

**REVIEW OF  
POLICY, LEGAL, AND INSTITUTIONAL ARRANGEMENTS FOR  
PHILIPPINE COMPLIANCE WITH THE WCPF CONVENTION**

**Jay L. Batongbacal**

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Republic Act No. 8435. The Agriculture and Fisheries Modernization Act of 1997.

Presidential Decree No. 704. The Philippine Fisheries Decree of 1975

Executive Order No. 209. Incentives for Commercial Fishing (including Annexes)

### C. Regulations

FAO 183, s. 1992. Prohibiting importation of tuna from certain countries.

FAO 188, s. 1993. Regulations on fishing operations with use of tuna purse seine nets.

FAO 191, s. 1995. Employment of foreign crew onboard specialized fishing vessels.

FAO 198, s. 2000. Rules and regulations on commercial fishing (licensing)

FAO 199, s. 2000. Transshipment.

FAO 200, s. 2000. Poaching in Philippine waters.

FAO 222, s. 2003. Regulations on fishing operations with use of Danish seine.

FAO 223, s. 2003. Moratorium on issuance of new CFVGL.

FAO 223-1, s. 2004. Extension of moratorium.

FAO 224, s. 2004. Tuna Productivity Project.

FAO 226, s. 2008. Regulation on mesh size of tuna purse seine nets and trade in small tuna

FAO 236, s. 2010. Regulation on operations of purse seine and ring net vessels using FADs, as compatible measures to WCPFC CMM 2008-01.

# REVIEW OF POLICY, LEGAL, AND INSTITUTIONAL ARRANGEMENTS FOR PHILIPPINE COMPLIANCE WITH THE WCPF CONVENTION

Jay L. Batongbacal\*

## 1. INTRODUCTION

The 1982 UN Convention on the Law of the Sea (LOSC)<sup>1</sup> and the 1995 UN Fish Stocks Agreement (UNFSA)<sup>2</sup> mark important milestones in an evolutionary effort by the international community sought to establish some means of controlling fishing in what used to be considered the 'high seas' adjacent to their coasts. Agreement on what became Part III of the LOSC on the establishment of the exclusive economic zone (EEZ) extending coastal State jurisdiction seaward to 200M from shore in matters such as fishing represents the earliest mutual recognition of the legitimacy of coastal State interests and jurisdiction extending beyond the limits of the territorial sovereignty, both actual and ancillary.<sup>3</sup> Recognition of such a vast jurisdictional zone generated new challenges for coastal and fishing States: effective monitoring, control and surveillance; scientific stock assessment and allocation; and control of fishing effort by vessels and entities not under coastal State jurisdiction to ensure compliance with and success of national fishery management measures.

Despite the fact that most commercial fishing activities in the 1970s were considered to be comprehended within the EEZ, the mere extension of State control even up to that distance could not address the impact of fishing activities beyond, in the high seas beyond any national jurisdiction. The interconnection and interaction between fish stocks in the EEZ and high seas areas was an ecological fact that could not be adequately faced by any kind of national fishery management system. Alarming data on high rates of depletion of fish stocks worldwide, and actual observation of collapses of commercial fish stocks in the final decades of the 20<sup>th</sup> century, spurred the international community to negotiate and agree on the

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\* BA, LLB, MMM, JSD. Assistant Professor V, University of the Philippines College of Law. The author acknowledges the contributions of the participants in the WPEA Workshop held in 16-17 November 2010, at which the initial framework and substance of this study was introduced for comments and reactions. Their contributions are more specifically documented in the Annexes.

<sup>1</sup> United Nations Convention on the Law of the Sea. Montego Bay, Jamaica. 10 December 1982. 21 I.L.M. 1261. Entered into force, 28 July 1994.

<sup>2</sup> United Nations Agreement for the Implementation of the Provisions of the UN Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks. Entered into force, 11 December 2001.

<sup>3</sup> Traditionally, territorial sovereignty was equated with the land territory mainly, and for hundreds of years extended seaward only to a distance that coastal States considered as being subject to the exercise of such sovereignty and full control by such coastal State. The adjacent band of sovereignty was considered to be 'territorial waters' subject only to one easement in favor of other States: the right of innocent passage in favor of foreign vessels.

UNFSA which currently forms the foundation document for international regulation of fishing activities in the high seas. Through the UNFSA, the international community agreed upon the Regional Fisheries Management Organization (RFMO) as the institutional mechanism of choice for attempting to moderate and regulate international fishing activities. Essentially, the RFMO system establishes international organizations comprised of coastal and fishing States with interests in a fishery area or fish stock/s to promote mutual cooperation in the management of fishing effort. The international organization so established, however does not supplant, but in fact seeks to strengthen, coastal State and flag State jurisdiction. It is by working through its members as coastal States with jurisdiction over the fishing areas, and flag States with jurisdiction over fishing vessels, that RFMOs are intended to achieve more effective control over all activities that impact on the fishery. There is also sufficient room for the use of innovations such as port State control and any other mechanisms that may be agreed upon between States. This leaves the issue of dealing with non-members of the RFMOs as the more difficult jurisdictional issue in regulation, but recent practices have attempted new ways of encouraging non-member compliance with RFMO measures and conventions.

RFMO coverage of the world's oceans and commercially-valuable stocks is presently nearly global in scope,<sup>4</sup> although there are many overlaps in terms of areas and species. To be sure, international fisheries management still has a long way to go in terms of developing effective and universally acceptable means and methods. But the shift in assumptions from open-access high seas fisheries to RFMO-managed areas are seen by some observers as evidence that fishing is no longer considered as among the 'sacred' high seas freedoms enjoyed by all States. Indeed, with the global coverage of the world's oceans and commercially-valuable species by RFMO jurisdictions of some kind, it is becoming difficult for any country to claim any right of unilateral and unrestricted freedom of fishing in what used to be considered as seas open to all. This has serious implications to a developing country like the Philippines that is both a coastal State with significant fisheries jurisdiction and at the same time a distant-water fishing nation with fishery interests extending beyond its own waters. The Philippine "international fishing fleet" is a long-standing component of the commercial fishing sector; its continued viability and growth (however incremental) depends in large part upon its compliance and participation in the evolving international fisheries management regime. This study is one small effort to assess the convergences and divergences in the policy stance of the Philippines with respect to one major RFMO convention in whose area the fleet operates: that for the Western and Central Pacific Fisheries Commission.<sup>5</sup> In particular, it is intended to identify the Philippines' current obligations under the Convention in order to establish its current level of compliance and facilitate policy reform and capacity-building for any outstanding international obligations.

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<sup>4</sup> See Meltzer, E. *Global Overview of Straddling and Highly Migratory Stocks*, DFO Online <[http://www.dfo-mpo.gc.ca/fgc-cgp/documents/meltzer\\_e.htm](http://www.dfo-mpo.gc.ca/fgc-cgp/documents/meltzer_e.htm)> and <<http://www.dfo-mpo.gc.ca/fgc-cgp/documents/meltzer/NEAFCfinal.pdf>> (2005). Date accessed: 04 November 2010.

<sup>5</sup> Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean. Honolulu, Hawaii (entered into force, 19 June 2004).

## 2. THE WCPF CONVENTION

### 2.1. *General Background*

The Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (the Convention for brevity) represents the first major international effort to establish a comprehensive fisheries management regime to govern a vast area of productive fisheries of the Western and Central Pacific Ocean. It was negotiated over the period of six years from 1994 to 2000, when it was finally opened for signature at Honolulu. The WCPF Commission established as the institutional structure for management of the Convention Area is responsible for fishing in waters comprising over 20% of the Earth's surface, and highly migratory fish stocks that comprise the world's commercially most-valuable species, such as tuna and billfish of various kinds, pursued by many different types of fishing vessels, gears, and systems.<sup>6</sup>

Officially, the Convention implements the obligations of the parties under the LOSC and UNFSA,<sup>7</sup> and manifests the members' determination that an international Commission is the institutional mechanism that can best achieve the conservation and management of highly migratory fish stocks in the WCP.<sup>8</sup> The expansive Convention Area<sup>9</sup> is necessary in order to achieve cooperation in the conservation and optimum utilization of all kinds of highly migratory fish stocks (except saurines) "throughout their range."<sup>10</sup> This broad geographic scope necessitates the use of sound scientific and ecological approaches to fisheries management, and to this end the Convention promotes the application of the precautionary approach and the use of best scientific information available.<sup>11</sup> Recognizing that the Convention Area cannot be effectively managed without considering the many different jurisdictional zones and prerogatives that may be covered or exercised within it, the Convention also acknowledges the need for compatible, effective, and binding conservation and management measures between coastal and fishing States.<sup>12</sup> The emphasis on 'compatibility' is intended as a means of achieving consistency in measures established by the Commission for the high seas and by the coastal States for the waters under their jurisdiction

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<sup>6</sup> See Western and Central Pacific Fisheries Commission. Frequently Asked Questions and Brochures. WCPFC Online <<http://www.wcpfc.int/frequently-asked-questions-and-brochures>> Date accessed: 14 November 2010.

<sup>7</sup> Convention, Preamble 2.

<sup>8</sup> Ibid., Preamble 7.

<sup>9</sup> Ibid., Art. 3.1.

<sup>10</sup> Ibid., Preamble 3; Art. 3.3.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid., Preamble 6.



but within the defined Convention Area (including territorial waters and EEZ zones), which legally are not affected by the jurisdiction granted to the Commission.<sup>13</sup>

Perusal of the Convention reveals that it also incorporates social as well as fisheries management imperatives. In particular, it recognizes the ecological and geographical vulnerability economic and social dependence on migratory fish stocks of the many Small Island Developing States (SIDS), mostly in the South Pacific within the Convention Area, and such SIDS' need for special assistance,<sup>14</sup> particularly in terms of financial, scientific, and technological assistance.<sup>15</sup>

### 2.1.1 The Commission

At present, the Commission has 25 members, comprised of full Members, Cooperating Non-Members, and Participating Territories. Membership, however, is not limited to States, as the Convention innovatively recognized the concept of Fishing Entities in order to accommodate significant fishing activities undertaken by entities other than recognized States.<sup>16</sup> A fishing entity which agrees to be bound by the Convention regime may participate in its work like a Member State, including decision-making.<sup>17</sup>

As an international organization, the Commission has legal personality and legal capacity, as well as all privileges and immunities that may be determined by agreement between the Commission and a contracting party.<sup>18</sup> It is led by a Chair and Vice-Chair who must be of different nationalities, elected for two-year terms.<sup>19</sup> The Commission meets annually, or as necessary, in order to deliberate and decide on matters within its scope<sup>20</sup> in order to carry out its numerous management functions. Among the most prominent of these functions are to determine the Total Allowable Catch or total level of fishing effort, adopt conservation and management measures to assure long-term sustainability of the stocks, compile and disseminate statistical information on the stocks, adopt standards for responsible fishing, establish appropriate mechanisms for monitoring, control and surveillance (MCS) including a vessel monitoring system (VMS), maintain fishing vessel registries, regulate fishing operations, among many others.<sup>21</sup> All Commission members are to be promptly notified

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<sup>13</sup> Ibid., Art. 3.1 [no prejudice clause].

<sup>14</sup> Ibid., Preamble 4.

<sup>15</sup> Ibid., Preamble 5.

<sup>16</sup> Ibid., Art. 9.2, 39, and Annex I.

<sup>17</sup> Ibid., Art. 9.2.

<sup>18</sup> Ibid., Art. 9.6.

<sup>19</sup> Ibid., Art. 9.4.

<sup>20</sup> Ibid., Art. 9.3.

<sup>21</sup> Ibid., Art. 10, 17.2 and 24.7.

of the measures and recommendations decided upon by the Commission in the discharge of its functions, and such measures are to be given due publicity.<sup>22</sup>

### 2.1.2 The Secretariat and Subsidiary Bodies

The Commission proper is assisted in carrying out its functions by a Secretariat and subsidiary bodies, mainly the Scientific Committee, the Technical and Compliance Committee, and the “Northern Committee.”

#### *A. The Secretariat*

The Secretariat consists of an Executive Director and such other staff as the Commission may require.<sup>23</sup> The ED is appointed for a 4 year term, which is renewable for another 4 years, during which time he acts as the chief administrator of the Commission and thus is responsible for the daily running of the Commission and its subsidiary bodies and administrative staff.<sup>24</sup> Most important, the Secretariat is also in charge of coordinating the Commission's Regional Observer Programme (ROP)<sup>25</sup> which is a key mechanism relied upon by the Commission for the effective monitoring of fishing effort. The Secretariat, in this sense, therefore is not only an administrative adjunct of the Commission tasked only with office work, but also an active organizational agent in its MCS system.

The ROP enables the Commission to directly collect reliable and verified catch data, other scientific data and additional information, as well as monitor the implementation of conservation and management measures (CMMs).<sup>26</sup> This is done through the placement of independent and impartial observers authorized by the Secretariat of the Commission in all the flag vessels of its members that fish in waters other than their own waters exclusively.<sup>27</sup> Thus, Members are required to ensure that their flag vessels accept such observers as a matter of obligation under the Convention when such vessels fish exclusively in the high seas, or in the high seas and jurisdictional waters of coastal States, or in the jurisdictional waters of 2 or more coastal States.<sup>28</sup> Basic guidelines for the establishment and operation of the ROP were laid in Art. 28.6 of the Convention, and later fleshed out in CMM 2006-07 and CMM 2007-01.

The ROP is notable because it does establish clear obligations on the part of the Philippines as a Convention Member. Among these are to explain to all vessel captains the duties of the

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<sup>22</sup> Ibid., Art. 10.6.

<sup>23</sup> Ibid., Art. 15.1.

<sup>24</sup> Ibid., Art. 15.2 and 15.3.

<sup>25</sup> Ibid., Art. 28.2.

<sup>26</sup> Ibid., Art. 28.1.

<sup>27</sup> Ibid., Art. 28.3 to 28.5.

<sup>28</sup> Ibid., Art. 28.5.

observer in relation to the CMMs being implemented,<sup>29</sup> and to ensure that all Philippine flag vessels fishing in the Convention Area are prepared to accept an observer onboard if so required by the Commission.<sup>30</sup> The Philippines is also responsible for meeting the level of observer coverage set by the Commission,<sup>31</sup> sourcing observers for its flag vessels.<sup>32</sup>

## *B. Other Subsidiary Bodies*

The Commission is also assisted by other subsidiary bodies that have mainly advisory functions. These bodies provide the Commission with advice and recommendations within their respective areas of competence,<sup>33</sup> and to carry out this function, such bodies may in turn consult any other organizations with competence on the subject or seek expert advice on an *ad hoc* basis.<sup>34</sup> Members are entitled to appoint one representative each to these bodies, who may be accompanied by experts and advisers.<sup>35</sup> They may meet as often as required prior to the annual meeting of the Commission.<sup>36</sup> Reports are adopted by consensus as much as possible; but if not, then the majority and minority views are to be indicated and reported as well.<sup>37</sup> Aside from the three already existing, the Commission may establish other subsidiary bodies as may be necessary.

### *B.1. Scientific Committee*

The Scientific Committee is established to ensure that the Commission obtains the best scientific information available in its deliberations.<sup>38</sup> It can carry out its own research, as well as undertake review functions. The Commission may, taking account of the Scientific Committee's recommendations, engage the services of scientific experts for further acquisition and refinement of the data and information at its disposal.<sup>39</sup>

### *B.2. Technical and Compliance Committee*

A Technical and Compliance Committee provides the Commission with information and technical advice and recommendations relating to the implementation of CMMs, including

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<sup>29</sup> CMM 2007-01, Sec. 4.

<sup>30</sup> *Ibid.*, Sec. 7.

<sup>31</sup> *Ibid.*, Sec. 8.

<sup>32</sup> *Ibid.*, Sec. 9.

<sup>33</sup> Convention, Art. 10.5 and 11.1.

<sup>34</sup> *Ibid.*, Art. 11.5.

<sup>35</sup> *Ibid.*, Art. 11.2.

<sup>36</sup> *Ibid.*, Art. 11.3.

<sup>37</sup> *Ibid.*, Art. 11.4.

<sup>38</sup> *Ibid.*, Art. 12.1.

<sup>39</sup> *Ibid.*, Art. 13.

the monitoring and review of compliance by Convention members. It may also review the implementation of all cooperative measures for monitoring, control, surveillance, and enforcement that are adopted by the Commission.<sup>40</sup>

### *B.3. Northern Committee*

The Northern Committee is a special committee established by the Commission to make recommendations concerning the part of the Convention Area north of the 20th parallel North. The members of this committee include all Members situated in and fishing in such area, but observers may be sent by other members. The Commission makes decisions on the stocks in the said area based on the recommendations of the Northern Committee.

#### 2.1.3 Decision-making

The Convention uses an elaborate system of decision-making that makes it rather difficult to reverse or contest decisions once they have been reached. As a general rule, decisions are arrived at by consensus, which is defined as the absence of objectives at the time the decision is taken.<sup>41</sup> If a decision that requires consensus is anticipated by the Chair to meet with objection, the Commission may appoint a conciliator in order to reconcile differences in order to achieve consensus.<sup>42</sup> If such efforts are not successful, the decision is then put to a vote.<sup>43</sup>

Where allowed by the Convention, a decision by vote is taken through qualified majorities. Questions of procedure are taken by the majority of those present and voting, while questions of substance are taken by a  $\frac{3}{4}$  majority of those present and voting, which majority must in turn include a  $\frac{3}{4}$  majority of the members of the South Pacific Forum Fisheries Agency (SPFFA) present and voting, and  $\frac{3}{4}$  majority of the non-members of the SPFFA present and voting. However, no proposal shall be defeated by two or fewer votes in either chamber.<sup>44</sup> The question of whether an issue is one of substance or not, is treated as one of substance that is decided by either consensus or the qualified majority above described.

Commission decisions are binding 60 days after the date of their adoption.<sup>45</sup> Any dissenting or absent Member may, within 30 days, seek a review of the decision by a review panel<sup>46</sup> on the grounds that such decision is inconsistent with either the Convention, the UNFSA, or LOSC; or unjustifiably discriminates in form or fact against the Member concerned. Pending

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<sup>40</sup> Ibid., Art. 14.1.

<sup>41</sup> Ibid., Art. 20.1.

<sup>42</sup> Ibid., Art. 20.4.

<sup>43</sup> Ibid., Art. 20.3.

<sup>44</sup> Ibid., Art. 20.2.

<sup>45</sup> Ibid., Art. 20.5.

<sup>46</sup> Ibid., Art. 20.6; see also Annex II.

such a review, no Member is required to give effect to the questioned decision.<sup>47</sup> The review panel may recommend the modification, amendment, or revocation of the decision, which shall be taken by the Commission at the next annual meeting unless a special meeting is called for the purpose.<sup>48</sup>

The Commission promotes transparency in its decision-making processes and other activities. This includes allowing representatives of concerned inter-governmental organizations and non-government organizations to participate in Commission meetings and subsidiary bodies as observers or as may be appropriate.<sup>49</sup>

#### 2.1.4 Cooperation with Other Organizations

The Commission also promotes cooperation with other organizations such as a Food and Agriculture Organization and other UN bodies; other RFMOs like CCAMLR, CCSBT, IOTC, and IATTC; and other organizations whose management area may overlap with the Convention Area. The Commission may also engage in relationship agreements with other organizations like the Pacific Community and the SPFFA in order to obtain the best scientific information for the discharge of its functions and to minimize the duplication of work.<sup>50</sup>

#### 2.1.5 Financial Arrangements

The Commission functions with the support of various funding sources, mainly assessed contributions from its Members. There are 3 components to each Member contribution: an equal basic fee, a fee based on national wealth, and a variable fee based on the total catch from within EEZ and areas beyond national jurisdiction within the Convention Area. A discount factor is applied for the catch within the EEZ of a developing State taken by its own flag vessels. The Commission may also receive and use voluntary contributions, as well as any other funds.<sup>51</sup>

Usage of the funds is based on a budget prepared by the ED, and adopted by the Commission by consensus.<sup>52</sup> If a Member is in arrears to an amount equal to or greater than that for the preceding 2 years, it cannot participate in the making of decisions.<sup>53</sup>

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<sup>47</sup> Ibid., Art. 20.7.

<sup>48</sup> Ibid., Art. 20.9.

<sup>49</sup> Ibid., Art. 21.

<sup>50</sup> Ibid., Art. 22.

<sup>51</sup> Ibid., Art. 17, 18.2, and 30.

<sup>52</sup> Ibid., Art. 18.1.

<sup>53</sup> Ibid., Art. 18.3.

## **2.2 Management Policy in the Convention Area**

The overall management policy of the Convention is essentially encapsulated in its stated objective "to ensure, through effective management, the long-term and sustainable use of highly migratory fish stocks in the western and central Pacific Ocean."<sup>54</sup> To achieve this objective, the Convention seeks to apply generally an ecosystem-based management approach (initially indicated by the Convention Area definition based on the 'range' of the stocks) based on certain key principles.

### 2.2.1 Precautionary Approach

These principles are expressly identified, led by the precautionary approach,<sup>55</sup> specifically applying the guidelines contained in Annex II of the UNFSA using stock-species reference points.<sup>56</sup> The Convention also elaborates upon the application of the precautionary approach. Members are to be more cautious in their management decisions when information is uncertain, unreliable or inadequate; and the absence of adequate scientific information shall not be used as reason for postponing or failing to take conservation and management measures.<sup>57</sup> Members shall also ensure that when the reference points are reached, they shall not be exceeded.<sup>58</sup>

Any new or exploratory fisheries opened in the Convention Area are to be subjected to cautious conservation and management measures, which must remain in force until there is sufficient data to allow the assessment of the impact of the fishing activity.<sup>59</sup>

### 2.2.2 Ecosystem-based Approach

The ecosystem-based approach is signalled more substantially by requiring Members to take into account uncertainties relating to size and productivity, stock condition, levels and distribution of fishing mortality, impact of activities on non-target and associated or dependent species, and surrounding conditions in their decisions.<sup>60</sup> If the status of target, non-target, associated, or dependent species are of concern, the Commission shall subject such stocks to enhanced monitoring.<sup>61</sup> The Commission shall also develop data collection and research programmes to assess the impact of fishing.<sup>62</sup>

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<sup>54</sup> Ibid., Art. 2.

<sup>55</sup> Ibid., Art. 6.

<sup>56</sup> Ibid., Art. 6.1(a).

<sup>57</sup> Ibid., Art. 6.2.

<sup>58</sup> Ibid., Art. 6.3.

<sup>59</sup> Ibid., Art. 6.5.

<sup>60</sup> Ibid., Art. 6.1(b).

<sup>61</sup> Ibid., Art. 6.4.

The Commission may adopt measures on an emergency basis to ensure that fishing activities do not exacerbate any adverse impacts of fishing. These include instances where a natural phenomenon has significant adverse impact on status of stocks, and where a fishing activity presents a serious threat to the sustainability of the stock.<sup>63</sup>

### 2.2.3 Compatibility of Measures

Particularly prominent among the management principles of the Convention is the principle of compatibility of measures.<sup>64</sup> Coastal States are to implement the various principles and measures enumerated in Article 5 for the conservation and management of highly migratory stocks within their national jurisdictions inside the Convention Area,<sup>65</sup> with due consideration to the respective capacities of developing coastal States.<sup>66</sup> But it is emphasized that Commission CMMs adopted for high seas and measures adopted by coastal States for areas under national jurisdiction shall be compatible in order to ensure conservation and management of highly migratory stocks in their entirety.<sup>67</sup> This establishes a duty to cooperate on the part of the Member States for the purpose of achieving compatible measures in respect of such stocks.<sup>68</sup> States are to ensure that the measures they establish for areas under their national jurisdiction do not undermine the effectiveness of measures adopted by the Commission.<sup>69</sup> To monitor and ensure compatibility, the Commission takes into account several factors, including biological factors (biological unity and the characteristics of the stocks, the relationship between stocks, fisheries and geographic particularities);<sup>70</sup> prior management measures adopted by coastal States;<sup>71</sup> and economic factors (relative dependence of coastal and fishing States on the stocks).<sup>72</sup> If the EEZs of coastal States surround an area of the high seas in the Convention Area, the Commission shall pay special attention to ensuring the compatibility of measures among those areas.<sup>73</sup>

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<sup>62</sup> Ibid., Art. 6.1(c).

<sup>63</sup> Ibid., Art. 6.6.

<sup>64</sup> Ibid., Art. 8-9.

<sup>65</sup> Ibid., Art. 7.1.

<sup>66</sup> Ibid., Art. 7.2.

<sup>67</sup> Ibid., Art. 8.1.

<sup>68</sup> Ibid.

<sup>69</sup> Ibid., Art. 8.3.

<sup>70</sup> Ibid., Art. 8.1.

<sup>71</sup> Ibid., Art. 8.2(b) and 8.2(d).

<sup>72</sup> Ibid., Art. 8.2(d).

<sup>73</sup> Ibid., Art. 8.4.

#### 2.2.4 Due Regard for Disadvantaged and Good Faith

Another prominent principle that underlies the Convention regime is the due regard to be given to the interests of artisanal and subsistence fishers,<sup>74</sup> and the special requirements of developing State parties, particularly SIDS.<sup>75</sup>

Finally, the Convention emphasizes that all obligations shall be fulfilled in good faith and all rights arising thereunder are to be exercised in a manner not constituting an abuse of rights.<sup>76</sup>

#### 2.2.5 Management Actions

The Convention mandates the Commission to take management actions of three general categories: fisheries management, biodiversity protection, and implementation of conservation and management measures. Fisheries management forms the bulk of the Commission's agenda and generally includes the adoption and implementation of the precautionary approach to fisheries management,<sup>77</sup> the adoption of management measures intended to ensure long-term sustainability and optimum utilization of stocks<sup>78</sup> based on the best available scientific evidence;<sup>79</sup> the collection of timely and accurate data;<sup>80</sup> the adoption of measures to minimize waste, discards, and bycatch,<sup>81</sup> as well as measures to prevent or eliminate over-fishing and excess fishing capacity,<sup>82</sup> and measures to assess the impact of fishing, other human activities, and environmental factors on fish stocks.<sup>83</sup>

The Commission is also authorized to protect biodiversity in the marine environment,<sup>84</sup> although the full extent of this protective mandate has yet to be tested. It may be argued that this underlies the power of the Commission to declare area and seasonal closures; but it might also be argued that this empowers the Commission to take more drastic species protection measures, such as fishing bans and moratoria, in the future.

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<sup>74</sup> Ibid., Art. 5(g).

<sup>75</sup> Ibid., Art. 30.1 to 30.4.

<sup>76</sup> Ibid., Art. 33.

<sup>77</sup> Ibid., Art. 5(c); CMM 2004-04, s. 5.

<sup>78</sup> Convention, Art. 5(a).

<sup>79</sup> Ibid., Art. 5(b); CMM 2004-04, s. 4.

<sup>80</sup> Ibid., Art. 5(h).

<sup>81</sup> Convention, Art. 5(e).

<sup>82</sup> Ibid., Art. 5(f).

<sup>83</sup> Ibid., Art. 5(d).

<sup>84</sup> Ibid., Art. 5(f).



## 2.3 Members' Obligations

The management system under the Convention assigns obligations to all States and fishing entities intending to participate in the Commission. These obligations are scattered throughout sundry provisions of the Convention, as well as CMMs that are agreed upon by the Commission. Obligations expressed directly in the Convention's main text may be presumed to be of a higher order than those expressed in CMMs, the latter being forms of implementation and refinement of the former. These however are no less binding upon Commission Members once they have been properly agreed upon and entered into force in accordance with the decision-making procedures of the Commission. The question raised whenever a Member is faced with the statement of an obligation in either Convention-based text and a CMM-based text is more often a question of specificity of conduct and responsibility: Convention-based obligations tend to be more general expressions since they are intended to be implemented in more detail by subsequent actions of the Commission and its members. There are instances, however, where the Convention is itself very specific with respect to conduct expected of a Member; these are in relation to issues or topics that were very high on the agenda of certain parties at the time of negotiation of the Convention.

One important innovation of the Convention is the creation of the category of Cooperating Non-Members. This originated from the general policy of the Convention to encourage non-parties to cooperate fully with the Commission in the implementation and enforcement of CMMs.<sup>85</sup> Cooperating Non-Members are entitled to participate in the benefits of the fishery commensurate to their commitment and record of compliance with the Convention and its CMMs,<sup>86</sup> and may attend as observers in Commission meetings.<sup>87</sup> The extent and scope of Cooperating Non-Members rights and duties are defined in CMM 2009-11.

### 2.3.1 General Obligations

Members' general obligations under the Convention may be categorized into three: to promptly implement the Convention and the CMMs agreed upon;<sup>88</sup> to promote compliance by all States with the Convention;<sup>89</sup> and to provide information to the Commission necessary for its fishery management functions.<sup>90</sup> While the first may be seen as an overall duty of all Members as a necessary result of their more fundamental obligation to comply with agreements in good faith, the second pertains a less-specific obligation of flag States to ensure that their nationals and fishing vessels comply with the Convention and its CMMs,

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<sup>85</sup> Ibid., Art. 32.4.

<sup>86</sup> Ibid.

<sup>87</sup> Ibid., Art. 32.5.

<sup>88</sup> Ibid., Art. 23.1.

<sup>89</sup> Ibid., Art. 23.5.

<sup>90</sup> Ibid., Art. 23.2 to 23.4.

including to investigate any reported violations by such nationals or fishing vessels upon request and proper information by another Member.<sup>91</sup>

The third class of obligations is a slightly more specific in the sense that the kind of information required by the Commission for its purposes is also a little more specific. These include any scientific data and information that the Commission may require for fisheries management, information on fishing activities (including fishing areas and vessels) of its nationals and flag vessels, and information on all steps taken by the coastal State to implement the Commission's CMMs.<sup>92</sup> The State must also inform the Commission of measures adopted for the conservation and management of highly migratory species in areas of national jurisdiction within the Convention Area,<sup>93</sup> which is necessary in view of the principle of compatibility of measures. Lastly, flag States must also inform the Commission of measures they have enacted to regulate the activities of fishing vessels flying their flags in the Convention Area.<sup>94</sup>

### 2.3.2 Compliance and Enforcement Obligations

A considerable number of obligations relate specifically to the promotion of compliance with and enforcement of the Convention and CMMs agreed upon at the Commission, by the Members and their fishing vessels flying their flags. These obligations may be classified into those relating to (a) boarding and inspection, (b) investigation of reported violations by flag fishing vessels, (c) imposition of punitive measures, and (d) transmission of information relating to compliance and enforcement.

#### *A. Flag State Obligations*

As mentioned earlier, the effectiveness of the RFMO mechanism depends upon flag States bearing considerable responsibility for compliance of, and enforcement against, fishing vessels operating in the Convention Area. All Members that are also flag States are to ensure that flag fishing vessels comply with the provisions of the Convention and all CMMs,<sup>95</sup> and that such vessels do not conduct unauthorized fishing in the Convention Area, whether in areas within the national jurisdiction of Members or in the high seas beyond them.<sup>96</sup> The obligation is made more onerous on the part of flag States because the Convention specifies that they should allow fishing vessels to fish "only where [the flag State] is able to exercise effectively its responsibilities in respect of such vessels."<sup>97</sup> This is intended to prevent merely

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<sup>91</sup> Ibid., Art. 23.5.

<sup>92</sup> Ibid., Art. 23.2.

<sup>93</sup> Ibid., Art. 23.3.

<sup>94</sup> Ibid., Art. 23.4.

<sup>95</sup> Ibid., Art. 24.1.

<sup>96</sup> Ibid., Art. 24.1 and 24.2.

<sup>97</sup> Ibid., Art. 24.2.

titular or perfunctory flag State exercise of jurisdiction, as in the case of 'flags of convenience', where States grant the privilege of flying their flags without either the intent or capacity to actually regulate and/or enforce regulations upon the vessels.

Two key obligations of flag States are of a very specific nature, to the point of imposing minimum documentary and equipment requirements on flag vessels over and above any existing flag State requirements. The first is with respect to the conditions of the authorization to fish issued to flag fishing vessels: flag States must maintain a record of all its flag fishing vessels authorized to fish in the Convention Area,<sup>98</sup> and ensure that such vessels issue permits to fish in areas under the jurisdiction of other States only if such other States license such fishing. In case the vessel fishes only in the high seas areas of the Convention, such authorization must be in accordance with the requirements of Annex III.<sup>99</sup> Information on all such vessels with authorization to fish are to be provided by the flag State annually to the Commission.<sup>100</sup>

The second obligation is to require flag fishing vessels to use real-time satellite positioning transmitters when operating in the high seas or areas under national jurisdiction within the Convention Area.<sup>101</sup> The standards, specifications and procedures for the use of satellite transponders is established by the Commission, and is in line with its mandate to create and maintain a Convention Area-wide VMS.

In addition to the obligations above, flag States are also generally obligated to ensure that its fishing vessels to not engage in activities that undermine the effectiveness of CMMs, and ensure the compatibility of management measures for waters under national jurisdiction and in the high seas.<sup>102</sup>

### *B. Boarding and Inspection*

Since the RFMO regime recommended by UNFSA relies heavily on flag-State jurisdiction to ensure enforcement against fishing vessels, the Convention reflects the overriding concern of empowering States to effectively regulate fishing activities, headlined by a general obligation on the part of all Members as flag States to enforce the provisions of the Convention and its CMMs.<sup>103</sup> Chief among these enforcement obligations is the duty to ensure that its flag vessels accept boarding and inspection at sea by Members<sup>104</sup> undertaken in accordance with

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<sup>98</sup> Ibid., Art. 24.4.

<sup>99</sup> Ibid., Art. 24.3.

<sup>100</sup> Ibid., Art. 24.9 and Annex IV.

<sup>101</sup> Ibid., Art. 24.8 and 24.9.

<sup>102</sup> Ibid., Art. 24.10.

<sup>103</sup> Ibid., Art 25.1.

<sup>104</sup> CMM 2006-08, s. 6-7.

procedures laid out in painstaking detail by the Commission in CMM 2006-08.<sup>105</sup> These procedures directly implement Article 26 and Annex III of the Convention.<sup>106</sup>

Any contracting party may carry out boarding and inspection of any fishing vessels on the high seas within the Convention Area;<sup>107</sup> such authorized vessels should be registered with the Commission.<sup>108</sup> Certain kinds of fishing vessels may be subject to prioritized attention, such as vessels flagged with a Member not appearing in the Commission's records; those reasonably believed to be engaged in activities in contravention of the Convention or its CMMs; those without observers onboard; and those with a known history of violating CMMs.<sup>109</sup> Fishing vessels of Members that do not dispatch patrol vessels to monitor their own fishing vessels, and large-scale tuna fishing vessels may also be prioritized for boarding and inspection.<sup>110</sup>

The operational procedures for boarding and inspections are detailed in CMM 2006-08;<sup>111</sup> but the most important characteristic of these procedures is the avoidance of the use of force unless it is for the purpose of ensuring the safety of the inspectors, or when such inspectors are obstructed in carrying out their duties.<sup>112</sup>

### *C. Investigation*

Boarding and inspections at sea are not intended as preludes to the arrest of fishing vessels on site; rather, they provide basis mainly for the coastal State to seek the exercise by the flag-State of its jurisdiction over the inspected vessel and the imposition of sanctions by the Commission such as 'blacklisting'. A flag State is obligated to fully investigate any alleged violation by its flag fishing vessels upon the request of any Member.<sup>113</sup> If a fishing vessel is reasonably believed to be engaged in activities that undermine the effectiveness of any CMM, Members are to draw the attention of the flag State to such vessels for the purpose of investigation and also inform the Commission.<sup>114</sup>

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<sup>105</sup> Convention, Art. 26.3.

<sup>106</sup> CMM 2006-08, s. 8.

<sup>107</sup> Ibid., s. 5.

<sup>108</sup> Ibid., s. 12, 15, and 17.

<sup>109</sup> Ibid., s. 10.

<sup>110</sup> Ibid.

<sup>111</sup> More specifically, in s. 18-27.

<sup>112</sup> CMM 2006-08, s. 28.

<sup>113</sup> Convention, Art. 25.6.

<sup>114</sup> Ibid., Art. 25.10.

In calling for an investigation, the reporting State is obliged to provide the flag State with the evidence of the reported transgression.<sup>115</sup> If the flag State is satisfied that sufficient evidence exists for the reported violation, it is to refer the case to its authorities for proceedings without delay and detain the vessel concerned.<sup>116</sup> All investigations and judicial or administrative proceedings are to be carried out expeditiously, with the flag State also obliged to report to the Commission the progress of such investigations and proceedings as soon as practicable, or within two months.<sup>117</sup> An expedited procedure is provided for investigation of offenses considered as "serious violations."<sup>118</sup> These violations include the following:<sup>119</sup>

- fishing without a license, permit, or authority of a Member
- failure to maintain sufficient catch records/data
- fishing in a closed area
- fishing during a closed season
- intentional taking or retention of species contrary to applicable CMMs
- significant violation of catch limits or quotas in force
- use of prohibited gear
- Falsifying or intentionally concealing vessel markings, identification, or registration
- concealing, tampering with, or disposing of evidence in relation to an investigation
- multiple violations which constitute serious disregard of measures in force under the Convention
- refusal to accept boarding and inspections, except as provided in Article 27 and 28 of the Convention

Each year, each contracting party engaged in boarding and inspection of vessels are obliged to report to the Commission all boardings and inspections carried out by its authorized vessels, and the possible violations that they have found,<sup>120</sup> as well as any actions they have taken as flag States in response to the boarding and inspection of their own vessels.<sup>121</sup> These annual reports enable the Commission to monitor compliance by flag States with their enforcement obligations concerning their flag fishing vessels.

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<sup>115</sup> CMM 2006-08, s. 34 [in case of serious violations] and 38.

<sup>116</sup> Convention, Art. 25.3.

<sup>117</sup> Ibid., Art. 25.7.

<sup>118</sup> CMM 2006-08, s. 37.

<sup>119</sup> Ibid.

<sup>120</sup> CMM 2006-08, s. 40.

<sup>121</sup> Ibid., s. 41.

#### *D. Punitive Measures*

Where proceedings yield sanctions against an offending vessel, the sanction should be of sufficient effect to discourage future violations, deprive the offenders of the benefits of their illegal activities, and be without prejudice to other sanctions under national law or international agreements.<sup>122</sup> Such sanctions may include the refusal, withdrawal, or suspension of the licenses of the fishing vessels' masters and officers.<sup>123</sup> The flag State is also obligated under the Convention to ensure that any vessel found guilty of a serious violation of the Convention or its CMMs actually ceases fishing activities and does not re-engage in them until all outstanding sanctions have been complied with.<sup>124</sup> All sanctions imposed for violations, as well as all other actions undertaken by the flag State for compliance with CMMs, are likewise to be reported annually to the Commission.<sup>125</sup>

In addition to sanctions against vessels, the Convention allows for the imposition of non-discriminatory trade measures against any State or fishing entity whose vessels fish in a manner which undermines the effectiveness of a CMM on any species regulated by the Commission.<sup>126</sup> These types of sanctions have more serious and far reaching impact than those against specific vessels, since they may affect the entire fishing industries and other interests of the flag States. The imposition of non-discriminatory trade measures raises the stakes for Members to ensure effective compliance and enforcement.

#### *E. Port State Measures*

The Convention takes advantage of recent developments in flag State enforcement in the shipping industry and adapt them to the fishing industry. Aside from the use of transponders, the Convention also permits the use of port State control measures in order to bring erring vessels into line. This is based on the Convention's express recognition that every port State has right and duty to take measures to promote the effectiveness of subregional, regional and global conservation and management.<sup>127</sup> Such measures shall not discriminate in form or fact against any State, nor affect the exercise of sovereignty over ports in accordance with international law.<sup>128</sup> Port state controls, including the inspection of documents, fishing gear, and catch on board, may be undertaken by port States upon any fishing vessel voluntarily entering their port or offshore terminal.<sup>129</sup> Such measure particularly include regulations to

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<sup>122</sup> Convention, Art. 25.7 and 25.9.

<sup>123</sup> Ibid., Art. 25.7.

<sup>124</sup> Ibid., Art. 25.4.

<sup>125</sup> Ibid., Art. 25.8.

<sup>126</sup> Ibid., Art. 25.12.

<sup>127</sup> Ibid., Art. 27.1.

<sup>128</sup> Ibid., Art. 27.4.

<sup>129</sup> Ibid., Art. 27.2.

prohibit landings and transshipments of catch that are taken from the Convention Area in a manner that undermines the effectiveness of CMMs.<sup>130</sup>

## **2.4 Conservation and Management Measures**

Numerous CMMs have been agreed upon by the Commission since the entry into force of the Convention in 2004, making the Western and Central Pacific Ocean one of the most rapidly and heavily regulated fishery areas of its kind in the world. This has also led to the establishment of an extremely complex regulatory regime: over 200 different obligations of various levels of generality and specificity that each Member is expected to comply with. A detailed table, comprising a venerable national "to do" list for States and fishing entities, is included in the Annexes. These extensive obligations form a considerable challenge for the Philippines, which retains the characteristics of a coastal State some of whose adjacent waters lie within the Convention Area; a flag-State in control of an international fishing fleet; and a port State with ports receiving landings from its fleet.

Understanding the requirements for the State vis-a-vis its flag vessels and coordinating the means and methods of compliance with such numerous, complex, and different obligations and regulatory approaches entail very serious and extended study and careful policy work. To ease their appreciation, the combined regulatory regime established by CMMs implementing the Convention may be generally divided into 3 major categories of regulations: (a) fishing vessel registry standards, (b) fishing operation regulations, and (c) species-specific restrictions.

### 2.4.1. Fishing Vessel Registry Standards

A significant number of CMMs concern specific requirements for the registration and authorization of fishing vessels that operate in the Convention Area, whether within or outside waters under national jurisdiction. Each of these CMMs delineate flag State responsibilities and obligations as a means of compliance with the Convention. The detailed requirements for fishing vessel registration and authorization to fish span a wide range, from the contents of registration documents (i.e. Information required) to equipment (e.g., VMS technology) to courses of action in cases of jurisdictional ambiguity (e.g. vessels without nationality).

