summary

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## **Annex 4**

### **Draft Terms of References of the Executive Committee**

## **DRAFT TERMS OF REFERENCES OF THE EXECUTIVE COMMITTEE**

### **1. The Executive Committee**

The Executive Committee (EC) is a body of the EAS Partnership Council tasked to ensure that the decisions and recommendations of the EAS Partnership Council are implemented.

### **2. Composition**

2.1 The Members of the Executive Committee are elected by the EAS Partnership Council to a three-year term and shall serve as the officers of the EAS Partnership Council.

2.2 The members of the Executive Committee are:

- a. Council Chair
- b. Intergovernmental Session Chair
- c. Technical Session Chair
- d. PRF Executive Director

The PEMSEA Resource Facility (PRF) Executive Director is a member of the Executive Committee and serves as Secretary to the EC. The Council Chair serves as Chair of the Executive Committee. The immediate past PRF Executive Director will sit ex-officio in all Executive Committee Meetings.

### **3. Frequency of Meetings**

The EC will meet at least twice during the intersessional period, subject to the budget as may be approved by the EAS Partnership Council. Special meetings of the EC will be organized upon the request of any Officers of the EC, with the consent of the Council Chair, subject to budget availability.

### **4. Mode of Conduct of Executive Committee Business**

The Executive Committee may conduct EC business through correspondence, telephone conference or video conference. For the transaction of EC business, at least two elected Chairs of the Council must participate.

### **5. Functions and Powers of Executive Committee**

#### **5.1 The Executive Committee will perform the following functions:**

- a. To oversee the implementation of the decisions, resolutions and recommendations of the EAS Partnership Council during intersessional periods;

- b. To provide recommendations, guidance and direction to the PRF and advise to the EAS Partnership Council regarding the implementation of the Sustainable Development Strategy for the Seas of East Asia (SDS-SEA);
- c. To facilitate decision-making on policy issues related to the operation and sustainability of the PEMSEA regional mechanism;
- d. To review and evaluate applications of stakeholders for inclusion as partners of PEMSEA and to recommend their application for the consideration of the EAS Partnership Council;
- e. To conduct and coordinate the nomination and election process for the Council Chair, Intergovernmental Session Chair and Technical Session Chair;
- f. To review, approve and support fund raising activities of the PRF and develop policies and operational guidelines on the management, allocation and utilization of resources in the PEMSEA Partnership Fund;
- g. To recommend to the EAS Partnership Council, as appropriate, policies, programs and partnership arrangements to promote regional cooperation in the governance of the Seas of East Asia.
- h. To invite resource persons (i.e., partners, agencies, experts, institutions, individuals) to the EC Meetings as and when required, subject to available budget;
- i. To represent the Partnership Council on the appointment of the PRF Executive Director.

## **5.2 The Secretary shall perform the following functions:**

- a. Organize EC meetings, give all notices required and document the proceedings;
- b. Have custody of the register of partners, all documents pertaining to partnerships, and all correspondence files of the EC ;
- c. Perform duties and work as the EC may, from time to time, require or assign.

## **6. Executive Committee Interactions**

To support the Executive Committee with the discharge of its functions, and within the limits of available human and financial resources:

- a. The PRF Executive Director will ensure the availability of necessary technical support, as well as access to pertinent information, within the PRF;
- b. The Chair of the EAS Partnership Council will call upon Officers of the Executive Committee to represent PEMSEA in key functions or activities at a regional or global level, as and when appropriate;
- c. The appointment of the PRF Executive Director by the Executing Agency will be undertaken in consultation with the Executive Committee, on behalf of the Council;
- d. The performance of the PRF Executive Director will be evaluated by the Executive Committee on behalf of the Council, on an annual basis;
- f. The PRF Executive Director will keep the Executive Committee informed of the major activities and decisions undertaken by the PRF through periodic reports/updates.

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## **Annex 5**

### **Draft Guidelines for the Conduct of Executive Committee Meetings**

## **Draft Guidelines for the Conduct of Executive Committee Meetings**

### **Members of the Executive Committee**

The members of the Executive Committee (EC) are:

- a. Council Chair
- b. Intergovernmental Session Chair
- c. Technical Session Chair
- d. PRF Executive Director

### **Schedule and Venue of Meetings**

The EC meets at least twice during the intersessional period. Special meetings of the EC may be organized upon the request of any Officers of the EC, with the consent of the Council Chair, subject to budget availability.

### **Agenda and Timetable**

The Secretary, in consultation with the other members of the Executive Committee, prepares a provisional agenda and timetable for each Executive Committee Meeting.

### **Meeting Documents**

The Secretary circulates copies of the provisional agenda and timetable as well as other draft meeting documents to the members of the Executive Committee prior to the Meeting.

### **Proceedings of the Executive Committee Meeting**

The Secretary is responsible for the preparation, review, and refinement of the proceedings of each Executive Committee Meeting. Draft proceedings will be distributed to the Executive Committee members for review within 5 working days of each EC Meeting. Final Proceedings of the Executive Committee Meeting will be distributed to all Partners.

### **Resource Persons**

The Executive Director on behalf of the Executive Committee may invite resource persons to the meeting to provide necessary information on key agenda items, in consultation with the other members of the Executive Committee.

### **Conduct of Executive Committee Meetings**

The Executive Committee may conduct EC business through meetings, correspondence, telephone and/or video conference. For the transaction of EC business, at least two elected Chairs of the Council must participate.

The Council Chair shall preside all EC meetings. Should the Council Chair be unable to attend the EC Meeting, the EC members will select an Acting Chair for the EC Meeting from either the Intergovernmental Session Chair or Technical Session Chair.

### **Amendment of Guidelines**

These guidelines may be amended, modified, or replaced by the Executive Committee in consideration of changing circumstances.

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## **Annex 6**

### **Supplementary Document to the Guidelines of Conduct of Meetings Pertaining to Elections**

## **Supplementary Document on Guidelines for the Conduct of Meetings Pertaining to the Provisions on Election**

### **3.3 Election**

After the nomination period, the Executive Committee notifies the nominees of their nomination and requests for their acceptance/confirmation. The confirmed nominees will be requested to submit their formal acceptance together with their curriculum vitae and other supporting information. Nominees shall not accept nomination for two positions at the same time. Nominations received after the nomination period will be considered invalid.

The Executive Committee communicates to Partner members of the Council the consolidated list of the confirmed nominees and curriculum vitae received. The Executive Committee conducts consultations in order to reach a consensus among the Partner members of the Council. Outcome of consultations is reported to the Council members at each stage.

In case there are more than one confirmed nominees for one position, the EC undertakes consultation with Partners in accordance with the Guidelines, in order for the Partners to reach consensus on a single candidate for the position.

The Executive Committee informs the candidates and reports the results of its consultation to the Council. Apart from the list of nominees and information on them, other details of the nomination process will be confidential (i.e., who was nominated and by whom). Detailed information on the nominations will be divulged by the Executive Committee only upon the request or decision of the EAS Partnership Council. The Council elects the officers by consensus with due consideration to the consultation results.

<b>Possible Scenarios</b>	<b>EC's Consensus building Measures</b>
A. The Partners nominate the same person for more than one position.	The Executive Committee contacts the nominee and informs him/her of the nominations received. The EC secures the nominee's confirmation for only one position. The EC informs the Partners of the outcome of the consultation with the nominee.
B. The nominees identified for the three positions are all from the Northern Asian countries or Southeastern Asian countries of PEMSEA.	In view of geographical consideration and to ensure a more balanced representation at the Council, the EC representing the interest of the entire EAS Partnership Council, may exercise its discretion to encourage Partners to consider in their nominations the importance of geographical representation at the Council.
C. After several consultations, the Partners still are not able to reach a consensus on a single candidate for a certain position	In the final consultation, the EC releases a list of confirmed nominees for a position. The candidate to garner the most support from Partners remains as the single candidate for the position.
D. A Partner/nominator would like to withdraw its nomination for a particular candidate.	The Partner/nominator informs the nominee and submits a formal letter to the EC expressing its intention to withdraw a nomination. The EC informs the members of the Council of the withdrawal of nomination and updates the list of confirmed nominees.
E. A nominee wishes to withdraw his/her candidacy	The nominee notifies the EC in writing of his/her desire to withdraw as candidate. The EC informs the members of the EAS Partnership Council of the withdrawal of candidacy and updates the list of confirmed participants.