#### *A. Vessel Marking and Identification*

Among the most basic are CMM 2004-03 defining the standards for marking and identification of fishing vessels authorized to operate in the Convention Area but outside the

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<sup>130</sup> Ibid., Art. 27.3.

national jurisdiction of Member States,<sup>131</sup> which implements FAO Standard Specifications.<sup>132</sup> Flag States are obliged to require vessel operators to mark their vessels with radio call signs (as well as the name and home port) painted on the superstructure;<sup>133</sup> these numbers serve as the WCPFC Identification Number (WIN)<sup>134</sup> without which the vessel should not be authorized to fish.<sup>135</sup> To emphasize the importance of this measure, Members are to penalize non-compliance, wrongful marking, removal or obstruction, and unauthorized use of the WIN as offenses under national legislation.<sup>136</sup>

### *B. Authorization to Fish*

In addition to requiring vessel markings and identification, the Commission also puts in place stringent requirements for the issuance by flag States of the authorization to fish in the Convention Area. CMM 2009-01 reiterates the burdens of the flag States of ensuring that no flag fishing vessel conducts fishing in the Convention Area without authorization to do so;<sup>137</sup> that such authorization is issued only if the flag State is able to exercise effectively its responsibilities in respect of such vessels;<sup>138</sup> that fishing for highly migratory stocks is conducted only by fishing vessels of members of the Commission;<sup>139</sup> and ensure that vessels do comply with CMMs.<sup>140</sup>

Documentary requirements for the issuance of an authorization to fish are also detailed. The Commission requires the flag State to ensure that the document contains specific information such as the specific fishing area, species fished, time period for fishing, and permitted activities, as well as minimum conditions such as the prohibition against fishing operations within the jurisdiction of other States without license, keeping the authorization onboard the vessel, and any other specific conditions that may be needed to give effect to the Convention and CMMs.<sup>141</sup>

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<sup>131</sup> CMM 2004-03, s. 1.1.2

<sup>132</sup> *Ibid.*, s. 1.1.1

<sup>133</sup> *Ibid.*, s. 2.1.1 and 2.1.3(a)

<sup>134</sup> *Ibid.*, s. 2.1.2

<sup>135</sup> *Ibid.*, s. 2.1.3

<sup>136</sup> *Ibid.*, s. 2.1.3(c)

<sup>137</sup> CMM 2009-01, s. A.3; s. A.1.d

<sup>138</sup> *Ibid.*, s. A.1

<sup>139</sup> *Ibid.*, s. A.1.c

<sup>140</sup> *Ibid.*, s. A.2

<sup>141</sup> *Ibid.*, s. A.4



CMM 2009-01 also requires Members to take measures to ensure that the owners of flag fishing vessels are its citizens, residents, or legal entities within its jurisdiction so that effective control and punitive actions may be taken against them if necessary.<sup>142</sup>

### *C. Record of Authorized Fishing Vessels*

As part of their obligations to establish a reliable registry of fishing vessels, Members are required to maintain a complete and accurate record of flag fishing vessels operating in the Convention Area beyond its own waters.<sup>143</sup> The information in this record must in turn be shared with the Commission, which establishes its own record of all vessels that fish in the waters beyond national jurisdiction within the Convention Area.<sup>144</sup> This is called the WCPFC Record of Fishing Vessels.<sup>145</sup> Vessels that are not on this record are deemed to be not authorized to fish, retain onboard, tranship, or land any highly migratory stocks in the Convention Area beyond national jurisdiction.<sup>146</sup> In response, Member States are to prohibit all such activities by any of its flag vessels (this is considered a serious violation),<sup>147</sup> and the landing in its ports or transshipment by/to/from such vessels.<sup>148</sup>

In the case of carrier and bunker vessels flagged to non-member States, their flag States are encouraged to apply for Cooperating Non-Member status,<sup>149</sup> and their vessels are to be included in the Interim Register of Non-member Carrier and Bunker Vessels.<sup>150</sup> Operators of such vessels are required to undertake in writing to comply with the Commission's relevant CMMs and decisions.<sup>151</sup> The Commission seeks to encourage the transition such vessels from non-member flags to member flags. This and other relevant interim measures for the category are to be implemented beginning 2010, and it is hoped that by 2013 the majority of carrier and bunker vessels will be flagged to Members.<sup>152</sup>

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<sup>142</sup> Ibid., s. A.i

<sup>143</sup> Ibid., s.B.5

<sup>144</sup> Ibid., s. C.11

<sup>145</sup> Ibid., s. C.11

<sup>146</sup> Ibid., s. C.16

<sup>147</sup> Ibid., s. C.16

<sup>148</sup> Ibid., s. C.17

<sup>149</sup> Ibid., s. C.25

<sup>150</sup> Ibid., s. C.26 to C.28

<sup>151</sup> Ibid., s. C.30 to C.32

<sup>152</sup> Ibid., s. C.40

#### *D. Commission Vessel Monitoring System*

A Vessel Monitoring System (VMS) is one of the WCPFC's main instruments for monitoring and regulating fishing effort. The VMS began to be set up in phases from 2008 onwards<sup>153</sup> and is described in CMM 2007-02. It is characterized as a stand-alone system that can link with the VMS of the SPFFA and is administered by the Commission Secretariat.<sup>154</sup> The rules and procedures for the use of the system are laid by the Commission,<sup>155</sup> as well as the data and security standards.<sup>156</sup>

All flag fishing vessels are required to use a functioning automatic location communicator (ALC) or transponder that is compliant with the Commission's standards in order to operate in the Convention Area; this is also a responsibility of the flag State.<sup>157</sup> The flag State is also obliged to cooperate with the Commission to ensure compatibility between its own national and high seas VMS.<sup>158</sup>

#### *E. IUU Vessel 'Blacklisting'*

Using various information at its disposal,<sup>159</sup> the Commission will annually identify vessels that fish in a manner that undermines the effectiveness of the Convention and CMMs in force.<sup>160</sup> These vessels are listed by the Commission ED as presumed to be carrying out illegal, unreported, and unregulated (IUU) fishing in the Convention Area.<sup>161</sup> The draft list is circulated among Members at least 120 days before the annual meeting of the Technical and Compliance Committee, and flag States are also notified of the inclusion of any of their flag vessels.<sup>162</sup> The flag State may submit comments or information to show that the vessels did not violate the Convention or its CMMs at least 30 days prior to the meeting,<sup>163</sup> If the vessel is not shown to have not been engaged in activities that undermine the effectiveness of the Convention or its CMMs, then it shall remain in the WCPFC IUU Vessel List that will be approved at the annual meeting of the Commission.<sup>164</sup>

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<sup>153</sup> CMM 2007-02, s. 2-3 and 5. Implementation of the VMS is subject to review in 2010.

<sup>154</sup> *Ibid.*, s. 7

<sup>155</sup> *Ibid.*

<sup>156</sup> *Ibid.*, Annex I and s. 7.c

<sup>157</sup> *Ibid.*, s. 9.a

<sup>158</sup> *Ibid.*, s. 9.b

<sup>159</sup> CMM 2007-03, s. 2; this includes documentation, reports from Members, trade information, statistical documentation or other verifiable statistics, and information from port States or from fishing grounds.

<sup>160</sup> *Ibid.*, s. 1

<sup>161</sup> *Ibid.*, s. 4

<sup>162</sup> *Ibid.*, s. 5-6

<sup>163</sup> *Ibid.*, s. 9

<sup>164</sup> *Ibid.*, s. 20

Inclusion of a flag fishing vessel in the IUU Vessel List portends consequences for both the vessel and the flag State. The Commission shall request the flag State (whether it is a Member or not) to notify the vessel's owner that it is included in the IUU Vessel List and the consequences of such inclusion, and to take necessary measures to eliminate the IUU fishing practices (including withdrawal of the license) and to inform the Commission of measures taken in this respect.<sup>165</sup> Commission Members, on the other hand, may take non-discriminatory measures to 'lock out' the flag State's fishing vessels, support vessels, mother ships and cargo vessels from transshipment and joint fishing operations, port services, charters, and trade and other commercial dealings with species fished/transported by such vessels.<sup>166</sup> In effect, all fishing vessels of the flag State may bear the penalty for the transgression of one or some of them.

This provides incentives for flag States to take swift and definitive action against erring fishing vessels. Removal of the vessel from the IUU Vessel List is possible,<sup>167</sup> and premised upon effective investigation and punitive action by the flag State.<sup>168</sup>

#### *F. Charter Notification Scheme*

Since fishing vessels may also be operated under charter, the Commission established interim rules governing charter arrangements in order to ensure that such arrangements are not used to promote IUU fishing activities or evade compliance with CMMs. All Members are required to notify and submit information to the Commission regarding any vessel that it authorized to fish which is a chartered vessel.<sup>169</sup> Such vessels must be listed on the WCPFC Record of Fishing Vessels or the WCPFC Interim Register of Non-CCM Carriers and Bunkers, and should not be in the IUU Vessel List or the IUU list of any other RFMO.<sup>170</sup> Information on chartered vessels will be made available to all Members and subject to review by the Commission.<sup>171</sup>

#### *G. Vessels Without Nationality*

Vessels without nationality, i.e., either flying without a flag, or with the flag of two or more States, represent a continuing problem in RFMO regulation. The Commission has declared that all fishing vessels without nationality and fishing in the high seas of the Convention Area are presumed to be operating in contravention of the Convention and its CMMs, and such

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<sup>165</sup> Ibid., s. 21

<sup>166</sup> Ibid., s. 22

<sup>167</sup> Ibid., s. 25-27

<sup>168</sup> Ibid., s. 25

<sup>169</sup> CMM 2009-08, s. 2

<sup>170</sup> Ibid., s. 4

<sup>171</sup> Ibid., s. 5-6

activities constitute serious violations.<sup>172</sup> The Commission encourages all Members to take all necessary measures, including domestic legislation, to prevent such vessels from undermining the CMMs adopted by the Commission.<sup>173</sup> Any sightings of such vessels in the high seas of the Convention Area are to be reported to the Secretariat as soon as possible by the appropriate authorities of the Member that made the sighting.<sup>174</sup>

#### 2.4.2 Fishing Operation Regulations

Through several CMMs, the Commission regulates certain aspects of fishing operations. The subject of such regulations do not yet appear to have a particular consistency, and likely arose due to specific operational concerns. These regulations generally pertain to transshipment, gear restrictions, catch retention, and area exclusions.

##### *A. Transshipment*

Transshipment of fish cargo has been one of the overriding concerns of members of the Commission ever since the inception of the Convention. An outright ban on transshipment at sea was one of the early controversies during the negotiations, and culminated in Article 29 of the Convention. Generally, Members are encouraged to conduct transshipment in ports rather than at sea,<sup>175</sup> the latter being subject to further regulation by the Convention and through subsequent CMMs.<sup>176</sup> CMM 2009-06 contains very detailed regulations on transshipment at sea agreed upon by the Commission, and became effective just last July 2010.<sup>177</sup> It applies to transshipment at sea in the Convention Area, with the exception of those taking place within archipelagic waters and territorial seas.<sup>178</sup> Transshipments in ports and in waters under national jurisdiction are subject to the coastal State's regulation.<sup>179</sup>

Flag States once again bear the burden of ensuring compliance by its vessels with CMM 2009-06, but chartering States (i.e., States whose nationals operate vessels flagged to another State under charter contracts) also have been included in the responsibility.<sup>180</sup> All Member States are required to include transshipment activities in their annual reports to the Commission,<sup>181</sup> and must ensure that transshipment activities take place with observers of the

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<sup>172</sup> CMM 2009-09, s. 1 and 2

<sup>173</sup> Ibid., s. 4

<sup>174</sup> Ibid., s. 5

<sup>175</sup> Convention, Art. 29.1

<sup>176</sup> Ibid., Art. 29.2, 29.3 and Annex III

<sup>177</sup> CMM 2009-06, s. 1

<sup>178</sup> Ibid., s. 2

<sup>179</sup> Ibid., s. 4

<sup>180</sup> Ibid., s. 6-8

<sup>181</sup> Ibid., s. 11

ROP present.<sup>182</sup> Observers are charged with monitoring and verifying the catch and transshipment data.<sup>183</sup> Transshipment data is reported on WCPFC Transshipment Declarations that must be completed by both the offloading and receiving vessels.<sup>184</sup>

Transshipment at sea by purse seine vessels specifically is expressly prohibited by the Convention and by CMM 2009-06.<sup>185</sup> However, the Commission has exempted from this ban small purse seine catcher boats with capacity of 600mt or less flagged to Papua New Guinea and the Philippines that operate in groups and in conjunction with freezer carrier boats that tranship cargo from the catcher boats.<sup>186</sup> Also exempted are small purse seine boats of New Zealand that operate in New Zealand waters and are already under NZ MCS.<sup>187</sup> Other exemptions may be requested of the Commission.<sup>188</sup>

Transshipment to/from vessels of non-Members is generally prohibited, unless the latter is registered in the Interim Register, or was authorized to fish in the jurisdictional waters of a Member.<sup>189</sup> However, transshipment between two vessels both of which are non-Members is prohibited.<sup>190</sup>

In relation to this, the Commission will soon turn its attention to the monitoring of landings of purse seine vessels in ports outside the Convention Area and in non-member States. In CMM 2009-10, the Commission declared that it would work with Members and a non-Member to enable collection of species and size composition data from canneries in the latter regarding purse seine catch in the Convention Area.<sup>191</sup>

### *B. Gear Restrictions*

The Commission established a ban on large scale driftnet fishing through CMM 2008-04. The use of such gear is considered a serious violation of the Convention and CMMs,<sup>192</sup> and a vessel found to be configured for the use of driftnets or in possession thereof in the high seas is presumed to be in violation of the CMM unless it can show that it is authorized to use them

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<sup>182</sup> Ibid., s. 13

<sup>183</sup> Ibid., s. 14-15

<sup>184</sup> Ibid., s. 10

<sup>185</sup> Ibid., Art. 29.5 [no transshipment by purse seine vessels within the Convention Area]; CMM 2009-05, s. 2 [no transshipment by purse seine vessels outside the Convention Area]

<sup>186</sup> CMM 2009-06, s. 25(a)

<sup>187</sup> Ibid., s. 25(b)

<sup>188</sup> Ibid., s. 26-29

<sup>189</sup> Ibid., s. 20, 22

<sup>190</sup> Ibid., s. 21

<sup>191</sup> CMM 2009-10, s. 1

<sup>192</sup> CMM 2008-04, s. 1

in national waters and the driftnets are not readily available for use in the high seas.<sup>193</sup> All Members are to take measures to prohibit fishing vessels from using such nets in the high seas of the Convention Area,<sup>194</sup> and may also impose more stringent measures against them.<sup>195</sup> MCS activities relating to large scale drift nets are to be included in the annual reports to the Commission.<sup>196</sup>

Fish Aggregating Devices (FADs) may also soon be subject to regulation. Commission Members are required to submit to the Commission their management plans for the use of FADs by their vessels on the high seas.<sup>197</sup> This is particularly in relation to the capture of bigeye and yellowfin tuna. It is apparent that the Commission has embarked on studies to establish management measures for FAD use in the Convention Area, especially in association with the purse seine fishery.<sup>198</sup>

### *C. Catch Retention*

Special guidelines have been established by CMM 2009-02 concerning catch retention. This is an attempt to curb the problem of bycatch where non-target species are wasted because they are caught together with the target species but die and are simply discarded. CMM 2009-02 seeks to encourage vessels to release any fish that are not to be retained by the vessel by reason of size, marketability, composition, or because it is unfit for human consumption.<sup>199</sup> Such fish are not to be discarded until after the observer has estimated the catch composition of the discard.<sup>200</sup> Such discards must also be reported to the Commission ED, with a copy furnished to the observer, within 48 hours of the discard.<sup>201</sup>

### *D. Area/Season Closures*

The Commission has closed off specific portions of the Convention from fishing in two instances. The first is in the case of the area around data buoys that are used in scientific monitoring and research programs. CMM 2009-05 prohibits fishing within 1 nautical mile of a data buoy in the high seas of the Convention Area.<sup>202</sup> Vessels are prohibited from taking

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<sup>193</sup> Ibid., s. 2-4

<sup>194</sup> Ibid., s. 2

<sup>195</sup> Ibid., s. 7

<sup>196</sup> Ibid., s. 5

<sup>197</sup> CMM 2008-01, s. 22

<sup>198</sup> Ibid., s. 13, 19

<sup>199</sup> CMM 2009-02, s. 8-9

<sup>200</sup> Ibid., s. 10

<sup>201</sup> Ibid., s. 12-13

<sup>202</sup> CMM 2009-05, s 1

such buoys onboard unless specifically authorized.<sup>203</sup> Flag States are to encourage their fishing vessels to keep watch for such buoys and avoid entanglement and any direct interaction with them.<sup>204</sup> Should they get entangled in fishing gear, they should be removed with as little damage to the data buoy as possible.<sup>205</sup> Fishing around data buoys is deemed to undermine the Convention and CMMS and is considered as a serious violation thereof.<sup>206</sup>

A more controversial measure is the area closure for FADs under CMM 2008-01 and CMM 2009-02. Purse seine vessels were prohibited from fishing within 1 nautical mile of a FAD in the Convention Area between 20 degrees South and 20 degrees North, from 1 July to 30 September beginning in 2010.<sup>207</sup> No purse seine vessel was permitted to fish without an observer onboard to monitor that the vessel does not fish or service a FAD, or schools of fish associated with a FAD.<sup>208</sup>

Operators were prohibited from aggregating or attracting fish, or cooperating with each other to do so.<sup>209</sup> FADs and associated equipment also could be retrieved for the duration of the closure, except for purposes of retrieval and landing and the vessel does not conduct fishing for at least 7 days after retrieval or within 50 nautical miles from the original location.<sup>210</sup>

A more general area closure, i.e., not limited to FADs, was also established by the Commission for high seas pockets enclosed by EEZs generated by the South Pacific and northern Indo-Australian island chains.<sup>211</sup>

#### *E. Mitigation Measures*

At least two CMMs have been concerned mainly with mitigating the impact of fishing on ancillary species within the Convention Area that are definitely not targeted, namely seabirds (CMM 2007-04 *vice* CMM 2005-01) and sea turtles (CMM 2008-03 *vice* Resolution 2005-04). These CMMs oblige Members to implement respectively the International Plans of Action for Seabirds<sup>212</sup> and the FAO Guidelines to Reduce Sea Turtle Mortality in Fishing Operations.<sup>213</sup> By themselves, the latter are non-binding instruments and thus have no

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<sup>203</sup> Ibid., s. 2

<sup>204</sup> Ibid., s. 4

<sup>205</sup> Ibid., s. 5

<sup>206</sup> Ibid., s. 6

<sup>207</sup> CMM 2008-01, s. 19; CMM 2009-02, s. 1 and 4

<sup>208</sup> CMM 2008-01, s. 19

<sup>209</sup> Ibid., s. 5 and 7

<sup>210</sup> Ibid., s. 6

<sup>211</sup> CMM 2008-01, s. 22 and Attachment D.

<sup>212</sup> CMM 2007-04, s. 1

<sup>213</sup> CMM 2008-03, s. 1

definitive obligatory force, thus the question may be raised as to whether their 'endorsement' and incorporation in specific CMMs have elevated their status in law at least among the Convention members. The CMMs also provide some specific guidelines and techniques for fishing vessels encountering seabirds or sea turtles in the course of fishing; and focus on the application of the CMMs to particular fisheries such as purse seiners and longliners.<sup>214</sup> As with other CMMs, flag States are to report on the implementation of the CMMs at the annual meetings of the Commission.<sup>215</sup>

### 2.4.3 Species-specific Restrictions

The Commission has issued a number of CMMs focused on specific species subject to its management jurisdiction, to wit:

- South Pacific Albacore (CMM 2005-02)
- North Pacific Albacore (CMM 2005-03)
- Striped Marlin (CMM 2006-04)
- Bigeye and Yellowfin Tuna (CMM 2008-01)
- Swordfish (CMM 2009-03)
- Sharks (CMM 2009-04)
- Pacific Bluefin Tuna (CMM 2009-07)

Each CMM above indicated contains numerous provisions specifically directed toward fishing activities targetting the identified species. Generally, the above CMMs establish common obligations for flag States to (a) limit or reduce the number of fishing vessels authorized to fish for the species;<sup>216</sup> (b) strengthen data gathering and provide to the Commission relevant information on catch.<sup>217</sup> A more detailed breakdown of specific obligations generated by each CMM is contained in Annex 1; but overall, the trend in the species-specific CMMs listed above is clear. The Commission seeks to limit the growth of fishing effort for each species in the Convention Area by capping and/or reducing the number of fishing vessels targetting the identified species, often to the catch levels between 2000 and 2006.

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<sup>214</sup> CMM 2007-04, s. 1 and 4; CMM 2008-03, s. 5 and 6.

<sup>215</sup> CMM 2007-04, s. 6; CMM 2008-03, s. 2

<sup>216</sup> CMM 2005-02, s. 1; CMM 2005-03, s. 2 and 7; CMM 2006-04, s. 1; CMM 2008-01, s. 1; CMM 2009-03, s. 2; CMM 2009-07, s. 2. The exception is CMM 2009-04 on sharks.

<sup>217</sup> CMM 2005-03, s. 3-4; CMM 2006-04, s. 4; CMM 2008-01, s. 45; CMM 2009-03, s. 8; CMM 2009-04, s. 12; CMM 2009-07, s. 4;



## 2.5 Other 'Soft' Obligations

Apart from clearly stated duties in CMMs, the WCPFC also serves to express certain 'soft' obligations that are left for entirely voluntary consideration. Most of these emerged in the early years of the Commission's operations. Resolution 2005-01 on seabirds and Resolution 2005-04 on sea turtles represent the earliest attempts of the Commission to act on mitigating the impact of fishing activities on species other than fish. Resolution 2005-02 encouraged members to work together to ensure that beneficial owners reduce overcapacity through the reduction of fishing effort; it originally stated an ideal target date for reduction of 31 December 2007.<sup>218</sup> Resolution 2005-03 exhorts members to encourage vessels operating in the Convention Area to avoid the capture of non-target fish species that are not to be retained,<sup>219</sup> and release non-retained non-target species into the water.<sup>220</sup>

It is important to pay attention to even 'soft' obligations that appear in Commission issuances, because they may signal the beginning of an evolving 'hard' obligation. Resolutions 2005-01 and 2005-04 on seabirds and sea turtles, for example, have transitioned into more obligatory CMMs (CMM 2007-04 and CMM 2008-03) even though in their later form, there are still many open-ended and general duties due to their reference to International Plans of Action rather than specific directives. To a large extent, many elements of the remaining initial and tentative resolutions have also been subsequently superseded by CMMs which have binding effect on the Commission members. It may also be noted that, especially in recent years, the number of decisions that become binding CMMs are far more than those that become only non-binding Resolutions.

However, one Resolution remains for future realization, Resolution 2008-01 on the aspirations of SIDS and participating territories. It encourages Members to cooperate to enhance the ability of developing States to develop their own fisheries for highly migratory stocks within the Convention Area.<sup>221</sup> To do this, Members should cooperate to reduce and restructure their fleets so as to accommodate the SIDS and participating territories own.<sup>222</sup> Developed countries are particularly asked to cooperate in investing in the fishing industry in SIDS and participating territories,<sup>223</sup> They should also ensure that CMMs are not implemented to constrain the coastal processing and transshipment facilities or vessels of SIDS and participating territories, nor undermine legitimate investments in their countries.<sup>224</sup> All Members are exhorted to ensure that by 2018, the domestic fisheries and related industries of developing SIDS and participating territories account for a greater share of

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<sup>218</sup> Res. 2005-02, s. 1

<sup>219</sup> Res. 2005-03, s. 1

<sup>220</sup> Ibid., s. 2

<sup>221</sup> Reso. 2008-01, s. 1

<sup>222</sup> Ibid., s. 2

<sup>223</sup> Ibid., s. 3

<sup>224</sup> Ibid., s. 6

benefits from the highly migratory stocks in the Convention Area than what are currently realized.<sup>225</sup>

## 2.6 *Peaceful Settlement of Disputes*

The Convention makes the provisions of Part VIII of the UNFSA on dispute settlement applicable between States Parties, whether or not they are also parties to the UNFSA.<sup>226</sup> This permits resort to negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, and other peaceful means of their choice.<sup>227</sup> The UNFSA dispute settlement provisions refer in turn to the dispute settlement mechanisms under the LOSC, which brings into play the procedures and modes for non-binding and binding dispute settlement procedures under the latter.<sup>228</sup> The UNFSA also allows reference to an expert panel in disputes of a technical nature.<sup>229</sup>

The Convention anticipates the possibility of disputes with States that are not parties, and provides that in such cases, Members are to take measures to deter the activities of fishing vessels flagged to such non-parties,<sup>230</sup> exchange information on such activities<sup>231</sup> and draw the attention of the said non-party to such activities which undermine the objective of the Convention.<sup>232</sup> They shall also request non-parties to cooperate fully with implementation of the CMMS, and cooperation shall be rewarded with "benefits from participation in the fishery" commensurate with their commitment and record of compliance.<sup>233</sup> Such cooperating non-parties may also be granted observer status in the Commission and invited to attend its meetings.<sup>234</sup>

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<sup>225</sup> Ibid., s. 4

<sup>226</sup> Convention, Art. 31

<sup>227</sup> UNFSA, Art. 27

<sup>228</sup> UNFSA, Art. 30

<sup>229</sup> UNFSA, Art. 28

<sup>230</sup> Convention, Art. 32.1

<sup>231</sup> Ibid., Art. 32.2

<sup>232</sup> Ibid., Art. 32.3

<sup>233</sup> Ibid., Art. 32.4

<sup>234</sup> Ibid., Art. 32.5

### **3. PHILIPPINE NATIONAL POLICY AND LEGAL ARRANGEMENTS CONCERNING HMS FISHERIES**

#### **3.1 General Policy**

Although fishing has officially been one of the main sectors of the Philippine economy since at least the 1930s with the enactment of the first Fisheries Act,<sup>235</sup> it has focused its energies on domestic fishing grounds. As an archipelago, the Philippines is endowed with rich fishing grounds that have sustained the needs of its population since earliest times. Commercial fishers normally did not need to venture beyond home waters until the 1970s when the first few fishing companies began operating in distant waters to the south and west. But even then, the Fisheries Decree of 1975 did not acknowledge or ever imply the existence of a Philippine fishing fleet operating in international or foreign waters. In fact, the Decree provided for the chartering of foreign vessels and employment of foreign crews, in order to create technology-transfer and human resource development on the part of the Philippine fishing industry.<sup>236</sup> It may fairly be said that for since its inception, the Philippine international fishing fleet has operated with nominal government regulation (e.g., licensing of vessels, gears, and issuance of permits) and practically no policy guidance. Fisheries regulations have historically been directed toward domestic fisheries operating in Philippine waters.

This situation changed with the enactment of the Fisheries Code of 1998, which provided for "Fishing by the Philippine commercial fishing fleet in international waters."<sup>237</sup> This authorizes Philippine flag fishing vessels to operate in international waters (the high seas) or waters of other countries that allow such fishing operations.<sup>238</sup> They must secure the usual clearances from the national maritime agencies such as the Maritime Industry Authority and the Philippine Coast Guard, as well as a separate international fishing permit and certificate of clearance from the Bureau of Fisheries and Aquatic Resources (BFAR).<sup>239</sup>

Fish caught by Philippine vessels in waters beyond its own are considered as fish caught in Philippine waters, exempting such fish products from import duties and taxes when landed in Philippine ports.<sup>240</sup> To promote the growth of this subsector, the Fisheries Code provides for incentives for Philippine fishing vessels to fish further out into the EEZ and beyond.<sup>241</sup> Such incentives include loans and guarantees, tax and duty exemptions for importing fishing vessels, equipment, and paraphernalia, duty and tax rebates on fuel consumption used for

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<sup>235</sup> Act 4003 (1932)

<sup>236</sup> Pres. Decree No. 704 (1979), s. 21

<sup>237</sup> Rep. Act No. 8550 (1998), s. 32

<sup>238</sup> Ibid.

<sup>239</sup> Ibid.

<sup>240</sup> Ibid.

<sup>241</sup> Ibid., s. 35

fishing operations, and other applicable incentives based on the annual Investment Incentives Plan issued by the Board of Investments.<sup>242</sup> Actual duty and tax exemptions on equipment imports and rebates on fuel consumption have in fact been issued at least once before, comprised of zero percent tax and duties for 5 years back in 2000-2005.<sup>243</sup>

The attention paid to promoting Philippine fishing must be seen in the light of the 1987 Constitution, which mandates the State to protect the nation's marine wealth in its jurisdictional waters and reserve them for the benefit and enjoyment solely of Filipinos. This means that fishing as an economic activity should be reserved for Philippine equity, or that only natural-born Philippine citizens or Philippine corporations are permitted to engage in fishing activities in Philippine waters.<sup>244</sup> Foreign citizens are no longer permitted to participate in Philippine domestic fishing, but it is possible for them to be employed in the international fishing fleet.

With these provisions of law, and in the absence of any amendments or repeals to date, it may be concluded that the Philippine policy on the international fishing fleet currently stands on promoting Philippine fishing in the EEZ, high seas, and waters of other countries (where permitted to do so). This policy complements the overall policy of the Fisheries Code of promoting conservation and sustainable utilization of existing fisheries resources in Philippine waters;<sup>245</sup> since growth in commercial fisheries (which operated in national waters) had become stagnant since the 1980s due to overfishing,<sup>246</sup> the government sought to move fishing effort elsewhere. The Philippine ratification of the WCPFC is consistent with this underlying policy framework,<sup>247</sup> although the terms of ratification give due regard to the Convention's conservation and management purposes.

### **3.2 Institutional Arrangements**

Under the Fisheries Code, fisheries resources are under the management jurisdiction of the Bureau of Fisheries and Aquatic Resources (BFAR), which is organized as a line bureau of the Department of Agriculture. An Undersecretary for Fisheries is charged with policy setting and standards formulation for the operation of the industry, overall supervision of the functions and activities related to fisheries, and other functions as may be assigned by the

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<sup>242</sup> Ibid.

<sup>243</sup> Exec. Order No. 209 (2000)

<sup>244</sup> 1987 Constitution, Art. 12, s. 2

<sup>245</sup> Rep. Act No. 8550 (1998), s. 2

<sup>246</sup> See Israel, D. C. And C. P. Banzon. *Overfishing in the Philippine Commercial Marine Fisheries Sector*. Discussion Paper Series No. 97-01. Makati City: Philippine Institute for Development Studies, 1997.

<sup>247</sup> Philippine Senate Resolution No. 242, Resolution Concurring in the Ratification of the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean and its Annexes. 26 April 2005.

Secretary of Agriculture.<sup>248</sup> But the main responsibilities fall upon BFAR, which exercises numerous administrative, licensing, planning, development, and other governance functions.<sup>249</sup> It is headed by a Director and 2 Assistant Directors, and functions through regional offices.<sup>250</sup>

It should be noted, though, that BFAR's express functions under the law with respect to the international fishing fleet are only to "monitor and review joint fishing agreements between Filipino citizens and foreigners who conduct fishing activities in international waters, and ensure that such agreements are not contrary to Philippine commitment under international treaties and convention on fishing in the high seas."<sup>251</sup> This again marks the absence of a detailed policy on the international fishing fleet other than promoting the domestic fleet's expansion outward from Philippine waters. Any other functions that BFAR exercises over the international fishing fleet must therefore be derived from its other, more general governance functions and prerogatives.

Policy-formulation is undertaken with the assistance of the National Fisheries and Aquatic Resources Management Council, an advisory body charged with formulating such policies, assisting the Department of Agriculture in developing a national fisheries and industry development plan, and any other functions that may be provided by law.<sup>252</sup> It is multi-sectoral in nature, comprised of representatives of the government, fisherfolk and fishworkers, commercial fishing and aquaculture sectors, processing sectors, members of the academe, and one representative of non-government organizations.<sup>253</sup> All Fisheries Administrative Orders are discussed and deliberated upon by the NFARMC before they are passed on to the Secretary of Agriculture for signature and issuance.

To address the concerns of the tuna industry, the National Tuna Industry Council was created in 2000 by the Secretary of Agriculture through Department Order No. 659.<sup>254</sup> It functions as an advisory council as well, tasked with formulating an Industry Action Plan, assist in reviewing and recommending policies for bilateral and multilateral fishing agreements and trade relations, coordination with the private sector, and become a mechanism for public-private sector collaboration.<sup>255</sup> It is comprised of 3 representatives from government, the fishing or producing sector (4 from purse seiners and 1 from handline operations), and the

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<sup>248</sup> Rep. Act No. 8550 (1998), s. 63

<sup>249</sup> Ibid., s. 65

<sup>250</sup> Ibid., s. 66

<sup>251</sup> Ibid., s. 65.d

<sup>252</sup> Ibid., s. 72

<sup>253</sup> Ibid., s. 70

<sup>254</sup> Vera, C. A. And Z. Hipolito. *The Philippines Tuna Industry: A Profile*. SAMUDRA Monograph. Chennai: International Collective in Support of Fishworkers, 2006, at 50.

<sup>255</sup> Ibid.

processing sector (4 from canneries and 1 from fresh./frozen processing sectors).<sup>256</sup> The Council was instrumental in drafting the Philippine Tuna Management Plan in 2004.<sup>257</sup>

The National Fisheries Research and Development Institute (NFRDI) was established by law to serve as the primary research arm for fisheries.<sup>258</sup> It is particularly tasked, among others, of making the country's fishing industry in the high seas competitive<sup>259</sup> aside from its other research and development functions.<sup>260</sup>

### 3.3 Regulations

Some existing fishery regulations, contained in Fisheries Administrative Orders issued by the Department of Agriculture, are relevant to the regulation of the international fishing fleet. For the most part, these regulations are actually directed toward the domestic fleet and local fishing operations, but are instructive in the sense that they may be seen as, or provide the basis for, compatible measures when viewed in comparison with the Commission's CMMs. As will become obvious, however, these regulations are few and far between.

#### 3.3.1 Fishing Vessel Registry

The regulation directly relevant to the fishing vessel registry are FAO 198 (2000) which contains the rules and regulations for commercial fishing. This Order contains the procedure for securing a Commercial Fishing Vessel/Gear License (CFGVL). It requires basic information such as pictures, descriptions of the vessel or gear, and copies of the vessel's certificates and owner's business documents, and is mainly concerned with the administrative process of securing the license. Provisions relevant to the WCPFC include:

- the requirement for a photograph of the vessel; grid map of the proposed fishing ground/s; certificates of registry, ownership, and inspection; fishing logbook for catcher vessels;<sup>261</sup>
- the requirement for the gear design and specifications of the fishing gear;<sup>262</sup>
- the requirement for displaying the CFGVL onboard the vessel;<sup>263</sup>

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<sup>256</sup> Ibid.

<sup>257</sup> Ibid.

<sup>258</sup> Rep. Act No. 8550 (1998), s. 82

<sup>259</sup> Ibid., s. 84(b)

<sup>260</sup> Ibid., s. 84-85

<sup>261</sup> FAO 198 (2000), s. 5

<sup>262</sup> Ibid., s. 6

<sup>263</sup> Ibid., s. 16

- the limitation of the transfer, lease or assignment of interest on the vessel or gear;<sup>264</sup>
- the requirements for the issuance of an international fishing permit and certificate of clearance;<sup>265</sup>
- the requirement for keeping of record books of fish catch;<sup>266</sup> and
- the grounds for cancellation or revocation of the CFGVL.<sup>267</sup>

Anent the last item, although non-compliance with the terms and conditions of the license is made a ground for cancellation, such terms and conditions are not expressly fixed in the FAO. A final 'catch-all' provision also allows cancellation of the license "when public interest so requires".

In 2003, a moratorium on the issuance of new CFGVL was established, "as part of a precautionary approach to fisheries management."<sup>268</sup> This was enacted in accord with the Food and Agriculture Organization's Code of Conduct for Responsible Fisheries, the International Plan of Action for the Management of Fishing Capacity, and the International Plan of Action for IUU Fishing,<sup>269</sup> to enable the Bureau to complete an inventory of fishing vessels. However, fishing vessels operating in international waters or waters of other countries were expressly excluded from the ban,<sup>270</sup> proving the Philippines' policy of promoting international fishing. The moratorium was extended the following year.<sup>271</sup>

Related to the vessel registry regulations are crewing regulations. In this regard, FAO 191(1995) governs the issuance of licenses to foreign crew members, who may not be employed for domestic fishing, but might be employable onboard international fishing vessels operating outside Philippine waters. Among the fishing activities in which they may be employed are vessels using longlining for catch tuna, purse seiners using triplex net rollers, and technology that allow operations in highly turbulent and agitated waters.<sup>272</sup> The Order provides for the procedure and requirements for licensing such foreign individuals for employment on Philippine flag vessels.

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<sup>264</sup> Ibid., s. 18

<sup>265</sup> Ibid., s. 20

<sup>266</sup> Ibid., s. 22

<sup>267</sup> Ibid., s. 31

<sup>268</sup> FAO 223 (2003)

<sup>269</sup> Ibid., 2<sup>nd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> Whereas clauses

<sup>270</sup> Ibid., s. 3.a

<sup>271</sup> FAO 223-1 (2004)

<sup>272</sup> FAO 191 (1995), s. 1

### 3.3.2 *Operational Regulations*

FAO 199 (2000) provides for guidelines on fish transshipment of fish caught outside Philippine waters by foreign fishing vessels. This was in support of the development and growth of Philippine canneries in the south, which were the immediate beneficiaries of the growth in international fishing. The Order regulates transshipment activities of foreign vessels in Philippine ports, and provides for the procedures and requirements for securing clearances to tranship, vessel accreditation, pre-arrival documentation, berthing and boarding formalities, unloading of fish cargo, loading of vessel provisions, pre-departure documentation, restrictions on movement, compliance with anti-pollution, Immigration, and labor laws as well as security and order while in port.<sup>273</sup> In this light, FAO 199 deals with only one aspect of transshipment, that conducted in port, and does not encompass the main concern of the Commission which is transshipment at sea.

Although not really a regulation, FAO 224 dealing with the establishment of a Tuna Productivity Project in the Davao Gulf is of possible interest. The Project concerns the establishment of special zone more than 15 km from shore in the southern Philippines for the purpose of attempting to revive local fishing grounds by promoting the use of FADs. Considering the concern expressed in the Commission regarding the nature and use of FADs as contributing to higher exploitation rates, and the contrary favorable attitude that the Philippines takes upon them as conservation and management measures, it may be the subject of inquiry or controversy in the future with respect to compatibility of measures, especially if the Project leads to the establishment of other similar zones in other Philippine waters.

One oddity is FAO 183 (1992) which prohibited the importation of yellowfin tuna and tuna products from Mexico and Venezuela. It is not clear from the Order why such an import ban was imposed, but it at least demonstrates the possibility of imposing trade measures through a Fishery Administrative Order.

### 3.3.3 *Gear Restrictions*

Although most regulations are intended to regulate fishing in Philippine waters, some of them may be relevant to the Convention. As indicated above, they may raise issues of compatibility of measures with the Convention and CMMs; they may also be applicable to fishing operations that take place in Convention Area adjacent to the Philippines.

FAO 236 (2010) is the latest and to date the most directly related Order concerning the Convention, as it is issued expressly in relation to CMM 2008-01. It provides for rules and regulations on the operation of purse seine and ring net vessels using FADs during the FAD closure period established in CMM 2008-01. The Order applies to all Philippine flag vessels that conduct fishing on FADs, and require such vessels to be properly accredited by BFAR to

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<sup>273</sup> FAO 191 (2000), s. 7



fish during the closure period.<sup>274</sup> The nets are to be modified so that their stretched depths are reduced by 10 fathoms in order to reduce the catch of bigeye tuna.<sup>275</sup> Vessels are required to carry Monitors who shall gather data and recommend further improvements to operations.<sup>276</sup> Non-compliance can result in suspension or revocation of the CFVGL.<sup>277</sup>

FAO 226 (2008) particularly is concerned with the mesh size of tuna purse seine nets and the trade in small tuna in the Philippines. It prohibits the use of purse seine nets with a mesh size of less than 3.5 inches in the bag or bunt portion, as well as to trade small tuna caught beyond the bycatch ceiling set at 10% of small tunas caught during a fishing operation.<sup>278</sup> Violations are penalized with either a fine of PHP2,000.00 (less than USD 50.00) or imprisonment of from 6 months to 2 years.<sup>279</sup> A 3-year grace period is allowed within which users of nets may change or replace their existing nets.<sup>280</sup>

FAO 222 (2003) prohibits the use of the Danish seine and modified Danish seine (adapted to local conditions) in waters within 15 km from shore. They may be allowed beyond 15 km, provided that they usage does not damage the marine environment, and the mesh size is no smaller than 3 centimeters.<sup>281</sup> Violations are penalized with a fine of at least PHP100,000.00 or imprisonment of 2-10 years.<sup>282</sup>

FAO 188 (1993) governs the operation of tuna purse seine nets in Philippine waters. It simply prohibits them if the mesh size is less than 3.5 inches.<sup>283</sup> Violations are penalized by a small fine of PHP 500 (a little more than USD 10) or imprisonment of from 6 months to 4 years.<sup>284</sup>

### 3.3.4 IUU Fishing Measures

On account of the constitutional reservation of fishing to Philippine citizens, and Section 87 of the Fisheries Code, foreign fishing in Philippine waters is considered illegal and a punishable offense. FAO 200 (2000) implements this ban by providing for the procedure for boarding and arrest foreign fishing vessels found fishing illegally in Philippine waters.<sup>285</sup>

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<sup>274</sup> FAO 236 (2010), s. 3

<sup>275</sup> Ibid., s. 4

<sup>276</sup> Ibid., s. 6

<sup>277</sup> Ibid., s. 7

<sup>278</sup> FAO 226 (2008), s. 1 and 2

<sup>279</sup> Ibid., s. 3

<sup>280</sup> Ibid., s. 4

<sup>281</sup> FAO 222 (2003), s. 2

<sup>282</sup> Ibid., s. 3

<sup>283</sup> FAO 188 (1993), s. 2

<sup>284</sup> Ibid., s. 5

<sup>285</sup> FAO 200 (2000), s. 7

Presumptions of evidence are provided by the FAO to provide a reasonable basis for concluding that a foreign fishing vessel is poaching in Philippine waters.<sup>286</sup> Poaching by foreign vessels is punishable by an administrative fine of not less than USD 50,000 nor more than USD 200,000, in addition to a possible judicial penalty not exceeding USD 100,000.00 and confiscation of the catch, paraphernalia, and vessel.<sup>287</sup>

#### **4. REVIEW OF NATIONAL POLICY, LEGAL AND INSTITUTIONAL ARRANGEMENTS IN LINE WITH WCPFC REQUIREMENTS**

The numerous and complex obligations defined in the Convention and CMMs to date make for a very challenging proposition for the Philippines in terms of determining the status of compliance with its international obligations to the Commission. A detailed table enumerating and comparing the different obligations with the existing regulations of the Philippines relevant to the Convention and CMMs is included as Attachment 1. Both the inputs of the author and the comments given at the stakeholder workshop held last November 16-17, 2010 are included in the matrix.