## **Annex 7**

### **PEMSEA Policy Issues and Actions**

## PEMSEA POLICY ISSUES AND ACTIONS

ISSUES	CONSIDERATIONS	RECOMMENDATION	ACTIONS TAKEN	FURTHER STEPS
<p><b>1. Is there a need for a regional mechanism for the implementation of the SDS-SEA?</b></p>	<p>1. Status Quo: The PEMSEA regional programme acts as <i>de facto</i> regional mechanism</p> <ul style="list-style-type: none"> <li>▪ Programme-based and sustainability depends on programme funding;</li> <li>▪ Operation limited within the frameworks of UNDP and IMO;</li> <li>▪ State partners cooperate through PEMSEA.</li> </ul> <p>2. Regional Mechanism: PEMSEA as a Partnership Arrangement</p> <ul style="list-style-type: none"> <li>▪ Stakeholder-driven, sustainability depends on voluntary contributions of stakeholders</li> <li>▪ Operation flexible and responsive to the needs of the region;</li> <li>▪ Partners may include other stakeholders;</li> <li>▪ States cannot enter into a convention-type binding arrangement.</li> </ul>	<p>At the 10<sup>th</sup> PSC Meeting (2004) concluded that the establishment of a regional arrangement is an essential step towards a country-driven implementation of the SDS-SEA.</p> <p>Other stakeholders can be partners in this agreement.</p> <p>PEMSEA shall be transformed into a regional partnership arrangement with the establishment and operationalization of :</p> <ul style="list-style-type: none"> <li>▪ EAS Partnership Council</li> <li>▪ Regional Partnership Fund</li> <li>▪ PEMSEA Resource Facility (PRF)</li> <li>▪ Triennial EAS Congress</li> </ul>	<ol style="list-style-type: none"> <li>1. PEMSEA Regional Mechanism established through Haikou Partnership Arrangement signed by Environment Ministers of 11 state-partners and Partnership Operating Arrangements signed by non-state partners in 2006.</li> <li>2. PEMSEA is a partnership arrangement of states and non-state partners, without legal personality.</li> <li>3. PEMSEA is developing four operating mechanisms: the EAS Partnership Council (Council), EAS Congress, PEMSEA Partnership Fund and the PEMSEA Resource Facility (PRF).</li> <li>4. Council was established and organized. Officers have been elected.</li> <li>5. PRF Secretariat Services established and organized to be implemented by UNDP.</li> <li>6. EAS Congress established. Preparations are being undertaken for 2009 Congress hosted by the Philippines.</li> <li>7. Regional Partnership Fund still to be established.</li> </ol>	<ol style="list-style-type: none"> <li>1. PRF Secretariat Staff to be on board October 2007.</li> <li>2. PRF Technical Services to be organized subject to the approval of the GEF project.</li> <li>3. PEMSEA to conduct studies on the most appropriate way to set up and organize the PEMSEA Partnership Fund.</li> </ol>

ISSUES	CONSIDERATIONS	RECOMMENDATION	ACTIONS TAKEN	FURTHER STEPS
<p><b>2. What is the uniqueness of PEMSEA vis-à-vis other regional mechanisms?</b></p>	<p>1. ASEAN</p> <ul style="list-style-type: none"> <li>▪ focuses on security, economic development, and environment. It has programme on environment and sustainable development</li> <li>▪ covers only Southeast Asian countries with Japan, China and RO Korea as partners</li> <li>▪ ASEAN, to date, is also an organization without legal personality.</li> </ul> <p>2. COBSEA</p> <ul style="list-style-type: none"> <li>▪ implements the East Asian Seas Action Plan</li> <li>▪ covers Australia and 9 PEMSEA countries (excluding Timor Leste, Lao PDR, Cambodia, DPR Korea and Japan)</li> <li>▪ focuses on the marine environment, land based sources of pollution in particular, i.e. control of coastal pollution, protection of mangroves, seagrasses and coral reefs, and waste management.</li> <li>▪ within UNEP Regional Seas Programme Framework</li> </ul> <p>3. NOWPAP</p> <ul style="list-style-type: none"> <li>▪ implements the Pacific Action Plan</li> <li>▪ promotes the wise use, development and management of the marine and coastal environment.</li> <li>▪ covers coastal zones from about 121 degree E to 143 degree E longitude, and from approximately 52 degree N to 33 degree N latitude (Japan, RO Korea, China and Russian Federation)</li> <li>▪ within UNEP Regional Seas Programme Framework</li> </ul> <p>4. UNDP/GEF YSLME</p> <ul style="list-style-type: none"> <li>▪ programme-based</li> <li>▪ sustainable management of YSLME</li> </ul>	<p>PEMSEA is unique as it –</p> <ul style="list-style-type: none"> <li>▪ Covers wider geographical area encompassing 11 countries of the Seas of East Asia region(Cambodia, China, DPR Korea, Indonesia, Japan, Lao PDR, Philippines, RO Korea, Singapore, Timor Leste, Vietnam);</li> <li>▪ Implements SDS-SEA, which provide the regional framework for collaboration among parties and other stakeholders that contribute to the sustainable development of the Seas of East Asia region;</li> <li>▪ Focuses on intersectoral issues related to sustainable coastal and ocean development cutting across sector-based mandates of other regional entities;</li> <li>▪ Promotes sharing of responsibilities and resources by stakeholders Involves non-state partners in the implementation of the SDS-SEA;</li> <li>▪ PEMSEA has developed policies and practices emphasizing on- the- ground implementation of project activities i.e. ICM;</li> </ul>	<p>The Haikou Partnership Agreement opened PEMSEA partnership to non-state stakeholders including organizations and regional programmes that can contribute to the implementation of the SDS-SEA.</p> <p>YSLME is one of the non-state partners that signed the Partnership Operating Arrangements. A Letter of Cooperation was signed between PEMSEA and YSLME in 2006.</p> <p>The Partnership Council (1<sup>st</sup> meeting of the EAS Partnership Council, August 2007) accepted in principle the inclusion of NOWPAP as PEMSEA partner subject to the signing of the Letter of Cooperation.</p> <p>COBSEA expressed interest to collaborate with PEMSEA in the implementation of the SDS-SEA (12<sup>th</sup> PSC Meeting, 2006).</p>	<p>PEMSEA to -</p> <ol style="list-style-type: none"> <li>1. Coordinate with ASEAN and COBSEA and determine its level of interest in becoming a partner of PEMSEA.</li> <li>2. follow up signing of the LOC with NOWPAP;</li> <li>3. coordinate with ASEAN Centre for Biodiversity to identify collaborative activities for the implementation of the SDS-SEA.</li> </ol>

Proceedings of the First Executive Committee Meeting  
 PEMSEA EC Meeting Report 1

ISSUES	CONSIDERATIONS	RECOMMENDATION	ACTIONS TAKEN	FURTHER STEPS
<p><b>3. Is there a need for PEMSEA to acquire a legal personality?</b></p>	<p>1. Status Quo: Current limitations on</p> <ul style="list-style-type: none"> <li>▪ PEMSEA has no legal personality and cannot contract, pursue actions and own property;</li> <li>▪ it cannot be represented in any conference, meeting, etc.</li> <li>▪ limitations on receiving and accepting donations</li> <li>▪ operational limitations under UN Framework</li> <li>▪ entails administrative costs</li> <li>▪ Decision-making is done by way of agreements at the ministerial level;</li> <li>▪ There is no mechanism for dispute settlement or enforcement of compliance;</li> <li>▪ state parties are free to implement the SDS-SEA in accordance with their respective priorities, subject to their technical capacities and within the limits of their financial resources;</li> <li>▪ no regular stream of funds as states voluntarily contribute to sustain PEMSEA.</li> </ul> <p>2. Yes</p> <ul style="list-style-type: none"> <li>▪ can contract, pursue remedies and own property</li> <li>▪ Process is lengthy and tedious;</li> <li>▪ Option does not entail administrative costs;</li> <li>▪ Can receive all types of funds from all types of funding sources and revenue generating activities</li> <li>▪ Contributes to the achievement of the overall goal of a self-sustaining mechanism</li> <li>▪ Challenge in getting consent of PEMSEA members</li> </ul>	<p>The EAS Partnership Council (Proceedings of the First EAS Partnership Council Meeting, p. 59) concluded that the legal issue of PEMSEA is an important issue for the participating countries with regard to their future policies on the development and sustainability of PEMSEA.</p>	<p>Consultations were conducted among countries from 2003-2005 showing that the region is not ready to confer legal personality and status on PEMSEA.</p>	<p>PEMSEA to –</p> <p>determine the readiness of the region to sign a charter or convention, considering the readiness of the ASEAN to have its own charter in the future.</p>

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ISSUES	CONSIDERATIONS	RECOMMENDATION	ACTIONS TAKEN	FURTHER STEPS
<p><b>4. What is the best option for PEMSEA to be self-sustaining?</b></p>	<p>1. PEMSEA with a PRF with legal personality (ASEAN Model)</p> <ul style="list-style-type: none"> <li>▪ does not confer legal personality to PEMSEA itself but on its resource facility</li> <li>▪ may be acceptable to PEMSEA countries vs. conferring legal personality to PEMSEA</li> <li>▪ documentation options: (i) Multilateral Recognition of Legal Personality and Charter (IRRI); or (ii) Agreement to Establish the Legal Personality (ASEAN)</li> </ul> <p>2. PEMSEA with a Regional Convention</p> <ul style="list-style-type: none"> <li>▪ PEMSEA will have legal personality to contract, own property, and pursue actions and can be given observer status in UN conferences;</li> <li>▪ PEMSEA will be given recognition and may be invited as observer in UN conferences or meetings;</li> <li>▪ PEMSEA can require contributions to support the activities;</li> </ul> <p>There will be a mechanism to enforce compliance and monitor implementation.</p>	<p>The 10<sup>th</sup> PSC Meeting (2004) concluded that a regional convention or other binding regional mechanism would be difficult to take in the short term but should be left to discussion in the future.</p> <p>PEMSEA's members are very diverse in socio-political, cultural, historical and economic aspect. PEMSEA's geographic area is vast with six large marine ecosystems with complex and varied processes. There is also existing dispute on international boundaries among the members.</p>	<p>1. RPO did a study on the non-binding approach to regional arrangements (2005) and concluded that PEMSEA would depend on the goodwill and commitment of its partners to implement the SDS-SEA, based on a moral obligation rather than a binding regional convention or mechanism.</p> <p>2. consultative meeting organized among policy and legal experts to provide guidance and direction in exploring options for PRF to acquire legal personality;</p> <p>3. Draft Charters and/or Agreements prepared following the IRRI Model (Annex 1) and ASEAN Model (Annex 2)</p>	<ul style="list-style-type: none"> <li>▪ Involve state Foreign Affairs departments, and legal and policy experts in determining the most appropriate option;</li> <li>▪ study internal processes of the identified countries for the signing of international agreements;</li> </ul> <p>Organize a technical working group that will study and evaluate options</p>