##### ***4.1 CMMs That May Be Inapplicable***

Generally, the Philippines still has much ground to cover in order to address the numerous obligations under the Convention. However, this ground must be contextualized as a number of CMMs are deemed by the international fishing fleet as not relevant to Philippine fishing operations in the Convention Area, to wit:

- CMM 2008-04 on the large scale driftnet ban;
- CMM 2007-04 on seabirds;
- CMM 2008-03 on sea turtles;
- CMM 2005-02 on South Pacific Albacore;
- CMM 2005-03 on North Pacific Albacore;
- CMM 2006-04 on Striped Marlin;
- CMM 2008-01 on Longline Fishery Measures;
- CMM 2009-03 on Swordfish;
- CMM 2009-07 on Pacific Bluefin Tuna.

According to the stakeholders, comprised of people from government and the private sector, the Philippine international fishing fleet comprised mainly of small purse seine vessels and

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<sup>286</sup> Ibid., s. 3

<sup>287</sup> Ibid., s. 9

handliners, and a few super seiners, do not specifically target the species enumerated in the above measures, and their methods do not create the same risks to seabirds and sea turtles. No Philippine company uses large scale driftnets. In this light, the Philippines' obligations revolve around reporting incidents or encounters with such other vessels or activities when such may be deemed to undermine the Convention or CMMs.

This indicates a need to examine more closely the nature of and methods used by the Philippine international fishing fleet in the Convention Area, in order to ensure the relevance of measures and obligations to Philippine operations, and the corresponding obligations that are thereby placed upon the Philippines as a Member of the Commission. After all, it would be unfair to expect the Philippines to comply with requirements that have no bearing on its actual operations in the Convention Area. But it should be recognized that the objectives of the CMMs above, even though they may be seen as not directly relevant to Philippine fishing operations, remain valid and applicable to all fishing operations even though they are not necessarily designed to target specific species. Philippine fishing operations may entail adjustments or adaptation of the above CMMs in order to address any possible risks to the species remain even in a multi-species fishery.

That being said, though, the remaining CMMs and Convention obligations still pose a formidable challenge. This arises because, as stated, the Philippine international fishing fleet has largely operated with minimal government intervention as a matter of policy and practice for decades, and the government is therefore as new to international fisheries regulation as the fleet itself. Comparison of the requirements of the Commission and the available regulations in the Philippines show that for over 200 different obligations of various kinds, there are relatively few corresponding Philippine regulations. However, to better appreciate the reform agenda that is necessitated by the divergence, various categories of actions that may be discussed and taken in order to bring the Philippines into full operational compliance.

## **4.2 *Internal Actions by BFAR***

### **4.2.1 *Information***

A good number of requirements pertaining to the obligation to provide the Commission with various data and information can be undertaken directly by BFAR as a matter of administrative decision, independent of any legislation or other administrative rule. These refer particularly to the information needs of the Commission submitted through the Members' Annual Reports, to wit:

- information required for management of the Convention Area<sup>288</sup>

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<sup>288</sup> Convention, Art. 23.2

- information on fishing activities, areas, and vessels<sup>289</sup>
- information on conservation and management measures established for areas within national jurisdiction<sup>290</sup>
- information on flag State control measures used to regulate fishing vessels<sup>291</sup>
- information on actions taken for compliance, including imposition of sanctions on erring flag fishing vessels<sup>292</sup>
- updated and complete record of flag fishing vessels authorized to operate in the Convention Area<sup>293</sup>
- detailed information on each flag fishing vessel authorized to operate in the Convention Area<sup>294</sup>
- all changes to the record or information on flag fishing vessels<sup>295</sup>
- record of flag fishing vessels that operated in the Convention Area in the previous year<sup>296</sup>
- outcomes of monitoring of landing and transshipment points.<sup>297</sup>

BFAR may also readily submit information required by the subsidiary bodies of the Commission such as:

- information on flag vessels, including alterations to the record, as required or upon request by the ED<sup>298</sup>
- notification of vessel charters, which are already recorded by BFAR<sup>299</sup>

As a matter of course, BFAR can establish and maintain its own record of flag fishing vessels authorized to fish in the Convention Area, since these vessels must also secure an international fishing permit. Only improvements in the system are probably needed, which is

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<sup>289</sup> Ibid.

<sup>290</sup> Ibid., Art. 23.3

<sup>291</sup> Ibid., Art. 23.4

<sup>292</sup> Ibid., Art. 25.8

<sup>293</sup> Ibid., Art. 24.4

<sup>294</sup> Ibid., Art. 24.5

<sup>295</sup> Ibid., Art. 24.6

<sup>296</sup> CMM 2009-01

<sup>297</sup> CMM 2008-01

<sup>298</sup> CMM 2009-01

<sup>299</sup> CMM 2009-08

entirely possible with the Commission's assistance on particular data requirements and formats.

Some of the needed information can be, or are already being drawn from, other BFAR requirements for operators' permits. These include the existing document for compliance with EU Directive 1005-2006, from which statistical data on species, volume, and catch may be procured; the NFRDI's WPEA Project, a part of which deals with species data; and the Catch Documentation Scheme which includes the filling out of Landing Certificates that contain various data about the catch that is landed. The data from these initiatives, though acquired for other purposes, may also serve the purposes of the Commission since they are raw data or statistics.

The above actions, being primarily concerned with acquisition and transmission of information to the Commission, require little more than administrative decisions at the level of BFAR. In fact, most are already being included in the Annual Reports to the Commission, and it only remains to rationalize and organize the collection and reporting of the information, which could indeed be a considerable amount to manage.

#### 4.2.2 Investigation

BFAR is empowered, under the provisions of the Revised Administrative Code, to undertake administrative investigations in relation to the licenses and permits it issues. Thus, investigations of violations of the Convention or CMMs committed by a Philippine fishing vessel may be undertaken through an administrative process. This includes the following types of investigations which may be conducted under the Convention or CMMs:

- investigation of reported violations of CMMs by flag fishing vessels, whether *motu proprio* or upon request by another Member<sup>300</sup>
- all actions in connection with the issuance and continued validity of the authorization to fish<sup>301</sup>
- proceedings against a flag fishing vessel for purpose of revoking its license to fish<sup>302</sup>
- imposition of punitive measures after investigation of violations, including preventing such vessels from sailing.<sup>303</sup>

The latter case, however, needs to be coordinated with other agencies like the Philippine Coast Guard and the Maritime Industry Authority, which are the actual offices in port that have the power to withhold the clearance to sail.

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<sup>300</sup> Convention, Art. 23.5, 25, and 33

<sup>301</sup> CMM 2009-01

<sup>302</sup> Ibid.; also CMM 2009-01

<sup>303</sup> Convention, Art. 25.4

#### 4.2.3 *Other Activities*

Other activities that BFAR may undertake under existing laws include participation in the Regional Observer Programme<sup>304</sup> subject to the acquisition of appropriate capacity through training, accreditation, and audit.

With respect to data buoys, BFAR can also on its own conduct an information, education and communication drive in order to apprise the public about what they are, their purpose, location, and what to do with them in case they are encountered.<sup>305</sup>

#### 4.3 *Amendments to Existing FAO on Fishing Vessel/Gear Licensing*

Certain requirements of the Commission, particularly those concerning the fishing vessel registry, may best fulfilled by amendment of FAO 199 governing the issuance of CFVGL. These include amendments to compliance with Commission requirements for the content of the license or authorization to fish:<sup>306</sup>

- the specific fishing area, species fished, and time period for fishing within the Convention Area
- activities that are permitted by BFAR under the license
- prohibited activities

A substantive change must be made to the existing rule in order to make the following acts a prerequisite for the issuance of a CFGVL and international fishing permit:

- compliance with the WCPFC marking/identification requirements and WIN<sup>307</sup>
- installation of satellite transponders<sup>308</sup>
- compliance with the Commission's VMS<sup>309</sup>
- inclusion of the vessel in the national VMS<sup>310</sup>
- a certification that the vessel has no history of IUU fishing<sup>311</sup>

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<sup>304</sup> Convention, Art. 28.6; CMM 2007-01

<sup>305</sup> CMM 2009-05

<sup>306</sup> CMM 2009-01

<sup>307</sup> CMM 2004-03

<sup>308</sup> Convention, Art. 24.9

<sup>309</sup> CMM 2007-02

<sup>310</sup> Convention, Art. 24.10

And finally, the following conditions can be added to the CFGVL as conditions for continued validity of the license to fish:

- to accept boarding and inspection at sea<sup>312</sup>
- to secure and maintain an international fishing permit as required under Rep. Act No. 8550 (1998)<sup>313</sup>
- to comply with CMMs of the Commission<sup>314</sup>
- compliance with catch retention procedures.<sup>315</sup>

It is important to note that changes to Fisheries Administrative Orders must go through the NFARMC for review and endorsement to the Department of Agriculture. This may entail a long process, thus in the meantime, BFAR has been using internal office memo and informal agreements with affected operators in order to comply with the Commission's requirements. While such memo/agreements may be effective in securing whatever information is needed for eventual transmission to the Commission, as "informal" requirements they do not have the force of law upon the operators, i.e., they cannot be invoked as separate enforceable obligations nor be the basis of fines and penalties.

#### ***4.4 Obligations Related to/Affected by Existing Regulations***

Some of the obligations under the Convention or CMMs are partly addressed existing FAOs. There is a need for a more detailed and official review, for purposes of updating/amendment of these FAOs in order to fill in any gaps that may be identified.

FAO 236 (2010) on bigeye and yellowfin tunas and FADs directly address the Commission's CMM 2008-01 and impliedly 2009-02. It covers compliance of purse seine vessels with requirements for fishing in the high seas,<sup>316</sup> enhancement of the effectiveness of regional CMMs,<sup>317</sup> FAD Closures,<sup>318</sup> and bigeye and yellowfin tuna.<sup>319</sup>

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<sup>311</sup> CMM 2009-01

<sup>312</sup> Convention, Art. 26.3

<sup>313</sup> Convention, s. 32, 24.1 and 24.2

<sup>314</sup> CMM 2009-01

<sup>315</sup> CMM 2009-02

<sup>316</sup> Ibid.

<sup>317</sup> Convention, Art. 27.1

<sup>318</sup> CMM 2009-02

<sup>319</sup> CMM 2008-01

FAO 199 (1995) on transshipment is included, but as mentioned, deals with only transshipments by foreign vessels at port. The coverage of the FAO needs to be expanded in order to accommodate the Commission's requirements, including especially:

- allowing only transshipments between Convention Members and vessels on the Interim Registry<sup>320</sup>
- the regulation of transshipments in port<sup>321</sup>
- regulation of transshipments outside the Convention Area but of fish taken from inside the Convention Area<sup>322</sup>
- monitoring of purse seine landings,<sup>323</sup>
- the prohibition of any landings, transshipments or transactions whose product/outcome has been procured in a manner contrary to CMMs.<sup>324</sup>

#### **4.5 Obligations Requiring New Regulations**

It would be necessary to formulate and issue new FAOs in order to address the following obligations:

- blacklisting and sanctioning of IUU fishing vessels<sup>325</sup>
- a cap on the number of vessels authorized to fish in the Convention Area<sup>326</sup>
- additional rules on transshipment at seas, particularly:
- use of the WCPFC Transshipment Declaration<sup>327</sup>
- monitoring of implementation<sup>328</sup>
- prohibition of the landings, transshipment, and transactions with products procured/produced contrary to CMMs<sup>329</sup>

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<sup>320</sup> CMM 2009-01

<sup>321</sup> Convention, Art. 29.1 and 29.2

<sup>322</sup> CMM 2009-06

<sup>323</sup> CMM 2009-10

<sup>324</sup> CMM 2008-01

<sup>325</sup> CMM 2007-03

<sup>326</sup> CMM 2009-01, s. A.c

<sup>327</sup> CMM 2009-06

<sup>328</sup> CMM 2009-06

<sup>329</sup> Convention, Art. 42



#### **4.6 *Obligations Requiring New Legislation***

Given the different options above, there would be need for new legislation in order of more effectively penalize certain types of offenses, such as non-compliance with the vessel marking and identification scheme.<sup>330</sup> It is not very clear, however, whether the Commission is stating a preference for penal sanctions against vessel owners and operators although the CMMs seem to point toward more drastic sanctions than revocation of vessel registration and fishing permits.

### **5. IMPROVEMENT NEEDS**

#### **5.1 *Administrative Adjustment***

Apart from having a long list of things to be done, improving the rate and pace of Philippine compliance with all WCPFC and CMM obligations must at the outset be recognized as a major administrative challenge: there is likely a large administrative cost associated with full compliance, ranging from having dedicated administrative staff in the home office to accredited observers at sea and continuing contact and interaction with the Commission itself; in addition there are technological infrastructures related to the upkeep of coordinated VMS and system of data-exchange with the international fishing fleet. The extensive information requirements alone, which entail regular data gathering, record-keeping, communications, and production of reports of various kinds, require dedicated and specialized personnel who should not be distracted by other work assignments. Responding to compliance and enforcement obligations, such as immediate investigations of reported violations, also require dedicated personnel.

This points toward the need for some degree of organizational restructuring on the part of the BFAR. While there has been a prepared reorganization program, it is not yet clear what final shape or form a reorganized BFAR will take since it depends on the outcome of further discussions and negotiations with other offices of the Executive, such as the Department of Budget and Management. The creation of an 'International Affairs' office within BFAR has been floated, but its form and staffing is not yet firm and concrete. Such an office, permanent in nature, dedicated to servicing the requirements of the WCPFC (as well as other RFMO areas in which the Philippine fleet operates) would be ideal and is recommended. In the meantime, a transitional office might be established to at least respond to current needs of the WCPFC.

#### **5.2 *Fishing Vessel Registry Reform***

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<sup>330</sup> CMM 2004-03

According to the WCPFC website, Philippine flag vessels comprise 614 out of 6147, or a full 10%, of the vessels currently authorized to operate within the Convention Area. This is a very significant number and it cannot be gainsaid that Philippines is therefore a major player and big influence on the success or failure of the Commission's management effort. Because of this, reforms relating to the Philippine fishing vessel registry system must take priority. It is, after a pivotal requirement to demonstrate effective flag State jurisdiction and also for compliance with WCPFC information and reporting needs. The current regulations must be brought in line with the relevant Commission CMMs, and as laid out in the previous section, this may be done in separate stages and there is no major obstacle to such actions since many of them are a matter of administrative will.

In association with the improvement of the fishing vessel registry, the Philippines should also fast-track the full implementation of a Commission-compliant VMS, even as it continues its current efforts in establishing a pool of observers for participation in the Regional Observer Programme. While the basic technology and infrastructure for a national VMS has been initially set up by BFAR, it was noted that the level of participation by fishing vessel operators need to be improved. The reasons for this slow response on the part of the industry should be examined, and appropriate action should be taken to ensure that all Philippine flag fishing vessels will join the VMS and be fully integrated into the Commission VMS at the soonest possible time.

### ***5.3 Review of Philippine International Fishing Fleet Operations***

As noted in the previous section, a number of CMMs are viewed by stakeholders as not being relevant to Philippine fishing operations in the Convention Area. The CMMs do establish regulations that are based on presumptions about how a particular fishing activity is undertaken, and it is important, both for the purposes of effectiveness and of compliance, to ensure that the regulations are relevant and applicable to the subject activity. In order to assist the Philippines in properly regulating the fleet, and the Commission in understanding the practical implications of its CMMs, a full technical review should be undertaken of exactly how the Philippine fishing fleet operates in order to determine whether or how it should be regulated in the manner that seems to be assumed by CMMs that are proposed. Fishing can be a complex and varied industry applying many different techniques and technologies; and in a Commission comprised of many different countries with different fishing sectors, it is important to not make premature assumptions about regulations. Otherwise, enacted regulations may be ineffective for the simple reason that they cannot be implemented in the context of the particular operations.

### ***5.4 Review and Harmonization of Data Gathering and Reporting Procedures***

Practically all CMMs establish their own specific data-gathering and reporting requirements. The practical impact of varied data and information needs concentrate around two points of collection and transmittal, namely the fishing vessels and the BFAR. As noted above, collection and coordinating this information for reporting should be handled by dedicated personnel in BFAR. But for the fishing vessel, it is not clear who should be tasked with these data gathering burdens, and how they should carry them out. While Philippine fishing vessels are already required to keep logbooks of their catch, it is not clear whether the level of detail that is recorded in practice corresponds to the requirements of the Commission's various CMMs. It is also not clear how the many different data can be most efficiently and accurately collected without unduly interfering with the fishing operations. It is recommended that all the cumulative data-gathering and reporting tasks be reviewed separately from a practical, on-the-ground standpoint in order to determine the best and most efficient means of compliance.

### **5.5 *A "One-Stop Shop" FAO for International Fishing***

At some point in the future, it may be useful to consider the issuance of a specialized and integrated Fisheries Administrative Order governing the licensing and operation of the international fishing fleet, given the specialized requirements of the WCPFC and likely of other RFMOs where the fleet might attempt to expand into. At present, the regulations for the fleet are embedded in the regulations for the domestic commercial fishing sector. A single FAO for international fishing could harmonize and coordinate the applicable rules, and simply and facilitate dissemination of information on the rules to ensure compliance with the WCPFC requirements. In view of the urgency of compliance and the regularly changing requirements of WCPFC regulations, administrative reform is preferable to legislation.

### **5.6 *A Manual of Operations for the Philippine International Fishing Fleet in the WCP***

Related to the issuance of a 'one-stop shop' FAO would be the publication of a single 'manual of operations' that can be disseminated to all Philippine flag fishing vessels operating in the Convention Area. The purpose of the manual would be to provide information, explain the necessary requirements and procedures for fishing operations within the Convention Area. Such a manual, suggested at the stakeholders' workshop, would be very useful in ensuring that the fishing vessels' officers and crew become very familiar with what needs to be done in the field in order to ensure compliance with the Convention and CMMs. This manual would need to be authored with the cooperation of the operators and actual ship captains and crew in order to ensure clarity and implementation.

## 5.7 *Coordination with Other Maritime Agencies*

Although the reform agenda indicated above revolves around fisheries regulations, it must be kept in mind that since the Philippines is an archipelagic country, many different agencies of government also have some mandates over maritime activities that need to be considered. Most relevant to Philippine flag fishing vessels are the Maritime Industry Authority (MARINA), the Philippine Coast Guard (PCG), and the port authorities (depending on which port is involved). While BFAR has jurisdiction over fishing activities, including the licensing of vessels for fisheries purposes, MARINA retains the primary jurisdiction over the vessel itself: issues relating to the vessels design and seaworthiness remain within MARINA's jurisdiction.<sup>331</sup> MARINA is the actual flag State administration because it is the agency that actually grants the privilege of flying the Philippine flag to vessels; BFAR comes in only if such vessels are to be used for fishing. On the other hand, the PCG has been granted jurisdiction over matters of maritime safety and environmental protection.<sup>332</sup> And finally, Philippine ports may be under the management of the Philippine Ports Authority or any of several specialized port authorities with their own charter.<sup>333</sup> These offices would have primary jurisdiction over a vessel while in port, including the power to conduct inspections and withhold clearances to sail.

The points at which BFAR's jurisdiction ends and either of the two other agencies' jurisdiction begins has not yet been officially delineated, especially for purposes of international fishing. There is therefore a need for close coordination between these agencies in order to be able to identify and address the proper point of intervention in regulations should an issue arise requiring a review of the vessel's registry status. There may be a need for a Memorandum of Agreement among these agencies in relation to their roles and functions with respect to ensuring compliance with the Convention and CMMs.

## 5.8 *Institutional Arrangements*

For some time now, there have been attempts to elevate the status of BFAR from a line bureau to a full-blown department of its own, independent from the Department of Agriculture (DA) of which it is presently a part. Stakeholders in the tuna industry are among the more supportive of this initiative, due to what they see as the inadequacy of status and resources on the part of the Bureau to respond to the needs of the industry. At the workshop on 17 November, the view was propounded that the fisheries sector is being unduly subordinated in the agriculture sector despite the fact that fisheries cover a much larger geographic area and has exhibited significant growth in contributing to the economy. As a

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<sup>331</sup> See Pres. Decree No. 474 (1973); Exec. Order No. 546 (1979); Exec. Order No. 1011 (1985); Exec. Order No. 125 (1987) as amended by Exec. Order No. 125-A (1987).

<sup>332</sup> See Rep. Act No. 9993 (2010).

<sup>333</sup> See Exec. Order 513 (1978).

line bureau, the BFAR has to compete for attention and resources with other offices within the DA. It is also seen to lack the necessary stature to directly command the appropriate attention and seek assistance from many other departments and offices in government with which it must necessarily deal on account of the maritime characteristics of its concerns. These shortcomings are most palpable to stakeholders in their experiences with the Commission and its meetings. It is thought that if BFAR were its own department, it would not have as difficult a time in securing high-level representatives to become members of delegations to diplomatic conferences and international organizations like the Commission. It is also believed that a department is in a better position to make and follow-through on commitments in international meetings and agreements.

But building up a full department may take some time, thus there is a need to consider current institutional arrangements aside from more radical reorganization. On this score, stakeholders likewise have certain concerns, but running along the same theme of need for proper priority and attention as well as provision of adequate resources. Although by law, an Undersecretary for Fisheries is supposed to provide the higher-level policy guidance to the sector, stakeholders see the position as being one of divided attention. There were calls for an Undersecretary to be "exclusively concerned with fisheries," hinting that stakeholders are not satisfied with the current set-up and believe that they are still not being accorded the proper attention in policies and decisions within the Department.

While the NFARMC mechanism has not been subject of focused critiques from stakeholders, the question arises as to its relationship with other advisory bodies within the Department, such as the National Agriculture and Fisheries Council established under the Agriculture and Fisheries Modernization Act.<sup>334</sup> It is apparently not clear to stakeholders what role the NFARMC should play in policy-making, perhaps because they are more focused in their concerns and already have a more specialized outlet in the National Tuna Industry Council (NTIC) created specifically for tuna industry issues. Stakeholders would rather defer to the NFARMC with respect to over-all national policy issues. The Council is seen as an appropriate mechanism for consultations and deliberations on issues relating to RFMOs, though it is thought that it could benefit from added representation from other subsectors related to the tuna industry (e.g., sardine, small pelagic fishers). This may indicate a lack of appreciation on the part of the stakeholders of the "national" status of the international fishing industry. The NTIC after all is created only by a special order of the Department Secretary, while the NFARMC is created by law. Although their functions with respect to the key offices are the same (they are both advisory councils), stakeholders seem to accept that in the absence of legislative attention, their industry's concerns will ultimately be only one among many other fisheries sectors and issues.

All these seem to point toward an interim need to strengthen BFAR's leadership role, both over the industry and within the Department. Such leadership requires institutional capacity, professional competence, and regulatory expertise in managing fisheries issues, not only with respect to the Commission, but in all fisheries and fisheries-related industries. However this

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<sup>334</sup> Rep. Act No. 8435 (1997). The Agriculture and Fisheries Modernization Act.

is very difficult to achieve in the current context of limited resources and multiplicity of functions of personnel. As noted in the workshop, responding to the Commission's reportorial requirements necessitated some personnel to be multi-taskers, which divides attention and lessens time available for the tasks at hand. The multi-tasking practice appears to be unavoidable given that BFAR simply does not have enough personnel even according to its current staffing pattern.

In this light, and short of a full reorganization, it is recommended that a professional study be undertaken of BFAR's current organization, capacity, and resources in terms of its ability to comply with the administrative and other requirements of participation in the Convention. Since the Commission's needs have now become quite concrete with the establishment of a significant number of CMMs, it is time to consider the administrative implications of compliance and compare them with what is currently available within BFAR. Such a study is absolutely necessary before alternative institutional arrangements can be discussed.

It should be stated at this point that the NFRDI, as the institution legally created and mandated to support BFAR, should play a bigger role in policy studies for fisheries. Much of its published materials concentrate on the science and scientific aspects of fisheries, and less attention seems to be devoted toward its social aspects including policies and management. And while it has been responding to the Commission's needs for scientific information as much as it can, it appears that the policy-related needs have not been adequately addressed. This is a gap in capacity within the NFRDI that also needs to be addressed. Full compliance with the Convention and CMMs, after all, are not limited to science and information, but even more importantly, policy responses and implementation.

Diverging from stakeholders' perspectives for the moment, from a pragmatic standpoint it is not recommended to propose radical institutional change at this point because even the current institutional arrangements do not appear to have 'matured' yet, and such arrangements themselves require a thorough review and assessment. It must be noted that while these arrangements were established only in 1998, or only a little more than a decade ago, the BFAR's and NFRDI's structure and organization are still largely based on a transitional arrangement that was adopted immediately after the enactment of the Fisheries Code. In this light, radical proposals might delay the process of change even further. Given the urgency of compliance, better results will be achieved by (a) securing truly dedicated personnel within the current staff, and (b) providing capacity-building.

The role and influence of the NTIC is something that needs to be more seriously considered. While it has served its purpose as a consultative mechanism, when it comes to compliance and enforcement issues it seems less effective. The players in the entire tuna industry from producer to retailer are very diverse and span all types of businesses from single-proprietorships to large corporations. Addressing the Commission's needs may be a matter of identifying the strategic players and concentrating on only the leading few, rather than all. This certainly runs certain risks, particularly that less than absolute compliance on the part of all producers no matter how small may be seen as undermining the Convention or its CMMs.

The Commission should consider the possibility of taking non-State-actor-centered responses to issues: this means incorporating private and business associations into the menu of options for compliance and enforcement. For example, direct accreditation of private companies or associations might provide incentive to compliance where State policy cannot. The conservation and management of an area as large as the WCP should not be limited in its means to address practical problems.

### **5.9 *Suggested Agenda for Actions***

Given the tasks above, a general sequence or agenda for actions to be undertaken is suggested. First, considering the importance of the vessel registry to Commission management, priority should be given to instituting reforms in the Philippine fishing vessel registry to bring it in line with the WCPFC requirements. A special Order dealing with the Philippine international fishing fleet specifically is suggested, in order to clearly differentiate it from the domestic commercial fishing fleet. Second, implementation and full operation of the VMS should be fast-tracked and the training and assignment of observers should also be given full support in order to ensure full participation in the Regional Observer Program. These two activities are important elements of the Commission's management system. Third, attention to be paid to how the Philippine international fishing fleet actually operates in order to determine the appropriate courses of action with respect to remaining items of CMM implementation. The agenda for formulation of new FAOs to address gaps in Philippine regulations in relation to CMMs, for example, may be determined after this study of operations. Afterwards, the Philippines can turn attention to reviewing the compatibility of its existing management of Philippine waters with that of the Convention. It can then move into more specific regulations of species if warranted.

While these actions are being undertaken, the effort toward the organizational restructuring of BFAR should continue and be supported, but special attention should now be paid to establishing in more concrete terms the 'international affairs' office dedicated to the needs of the international fishing fleet and RFMOs. The process of reorganization is understandably going to be a long one given the current context of the Philippine government, and it would be timely to formulate concrete proposals for a specific office that will cater to concrete needs and charged with tasks that are already specified by Philippine participation in the Convention.

## **6. CONCLUSION**

In conclusion, the Philippines is undoubtedly faced with a serious challenge of administrative and regulatory reform in joining and participating in the WCPFC. Although its international fishing fleet is relatively small compared to its domestic commercial fishing interests, it is

undoubtedly a major player in the WCPFC, and the latter's success in conserving and managing the highly migratory stocks in the WCP will certainly be affected by the Philippines' own success or failure in compliance. This emphasizes the importance of ensuring that the Philippines is able to improve its systems and achieve full compliance with the Convention regime. Hopefully, this modest study has contributed to identifying the initial tasks that need to be undertaken in that long and complex process.

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<b>COMPARATIVE MATRIX OF WCPFC MEMBER OBLIGATIONS WITH PHILIPPINE POLICY/LAW/INSTITUTIONAL ARRANGEMENTS</b>		
<b>WCPFC MEMBER OBLIGATIONS</b>	<b>PHILIPPINE LAW / POLICY / PRACTICE</b>	<b>REMARKS</b>
<b>1. THE WCPF CONVENTION</b>		
1.1 In General		
a. promptly implement Conv and CMMs agreed upon (Art. 23.1)		<i>general obligation</i>
b. inform the Comm on matters required for management of the Conv Area		<i>internal (to BFAR)</i>
c. Submit annual reports as required, particularly (Art. 23.2) -- statistical, biological, other data and information	<i>EU 1005-2008 compliance can provide species, volume, vessel; also NFRDI WPEA Project</i>	
-- information on its fishing activities, including the fishing areas and vessels	<i>NFRDI WPEA Project; Catch Landing Certificate (internal memo)</i>	
-- information on steps taken to implement CMMs	<i>BFAR Annual Report I &amp; II (same)</i>	
d. Inform the Comm of measures adopted for conservation and management of HMS in areas of national jurisdiction within the Conv Area (Art. 23.3)		
e. Inform the Comm of flag State control measures to regulate fishing vessels under its flag in the Conv Area (Art. 23.4)	<i>(same)</i>	
1.2. "Soft" Obligations		
a. to greatest extent possible, ensure its nationals and fishing vessels owned by its nationals comply with the Conv (Art. 23.5)	<i>Rev. Admi. Code of 1987, administrative remedies (for sanctions vs fishing vessels)</i>	
b. to greatest extent possible, at request of any other Member w/ relevant information, investigate any alleged violation by its nationals/their fishing vessels of either the Conv or CMMs (art. 23.5)	<i>(same)</i>	
1.3 Compliance and Enforcement Obligations		
1.3.1. Generally, to enforce the provisions of Conv and CMMs (Art. 25.1)		
		<i>general obligation</i>
1.3.2. Participation in /compliance with the the Regional Observer Programme (Art. 28.6, in relation to CMM 07-01)		
	<i>Full authorization via internal office memo; completed audit, trained 106 observers</i>	<i>draft FAO on observer already made and pending discussion</i>
a. ensure fishing vessels fishing in the high seas of the Conv Area are prepared to accept an observer from the Comm ROP if required (CMM 07-01, s. 7)	<i>(same)</i>	
b. meet the level of observer coverage set by Comm (Ibid., s. 8)	<i>Already in progress, need to train at least 44 more at least to achieve 100% coverage</i>	<i>100% coverage in HS, EEZ at discretion of coastal State</i>
c. source observers for their vessels as determined by Comm (CMM 07-01, s. 9)	<i>Full authorization via internal office memo; completed audit, trained 106 observers</i>	<i>need to come up with long-term training program</i>
d. explain to the vessel captain the observer's duties relevant to Comm CMMs (CMM 07-01, s. 10)	<i>(same)</i>	<i>(same)</i>

WCPFC MEMBER OBLIGATIONS	PHILIPPINE LAW / POLICY / PRACTICE	REMARKS
<p>1.3.3. In re. Boarding and inspection</p> <p>a. ensure vessels accept duly authorized boarding inspectors in accordance with procedures established by the Comm (Art. 26.3)</p> <p>b. in case of “serious violations” (s. 32-38)  -- inspecting authority: immediately notify authorities of fishing vessel, directly as well as thru Comm (s. 32)  -- flag State: investigate and take enforcement action, notify authority of inspecting vessel and Comm; and authorize complete investigation (s. 33)</p> <p>1.3.4. In re. Investigation</p> <p>a. fully investigate any alleged violation by fishing vessels flying its flag, at request of any other Member (Art. 25.2)</p> <p>b. if satisfied that sufficient evidence is available re alleged violation, refer the cases to its authorities for proceedings without delay, and detain the vessel concerned (Art. 25.3)</p> <p>c. carry out all investigations and judicial proceedings expeditiously (Art. 25.7)</p> <p>d. if warranted, impose effective sanctions that discourage violations, deprive offenders of the benefits of illegal activities, without prejudice to other sanctions (Art. 25.7)</p> <p>e. where there are reasonable grounds to believe that a flag vessel has engaged in unauthorized fishing in national jurisdiction, fully investigate the matter at request of Member concerned (Art. 25.6)</p> <p>f. if there is reasonable ground to believe that a flag vessel of another State is engaged in activity undermining effectiveness of CMM, draw attention of the flag State and the Comm (Art. 25.10)</p> <p>1.3.5. In re. Punishment</p> <p>a. if a vessel is found guilty of a serious violation, ensure that such vessel ceases fishing activities and does not engage in activities until all outstanding sanctions have been complied with (Art. 25.4) including those of State in whose waters the violation was committed</p>	<p><i>At present, the vessel and/or master's license/permit may include condition to accept boarding and inspection; could be subject of future legislation; also check MARINA regs re. vessel registration</i></p> <p><i>BFAR, MARINA have jurisdiction.</i></p> <p><i>(same)</i></p>	<p><i>For Philippine boarding and inspection procedures, the closest is that in the FAO on poaching; this may be a possible template, although it applies only to national waters. There may be need for legislation for it to be applied beyond Philippine waters.</i></p> <p><i>There is a need to review other procedures for certain offenses (e.g. sexual harassment). This may also be considered for a possible port State control measure.</i></p> <p><i>There is a need for a formal administrative investigation procedure in an FAO.</i></p> <p><i>(same)</i></p> <p><i>(same)</i></p> <p><i>(same)</i></p> <p><i>(same)</i></p> <p><i>(same)</i></p> <p><i>To keep vessel from sailing/fishing, BFAR must request PPA/PCG to not issue clearance to sail. This may require a Memorandum of Agreement.</i></p>

WCPFC MEMBER OBLIGATIONS	PHILIPPINE LAW / POLICY / PRACTICE	REMARKS
<p>1.3.6 In re. Information on compliance</p> <p>a. State shall transmit to Comm annual statement of compliance measures, including of sanctions imposed for violations (Art. 25.8)</p> <p>1.4. As flag States (Art. 24)</p> <p>1.4.1. Flag fishing vessels comply with the Conv/CMMs</p> <p>1.4.2. Flag fishing vessels do not conduct unauthorized fishing in areas under national jurisdiction of any Member (Art. 24.1)</p> <p>1.4.3. Not allow fishing vessels flying its flag to fish for HMS in areas beyond national jurisdiction unless authorized to do so (Art. 24.2)</p> <p>1.4.4. Allow fishing only where it is able to exercise effectively its responsibilities in respect of such vessels</p> <p>1.4.5. Require fishing vessels to use near real-time satellite position-fixing transmitters while in high seas Conv Area (Art. 24.8) or when operating in areas under national jurisdiction within Conv Area (Art. 24.9)</p> <p>1.4.6. Ensure that the effectiveness of CMMs are not undermined</p> <p>a. ensure that fishing vessels flying it flag do not engage in activity which undermines effectiveness of CMMs (Art. 24.1)</p> <p>b. ensure compatibility between national and high seas VMS (Art. 24.10)</p> <p>1.4.7. Record data and inform the Comm</p> <p>a. maintain record of fishing vessels entitled to fly its flag and authorized to be used for fishing in the Conv Area, and ensure such vessels entered in the record (Art. 24.4)</p> <p>b. provide annually to Comm, information under Annex IV regarding each fishing vessel (Art. 24.5) as well as addition, deletions, and reasons therefor (Art. 24.6)</p>	<p><i>BFAR Annual Report II</i></p> <p><i>RA8550, s. 32 requires that separate consent of other State must be secured in order to fish in others' waters (same)</i></p> <p><i>BFAR Annual Report II</i></p> <p><i>(same)</i></p>	<p><i>There is a need for amendment of FAO 198.</i></p> <p><i>There is a need for amendment of FAO 198.</i></p> <p><i>BFAR must provide that it will issue permit only if it complies with requirements/conditions (e.g. VMS), work in progress. There is a need for WCPFC to set criteria to determine whether State "can exercise" its responsibilities. There should be a checklist of qualifications to be issued a license.</i></p> <p><i>The private sector needs to be encouraged to get/reactivate. The BFAR should also fasttrack a draft FAO requiring participation in the VMS.</i></p> <p><i>The VMS is ready, but needs higher rate of compliance by the private sector.</i></p> <p><i>This is inherently included in the authority of BFAR to issue CFVL. However, there is presently no official memo/FAO; it is based only on a letter to the companies. There is a need for an FAO on listing of active vessels.</i></p> <p><i>BFAR and MARINA should coordinate (complete and clean the list) and rationalize their registration process for fishing vessels.</i></p>

WCPFC MEMBER OBLIGATIONS	PHILIPPINE LAW / POLICY / PRACTICE	REMARKS
<p>1.5 As Port States</p> <p>1.5.1 Take measures to promote effectiveness of subregional, regional and global conservation and management measures (Art. 27.1)</p>	<p><i>FAO 236 s. 2010 is an example.</i></p>	<p><i>There is a need for new port State measures as approved by FAO. It should be studied whether the Philippines can have additional legislation on port entry, and whether PPA/MARINA/BFAR have enough powers to implement port State control measures. There is also an FAO on transshipment that can be examined. BFAR will need to work with DFA and Senate for accession to new conventions, with DOTC on application to flag vessels. Port State requirements in various CMMs should also be examined to determine action points.</i></p>
<p>1.6 Co-operating Non-Members (CMM 2009-11)</p>		<p><i>not applicable</i></p>
<p><b>2. CONSERVATION AND MANAGEMENT MEASURES TO DATE</b></p>		
<p>2.1 Fishing Vessel Regulations</p>		
<p>2.1.1. Marking and identification of fishing vessels (CMM 2004-03)</p>		<p><i>There is a need to amend FAO 198 on CFVL to include current informal requirements. BFAR and MARINA should also harmonize their regulations on these issues. MARINA requests they be invited to consultation when the draft FAO is prepared. One option is for this come out as a Joint Administrative Order.</i></p>
<p>a. implementation of FAO Standard Specifications (s. 1.1.1)</p>		
<p>b. require operators to mark vessels for ID with radio call signs (s.2.1.1), which becomes the WCPFC Identification Number (WIN) (s.2.1.2)</p>		<p><i>(same)</i></p>
<p>c. all WIN entered into WCPFC Record of Fishing Vessels (s. 3.1)</p>		<p><i>(same)</i></p>
<p>d. require that WIN is painted on hull or superstructure, aside from vessel name, ID mark, and port (s.2.1.3.a), per specifications (s. 2.2)</p>		<p><i>This requires a new FAO to provide for penalties in case of non-compliance.</i></p>
<p>e. penalize certain offenses under national legislation (s.2.1.3.c)</p>		<p><i>(same)</i></p>

WCPFC MEMBER OBLIGATIONS	PHILIPPINE LAW / POLICY / PRACTICE	REMARKS
<ul style="list-style-type: none"> <li>-- non-compliance with WIN specifications</li> <li>-- non-marking or wrongful marking of vessel</li> <li>-- deliberate removal or obstruction of WIN</li> <li>-- use of WIN allocated to another operator/vessel</li> </ul>		<p><i>(same)</i></p> <p><i>(same)</i></p> <p><i>(same)</i></p> <p><i>(same)</i></p>
<p>2.1.2. Blacklisting (CMM 2007-03)</p> <ul style="list-style-type: none"> <li>a. transmit to Exec. Director a list of vessels presumed to be carrying out IUU activities in the Conv Area, accompanied by documentation, at least 120 days before annual meeting of TCC (s. 4)</li> <li>b. notify the flag State of vessel's inclusion in list either directly or through Exec. Director</li> <li>c. flag State to promptly acknowledge receipt of notification (s. 5)</li> <li>d. closely monitor vessels in the Exec. Director's draft list prepared at least 90 days prior to TCC meeting in order to follow their activities (s. 8)</li> <li>e. transmit, if the CCM's vessel/s on list, at least 30 days prior to meeting of TCC, comments and info showing vessels did not violate Conv or CMMs (s. 9); they may submit additional info at any time</li> <li>f. take all non-discriminatory measures against IUU vessels under applicable law or international law (22)</li> </ul> <ul style="list-style-type: none"> <li>-- ensure vessel does not participate in transshipment or joint fishing operations</li> <li>-- ensure vessels that enter ports voluntarily are not authorized to land, tranship, refuel, or resupply but are inspected upon entry</li> <li>-- prohibit chartering of vessel</li> <li>-- refuse to grant their flag such vessels</li> <li>-- prohibit commercial transactions, imports, landings or transshipment</li> <li>-- encourage traders, importers, transporters, etc. to refrain from transactions with/transshipment of species from IUU vessels</li> <li>-- collect, exchange information with other CCMs to search, control, prevent false import/export certificates for species from IUU vessels</li> <li>g. CCMs shall not take unilateral trade measures or other sanctions against vessels on draft List, or that have been removed from the list (s. 24)</li> </ul>		<p><i>This is to be implemented, perhaps in connection with an amendment to the FAO on poaching.</i></p> <p><i>(same)</i></p> <p><i>(same)</i></p> <p><i>(same)</i></p> <p><i>(same)</i></p> <p><i>There is a need for an FAO for listing of vessels as IUU vessels, providing for punitive measures, and process of imposition and withdrawal of sanctions against IUU vessels.</i></p> <p><i>(same)</i></p> <p><i>(same); But this may also be achieved with a Joint Administrative Order between BFAR and MARINA / PPA / PCG.</i></p> <p><i>(same)</i></p> <p><i>(same)</i></p> <p><i>(same)</i></p> <p><i>(same)</i></p> <p><i>(same)</i></p> <p><i>FAO 183, s. 1992 is a possible example of a unilateral trade measure. But there should also be a procedure to allow vessel to contest its listing as IUU.</i></p>
<p>2.1.3. Comm VMS (CMM 2007-02)</p>		

WCPFC MEMBER OBLIGATIONS	PHILIPPINE LAW / POLICY / PRACTICE	REMARKS
<p>a. Ensure fishing vessels in high seas comply with requirements of Comm and are equipped with ALCs (s. 9.a)</p> <p>b. Member States shall cooperate to ensure compatibility between national and high seas VMS (s. 9.b)</p>		<p><i>There is a need to fast-track the FAO on VMS. But there should also be discussion with MARINA because it has its own VMS/ALC requirements for commercial vessels.</i></p> <p><i>(same)</i></p>
<p>2.1.4. Record and Authorization (CMM 2009-01)</p>		
<p>2.1.4.1. In re. Authorization to Fish</p>		
<p>a. Authorize its vessels to fish only where it is able to exercise effectively its responsibilities in respect of such vessels (s. A.1)</p>	<p><i>FAO 198, s. 2000 (CFVGL)</i></p>	<p><i>The issue of capacity and effective monitoring needs to be discussed.</i></p>
<p>b. Review own internal actions and measures and report annually to Comm (s. 15)</p>	<p><i>BFAR Annual Report II</i></p>	
<p>c. No member shall allow its flag vessel to be used for fishing in Conv Area beyond areas of national jurisdiction unless authorized to do so by appropriate authority/authorities (s. 3)</p>	<p><i>FAO 198, s. 2000 (CFVGL)</i></p>	
<p>d. Formal requirements in authorization (s. 4)</p> <p>-- specific area, species, time periods</p>	<p><i>(same)</i></p>	<p><i>FAO 198, s. 2000 only requires grid map, not species or time periods</i></p>
<p>-- permitted activities</p>	<p><i>(same)</i></p>	<p><i>(same)</i></p>
<p>-- prohibition of fishing, retention on board, transshipment or landing by vessel in waters under national jurisdiction of another State, except when licensed</p>	<p><i>(same)</i></p>	
<p>-- requirement that vessel keep authorization onboard</p>	<p><i>(same)</i></p>	
<p>-- other specific conditions to give effect to Conv and CMMs</p>	<p><i>(same)</i></p>	
<p>e. Ensure that its flag vessel fishes in waters under the national jurisdiction of another State only where it holds required license, permit or authorization (s. A.d)</p>	<p><i>(same)</i></p>	
<p>f. Ensure vessels comply with CMMs (s. A.2)</p>		
<p>g. Ensure fishing for HMS is conducted only by vessels of CCMs (s. A.c)</p>		
<p>h. Manage the number of authorizations to fish and level of fishing effort commensurate with the fishing opportunities available to that member (s. A.e)</p>	<p><i>FAO 223 s. 2003 / 223-1 s. 2004</i></p>	<p><i>BFAR may consider imposing a quota on international fishing permits.</i></p>
<p>i. Ensure that no authorization to fish in Conv Area is issued to a vessel with a history of IUU fishing (s. A.f), subject to certain exceptions</p>		<p><i>This may be imposed as a qualification for the issuance of a CFVGL.</i></p>
<p>j. Withdraw authorization to fish consistent with Conv Art 25(4)</p>	<p><i>Rev Admi Code of 1987</i></p>	
<p>k. Ensure owners of flag vessels on the Record are citizens, residents or legal entities within its jurisdiction so that control or punitive actions can be effectively taken against them (s. A.i)</p>	<p><i>1987 Const., Art. 12(2)</i></p>	<p><i>Philippine fisheries are reserved to Filipino citizens only under the 1987 Constitution.</i></p>
<p>l. Ensure its fishing vessels in Conv Area only tranship to/from and bunker by vessels flagged by Conv Members, vessels in WCPFC Interim Register of Non-Member Carrier and Bunker Vessels, or vessels under charter, lease or similar mechanisms</p>		<p><i>FAO 199 on transshipment does not deal with transshipment at sea.</i></p>

WCPFC MEMBER OBLIGATIONS	PHILIPPINE LAW / POLICY / PRACTICE	REMARKS
m. Maintain a record of flag fishing vessels and authorized to fish in Conv Area beyond its own waters, and ensure all such fishing vessels entered in that record (s. B.5)	FAO 198, s. 2000 (CFVGL)	This is possible with the current system, but at present the centralization and monitoring of records is not expressly required.
n. Submit information on flag fishing vessels to Comm Exec Director (s. B.6)	Currently done.	
-- Notify Exec. Director of any addition, change, deletion (s. B.7)	Currently done.	
-- Submit to the Exec. Director any information requested on any vessel in the record within 15 days from request (s. B. 8)	Currently done.	
-- If vessel registered with another flag State, must make arrangements to ensure that flag State can meet its obligations above (s. B.10)		
-- Annually submit to the Exec. Director the list of vessels on record that fished in preceding year, with WIN and whether it fished for HMS in Conv Area beyond national jurisdiction (s. B.10)	BFAR Annual Report II	
2.1.4.2. Commission Records		
a. Vessel not included in Comm Record shall be deemed not authorized to fish, retain onboard, tranship or land HMS in Conv Area beyond national jurisdiction.		
b. Each Member shall prohibit fishing retaining onboard, transshipping, or landing HMS by any such flag vessels; treated as a serious violation (s. 16)	Currently done.	
c. Each Member shall prohibit landing in its ports or transshipment by flag vessels not entered in the Record/Register (s. 17)	Currently done.	
d. CCM should notify Exec. Director of any information showing reasonable grounds that unregistered vessel is engaged in fishing of transshipment (s. 18)	Currently done.	
e. CCMs and Comm to communicate with each other to develop/implement measures to establish records to help avoid adverse effects of fishery on oceans (s. 22) Charter Notification Scheme (CMM 2009-08)	This is already done between BFAR and MARINA, although under an internal office memo only.	BFAR needs to coordinate closely with MARINA to track down vessel charters.
Vessels without Nationality (CMM 2009-09)		This requires further study.
2.2. Fishing Operations Regulation		
2.2.1. Transshipment restrictions		
a. Convention Rules		
-- members shall encourage vessels, to the extent practicable, to conduct transshipment in port (Art. 29.1)	FAO 199, s. 2000 (Transshipment)	
-- transshipment in port or area within national waters shall take place in accordance with applicable laws (Art. 29.2)	(same)	

WCPFC MEMBER OBLIGATIONS	PHILIPPINE LAW / POLICY / PRACTICE	REMARKS
-- transshipment at sea in Conv Area beyond national jurisdiction take place only in accordance with Annex III:4 and procedures adopted -- transshipment at sea by purse-seine vessels operating within Conv Area shall be prohibited (Art. 29.5) b. Regulations (CMM 2009-06)		There is a draft FAO pending discussions.  (same)
	FAO 199, s. 2000 (Transshipment)	There are compatibility issues with FAO 199, since this deals only with transshipment in Philippines ports by foreign vessels, and not all the situations contemplated by the Commission.
-- CMMs that tranship outside the Conv Area (but with fish taken from within Conv Area) shall provide information related to those activities	(same)	(same)
-- Ensure that flag vessels comply with this measure (s. 6)	(same)	(same)
-- Be responsible for reporting against their flag vessels (s. 7)	(same)	
-- Chartering CCMs and flag CCMs will cooperate for appropriate management of the vessel (s. 8)		
-- Report on all transshipment activities covered by this measure (including transshipment in ports or EEZs) as part of annual report (s. 11)		This requires amendment of the FAO on transshipment in order expand its coverage.
-- Provide notices of transshipment to Exec. Director (s. 12) unless vessel/vessel operator authorized to provide notice directly		(same)
-- Ensure vessels carry observers from the ROP to observe transshipments at sea (s. 13)		(same)
-- HMS covered by Conv shall not be transhipped at sea by pursue seine vessels outside the Conv Area (s. 2)		(same)
-- transshipment in port/waters under national jurisdiction shall take place in accordance with applicable national laws (s. 4)	FAO 199, s. 2000 (Transshipment)	
-- Vessel master responsible for reporting against carrier vessel flagged to non-CCM and included on Interim Register (s. 9)	(same)	
-- WCPFC Transshipment Declaration to be completed by offloading and receiving vessel for each transshipment in Conv Area/transshipment of catch taken in Conv Area (s. 10)	(same)	
c. Observers monitor implementation of measure (s. 14)	(same)	
d. Non-CCM Vessels		
-- CCMs to take measures to ensure flag vessels do not tranship to/from non-CCM flag (s. 20) though with exceptions	(same)	
-- non-CCM vessel shall not tranship to/from non-authorized non-CCM vessel (even if in Interim Register) (s. 21)	(same)	
e. Special Regulations for Purse Seine Vessels		This may be covered by the proposed new FAO on transshipment.
2.2.2. Gear restrictions a. large scale driftnet ban (CMM 2008-04)		not applicable



WCPFC MEMBER OBLIGATIONS	PHILIPPINE LAW / POLICY / PRACTICE	REMARKS
<p>-- Take all measures necessary to prohibit fishing vessels from using large scale driftnets in high seas of Conv Area (s. 2)</p> <p>-- Report in their annual report a summary of MCS actions relating to driftnets (s. 5)</p> <p>-- CCM may impose more stringent measures (s. 7)</p> <p>b. FAD Closure (CMM 2009-02)</p> <p>-- CCMs to take necessary measures to ensure purse seine flag vessels on HS comply with rules of CMM 2008-01 (s. 2)</p> <p>-- during FAD closure, no purse seine vessel conduct any part of a set within 1M of a FAD (s. 4)</p> <p>c. Catch Retention (CMM 2009-02)</p> <p>2.2.3. Mitigation Measures</p> <p>a. Seabirds (CMM 2007-04)</p> <p>-- implement, to extent possible, IPOA-Seabirds (s. 1)</p> <p>-- report to the Comm their implementation of IPOA-Seabirds, including NPOAs (s. 2)</p> <p>-- require longline vessels to use at least 2 mitigation measures listed (s. 1)</p> <p>-- for CCM with longliners that fish in Conv Area south of 30dS or north of 23dN, submit to Comm in its 2008 report, info describing which mitigation measure they require/will require to be used (s. 4)</p> <p>b. Sea Turtles (CMM 2008-03)</p> <p>-- implement FAO Guidelines to Reduce Sea Turtle Mortality in Fishing Operations and ensure safe handling of all captured sea turtles (s. 1)</p> <p>-- from 2009, CCMs shall report implementation of FAO Guidelines and this measure, and info on interaction (s. 2)</p> <p>-- require fishermen to bring aboard if practicable, any capture hardshell sea turtle that is comatose and inactive ASAP and foster its recovery before returning it to the water (s. 4)</p> <p>-- Ensure fishermen are aware of and use proper mitigation and handling techniques (s. 4)</p> <p>-- CCMs with purse seines (s. 5), ensure implementation of certain procedures</p> <p>-- CCMs with longliners (s. 6), ensure implementation of certain procedures</p> <p>-- Report to Comm (s. 7.e)</p> <p>2.2.4. Monitoring of Landings of Purse Seine Vessels (CMM 2009-10)</p> <p>2.2.5. No Fishing on Data Buoys (CMM 2009-05)</p>	<p>FAO 236 s. 2010</p> <p>FAO 236 s. 2010</p> <p>FAO 199, s. 2000 (Transshipment)</p>	<p>This may be imposed as a condition for the license; but it is not applicable since the Philippines doesn't have many longliners in the Convention Area.</p> <p>There is a draft FAO concerning sea turtles, and a memorandum concerning the use of circle hooks.</p> <p>(same)</p> <p>(same)</p> <p>(same)</p> <p>(same)</p> <p>(same)</p> <p>(same)</p> <p>(same)</p>

WCPFC MEMBER OBLIGATIONS	PHILIPPINE LAW / POLICY / PRACTICE	REMARKS
<p>a. Prohibit flag vessels from fishing within 1M of data buoy in HS of Conv Area (s. 1)</p> <p>b. Prohibit flag vessels from taking on board a data buoy unless specifically authorized/requested to do so (s. 2)</p> <p>c. Require fishing vessels that become entangled to remove gear with as little damage to the data buoy as possible (s. 5); encourage their vessels to report incidents</p> <p>d. Fishing on data buoys deemed to undermine the Conv and considered serious violation under Art 25 Conv (s. 6), except for scientific research programs (s. 7)</p>		<p><i>There is a need to coordinate with NAMRIA to issue warnings as Notice to Mariners. There should also be a system for dissemination of such notices, including the location of buoys and other information. An IEC campaign is needed, and an FAO must be drafted if the intention is to establish penalties.</i></p> <p><i>(same)</i></p> <p><i>(same)</i></p> <p><i>(same)</i></p>
<p>2.3. Species-specific Regulations</p>		
<p>2.3.1. South Pacific Albacore (CMM 2005-02)</p>		
<p>a. CCM shall not increase number of fishing vessels fishing for SP Albacore in Conv Area south of 20th degree South beyond about 2005 levels (s.1)</p>		<p><i>not applicable</i></p>
<p>2.3.2. North Pacific Albacore (CMM 2005-03)</p>		<p><i>not applicable</i></p>
<p>b. CCM shall take necessary measures to ensure level of fishing effort by their vessels fishing for NPA in Conv Area is not increased beyond 2005 levels (s. 2)</p>		<p><i>The catch of NP Albacore is insignificant; this is not a developed fishery on the part of the Philippines</i></p>
<p>c. CCMs shall report all catches of NPA to Comm every 6 months, except for small coastal fisheries which shall be on an annual basis (s. 3); no later than 1 year after end of period</p>	<p><i>BFAR Annual Report</i></p>	
<p>d. CCMs to report annually all catches of albacore north of the equator and all fishing effort north of the equator in fisheries directed at albacore (s. 4)</p>	<p><i>BFAR Annual Report</i></p>	
<p>2.3.3. Striped Marlin (CMM 2006-04)</p>		<p><i>not applicable</i></p>
<p>a. CCMs to limit number of fishing vessels fishing for striped marlin in Conv Area south of 15 degree S, to number in any year between 2000-04 (s. 1)</p>		
<p>b. CCMs to provide information to Comm on number of vessels that have fished for striped marlin in Conv Area south of 15 degree S during 2000-2004 (s. 4)</p>		
<p>c. CCMs to nominate maximum number of vessels that shall continue to be permitted to fish</p>		
<p>d. CCMs to report annually to Comm catch levels of vessels that have taken striped marlin as bycatch (s. 4)</p>		
<p>e. CCMs to report annually number and catch levels of vessels fishing for striped marlin in Conv Area south of 15 deg S (s. 4)</p>		

WCPFC MEMBER OBLIGATIONS	PHILIPPINE LAW/ POLICY/ PRACTICE	REMARKS
<p>2.3.4. Bigeye and Yellowfin Tuna (CMM 2008-01)</p> <p>a. CCMs to ensure effectiveness of measures for purse seine fishery not undermined by transfer of effort in days fished into areas within Conv Area south of 20 deg N</p> <p>b. CCMs shall not transfer fishing effort in days fished in the purse seine fishery to areas within Conv Area north of 20 deg N</p> <p>c. CCMs shall take necessary measures to ensure level of purse seine fishing effort in days fished by vessels in high seas does not exceed 2004 levels or average from 2001-2004</p> <p>d. in EEZ, FFA/PNA members implement domestic legislation on time limits, FAD closures (s. 17)</p> <p>e. other CCMs shall implement compatible measures to reduce purse seine fishing mortality on BE in their EEZ (s. 17)</p> <p>f. in HS, purse seine in HS area bounded by 20 deg N and 20 deg S closed to fishing on FADs between 1 July and 30 Sept(s. 19)</p> <p>g. during this period, all purse seine vessels required to have observer; otherwise return to port (s. 19)</p> <p>h. CCMs to submit to Comm their Management Plans for use of FADS by 1 July 2009 (s. 23); includes marking and ID, electronic monitoring, registration, position reporting, limits to deployment</p> <p>i. CCMs independently or with industry, reporting thru SC and TCC, shall explore and evaluate mitigation measures for juvenile BE and YF taken around FADs</p> <p>j. Catch Retention: CCMs shall require purse seine vessels fishing in EEZ/HS within 20 deg N and 20 deg S from 1 Jan 2010, to retain onboard and land/tranship in port all BE, SJ, or YF tuna (s. 27)</p> <p>k. Monitoring: All purse seine vessels fishing in area 20 deg N and 20 deg S exclusively on HS, or in HS and waters under national jurisdiction, or in waters under national jurisdiction of 2 or more states, shall carry observer from ROP, effective 1 Jan</p> <p>l. Longline fishery The total catch of BE by longline fishing gear to be reduced 70% of average 2001-2004 (s. 31) The total catch of YF is not to be increased in longline fishery from 2001-2004 (s. 31)</p> <p>m. Other Effort Restrictions CCMs shall take necessary measures to ensure total capacity for BE and YF, including purse seine but excluding artisanal fisheries and those taking less than 2000 tonnes of BE/YF, shall not exceed level of period for 2001-2004 (s. 39) CCMs shall provide SC with estimates of fishing effort for these and other fisheries or proposals for provision of effort data for 2009 and future years (s. 39) CCMs shall provide catch and effort data and species composition data for all fleets in format required by Comm (s. 40)</p> <p>n. Port Controls</p>	<p><i>FAO 236 s. 2010</i></p> <p><i>FAO 236 s. 2010</i></p> <p><i>FAO 236 s. 2010</i></p> <p><i>FAO 224, s. 2004 (Tuna Productivity Project); FAO 236 s. 2010</i></p> <p><i>FAO 224, s. 2004 (Tuna Productivity Project); FAO 236 s. 2010</i></p> <p><i>FAO 236 s. 2010</i></p> <p><i>FAO 236 s. 2010</i></p> <p><i>FAO 224, s. 2004 (Tuna Productivity Project)</i></p> <p><i>FAO 236 s. 2010</i></p> <p><i>FAO 236 s. 2010</i></p> <p><i>FAO 188, s. 1993 (tuna purse seine, mesh net size); FAO 226, s. 2008 (mesh net size and trade in small tuna)</i></p>	<p><i>work in progress</i></p> <p><i>not applicable; There are no longliners active in the Convention Area.</i></p>

WCPFC MEMBER OBLIGATIONS	PHILIPPINE LAW / POLICY / PRACTICE	REMARKS
<p>CCM shall prohibit landings, transshipment, and commercial transactions in tuna and tuna products originating from activities contra to CMMs (s. 42)</p> <p>CCM to report annually to Comm, the outcomes of monitoring at landing and transshipment points to assess catch (s. 43)</p> <p>o. Reporting and review</p> <p>All CCMs will report at each regular session of TCSC, on implementation of this measure for their fishing vessels (s. 45)</p>	<p><i>FAO 198 on transshipment</i></p> <p><i>FAO 198 on transshipment; Catch Documentation Scheme implemented by BFAR.</i></p> <p><i>BFAR Annual Report</i></p>	
<p>2.3.5. Swordfish (CMM 2009-03)</p> <p>a. CCMs shall exercise restraint through limiting number of vessels for swordfish in the Conv Area south of 20 deg S, to the number in one year between 2000-2005 (s. 1)</p> <p>b. CCMs shall exercise restraint through limiting amount of swordfish caught by flag fishing vessels in Conv Area south of 20 deg S, to amount caught in one year in 2000-2006 (s/ 2)</p> <p>c. CCMs shall not shift their fishing effort for swordfish to area north of 20 deg S (s. 3)</p> <p>d. CCMs shall cooperate to protect long-term sustainability and economic viability of the fisheries for swordfish in SW Pacific, particularly cooperate on research</p> <p>e. CCMs shall report annually total number of vessels that fished for swordfish and total catch of swordfish (s. 8)</p> <p>f. CCMs nominate maximum total catch of swordfish no later than 30 Apr 2010, not more than verified catch for any one year between 2000-2006 (.s 4)</p> <p>g. if Comm determines that CCM vessels exceed total catch specified for them, the CCM will be subject to reduction in catch limit equal to that exceeded amount, applicable following year (s. 9)</p>		<p><i>not applicable</i></p>
<p>2.3.6. Sharks (CMM 2009-04)</p> <p>a. Implement IPOA Sharks (s. 1)</p> <p>b. Advise Comm of implementation of IPOA Sharks, including assessment/status of NPOA (s. 2)</p> <p>c. Report should include measures to minimize waste and discards from shark catches and encourage live release of incidental catch (s. 3)</p> <p>d. Report should include key shark species identified by SC in their annual reporting to Comm on annual catch and fishing effort statistics (s. 4)</p> <p>e. Require fishers to fully utilize any retained catches of sharks (s. 6)</p> <p>f. Require flag vessels to have on board fins that total no more than 5% of weight of sharks onboard up to first landing / transshipment (s. 6)</p> <p>g. Prohibit their fishing vessels from retaining onboard, transshipping, landing, or trading any fins harvested in contravention of this CMM (s. 9)</p> <p>h. Take measures to encourage the release of live sharks incidentally caught and not used for food or other purposes (s. 10)</p>		<p><i>There is an existing NPOA-Sharks which has been approved.</i></p> <p><i>Any shark catches are fully utilized.</i></p>

WCPFC MEMBER OBLIGATIONS	PHILIPPINE LAW / POLICY / PRACTICE	REMARKS
<p>i. Advise Comm in their annual report, on implementation of CMM and alternative measures if any (s. 12)</p> <p>2.3.7. Pacific Bluefin Tuna (CMM 2009-07)</p> <p>2.4. Soft obligations / Resolutions</p> <p>2.4.1. Incidental catch of seabirds (CMM 2005-01)</p> <p>a. CCMS shall, to extent possible, implement IPOA-Seabirds (s. 1)</p> <p>b. CCMS shall report to Comm on their implementation of IPOA-Seabirds, including national action plans (s. 2)</p> <p>c. CCMS to provide Comm all available info on interactions with seabirds (s. 3) to assist Scientific Committee</p> <p>2.3.2. To mitigate impact of HMS fishing on sea turtles (Reso 2005-04)</p> <p>a. CCMS to implement FAO Guidelines to Reduce Sea Turtle Mortality in Fishing Operations (s. 1)</p> <p>2.3.3. Non-target Species (Reso 2005-03)</p> <p>a. CCMS to encourage their vessels operating in Conv Area to avoid to the extent possible, capture of all non-target fish species that are not to be retained (s. 1)</p> <p>b. CCMS to encourage their vessels to promptly release non-retained non-target species to water unharmed (s. 2)</p> <p>2.3.4. Reduction of Overcapacity (Reso 2005-02)</p> <p>a. CCMS to work together to ensure that beneficial owners reduce overcapacity by 31 Dec 2007, through reduction of equivalent fishing capacity of other fishing vessels operating in the Conv Area (s. 1)</p> <p>b. CCMS to ensure no adverse effect to coastal processing and transshipment facilities and associated vessels of SIDS/PTs, nor legal investments in FFA countries (s. 2)</p> <p>2.3.5. Aspirations of SIDS/PTs (Reso 2008-01)</p> <p>a. CCMS shall cooperate to enhance ability of developing States, particularly least developed, to develop their own fisheries for HMS including but not limited to high seas in Conv Area (s.1)</p> <p>b. CCMS shall make concerted efforts and consider innovative options to reduce or restructure their fleet so as to accommodate SIDS/PTs (s. 2)</p> <p>c. Developed CCMSs shall cooperate in investments in fishing vessels/activities/facilities in SIDS/PTs (s. 3)</p> <p>d. CCMS commit to ensure that by 2018, domestic fisheries and related industries of developing SIDS/PTs accounts for greater share of benefits than what is currently realized of total catch and value of HMS in Conv Area (s. 4)</p> <p>e. CCMS ensure measures do not result in transferring disproportionate burden of conservation action onto SIDS/PTs</p> <p>f. CCMS shall implement measures that enhance ability of SIDS/PTs to develop their own fisheries for HMS</p>	<p>FAO 223 s. 2003, FAO 223-1 s. 2004 (CFVGL moratorium)</p>	<p>not applicable</p> <p>not applicable</p>

<b>WCPFC MEMBER OBLIGATIONS</b>	<b><i>PHILIPPINE LAW / POLICY / PRACTICE</i></b>	<b><i>REMARKS</i></b>
g. Developed CCMs shall ensure that CMMs shall not be implemented to constrain coastal processing and transshipment facilities/vessels of SIDS/PTs, nor undermine legitimate investment in FFA member countries (s. 6)		

**Republic of the Philippines  
Congress of the Philippines  
Metro Manila**

**Tenth Congress**

**Republic Act No. 8550**

**AN ACT PROVIDING FOR THE DEVELOPMENT, MANAGEMENT AND  
CONSERVATION OF THE FISHERIES AND AQUATIC RESOURCES,  
INTEGRATING ALL LAWS PERTINENT THERETO, AND FOR OTHER  
PURPOSES**

*Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled::*

**Section 1. Title.** - This Act shall be known as "*The Philippine Fisheries Code of 1998.*"

**CHAPTER I**

**Declaration of Policy and Definitions**

**Section 2. Declaration of Policy.** - It is hereby declared the policy of the State:

(a) to achieve food security as the overriding consideration in the utilization, management, development, conservation and protection of fishery resources in order to provide the food needs of the population. A flexible policy towards the attainment of food security shall be adopted in response to changes in demographic trends for fish, emerging trends in the trade of fish and other aquatic products in domestic and international markets, and the law of supply and demand;

(b) to limit access to the fishery and aquatic resources of the Philippines for the exclusive use and enjoyment of Filipino citizens;

(c) to ensure the rational and sustainable development, management and conservation of the fishery and aquatic resources in Philippine waters including the Exclusive Economic Zone (EEZ) and in the adjacent high seas, consistent with the primordial objective of maintaining a sound ecological balance, protecting and enhancing the quality of the environment;

(d) to protect the rights of fisherfolk, especially of the local communities with priority to municipal fisherfolk, in the preferential use of the municipal waters. Such preferential use, shall be based on, but not limited to, Maximum Sustainable Yield (MSY) or Total Allowable Catch (TAC) on the basis of resources and ecological conditions, and shall be consistent with our commitments under international treaties and agreements;

(e) to provide support to the fishery sector, primarily to the municipal fisherfolk, including women and youth sectors, through appropriate technology and research,

adequate financial, production, construction of post-harvest facilities, marketing assistance, and other services. The protection of municipal fisherfolk against foreign intrusion shall extend to offshore fishing grounds. Fishworkers shall receive a just share for their labor in the utilization of marine and fishery resources;

(f) to manage fishery and aquatic resources, in a manner consistent with the concept of an integrated coastal area management in specific natural fishery management areas, appropriately supported by research, technical services and guidance provided by the State; and

(g) to grant the private sector the privilege to utilize fishery resources under the basic concept that the grantee, licensee or permittee thereof shall not only be a privileged beneficiary of the State but also active participant and partner of the Government in the sustainable development, management, conservation and protection of the fishery and aquatic resources of the country.

The state shall ensure the attainment of the following objectives of the fishery sector:

1. Conservation, protection and sustained management of the country's fishery and aquatic resources;
2. Poverty alleviation and the provision of supplementary livelihood among municipal fisherfolk;
3. Improvement of productivity of aquaculture within ecological limits;
4. Optimal utilization of offshore and deep-sea resources; and
5. Upgrading of post-harvest technology.

**Section 3. *Application of its Provisions.*** - The provisions of this Code shall be enforced in:

(a) all Philippine waters including other waters over which the Philippines has sovereignty and jurisdiction, and the country's 200-nautical mile Exclusive Economic Zone (EEZ) and continental shelf;

(b) all aquatic and fishery resources whether inland, coastal or offshore fishing areas, including but not limited to fishponds, fishpens/cages; and

(c) all lands devoted to aquaculture, or businesses and activities relating to fishery, whether private or public lands.

**Section 4. *Definition of Terms.*** - As used in this Code, the following terms and phrases shall mean as follows:

1. Ancillary Industries - firms or companies related to the supply, construction and maintenance of fishing vessels, gears, nets and other fishing paraphernalia; fishery machine shops; and other facilities such as hatcheries, nurseries, feed plants, cold storage and refrigeration, processing plants and other pre-harvest and post-harvest facilities.



2. Appropriate Fishing Technology - adaptable technology, both in fishing and ancillary industries, that is ecologically sound, locally source-based and labor intensive.
3. Aquaculture - fishery operations involving all forms of raising and culturing fish and other fishery species in fresh, brackish and marine water areas.
4. Aquatic Pollution - the introduction by human or machine, directly or indirectly, of substances or energy to the aquatic environment which result or is likely to result in such deleterious effects as to harm living and non-living aquatic resources, pose potential and/or real hazard to human health, hindrance to aquatic activities such as fishing and navigation, including dumping/disposal of waste and other marine litters, discharge of petroleum or residual products of petroleum or carbonaceous materials/substances, and other, radioactive, noxious or harmful liquid, gaseous or solid substances, from any water, land or air transport or other human-made structure. Deforestation, unsound agricultural practices such as the use of banned chemicals and excessive use of chemicals, intensive use of artificial fish feed, and wetland conversion, which cause similar hazards and deleterious effects shall also constitute aquatic pollution.
5. Aquatic Resources - includes fish, all other aquatic flora and fauna and other living resources of the aquatic environment, including, but not limited to, salt and corals.
6. Artificial Reefs - any structure of natural or man-made materials placed on a body of water to serve as shelter and habitat, source of food, breeding areas for fishery species and shoreline protection.
7. Catch Ceilings - refer to the annual catch limits allowed to be taken, gathered or harvested from any fishing area in consideration of the need to prevent overfishing and harmful depletion of breeding stocks of aquatic organisms.
8. Closed Season - the period during which the taking of specified fishery species by a specified fishing gear is prohibited in a specified area or areas in Philippine waters.
9. Coastal Area/Zone - is a band of dry land and adjacent ocean space (water and submerged land. in which terrestrial processes and uses directly affect oceanic processes and uses, and vice versa; its geographic extent may include areas within a landmark limit of one (1. kilometer from the shoreline at high tide to include mangrove swamps, brackish water ponds, nipa swamps, estuarine rivers, sandy beaches and other areas within a seaward limit of 200 meters isobath to include coral reefs, algal flats, seagrass beds and other soft-bottom areas.
10. Commercial Fishing - the taking of fishery species by passive or active gear for trade, business & profit beyond subsistence or sports fishing, to be further classified as:
  - (1) Small scale commercial fishing - fishing with passive or active gear utilizing fishing vessels of 3.1 gross tons (GT) up to twenty (20) GT;

(2) Medium scale commercial fishing - fishing utilizing active gears and vessels of 20.1 GT up to one hundred fifty (150) GT; and

(3) Large commercial fishing - fishing utilizing active gears and vessels of more than one hundred fifty (150) GT.

11. Commercial Scale - a scheme of producing a minimum harvest per hectare per year of milkfish or other species including those raised in pens, cages, and tanks to be determined by the Department in consultation with the concerned sectors;

12. Coral - the hard calcareous substance made up of the skeleton of marine coelenterate polyps which include reefs, shelves and atolls or any of the marine coelenterate animals living in colonies where their skeletons form a stony mass. They include: (a. skeletons of anthozoan coelenterates characterized as having a rigid axis of compact calcareous or horny spicules, belonging to the genus corallium as represented by the red, pink, and white corals which are considered precious corals; (b. skeletons of anthozoan coelenterates characterized by thorny, horny axis such as the antipatharians represented by the black corals which are considered semi-precious corals; and (c. ordinary corals which are any kind of corals that are not precious nor semi-precious.

13. Coral Reef - a natural aggregation of coral skeleton, with or without living coral polyps, occurring in intertidal and subtidal marine waters.

14. Demarcated Areas - boundaries defined by markers and assigned exclusively to specific individuals or organizations for certain specified and limited uses such as:

(a) Aquaculture, sea ranching and sea farming;

(b) Fish aggregating devices;

(c) Fixed and passive fishing gears; and

(d) Fry and fingerlings gathering.

15. Department - shall mean the Department of Agriculture.

16. Electrofishing - the use of electricity generated by batteries, electric generators and other source of electric power to kill, stupefy, disable or render unconscious fishery species, whether or not the same are subsequently recovered.

17. Endangered Rare and/or Threatened Species - aquatic plants, animals, including some varieties of corals and sea shells in danger of extinction as provided for in existing fishery laws, rules and regulations or in the Protected Areas and Wildlife Bureau of the Department of Environment and Natural Resources (DENR. and in the Convention on the International Trade of Endangered Species of Flora and Fauna (CITES).

18. Exclusive Economic Zone (EEZ. - an area beyond and adjacent to the territorial sea which shall not extend beyond 200 nautical miles from the baselines as defined under existing laws.

19. FARMCs - the Fisheries and Aquatic Resources Management Councils.
20. Farm-to-Market Roads - shall include roads linking the fisheries production sites, coastal landing points and other post-harvest facilities to major market and arterial roads and highways.
21. Fine Mesh Net - net with mesh size of less than three centimeters (3 cm.. measured between two (2. opposite knots of a full mesh when stretched or as otherwise determined by the appropriate government agency.
22. Fish and Fishery/Aquatic Products - include not only finfish but also mollusks, crustaceans, echinoderms, marine mammals, and all other species of aquatic flora and fauna and all other products of aquatic living resources in any form.
23. Fish Cage - refers to an enclosure which is either stationary or floating made up of nets or screens sewn or fastened together and installed in the water with opening at the surface or covered and held in a place by wooden/bamboo posts or various types of anchors and floats.
24. Fish Corral or "Baklad" - a stationary weir or trap devised to intercept and capture fish consisting of rows of bamboo stakes, plastic nets and other materials fenced with split blood mattings or wire mattings with one or more enclosures, usually with easy entrance but difficult exit, and with or without leaders to direct the fish to the catching chambers, purse or bags.
25. Fish fingerlings - a stage in the life cycle of the fish measuring to about 6-13 cm. depending on the species.
26. Fish fry - a stage at which a fish has just been hatched usually with sizes from 1- 2.5 cm.
27. Fish pen - an artificial enclosure constructed within a body of water for culturing fish and fishery/aquatic resources made up of poles closely arranged in an enclosure with wooden materials, screen or nylon netting to prevent escape of fish.
28. Fisherfolk - people directly or personally and physically engaged in taking and/or culturing and processing fishery and/or aquatic resources.
29. Fisherfolk Cooperative - a duly registered association of fisherfolk with a common bond of interest, who have voluntarily joined together to achieve a lawful common social or economic end, making equitable contribution to the capital requirement and accepting a fair share of the risks and benefits of the undertakings in accordance with universally accepted cooperative principles.
30. Fisherfolk Organization - an organized group, association, federation, alliance or an institution of fisherfolk which has at least fifteen (15. members, a set of officers, a constitution and by-laws, an organizational structure and a program of action.
31. Fisheries - refers to all activities relating to the act or business of fishing, culturing, preserving, processing, marketing, developing, conserving and managing

aquatic resources and the fishery areas, including the privilege to fish or take aquatic resource thereof.

32. Fish Pond - a land-based facility enclosed with earthen or stone material to impound water for growing fish.

33. Fishing Boat/Gear License - a permit to operate specific types of fishing boat/gear for specific duration in areas beyond municipal waters for demersal or pelagic fishery resources.

34. Fishery Management Areas - a bay, gulf, lake or any other fishery area which may be delineated for fishery resource management purposes.

35. Fishery Operator - one who owns and provides the means including land, labor, capital, fishing gears and vessels, but does not personally engage in fishery.

36. Fishery Refuge and Sanctuaries - a designated area where fishing or other forms of activities which may damage the ecosystem of the area is prohibited and human access may be restricted.

37. Fishery Reserve - a designated area where activities are regulated and set aside for educational and research purposes.

38. Fishery Species - all aquatic flora and fauna including, but not restricted to, fish, algae, coelenterates, mollusks, crustaceans, echinoderms and cetaceans.

39. Fishing - the taking of fishery species from their wild state of habitat, with or without the use of fishing vessels.

40. Fishing gear - any instrument or device and its accessories utilized in taking fish and other fishery species.

(a) Active fishing gear - is a fishing device characterized by gear movements, and/or the pursuit of the target species by towing, lifting, and pushing the gears, surrounding, covering, dredging, pumping and scaring the target species to impoundments; such as, but not limited to, trawl, purse seines, Danish seines, bag nets, paaling, drift gill net and tuna longline.

(b) Passive fishing gear - is characterized by the absence of gear movements and/or the pursuit of the target species; such as, but not limited to, hook and line, fishpots, traps and gill nets across the path of the fish.

41. Fishing vessel - any boat, ship or other watercraft equipped to be used for taking of fishery species or aiding or assisting one (1. or more vessels in the performance of any activity relating to fishing, including, but not limited to, preservation, supply, storage, refrigeration, transportation and/or processing.

42. Fishing with Explosives - the use of the dynamite, other explosives or other chemical compounds that contain combustible elements or ingredients which upon ignition by friction, concussion, percussion or detonation of all or parts of the compound, will kill, stupefy, disable or render unconscious any fishery species. It also

refers to the use of any other substance and/or device which causes an explosion that is capable of producing the said harmful effects on any fishery species and aquatic resources and capable of damaging and altering the natural habitat.

43. Fishing with Noxious or Poisonous Substances - the use of any substance, plant extracts or juice thereof, sodium cyanide and/or cyanide compounds or other chemicals either in a raw or processed form, harmful or harmless to human beings, which will kill, stupefy, disable or render unconscious any fishery species and aquatic resources and capable of damaging and altering the natural habitat.

44. Fishworker - a person regularly or not regularly employed in commercial fishing and related industries, whose income is either in wage, profit-sharing or stratified sharing basis, including those working in fish pens, fish cages, fish corrals/traps, fishponds, prawn farms, sea farms, salt beds, fish ports, fishing boat or trawlers, or fish processing and/or packing plants. Excluded from this category are administrators, security guards and overseers.

45. Food Security - refers to any plan, policy or strategy aimed at ensuring adequate supplies of appropriate food at affordable prices. Food security may be achieved through self-sufficiency (i.e. ensuring adequate food supplies from domestic production), through self-reliance (i.e. ensuring adequate food supplies through a combination of domestic production and importation), or through pure importation.

46. Foreshore Land - a string of land margining a body of water; the part of a seashore between the low-water line usually at the seaward margin of a low tide terrace and the upper limit of wave wash at high tide usually marked by a beach scarp or berm.

47. Fully-developed Fishpond Area - a clean leveled area enclosed by dikes, at least one foot higher than the highest floodwater level in the locality and strong enough to resist pressure at the highest flood tide; consists of at least a nursery pond, a transition pond, a rearing pond or a combination of any or all said classes of ponds, and a functional water control system and producing in a commercial scale.

48. Gross Tonnage - includes the underdeck tonnage, permanently enclosed spaces above the tonnage deck, except for certain exemptions. In broad terms, all the vessel's 'closed-in' spaces expressed in volume terms on the bases of one hundred cubic feet (that equals one gross ton).

49. Inland Fishery - the freshwater fishery and brackishwater fishponds.

50. Lake - an inland body of water, an expanded part of a river, a reservoir formed by a dam, or a lake basin intermittently or formerly covered by water.

51. Limited Access - a fishery policy by which a system of equitable resource and allocation is established by law through fishery rights granting and licensing procedure as provided by this Code.

52. Mangroves - a community of intertidal plants including all species of trees, shrubs, vines and herbs found on coasts, swamps, or border of swamps.

53. Maximum Sustainable Yield (MSY) - is the largest average quantity of fish that can be harvested from a fish stocks/resource within a period of time (e.g. one year) on a sustainable basis under existing environmental conditions.

54. Migratory species - refers to any fishery species which in the course of their life could travel from freshwater to marine water or vice versa, or any marine species which travel over great distances in waters of the ocean as part of their behavioral adaptation for survival and speciation:

(a) Anadromous species - marine fishes which migrate to freshwater areas to spawn;

(b) Catadromous species - freshwater fishes which migrate to marine areas to spawn.

55. Monitoring, control and surveillance -

(a) Monitoring - the requirement of continuously observing: (1) fishing effort which can be expressed by the number of days or hours of fishing, number of fishing gears and number of fisherfolk; (2) characteristics of fishery resources; and (3) resource yields (catch);

(b) Control - the regulatory conditions (legal framework) under which the exploitation, utilization and disposition of the resources may be conducted; and

(c) Surveillance - the degree and types of observations required to maintain compliance with regulations.

56. Municipal fisherfolk - persons who are directly or indirectly engaged in municipal fishing and other related fishing activities.

57. Municipal fishing - refers to fishing within municipal waters using fishing vessels of three (3) gross tons or less, or fishing not requiring the use of fishing vessels.

58. Municipal waters - include not only streams, lakes, inland bodies of water and tidal waters within the municipality which are not included within the protected areas as defined under Republic Act No. 7586 (The NIPAS Law), public forest, timber lands, forest reserves or fishery reserves, but also marine waters included between two (2) lines drawn perpendicular to the general coastline from points where the boundary lines of the municipality touch the sea at low tide and a third line parallel with the general coastline including offshore islands and fifteen (15) kilometers from such coastline. Where two (2) municipalities are so situated on opposite shores that there is less than thirty (30) kilometers of marine waters between them, the third line shall be equally distant from opposite shore of the respective municipalities.

59. Non-governmental organization (NGO) - an agency, institution, a foundation or a group of persons whose purpose is to assist peoples organizations/associations in various ways including, but not limited to, organizing, education, training, research and/or resource accessing.

60. Payao - a fish aggregating device consisting of a floating raft anchored by a weighted line with suspended materials such as palm fronds to attract pelagic and schooling species common in deep waters.
61. Pearl Farm Lease - public waters leased for the purpose of producing cultured pearls.
62. People's Organization - a bona fide association of citizens with demonstrated capacity to promote the public interest and with identifiable leadership, membership and structure. Its members belong to a sector/s who voluntarily band themselves together to work for and by themselves for their own upliftment, development and greater good.
63. Person - natural or juridical entities such as individuals, associations, partnership, cooperatives or corporations.
64. Philippine waters - include all bodies of water within the Philippine territory such as lakes, rivers, streams, creeks, brooks, ponds, swamps, lagoons, gulfs, bays and seas and other bodies of water now existing or which may hereafter exist in the provinces, cities, municipalities, and barangays and the waters around, between and connecting the islands of the archipelago regardless of their breadth and dimensions, the territorial sea, the sea beds, the insular shelves, and all other waters over which the Philippines has sovereignty and jurisdiction including the 200-nautical miles Exclusive Economic Zone and the continental shelf.
65. Post-harvest facilities - these facilities include, but are not limited to, fishport, fishlanding, ice plants and cold storages, fish processing plants.
66. Purse Seine - a form of encircling net having a line at the bottom passing through rings attached to the net, which can be drawn or pursed. In general, the net is set from a boat or pair of boats around the school of fish. The bottom of the net is pulled closed with the purse line. The net is then pulled aboard the fishing boat or boats until the fish are concentrated in the bunt or fish bag.
67. Resource Rent - the difference between the value of the products produced from harvesting a publicly owned resource less the cost of producing it, where cost includes the normal return to capital and normal return to labor.
68. Sea farming - the stocking of natural or hatchery-produced marine plants or animals, under controlled conditions, for purposes of rearing and harvesting, but not limited to commercially-important fishes, mollusks (such as pearl and giant clam culture), including seaweeds and seagrasses.
69. Sea ranching - the release of the young of fishery species reared in hatcheries and nurseries into natural bodies of water for subsequent harvest at maturity or the manipulation of fishery habitat, to encourage the growth of the wild stocks.
70. Secretary - the Secretary of the Department of Agriculture.