ISSUES	CONSIDERATIONS	RECOMMENDATION	ACTIONS TAKEN	FURTHER STEPS
<p><b>5. How will the Partnership Fund be established and managed?</b></p>	<p>1. UN Framework: UNDP CSA –</p> <ul style="list-style-type: none"> <li>▪ UNDP approval to establish a separate Trust Account for the PEMSEA Partnership Fund ruled out; only option is through the Cost-Sharing Agreements modality</li> <li>▪ CSA has limited capacity with respect to handling and managing other sources of income (e.g., income from new projects; sale of publications; cost-recovery activities of the PRF)</li> <li>▪ UNDP charges an administrative/management fee of 8% plus direct expenses associated with the UNDP account</li> <li>▪ The CSA does not contribute to the longer-term goal of transforming PEMSEA into a self-sustained and effective regional mechanism</li> </ul> <p>2. UN Framework: UNOPS Trust Account -</p> <ul style="list-style-type: none"> <li>▪ UNOPS can set up a Trust Account within its legal framework</li> <li>▪ UNOPS to manage and administer the Account subject to a fee of no less than 7% plus direct expenses</li> <li>▪ Trust Account can receive government and donor funds through contractual agreements with, or approved by UNOPS, as well as income from technical assistance and training activities;</li> <li>▪ Use of the Account funds (i.e., the Partnership Fund) would be managed by UNOPS, upon the recommendations of the EAS Partnership Council/Executive Committee;</li> <li>▪ The UNOPS option provides short-term solution to receiving proceeds of existing trust account but does not contribute to the longer-term goal of transforming PEMSEA into a self-sustained and effective regional mechanism</li> </ul>	<p>The EAS Partnership Council (1<sup>st</sup> EAS Partnership Council Meeting, 2007) concluded that:</p> <ul style="list-style-type: none"> <li>▪ the NGO option, while easier to achieve, may have a negative impact on government support to the Partnership Fund, and reduce the momentum that has been gained for SDS-SEA implementation under the current intergovernmental, multi-sectoral partnership arrangement.</li> <li>▪ that PRF would have to acquire legal personality through multilateral agreement or other options in order to contribute to the achievement of the long-term goal of sustainability of the PRF to maintain the intergovernmental character of PEMSEA; and</li> <li>▪ PRF should further explore other options, it should be cost-effective, flexible and sustainable, and maintain the partnership relationship among governments and non-government stakeholders</li> </ul>	<p>1. Initial study was conducted on the establishment and operation of various options, including intergovernmental agreements and NGOs;</p> <p>2. Consultative meeting with policy and legal experts has been organized to explore options and possibilities.</p>	<p>PEMSEA to –</p> <ul style="list-style-type: none"> <li>▪ Further study on the different options for PRF to acquire a legal personality</li> </ul>

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ISSUES	CONSIDERATIONS	RECOMMENDATION	ACTIONS TAKEN	FURTHER STEPS
	<p>3. PRF Legal Personality: as International Organization</p> <ul style="list-style-type: none"> <li>▪ PRF would acquire legal personality to contract, pursue remedies and own property;</li> <li>▪ Process is lengthy and tedious;</li> <li>▪ PRF does retains its international standing;</li> <li>▪ Option does not entail administrative costs;</li> <li>▪ Can receive all types of funds from all types of funding sources and revenue generating activities</li> </ul> <p>4. PRF Legal Personality: NGO Arm Trust Account</p> <ul style="list-style-type: none"> <li>▪ PRF will set up PRFI, a Philippine-registered NGO that will acquire legal personality to contract with partners, collaborators and stakeholders; pursue remedies; and own properties;</li> <li>▪ The Philippines would be the state of registry since it has been hosting the Regional Programme for the past decade, and has committed to continue hosting the PRF.</li> <li>▪ PRFI, through the PRF, can manage and administer the PEMSEA Partnership Fund by way of a Trust Fund;</li> <li>▪ PRFI can receive fees and revenues generated by the PRF, as well as grants, donations and other potential funding;</li> <li>▪ The registration process would take from one to two months and another month to get licenses and permits;</li> <li>▪ PRFI would be exempt from income tax on donations, grants, and gifts, provided its net income will not inure to the benefit of any individual;</li> <li>▪ PRFI would form part of the PEMSEA regional mechanism, operating outside the UN framework;</li> </ul> <p>PRFI would be subject to Philippine laws and regulations.</p>			

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Acronyms Used:

ASEAN – Association of Southeast Asian Nations

COBSEA – Coordinating Body for the Seas of East Asia

GEF – Global Environment Facility

IRRI – International Rice Research Institute

MDG – Millennium Development Goals

NOWPAP – Action Plan for the Protection, Development and Management of the Marine and Coastal Environment of the Northwest Pacific Region

PEMSEA – Partnership in Environmental Management for the Seas of East Asia, the regional mechanism for the implementation of the SDS-SEA

PEMSEA Regional Programme – GEF/UNDP/IMO Regional Programme for Partnerships in Environmental Management for the Seas of East Asia

PNLG – PEMSEA Network of Local Governments

PRF – PEMSEA Resource Facility

PSC – Programme Steering Committee of PEMSEA Regional Programme

RCU – Regional Coordinating Unit, NOWPAP

RPO – Regional Programme Office, PEMSEA Regional Programme

SDS-SEA – Sustainable Development Strategy for the Seas of East Asia

UN – United Nations

UNDP – United Nations Development Fund

UNOPS – United Nations Organization for Project Services

YSLME – UNDP/GEF Yellow Sea Large Marine Ecosystem Project

**Annex 7- A**  
**IRRI Model**

**APPENDIX A**  
**MULTILATERAL AGREEMENT AND CHARTER**  
**IRRI MODEL**

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**AGREEMENT**  
**RECOGNIZING THE INTERNATIONAL LEGAL PERSONALITY**  
**OF THE PEMSEA RESOURCE FACILITY**

**PREAMBLE**

**WHEREAS**, on 12 December 2003, the Ministers of the participating countries of the UNDP/GEF/IMO Regional Programme on Building Partnerships in Environmental Management for the Seas of East Asia (Regional Programme) adopted the Sustainable Development Strategy for the Seas of East Asia (SDS-SEA) through the Putrajaya Declaration as a framework for cooperation to achieve the goals and objectives of the World Summit on Sustainable Development Plan of Implementation and the United Nations Development Goals concerning sustainable coastal and ocean development;

**WHEREAS**, the countries in the region, through the Partnership Agreement signed on December 17, 2006 in Haikou, China, established the Partnerships in Environmental Management for the Seas of East Asia (PEMSEA) as the regional coordinating mechanism for the implementation of the SDS-SEA through collaborative, synergistic and responsible actions and the accomplishment of individual state commitments;

**WHEREAS**, PEMSEA is a partnership arrangement involving all the stakeholders of the Seas of East Asia, including national and local governments, civil society, the private sector, research and education institutions, communities, international agencies, regional programmes, financial institutions and donors;

**WHEREAS**, in achieving its targets and objectives, PEMSEA, through the Partnership Operating Arrangements, established four major operating mechanisms namely the PEMSEA Resource Facility (PRF), a triennial East Asian Seas (EAS) Congress, the EAS Partnership Council and a Regional Partnership Fund;

**WHEREAS**, the PRF provides the secretariat and technical support services to PEMSEA, and has entered into agreements with stakeholders on the implementation of the SDS-SEA;

**WHEREAS**, there is a need to strengthen the PEMSEA Resource Facility and to ensure efficiency in performing its function as the central facility for the provision of technical and secretariat services in the Seas of East Asia region;

**WHEREAS**, it is to the benefit of the national, regional and international community that the PRF be provided with the status and characteristics appropriate to its regional and international mandate, its international sources of financing, its international operations and

the international character of its Partnership Council and staff, so that it may more effectively pursue its international activities;

**NOW, THEREFORE**, the Parties to this Agreement hereby agree, as follows:

## **ARTICLE I RECOGNITION OF INTERNATIONAL STATUS**

1. The status of the PRF as an international organization is hereby recognized. The PRF shall have a juridical personality and, in the pursuit of its goals and objectives, consistent with the laws and regulations of the Parties to this Agreement, operate in accordance with its Charter, as appended hereto.
2. In order to fulfill its purpose, the PRF may cooperate and/or conclude agreements or arrangements with governments and/or organizations.

## **ARTICLE II FORMS OF CONSENT**

1. This Agreement shall be open for signature by states and eligible international organizations for a period of one year from the date of execution hereof. Thereafter, this Agreement shall be open to accession by any state or eligible international organization.
2. Subject to the internal legal requirements of a signatory Party, consent to this Agreement may be made in the form of signature, ratification or accession.

## **ARTICLE III LIMITATIONS**

1. This Agreement shall be strictly limited to bestowing international status upon the PRF as provided in Section I, Article I and shall not bind any Party to automatically grant to the PRF any privileges and/or immunities. However, this Agreement may serve as legal basis for the grant of such privileges and immunities to the PRF, as stated in Section 4 below.
2. This Agreement shall not oblige any of the Parties to provide any form of financial contribution or support to the PRF, except that which may be voluntary in nature and character; nor shall it constitute an obligation upon any of the Parties to assume or guarantee any of the liabilities, debts and other forms of obligations incurred by the PRF.
3. This Agreement shall not affect any existing right, obligation, concession or interest granted to the PRF nor the sovereign prerogative of the Party granting such right, obligation, concession or interest to repeal, amend or otherwise, modify the same. Where such right, obligation, concession or interest is acquired by virtues of an agreement, modifications or amendments shall be made in accordance with said agreement.

4. By virtue of its international legal personality, the PRF may enter into other agreements with states including the host country for the purpose of acquiring additional right and privileges as may be necessary and useful to further its objectives, consistent with the applicable laws and regulations of such states.