71. Superlight - also called magic light, is a type of light using halogen or metal halide bulb which may be located above the sea surface or submerged in the water. It consists of a ballast, regulator, electric cable and socket. The source of energy comes from a generator, battery or dynamo coupled with the main engine.

72. Total Allowable Catch (TAC. - the maximum harvest allowed to be taken during a given period of time from any fishery area, or from any fishery species or group of fishery species, or a combination of area and species and normally would not exceed the MSY.

73. Trawl - an active fishing gear consisting of a bag shaped net with or without otter boards to open its opening which is dragged or towed along the bottom or through the water column to take fishery species by straining them from the water, including all variations and modifications of trawls (bottom, mid-water, and baby trawls) and tow nets.

## CHAPTER II

### **Utilization, Management, Development, Conservation and Allocation System of Fisheries and Aquatic Resources**

**Section 5. *Use of Philippine Waters.*** - The use and exploitation of the fishery and aquatic resources in Philippine waters shall be reserved exclusively to Filipinos: Provided, however, That research and survey activities may be allowed under strict regulations, for purely research, scientific, technological and educational purposes that would also benefit Filipino citizens.

**Section 6. *Fees and Other Fishery Charges.*** - The rentals for fishpond areas covered by the Fishpond Lease Agreement (FLA) and license fees for Commercial Fishing Boat Licenses (CFBL) shall be set at levels that reflect resource rent accruing from the utilization of resources and shall be determined by the Department: Provided, That the Department shall also prescribe fees and other fishery charges and issue the corresponding license or permit for fishing gear, fishing accessories and other fishery activities beyond the municipal waters: Provided, further, That the license fees of fishery activity in municipal waters shall be determined by the Local Government Units (LGUs) in consultation with the FARMCs. The FARMCs may also recommend the appropriate license fees that will be imposed.

**Section 7. *Access to Fishery Resources.*** - The Department shall issue such number of licenses and permits for the conduct of fishery activities subject to the limits of the MSY of the resource as determined by scientific studies or best available evidence. Preference shall be given to resource users in the local communities adjacent or nearest to the municipal waters.

**Section 8. *Catch Ceiling Limitations.*** - The Secretary may prescribe limitations or quota on the total quantity of fish captured, for a specified period of time and specified area based on the best available evidence. Such a catch ceiling may be imposed per species of fish whenever necessary and practicable: Provided, however, That in municipal waters and fishery management areas, and waters under the jurisdiction of special agencies, catch ceilings may be established upon the concurrence and approval or recommendation of such



special agency and the concerned LGU in consultation with the FARMC for conservation or ecological purposes.

**Section 9. *Establishment of Closed Season.*** - The Secretary may declare, through public notice in at least two (2) newspapers of general circulation or in public service announcements, whichever is applicable, at least five (5) days before the declaration, a closed season in any or all Philippine waters outside the boundary of municipal waters and in bays, for conservation and ecological purposes. The Secretary may include waters under the jurisdiction of special agencies, municipal waters and bays, and/or other areas reserved for the use of the municipal fisherfolk in the area to be covered by the closed season: Provided, however, That this shall be done only upon the concurrence and approval or recommendation of such special agency and the concerned LGU and FARMC: Provided, further, That in municipal waters, fishery management areas and other areas reserved for the use of the municipal fisherfolk, closed season may be established by the concerned LGU in consultation with the FARMC for conservation or ecological purposes. The FARMCs may also recommend the establishment of closed seasons in municipal waters, fisheries management and other areas reserved for the use of the municipal fisherfolk.

**Section 10. *Introduction of Foreign Aquatic Species.*** - No foreign finfish, mollusk, crustacean or aquatic plants shall be introduced in Philippine waters without a sound ecological, biological and environmental justification based on scientific studies subject to the bio-safety standard as provided for by existing laws: Provided, however, That the Department may approve the introduction of foreign aquatic species for scientific/research purposes.

**Section 11. *Protection of Rare, Threatened and Endangered Species.*** - The Department shall declare closed seasons and take conservation and rehabilitation measures for rare, threatened and endangered species, as it may determine, and shall ban the fishing and/or taking of rare, threatened and/or endangered species, including their eggs/offspring as identified by existing laws in concurrence with concerned government agencies.

**Section 12. *Environmental Impact Statement (EIS).*** - All government agencies as well as private corporations, firms and entities who intend to undertake activities or projects which will affect the quality of the environment shall be required to prepare a detailed Environmental Impact Statement (EIS) prior to undertaking such development activity. The preparation of the EIS shall form an integral part of the entire planning process pursuant to the provisions of Presidential Decree No. 1586 as well as its implementing rules and regulations.

**Section 13. *Environmental Compliance Certificate (ECC).*** - All Environmental Impact Statements (EIS) shall be submitted to the Department of Environment and Natural Resources (DENR) for review and evaluation. No person, natural or juridical, shall undertake any development project without first securing an Environmental Compliance Certificate (ECC) from the Secretary of the DENR.

**Section 14. *Monitoring, Control and Surveillance of Philippine Waters.*** - A monitoring, control and surveillance system shall be established by the Department in coordination with

LGUs, FARMCs, the private sector and other agencies concerned to ensure that the fisheries and aquatic resources in Philippine waters are judiciously and wisely utilized and managed on a sustainable basis and conserved for the benefit and enjoyment exclusively of Filipino citizens.

**Section 15. *Auxiliary Invoices.*** - All fish and fishery products must have an auxiliary invoice to be issued by the LGUs or their duly authorized representatives prior to their transport from their point of origin to their point of destination in the Philippines and/or export purposes upon payment of a fee to be determined by the LGUs to defray administrative costs therefor.

## **ARTICLE I MUNICIPAL FISHERIES**

**Section 16. *Jurisdiction of Municipal/City Government.*** - The municipal/city government shall have jurisdiction over municipal waters as defined in this Code. The municipal/city government, in consultation with the FARMC shall be responsible for the management, conservation, development, protection, utilization, and disposition of all fish and fishery/aquatic resources within their respective municipal waters.

The municipal/city government may, in consultation with the FARMC, enact appropriate ordinances for this purpose and in accordance with the National Fisheries Policy. The ordinances enacted by the municipality and component city shall be reviewed pursuant to Republic Act No. 7160 by the sanggunian of the province which has jurisdiction over the same.

The LGUs shall also enforce all fishery laws, rules and regulations as well as valid fishery ordinances enacted by the municipal/city council.

The management of contiguous fishery resources such as bays which straddle several municipalities, cities or provinces, shall be done in an integrated manner, and shall not be based on political subdivisions of municipal waters in order to facilitate their management as single resource systems. The LGUs which share or border such resources may group themselves and coordinate with each other to achieve the objectives of integrated fishery resource management. The Integrated Fisheries and Aquatic Resources Management Councils (FARMCs) established under Section 76 of this Code shall serve as the venues for close collaboration among LGUs in the management of contiguous resources.

**Section 17. *Grant of Fishing Privileges in Municipal Waters.*** - The duly registered fisherfolk organizations/cooperatives shall have preference in the grant of fishery rights by the Municipal/City Council pursuant to Section 149 of the Local Government Code: Provided, That in areas where there are special agencies or offices vested with jurisdiction over municipal waters by virtue of special laws creating these agencies such as, but not limited to, the Laguna Lake Development Authority and the Palawan Council for Sustainable Development, said offices and agencies shall continue to grant permits for proper management and implementation of the aforementioned structures.

**Section 18. *Users of Municipal Waters.*** - All fishery related activities in municipal waters, as defined in this Code, shall be utilized by municipal fisherfolk and their cooperatives/organizations who are listed as such in the registry of municipal fisherfolk.

The municipal or city government, however, may, through its local chief executive and acting pursuant to an appropriate ordinance, authorize or permit small and medium commercial fishing vessels to operate within the ten point one (10.1) to fifteen (15) kilometer area from the shoreline in municipal waters as defined herein, provided, that all the following are met:

- (a) no commercial fishing in municipal waters with depth less than seven (7) fathoms as certified by the appropriate agency;
- (b) fishing activities utilizing methods and gears that are determined to be consistent with national policies set by the Department;
- (c) prior consultation, through public hearing, with the M/CFARMC has been conducted; and
- (d) the applicant vessel as well as the shipowner, employer, captain and crew have been certified by the appropriate agency as not having violated this Code, environmental laws and related laws.

In no case shall the authorization or permit mentioned above be granted for fishing in bays as determined by the Department to be in an environmentally critical condition and during closed season as provided for in Section 9 of this Code.

**Section 19. *Registry of Municipal Fisherfolk.*** - The LGU shall maintain a registry of municipal fisherfolk, who are fishing or may desire to fish in municipal waters for the purpose of determining priorities among them, of limiting entry into the municipal waters, and of monitoring fishing activities an/or other related purposes: Provided, That the FARMC shall submit to the LGU the list of priorities for its consideration.

Such list or registry shall be updated annually or as may be necessary, and shall be posted in barangay halls or other strategic locations where it shall be open to public inspection, for the purpose of validating the correctness and completeness of the list. The LGU, in consultation with the FARMCs, shall formulate the necessary mechanisms for inclusion or exclusion procedures that shall be most beneficial to the resident municipal fisherfolk. The FARMCs may likewise recommend such mechanisms.

The LGUs shall also maintain a registry of municipal fishing vessels by type of gear and other boat particulars with the assistance of the FARMC.

**Section 20. *Fisherfolk Organizations and/or Cooperatives.*** - Fisherfolk organizations/cooperatives whose members are listed in the registry of municipal fisherfolk, may be granted use of demarcated fishery areas to engage in fish capture, mariculture and/or fish farming: Provided, however, That an organization/cooperative member whose household is already in possession of a fishery right other than for fish capture cannot enjoy the fishing rights granted to the organization or cooperative.

**Section 21. *Priority of Resident Municipal Fisherfolk.*** - Resident municipal fisherfolk of the municipality concerned and their organizations/cooperatives shall have priority to exploit municipal and demarcated fishery areas of the said municipality.

**Section 22. *Demarcated Fishery Right.*** - The LGU concerned shall grant demarcated fishery rights to fishery organizations/cooperatives for mariculture operation in specific areas identified by the Department.

**Section 23. *Limited Entry Into Overfished Areas.*** - Whenever it is determined by the LGUs and the Department that a municipal water is overfished based on available data or information or in danger of being overfished, and that there is a need to regenerate the fishery resources in that water, the LGU shall prohibit or limit fishery activities in the said waters.

**Section 24. *Support to Municipal Fisherfolk.*** - The Department and the LGUs shall provide support to municipal fisherfolk through appropriate technology and research, credit, production and marketing assistance and other services such as, but not limited to training for additional/supplementary livelihood.

**Section 25. *Rights and Privileges of Fishworkers.*** - The fishworkers shall be entitled to the privileges accorded to other workers under the Labor Code, Social Security System and other benefits under other laws or social legislation for workers: Provided, That fishworkers on board any fishing vessels engaged in fishing operations are hereby covered by the Philippine Labor Code, as amended.

## ARTICLE II COMMERCIAL FISHERIES

**Section 26. *Commercial Fishing Vessel License and Other Licenses.*** - No person shall operate a commercial fishing vessel, pearl fishing vessel or fishing vessel for scientific, research or educational purposes, or engage in any fishery activity, or seek employment as a fishworker or pearl diver without first securing a license from the Department, the period of which shall be prescribed by the Department: Provided, That no such license shall be required of a fishing vessel engaged in scientific, research or educational purposes within Philippine waters pursuant to an international agreement of which the Philippines is a signatory and which agreement defines the status, privileges and obligations of said vessel and its crew and the non-Filipino officials of the international agency under which said vessel operates: Provided, further, That members of the crew of a fishing vessel used for commercial fishing except the duly licensed and/or authorized patrons, marine engineers, radio operators and cooks shall be considered as fisherfolk: Provided, furthermore, That all skippers/master fishers shall be required to undertake an orientation training on detection of fish caught by illegal means before they can be issued their fishworker licenses: Provided, finally, That the large commercial fishing vessels license herein authorized to be granted shall allow the licensee to operate only in Philippine waters seven (7) or more fathoms deep, the depth to be certified by the NAMRIA, and subject to the conditions that may be stated therein and the rules and regulations that may be promulgated by the Department.

**Section 27. *Persons Eligible for Commercial Fishing Vessel License.*** - No commercial fishing vessel license shall be issued except to citizens of the Philippines, partnerships or to

associations, cooperatives or corporations duly registered in the Philippines at least sixty percent (60%) of the capital stock of which is owned by Filipino citizens. No person to whom a license has been issued shall sell, transfer or assign, directly or indirectly, his stock or interest therein to any person not qualified to hold a license. Any such transfer, sale or assignment shall be null and void and shall not be registered in the books of the association, cooperative or corporation.

For purposes of commercial fishing, fishing vessels owned by citizens of the Philippines, partnerships, corporations, cooperatives or associations qualified under this section shall secure Certificates of Philippine Registry and such other documents as are necessary for fishing operations from the concerned agencies: Provided, That the commercial fishing vessel license shall be valid for a period to be determined by the Department.

**Section 28. Commercial Fishing Vessel Registration.** - The registration, documentation, inspection and manning of the operation of all types of fishing vessels plying Philippine waters shall be in accordance with laws, rules and regulations.

**Section 29. Registration and Licensing of Fishing Gears Used in Commercial Fishing.** - Before a commercial fishing vessel holding a commercial fishing vessel license may begin fishing operations in Philippine waters, the fishing gear it will utilize in fishing shall be registered and a license granted therefor. The Department shall promulgate guidelines to implement this provision within sixty (60) days from approval of this Code.

**Section 30. Renewal of Commercial Boat License.** - The commercial fishing boat license shall be renewed every three (3) years.

The owner/operator of a fishing vessel has a period of sixty (60) days prior to the expiration of the license within which to renew the same.

**Section 31. Report of Transfer of Ownership.** - The owner/operator of a registered fishing vessel shall notify the Department in writing of the transfer of the ownership of the vessel with a copy of such document within ten (10) days after its transfer to another person.

**Section 32. Fishing by Philippine Commercial Fishing Fleet in International Waters.** - Fishing vessels of Philippine registry may operate in international waters or waters of other countries which allow such fishing operations: Provided, That they comply with the safety, manning and other requirements of the Philippine Coast Guard, Maritime Industry Authority and other agencies concerned: Provided, however, That they secure an international fishing permit and certificate of clearance from the Department: Provided, further, That the fish caught by such vessels shall be considered as caught in Philippine waters and therefore not subject to all import duties and taxes only when the same is landed in duly designated fish landings and fish ports in the Philippines: Provided, furthermore, That landing ports established by canneries, seafood processors and all fish landing sites established prior to the effectivity of this Code shall be considered authorized landing sites: Provided, finally, That fishworkers on board Philippine registered fishing vessels conducting fishing activities beyond the Philippine Exclusive Economic Zone are not considered as overseas Filipino workers.

**Section 33. *Importation of Fishing Vessels or Construction of New Fishing Boats.*** - Prior to the importation of fishing vessels and the construction of new fishing vessels, the approval/clearance of the Department must first be obtained.

**Section 34. *Incentives for Municipal and Small-Scale Commercial Fisherfolk.*** - Municipal and small-scale commercial fisherfolk shall be granted incentives which shall include, but are not limited to, the following:

(a) at least ten percent (10%) of the credit and the guarantee funds of government financing institutions shall be made available for post-harvest and marketing projects for the purpose of enhancing our fisherfolk competitiveness by reducing post-harvest losses. Qualified projects shall include, but shall not be limited to, ice plants, cold storage, canning, warehouse, transport and other related infrastructure projects and facilities; and

(b) the Department shall undertake the following programs:

1. a capability-building program for targeted parties shall be developed by the Department to promote greater bankability and credit worthiness of municipal and small-scale commercial fishers. Such program shall include organizing activities, technology transfer, and skills training related to commercial fishing as well as credit management. Groups and cooperatives organized under the program shall have priority access over credit and guarantee funds established under this Code; and

2. an information campaign shall be conducted to promote the capability building and credit programs. The campaign shall ensure greater information dissemination and accessibility to targeted fisherfolk.

**Section 35. *Incentives for Commercial Fishers to Fish Farther into the Exclusive Economic Zone.*** - In order to encourage fishing vessel operators to fish farther in the EEZ and beyond, new incentives for improvement of fishing vessels and acquisition of fishing equipment shall be granted in addition to incentives already available from the Board of Investments (BOI). Such incentives shall be granted subject to exhaustive evaluation of resource and exploitation conditions in the specified areas of fishing operations. The incentive shall include, but not be limited to:

(a) long term loans supported by guarantee facilities to finance the building and acquisition and/or improvement of fishing vessels and equipment;

(b) commercial fishing vessel operators of Philippine registry shall enjoy a limited period of tax and duty exemptions on the importation of fishing vessels not more than five (5) years old, equipment and paraphernalia, the period of exemption and guidelines shall be fixed by the Department within ninety (90) days from the effectivity of this Code;

(c) commercial fishing operator of Philippine registry engaged in fisheries in the high seas shall be entitled to duty and tax rebates on fuel consumption for commercial

fisheries operations. Guidelines shall be promulgated within ninety (90) days from the effectivity of this Code by the Department; and

(d) all applicable incentives available under the Omnibus Investment Code of 1987: Provided, That the fishing operation project is qualified for registration and is duly registered with the BOI.

**Section 36. *Complement of Fishing Vessels.*** - Every commercial fishing vessel of Philippine registry when actually operated, shall be manned in accordance with the requirements of the Philippine Merchant Marine rules and regulations.

**Section 37. *Medical Supplies and Life-Saving Devices.*** - All fishing vessels shall be provided with adequate medical supplies and life-saving devices to be determined by the Occupational Safety and Health Center: Provided, That a fishing vessel of twenty (20) GT or more shall have as a member of its crew a person qualified as a first aider duly certified by the Philippine National Red Cross.

**Section 38. *Reportorial Requirements.*** - Each commercial fishing vessel shall keep a daily record of fish catch and spoilage, landing points, and quantity and value of fish caught, and off-loaded for transshipment, sale and/or other disposal. Detailed information shall be duly certified by the vessel's captain and transmitted monthly to the officer or representative of the Department, at the nearest designated landing point.

**Section 39. *Report of Meteorological and Other Data.*** - All vessels and crafts passing navigational lanes or engaged in fisheries activity shall be required to contribute to meteorological and other data, and shall assist the Department in documentation or reporting of information vital to navigation and the fishing industry.

**Section 40. *Color Code and Radio Frequency.*** - For administrative efficiency and enforcement of regulations, registered fishing vessels shall bear a color code as may be determined by the Department and may be assigned a radio frequency specific and distinct to its area of operation.

**Section 41. *Passage.*** - Commercial and other passage not in the regular conduct of fisheries activity shall be made at designated navigational lanes.

**Section 42. *Transshipment.*** - Foreign fishing vessels wishing to avail of land, air and sea facilities available in the Philippines to transport fishery products which are caught outside Philippine territorial waters to its final destination shall call only at duly designated government-owned or -controlled regional fishport complexes after securing clearance from the Department.

**Section 43. *Operation of Radio Communication Facilities on Board Fishing Vessels.*** - The Department shall promulgate guidelines in the operation of radio communication facilities on board fishing vessels and the assignment of radio frequencies specific and distinct to area of operation in coordination with the National Telecommunications Commission.

**Section 44. *Use of Superlight.*** - The number and wattage of superlights used in commercial fishing vessels shall be regulated by the Department: Provided, That the use of superlights is banned within municipal waters and bays.

### **ARTICLE III AQUACULTURE**

**Section 45. *Disposition of Public Lands for Fishery Purposes.*** - Public lands such as tidal swamps, mangroves, marshes, foreshore lands and ponds suitable for fishery operations shall not be disposed or alienated. Upon effectivity of this Code, FLA may be issued for public lands that may be declared available for fishpond development primarily to qualified fisherfolk cooperatives/associations: Provided, however, That upon the expiration of existing FLAs the current lessees shall be given priority and be entitled to an extension of twenty-five (25) years in the utilization of their respective leased areas. Thereafter, such FLAs shall be granted to any Filipino citizen with preference, primarily to qualified fisherfolk cooperatives/associations as well as small and medium enterprises as defined under Republic Act No. 8289: Provided, further, That the Department shall declare as reservation, portions of available public lands certified as suitable for fishpond purposes for fish sanctuary, conservation, and ecological purposes: Provided, finally, That two (2) years after the approval of this Act, no fish pens or fish cages or fish traps shall be allowed in lakes.

**Section 46. *Lease of Fishponds.*** - Fishpond leased to qualified persons and fisherfolk organizations/cooperatives shall be subject to the following conditions:

- (a) Areas leased for fishpond purposes shall be no more than 50 hectares for individuals and 250 hectares for corporations or fisherfolk organizations;
- (b) The lease shall be for a period of twenty-five (25) years and renewable for another twenty-five (25) years: Provided, That in case of the death of the lessee, his spouse and/or children, as his heirs, shall have preemptive rights to the unexpired term of his Fishpond Lease Agreement subject to the same terms and conditions provided herein provided that the said heirs are qualified;
- (c) Lease rates for fishpond areas shall be determined by the Department: Provided, That all fees collected shall be remitted to the National Fisheries Research and Development Institute and other qualified research institutions to be used for aquaculture research development;
- (d) The area leased shall be developed and producing on a commercial scale within three (3) years from the approval of the lease contract: Provided, however, That all areas not fully producing within five (5) years from the date of approval of the lease contract shall automatically revert to the public domain for reforestation;
- (e) The fishpond shall not be subleased, in whole or in part, and failure to comply with this provision shall mean cancellation of FLA;
- (f) The transfer or assignment of rights to FLA shall be allowed only upon prior written approval of the Department;



(g) The lessee shall undertake reforestation for river banks, bays, streams, and seashore fronting the dike of his fishpond subject to the rules and regulations to be promulgated thereon; and

(h) The lessee shall provide facilities that will minimize environmental pollution, i.e., settling ponds, reservoirs, etc: Provided, That failure to comply with this provision shall mean cancellation of FLA.

**Section 47. Code of Practice for Aquaculture.** - The Department shall establish a code of practice for aquaculture that will outline general principles and guidelines for environmentally-sound design and operation to promote the sustainable development of the industry. Such Code shall be developed through a consultative process with the DENR, the fishworkers, FLA holders, fishpond owners, fisherfolk cooperatives, small-scale operators, research institutions and the academe, and other potential stakeholders. The Department may consult with specialized international organizations in the formulation of the code of practice.

**Section 48. Incentives and Disincentives for Sustainable Aquaculture Practices.** - The Department shall formulate incentives and disincentives, such as, but not limited to, effluent charges, user fees and negotiable permits, to encourage compliance with the environmental standards and to promote sustainable management practices.

**Section 49. Reversion of All Abandoned, Underdeveloped or Underutilized Fishponds.** - The DENR, in coordination with the Department, LGUs, other concerned agencies and FARMCs shall determine which abandoned, underdeveloped or underutilized fishponds covered by FLAs can be reverted to their original mangrove state and after having made such determination shall take all steps necessary to restore such areas in their original mangrove state.

**Section 50. Absentee Fishpond Lease Agreement Holders.** - Holders of fishpond lease agreements who have acquired citizenship in another country during the existence of the FLA shall have their lease automatically cancelled and the improvements thereon to be forfeited in favor of the government and disposed of in accordance with rules and regulations promulgated thereon.

**Section 51. License to Operate Fish Pens, Fish Cages, Fish Traps and Other Structures for the Culture of Fish and Other Fishery Products.** - Fish pens, fish cages, fish traps and other structures for the culture of fish and other fishery products shall be constructed and shall operate only within established zones duly designated by LGUs in consultation with the FARMCs concerned consistent with national fisheries policies after the corresponding licenses thereof have been secured. The area to be utilized for this purpose for individual person shall be determined by the LGUs in consultation with the concerned FARMC: Provided, however, That not over ten percent (10%) of the suitable water surface area of all lakes and rivers shall be allotted for aquaculture purposes like fish pens, fish cages and fish traps; and the stocking density and feeding requirement which shall be controlled and determined by its carrying capacity: Provided, further, That fish pens and fish cages located outside municipal waters shall be constructed and operated only within fish pen and fish cage

belts designated by the Department and after corresponding licenses therefor have been secured and the fees thereof paid.

**Section 52. *Pearl Farm Leases.*** - The foregoing provisions notwithstanding, existing pearl farm leases shall be respected and allowed to operate under the terms thereof. New leases may be granted to qualified persons who possess the necessary capital and technology, by the LGUs having jurisdiction over the area.

**Section 53. *Grant of Privileges for Operations of Fish Pens, Cages, Corrals/Traps and Similar Structures.*** - No new concessions, licenses, permits, leases and similar privileges for the establishment or operation of fish pens, fish cages, fish corrals/traps and other similar structures in municipal areas shall be granted except to municipal fisherfolk and their organizations.

**Section 54. *Insurance for Fishponds, Fish Cages and Fish Pens.*** - Inland fishponds, fish cages and fish pens shall be covered under the insurance program of the Philippine Crop Insurance Corporation for losses caused by force majeure and fortuitous events.

**Section 55. *Non-Obstruction to Navigation.*** - Nothing in the foregoing sections shall be construed as permitting the lessee, licensee, or permittee to undertake any construction which will obstruct the free navigation in any stream, river, lakes, or bays flowing through or adjoining the fish pens, fish cages, fish traps and fishponds, or impede the flow of the tide to and from the area. Any construction made in violation hereof shall be removed upon the order of the Department in coordination with the other government agencies concerned at the expense of the lessee, licensee, or occupants thereof, whenever applicable. The Department shall within thirty (30) days after the effectivity of this Code formulate and implement rules and regulations for the immediate dismantling of existing obstruction to navigation.

**Section 56. *Non-Obstruction to Defined Migration Paths.*** - Nothing in the foregoing sections shall be construed as permitting the lessee, permittee, or licensee to undertake any construction which will obstruct any defined migration path of migratory fish species such as river mouths and estuaries with a distance determined by the concerned LGUs in consultation with and upon the recommendation of the FARMCs.

**Section 57. *Registration of Fish Hatcheries and Private Fishponds, etc.*** - All fish hatcheries, fish breeding facilities and private fishponds must be registered with the LGUs which shall prescribe minimum standards for such facilities in consultation with the Department: Provided, That the Department shall conduct a yearly inventory of all fishponds, fish pens and fish cages whether in public or private lands: Provided, further, That all fishpond, fish pens and fish cage operators shall annually report to the Department the type of species and volume of production in areas devoted to aquaculture.

#### **ARTICLE IV POST-HARVEST FACILITIES, ACTIVITIES AND TRADES**

**Section 58. *Comprehensive Post-harvest and Ancillary Industries Plan.*** - The Department shall conduct a regular study of fisheries post-harvest operations and ancillary industries, in

the formulation of a comprehensive plan for post-harvest and ancillary industries. It shall take into account among others, the following:

- (a) detailed and clear guidelines on the distribution, construction, maintenance and use of post-harvest infrastructure facilities;
- (b) extension of credit and incentives for post-harvest operations;
- (c) promotion and strengthening of semi-processing, processing and handling;
- (d) development of domestic fishmeal industry;
- (e) development of fisheries ship-building and repair as a viable industry;
- (f) development and strengthening of marketing facilities and activities, including the pricing system, with emphasis on collective marketing and the elimination of middlemen;
- (g) increased participation of cooperatives and non-governmental organizations in post-harvest operations and ancillary industries; and
- (h) integration of fisheries post-harvest operations into the national fisheries plan.

**Section 59. *Establishment of Post-Harvest Facilities for Fishing Communities.*** - The LGUs shall coordinate with the private sector and other concerned agencies and FARMCs in the establishment of post-harvest facilities for fishing communities such as, but not limited to, municipal fish landing sites, fish ports, ice plants and cold storage and other fish processing establishments to serve primarily the needs of municipal fisherfolk: Provided, That such post-harvest facilities shall be consistent with the Comprehensive Post-harvest and Ancillary Industries Plan.

**Section 60. *Registration and Licensing of all Post-Harvest Facilities.*** - All post-harvest facilities such as fish processing plants, ice plants, and cold storages, fish ports/landings and other fishery business establishments must register with and be licensed by the LGUs which shall prescribe minimum standards for such facilities in consultation with the Department.

**Section 61. *Importation and Exportation of Fishery Products.*** -

- (a) Export of fishery products shall be regulated whenever such exportation affects domestic food security and production: Provided, That exportation of live fish shall be prohibited except those which are hatched or propagated in accredited hatcheries and ponds;
- (b) To protect and maintain the local biodiversity or ensure the sufficiency of domestic supply, spawners, breeders, eggs and fry of bangus, prawn and other endemic species, as may be determined by the Department, shall not be exported or caused to be exported by any person;
- (c) Fishery products may be imported only when the importation has been certified as necessary by the Department in consultation with the FARMC, and all the requirements of this Code, as well as all existing rules and regulations have been

complied with: Provided, That fish imports for canning/processing purposes only may be allowed without the necessary certification, but within the provisions of Section 61(d) of this Code; and

(d) No person, shall import and/or export fishery products of whatever size, stage or form for any purpose without securing a permit from the Department.

The Department in consultation with the FARMC shall promulgate rules and regulations on importation and exportation of fish and fishery/aquatic resources with the Government's export/import simplification procedures.

**Section 62. *Instruments of Weights and Measures, and Quality Grades/Standards.*** - Standards for weights, volume and other measurements for all fishery transactions shall be set by the Department.

All fish and fishery products for export, import and domestic consumption shall meet the quality grades/standards as determined by the Department.

The LGU concerned shall, by appropriate ordinance, penalize fraudulent practices and unlawful possession or use of instruments of weights and measures.

### CHAPTER III

#### Reconstitution of The Bureau of Fisheries and Aquatic Resources and Creation of Fisheries and Aquatic Resources Management Councils

#### ARTICLE I

#### RECONSTITUTION OF THE BUREAU OF FISHERIES AND AQUATIC RESOURCES

**Section 63. *Creation of the Position of Undersecretary for Fisheries and Aquatic Resources.*** - There is hereby created in the Department of Agriculture the position of Undersecretary for Fisheries and Aquatic Resources, solely for the purpose of attending to the needs of the fishing industry, to be appointed by the President. Such Undersecretary shall have the following functions:

- (a) set policies and formulate standards for the effective, efficient and economical operations of the fishing industry in accordance with the programs of the government;
- (b) exercise overall supervision over all functions and activities of all offices and instrumentalities and other offices related to fisheries including its officers;
- (c) establish, with the assistance of the director, such regional, provincial and other fishery officers as may be necessary and appropriate and organize the internal structure of BFAR in such manner as is necessary for the efficient and effective attainment of its objectives and purposes; and
- (d) perform such other functions as may be necessary or proper to attain the objectives of this Code.

**Section 64. *Reconstitution of the BFAR.*** - The Bureau of Fisheries and Aquatic Resources (BFAR) is hereby reconstituted as a line bureau under the Department of Agriculture.

**Section 65. *Functions of the Bureau of Fisheries and Aquatic Resources.*** - As a line bureau, the BFAR shall have the following functions:

- (a) prepare and implement a Comprehensive National Fisheries Industry Development Plan;
- (b) issue licenses for the operation of commercial fishing vessels;
- (c) issue identification cards free of charge to fishworkers engaged in commercial fishing;
- (d) monitor and review joint fishing agreements between Filipino citizens and foreigners who conduct fishing activities in international waters, and ensure that such agreements are not contrary to Philippine commitment under international treaties and convention on fishing in the high seas;
- (e) formulate and implement a Comprehensive Fishery Research and Development Program, such as, but not limited to, sea farming, sea ranching, tropical/ornamental fish and seaweed culture, aimed at increasing resource productivity, improving resource use efficiency, and ensuring the long-term sustainability of the country's fishery and aquatic resources;
- (f) establish and maintain a Comprehensive Fishery Information System;
- (g) provide extensive development support services in all aspects of fisheries production, processing and marketing;
- (h) provide advisory services and technical assistance on the improvement of quality of fish from the time it is caught (i.e. on board fishing vessel, at landing areas, fish markets, to the processing plants and to the distribution and marketing chain);
- (i) coordinate efforts relating to fishery production undertaken by the primary fishery producers, LGUs, FARMCs, fishery and organizations/cooperatives;
- (j) advise and coordinate with LGUs on the maintenance of proper sanitation and hygienic practices in fish markets and fish landing areas;
- (k) establish a corps of specialists in collaboration with the Department of National Defense, Department of the Interior and Local Government, Department of Foreign Affairs for the efficient monitoring, control and surveillance of fishing activities within Philippine territorial waters and provide the necessary facilities, equipment and training therefor;
- (l) implement an inspection system for import and export of fishery/aquatic products and fish processing establishments, consistent with international standards to ensure product quality and safety;
- (m) coordinate with LGUs and other concerned agencies for the establishment of productivity enhancing and market development programs in fishing communities to enable women to engage in other fisheries/economic activities and contribute significantly to development efforts;

- (n) enforce all laws, formulate and enforce all rules and regulations governing the conservation and management of fishery resources, except in municipal waters, and to settle conflicts of resource use and allocation in consultation with the NFARMC, LGUs and local FARMCs;
- (o) develop value-added fishery-products for domestic consumption and export;
- (p) recommend measures for the protection/enhancement of the fishery industries;
- (q) assist the LGUs in developing their technical capability in the development, management, regulation, conservation, and protection of the fishery resources;
- (r) formulate rules and regulations for the conservation and management of straddling fish stocks and highly migratory fish stocks; and
- (s) perform such other related functions which shall promote the development, conservation, management, protection and utilization of fisheries and aquatic resources.

**Section 66. *Composition of BFAR.*** - As a line bureau, the BFAR shall be headed by a Director and assisted by two (2) Assistant Directors who shall supervise the administrative and technical services of the bureau respectively. It shall establish regional, provincial and municipal offices as may be appropriate and necessary to carry out effectively and efficiently the provisions of this Code.

**Section 67. *Fisheries Inspection and Quarantine Service.*** - For purposes of monitoring and regulating the importation and exportation of fish and fishery/aquatic resources, the Fisheries Inspection and Quarantine Service in the BFAR is hereby strengthened and shall have the following functions:

- (a) conduct fisheries quarantine and quality inspection of all fish and fishery/aquatic products coming into and going out of the country by air or water transport, to detect the presence of fish pest and diseases and if found to harbor fish pests or diseases shall be confiscated and disposed of in accordance with environmental standards and practices;
- (b) implement international agreements/commitments on bio-safety and bio-diversity as well as prevent the movement or trade of endemic fishery and aquatic resources to ensure that the same are not taken out of the country;
- (c) quarantine such aquatic animals and other fishery products determined or suspected to be with fishery pests and diseases and prevent the movement or trade from and/or into the country of these products so prohibited or regulated under existing laws, rules and regulations as well as international agreements of which the Philippines is a State Party;
- (d) examine all fish and fishery products coming into or going out of the country which may be a source or medium of fish pests or diseases and/or regulated by existing fishery regulations and ensure that the quality of fish import and export meet international standards; and

(e) document and authorize the movement or trade of fish and fishery products when found free of fish pests or diseases and collect necessary fees prescribed by law and regulations.

**ARTICLE II**  
**THE FISHERIES AND AQUATIC RESOURCES MANAGEMENT COUNCILS**  
**(FARMCs)**

**Section 68. *Development of Fisheries and Aquatic Resources in Municipal Waters and Bays.*** - Fisherfolk and their organizations residing within the geographical jurisdiction of the barangays, municipalities or cities with the concerned LGUs shall develop the fishery/aquatic resources in municipal waters and bays.

**Section 69. *Creation of Fisheries and Aquatic Resources Management Councils (FARMCs).*** - FARMCs shall be established in the national level and in all municipalities/cities abutting municipal waters as defined by this Code. The FARMCs shall be formed by fisherfolk organizations/cooperatives and NGOs in the locality and be assisted by the LGUs and other government entities. Before organizing FARMCs, the LGUs, NGOs, fisherfolk, and other concerned POs shall undergo consultation and orientation on the formation of FARMCs.

**Section 70. *Creation and Composition of the National Fisheries and Aquatic Resources Management Council (NFARMC).*** - There is hereby created a National Fisheries and Aquatic Resources Management Council hereinafter referred to as NFARMC as an advisory/recommendatory body to the Department. The NFARMC shall be composed of fifteen (15) members consisting of:

- (a) the Undersecretary of Agriculture, as Chairman;
- (b) the Undersecretary of the Interior and Local Government;
- (c) five (5) members representing the fisherfolk and fishworkers;
- (d) five (5) members representing commercial fishing and aquaculture operators and the processing sectors;
- (e) two (2) members from the academe; and
- (f) one (1) representative of NGOs involved in fisheries.

The members of the NFARMC, except for the Undersecretary of Agriculture and the Undersecretary of the Interior and Local Government, shall be appointed by the President upon the nomination of their respective organizations.

**Section 71. *Terms of Office.*** - The members of NFARMC, except the Undersecretary of Agriculture and the Undersecretary of the Interior and Local Government, shall serve for a term of three (3) years without reappointment.

**Section 72. *Functions of the NFARMC.*** - The NFARMC shall have the following functions:

- (a) assist in the formulation of national policies for the protection, sustainable development and management of fishery and aquatic resources for the approval of the Secretary;
- (b) assist the Department in the preparation of the National Fisheries and Industry Development Plan; and
- (c) perform such other functions as may be provided by law.

**Section 73. *The Municipal/City Fisheries and Aquatic Resources Management Councils (M/CFARMCs).*** - The M/CFARMCs shall be created in each of the municipalities and cities abutting municipal waters. However, the LGU may create the Barangay Fisheries and Aquatic Resources Management Councils (BFARMCs) and the Lakewide Fisheries and Aquatic Resources Management Councils (LFARMCs) whenever necessary. Such BFARMCs and LFARMCs shall serve in an advisory capacity to the LGUs.

**Section 74. *Functions of the M/CFARMCs.*** - The M/CFARMCs shall exercise the following functions:

- (a) assist in the preparation of the Municipal Fishery Development Plan and submit such plan to the Municipal Development Council;
- (b) recommend the enactment of municipal fishery ordinances to the sangguniang bayan/sangguniang panlungsod through its Committee on Fisheries;
- (c) assist in the enforcement of fishery laws, rules and regulations in municipal waters;
- (d) advise the sangguniang bayan/panlungsod on fishery matters through its Committee on Fisheries, if such has been organized; and
- (e) perform such other functions which may be assigned by the sangguniang bayan/panlungsod.

**Section 75. *Composition of the M/CFARMC.*** - The regular member of the M/CFARMCs shall be composed of:

- (a) Municipal/City Planning Development Officer;
- (b) Chairperson, Agriculture/Fishery Committee of the Sangguniang Bayan/Panlungsod;
- (c) representative of the Municipal/City Development Council;
- (d) representative from the accredited non-government organization;
- (e) representative from the private sector;
- (f) representative from the Department of Agriculture; and
- (g) at least eleven (11) fisherfolk representatives (seven (7) municipal fisherfolk, one (1) fishworker and three (3) commercial fishers) in each municipality/city which include representative from youth and women sector.



The Council shall adopt rules and regulations necessary to govern its proceedings and election.

**Section 76. *The Integrated Fisheries and Aquatic Resources Management Councils (IFARMCs).*** - The IFARMCs shall be created in bays, gulfs, lakes and rivers and dams bounded by two (2) or more municipalities/cities.

**Section 77. *Functions of the IFARMCs.*** - The IFARMC shall have the following functions:

- (a) assist in the preparation of the Integrated Fishery Development Plan and submit such plan to the concerned Municipal Development Councils;
- (b) recommend the enactment of integrated fishery ordinances to the concerned sangguniang bayan/panlungsod through its Committee on Fisheries, if such has been organized;
- (c) assist in the enforcement of fishery laws, rules and regulations in concerned municipal waters;
- (d) advice the concerned sangguniang bayan/panlungsod on fishery matters through its Committee on Fisheries, if such has been organized; and
- (e) perform such other functions which may be assigned by the concerned sangguniang bayan/panlungsod.

**Section 78. *Composition of the IFARMCs.*** - The regular members of the IFARMCs shall be composed of the following:

- (a) the chairperson of the Committee on Agriculture/Fisheries of the concerned sangguniang bayan/panlungsod;
- (b) the Municipal/City Fisheries Officers of the concerned municipalities/cities;
- (c) the Municipal/City Development Officers of the concerned municipalities/cities;
- (d) one (1) representative from NGO;
- (e) one (1) representative from private sector; and
- (f) at least nine (9) representatives from the fisherfolk sector which include representatives from the youth and women sector.

The Council shall adopt rules and regulations necessary to govern its proceedings and election.

**Section 79. *Source of Funds of the FARMCs.*** - A separate fund for the NFARMC, IFARMCs and M/CFARMCs shall be established and administered by the Department from the regular annual budgetary appropriations.

#### **CHAPTER IV Fishery Reserves, Refuge and Sanctuaries**

**Section 80. *Fishing Areas Reserves for Exclusive Use of Government.*** - The Department may designate area or areas in Philippine waters beyond fifteen (15) kilometers from shoreline as fishery reservation for the exclusive use of the government or any of its political subdivisions, agencies or instrumentalities, for propagation, educational, research and scientific purposes: Provided, That in municipalities or cities, the concerned LGUs in consultation with the FARMCs may recommend to the Department that portion of the municipal waters be declared as fishery reserves for special or limited use, for educational, research, and/or special management purposes. The FARMCs may recommend to the Department portions of the municipal waters which can be declared as fisheries reserves for special or limited use for educational, research and special management purposes.