#### **ARTICLE IV DEPOSIT**

The Department of Foreign Affairs of the Republic of the Philippines shall be the Depositary of this Agreement, as well as of the instruments of ratification or of accession.

#### **ARTICLE V ENTRY INTO FORCE**

1. This Agreement shall enter into force on the date on which at least three governments including that of the host country, have consented to it.

2. With respect to ratifying or acceding Parties, this Agreement shall become effective on the date of deposit of the instrument of ratification or of accession.

#### **ARTICLE VI AMENDMENTS**

Any Party may propose an amendment to this Agreement. The amendment shall take effect upon the approval of a majority of the Parties including the host country.

#### **ARTICLE VII WITHDRAWAL**

After this Agreement has entered into force, a Party may voluntarily withdraw by giving a written notice of withdrawal to the Depositary Government. The withdrawal shall become effective one year after the notice is received.

#### **ARTICLE VIII DISSOLUTION**

This Agreement shall lapse once the PRF has been dissolved or when, as a result of withdrawals, only less than three (3) countries remain as Parties.

**ARTICLE IX  
TEXT OF AGREEMENT**

The authentic text of this Agreement shall be in English.

**IN WITNESS WHEREOF**, the undersigned, endowed with full powers, have signed this Agreement.

Done this \_\_\_\_ day of \_\_\_\_\_ in \_\_\_\_\_.



## **CHARTER OF THE PEMSEA RESOURCE FACILITY**

### **ARTICLE I STATUS**

The PEMSEA RESOURCE FACILITY (hereinafter referred to as the “PRF”) shall operate as an autonomous organization, international in status and non-political in management, staffing and operations. The PRF shall continue to be organized for the provision of secretariat and technical services for the sustainable development of the Seas of East Asia region.

### **ARTICLE II OBJECTIVES AND INCIDENTAL POWERS**

Section 1. The PRF shall continue to maintain and operate the resource facility designed to pursue any or all of the following objectives:

- a. Provide technical support services to countries, including delivery and mobilization of policy and technical advice, capacity building and technical support for sustainable coastal ocean governance;
- b. Monitor and oversee the implementation of the SDS-SEA;
- c. Provide secretariat and technical support services;
- d. Mobilize necessary resources, capacities and services;
- e. Operate and maintain an integrated information management system which will provide interested researchers and scientists access to updated collection of information on coasts and oceans in the East Asian Seas region;
- f. Conduct conferences, workshops and seminars for the purpose of discussing current coastal and marine issues.

Section 2. In furtherance of the above objectives, the PRF shall have incidental powers to:

- a. Acquire or obtain assistance from any sector, organization or governmental authorities, within or outside the region, any assistance conducive to and necessary for the attainment of the purpose of the PRF;
- b. To receive and acquire from any person, firm or entity, by donation, grant, exchange, devise, bequest, purchase or lease, either absolutely or in trust, contributions consisting of such properties, real or personal, including funds and valuable effects of things as may be useful or necessary to carry out the purpose and objectives of the PRF, and to hold, own, operate, use or dispose of said properties or valuable things;
- c. To do and perform all acts and things as are necessary, expedient, suitable or proper for the furtherance or accomplishment of the purpose and the attainment of any or

all of the objectives herein stated, or which shall appear, at anytime, as conducive to and useful for the activities of the PRF.

### **ARTICLE III JURIDICAL PERSONALITY**

The PRF shall possess juridical personality. It shall have the legal capacity:

- a. To contract;
- b. Acquire and dispose of immovable and movable properties; and
- c. Pursue remedial actions and perform any legal act in furtherance of its functions and objectives.

### **ARTICLE IV HEADQUARTERS**

The headquarters of the PRF shall be located in the Quezon City, Philippines. The PRF may have such other offices within or outside the Philippines as the Board of Trustees may determine or its affairs may, from time to time, require.

### **ARTICLE V INTERNAL ORGANIZATION**

The work of the PRF shall be carried out by a Board of Trustees, an Executive Director and the PRF Staff.

### **ARTICLE VI THE BOARD OF TRUSTEES**

Section 1. The PRF shall be governed by a Board of Trustees (hereinafter referred to as the "Board") composed of Seven (7) members. Five of the members shall sit de officio and two (2) shall be selected as follows:

- a. The Chair of PEMSEA's EAS Partnership Council,
- b. Chair of Intergovernmental Session of EAS Partnership Council,
- c. Chair of the Technical Session of the EAS Partnership Council,
- d. Secretary of the Department of Environment and Natural Resources,
- e. Executive Director of the PRF, and
- f. Two members to be selected from among the nominees of PEMSEA state and non-state partners.

Section 2. The Board shall perform the following functions:

- a. to act as the policy making body of the PRF and to lay down or approve its program of activities;
- b. to review and approve allocation and utilization of the financial resources of the PRF;
- c. to review and evaluate the progress reports of the PRF and provide guidance and direction to the PRF;
- d. to appoint the Executive Director and determine the terms of his/her service;
- e. to exercise corporate powers in the conduct of the business and control of properties owned or held by the PRF;
- f. to appoint the external auditor of the PRF and to receive periodic reports on the results of his/her examinations; and
- g. to exercise such other powers and to do such other acts as may be conducive to the promotion of the purpose or objectives for which the PRF was established.

Section 3. De-officio members of the Board shall serve office until their respective successors have been appointed. Elected members of the Board shall serve for a term of three (3) years commencing from the first day of January following their election until the assumption to office of their successors; provided, however, that all the incumbent Trustees at the time of the effectivity of this Charter shall serve their entire unexpired terms.

Section 4. In case of death, resignation or permanent disability of the Trustee, the resulting vacancy may be filled by majority vote of the remaining Trustees, if still constituting a quorum, and the successor so elected shall serve only for the unexpired terms of his/her predecessor.

## **Article VII BOARD OFFICERS**

Section 1. The officers of the Board shall be:

- the Chairperson;
- the First Vice-Chairperson;
- the Second Vice-Chairperson;
- the Secretary;
- the Treasurer;

and such other officers as the Board of Trustees shall see fit to designate.

Section 2. The Officers of the Board shall be elected in annual meeting of the Board and shall hold office until their successors assume office.

Section 3. The Chairperson of the Board shall be elected from among the members of the Board. He shall preside at all meetings of the Board and supervise all matters with which the Board is concerned. In the absence or disability of the Chairperson, the First Vice-Chairperson shall serve as Acting Chairperson. In the absence or disability of both the Chairperson and the First Vice-Chairperson, the Second Vice-Chairperson shall be the Acting Chairperson. In the absence or disability of the Chairperson and the Vice-Chairpersons, the Board shall elect, from among their own number, an Acting Chairperson.

Section 3. The Secretary, who need not be chosen from among the Trustees, shall have powers and duties customarily incident to this office. The Board may, however, require him/her to render such report or reports as are necessary or expedient.

Section 4. The Treasurer, who need not be chosen from the Trustees, shall be elected each year at the end of the annual meeting of the Board, or in the absence of election at that meeting, at the end of a subsequent meeting of the Board, to serve until the end of the next annual meeting of the Board. His/her powers and duties shall be those customarily incident to his office. The Board may, however, require him/her to render such report or reports as are necessary or expedient. He shall furnish a bond in an amount to be fixed by the Trustees for the faithful performance of his/her duties.

Section 5. The Board is empowered to create such other offices and designate officers thereof as may be required by the circumstances and as may be necessary to promote the purpose or objectives of the Centre.

## **ARTICLE VIII BOARD MEETINGS**

**Section 1.** Subject to the provisions of Articles VI and VII hereof, the election of the elective members of the Board shall take place at an organizational meeting held every three years, unless a different date is fixed by the Board.

Section 2. An annual meeting of the Board shall be held every 1 December unless a different date is specified by the Board. The Board may hold regular meetings as it may deem necessary.

Section 3. A special meeting of the Board of Trustees may be called by the Chairman or by any three (3) of the Trustees. The business of any such special meeting shall be limited to the purposes specified in the notice of the meeting.

Section 4. The meetings of the Board shall be held in the headquarters of the PRF or at such other places as the Board may determine.

Section 5. Each regular meeting of the Board shall be held on thirty days written notice. Each special meeting of the Board of Trustees shall be held on ten days written notice. The notice which shall state the time and place of the meeting shall be sent to all members.

Section 6. At the meetings of the Board, a majority of the members of the Board present in person shall constitute a quorum for the transaction of business. No trustee shall be allowed to attend or vote by proxy or absentee balloting at any meeting.

Section 7. In the absence of a quorum at the time and place set for a meeting of the Board of Trustees, those present may adjourn the meeting from time to time until a quorum is present.

Section 8. The following shall be the order of business at the annual meeting and regular meetings of the Board of Trustees:

- a. Reading of the previous minutes;
- b. Reports of the Standing committees and other committees, if any;
- c. Unfinished business;
- d. Report of the executive director; and
- e. New business.

## **ARTICLE IX THE EXECUTIVE DIRECTOR AND STAFF**

Section 1. PRF shall be managed and administered by an Executive Director, who shall serve under the direction of the Board. The Executive Director's appointment, terms of service and any termination for cause shall be decided by a three-fourth's majority of all members of the Board of Trustees.

Section 2. The Executive Director shall implement the policies and programs established by the Board and shall be responsible to the Board for operating and managing PRF and for assuring that its programs are properly developed and carried out.

Section 3. The Executive Director shall be PRF's legal representative and shall, within the limits established by the Board, be empowered to take such actions as shall be necessary for the attainment of PRF's purposes.

Section 4. The Executive Director shall appoint and manage the staff of the PRF in accordance with policies and regulations approved by the Board. Subject to the paramount importance of securing the highest standards of integrity, efficiency and technical competence, due regard shall be paid, in the appointment of staff, to PRF's international character.

## **ARTICLE X FINANCING**

Section 1. The financial resource of PRF shall be obtained from voluntary contributions by PEMSEA partners to whom the PRF's annual budgets shall be submitted for approval. PRF shall also be authorized to receive contributions from other sources for the furtherance of its purposes and activities.

Section 2. PRF's financial operations shall be conducted in accordance with the policies approved by the Board.

Section 3. A full financial audit of the operations of the PRF shall be conducted on an annual basis by an independent international accounting firm appointed by the Board upon the recommendation of the Executive Director. The results of such audit shall be distributed to entities deemed appropriate by the Board.

## **ARTICLE XI RELATIONS WITH STATES AND OTHER INTERNATIONAL ORGANIZATIONS**

Section 1. The PRF shall cooperate, within the terms of this Agreement, with other international organizations having specialized responsibilities in related fields and shall enter into such cooperative relationships with such other organizations, agencies or other entities as may be conducive to furthering the efficient implementation of the PRF's programs and objectives.

Section 2. The PRF may enter into appropriate agreements with the governments of other countries where it has cooperative relationships or in which it may establish a branch office.

Section 3. Neither the signatories of their Agreement nor any member of PEMSEA shall be liable for any obligations of the PRF.

Section 4. The agreements referred to in the immediately preceding paragraphs and all other significant contracts entered into by the PRF shall contain provisions stating that (a) the PRF possesses independent legal personality and (b) neither the signatories to this Agreement nor any member of PEMSEA shall be liable for any obligations of the PRF.

## **ARTICLE XII GOVERNING CHARTER AND OTHER RULES AND REGULATIONS**

Section 1. The PRF shall be governed by this Charter and by such other rules and regulations as the Board may, from time to time, promulgate for the observance of the PRF, its officers and staff.

Section 2. This Charter may be amended or modified by the affirmative vote of a majority of all the members of the Board of the PRF, inclusive of the ex-officio members; provided, that notice of a proposed amendment together with its full text shall have been mailed to all members of the Board at least forty-five days in advance of the meeting at which the amendment is to be taken up, or such notices are waived in writing by all the members of the Board.

### **ARTICLE XIII DISSOLUTION OF THE PRF**

Section 1. The PRF may be dissolved by the affirmative vote of at least three-fourths of all the members of the Board, inclusive of the ex-officio members, at a meeting called for that purpose, if it is determined that the purposes of the PRF have been achieved through a satisfactory degree or if it is determined that the PRF will no longer be able to function effectively.

Section 2. If the existence of the PRF is terminated for any reason, all its physical plant, equipment and other assets shall become the property of the Department of Environment and Natural Resource, without payment of any consideration, with the exception of such funds and other assets that have been assigned in trust for others or donated to PRF or shall have been made subject to some other conditions in respect of their disposition upon the dissolution of the PRF.

**Annex 7- B**  
**ASEAN Model**



AGREEMENT  
ON THE ESTABLISHMENT OF THE LEGAL PERSONALITY OF  
THE PEMSEA RESOURCE FACILITY

PREAMBLE

**WHEREAS**, on 12 December 2003, the Ministers of the participating countries of the UNDP/GEF/IMO Regional Programme on Building Partnerships in Environmental Management for the Seas of East Asia (Regional Programme) adopted the Sustainable Development Strategy for the Seas of East Asia (SDS-SEA) through the Putrajaya Declaration as a framework for cooperation to achieve the goals and objectives of the World Summit on Sustainable Development Plan of Implementation and the United Nations Development Goals concerning sustainable coastal and ocean development;

**WHEREAS**, the countries in the region, through the Partnership Agreement signed on December 17, 2006 in Haikou, China, established the Partnerships in Environmental Management for the Seas of East Asia (PEMSEA) as the regional coordinating mechanism for the implementation of the SDS-SEA through collaborative, synergistic and responsible actions and the accomplishment of individual state commitments;

**WHEREAS**, PEMSEA is a partnership arrangement involving all the stakeholders of the Seas of East Asia, including national and local governments, civil society, the private sector, research and education institutions, communities, international agencies, regional programmes, financial institutions and donors;

**WHEREAS**, in achieving its targets and objectives, PEMSEA, through the Partnership Operating Arrangements, established four major operating mechanisms namely the PEMSEA Resource Facility (PRF), a triennial East Asian Seas (EAS) Congress, the EAS Partnership Council (Council) and a Regional Partnership Fund;

**WHEREAS**, the PRF provides the secretariat and technical support services to PEMSEA, and has entered into agreements with stakeholders on the implementation of the SDS-SEA;

**WHEREAS**, there is a need to strengthen the PEMSEA Resource Facility and to ensure efficiency in performing its function as the central facility for the provision of technical and secretariat services in the Seas of East Asia region;

**WHEREAS**, it is to the benefit of the national, regional and international community that the PRF be provided with the status and characteristics appropriate to its regional and international mandate, its international sources of financing, its international operations and

the international character of its Partnership Council and staff, so that it may more effectively pursue its international activities;

**NOW, THEREFORE**, the State Parties to this Agreement do hereby agree, as follows:

## **ARTICLE 1 THE PEMSEA RESOURCE FACILITY**

1. The Contracting Parties hereby constitute the PEMSEA RESOURCE FACILITY (PRF) as an operating mechanism for the Partnerships in Environmental Management for the Seas of East Asia (PEMSEA).
2. The PRF shall have its seat in Quezon City, Philippines, hereinafter referred to as "the Host Country".

## **ARTICLE 2 COMPOSITION**

1. The work of the PRF shall be carried out by an Executive Director and the PRF Staff.
2. The PRF shall be composed of the Office of the Executive Director, and two divisions: the PRF Secretariat Services and the PRF Technical Services.
3. The Executive Director and the PRF staff shall execute the plans and programs of the PRF as may be approved the Council.

## **ARTICLE 3 THE EXECUTIVE DIRECTOR**

1. PRF shall be managed and administered by an Executive Director, who shall serve under the direction of the EAS Partnership Council (Council). The Executive Director's appointment, terms of service and any termination for cause shall be decided by Council.
2. The Executive Director shall implement the policies and programs established by the Council and shall be responsible to the Council for operating and managing the PRF and for assuring that its programs are properly developed and carried out.
3. The Executive Director shall be PRF's legal representative and shall, within the limits established by the Board, be empowered to take such actions as shall be necessary for the attainment of PRF's purposes.
4. The Executive Director shall appoint and manage the staff of the PRF in accordance with policies and regulations approved by the Council. Subject to the paramount importance of

securing the highest standards of integrity, efficiency and technical competence, due regard shall be paid, in the appointment of staff, to PRF's international character.

#### **ARTICLE 4 SALARIES**

The salaries and allowances of the PRF Executive Director and staff shall be determined by the Council which may, from time to time, on the recommendation of the Executive Director, review such salaries and allowances.

#### **ARTICLE 5 STAFF REGULATIONS**

Subject to the other provisions of this Agreement, the terms and conditions of employment of the members of the Staff shall be set out in Staff Regulations.

#### **ARTICLE 6 BUDGET AND FUNDING**

1. Funding of activities of the PRF shall come from contributions of state parties based on a schedule.
2. An Annual Budget for the PRF shall be submitted to the Council for approval.
3. The Annual Budget shall also include the numbers and the grades of staff personnel to be employed.
4. The budget of the PRF shall be categorized into:
  - (i) Capital outlay; and
  - (ii) Recurrent expenditure.

#### **ARTICLE 7 AUDITING OF THE ACCOUNTS**

1. The accounts of the PRF shall be audited annually by an Audit Committee to be constituted by the Council consisting of three qualified members nominated by three of the Contracting Parties in rotation and appointed for a period of two years.
2. The annual accounts together with the Report of the Audit Committee there on shall be submitted and reported to the Council.

#### **ARTICLE 8 PRIVILEGES AND IMMUNITIES**

The Host Country shall grant to the PRF, the Executive Director and the Staff such privileges and immunities as may be necessary for the performance of their duties and functions.

**ARTICLE 9  
AMENDMENTS**

Any Contracting Party may propose amendments to this Agreement. When approved by the Council, such amendments shall come into force from such date as may be specified.

**ARTICLE 10  
RATIFICATION**

1. This Agreement is subject to ratification by the Contracting Parties.
2. The Instruments of Ratification shall be deposited with the Department of Foreign Affairs of the Republic of the Philippines.

**ARTICLE 11  
ENTRY INTO FORCE**

This Agreement shall enter into force on the date on which the third Instrument of Ratification is deposited.

**ARTICLE 12  
ACCESSION**

1. This Agreement is open for accession by any Government which is accepted as a new member of PEMSEA.
2. The Instrument of Accession shall be deposited with the Department of Foreign Affairs of the Republic of the Philippines.
3. With respect to any such new member Government acceding to this Agreement after it has come into force, this Agreement shall become effective in relation to that new member Government on the date of deposit of its Instrument of Accession. If such an instrument of Accession is deposited before this Agreement comes into force, it shall become effective in relation to that new member Government on the date this Agreement comes into force.

**IN WITNESS WHEREOF**, the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.

**DONE** at \_\_\_\_\_, in five originals in the English Language this  
\_\_\_\_\_ Day of February, Two Thousand \_\_\_\_.