**Section 81. *Fish Refuge and Sanctuaries.*** - The Department may establish fish refuge and sanctuaries to be administered in the manner to be prescribed by the BFAR at least twenty-five percent (25%) but not more than forty percent (40%) of bays, foreshore lands, continental shelf or any fishing ground shall be set aside for the cultivation of mangroves to strengthen the habitat and the spawning grounds of fish. Within these areas no commercial fishing shall be allowed. All marine fishery reserves, fish sanctuaries and mangrove swamp reservations already declared or proclaimed by the President or legislated by the Congress of the Philippines shall be continuously administered and supervised by the concerned agency: Provided, however, That in municipal waters, the concerned LGU in consultation with the FARMCs may establish fishery refuge and sanctuaries. The FARMCs may also recommend fishery refuge and sanctuaries: Provided, further, That at least fifteen percent (15%) where applicable of the total coastal areas in each municipality shall be identified, based on the best available scientific data and in consultation with the Department, and automatically designated as fish sanctuaries by the LGUs in consultation with the concerned FARMCs.

## **CHAPTER V**

### **Fisheries Research and Development**

**Section 82. *Creation of a National Fisheries Research and Development Institute (NFRDI).*** - In recognition of the important role of fisheries research in the development, management, conservation and protection of the country's fisheries and aquatic resources, there is hereby created a National Fisheries Research and Development Institute (NFRDI).

The Institute shall form part of the National Research and Development Network of the Department of Science and Technology (DOST).

The Institute, which shall be attached to the Department shall serve as the primary research arm of the BFAR. The overall governance of the Institute shall be vested in the Governing Board which shall formulate policy guidelines for its operation. The plans, programs and operational budget shall be passed by the Board. The Board may create such committees as it may deem necessary for the proper and effective performance of its functions. The composition of the Governing Board shall be as follows:

- (a) Undersecretary for Fisheries - Chairman
- (b) BFAR Director - Vice Chairman

- (c) NFRDI Executive Director - Member
- (d) PCAMRD Executive Director - Member
- (e) Representative from the academe - Member
- (f) four (4) representatives from the private sector who shall come from the following subsectors: - Members
  - Municipal Fisherfolk
  - Commercial Fishing Operator
  - Aquaculture Operator
  - Post-Harvest/Processor

The NFRDI shall have a separate budget specific to its manpower requirements and operations to ensure the independent and objective implementation of its research activities.

**Section 83. *Qualification Standard.*** - The Institute shall be headed by an Executive Director to be appointed by the President of the Philippines upon the recommendation of the governing board. The Executive Director shall hold a Doctorate degree in fisheries and/or other related disciplines. The organizational structure and staffing pattern shall be approved by the Department: Provided, however, That the staffing pattern and remunerations for scientific and technical staff shall be based on the qualification standards for science and technology personnel.

**Section 84. *Research and Development Objectives.*** - Researches to be done by the NFRDI are expected to result in the following:

- (a) To raise the income of the fisherfolk and to elevate the Philippines among the top five (5) in the world ranking in the fish productions;
- (b) to make the country's fishing industry in the high seas competitive;
- (c) to conduct social research on fisherfolk families for a better understanding of their conditions and needs; and
- (d) to coordinate with the fisheries schools, LGUs and private sectors regarding the maximum utilization of available technology, including the transfer of such technology to the industry particularly the fisherfolk.

**Section 85. *Functions of the NFRDI.*** - As a national institute, the NFRDI shall have the following functions:

- (a) establish a national infrastructure unit complete with technologically-advanced features and modern scientific equipment, which shall facilitate, monitor, and implement various research needs and activities of the fisheries sector;
- (b) provide a venue for intensive training and development of human resources in the field of fisheries, a repository of all fisheries researches and scientific information;

- (c) provide intensive training and development of human resources in the field of fisheries for the maximum utilization of available technology;
- (d) hasten the realization of the economic potential of the fisheries sector by maximizing developmental research efforts in accordance with the requirements of the national fisheries conservations and development programs, also possibly through collaborative effort with international institutions; and
- (e) formally establish, strengthen and expand the network of fisheries-researching communities through effective communication linkages nationwide.

## **CHAPTER VI**

### **Prohibitions and Penalties**

#### **Section 86. *Unauthorized Fishing or Engaging in Other Unauthorized Fisheries***

**Activities.** - No person shall exploit, occupy, produce, breed, culture, capture or gather fish, fry or fingerlings of any fishery species or fishery products, or engage in any fishery activity in Philippine waters without a license, lease or permit.

Discovery of any person in an area where he has no permit or registration papers for a fishing vessel shall constitute a prima facie presumption that the person and/or vessel is engaged in unauthorized fishing: Provided, That fishing for daily food sustenance or for leisure which is not for commercial, occupation or livelihood purposes may be allowed.

It shall be unlawful for any commercial fishing vessel to fish in bays and in such other fishery management areas which may hereinafter be declared as over-exploited.

Any commercial fishing boat captain or the three (3) highest officers of the boat who commit any of the above prohibited acts upon conviction shall be punished by a fine equivalent to the value of catch or Ten thousand pesos (P10,000.00) whichever is higher, and imprisonment of six (6) months, confiscation of catch and fishing gears, and automatic revocation of license.

It shall be unlawful for any person not listed in the registry of municipal fisherfolk to engage in any commercial fishing activity in municipal waters. Any municipal fisherfolk who commits such violation shall be punished by confiscation of catch and a fine of Five hundred pesos (500.00).

**Section 87. *Poaching in Philippine Waters.*** - It shall be unlawful for any foreign person, corporation or entity to fish or operate any fishing vessel in Philippine waters.

The entry of any foreign fishing vessel in Philippine waters shall constitute a prima facie evidence that the vessel is engaged in fishing in Philippine waters.

Violation of the above shall be punished by a fine of One hundred thousand U.S. Dollars (US\$100,000.00), in addition to the confiscation of its catch, fishing equipment and fishing vessel: Provided, That the Department is empowered to impose an administrative fine of not less than Fifty thousand U.S. Dollars (US\$50,000.00) but not more than Two hundred thousand U.S. Dollars (US\$200,000.00) or its equivalent in the Philippine Currency.

**Section 88. *Fishing Through Explosives, Noxious or Poisonous Substance, and/or Electricity.* -**

(1) It shall be unlawful for any person to catch, take or gather or cause to be caught, taken or gathered, fish or any fishery species in Philippine waters with the use of electricity, explosives, noxious or poisonous substance such as sodium cyanide in the Philippine fishery areas, which will kill, stupefy, disable or render unconscious fish or fishery species: Provided, That the Department, subject to such safeguards and conditions deemed necessary and endorsement from the concerned LGUs, may allow, for research, educational or scientific purposes only, the use of electricity, poisonous or noxious substances to catch, take or gather fish or fishery species: Provided, further, That the use of poisonous or noxious substances to eradicate predators in fishponds in accordance with accepted scientific practices and without causing adverse environmental impact in neighboring waters and grounds shall not be construed as illegal fishing.

It will likewise be unlawful for any person, corporation or entity to possess, deal in, sell or in any manner dispose of, any fish or fishery species which have been illegally caught, taken or gathered.

The discovery of dynamite, other explosives and chemical compounds which contain combustible elements, or noxious or poisonous substances, or equipment or device for electro-fishing in any fishing vessel or in the possession of any fisherfolk, operator, fishing boat official or fishworker shall constitute prima facie evidence, that the same was used for fishing in violation of this Code. The discovery in any fishing vessel of fish caught or killed with the use of explosive, noxious or poisonous substances or by electricity shall constitute prima facie evidence that the fisherfolk, operator, boat official or fishworker is fishing with the use thereof.

(2) Mere possession of explosive, noxious or poisonous substances or electrofishing devices for illegal fishing shall be punishable by imprisonment ranging from six (6) months to two (2) years.

(3) Actual use of explosives, noxious or poisonous substances or electrofishing devices for illegal fishing shall be punishable by imprisonment ranging from five (5) years to ten (10) years without prejudice to the filing of separate criminal cases when the use of the same result to physical injury or loss of human life.

(4) Dealing in, selling, or in any manner disposing of, for profit, illegally caught/gathered fisheries species shall be punished by imprisonment ranging from six (6) months to two (2) years.

(5) In all cases enumerated above, the explosives, noxious or poisonous substances and/or electrical devices, as well as the fishing vessels, fishing equipment and catch shall be forfeited.

**Section 89. *Use of Fine Mesh Net.* -** It shall be unlawful to engage in fishing using nets with mesh smaller than that which may be fixed by the Department: Provided, That the

prohibition on the use of fine mesh net shall not apply to the gathering of fry, glass eels, elvers, tabios, and alamang and such species which by their nature are small but already mature to be identified in the implementing rules and regulations by the Department.

Violation of the above shall subject the offender to a fine from Two thousand pesos (P2,000.00) to Twenty thousand pesos (P20,000.00) or imprisonment from six (6) months to two (2) years or both such fine and imprisonment at the discretion of the court: Provided, That if the offense is committed by a commercial fishing vessel, the boat captain and the master fisherman shall also be subject to the penalties provided herein: Provided, further, That the owner/operator of the commercial fishing vessel who violates this provision shall be subjected to the same penalties provided herein: Provided, finally, That the Department is hereby empowered to impose upon the offender an administrative fine and/or cancel his permit or license or both.

**Section 90. *Use of Active Gear in the Municipal Waters and Bays and Other Fishery Management Areas.*** - It shall be unlawful to engage in fishing in municipal waters and in all bays as well as other fishery management areas using active fishing gears as defined in this Code.

Violators of the above prohibitions shall suffer the following penalties:

(1) The boat captain and master fisherman of the vessels who participated in the violation shall suffer the penalty of imprisonment from two (2) years to six (6) years;

(2) The owner/operator of the vessel shall be fined from Two thousand pesos (P2,000.00) to Twenty thousand pesos (20,000.00) upon the discretion of the court.

If the owner/operator is a corporation, the penalty shall be imposed on the chief executive officer of the Corporation.

If the owner/operator is a partnership the penalty shall be imposed on the managing partner.

(3) The catch shall be confiscated and forfeited.

**Section 91. *Ban on Coral Exploitation and Exportation.*** - It shall be unlawful for any person or corporation to gather, possess, sell or export ordinary precious and semi-precious corals, whether raw or in processed form, except for scientific or research purposes.

Violations of this provision shall be punished by imprisonment from six (6) months to two (2) years and a fine from Two thousand pesos (P2,000.00) to Twenty thousand pesos (20,000.00), or both such fine and imprisonment, at the discretion of the court, and forfeiture of the subject corals, including the vessel and its proper disposition.

The confiscated corals shall either be returned to the sea or donated to schools and museums for educational or scientific purposes or disposed through other means.

**Section 92. *Ban on Muro-Ami Other Methods and Gear Destructive to Coral Reefs and Other Marine Habitat.*** - It shall be unlawful for any person, natural or juridical, to fish with gear method that destroys coral reefs, seagrass beds, and other fishery marine life habitat as

may be determined by the Department. "Muro-Ami" and any of its variation, and such similar gear and methods that require diving, other physical or mechanical acts to pound the coral reefs and other habitat to entrap, gather or catch fish and other fishery species are also prohibited.

The operator, boat captain, master fisherman, and recruiter or organizer of fishworkers who violate this provision shall suffer a penalty of two (2) years to ten (10) years imprisonment and a fine of not less than One hundred thousand pesos (P100,000.00) to Five hundred thousand pesos (P500,000.00) or both such fine and imprisonment, at the discretion of the court. The catch and gear used shall be confiscated.

It shall likewise be unlawful for any person or corporation to gather, sell or export white sand, silica, pebbles and any other substances which make up any marine habitat.

The person or corporation who violates this provision shall suffer a penalty of two (2) years to ten (10) years imprisonment and a fine of not less than One hundred thousand pesos (P100,000.00) to Five hundred thousand pesos (P500,000.00) or both such fine and imprisonment, at the discretion of the court. The substance taken from its marine habitat shall be confiscated.

**Section 93. *Illegal Use of Superlights.*** - It shall be unlawful to engage in fishing with the use of superlights in municipal waters or in violation of the rules and regulations which may be promulgated by the Department on the use of superlights outside municipal waters.

Violations of this provision shall be punished by imprisonment from six (6) months to two (2) years or a fine of Five thousand pesos (P5,000.00) per superlight, or both such fine and imprisonment at the discretion of the courts. The superlight, fishing gears and vessel shall be confiscated.

**Section 94. *Conversion of Mangroves.*** - It shall be unlawful for any person to convert mangroves into fishponds or for any other purposes.

Violation of the provision of this section shall be punished by imprisonment of six (6) years and one (1) day to twelve (12) years and/or a fine of Eighty thousand pesos (P80,000.00): Provided, That if the area requires rehabilitation or restoration as determined by the court, the offender should also be required to restore or compensate for the restoration of the damage.

**Section 95. *Fishing in Overfished Area and During Closed Season.*** - It shall be unlawful to fish in overfished area and during closed season.

Violation of the provision of this section shall be punished by imprisonment of six (6) months and one (1) day to six (6) years and/or fine of Six thousand pesos (P6,000.00) and by forfeiture of the catch and cancellation of fishing permit or license.

**Section 96. *Fishing in Fishery Reserves, Refuge and Sanctuaries.*** - It shall be unlawful to fish in fishery areas declared by the Department as fishery reserves, refuge and sanctuaries.

Violation of the provision of this section shall be punished by imprisonment of two (2) years to six (6) years and/or fine of Two thousand pesos (P2,000.00) to Twenty thousand pesos (P20,000.00) and by forfeiture of the catch and the cancellation of fishing permit or license.

**Section 97. *Fishing Or Taking of Rare, Threatened or Endangered Species.*** - It shall be unlawful to fish or take rare, threatened or endangered species as listed in the CITES and as determined by the Department.

Violation of the provision of this section shall be punished by imprisonment of twelve (12) years to twenty (20) years and/or a fine of One hundred and twenty thousand pesos (P120,000.00) and forfeiture of the catch, and the cancellation of fishing permit.

**Section 98. *Capture of Sabalo and Other Breeders/Spawners.*** - It shall be unlawful for any person to catch, gather, capture or possess mature milkfish or "sabalo" and such other breeders or spawners of other fishery species as may be determined by the Department: Provided, That catching of "sabalo" and other breeders/spawners for local breeding purposes or scientific or research purposes may be allowed subject to guidelines to be promulgated by the Department.

Violation of the provision of this section shall be punished by imprisonment of six (6) months and one (1) day to eight (8) years and/or a fine of Eighty thousand pesos (P80,000.00) and forfeiture of the catch, and fishing equipment used and revocation of license.

**Section 99. *Exportation of Breeders, Spawners, Eggs or Fry.*** - Exportation of breeders, spawners, eggs or fry as prohibited in this Code shall be punished by imprisonment of eight (8) years, confiscation of the same or a fine equivalent to double the value of the same, and revocation of the fishing and/or export license/permit.

**Section 100. *Importation or Exportation of Fish or Fishery Species.*** - Any importation or exportation of fish or fisheries species in violation of this Code shall be punished by eight (8) years of imprisonment, a fine of Eighty thousand pesos (P80,000.00) and destruction of live fishery species or forfeiture of non-live fishery species in favor of the department for its proper disposition: Provided, That violator of this provision shall be banned from being members or stock holders of companies currently engaged in fisheries or companies to be created in the future, the guidelines for which shall be promulgated by the Department.

**Section 101. *Violation of Catch Ceilings.*** - It shall be unlawful for any person to fish in violation of catch ceilings as determined by the Department. Violation of the provision of this section shall be punished by imprisonment of six (6) months and one (1) day to six (6) years and/or a fine of Fifty thousand pesos (P50,000.00) and forfeiture of the catch, and fishing equipment used and revocation of license.

**Section 102. *Aquatic Pollution.*** - Aquatic pollution, as defined in this Code shall be unlawful.

Violation of the provision of this section shall be punished by imprisonment of six (6) years and one (1) day to twelve (12) years and/or a fine of Eighty thousand pesos (P80,000.00) plus an additional fine of Eight thousand pesos (P8,000.00) per day until such violation ceases and the fines paid.

**Section 103. *Other Violations.*** - The following fisheries activities shall also be considered as a violation of this Code:



(a) Failure to Comply with Minimum Safety Standards. - The owner and captain of a commercial fishing vessel engaged in fishing who, upon demand by proper authorities, fails to exhibit or show proof of compliance with the safety standards provided in this Code, shall be immediately prevented from continuing with his fishing activity and escorted to the nearest port or landing point. The license to operate the commercial fishing vessel shall be suspended until the safety standard has been complied with.

(b) Failure to Conduct a Yearly Report on all Fishponds, Fish Pens and Fish Cages. - The FLA of the holder who fails to render a yearly report shall be immediately cancelled: Provided, That if the offender be the owner of the fishpond, fish pen or fish cage, he shall be subjected to the following penalties: (1) first offense, a fine of Five hundred pesos (P500.00) per unreported hectare; (2) subsequent offenses, a fine of One thousand pesos (1,000.00) per unreported hectare.

(c) Gathering and Marketing of Shell Fishes. - It shall be unlawful for any person to take, sell, transfer, or have in possession for any purpose any shell fish which is sexually mature or below the minimum size or above the maximum quantities prescribed for the particular species.

(d) Obstruction to Navigation or Flow and Ebb of Tide in any Stream, River, Lake or Bay. - It shall be unlawful for any person who causes obstruction to navigation or flow or ebb of tide.

(e) Construction and Operation of Fish Corrals/Traps, Fish Pens and Fish Cages. - It shall be unlawful to construct and operate fish corrals/traps, fish pens and fish cages without a license/permit.

Subject to the provision of subparagraph (b) of this section, violation of the above-enumerated prohibited acts shall subject the offender to a fine ranging from Two thousand pesos (P2,000.00) to Ten thousand pesos (P10,000.00) or imprisonment from one (1) month and one (1) day to six (6) months, or both such fine and imprisonment, upon the discretion of the court: Provided, That the Secretary is hereby empowered to impose upon the offender an administrative fine of not more than Ten thousand pesos (P10,000.00) or to cancel his permit or license, or to impose such fine and to cancel his permit or license, in the discretion of the Secretary: Provided, further, That the Secretary, or his duly authorized representative, and law enforcement agents are hereby empowered to impound with the assistance of the Philippine Coast Guard, PNP-Maritime Command: Provided, finally, That any person who unlawfully obstructs or delays the inspection and/or movement of fish and fishery/aquatic products when such inspection and/or movement is authorized under this Code, shall be subject to a fine of not more than Ten thousand pesos (P10,000.00) or imprisonment of not more than two (2) years, or both such fine and imprisonment, upon the discretion of the court.

Every penalty imposed for the commission of an offense shall carry with it the forfeiture of the proceeds of such offense and the instruments or tools with which it was committed.

Such proceeds and instruments or tools shall be confiscated and forfeited in favor of the Government, unless they be the property of a third person not liable for the offense, but those articles which are not subject of lawful commerce shall be destroyed.

**Section 104. Commercial Fishing Vessel Operators Employing Unlicensed Fisherfolk or Fishworker or Crew.**- The owner/operator of a commercial fishing vessel employing unlicensed fisherfolk or fishworker shall be fined Five hundred pesos (P500.00) each for every month that the same has been employed and/or One thousand pesos (P1,000.00) for every month for each unlicensed crew member who has been employed.

**Section 105. Obstruction of Defined Migration Paths.** - Obstruction of any defined migration paths of anadromous, catadromous and other migratory species, in areas including, but not limited to river mouths and estuaries within a distance determined by the concerned FARMCs shall be punished by imprisonment of seven (7) years to twelve (12) years or a fine from Fifty thousand pesos (P50,000.00) to One hundred thousand pesos (P100,000.00) or both imprisonment and fine at the discretion of the court, and cancellation of permit/license, if any, and dismantling of obstruction shall be at his own expense and confiscation of same.

**Section 106. Obstruction to Fishery Law Enforcement Officer.** - The boat owner, master or operator or any person acting on his behalf of any fishing vessel who evades, obstructs or hinders any fishery law enforcement officer of the Department to perform his duty, shall be fined Ten thousand pesos (P10,000.00). In addition, the registration, permit and/or license of the vessel including the license of the master fisherman shall be canceled.

**Section 107. Promulgation of Administrative Orders.** - For purposes of fishery regulation or other fishery adjustments, the Department in consultation with the LGUs and local FARMCs, shall issue Fishery Administrative Orders or regulations for the conservation, preservation, management and sustainable development of fishery and aquatic resources.

## **CHAPTER VII General Provisions**

**Section 108. Fisherfolk Settlement Areas.** - The Department shall establish and create fisherfolk settlement areas in coordination with concerned agencies of the government, where certain areas of the public domain, specifically near the fishing grounds, shall be reserved for the settlement of the municipal fisherfolk. Nothing in this section shall be construed to vest ownership of any resettlement area to a municipal fisherfolk for whom said areas may have been reserved for or had been actually granted to.

**Section 109. Municipal Fisheries Grant Fund.** - For the development, management and conservation of the municipal resources, there is hereby created a Fishery Grant Fund to finance fishery projects of the LGUs primarily for the upliftment of the municipal fisherfolk. The amount of One hundred million pesos (P100,000,000.00) is hereby appropriated out of the Department's allocation in the General Appropriations Act (GAA) to support the Grant Fund.

For this purpose, the Department may seek financial assistance from any source and may receive any donation therefore.

**Section 110. *Fishery Loan and Guarantee Fund.*** - Pursuant to Section 7, Article XIII of the Constitution, there is hereby created a Fishery Loan and Guarantee Fund with an initial of One hundred million pesos (P100,000,000.00), which shall be administered by the Land Bank of the Philippines. The fund shall be made available for lending to qualified borrowers to finance the development of the fishery industry under a program to be prescribed by the Department.

For the same purpose, the Department may seek financial assistance from any source and may receive any donation therefrom.

**Section 111. *Fishing Vessels Development Fund.*** - There is hereby created a Fishing Vessels Development Fund to enhance the building and/or acquisition of fishing vessels. This shall be a long-term loan facility that shall be administered by the Development Bank of the Philippines. The amount of Two hundred and fifty million pesos (P250,000,000.00) per year for five (5) years is hereby appropriated out of the Department's allocation in the GAA to support this Development Fund.

**Section 112. *Special Fisheries Science and Appropishtech Fund.*** - The Department shall provide subsidy for full technical and financial support to the development of appropriate technology, both in fishery and ancillary industries, that are ecologically sound, locally source-based and labor intensive, based on the requirement and needs of the FARMCs. An initial amount of One hundred million pesos (100,000,000.00) shall be authorized for the purpose of a Special Fisheries Science and Appropishtech Fund, and thereafter shall be included in the GAA.

**Section 113. *Aquaculture Investment Fund.*** - An Aquaculture Investment Fund in the minimum amount of Fifty million pesos (P50,000,000.00) shall be established for soft loans which shall be extended to municipal fisherfolk and their organization who will engage in aquaculture, and for the development of underdeveloped or underutilized inland fishponds.

**Section 114. *Other Fisheries Financing Facilities.*** - In addition to fisheries credit guarantee, grant and other similar facilities granted under this Code, qualified Filipino fisherfolk and fisheries enterprises shall enjoy such other facilities granted them under existing and/or new laws, specially as to rural credit, with preference being given to fisheries cooperatives.

**Section 115. *Professionalization of Fisheries Graduates.*** - There is hereby created a Fisheries Board of Examiners in the Professional Regulation Commission to upgrade the Fisheries Profession: Provided, however, That those who have passed the Civil Service Examination for Fisheries shall automatically be granted eligibility by the Fisheries Board of Examiners: Provided, further, That they have served the industry in either public or private capacity for not less than five (5) years: Provided, finally, That the first Board Examination for B.S. Fisheries Graduates shall be conducted within one (1) year from the approval of this Code.

**Section 116. *Upgrading of State Fisheries Schools/Colleges.*** - The Department, in coordination with the Commission on Higher Education (CHED), Department of Education, Culture and Sports (DECS), and Technical Education and Skills Development Authority (TESDA), shall upgrade State Fisheries Schools/Colleges which provide both formal and

non-formal education: Provided, however, That the CHED shall incorporate Approfishtech in the curricula of fisheries schools/colleges.

The Department and the CHED shall jointly formulate standards to upgrade all fisheries schools/colleges. Fisheries schools/colleges that do not meet minimum standards shall be closed.

**Section 117. *Inclusion of Fisheries Conservation Subjects in School Curriculum.* -**

Fisheries conservation subjects shall be incorporated in the curricula of elementary and secondary schools both private and public.

**Section 118. *Educational campaign at all levels.* -** The Department, the CHED, the DECS and the Philippine Information Agency shall launch and pursue a nationwide educational campaign to:

- (a) help realize the policies and implement the provisions of this Code;
- (b) promote the development, management, conservation and proper use of the environment;
- (c) promote the principle of sustainable development; and
- (d) promote the development of truly Filipino-oriented fishing and ancillary industries.

**Section 119. *Infrastructure Support.* -** The Department in cooperation with concerned agencies shall:

- (a) prepare and implement a nationwide plan for the development of municipal fishing ports and markets;
- (b) prioritize the construction of farm-to-market roads linking the fisheries production sites, coastal landing points and other post-harvest facilities to major market and arterial roads/highways;
- (c) identify community infrastructure facilities such as fish landing ports, ice plant and cold storage facilities in consultation with fishery cooperatives/associations and prepare plans and designs for their construction that would be consistent with international environmental impact;
- (d) establish and maintain quality laboratories in major fish ports and prescribe the highest standards for the operation and maintenance of such post-harvest facilities;
- (e) arrange and make representations with appropriate funding institutions to finance such facilities for the use of the fishery cooperatives/associations;
- (f) develop and strengthen marketing facilities and promote cooperative marketing systems; and
- (g) promote and strengthen local fisheries ship-building and repair industry.

**Section 120. *Extension Services.*** - The Department shall develop cost-effective, practical and efficient extension services on a sustained basis, in addition to those provided by state educational institutions, especially to municipal fisherfolk in undeveloped areas, utilizing practicable and indigenous resources and government agencies available, and based upon a system of self-reliance and self-help.

**Section 121. *Protection of Sensitive Technical Information.*** - The Department shall take such measures as may be necessary in order to protect trade, industrial and policy information of Filipino fisherfolk, fisheries owners/operators, entrepreneurs, manufacturers and researchers, when disclosure of such information will injure the competitiveness or viability of domestic fisheries.

**Section 122. *Assistance in Collecting Information.*** - The Department, in coordination with other government entities concerned, may require Filipino representatives abroad and foreign-based personnel to assist in the collection of fisheries data and information.

**Section 123. *Charting of Navigational Lanes and Delineation of Municipal Waters.*** - The Department shall authorize the National Mapping and Resource Information Authority (NAMRIA) for the designation and charting of navigational lanes in fishery areas and delineation of municipal waters. The Philippine Coast Guard shall exercise control and supervision over such designated navigational lanes.

**Section 124. *Persons and Deputies Authorized to Enforce this Code and Other Fishery Laws, Rules and Regulations.*** - The law enforcement officers of the Department, the Philippine Navy, Philippine Coast Guard, Philippine National Police (PNP), PNP-Maritime Command, law enforcement officers of the LGUs and other government enforcement agencies, are hereby authorized to enforce this Code and other fishery laws, rules and regulations. Other competent government officials and employees, punong barangays and officers and members of fisherfolk associations who have undergone training on law enforcement may be designated in writing by the Department as deputy fish wardens in the enforcement of this Code and other fishery laws, rules and regulations.

**Section 125. *Strengthening Prosecution and Conviction of Violators of Fishery Laws.*** - The Department of Justice (DOJ) shall embark on a program to strengthen the prosecution and conviction aspects of fishery law enforcement through augmentation of the current complement of state prosecutors and through their continuous training and reorientation on fishery laws, rules and regulations.

**Section 126. *Foreign Grants and Aids.*** - All foreign grants, aids, exchange programs, loans, researches and the like shall be evaluated and regulated by the Department to ensure that such are consistent with the Filipinization, democratization and industrialization of fishing industry and the development of the entire country.

**Section 127. *Mandatory Review.*** - The Congress of the Philippines shall undertake a mandatory review of this Code at least once every five (5) years and as often as it may deem necessary, to ensure that fisheries policies and guidelines remain responsive to changing circumstances.

## **CHAPTER VIII**

### **Transitory Provisions**

**Section 128. *Moratoria.*** - The Department shall, upon the recommendation of the Bureau, have the power to declare a moratorium on the issuance of licenses for commercial fishing vessels to operate in specified area or areas in Philippine waters for a limited period of time if there are indications of overfishing brought about by a decrease in the volume and sizes of fish caught therein or for conservation or ecological purposes.

No new licenses and similar privileges on exploitation of specific fishery areas in Philippine waters and aquaculture production areas shall be issued in accordance with this Code. Such moratoria shall not exceed five (5) years from the effectivity of this Code.

**Section 129. *Formulation of Implementing Rules and Regulations.*** - An Inter-agency Committee is hereby created to formulate rules and regulations for the full implementation of this Code within ninety (90) days of its effectivity: Provided, however, That the formulated rules and regulations shall be submitted to both Houses of Congress for information and guidance. Such rules and regulations shall take effect upon publication in a newspaper of general circulation.

The Inter-agency Committee shall be composed of the following:

- (a) Secretary of Agriculture as Chairman;
- (b) Secretary of the Interior and Local Government;
- (c) Secretary of Environment and Natural Resources;
- (d) Secretary of Justice;
- (e) Secretary of Finance;
- (f) Secretary of Budget and Management;
- (g) Secretary of Labor and Employment;
- (h) Secretary of National Defense;
- (i) Commissioner of Civil Service Commission;
- (j) Director of BFAR;
- (k) Executive Director of PCAMRD;
- (l) General Manager of PFDA;
- (m) One (1) representative from each of the following:
  - (a.1) The League of Provinces;
  - (a.2) The League of Cities;
  - (a.3) The League of Municipalities;

- (a.4) The Liga ng mga Barangay;
- (n) Representative of the municipal fisherfolk;
- (o) Representative of the commercial fishers;
- (p) Representative of the non-government organizations involved in fishing concerns; and
- (q) A representative from the academe coming from the specialized fisheries institution.

## **CHAPTER IX**

### **Final Provisions**

**Section 130. *Appropriation.*** - The sum necessary to effectively carry out the provisions of this Act during the first year of implementation shall be sourced from the budget of the DA/BFAR and other agencies performing fisheries-related functions: Provided, however, That such amount as may be necessary to carry out the provisions of Sections 79, 109, 110, 111, 112, 113 are hereby appropriated out of the unappropriated funds of the National Treasury. The Congress of the Philippines shall provide for the appropriations of the Department, the NFRDI and the Fisheries Scholarship Program for the succeeding years to be included in the annual GAA.

**Section 131. *Repealing Clause.*** - Presidential Decree No. 704, as amended by Presidential Decree Nos. 1015 and 1058, Presidential Decree No. 977, as amended, Executive Order No. 967, Series of 1984, Executive Order No. 116, Series of 1987, Executive Order No. 292, Series of 1987, Executive Order No. 473, Series of 1991 and other existing laws except Republic Act No. 7611, decrees, executive orders, and rules and regulations or parts thereof, which are inconsistent with this Code, are hereby repealed or modified accordingly.

**Section 132. *Separability Clause.*** - If any portion or provision of this Code is declared unconstitutional or invalid, the other portions or provisions hereof, which are not affected thereby, shall continue in full force and effect.

**Section 133. *Effectivity.*** - This Code shall take effect fifteen (15) days after its publication in the Official Gazette or in two (2) newspapers of general publication.

Approved: **February 25, 1998**

**Republic of the Philippines**  
**Congress of the Philippines**  
Metro Manila

**Tenth Congress**

**Republic Act No. 8435            December 22, 1997**

**AN ACT PRESCRIBING URGENT RELATED MEASURES TO MODERNIZE THE AGRICULTURE AND FISHERIES SECTORS OF THE COUNTRY IN ORDER TO ENHANCE THEIR PROFITABILITY, AND PREPARE SAID SECTORS FOR THE CHALLENGES OF THE GLOBALIZATION THROUGH AN ADEQUATE, FOCUSED AND RATIONAL DELIVERY OF NECESSARY SUPPORT SERVICES, APPROPRIATING FUNDS THEREFOR AND FOR OTHER PURPOSES**

*Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled::*

**Section 1. *Short Title.*** - This act shall be known as the "*Agriculture and Fisheries Modernization Act of 1997.*"

**Section 2. *Declaration of Policy.*** - The goals of the national economy are more equitable distribution of opportunities, income and wealth; a sustained increase in the amount of goods and services produced by the nation for the benefit of the people; and an expanding productivity as the key to raising the quality of life for all, especially the underprivileged.

The State shall promote industrialization and full employment based on sound agricultural development and agrarian reform, through industries that make full and efficient use of human and natural resources, and which are competitive in both domestic and foreign markets. In pursuit of these goals, all sectors of the economy and all regions of the country shall be given optimum opportunity to develop. Private enterprises, including corporations, cooperatives, and similar collective organizations, shall be encouraged to broaden the base of their ownership.

Thus, it is hereby declared the policy of the State to enable those who belong to the agriculture and fisheries sectors to participate and share in the fruits of development and growth in a manner that utilizes the nations resources in the most efficient and sustainable way possible by establishing a more equitable access to assets, income, basic and support services and infrastructure.

The State shall promote food security, including sufficiency in our staple food, namely rice and white corn. The production of rice and white corn shall be optimized to meet our local consumption and shall be given adequate support by the State.

The State shall adopt the market approach in assisting the agriculture and fisheries sectors while recognizing the contribution of the said sector to food security, environmental protection, and balanced urban and rural development, without neglecting the welfare of the consumers, especially the lower income groups. The state shall promote market-oriented policies in agricultural production to encourage farmers to shift to more profitable crops.



The state shall empower the agricultural and fisheries sector to develop and sustain themselves. Toward this end, the State shall ensure the development of the agriculture and fisheries sectors in accordance with the following principles:

- a) *Poverty Alleviation and Social Equity.* - The State shall ensure that the poorer sectors of society have equitable access to resources, income opportunities, basic and support services and infrastructure especially in areas where productivity is low as a means of improving their quality of life compared with other sectors of society;
- b) *Food Security.* - The State shall assure the availability, adequacy, accessibility of food supplies to all at all times;
- c) *Rational Use of Resources.* - The State shall adopt a rational approach in the allocation of public investments in agriculture and fisheries in order to assure efficiency and effectiveness in the use of scarce resources and thus obtain optimal returns on its investments;
- d) *Global Competitiveness.* - The State shall enhance the competitiveness of the agriculture and fisheries sectors in both domestic and foreign markets;
- e) *Sustainable Development.* - The State shall promote development that is compatible with the preservation of the ecosystem in areas where agriculture and fisheries activities are carried out. The State should exert care and judicious use of the country's natural resources in order to attain long-term sustainability;
- f) *People Empowerment.* - The State shall promote people empowerment by enabling all citizens through direct participation or through their duly elected, chosen or designated representatives the opportunity to participate in policy formulation and decision-making by establishing the appropriate mechanisms and by giving them access to information; and
- g) *Protection from Unfair Competition.* - The State shall protect small farmers and fisher folk from unfair competition such as monopolistic and oligopolistic practices by promoting a policy environment that provides them priority access to credit and strengthened cooperative-based marketing system.

**Section 3. *Statement of Objectives.*** - This Act shall have the following objectives:

- a) To modernize the agriculture and fisheries sectors by transforming these sectors from a resource-based to a technology-based industry;
- b) To enhance profits and incomes in the agriculture and fisheries sectors, particularly the small farmers and fisherfolk, by ensuring equitable access to assets, resources and services, and promoting higher-value crops, value-added processing, agribusiness activities, and agro-industrialization;
- c) To ensure the accessibility, availability and stable supply of food to all at all times;
- d) To encourage horizontal and vertical integration, consolidation and expansion of agriculture and fisheries activities, group functions and other services through the organization of cooperatives, farmers' and fisherfolk's associations, corporations,

nucleus estates, and consolidated farms and to enable these entities to benefit from economies of scale, afford them a stronger negotiating position, pursue more focused, efficient and appropriate research and development efforts and enable them to hire professional managers;

e) To promote people empowerment by strengthening people's organizations, cooperatives and NGO's and by establishing and improving mechanisms and resources for their participation in government decision-making and implementation;

f) To pursue a market-driven approach to enhance the comparative advantage of our agriculture and fisheries sectors in the world market;

g) To induce the agriculture and fisheries sectors to ascend continuously the value-added ladder by subjecting their traditional or new products to further processing in order to minimize the marketing of raw, unfinished or unprocessed products;

h) To adopt policies that will promote industry dispersal and rural industrialization by providing incentives to local and foreign investors to establish industries that have backward linkages to the country's agriculture and fisheries resource base;

i) To provide social and economic adjustment measures that increase productivity and improve market efficiency while ensuring the protection and preservation of the environment and equity for small farmers and fisherfolk; and

j) To improve the quality of life of all sectors.

#### **Section 4. *Definition of Terms.* -**

*"Agrarian Reform Community"* is a barangay at the minimum or a cluster of contiguous barangays where there is a critical mass of farmers or farm workers and which features the main thrust of agrarian development land tenure improvement and effective delivery of support services.

*"Agricultural Lands"* refers to lands devoted to or suitable for the cultivation of the soil, planting of crops, growing of trees, raising of livestock, poultry, fish or aquiculture production, including the harvesting of such farm products, and other farm activities and practices performed in conjunction with such farming operations by persons whether natural or juridical and not classified by the law as mineral land, forest land, residential land, commercial land, or industrial land.

*"Agricultural Land Use Conversion"* refers to the process of changing the use of agricultural land to non-agricultural uses.

*"Agricultural Sector"* is the sector engaged in the cultivation of the soil, planting of crops, growing of fruit trees, raising of livestock, poultry, or fish, including the harvesting and marketing off such farm products, and other farm activities and practices.

*"Agricultural Mechanization"* is the development, adoption, manufacture and application of appropriate location-specific, and cost-effective agricultural technology using human, animal, mechanical, electrical and other non-conventional sources of

energy for agricultural production and post-harvest operations consistent with agronomic conditions and for efficient and economic farm management.

"*Agriculture and Fisheries Modernization*" is the process of transforming the agriculture and fisheries sectors into one that is dynamic, technologically advanced and competitive yet centered on human development guided by the sound practices of sustainability and the principles of social justice.

"*Agro-Processing Activities*" refers to the processing of raw agricultural and fishery products into semi-processed or finished products which include materials for the manufacture for food and/or non-food products, pharmaceuticals and other industrial products.

"*Banks*" collective used, means government banks and private banks, rural banks and cooperative banks.

"*Basic Needs Approach to Development*" involves the identification, production and marketing of wage goods and services for consumption of rural communities.

"*Communal Irrigation System (CIS)*" is an irrigation system that is managed by a bona fide Irrigators Association.

"*Competitive Advantage*" refers to competitive edge in terms of product quality and/or price. It likewise refer to the ability to produce a product with the greatest relative efficiency in the use of resources.

"*Cooperatives*" refers to duly registered associations of persons with a common bond of interest who have voluntarily joined together to achieve a lawful common social and economic end, making equitable contributions to the capital required and accepting a fair share of the risks and benefits of the undertaking in accordance with universally accepted cooperatives principles.

"*Department*" refers to the Department of Agriculture.

"*Economic Scale*" refers to the minimum quantity of volume of goods required to be efficient.

"*Economies of Scale*" refers to the decrease in unit cost as more units are produced due to the spreading out of fixed costs over a greater number of units produced.

"*Empowerment*" involves providing authority, responsibility and information to people directly engaged in agriculture and fishery production, primarily at the level of the farmers, fisher folk and those engaged in food and non-food production and processing, in order to give them wider choices and enable them to take advantage of the benefits of the agriculture and fishery industries.

"*Extension Services*" refers to the provision of training, information, and support services by the government and non-government organizations to the agriculture and fisheries sectors to improve the technical, business, and social capabilities of farmers and fisher folk.

*"Farmer's and Fisherfolk's Organizations or Associations"* refer to farmers and fisherfolks cooperatives, associations or corporations duly registered with appropriate government agencies and which are composed primarily of small agricultural producers, farmers, farm, workers, agrarian reform beneficiaries, fisher folk who voluntarily join together to form business enterprises or non-business organizations which they themselves own, control and patronize.

*"Farm-to-Market Roads"* refer to roads linking the agriculture and fisheries production sites, coastal landing points and post-harvest facilities to the market and arterial roads and highways.

*"Fisheries"* refers to all systems or networks of interrelated activities which include the production, growing, harvesting, processing, marketing, developing, conserving, and managing of all aquatic resources and fisheries areas.

*"Fisheries Sector"* is the sector engaged in the production, growing, harvesting, processing, marketing, developing, conserving, and managing of aquatic resources and fisheries areas.

*"Fishing"* refers to the application of techniques using various gear in catching fish and other fisheries products.

*"Fishing Grounds"* refers to areas in any body of water where fish and other aquatic resources congregate and become target of capture.

*"Food Security"* refers to the policy objective, plan and strategy of meeting the food requirements of the present and future generations of Filipinos in substantial quantity, ensuring the availability and affordability of food to all, either through local production or importation, of both, based on the country's existing and potential resource endowment and related production advantages, and consistent with the over all national development objectives and policies. However, sufficiency in rice and white corn should be pursued.

*"Fresh Agricultural And Fishery Products"* refers to agricultural and fisheries products newly taken or captured directly from its natural state or habitat, or those newly harvested or gathered from agricultural areas or bodies of water used for aquaculture.

*"Global Competitiveness"* refers to the ability to compete in terms of price, quality and value of agriculture and fishery products relative to those of other countries.

*"Gross Value-Added"* refers to the total value, excluding the value of non-agricultural of fishery intermediate inputs, of goods and services contributed by the agricultural and fisheries sectors.

*"Head works"* refers to the composite parts of the irrigation system that divert water from natural bodies of water such as river, streams, and lakes.

*"Industrial Dispersal"* refers to the encouragement given to manufacturing enterprises to establish their plants in rural areas. Such firms normally use agricultural raw materials either in their primary or intermediate state.

"*Irrigable Lands*" refers to lands which display marked characteristics justifying the operation of an irrigation system.

"*Irrigated Lands*" refers to lands services by natural irrigation or irrigation facilities. These include lands where water is not readily available as existing irrigation facilities need rehabilitation or upgrading or where irrigation water is not available year-round.

"*Irrigation System*" refers to a system of irrigation facilities covering contiguous areas.

"*Irrigators' Association (IA)*" refers to an association of farmers within a contiguous area served by a National Irrigation System or Communal Irrigation System.

"*Land Use*" refers to the manner of utilizing the land, including its allocation, development and management.