## **Annex 7- C**

### **Comparative Analysis of Proposed International Agreements**

COMPARATIVE ANALYSIS  
Of PROPOSED INTERNATIONAL AGREEMENTS

	PRF Legal Personality		PEMSEA Legal Personality
Document	MLA to Establish Legal Personality	MLA to Recognize Legal Personality and Charter	CONVENTION
Nature of Documents <sup>1</sup>	Executive Agreement	Executive Agreement	Treaty
Parties	More than 2 states	More than 2 states	More than 2 states
Signing Authority	Foreign Affairs Ministers	Foreign Affairs Ministers	Foreign Affairs Ministers
Legal Effect <sup>2</sup>	Binding	Binding	Binding
Provisions	No obligation for institutional changes	No obligation for institutional changes	institutional changes obligatory
Enforcement	No enforcement mechanism	No enforcement mechanism	Enforcement Mechanisms
Entry into force	<p>1. As provided or as the negotiating States may agree; absent such provision, the instrument into force as soon as consent to be bound by the treaty has been established for all the negotiating States.</p> <p>2. When the consent of a State to be bound by a treaty is established on a date after the treaty has come into force, the treaty enters into force for that State on that date, unless the treaty otherwise provides.</p>		
Features	<ul style="list-style-type: none"> <li>▪ Establishes PRF legal personality</li> <li>▪ Identifies headquarters office</li> <li>▪ No funding or other</li> </ul>	<ul style="list-style-type: none"> <li>▪ Recognize PRF legal personality</li> <li>▪ Charter establishes the PRF (structure, officers, organization,</li> </ul>	<ul style="list-style-type: none"> <li>▪ Establishes PEMSEA legal personality and structure</li> <li>▪ Dispute settlement and enforcement</li> </ul>

<sup>1</sup> Under the Vienna Convention, the term treaty refers to all types of international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation; hence, multilateral agreements, executive agreements and conventions are treaties under international law.

In the Philippines, Executive Agreements and Treaties fall under "International Agreements". Treaties refer to international agreements entered into by the Philippines which require legislative concurrence after executive ratification. This term may include compacts like conventions, declarations, covenants and acts. Executive Agreements are similar to treaties except that they do not require legislative concurrence.

<sup>2</sup>There are many other terms used for a treaty or international agreement, some of which are: *act, protocol, agreement, compromis d' arbitrage, concordat, convention, declaration, exchange of notes, pact, statute, charter and modus vivendi*. Thus, in international law, there is no difference between treaties and executive agreements in their binding effect upon states concerned, as long as the negotiating functionaries have remained within their powers. International law continues to make no distinction between treaties and executive agreements: they are equally binding obligations upon nations. (Bayan vs. Zamora)

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	obligations	headquarters office, funding mechanism, etc.) ▪ No funding or other obligations	mechanisms ▪ Financial contributions ▪ Decision-making ▪ Other state obligations
Process for Conclusion of International Agreement (Philippines)			
1. Request for authorization		Prior to any international meeting or negotiation of treaty, the lead agency shall send a written request for authorization to the President, through the Secretary of Foreign Affairs, proposing the composition of the Philippine delegation and recommending the range of positions to be taken by that delegation.	
2. Grant of authorization (may be delegated to the Secretary of Foreign Affairs)		a. Written authorization - in case of other agreements not requiring institutional changes	Full Powers with formal instructions
3. Negotiation <sup>3</sup>		Multilateral Negotiation by authorized representative and the negotiating panel.	The Philippine-organized negotiating panel, to be headed by a plenipotentiary to join the Conference of Plenipotentiaries <sup>4</sup> to be organized for the purpose.

<sup>3</sup>The standard practice is that one of the parties/or a preparatory committee will submit a draft of the proposed agreement/treaty, which will be reviewed and draft counter-proposals will be prepared which would become the basis of subsequent negotiations.

<sup>4</sup>In general, representatives to the Diplomatic Conference should possess 'full powers', a document emanating from the competent authority of a State designating a person or persons to represent the State for negotiating, adopting or authenticating the text of a treaty, for expressing the consent of the State to be bound by a treaty, or for accomplishing any other act with respect to a treaty.

In the Philippines, the following, because of their functions, do not need full powers prior to negotiation: (i) Secretary of Foreign Affairs, (ii) Heads of Philippine diplomatic missions, for the purpose of adopting the text of a treaty or an agreement between the Philippines and the State to which they are accredited; and (iii) Representative accredited by the Philippines to an international conference or to an international organization or one of its organs, for the purpose of adopting the text of a treaty in that conference, organization or organ.

In case of negotiating international agreements other than in the nature of a treaty, the Philippine representative need possess only an authorization.

In the Philippines, the following, because of their functions, do not need full powers prior to negotiation: (i) Secretary of Foreign Affairs, (ii) Heads of Philippine diplomatic missions, for the purpose of adopting the text of a treaty or an agreement between the Philippines and the State to which they are accredited; and (iii) Representative accredited by the Philippines to an international conference or to an international organization or one of its organs, for the purpose of adopting the text of a treaty in that conference, organization or organ.

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4. Signature <sup>5</sup> (Signing of the Agreement)	Signing by authorized representative	Signing by plenipotentiary
5. Endorsement of Instrument	The authorized representative or plenipotentiary, after signing, shall transmit the instrument to the DFA for the preparation of the ratification papers. The transmittal shall include the highlights of the agreements and the benefits which will accrue to the Philippines arising from them.	
6. Ratification by the President	The DFA, pursuant to the endorsement by the concerned agency, shall prepare the ratification papers and transmit the agreement to the President of the Philippines for ratification. The original signed instrument of ratification shall then be returned to the DFA for appropriate action. There is no legal obligation for the president to ratify the treaty or executive agreement signed by its plenipotentiary or authorized representative.	
7. Concurrence by the Senate <sup>6</sup>	Concurrence of the Senate is not required	The DFA shall submit the treaties to the Senate of the Philippines for concurrence by 2/3 of the senate members in the ratification by the President.
8. Compliance with effectivity requirements	Upon receipt of concurrence of the senate, the DFA shall comply with the provision of the treaties in effecting their entry into force.	
9. Exchange of Instruments of Ratification	Deposit of Instruments of Ratification to designated depository.	
10. Registration and Publication (not required for validity)	The treaty may then be submitted for registration and publication in the UN Treaty Series under the U.N. Charter.	
11. Concluding a Host Country Agreement	Same as the process for concluding a treaty	

<sup>5</sup> Under international law, the signing by the plenipotentiary is for the purpose of authenticating the text of the agreement and does not signify consent of the state. Ratification is the act of the state giving its consent to be bound.

<sup>6</sup> When a treaty is received in the Senate for its concurrence, the same shall be referred to the Committee on Foreign Relations, currently headed by Senator Santiago. The committee will report the treaty to the Senate. The Second Reading of the treaty shall take place during which this period it shall be opened to general debate and to amendments. After the close of the debate, the treaty shall be voted upon and once approved shall pass to its Third Reading. Any action taken by the Senate on the treaty shall be set forth in a resolution prepared by the Committee on Foreign Relations to be printed and distributed to the Senators as a bill on third reading. Three (3) days after the distribution of the resolution of the Senate with printed copies of the treaty attached thereto, the resolution shall be submitted for nominal voting and, if two-thirds (2/3) of all the Senators approve it, the treaty shall be deemed approved, and in the contrary case, disapproved.

Consideration of the treaty shall be resumed from session to session until final approval or non-approval. All proceedings on treaties shall terminate upon the expiration of the term of the Senators elected in the preceding elections and the same shall be taken up in the succeeding sessions of the Senate, as if presented for the first time.



**REFERENCES:**

Vienna Convention on the Law of Treaties, 1969

Philippine Constitution, 1987

Executive Order No. 459, 1997

Memorandum Circular No. 89, 1988

Rules of the Senate of the Philippines

Commissioner of Customs vs. Eastern Sea Trading, G.R. No 14409, 31 October 1961

Bayan vs. Zamora, G.R. 138570, 10 October 2000

Pimentel vs. Office of the Executive Secretary, G.R. 158088, 6 July 2005

## **Annex 7- D**

### **Steps in Concluding Multilateral Agreement to Establish/Recognize PRF Legal Personality**

## **STEPS IN CONCLUDING MULTILATERAL AGREEMENT TO ESTABLISH/RECOGNIZE PRF LEGAL PERSONALITY**

### **1. Request for authorization**

Prior to any international meeting or negotiation of agreements, the lead agency shall send a written request for authorization to the President, through the Secretary of Foreign Affairs, proposing the composition of the Philippine delegation and recommending the range of positions to be taken by that delegation.

### **2. Grant of authorization**

The President may delegate the granting of authorization to the Secretary of Foreign Affairs. In case of negotiating international agreements other than in the nature of a treaty, the Philippine representative need possess only an authorization. Since the MLA does not entail obligations to undertake institutional changes, only a written authorization will be granted.

### **3. Negotiation**

The authorized representative and the panel members will join the negotiation rounds. The standard practice is that a draft of the proposed agreement will be reviewed and draft counter-proposals will be prepared which would become the basis of subsequent negotiations.

### **4. Signing**

The authorized representative may sign the agreement to authenticate the text. Under international law, the signing does not signify consent of the state. Ratification is the act of the state giving its consent to be bound.

### **5. Endorsement of Instrument**

The authorized representative, after signing, shall transmit the instrument to the DFA for the preparation of the ratification papers. The transmittal shall include the highlights of the agreements and the benefits which will accrue to the Philippines arising from the said instrument.

### **6. Ratification by the President**

The DFA, pursuant to the endorsement by the concerned agency, shall prepare the ratification papers and transmit the agreement to the President of the Philippines for his ratification. The original signed instrument of ratification shall then be returned to the Department of Foreign Affairs for appropriate action. It is to be noted that there is no legal obligation for the president to ratify the treaty or executive agreement signed by its authorized representative.

## **7. Compliance with effectivity requirements**

Upon receipt of concurrence of the senate, the DFA shall comply with the provision of the treaties in effecting their entry into force.

## **8. Exchange of Instruments\_of Ratification**

DFA shall deposit the instrument of ratification to the designated depositary.

## **9. Registration and Publication (not required for validity)**

The treaty may then be submitted for registration and publication in the UN Treaty Series under the U.N. Charter.

## **10. Concluding a Host Country Agreement**

Concluding a Host Country Agreement will follow the same process for concluding a treaty/convention. Negotiations will be bilateral.

## **STEPS IN CONCLUDING THE PEMSEA REGIONAL CONVENTION**

### **1. Request for Authorization**

Prior to any international meeting or negotiation of treaty, the lead agency shall send a written request for authorization to the President, through the Secretary of Foreign Affairs, proposing the composition of the Philippine delegation and recommending the range of positions to be taken by that delegation.

### **2. Grant of Authorization**

The President may delegate the granting of authorization to the Secretary of Foreign Affairs. In case of negotiations of agreements, changes of national policy or those involving international arrangements of permanent character entered into in the name of the Government of the Republic of the Philippines, the Philippine representative should possess “full powers” with formal instructions. Since the Regional Convention will entail state obligations with institutional changes, the Philippine representative should be armed with full powers.

The following, because of their functions, do not need full powers prior to negotiation: (i) Secretary of Foreign Affairs, (ii) Heads of Philippine diplomatic missions, for the purpose of adopting the next of a treaty or an agreement between the Philippines and the State to which they are accredited; and (iii) Representative accredited by the Philippines to an international conference or to an international organization or one of its organs, for the purpose of adopting the text of a treaty in that conference, organization or organ.

### **3. Negotiation**

The plenipotentiaries and the panel members will meet to negotiate on the terms of the treaty or convention in a Conference of Plenipotentiaries to be organized. The standard practice is that a draft of the proposed agreement prepared by the Preparatory Committee will be reviewed and draft counter-proposals will be prepared which would become the basis of subsequent negotiations.

### **4. Signing**

The plenipotentiary may sign the convention to authenticate the text. Under international law, the signing does not signify consent of the state. Ratification is the act of the state giving its consent to be bound.

### **5. Endorsement of Instrument**

The plenipotentiary, after signing, shall transmit the instrument to the DFA for the preparation of the ratification papers. The transmittal shall include the highlights of the agreements and the benefits which will accrue to the Philippines arising from the said instrument.

## **6. Ratification by the President**

The DFA, pursuant to the endorsement, shall prepare the ratification papers and transmit the agreement to the President of the Philippines for his ratification. The original signed instrument of ratification shall then be returned to the DFA for appropriate action. It is to be noted that there is no legal obligation for the president to ratify the treaty or executive agreement signed by its authorized representative.

## **7. Concurrence by the Senate**

The DFA shall submit the treaties to the Senate of the Philippines for concurrence by 2/3 of the senate members in the ratification by the President.

When a treaty is received in the Senate for its concurrence, the same shall be referred to the Committee on Foreign Relations, currently headed by Senator Miriam Defensor-Santiago. The committee will report the treaty to the Senate. The Second Reading of the treaty shall take place during which this period it shall be opened to general debate and to amendments. After the close of the debate, the treaty shall be voted upon and once approved shall pass to its Third Reading. Any action taken by the Senate on the treaty shall be set forth in a resolution prepared by the Committee on Foreign Relations to be printed and distributed to the Senators as a bill on third reading. Three (3) days after the distribution of the resolution of the Senate with printed copies of the treaty attached thereto, the resolution shall be submitted for nominal voting and, if two-thirds (2/3) of all the Senators approve it, the treaty shall be deemed approved, and in the contrary case, disapproved.

Consideration of the treaty shall be resumed from session to session until final approval or non-approval. All proceedings on treaties shall terminate upon the expiration of the term of the Senators elected in the preceding elections and the same shall be taken up in the succeeding sessions of the Senate, as if presented for the first time.

## **8. Compliance with Effectivity Requirements**

Upon receipt of concurrence of the senate, the DFA shall comply with the provision of the treaties in effecting their entry into force.

## **9. Exchange of Instruments\_of Ratification**

DFA shall deposit the instrument of ratification to the designated depository.

## **10. Registration and Publication (not required for validity)**

The treaty may then be submitted for registration and publication in the UN Treaty Series under the U.N. Charter.

## **11. Concluding a Host Country Agreement**

Concluding a Host Country Agreement will follow the same process for concluding a treaty. Negotiations will be bilateral.

## **Annex 8**

### **Draft Framework of Partnership Programmes**

**PROGRAM/PROJECT KEY INFORMATION**

PROGRAM/PROJECT KEY INFORMATION						Issues <sup>4</sup>						Governance <sup>4</sup>					
						Water Use and Supply Mgmt <sup>S,D</sup>	Food Security & Livelihood Mgt <sup>S,D</sup>	Habitat Protection, Restoration & Mgmt <sup>S,Pv</sup>	Pollution Reduction & Waste Mgmt <sup>Pt</sup>	Natural & Man-Made Hazards Prevention &	Policy, Strategy, Plans <sup>I</sup>	Institutional Arrangements <sup>I</sup>	Legislation <sup>I</sup>	Information & Public Awareness <sup>C</sup>	Financing Mechanisms <sup>D</sup>	Capacity Development <sup>C</sup>	
Name of Partner:		Name of Focal Point:				Tel/Fax #:				Address of Focal Point:							
Name of Program/Project/Plan/Initiative <sup>1</sup>		Implementer <sup>2</sup>	Start (mo/year)	End (mo/year)	Area <sup>3</sup>	Budget (pls specify currency)											
Environmental Governance Project 2		Dev't Alternatives	10/2004	09/2009	SN (100)	USD19.0M	N	Y	Y	Y	N	Y	Y	Y	Y	Y	Y
Sulu-Sulawesi Seascape		Conservation International (Walton)	/2006	/2008	SR	N/A	N	Y?	Y	N	N	Y	Y	Y	Y	Y	Y
Capacity Development for Water Quality Management		DENR-FMB (JICA)	09/2005	09/2010	SN		Y?	N	N	Y?	N	N	N	N	N	N	Y
Improvement of the Marine Disaster Response and Environmental Protection System Project.		DOTC (JBIC)	03/2002	02/2008	SN (6)	USD6.9M	N	N	N	N	Y	Y	N	N	N	N	N
Integrated Population and Coastal Resource Management Initiative		PATH (USAID, Packard, UNFPA)	/2001	/2009	SN (30)		N	Y	Y	N	N	Y	Y	N	Y	N	Y
Manila Third Sewage Project		LBP (WB)	03/2006	06/2010	SN	JPY6,592M	N	N	N	Y	N	N	N	N	Y	N	N
Grants Program		Foundation for the Philippine Environment	on-going	on-going			Y	Y	Y	N	N	N	N	Y	Y	Y	Y
<b>TOTAL NUMBER OF PROJECTS per SDS-SEA aspect/area of governance</b>							2	4	4	3	1	4	3	2	5	3	5

1) Please use the official program/project name. Nicknames may be indicated within parentheses. Additional details (such as key objectives and activities) may be indicated at the back of the page  
 2) Specify lead implementing organization first & underline in cases of multiple organizations. Funding agencies that are not direct implementers may also be noted but are to be indicated in parentheses.  
 3) R = multiple-countries, N = national, SN = sub-national. Indicate number of provinces within parentheses for sub-national programs/projects.  
 4) Please check box if these issues are being addressed or these approaches are being used. Cross-out box if these are not being addressed or used. Leave blank if unknown.  
 S = Sustain, Pv = Preserve, Pt = Protect, D = Develop, I = Implement, C = Communicate



**Additional Description (such as Key Objectives and Indicators)** (note: this is on the back of the page with the program/project t  
800 hectares of coastal areas placed under improved management, 20 marine protected areas (MPAs) established covering 300  
has and the improved management of 60 existing MPAs (covering about 750 has). 20 LGUs investing in sanitation facilities.  
<http://www.fishbase.ph/otherprojects/sssweb/Outcomes.htm>

Procurement of Marine Disaster Response Vessels, and the review and formulation of a short and medium-term plan for marine  
disaster response and environmental protection

\* Improved reproductive health outcomes among people living in coastal communities \* Enhanced management of  
fisheries/coastal resources through local capacity building \* Increased awareness of the interrelationship between population-  
environment-poverty

Construction of sewage and septage treatment plants and communal septic tanks, rehabilitation/upgrading of drainage system,  
installation of interceptor sewers, inspection and repair of defective sewer lines and preparation of information and education cam

## **Annex 9**

### **Template for the State of the Coasts Reporting System**

## TEMPLATE FOR SOC REPORTING

### PART I. GENERAL INFORMATION

#### I. A. Information relevant to the MDG Targets

Indicators	Current Status	Local Targets	National Targets	MDG Targets	Remarks
<b>Poverty eradication</b>					
Poverty headcount ratio at \$1 a day (PPP) (% of population)	19.8 (1990); 14.8 (2005)			Halve, between 1990 and 2015, the proportion of people whose income is less than \$1 a day	
Poverty gap at \$1 a day (PPP) (%)	4.2 (1990); 2.9 (2005)				
Poverty headcount ratio at national poverty line (% of population)	40.6 (1995)				
Income share held by lowest 20%	5.9 (1990); 5.4 (2005)				
Prevalence of underweight children under-five years of age	34.5 (1990); 24.6 (2006)		17.25 (2015)	Halve, between 1990 and 2015, the proportion of people who suffer from hunger	
Prevalence of undernourishment (% of population that is undernourished)	26 (1990); 18 (2005)				
<b>Achieve universal primary education</b>					
Net enrollment ratio in primary education	85.1 (1990); 90.15 (2003)		100 (2015)	Ensure that, by 2015, children everywhere, boys and girls alike, will be able to complete a full course of primary schooling	
Proportion of pupils starting Grade 1 who reach Grade 5 Primary completion rate	68.4 (1990); 69.8 (2003)		83.3 (2015)		
Literacy rate of 15-24 years	97 (1990); 95 (2005)				
<b>Reduce child mortality</b>					
Under-five mortality rate (expressed as rate per 1,000 live births)	80 (1990); 40 (2003)		26.7 (2015)	Reduce by two-thirds, between 1990 and 2015, the under-five mortality	
Infant mortality rate (per 1,000 live births)	57 (1990); 29 (2003)		19 (2015)		
Proportion of one-year-old immunized against measles	85 (1990) 80 (2005)				
<b>Improve maternal health</b>					
Maternal mortality	209 (1990);		52.2	Reduce by	