"*Land Use Plan*" refers to a document embodying a set of policies accompanied by maps and similar illustrations which represent the community-deserved pattern of population distribution and a proposal for the future allocation of land to the various land-using activities, in accordance with the social and economic objectives of the people. It identifies the location, character and extent of the area's land resources to be used for different purposes and includes the process and the criteria employed in the determination of the land use.

"*Land Use Planning*" refers to the act of defining the allocation, utilization, development and management of all lands within a given territory or jurisdiction according to the inherent qualities of the land itself and supportive of sustainable, economic, demographic, socio-cultural and environmental objectives as an aid to decision-making and legislation.

"*Main Canal*" refers to the channel where diverted water from a source flows to the intended area to be irrigated.

"*Market Infrastructure*" refers to facilities including, but not limited to, market buildings, slaughterhouses, holding pens, warehouses, market information centers, connecting roads, transport and communication and cold storage used by the farmers and fisher folk in marketing their produce.

"*National Information Network (NIN)*" refers to an information network which links all offices and levels of the Department with various research institutions and local end-users, providing easy access to information and marketing services related to agriculture and fisheries.

"*National Irrigation System (NIS)*" refers to a major irrigation system managed by the National Irrigation Administration.

"*Network of Protected Areas for Agricultural and Agro-industrial Development (NPAAD)*" refers to agricultural areas identified by the Department through the Bureau of Soils and Water Management in coordination with the National Mapping and Resources Information Authority in order to ensure the efficient utilization of

land for agriculture and Agro-industrial development and promote sustainable growth . The NPAAD covers all irrigated areas, all irrigable lands already covered by irrigation projects with firm funding commitments; all alluvial plain land highly suitable for agriculture whether irrigated or not; Agro-industrial crop lands or lands presently planted to industrial crops that support the viability of existing agricultural infrastructure and agro-based enterprises, highlands, areas located at an elevation of five hundred (500) meters or above and have the potential for growing semi temperate and high-value crops; all agricultural lands that are ecological fragile, the conversion of which will result in serious environmental degradation, and mangrove areas and fish sanctuaries.

"*On-Farm Irrigation Facilities*" refers to composite facilities that permit entry of water to paddy areas and consist of farm ditches and turnouts.

"*Primary Processing*" refers to the physical alteration of raw agricultural or fishery products with or without the use of mechanical facilities.

"*Post-Harvest Facilities*" includes, but is not limited to , threshing, drying, milling, grading , storing, and handling of produce and such other activities as stripping, winnowing, chipping and washing.

"*Post -Harvest Facilities*" includes, but it is not limited to, threshers, moisture meters, dryers, weighing scales, milling equipment, fish ports, fish landings, ice plants and cold storage facilities, processing plants, warehouses, buying stations, market infrastructure and transportation.

"*Premature Conversion of Agricultural Land*" refers to the undertaking of any development activity, the results of which modify or alter the physical characteristics of the agricultural lands to render them suitable for non-agricultural purposes, without an approved order of conversion from the DAR.

"*Resource Accounting*" refers to a tracking changes in the environment and natural resources biophysically and economically (in monetary terms)

"*Resource-based*" refers to the utilization of natural resources.

"*Rural Industrialization*" refers to the process by which the economy is transformed from one that is predominantly agricultural to one that is dominantly industrial and service-oriented. Agriculture provides the impetus and push for industry and services through the market that it creates, the labor that it absorbs, and the income that it generates which is channeled to industry and services. As development continues, with agriculture still an important sector, industry and services begin to generate income and markets and concomitantly increase their share of total income.

"*Strategic Agriculture and Fisheries Development Zones (SAFDZ)*" refers to the areas within the NAPAAD identified for production, Agro-Processing and marketing activities to help develop and modernize, either the support of government, the agriculture and fisheries sectors in an environmentally and socio-cultural sound manner.

"*Secondary Canal*" refers to the channel connected to the main canal which distributes irrigation to specific areas.

"*Secondary Processing*" refers to the physical transformation of semi-processed agricultural or fishery products.

"*Shallow Tube Well (STW)*" refers to a tube or shaft vertically set into the ground for the purpose of bringing ground water to the soil surface from a depth of less than 20 meters by suction lifting.

"*Small Farmers and Fisherfolk*" refers to natural person dependent on small-scale subsistence farming and fishing activities as their primary source of income.

"*Small and Medium Enterprise (SME)*" refers to any business activity or enterprise engaged in industry, agribusiness and/or services, whether single proprietorship, cooperative, partnership or corporation whose total assets, inclusive of those arising from loans but exclusive of the land on which the particular business entity's office, plan and equipment are situated, must have value falling under the following categories:

Micro - not more than P 1,500,000

Small - P 1,500,001 to P 15,000,000

Medium - P15,000,001 to P 60,000,000

The Department, in consultation with the Congressional Oversight Committee on Agricultural and Fisheries Modernization, may adjust the above values as deemed necessary.

"*Socio-culturally Sound*" means the consideration of the social structure of the community such as leadership pattern, distribution of roles across gender and age groups, the diversity of religion and other spiritual beliefs, ethnicity and cultural diversity of the population.

"*Technology-based*" refers to utilization of technology.

"*Zoning Ordinance*" refers to a local legislation approving the development land use plan and providing for the regulations and other conditions on the uses of land including the limitation of the infrastructure that may be placed within the territorial jurisdiction of a city or municipality.

## **TITLE I PRODUCTION AND MARKETING SUPPORT SERVICES**

### **Chapter 1 Strategic Agricultural and Fisheries Development Zones**

**Section 5. Declaration of Policy.** - It is the policy of the State to ensure that all sectors of the economy and all regions of the country shall be given optimum opportunity to develop through the rational and sustainable use of resources peculiar to each area in order to

maximize agricultural productivity, promote efficiency and equity and accelerate the modernization of the agriculture and fisheries sectors of the country.

**Section 6. *Network of Areas for Agricultural and Agro-Industrial Development.*** - The Department shall, within six (6) months after the approval of this Act, and in consultation with the local government units, appropriate government agencies, concerned non-government organizations (NGOs) and organized farmers' and fisherfolk's groups, identify the strategic Agriculture and Fisheries Development Zones (SAFDZ) within the network of protected areas for agricultural and agro-industrial development to ensure that lands are efficiently and sustainably utilized for food and non-food production and agro-industrialization.

The SAFDZ which shall serve as centers where development in the agriculture and fisheries sectors are catalyzed in an environmentally and socio-cultural sound manner, shall be identified on the basis of the following criteria

- a. Agro-climatic and environmental conditions giving the area a competitive advantage in the cultivation, culture, production and processing of particular crops, animals and aquatic products;
- b. Strategic location of the area for the establishment of agriculture or fisheries infrastructure, industrial complexness, production and processing zones;
- c. Strategic location and of the area for market development and market networking both at the local and international levels; and
- d. Dominant presence of agrarian reform communities (ARCs) and/or small owner-cultivators and amortizing owners/agrarian reform beneficiaries and other small farmers and fisher folk in the area.

The SAFDZ shall have an integrated development plan consisting of production, processing, investment, marketing, human resources and environmental protection components.

**Section 7. *Modern Farms.*** - The Department in coordination with the local government units (LGUs) and appropriate government agencies, may designate agrarian reform communities (ARCs) and other areas within the SAFDZ suitable for economic scale production which will serve as model farms.

Farmer-landowners whose lands are located within these designated areas shall be given the option to enter into a management agreement with corporate entities with proven competence in farm operations and management, high-end quality production and productivity through the use of up-to-date technology and collateral resources such as skilled manpower, adequate capital and credit, and access to markets, consistent with the existing laws.

**Section 8. *Mapping.*** - The Department, through the Bureau of Soils and Water Management (BSWM), in coordination with the National Mapping and Resource Information Authority (NAMRIA) and the Housing and Land Use Regulatory Board (HLURB) shall undertake the mapping of network of areas for agricultural and agro-industrial development for all municipalities, cities and an appropriate scale. The BSWM may call on other agencies to provide technical and other logistical support in this undertaking.



**Section 9. *Delineation of Strategic Agriculture and Fisheries Development Zones.*** - The Department, in consultation with the Department of Agrarian Reform, the Department of Trade and Industry, the Department of Environment and Natural Resources, Department of Science and Technology, the concerned LGU's, the organized farmers and fisher folk groups, the private sector and communities shall, without prejudice to the development of identified economic zones and free ports, establish and delineate based on sound resource accounting, the SAFDZ within one (1) year from the effectivity of this Act.

All irrigated lands, irrigable lands already covered by irrigation a projects with firm funding commitments, and lands with existing or having the potential for growing high-value crops so delineated and included within the SAFDZ shall not be converted for a period of five (5) years front the effectivity for this Act: *Provided, however;* That not more than five percent (5%) of the said lands located within the SAFDZ may be converted upon compliance with existing laws, rules, regulations, executive order and issuances, and administrative orders relating to land use conversion: *Provided, further;* That thereafter 1) a review of the SAFDZ, specifically of the productivity of the areas, improvement of the quality of life of farmers and fisher folk, and efficiency and defectiveness of the support services shall be conducted by the Department and the Department of Agrarian Reform, in coordination with the Congressional Oversight Committee on Agricultural Committee and Fisheries Modernization; 2) conversion may be allowed, if at all, on a case-to-case basis subject to existing laws, rules, regulations, executive orders and issuances, and administrative orders governing land use conversion; 3) in case of conversion, the land owners will pay the Department the amount equivalent to the government's investment cost including inflation.

**Section 10. *Preparation of Land Use and Zoning Ordinance.*** - Within one (1) year from the finalization of the SAFDZ, in every city and municipality, all cities and municipalities shall have prepared their respective land use and zoning ordinance incorporating the SAFDZ, where applicable. Thereafter, all land use plans and zoning ordinances shall be updated every four (4) years or as often as may be deemed necessary upon the recommendation of the Housing and Land Use Regulatory Board and must be completed within the first year of the term of office of the mayor. If the cities/municipalities fail to comply with the preparation of zoning and land use plans, the DILG shall impose the penalty as provided for under Republic Act No.7160

**Section 11. *Penalty for Agricultural Inactivity and Premature Conversion.*** - Any person or juridical entity who knowingly or deliberately causes any irrigated agricultural lands seven (7) hectares or larger, whether contiguous for not, within the protected areas for agricultural development, as specified under Section 6 in relation to Section 9 of this Act, to lie idle and unproductive for a period exceeding one (1) year, unless due to force majeure, shall be subject to an idle land tax of Three Thousand Pesos (P3,000.00) per hectare per year. In addition, the violator, shall be required to put back such lands to productive agricultural use. Should the continued agricultural inactivity, unless due to force majeure, exceed a period of two (2) years, the land shall be subject to escheat proceedings.

Any person found guilty of premature or illegal conversion shall be penalized with imprisonment of two (2) to six (6) years, or a fine equivalent to one hundred percent (100%)

of the government's investment cost, or both, at the discretion of the court, and an accessory penalty of forfeiture of the land and any improvement thereon.

In addition, the DAR may impose the following penalties, after determining, in an administrative proceedings, that violation of this law has been committed:

- a. Consolation or withdrawal of the authorization for land use conversion; and
- b. Backlisting, or automatic disapproval of pending and subsequent conversion applications that they may file with the DAR.

**Section 12. *Protection of Watershed Areas.*** - All watersheds that are sources of water for existing and potential irrigable areas and recharge areas of major aquifers identified by the Department of Agriculture and the Department of Environment and Natural resources shall be preserves as such at all times.

## **Chapter 2**

### **Agriculture and Fisheries Modernization Plan**

**Section 13. *Agriculture and Fisheries Modernization Plan (AFMP).*** - The Department, in consultation with the farmers and fisher folk, the private sector, NGOs, people's organizations and the appropriate government agencies and offices, shall formulate and implement a medium- and long-term comprehensive Agriculture and Fisheries Modernization Plan.

The Agriculture and Fisheries Modernization Plan shall focus on five (5) major concerns:

- a. Food security;
- b. Poverty alleviation and social equity;
- c. Income enhancement and profitability, especially for farmers and fisher folk;
- d. Global competitiveness; and
- e. Sustainability.

**Section 14. *Food Security , Poverty Alleviation, Social Equity and Income Enhancement.*** - The Department, in coordination with other concerned departments or agencies, shall formulate medium-and long-term plans addressing food security, poverty alleviation, social equity and income enhancement concerns based on, but not limited to, the following goals and indicators for development:

- a. Increased income and profit of small farmers and fisherfolk;
- b. Availability of rice and other staple foods at affordable process;
- c. Reduction of rural poverty and income inequality;
- d. Reduction of the incidence of malnutrition;
- e. Reduction of rural unemployment and underemployment; and
- f. Improvement in land tenure of small farmers.

**Section 15. *Global Competitiveness and Sustainability.*** - The Department shall formulate medium-and-long-term plans aimed at enhancing the global competitiveness and sustainability of the country in agriculture and fisheries based on, but not limited to, the following goals and indicators for development:

- a. Increase in the volume, quality and value of agriculture and fisheries production for domestic consumption and for exports;
- b. Reduction in post-harvest losses;
- c. Increase in the number/types and quality of processed agricultural and fishery products;
- d. Increase in the number of international trading partners in agriculture and fishery products;
- e. Increase in the number of sustainable agriculture and fisheries firms engaged in domestic production, processing, marketing and export activities;
- f. Increase in and wider level of entrepreneurship among farmers and fisher folk in the area;
- g. Increase in the number of farms engaged in diversified farming; and
- h. Reduced use of agro-chemicals that are harmful to health and the environment.

**Section 16. *Global Climate Change.*** - The Department, in coordination with the Philippine Atmospheric, Geophysical and Astronomical Service Administration (P. A. G. A. S. A.) and such other appropriate government agencies, shall devise a method of regularly monitoring and considering the effect of global climate changes, weather disturbances, and annual productivity cycles for the purpose of forecasting and formulating agriculture and fisheries production programs.

**Section 17. *Special Concerns.*** - The Department shall consider the following areas of concerns, among other in formulating the AFMP:

- a. Strategies and programs aimed to achieve growth and profitability targets in the context of the constraints and challenges of the World Trade Organization (WTO);
- b. Programs arising from the implementation of the Agrarian Reform Program;
- c. Identification of SAFDZ;
- d. Infrastructure and market support for the SAFDZ;
- e. Infrastructure support to make agriculture and fisheries production inputs, information and technology readily available to farmers, fisherfolk, cooperatives and entrepreneurs;
- f. Credit programs for small farmers and fisher folk, and agricultural graduates;
- g. Comprehensive and integrated agriculture and fisheries research, development and extension services;
- h. Preservation of biodiversity, genetic materials and the environment;

- i. Adequate and timely response against environmental threats to agriculture and fisheries;
- j. Rural non-farm employment;
- k. Access to aquatic resources by fisher folk;
- l. Basic needs program for the impoverished sectors of society who will be affected by liberalization;
- m. Indigenous peoples;
- n. Rural youth;
- o. Women;
- p. Handicapped persons; and
- q. Senior citizens.

**Section 18. *Monitoring and Evaluation.*** - The Department shall develop the capability of monitoring the AFMP through a Program Benefit Monitoring and Evaluation System (PBMES). In addition, it can secure the services of independent consultants and external evaluators in order to assess its over-all impact. The Department shall make periodic reports to the Congressional Oversight Committee on Agriculture and Fisheries Modernization.

**Section 19. *Role of Other Agencies.*** - All units and agencies of the government shall support the Department in the implementation of the AFMP.

In particular, the Department of Public Works and Highways shall coordinate with the Department with respect to the infrastructure support aspect of the plan order to accomplish networking of related infrastructure facilities.

The Department of Interior and Local Government shall provide assistance to the Department in mobilizing resources under the control of local government units.

The Department of Trade and Industry, Agrarian Reform, Science and Technology, and Environment and Natural Resources shall coordinate their investment programs and activities to complement the Department's implementation of the AFMP.

The Department of Education, Culture and Sports, the Technical Educational and Skills Development Authority, the Department of Health with the Department of Social Services and Development shall coordinate with the Department to determine the financial requirements of small farmers and fisherfolk to adjust to the effects of modernization as envisioned in the Agriculture and Fisheries Modernization Plan.

The departments referred above shall be required to identify in their budget proposals the allocation intended for the improvement of the environmental and other conditions affecting agriculture and fisheries.

Congressional initiatives shall also be coordinated by the Committees on Agriculture on both Houses to complement and enhance the programs and activities of the Department in the implementation of the AFMP.

### Chapter 3 Credit

**Section 20. Declaration of Policy.** - It is hereby declared the policy of the State to alleviate poverty and promote vigorous growth in the countryside through access to credit by small farmers, fisher folk, particularly the women involved in the production, processing and trading of agriculture and fisheries products and the small and medium scale enterprises (SMEs) and industries engaged in agriculture and fisheries.

Interest rates shall be determined by market forces, provided that existing credit arrangements with agrarian reform beneficiaries are not affected. Emphasis of the program shall be on proper management and utilization.

In this regard, the State enjoins the active participation of the banking sector and government financial institutions in the rural financial system.

**Section 21. Phase-out of the Directed Credit Programs (DCPs) and Provision for the Agro-Industry Modernization Credit and Financing Program (AMCPP).** - The Department shall implement existing DCPs; however, the Department shall, within a period of four (4) years from the effectivity of this Act, phase-out all DCPs and deposit all its loanable funds including those under the Comprehensive Agricultural Loan Fund (CALF) including new funds provided by this Act for the AMCFP and transfer the management thereof to cooperative banks, rural banks, government financial institutions and viable NGOs for the Agro-Industry Modernization Credit Financing Program (AMCFP). Interest earnings of the said deposited loan funds shall be reverted to the AMCFP.

**Section 22. Coverage.** - An agriculture, fisheries and agrarian reform credit and financing system shall be designed for the use and benefit of farmers, fisher folk those engaged in food and non-food production, processing and trading, cooperatives, farmers'/fisherfolk's organization, and SMEs engaged in agriculture hereinafter referred to in this chapter as the "beneficiaries"

**Section 23. Scope of the Agro-Industry Modernization Credit and Financing Program (AMCFP)..** - The Agro-Industry Modernization Credit and Financing Program shall include the packaging and delivery of various credit assistance programs for the following:

- a. Agriculture and fisheries production including possessing of fisheries and agri-based products and farm inputs;
- b. Acquisition of work animals, farm and fishery equipment and machinery;
- c. Acquisition of seeds, fertilizer, poultry, livestock, feeds and other similar items;
- d. Procurement of agriculture and fisheries products for storage, trading, processing and distribution;
- e. Acquisition of water pumps and installation of tube wells for irrigation;
- f. Construction, acquisition and repair of facilities for production, processing, storage, transportation, communication, marketing and such other facilities in support of agriculture and fisheries;

- g. Working capital for agriculture and fisheries graduates to enable them to engage in agriculture and fisheries related economic activities;
- h. Agribusiness activities which support soil and water conservation and ecology-enhancing activities;
- i. Privately-funded and LGU-funded irrigation systems that are designed to protect the watershed;
- j. Working capital for long-gestating projects; and
- k. Credit guarantees on uncollaterized loans to farmers and fisherfolks.

**Section 24.** Review of the mandates of Land Bank of the Philippines Crop Insurance Corporation, Guarantee Fund For Small and Medium Enterprises, Quedan and Rural Credit Guarantee Corporation, Agricultural Credit Policy Council. - The Department of Finance shall commission and independent review of the charters and the respective programs of the Land Bank of the Philippines (LBP), Philippine Crop Insurance Corporation (PCIC), Guarantee Fund for Small and Medium Enterprises (GFSME), Quedan and Rural Credit Guarantee Corporation (Quendancor), and Agricultural Credit Policy Council (ACPC), and recommend policy changes and other measures to induce the private sectors participation in lending to agriculture and to improve credit access by farmers and fisherfolk: Provided, That agriculture and fisheries projects with long gestation period shall be entitled to a longer grace period in repaying the loan based on the economic life of the project.

The Land Bank of the Philippines, shall, in accordance with its original mandate, focus primarily on plans and programs in relation to the financing of agrarian reform and the delivery of credit services to the agriculture and fisheries sectors, especially to small farmers and fisherfolk.

The review shall start six (6) months after the enactment of this Act. Thereafter, the review shall make recommendations to the appropriate Congressional Committees for possible legislative actions and to the Executive Branch for policy and program changes within six (6) months after submission.

**Section 25. *Rationalization of Credit Guarantee Schemes and Funds.*** - All existing credit guarantee schemes and funds applicable to the agriculture and fishery sectors shall be rationalized and consolidated into an Agriculture and Fisheries Credit Guarantee Fund. The rationalization shall cover the credit guarantee schemes and funds operated by the Quendancor, the GFSME and the Comprehensive Agricultural Loan Fund. The Agriculture and Fisheries Credit Guarantee Fund shall be managed and implemented by the Quendancor. Provided, That representation to the Quendancor Board shall be granted to cooperatives, local government units and rural financial institutions; Provided, further, That credit guarantee shall be given only to small-scale agriculture and fisheries activities and to countryside micro-small, and medium enterprises. It may also cover loan guarantees for purchase orders and sales contracts.

The Agriculture and Fisheries Credit Guarantee Fund shall be funded by at least ten percent (10%) of the funding allocation for the AMCFP.

## **Chapter 4 Irrigation**

**Section 26. *Declaration of Policy.*** - It is the policy of the State to use its natural resources rationally and equitably. The state shall prevent the further destruction of watersheds, rehabilitate existing irrigation systems and promote the development of irrigation systems that are effective, affordable, appropriate, and efficient.

In the choice of location-specific irrigation projects, the economic principle of comparative advantage shall always be adhered to.

**Section 27. *Research and Development.*** - Irrigation Research and Development (R&D) shall be pursued and priority shall be given to the development of effective, appropriate, and efficient irrigation and water management technologies.

The Department shall coordinate with the Department of Environment and Natural Resources concerning the preservation and rehabilitation of watersheds to support the irrigation systems.

**Section 28. *Criteria for Selection of Irrigation Development Scheme.*** - The Selection of appropriate scheme of irrigation development shall be location-specific and based on the following criteria:

- a. Technical feasibility;
- b. Cost-effectiveness;
- c. Affordability, low investment cost per unit area;
- d. Sustainability and simplicity of operation;
- e. Recovery of operation and maintenance cost;
- f. Efficiency in water use;
- g. Length of gestation period; and
- h. Potential for increasing unit area productivity.

All irrigation projects shall, in addition to the criteria enumerated above, be subjected to a social cost-benefit analysis.

**Section 29. *Simplified Public Bidding.*** - The construction, repair, rehabilitation, improvement, or maintenance of irrigation projects and facilities shall follow the Commission on Audit (COA) rules on simplified public bidding.

Irrigation projects undertaken by farmers, farmer's organizations and other private entities whose funding is partly or wholly acquired by way of loan from government financial institutions shall not be subject to the bidding requirements of the government.

**Section 30. *National Irrigation Systems (NIS).*** - The National Irrigation Administration (NIA) shall continue to plan, design, develop, rehabilitate, and improve the NISs. It shall continue to maintain and operate the major irrigation structures including the head works and main canals.

In addition, the NIA is mandated to gradually turn over operation and maintenance of the National Irrigation System's secondary canals and on-farm facilities to Irrigators' Associations

**Section 31. *Communal Irrigation Systems (CIS).*** - The Department shall, within five (5) years from the effectivity of this Act, devolve the planning, design and management of CISs, including the transfer of NIA's assets and resources in relation to the CIS, to the LGUs. The budget for the development, construction, operation and maintenance of the CIS and other types of irrigation systems shall be prepared by and coursed through the LGUs. The NIA shall continue to provide technical assistance to the LGUs even after complete devolution of the Irrigation Systems to the LGUs, as may be deemed necessary.

**Section 32. *Minor Irrigation Schemes.*** - The Department shall formulate and develop a plan for the promotion of a private sector-led development of minor irrigation systems, such as Shallow Tube Wells (STWs), Low-Lift pumps (LLPs) and other inundation systems. the plan shall be included in the Short-term Agriculture and fisheries Modernization Plan.

**Section 33. *Other Irrigation Construction Schemes.*** - The Government shall also encourage the construction of irrigation facilities through other viable schemes for the construction of irrigation such as build-operate-transfer, build-transfer and other schemes that will fast-track the development of irrigation systems.

**Section 34. *Guarantee of the National Government.*** - To make build-operate-transfer (BOT) projects for irrigation attractive to proponents, the national government shall issue the need payment guarantee for BOT projects which shall answer for default of the National Irrigation Administration. Such amounts needed to answer for the payment guarantee is hereby to be appropriated.

**Section 35. *Irrigation Service Fees (ISF).*** - Upon effectivity of this Act, the NIA shall immediately review the ISF rates and recommend to the Department reasonable rates within six (6) months from the effectivity of this Act.

**Section 36. *Monitoring and Evaluation.*** - The Department shall monitor the implementation of R&D programs and irrigation projects. The Department shall review all existing irrigation systems every four (4) years, to determine their viability or ineffectiveness. The Department shall employ the services of independent evaluators to assess the overall impact of the country's irrigation development .

**Section 37. *Exemption from Election Ban.*** - The repair, maintenance and rehabilitation of irrigation facilities as well as BOT irrigation projects shall be exempted from the scope of the election ban on public works.

## **Chapter 5**

### **Information and Marketing Support Service**

**Section 38. *Declaration of Policy.*** - It is hereby declared the policy of the State to empower Filipino farmers and fisherfolk, particularly the women, involved in agriculture and fisheries through the provision of timely, accurate and responsive business information and efficient trading services which will link them to profitable markets for their products. They shall



likewise be given innovative support toward the generation of maximum income through assistance in marketing.

**Section 39. Coverage.** - A market information system shall be installed for the use and benefit of, but not limited to, the farmers and fisher folk, cooperatives, traders, processors, the LGUs and the Department.

**Section 40. The Marketing Assistance System.** - The Department shall establish a National Marketing Assistance Program that will immediately lead to the creation of a national marketing umbrella in order to ensure the generation of the highest possible income for the farmers and fisher folk or groups of farmers and fisher folk, matching supply and demand in both domestic and foreign markets.

**Section 41. National Information Network.** - A National Information Network (NIN) shall be set up from the Department level down to the regional, provincial and municipal offices within one (1) year from the approval of this Act taking into account existing information networks and seems.

The NIN shall likewise link the various research institutions for easy access to data on agriculture and fisheries research and technology. All departments, agencies, bureaus, research institutions, and local government units shall consolidate and continuously update all relevant information and data on a periodic basis and make such data available on the Internet.

**Section 42. Information and Marketing Service.** - The NIN shall provide information and marketing services related to agriculture and fisheries which shall include the following:

- a. Supply data;
- b. Demand data
- c. Price and Price trends;
- d. Product standards for both fresh and processed agricultural and fisheries projects;
- e. Directory of, but not limited to cooperatives, traders, key market centers, processors and business institutions concerned with agriculture and fisheries at the provincial and municipal levels;
- f. Research information and technology generated from research institutions involved in agriculture and fisheries;
- g. International, regional and local market forecasts; and
- h. Resource accounting data.

**Section 43. Initial Set-up.** - The Department shall provide technical assistance in setting -up the NIN at the local level through the cooperatives and the LGUs Provided , That , at the local level, a system that will make marketing information and services related to agriculture and fisheries will be readily available in the city/municipal public market for the benefit of the producers, traders and consumers.

**Section 44. *Role of Government Agencies.*** - The Bureau of Agricultural Statistics will serve as the central information server and will provide technical assistance to end-users in accessing and analyzing product and market information and technology.

The Department of Transportation and Communications shall provide technical and infrastructure assistance to the Department in setting up the NIN.

LGUs shall coordinate with the Department for technical assistance in order to accelerate the establishment and training of information end-users in their respective jurisdictions.

The Cooperative Development Authority shall coordinate with the Department for technical assistance in order to provide training assistance to cooperatives in the use of market information and technology.

**Section 45. *Role of Private Sector.*** - The NIN shall likewise be accessible to the private sector engaged in agriculture and fisheries enterprises. The Department shall formulate guidelines and determine fees for private sector entities that use the NIN.

## **Chapter 6 Other Infrastructure**

**Section 46. *Agriculture and Fisheries Infrastructure Support Services.*** - The Department of Public Works and Highways, the Department of Transportation and Communications, the Department of Trade and Industry and the LGUs shall coordinate with the Department to address the infrastructure requirements in accordance with this Act. Provided, that The Department and the LGU shall also strengthen its agricultural engineering support in carrying out the smooth and expeditious implementation of agricultural infrastructure projects.

**Section 47. *Criteria for Prioritization.*** - The prioritization of government resources for rural infrastructure shall be based on the following criteria:

- a. Agro-industrial potential of the area;
- b. Socio-economic contributions of the investments in the area;
- c. Absence of public investments in the area; and
- d. Presence of agrarian reform beneficiaries and other small farmers and fisher folk in the area.

**Section 48. *Public Infrastructure Facilities.*** - Public Infrastructure investments shall give preference to the kind, type and model of infrastructure facilities that are cost-effective and will be useful for the production, conservation, and distribution of most commodities and should benefit the most number of agriculture and fisheries producers and processors.

**Section 49. *Private Infrastructure Facilities.*** - For infrastructure facilities primarily benefiting private investors, the State shall facilitate the purchase and use of such utilities and shall keep to the minimum the bureaucratic requirements for these types of investments. Private investors include cooperatives or corporations of agriculture and fisheries producers and processors.

**Section 50. *Public Works Act.*** - The Department of Public Works and Highways shall coordinate with the Department for the purpose of determining the order of priorities for public works funded under the Public Works Act directly or indirectly affect agriculture and fisheries.

**Section 51. *Fishports, Seaports and Airports.*** - The Department of Transportation and Communications, Philippine Ports Authority and Philippine Fisheries Development Authority shall coordinate with the Department for the purpose of determining priority fishports, seaports and airports and facilitating the installation of bulk-handling and storage facilities , and other post-harvest facilities needed to enhance the marketing of agriculture and fisheries products Provided, that fishports , seaports an airports are also equipped with quarantine , sanitary and phytosanitary centers. The Department of Transportation and Communications (DOTC) shall have the mandate to cancel arrastre and cargo handling franchises among operators whom it deems inefficient and/or ineffective owing, but not limited to, a past history of under-capitalization, lack of equipment and lack of professional expertise. The DOTC shall recommend to the Philippine Ports Authority and consult with ship-owners and ship-operators in assessing the cargo-handling capabilities of cargo operators prior to extending new franchises or awards.

**Section 52. *Farm-to-Market Roads.*** - The Department shall coordinate with the LGUs and the resident-farmers and fisher folk in order to identify priority locations of farm-to -market roads that take into account the number of farmer and fisher folk and their families who shall benefit therefrom and the amount , kind and importance of agricultural and fisheries products produced in the area.

Construction of farm-to-market roads shall be a priority investment of the LGUs which shall provide a counterpart of not less than ten percent (10%) of the project cost subject to their IRA in the area.

**Section 53. *Rural Energy.*** - The Department shall coordinate with the Department of Energy (DOE), the Department of Public Works and Highways (DPWH), the National Electrification Administration (NEA) and the National Power Corporation (NAPOCOR) for the identification and installation of appropriate types of energy sources particularly in the use of non-conventional energy sources for the locality in order to enhance agriculture and fisheries development in the area.

**Section 54. *Communications Infrastructure.*** - The Department shall coordinate with the DOTC to facilitate the installation of telecommunication facilities in priority areas, in order to enhance agriculture and fisheries development .

**Section 55. *Water Supply System.*** - The Department shall coordinate with the DPWH and the LGUs for the identification and installation of water supply system in the locality for agro-industrial uses to enhance agriculture and fisheries development in the area.

**Section 56. *Research and Technology Infrastructure.*** - The Department in coordination with other government agencies shall give priority and facilitate the funding of infrastructure necessary for research ventures such as farm laboratories and demonstration farms with state colleges and universities that derive their core funds from the Department .

**Section 57. *Post-Harvest Facilities.*** - The Department shall coordinate with the Bureau of Post-Harvest for Research and Extension and the Post-harvest Horticulture, Training and Research Center of the University of the Philippines, Los Baños, to identify appropriate post-harvest facilities and technology needed to enhance agriculture and fisheries development in the area.

**Section 58. *Public Market and Abattoirs.*** - The Department shall encourage the LGUs to turn over the management and supervision of public markets and abattoirs to market vendors' cooperatives and for that purpose, the appropriation for post-harvest facilities shall include the support for market vendor' facilities.

The Department shall coordinate with the LGUs in the establishment of standardized market systems and use of sanitary market , facilities , and abattoirs, intended to ensure the food safety and quality.

All markets shall have a sanitation unit, proper and adequate drainage and sewerage system, ample water supply, public toilets with lavatories, garbage receptacles, ice plants and cold storage, adequate lighting and ventilation and supply of electricity to ensure cleanliness and sanitation. Price monitoring bulletin boards for selected commodities and weighing scales accessible to the public shall also be established.

Proper protection and preservation of agriculture and fisheries products being sold in the market shall also be observed. All foods which require no further cooking shall be wrapped , covered , or enclosed in containers to preserve the freshness and prevent contamination. Selling of products on market floors shall be prohibited.

**Section 59. *Agricultural Machinery.*** - The Department shall give priority to the development and promotion of appropriate agricultural machinery and other agricultural mechanization technologies to enhance agricultural mechanization in the countryside.

## **Chapter 7**

### **Products Standardization and Consumer Safety**

**Section 60. *Declaration of Policy.*** - It is the policy of the State that all sectors involved in the production, processing, distribution and marketing of food and non-food agricultural and fisheries products shall adhere to, and implement the use of product standards in order to ensure consumer safety and promote the competitiveness of agriculture and fisheries products.

**Section 61. *Bureau of Agriculture and Fisheries Product Standards.*** - The Department, within six (6) months after the approval of this act, and in consultation with the Department of Trade and Industry and the Bureau of Food and Drug, shall establish the Bureau of Agriculture and Fisheries Product Standards (BAFPS).

**Section 62. *Coverage.*** - The BAFPS shall set and implement standards for fresh, primary- and -secondary-processed agricultural and fishery products.

**Section 63. *Powers and Functions.*** - The BAFPS shall have the following powers and functions:

- a. Formulate and enforce standards of quality in the processing, preservation, packaging, labeling, importation, exportation, distribution, and advertising of agricultural and fisheries products;
- b. Conduct research on product standardization, alignment of the local standards with the international standards; and
- c. Conduct regular inspection of processing plants, storage facilities, abattoirs, as well as public and private markets in order to ensure freshness, safety and quality of products.

**Section 64. *Pool of Experts and Advisers.*** - The BAFPS may coordinate, seek the services of, and consult with both private and governmental agencies, research institute, educational establishments and such other individuals and entities with expertise in the field of product standards and consumer safety.

The Department of Trade and Industry, the Food and Nutrition Research Institute, and the Bureau of Food and Drug Administration shall provide technical advice and form part of the pool of experts/advisers of the BAFPS.

## TITLE 2 HUMAN RESOURCE DEVELOPMENT

**Section 65. *Declaration of Policy.*** - It is hereby declared the policy of the State to give priority to education and training on science and technology in order to accelerate social progress and promote total human liberation and development.

The State shall promote industrialization and full employment, based on sound agriculture and fisheries development and agrarian reform, through industries that make full and efficient use of human and natural resources.

**Section 66. *National Agriculture and Fisheries Education System (NAFES).*** - The Commission on Higher Education (CHED), in coordination with the Department and appropriate government agencies, shall establish a National Agriculture and Fisheries Education System (NAFES) which shall have the following objectives:

- a. To establish, maintain and support a complete and integrated system of agriculture and fisheries education relevant to the needs of the economy, the community and society.
- b. To modernize and rationalize agriculture and fisheries education from the elementary to the tertiary levels;
- c. To unify, coordinate and improve the system of implementation of academic programs that are geared toward achieving agriculture and fisheries development in the country; and
- d. To upgrade the quality, ensure sustainability and promote the global competitiveness, at all levels, of agriculture and fisheries education.

**Section 67. *Education Program for Elementary and Secondary Levels.*** - There is hereby established an Agriculture and Fisheries Education Program, under the NAFES specially

designed for elementary and secondary levels. The program shall be formulated, organized and implemented by the DECS with the following objectives:

- a. to develop appropriate values that form the foundation for sustained growth in agriculture and fisheries modernization.
- b. to increase the attractiveness of agriculture and fisheries education, so that more young and talented person will look at agriculture and fisheries as an acceptable option for career and livelihood;
- c. to promote appreciation of science in agriculture and fisheries development;
- d. to develop among students, positive attitudes towards entrepreneurship and global competition in the agriculture and fisheries business;
- e. to improve the present curriculum in the elementary and secondary levels by emphasizing the core values necessary for agriculture and fisheries modernization; and
- f. to develop an outreach program where students, parents and schools become instruments in effecting positive changes in the pupil's home and community.

**Section 68. *Post-Secondary Education Program.*** - There is hereby established a Post-Secondary Education Program for Agriculture and Fisheries under the NAFES, which shall be formulated and developed by TESDA in coordination with the appropriate government agencies and the private sector. The program shall include, among others, the following:

- a. a mechanism for a flexible process of curriculum development;
- b. integration of the dual training system in the various agricultural curricula and training programs;
- c. integration of entrepreneurship and global competitiveness in the agro-fisheries curricula;
- d. institutionalizing agriculture and fisheries skills standards and technical testing and certification;
- e. regular upgrading of learning/training facilities, school buildings , laboratory equipment; and
- f. development of a system for the strict enforcement of school regulations regarding standards and requirements.

**Section 69. *Network of National Centers of Excellence for Territory Education.*** - There is hereby established a Network of National Centers of Excellence in Agriculture and Fisheries Education, composed of qualified public and private colleges and universities, duly accredited as National Centers of Excellence (NCE) in the field of agriculture and fisheries.

For this purpose, the CHED shall formulate and implement a system of accreditation Provided, That not more than one provincial institute in every province and no more than one national university in each field in every region shall be accredited as such and Provided, further, That the system shall be based on the following criteria:

- a. institutional accessibility, population, economic contribution of agriculture and fisheries in the community, and the needs or unique requirements of the area
- b. quantity and quality of research studies conducted;
- c. degree of utilization of research results;
- d. quantity and quality of faculty members;
- e. type of facilities;
- f. linkage with international organizations; and
- g. potential contribution to agriculture and fisheries development in the target area.

**Section 70. Rationalization Plan.** - For the purpose of upgrading and maintaining a high degree of academic excellence in the fields of agriculture and fisheries, all existing public and private colleges and universities that are not hereinafter designated and accredited as centers of excellence shall be given adequate time to redirect its program to non-agriculture and/or non-fisheries areas needed by the province or region and/or merge their program with accredited NCEs in accordance with the Rationalization Plan to be jointly formulated by CHED and the Philippine Association of State Universities and Colleges (PASUC) upon consultation with the institution concerned.

The Rationalization Plan shall include a policy for the effective utilization of affected personnel and facilities, and shall not be construed as to result in the decrease of the budget allocation for the state universities and colleges concerned.

**Section 71. Counterpart Funding from LGUs.** - The LGUs shall, within two, (2) years from the effectivity of this Act, provide at least ten percent (10%) of the Maintenance and Other Operating Expenses (MOOE) budget for the operation of the provincial institutes within their area of responsibility.

In consultation with the LGUs, the CHED shall develop a provincial-national partnership scheme for a reasonable sharing of financial support taking into account social equity factors for poor provinces.

**Section 72. National Integrated Human Resource Development Plan in Agriculture and Fisheries.** - The CHED, in coordination with the Department and appropriate government agencies, shall formulate, develop and implement an integrated human resource development plan in agriculture and fisheries which shall serve as an instrument that will provide over-all direction in setting priorities in curricular programs, enrollment, performance targets, and investment programs.

**Section 73. Output-Oriented Performance Standards.** - In order to ensure the institutional accountability, efficiency, and quality, there shall be formulated and developed an Output-Oriented Performance Standards which shall serve as the primary instrument for institutional evaluation.

For this purpose, all public and private universities and colleges, that are designated as centers of excellence, shall cause to be installed a computerized monitoring and evaluation

system that periodically collects and regularly measures variables indicating institutional performance based on the Output-Oriented Performance Standards.

**Section 74. *Evaluation System.*** - Not later than one (1) year from the effectivity of this Act, the CHED shall establish a baseline information using the Output-Oriented Performance Standards referred to in Section 73 of this Title. Once every five (5) years thereafter, all designated NCEs in agriculture and fisheries shall be subject to a third party evaluation.

The evaluation shall include, among others, management and educational experts of national stature and representatives of key sectors of the agriculture and fisheries industries, as well as representatives of the Department, the Department of Environment and Natural Resources, the Department of Science and Technology, and the National Economic and Development Authority.

**Section 75. *Agriculture and Fisheries Board.*** - There shall be created an Agriculture and Fisheries Board in the Professional Regulation Commission to upgrade the Agriculture and Fisheries profession.

Those who have not passed the Civil Service Examination for Fisheries and Agriculture but have served the industry in either private or public capacity for not less than five (5) years shall be automatically granted eligibility by the Board of Examiners.

The first board of examination for B.S. Fisheries and/or Agriculture Graduates shall be conducted within one (1) year from the approval of this Act.

**Section 76. *Continuing Agriculture and Fisheries Education Program.*** - The Commission on Higher Education, the Department of Education, Culture and Sports and Technical Education and Skills Development Authority, in coordination with the Department and the public and private universities and colleges, shall formulate and develop a National and Integrated Continuing Agriculture and Fisheries Education Program, which shall address the current education and training requirements of teachers, professors and educators in agriculture and fisheries.

For this purpose, pre-service and in-service training of teachers in Home Economics Livelihood Education (HELE) for the primary level and Technology and Home Economics (THE) for the Secondary level, shall be upgraded.

**Section 77. *Scholarship Program.*** - The CHED in coordination with the public and private universities and colleges, TESDA and the DBM, shall develop a national scholarship program that provides opportunities for deserving academic staff to pursue advanced degrees in agriculture and fisheries. Where appropriate, such scholarship program shall also provide opportunities for graduate work in foreign universities.

**Section 78. *Merit System.*** - To promote the development of scientific excellence and academic scholarship, the public and private universities and colleges, in cooperation with the CHED and the DBM, shall institute an output-oriented unified system of promotion for the academic personnel.