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rate (per 100,000 live births)	172 (2003)		(2015)	three-quarters, between 1990 and 2015, the maternal mortality ratio	
Proportion of births attended by skilled health personnel	53 (1995); 60 (2005)				
<b>Promote gender equality and empower women</b>					
Ratio of girls to boys in primary, secondary and tertiary education	Elementary: 95.8 (1990); 101.8 (2003) Secondary: 104.5(1990); 115.9 (2003)		100 (2015)	Eliminate gender disparity in primary and secondary education, preferable by 2005, and in all levels of education no later than 2015	
Ratio of literate women to men, 15-24 years old	100 (1990); 101 (2005)				
Share of women in wage employment in the non-agricultural sector	39.7 (1990); 40.4 (2005)				
Proportion of seats held by women in national parliaments (local governments)	9 (1990); 15 (2005)				

**I. B. Information relevant to the country/site**

<b>Area:</b>	
Total	300,000 km <sup>2</sup>
Land	298,170 km <sup>2</sup>
Water (Inland)	1,830 km <sup>2</sup>
Coastline	36,289 km
Territorial sea (up to 12 nm)	679,800 km <sup>2</sup>
Exclusive Economic Zone (200 nm)	2.2 million km <sup>2</sup>
Continental shelf (up to 200 m depth)	244,500 km <sup>2</sup>
Coastal waters	226,000 km <sup>2</sup>
Oceanic waters	1.93 million km <sup>2</sup>
Population	84.6 million (July 2003 est.)
Population growth rate	1.92% (2003 est.)
Coastal population	39 million (2002)
Coastal population density	285 person per km <sup>2</sup>
<b>Ethnic groups (please indicate major groups):</b>	
Christian	91.5%
Muslim	4%
Chinese	1.5%
Other	3%
<b>Religions (please indicate major religions):</b>	
Roman Catholic	83%
Protestant	9%
Islam	5%
Buddhist and others	3%
<b>Administrative Divisions:</b>	
Provinces	79
Cities	61
Coastal municipalities	822 (out of 1,502)
GDP per capita	\$4,200 (2002 est.)
Labor force	33.9 million (2002 est.)
Labor Force Participation Rate	64.5 (April 2007)
Employment Rate	92.6 (April 2007)
Unemployment Rate	7.4 (April 2007)
Underemployment Rate	18.9 (April 2007)
Ports and harbors	Batangas, Cagayan de Oro, Cebu, Davao, Guimaras Island, Iligan, Iloilo, Jolo, Legaspi, Manila, Masao, Puerto Princesa, San Fernando, Subic Bay, Zamboanga
Merchant marine	393 ships (1000 GRT or over)
<b>Pipelines:</b>	
Petroleum products	357 km
Natural gas	100 km
International disputes	<ul style="list-style-type: none"> <li>a) a complex dispute over Kalayaan Islands (Spratlys) with China, Malaysia, Taiwan, Vietnam and possibly Brunei</li> <li>b) RP government represents heirs of the Sultan of Sulu in pursuing sovereignty claims over Malaysian-held Sabah</li> </ul>
<b>Incidence of water related diseases</b>	
Schistosomiasis	

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Diarrhea	
Typhoid and Paratyphoid	
Poliomyelitis	
Infectious Hepatitis	
Amoebiasis and Other Dysentery All Forms	
<b>Number of Morbidity and Mortality Cases of water related diseases</b>	
Schistosomiasis	
Diarrhea	
Typhoid and Paratyphoid	
Poliomyelitis	
Infectious Hepatitis	
Amoebiasis and Other Dysentery All Forms	
<b>Other relevant information</b>	

## PART II. KEY INDICATORS AND TARGETS FOR SOC REPORTING

Indicators	Current Status	Local Targets	National Targets	International Targets	Response	Remarks
<b>Governance</b>						
<b>Policy, Strategies and Plans</b>						
Coastal, Ocean Policy	( <input checked="" type="checkbox"/> )Yes** ( ) No EO 186 s. 1994 or the National Marine Policy					
<b>Institutional Arrangements</b>						
Coordinating mechanism for CRM/ICM programs	( <input checked="" type="checkbox"/> )Yes ( ) No CMMO ; Batangas Bay Region Environmental Protection Council					
<b>Legislation</b>						
International instruments ratified ( <b>National SOC only</b> )	( <input checked="" type="checkbox"/> ) MARPOL; ( <input checked="" type="checkbox"/> ) London Convention; ( <input checked="" type="checkbox"/> ) CBD; ( <input checked="" type="checkbox"/> )CLC; ( <input checked="" type="checkbox"/> ) FUND; ( <input checked="" type="checkbox"/> ) UNCLOS; ( <input checked="" type="checkbox"/> ) Ramsar; ( <input checked="" type="checkbox"/> ) CITES; ( <input checked="" type="checkbox"/> ) UNFCCC; ( ) UNCCD; ( ) POPs					
Water Act ( <b>National SOC only</b> )	( <input checked="" type="checkbox"/> )Yes ( ) No RA 9275 Clean Water Act					
ICM Act or Legislation ( <b>National SOC only</b> )	( <input checked="" type="checkbox"/> )Yes ( ) No Exec. Order 533					
Solid Waste Legislation ( <b>National SOC only</b> )	( <input checked="" type="checkbox"/> )Yes ( ) No Ecological and Solid Waste Management Act 2000					
Protected Areas Legislation ( <b>National SOC only</b> )	( <input checked="" type="checkbox"/> )Yes ( ) No National Integrated Protected Areas System Act, 1992					
Local Legislations (Please list and provide details of all relevant legislations)	Ex. Zoning legislations, Protected Area Legislations, Licensing of Commercial, Municipal					

	Fishers					
<b>Information and Public Awareness</b>						
Presence/ implementation of communication plans	( ) Yes ( ) No					
<b>Financing Mechanisms</b>						
<b>Government Investments</b>						
National (or LGU) level allocation (% of total expenditure)						
- For Environment	PHP 4.2 billion, 0.8% of the total national budget (1998)					
- For ICM	No available data					
- For SAP	No available data					
<b>Strategic Action Programs</b>						
<b>Natural and man-made hazard prevention and management</b>						
Integrated natural and man-made hazards response plan	( ) Yes (✓) No					
Proportion of households with access to secure tenure (owned and rented, %)	91 (1990); 81.2 (2000)			Substantial reduction of disaster losses, in lives and in the social, economic and environmental assets of communities and countries (Hyogo Framework for Action 2005-2015)		
<b>Habitat protection, restoration and management</b>						
Total number and area of proclaimed protected areas	101; 3.2 million hectares (2005)		Delineate 6.336 million hectares nationwide for protection	Significant reduction in the current rate of loss of biological diversity by		



				2010 (WSSD, CBD)		
<b>Water Use, Supply and Management</b>						
% population with access to improved water source	87% (1990); 85% (2005)		Potable water for the entire country by 2010	Halve by 2015, the proportion of people without sustainable access to safe drinking water and basic sanitation		To achieve the priority target of 200 waterless municipalities without access to potable water, it is estimated that <b>PhP1.90 billion and PhP10.77 billion</b> are needed to construct 38,097 level I and 7,696 level II systems for these municipalities, respectively
<b>Food and other resources Security Livelihood</b>						
Net change in fish catch Marine Inland Aquaculture Commercial	2.41 (avg. 95-05) -2.41 (avg. 95-05) 7.61 (avg. 95-05)			Restoration of depleted stocks by 2015 (FAO)		Negative net change indicates depleted fishery resources.
<b>Pollution Reduction and Waste Management</b>						
% population with access to sanitation	57% (1990); 72% (2004) Urban: 66% (1990); 80% (2004) Rural: 48% (1990); 59% (2004)		All barangays/ municipalities that will be provided with water supply services have the corresponding sanitation facilities for proper disposal of wastewater/	<b>Sewage (UNEP-GPA)</b>  By the year 2025, dispose of all sewage, waste waters and solid wastes in conformity with national or international environmental quality		Public investment in water supply and sanitation is estimated to be PhP3-4 billion per year. Sewerage and sanitation investments are only a fraction, amounting to PhP500 million. It is estimated that

			septage	guidelines		to reach the MDG for water supply, an investment of PhP6-7 billion per year is necessary. For sanitation and sewerage, an average of PhP25 billion per year in investments is necessary between now and 2015 to improve the situation (Phil. Environment Monitor 2006).
% population with access to sewerage	ADB reported that approx. 1% of the country's population have access to sewerage systems, 74% rely on on-site sanitation systems like sanitary toilets and septic tanks, and 25% do not have access to sanitation services and discharge untreated wastes directly into rivers and land.					Limited government funding is allocated to sanitation improvements with only 0.05% of the 1999 gross domestic product (GDP) dedicated to sanitation and sewerage improvements (PSS, 2006).
Volume and percent of solid waste collected						
Percent of waste recycled or reuse						

**\*\*Note:** For questions answerable by **Yes** or **No**. Those with “**yes**” answer, please provide details.