**Section 79. *Budgetary Allocation Scheme.*** - The Budgetary Allocation Scheme for NAFES shall be as follows:



a. The current appropriation or budgets of state universities and colleges, that are herein designate as NCEs, shall continue and shall be modified and adjusted in succeeding years in order to meet the standards of the rationalized programs of the institutions as approved by Congress and shall be included in the annual General Appropriations Act;

b. NCEs that are created under this Act shall likewise be provided with budgetary support based on their programs and a new staffing pattern as approved by DBM and shall be included in the annual General Appropriations Act.

### TITLE 3 RESEARCH DEVELOPMENT AND EXTENSION

#### Chapter 1 Research and Development

**Section 80. *Declaration of Policy.*** - It is hereby declared the policy of the State to promote science and technology as essential for national development and progress.

The State shall likewise give priority to research and development, invention, innovation, and their utilization and to science and technology education, training, and services. In addition to appropriate and relevant technology, the state shall support indigenous and self-reliant scientific and technological capabilities, and their application to the country's productive system and national life.

**Section 81. *The National Research and Development System in Agriculture and Fisheries.*** - The Department, in coordination with the Department of Science and Technology and other appropriate agencies and research institutions shall enhance, support and consolidate the existing National Research and Development System in Agriculture and Fisheries within six (6) months from the approval of this Act. Provided, That fisheries research and development shall be pursued separately, from but in close coordination with that of agriculture.

**Section 82. *Special Concerns in Agriculture and Fisheries Research Services.*** - Agriculture and Fisheries Research and Development activities shall be multidisciplinary and shall involve farmers, fisherfolk and their organizations, and those engaged in food and non-food production and processing including the private and public sectors.

Research institutions and centers shall enjoy autonomy and academic freedom. The Department, in collaboration with the Department of Science and Technology and other appropriate agencies, shall harmonize its merit and output-oriented promotion system governing the scientific community in order to promote increased research excellence and productivity and provide the government research system a competitive edge in retaining its scientific personnel.

Appropriate technology shall be used to protect the environment, reduce cost of production , improve product quality and increase value added for global competitiveness.

**Section 83. *Funds for Research and Development.*** - Considering the nature of research, development and extension activities, funding shall be based on the following guidelines:

- a. Allocation of multi-year budgets which shall be treated as research and development grants.
- b. The budget for agriculture and fisheries research and development shall be at least one percent (1%) of the gross value added (GVA) by year 2001 allocating at least one percent (1%) of the total amount by 1999. The Department of Finance (DOF) in consultation with the Department shall formulate revenue enhancement measures to fund this facility.
- c. At least twenty percent (20%) shall be spent in support of basic research and not more than eighty percent (80%) shall be used for applied research and technology packaging and transfer activities.
- d. A science fund shall be established from which the scientific community in agriculture and fisheries shall draw its financial resource for sustained career development, Provide, That only the interest earnings of the funds shall be used.

The Department and other research agencies, in the national interest, are encouraged to go into co-financing agreements with the private sector in the conduct of research and development provided that the terms and conditions of the agreement are beneficial to the country.

**Section 84. *Excellence and Accountability in Research and Development.*** - The Department, in collaboration with the Department of Science and Technology and other appropriate government agencies, shall formulate the national guidelines in evaluating research and development activities and institutions, which shall involve an independent and interdisciplinary team of collegial reviewer and evaluators.

**Section 85. *Communication of Research Results and Research-Extension Linkage.*** - Research information and technology shall be communicated through the National Information Network (NIN)

All government agencies including the state colleges and universities and private educational institutions selected as NCEs shall be computerized , networked , provided with regular updated information and shall likewise provide, through the NIN results of research and development activities and current available technology relating agriculture and fisheries.

## **Chapter 2**

### **Extension Services**

**Section 86. *Declaration of Policy.*** - It is hereby declared the policy of the State to promote science and technology as essential for national development and progress. The State shall give priority for the utilization of research results through formal and non-formal education, extension, and training services. It shall support the development of a national extension system that will help accelerate the transformation of Philippine agriculture and fisheries from a resource -based to a technology-based industry.

**Section 87. *Extension Services.*** - Agriculture and Fisheries extension services shall cover the following major services to the farming and fishing community:

- a. Training services;

- b. Farm or business advisory services;
- c. Demonstration services; and
- d. Information and communication support services through trimedia.

**Section 88. *Special Concerns in the Delivery of Extension services.*** - The delivery of agriculture and Fisheries Extension Services shall be multidisciplinary and shall involve the farmers, fisherfolk, and their organizations and those engaged in food and non-food production and processing, including the private and public sectors.

There shall be a national merit and promotion system governing all extension personnel, regardless of source of funding, to promote professionalism and achieve excellence and productivity in the provision of the government extension services.

**Section 89. *The National Extension System for Agriculture and Fisheries (NESAF).*** - The Department in coordination with the appropriate government agencies, shall formulate a National Extension System for Agriculture and Fisheries.

The National Extension System for Agriculture and Fisheries shall be composed of three (3) subsystems:

- a. the national government subsystem which directly complements;
- b. The local government subsystems; and
- c. the private sector subsystem.

**Section 90. *The Role of Local Government Units.*** - The LGUs shall be responsible for delivering direct agriculture and fisheries extension services.

The provincial governments shall integrate the operations for the agriculture extension services and shall undertake an annual evaluation of all municipal extension programs.

The extension program of state colleges and universities shall primarily focus on the improvement of the capability of the LGU extension service by providing:

- a) Degree and non-degree training programs;
- b) Technical assistance;
- c) Extension cum research activities;
- d) Monitoring and evaluation of LGU extension projects; and
- e) Information support services through the tri-media and electronics.

**Section 91. *Role of the Private Sector in Extension.*** - The department shall encourage the participation of farmers and fisherfolk cooperatives and associations and others in the private sector in the training and other complementary extension services especially in community organizing, use of participatory approaches, popularization of training materials, regenerative agricultural technologies, agri-business and management skills.

The Department is hereby authorized to commission and provide funding for such training and extension services undertaken by the private sector.

**Section 92. *The Role of Government Agencies.*** - The Department, together with state colleges and universities shall assist in the LGU's extension system by improving their effectiveness and efficiency through capability-building and complementary extension activities such as:

- a) technical assistance;
- b) training of LGU extension personnel;
- c) improvement of physical facilities;
- d) extension cum research; and
- e) information support services;

**Section 93. *Funding for Extension Activities.*** - Extension activities shall be supported by the following measures:

- a) allocation of multi-year budgets that shall be treated as grants;
- b) allow transfer of funds from the Department to the local government units as extension grants, and
- c) the budget for agriculture and fisheries extension services shall be at least one percent (1%) of the gross value added (GVA) by year 2001

**Section 94. *Excellence and Accountability in Extension.*** - The Department shall formulate the guidelines in evaluating extension, activities, and institutions, which shall involve an independent and interdisciplinary team of the collegial reviewers and evaluators.

**Section 95. *Extension Communication Support for LGU's.*** - The Department in coordination with the public and private universities and colleges, shall develop an integrated multimedia support for national and LGU extension programs. The Department shall assist the LGU's in the computerization of communication support services to clients and linkages to the NIN.

## **TITLE 4 RURAL NON-FARM EMPLOYMENT**

### **Chapter 1**

**Section 96. *Declaration of policy.*** - It is hereby declared the policy of the State to promote full employment. Economic history, however, shows that as an economy modernizes the number of workers employed in its agricultural sector declines. It is therefore necessary to formulate policies and implement programs that will employ workers efficiently in rural areas in order to improve their standard of living, and reduce their propensity to migrate to urban areas.

**Section 97. *Objectives.*** - Rural non-farm employment aims to:

- a) promote a basic needs approach to rural development;
- b) make rural workers more adaptable and flexible through education and training;

- c) promote rural industrialization and the establishment of agro- processing enterprises in rural communities; and
- d) increase the income of rural workers.

## **Chapter 2**

### **The Basic Needs Program**

**Section 98. Principles.** - The Department, in coordination with the appropriate government agencies, shall formulate the Basic Needs Program to create employment and cushion the effect of liberalization based on the following principles:

- a) No credit subsidies shall be granted. The normal rules of banking shall apply to all enterprises involved, provided that existing credit arrangements with ARBs shall not be affected.
- b) Enterprises can use training, information, advisory and related services of the Government free of charge.
- c) The participation of the private sector shall be voluntary.

Teams composed of specialists from government agencies and the private sectors shall develop pilot programs in selected locales to establish the planning, implementation and evaluation procedures.

**Section 99. Participation of Government Agencies.** - The replication of the program shall be the responsibility of the local government units concerned in collaboration with the appropriate government agencies, and the private sector. The local government units shall bear the costs of promoting and monitoring the basic needs program for which their IRA shall be increased accordingly as recommended by the Secretary of the Department Provided, That the appropriate national government agencies shall continue to provide the necessary technical as well as financial assistance to the LGUs in the replication of the program.

The Cooperatives Development Authority shall encourage the establishment and growth of associations and cooperatives as vehicles for the stable expansion of basic needs enterprises.

The Department of Education, Culture and Sports, Department of Health, and the Technical Education and Skills Development Authority shall coordinate with the Department and Congress in the review, rationalization and reallocation of their regular budgets as well as their budgets under the GATT- related measures fund to finance education, training, health and other welfare services for farmers and fisherfolk.

## **Chapter 3**

### **Rural Industrialization**

### **Industry Dispersal Program**

**Section 100. Principles.** - Rural industrialization and industry dispersal programs shall be based on the interplay of market forces. The Board of Investments (BOI) is hereby required to give the highest priority to the grant of incentives to business and industries with linkages to agriculture.

**Section 101. *Role of Government Agencies.*** - The appropriate government agencies, under the leadership of the LGUs concerned, shall provide integrated services and information to prospective enterprises under the one-stop-shop concept.

Local government units are authorized to undertake investment and marketing missions provided that the costs of such missions are borne by the LGUs concerned. In making their land use plans, the LGUs, in consultation with the appropriate government agencies concerned, shall identify areas for industrial parks.

The Department shall coordinate with the Department of Trade and Industry , in particular, the Board of Investments, in the formulation of investments priorities for rural areas.

The Regional Wage Boards shall consult participating enterprises in this program before they issue wage orders.

**Section 102. *Participating Enterprises.*** - Participating enterprises may request any government agency for training, technical and advisory services free of cost.

A set of incentives shall be given to enterprises that subcontract part of their production to farmers, fisherfolk and landless workers during periods when they are not engaged in agricultural activities.

**Section 103. *Financing.*** - Except for basic infrastructure and other goods that benefit all citizens, the facilities of this program should be undertaken and financed by the private sector.

#### **Chapter 4 Training of Workers**

**Section 104. *Role of TESDA.*** - TESDA shall organize local committees that will advise on the scope, nature and duration of training for the above-mentioned programs.

TESDA is authorized to request the additional budgetary resources for these programs: Provided, That after a reasonable period, the task of coordinating the training is transferred to the LGUs concerned.

**Section 105. *Role of the DENR.*** - The Department and the DENR shall organize the training of workers in coastal resources management and sustainable fishing techniques.

**Section 106. *Role of the Technology and Livelihood Resource Center (TLRC).*** - The TLRC shall undertake field training in entrepreneurship and management of workers involved in the basic needs program.

**Section 107. *Special Training Projects for Women.*** - The Department, in collaboration with the appropriate government agencies concerned shall plan and implement special training projects for women for absorption in the basic needs and rural industrialization programs.

#### **TITLE 5 TRADE AND FISCAL INCENTIVES**

**Section 108.** Taxation policies must not deter the growth of value-adding activities in the rural areas.

**Section 109.** All enterprises engaged in agriculture and fisheries as duly certified by the Department in consultation with the Department of Finance and the board of Investment, shall, for five (5) years after the effectivity of this Act, be exempted from the payment of tariff and duties for the importation of all types of agriculture and fisheries inputs, equipment and machinery such as, but not limited to, fertilizer, insecticide, pesticide, tractor, trailers, trucks, farm implements and machinery, harvesters, threshers, hybrid seeds, genetic materials, sprayers, packaging machinery and materials, bulk-handling facilities such as conveyors and mini loaders, weighing scales, harvesting equipment, spare parts of all agricultural equipment, fishing equipment and parts thereof, refrigeration equipment, and renewable energy systems such as solar panels *Provided, however,* That the imported agricultural and fishery inputs, equipment and machinery shall be for the exclusive use of the importing enterprise.

The Department, in consultation with the Department of Finance and the Board of Investment, shall, within ninety (90) days from the effectivity of this Act, formulate the implementing rules and regulations governing the importation of agriculture and fishery inputs, equipment and machinery.

**Section 110.** Any person, partnership, corporation, association and other juridical entity found circumventing the provisions of Section 109 of this Act shall suffer the penalty of imprisonment for a period of not less than six (6) months but not more than one (1) year, or a fine equivalent to two hundred percent (200%) of the value of the imported materials, or both, at the discretion of the court, and the accessory penalties of confiscation of the imported goods in favor of the government and revocation of the privileges given under this title.

In cases where the violator is a juridical entity, the officers responsible in the violation of Section 109 shall suffer the penalty of imprisonment prescribed in this Section.

The importation of goods equivalent to or exceeding the declared assets of the enterprise, partnership, or the authorized capital stock in case of corporations, and/or the resale of the imported goods shall be a prima facie evidence of the violation of the provisions of Section 109 of this Act.

## **GENERAL PROVISIONS**

**Section 111. *Initial Appropriation.*** - For the first year of implementation of this Act, the amount of Twenty Billion pesos (P20,000,000,000.00) is hereby appropriated. The Department is hereby authorized to re-align its appropriations in the current year of the date of effectivity of this Act to conform with the requirements of this Act *Provided,* That the amount shall be allocated and disbursed as follows:

1. Thirty percent (30%) for irrigation;
2. Ten percent (10%) for post-harvest facilities *Provided,* That the Secretary of Agriculture may invest up to fifty percent (50%) of the said amount to fund post-harvest facilities of cooperatives, especially market vendors' cooperatives, where said cooperatives exist and are operational *Provided,* further, That if no cooperatives are

operational, said amount shall fund the post-harvest facilities of the market -assistance system;

3. Ten percent (10%) for other infrastructure including fishports, seaports, and airports, farm-and -coast-to-market roads, rural energy, communications infrastructure, watershed rehabilitation, water supply system, research and technology infrastructure, public markets and abattoirs;

4. Ten percent (10%) for the Agro-industry Modernization Credit and Financing Program (AMCFP) to be deposited by the Department in participating rural-based public and private financial institutions provided that no less than fifty percent (50%) of said funds shall be deposited in rural banks in cooperative banks;

5. Eight percent (8%) for the implementation of the Farmer-Fisherfolk Marketing Assistance System and support of market vendors' cooperatives;

6. Ten percent (10%) for research and development, four percent (4%) of which shall be used to support the Biotechnology Program;

7. Five percent (5%) for capability-building of farmers and fisherfolk organizations and LGUs for the effective implementation of the agriculture and fisheries programs at the local level;

8. Six percent (6%) for salary supplement of Extension Workers under the LGUs;

9. Five percent (5%) for NAFES , for the upgrading of the facilities of State Universities and Colleges that will be chosen as national center of excellence in agriculture and fisheries education;

10. Four percent (4%) for the National Information Network (NIN) consisting of both the national and local levels;

11. One-and-three-fourth percent (1.75%) for SUC- and TESDA-administered Rural Non-Farm Employment Training; and

12. One-fourth percent (0.25%) for the identification of the SAFDZs.

**Section 112. Continuing Appropriation.** - The Department of Budget and Management (DBM) is hereby mandated to include annually in the next six (6) years, in the President's Program of expenditures for submission to Congress, and release, an amount not less than Seventeen billion pesos (P17,000,000,000.00) for the implementation of this Act.

Additional funds over and above the regular yearly budget of the Department shall be sourced from twenty percent (20%) of the proceeds of the securitization of government assets, including the Subic, Clark, and other special economic zones.

Other sources of funds shall be from the following:

- a. Fifty Percent (50%) of the net earnings of the Public Estates Authority;
- b. Loans, grants, bequest, or donations, whether from local or foreign sources;
- c. Forty percent (40%) of the TESDA Skills Development Fund;



- d. Net proceeds from the privatization of the Food Terminal Inc. (FTI), the Bureau of Animal Industry (BAI), the Bureau of Plant Industry (BPI), and other assets of the Department that will be identified by the DA Secretary and recommended to the President for privatization;
- e. Proceeds from the Minimum Access Volume (MAV) in accordance with the provisions of Republic Act No. 8178;
- f. Poverty alleviation Fund; and
- g. Fifty Percent (50%) of the Support Facilities and Services Fund under Republic Act No. 6657.

**Section 113. *Implementing Rules and Regulations.*** - The Secretary within ninety (90) working days after the effectivity of this act, together with the Department of Agrarian Reform (DAR), Department of Environment and Natural Resources (DENR), Department of Finance (DOF), Department of Science and Technology (DOST), Department of Trade and Industry (DTI), Commission on Higher Education (CHED), Technical Education and Skills Development Authority (TESDA), Department of Education , Culture and sports (DECS), Department of Social services and Development (DSSD), National Economic and Development Authority (NEDA), Department of Budget and Management (DBM), Department of Labor and Employment (DOLE), Commission on Audit (COA), Civil Service Commission (CSC), in consultation with other agencies concerned, farmers, fisherfolk and agribusiness organizations, and in coordination with the Congressional Oversight committee on Agriculture and Fisheries Modernization, shall promulgate the rules and regulations for the effective implementation of this act.

The Secretary shall submit to the Committee on Agriculture of both houses of congress copies of the implementing rules and regulations within thirty (30) days after their promulgation.

Any violation of this section shall render the official/s concerned liable under Republic Act. No. 6713 otherwise known as the "Code of Conduct and Ethical Standards for Public Officials and Employees" and other existing administrative and/or criminal laws.

**Section 114. *Congressional Oversight Committee on Agricultural and Fisheries Modernization.*** - A congressional Committee on Agricultural and Fisheries Modernization is hereby created to be composed of the Chairs of the Committee on Agriculture of both Houses, six (6) members of the House of Representatives and six (6) members of the Senate, to be designated respectively by the Speaker of the House and the President of the Senate, who shall endeavor to have the various sectors and regions of the country represented.

The Chairs of the Committees on Agriculture in the Senate and House of Representatives, shall be respectively, the Chair and Co-Chair of the Oversight Committee. The other members shall receive no compensation: however, traveling and other necessary expenses shall be allowed.

The Committee shall oversee and monitor the implementation of the Congressional Commission on Agricultural Modernization (AGRICOM) recommendations as well as all programs, projects and activities related to agriculture and fisheries, and its allied concerns in

both public and private sectors, with a view to providing all legislative support and assistance within the powers of Congress to ensure their inclusion, wherever feasible, in the national, regional, provincial, municipal, and sectoral development plans to recommend the disposal of assets no longer needed by the Department to fund the modernization program, and to see them through their successful implementation.

**Section 115. Powers and Functions of the Committee.** - The Congressional Oversight on Agriculture and Fisheries Modernization shall have the following powers and functions:

- a. Prescribe and adopt guidelines that will govern its work;
- b. Hold hearings, receive testimonies and reports pertinent to its specified concerns;
- c. Secure from any department, bureau, office or instrumentality of the Government such assistance as may be needed, including technical information, preparation, and production of reports and submission of recommendations or plans as it may require;
- d. Summon by subpoena any public or private citizen to testify before it, or require by subpoena duces tecum to produce before it such records, reports or other documents as may be necessary in the performance of its functions;
- e. Use resource persons from the public and private sectors as may be needed;
- f. Carry on the winding-up work of AGRICOM, such as editing and printing all technical reports and studies as well as bibliographic cataloguing of its collection of source materials, continue its information and advocacy work;
- g. Cause to be transferred to the Committee all works, outputs, source materials, and assets, funds, supplies and equipment of AGRICOM;
- h. Approve the budget for the work of the Committee and all disbursements therefrom, including compensation of all personnel;
- i. Organize its staff and hire and appoint such employees and personnel whether temporary, contractual or on consultancy, subject to applicable rules; and
- j. Generally to exercise all the powers necessary to attain the purposes for which it was created.

**Section 116. Periodic Reports.** - The Committee shall submit periodic reports on its findings and make recommendations on actions to be taken by Congress and the appropriate department, and in order to carry out the objectives of this Act, an initial amount of Twenty million pesos (P20,000,000.00) is hereby appropriated for the Oversight Committee for the first year of its operation.

**Section 117. Automatic Review.** - Every five (5) years after the effectivity of this Act, an independent review panel composed of experts to be appointed by the President shall review the policies and programs in the Agriculture and Fisheries Modernization Act and shall make recommendations, based on its findings, to the President and to both Houses of Congress.

**Section 118. Repealing Clause.** - All laws, decrees, executive issuance, rules and regulations inconsistent with this Act are hereby repealed or modified accordingly.

**Section 119. *Separability Clause.*** - The provisions of this Act are hereby declared to be separable, and in the event one or more of such provisions are held unconstitutional, the validity of the other provisions shall not be affected thereby.

**Section 120. *Effectivity.*** - This Act shall take effect thirty (30) days from the date of its publication in the Official Gazette or in at least two (2) newspapers general circulation.

Approved: **22 December 1997**

**MALACAÑANG**

M a n i l a

**PRESIDENTIAL DECREE No. 704**

**REVISING AND CONSOLIDATING ALL LAWS AND DECREES  
AFFECTING FISHING AND FISHERIES**

WHEREAS, fish is one of the major and cheapest sources of protein in the diet of the Filipino people;

WHEREAS, 2.2 million Filipinos depend directly on the fishery industry for their livelihood;

WHEREAS, the Philippines continues to import fish and fishery products in substantial quantities because of the insufficiency of domestic production;

WHEREAS, there is a compelling need to increase the production of fish to bring down its price to a level which will be within the reach of our people, and at the same time insure the continuity of our fishery resources in productive condition through wise utilization and proper conservation;

WHEREAS, the vast fishery resources of the Philippines have remained largely untapped due to unnecessary constraints brought by existing laws and regulations and by the failure to provide an integrated development program for the industry; and

WHEREAS, there is an urgent need to revise and consolidate all laws and decrees affecting fishing and fisheries to make them even more responsive to the needs of the fishery industry.

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby decree as part of the law of the land the following:

**Section 1. Title.** This Decree shall be known as the fisheries Decree of 1975.

**CHAPTER 1**

**DECLARATION OF POLICY DEFINITION OF TERMS**

**Section 2. Declaration of Policy.** It is hereby declared the policy of the State to accelerate and promote the integrated development of the fishery industry and to keep the fishery resources of the country in optimum productive condition through proper conservation and protection.

The government shall promote and encourage the organization of, provide assistance to, and help integrate the activities of, persons, associations, cooperatives and corporations engaged in the industry so that the nation may

achieve the maximum economic utilization of its fishery resources. In this connection, the fishery industry shall be considered as preferred area of investment.

The government shall also encourage and promote the exportation of fish and fishery/aquatic products to enable the fishery industry to contribute positively to the development and growth of the national economy.

The private sector's privilege to utilize a fishery resource shall be exercised or continued to be exercised only under the basic concept that the grantee, license or permittee thereof shall not only be a privileged beneficiary of the State, but also an active participant and partner of the government in the conservation and development of the fishery resources of the country.

**Section 3. Definition of Terms.** As used in this Decree, the following terms are defined as follows:

- a) Bureau Means the Bureau of Fisheries and Aquatic Resources.
- b) Closed season. Refers to the period during which fishing is prohibited in a specified area or areas in Philippine waters, or to the period during which the catching or gathering of specified species of fish or fishery/aquatic products or the use of specified fishing gears to catch or gather fish or fishery/aquatic product is prohibited.
- c) Commercial fishing Fishing for commercial purposes in waters more than seven fathoms deep with the use of fishing boats more than three gross tons.
- d) Electro fishing Means the use of electricity generated by dry-cell batteries, electric generators or other sources of electric power to kill, stupefy, disable or render unconscious fish or fishery/aquatic products in both fresh and salt water areas.
- e) Family-size fishpond An area of fishpond that permits the efficient use of labor and capital resources of a family to produce an income sufficient to meet a family's need for food, clothing, shelter, health and education with reasonable reserves to absorb yearly fluctuation in income.
- f) Fish and fishery/aquatic products Fish includes all fishes and other aquatic animals, such as crustaceans (crabs, prawns, shrimps and lobsters), mollusks (clams, mussels, scallops, oysters, snails and other shellfish). Fishery/aquatic products include all other products of aquatic living resources in any form.
- g) Fishing boat Includes all boats, such as bancas, sailboats, motor boats or any other type of watercraft, whether licensed or not, used for fishing purposes: Provided, That any such boat used for the purpose of transporting the fish in the course of fishing operations shall be considered as a fishing

boat.

h) Fish corral or "baclad" Means a stationary weir or trap devised to intercept and capture fish, consisting of rows of stakes of bamboo, palma brava or other materials fenced with split bamboo mattings or wire nettings with one or more enclosures usually with easy entrance but difficult exit, and with or without leaders to direct the fish to the catching chambers or purse.

i) Fish pen means fish enclosure made of closely-woven bamboo screens or nets, or other materials attached to poles staked to the water bottom for the purpose of growing and/or culture of fish to various sizes in both fresh and salt water areas.

j) Fishery Is the business of catching, taking, handling, marketing and preserving fish or other fishery/aquatic products; the fishing grounds; and the right to fish or take such products therefrom.

k) Fishery industry Includes fish produces, fish processors, fish traders, both wholesalers and retailers, and owners of refrigerating and cold storage plants serving the industry.

l) Fishing with the use of explosives Means the use of dynamite, other explosives, or chemical compound that contains combustible elements or ingredients that, upon ignition by friction, concussion, percussion, or detonation of all or parts of the compound, kill, stupefy, disable or render unconscious any fish or fishery/aquatic product. It shall also refer to the use of any other substance and/or device that causes explosion capable of producing the said harmful effects on fish or fishery/aquatic products.

m) Fishing with the use of obnoxious or poisonous substance Means the use of any substance, plants, extracts or juice thereof, chemicals, whether in raw or processed form, harmful or harmless to human beings, which kill, stupefy, disable, or render unconscious fish or fishery/aquatic products.

n) Fully developed fishpond A clean, leveled area enclosed with dikes at least one foot higher than the highest flood water level in the locality and strong enough to resist water pressure at the highest flood tide, and consisting at least of a nursery pond, a transition pond, a rearing pond, or a combination of any or all of said classes of ponds, and water control system.

o) Municipal and/or small-scale fishing Fishing utilizing fishing boats of the three gross tons or less, or using gear not requiring the use of boats.

p) Municipal waters Include not only streams, lakes, and tidal waters included within the municipality not being the subject of private ownership, and not comprised within national parks, public forests, timber lands, forest

reserves, or fishery reserves, but also marine waters included between two lines drawn perpendicular to the general coastline from points where the boundary lines of the municipality touch the sea at low tide and a third line parallel with the general coastline and three nautical miles from such coastline. Where two municipalities are so situated on the opposite shores that there is less than six nautical miles of marine waters between them, the third line shall be a line equi-distant from the opposite shores of the respective municipalities.

Disputes regarding jurisdiction over fresh water lakes not included within the limits of a municipality or freshwater or tidal streams forming boundaries between municipalities, shall be referred by the councils of the municipalities concerned to the provincial board.

q) Persons Include juridical entities such as associations, partnerships, cooperatives or corporations.

r) Philippine waters Include all bodies of water within Philippine territory, such as rivers, streams, creeks, brooks, ponds, swamps, lagoons, gulfs, bays and seas and other bodies of water now existing, or which may hereafter exist in the provinces, cities, and municipalities, municipal districts, and barrios; and the sea or fresh water around, between and connecting each of the islands of the Philippine archipelago, irrespective of its depth, breadth, length and dimension, and all other belonging to the Philippines by historic or legal title, including the territorial sea, the seabed, the insular shelves and other submarine areas over which the Philippines has sovereignty or jurisdiction.

s) Refrigerating and cold storage plants Consist of a set of refrigerating machinery housed in a building with cold storage compartments, for making ice and freezing and storing fish and fishery/aquatic products exclusively for the fishery industry.

t) Secretary Means the Secretary of natural Resources.

## **CHAPTER II**

### **THE BUREAU OF FISHERIES AND AQUATIC RESOURCES**

**Section 4.** *Jurisdiction of the Bureau.* The Bureau shall have jurisdiction and responsibility in the management, conservation, development, protection, utilization and disposition of all fishery and aquatic resources of the country except municipal waters which shall be under the municipal or city government concerned: Provided, That, fish pens and seaweed culture in municipal centers shall be under the jurisdiction of the Bureau: Provided, further, That all municipal or city ordinances and resolutions affecting fishing and fisheries and any disposition thereunder shall be submitted to the Secretary for appropriate action and shall have full force and effect only upon his approval. The Bureau shall also have the

authority to regulate and supervise the production, capture and gathering of fish and fishery/aquatic products.

The Bureau shall prepare and implement, upon approval of the Fishery Industry Development Council, a Fishery Industry Development Program.

**Section 5. *Supervision and Control.*** The Bureau shall be directly under the control and supervision of the Secretary of Natural Resources.

**Section 6. *Review.*** All actions decisions of the Director of Fisheries and Aquatic Resources are subject to review, *motu proprio* or upon appeal of any person aggrieved thereby, by the Secretary whose decision shall be final and executory after the lapse of thirty (30) days from receipt by the aggrieved party of said decision, unless appealed to the President in accordance with the Executive Order No. 19, series of 1966. The decision of the Secretary may not be reviewed by the courts except through the special civil action of *certiorari* and prohibition.

**Section 7. *Rules and Regulations.*** The Secretary shall, upon recommendation of the Director, promulgate rules and regulations to implement effectively the provisions of the Code, Such rules and regulations shall, unless otherwise herein provided, take effect fifteen (15) days after its publication in the Official Gazette and/or two newspapers of general circulation.

**Section 8. *Technical Assistance and Training Program.*** The Bureau shall undertake or arrange special technical assistance and training programs for the enhancement of the fishery industry and provide assistance to fishery educational institutions in their research and instructional activities, and in connection therewith to maintain and operate fishing boats.

**Section 9. *Research and Demonstration Service.*** The Bureau shall conduct research and studies regarding fish and fishery/aquatic products; establish fish hatcheries, nurseries and demonstration fishponds; conduct experiment and demonstration services on fish capture and gathering fishery/aquatic products, and the culture and processing thereof; conduct oceanographic and limnological surveys; and disseminate the result of such research, studies and surveys.

**Section 10. *Fish landing points.*** The Bureau shall determine and designate fish landing points where all commercial fishing boats shall land and unload their catch: Provided, That all fish landing points established prior to the effectivity of this Decree shall be considered authorized fish landing points: Provided, further, That any fish landing point may, if circumstances so warrant, be closed.

**Section 11. *New Divisions in the Bureau.*** To carry out efficiently its functions under this Decree, the following new divisions are hereby created in the Bureau: Legal Division, Fisheries Conservation and Enforcement Division, Fisheries Extension Division, Fisheries Utilization Division, Fisheries Engineering Division and Fisheries Training Division: Provided, That the new divisions shall be staffed by the Director from qualified personnel of the Bureau as first priority, and



proposals for additional necessary personnel shall be included in the Bureau's appropriation for the succeeding year.

**CHAPTER III**  
**THE FISHERY INDUSTRY DEVELOPMENT COUNCIL**

**Section 12.** *Creation and Membership of the Council.* To implement the policy enunciated in Section Two of this Decree, there is hereby created a Fishery Industry Development Council, hereinafter referred to as the Council, which shall be composed of the following:

Secretary of Natural Resources	Chairman
Secretary of Agriculture	Member
Secretary of National Defense	Member
Secretary of Trade	Member
Secretary of Public Works, Transportation and Communications	Member
Governor of the Central Bank of The Philippines	Member
Chairman of the Development Bank of the Philippines	Member
President of the Philippine National Bank	Member
Chairman of the Board of Investments	Member
Director of Fisheries and Aquatic Resources	Member and Executive Officer
A representative of the inland fisheries associations	Member
A representative of the marine fisheries associations	Member

The two representatives from the private sector shall be appointed for a term of two (2) years by the Secretary upon the recommendation of the Director.

Upon the effectivity of this Decree, the Council shall be constituted. The Council shall meet at least once a month: Provided, That the Chairman may convene the Council in special

meetings to consider urgent matters. If the Chairman cannot attend any meeting, the members present shall select from among themselves a temporary presiding officer. If any of the members shall not be able to attend any meeting of the Council, he shall send a duly authorized representative to exercise his powers and perform his functions.

The Council shall adopt rules and regulations necessary to govern its proceedings.

The Executive Officer shall be charged with the duty of implementing the policies and guidelines established by the Council.

**Section 13. *Function of the Council.*** The Council shall formulate and establish comprehensive policy guidelines for the management, protection, conservation and utilization of the fishery/aquatic resources of the country and for the creation of a healthy investment climate for the development of the fishery industry. It shall collect data and information from member agencies and the private sector for the formulation of policy guidelines.

**Section 14. *Council Secretariat and its Director.*** The Council shall have a secretariat which shall furnish the necessary administration, secretarial and other service support to the Council. The secretariat shall be under the support to the Council. The secretariat shall be under the direction and supervision of a Secretariat Director who shall be appointed, and whose compensation shall be fixed, by the Chairman of the Council. The personnel of the Secretariat shall be appointed, and their compensation fixed, by the Chairman upon recommendation of the Secretariat Director.

**Section 15. *Role of Member-Agencies.*** A. The Central Bank of the Philippines, through the Monetary Board, shall be primarily responsible for seeking ways and means of financing the requirements of the Program in all its aspects. For this Purpose, it shall, in addition to its present powers and functions, undertake the following activities:

1. Coordinate the policies, programs and activities of all banks and financial institutions relating to the grant or extension of credit to persons, associations, cooperatives, and corporations engaged in the fishery industry;
2. Facilitate the grant of preferential rates in the rediscounting of papers involving loans for the fishery industry; and
3. Facilitate the grant of concessionary rate of interest on loans for the development of the fishery industry upon certification by the Director of Fisheries and Aquatic Resources.

B. The Department of National Defense, principally through the Philippine Coast Guard shall extend all assistance, including personnel and equipment, as may be necessary in the enforcement of fishery laws, rules and regulations to help attain the aims and objectives of this Decree.

C. The Department of Agriculture shall:

1. Undertake soil sampling and provide or help provide fertilizers for fish farming purposes; and

2. Perform such other functions as may be imposed upon it by law or requested by the Council in the acceleration of fish farming and/or in the furtherance of the objectives of this Decree.

D. The Department of Trade shall:

1. Plan and prepare such measures as may be necessary to promote exports of fish and fishery/aquatic products; and
2. Perform such other functions as may be imposed upon it by law or requested by the Council in furtherance of the objectives of this Decree.

E. The Department of Public Works, Transportation and Communications shall;

1. Upon request of the Council, undertake site survey and investigation, draw plans for, and construct, infrastructure facilities for the fishery industry; and
2. Perform such other functions as may be imposed upon it by law or requested by the Council in furtherance of the objectives of this Decree.

F. The private sector of the fishery industry shall direct their collective efforts towards a more active cooperation and coordination with government agencies to attain the objectives of this Decree.

It shall:

1. Assume the primary responsibility of accelerating the development of the industry;
2. Conduct research and experiments in cooperation with government agencies;
3. Allow implementing agencies of the government access to such statistical data and information as would be necessary in the formulation of sound policies; and
4. Take active participation, in collaboration with the Bureau and other government agencies, in technical manpower training by giving on-the-job training opportunities to fisheries apprentices, trainees and volunteers.

#### **CHAPTER IV**

#### **UTILIZATION AND EXPLOITATION OF FISHERY/AQUATIC RESOURCES**

**Section 16.** *License, lease and permit.* No person shall exploit, occupy, produce, culture, capture or gather fish, or fry or fingerling of any species of fish, or fishery/aquatic products, or engage in any fishery activity in Philippine or municipal waters without a license, lease or permit: Provided, That when due to destruction wrought upon fishponds, fishpens or fish nurseries, by typhoons, floods and other fortuitous events, or due to speculation, monopolistic and other pernicious practices which tend to create an artificial shortage of fry and/or fingerling, the supply of fish and fishery/aquatic products can reasonably be expected to fall below the usual demand therefor and the price thereof, to increase, the Secretary, upon

recommendation of the Director, is hereby authorized to fix a fair and reasonable price for fry and fingerling of any species of fish, and in so doing and when necessary, fix different price levels for various areas or regions taking into account such variable factors as availability, accessibility to transportation facilities, packing and crating, and to regulate the movement, shipment and transporting of such fry and fingerling: Provided, further, That the price so fixed shall guarantee the gatherers of fry a just and equitable return for their labor: Provided, finally, That any administrative order issued by the Secretary to implement the foregoing shall take effect immediately, the provisions of Section 7 hereof to the contrary notwithstanding.

**Section 17.** *Commercial fishing boat license and other licenses.* No person shall operate a commercial fishing boat, pearl fishing boat or fishing boat for scientific, research or educational, purposes, or engage in any fishery activity, or seek employment as a fisherman without first securing a license from the Bureau: Provided, That no such special permit shall be required of a fishing boat engaged in scientific, research or educational purposes within Philippine waters pursuant to an international agreement of which the Philippines is a signatory, and which agreement defines the status, privileges and obligations of said boat and its crew and the non-Filipino officials of the international agency under which said boat operates: Provided, further, That the members of the crew of a fishing boat used for commercial fishing, including but not limited to duly licensed and/or authorized patrons, marine engineers, radio operators and cooks, shall be considered as fisherman: Provided, furthermore, That the commercial fishing boat license herein authorized to be granted shall allow the license to operate only in Philippine waters seven (7) or more fathoms deep subject to the conditions that may be stated therein and the rules and regulations that may, from time to time, be promulgated by the Secretary: Provided, finally, That baby trawls using fishing boats of three (3) gross tons or less may operate in areas four (4) fathoms deep or more if authorized by existing municipal ordinances duly approved by the Secretary.

The Philippine Coast Guard shall perform all functions pertaining to the registration, documentation, inspection and manning of all types of fishing boats plying Philippine waters except those hereinabove vested in the Bureau of Fisheries and Aquatic Resources: Provided, That a fishing boat may, upon inspection and verification by the Maritime Safety Division and Naval Architecture and Engineering Section of the Philippines Coast Guard that the fishing boat is seaworthy and fit for operations, be accepted for registration, documentation, and licensing purposes: Provided, further, That the coastwise license shall not be required of fishing boats.

Every boat of Philippine registry of 10 gross tons more but less than 500 tons, which is operated exclusively as a fishing boat for catching and transporting fish in the territorial waters of the Philippines may be operated at least by one licensed deck officer and one licensed engine officer, the qualifications of who shall be prescribed by the Philippine Coast Guard, which qualifications may, considering that the fishing boat will not transport passengers and/or cargo, be less than those required of similar officers employed in vessels engaged in the coastwise trade.

Any provision of law to the contrary notwithstanding all finishing boats shall be provided with adequate medical supplies and life-saving devices to be determined by the Philippine Coast Guard: Provided, That a fishing boat twenty (20) gross tons or more shall have in its employ a person qualified as a First Aider duly certified by a government physician.

**Section 18.** *Permit for importation or exportation of fish or fishery/aquatic products.* No person shall import or export any fish or fishery/aquatic product, whether adult or young, fry or fish eggs, for propagation or for other purposes, without first securing a permit therefor and paying the inspection and other fees: Provided, That exportation of fry, except "bangus" fry exportation of which is totally banned, shall be allowed only after the requirement of the domestic fishing industry are met: Provided, further, That no other inspection fee shall be imposed and collected by any other government office or agency.

**Section 19.** *Development of the Fish Meal Industry.* To maximize the utilization of fish and fishery products and to complement the development of the animal industry, steps shall be taken to promote the production of fish meal.

#### A. DEEP-SEA OR OFFSHORE FISHING

**Section 20.** *Persons eligible for commercial fishing boat license.* No commercial fishing boat license shall be issued except to citizens of the Philippines or to associations or corporations duly registered in the Philippines, at least sixty per cent (60%) of the capital stock of which is owned by Filipino citizens. No person to whom a license has been issued shall sell, transfer, or assign, directly or indirectly, his stock or interest therein to any person not qualified to hold a license, and any such transfer, sale or assignment shall be null and void and shall not be registered in the books of the association or corporation.

For purposes of commercial fishing, fishing boats owned by citizens of the Philippines and corporations or associations qualified under this section, may be issued certificates of Philippine registry and such other documents as are necessary for fishing operations, any provision of law to the contrary notwithstanding: Provided, That the certificate of Philippine registry shall be valid only as long as the fishing boat is engaged in, or used for, fishing operations. For the purpose of this section, fishing operation include the transportation of the fish caught.

**Section 21.** *Charter contracts, lease or lease-purchase agreements and contracts for assistance.* Citizens of the Philippines and qualified corporations or associations engaged in commercial fishing may, subject to the approval of the Secretary, enter into charter contracts, lease or lease-purchase agreements of fishing boats, or contracts for financial, technical or other forms of assistance with any foreign person, corporation or entity for the production, storage, marketing and processing of fish and fishery/aquatic products: Provided, That the foreign crew members of the foreign fishing boat who shall not exceed seventy-five per cent (75%) of the complement of the boat, may be issued fishermen's license subject to security clearance by the Philippine Coast Guard and to the rules, regulations and guidelines to be promulgated by the Council: Provided, further, That it shall be a condition in all charter contracts, lease or lease-purchase agreements that Filipino seamen and fishermen shall be

given instruction and training by the foregoing crew members in the operation of the fishing boat and the use of fishing gears and after two years shall replace all foreign crew members.

Charter contracts, lease or lease-purchase agreement and contacts for financial, technical or other forms of assistance with any foreign person, corporation or entity, shall be subject to the guidance promulgated by the Council and the approval of the Secretary: Provided, That payments under such contracts or agreements shall be made in kind, i.e., in export items of fish and/or fishery/aquatic products.

**Section 22.** *Operation of radio communication facilities on board fishing boats.* Any employee on board a fishing boat capable of operating radio transceivers may be authorized by the Radio control Office to operate such transceivers during fishing operations without the necessity of qualifying in the examination prescribed by existing laws and regulations: Provided, That the Radio Control Office shall give practical examinations to persons with sufficient experience and knowledge of radio telephone and/or telegraphy, for the purpose of qualifying them as radio operators on board fishing boats only.

No franchise shall be required for the installation and operation of radio transceivers on board fishing boats and in their home-based stations: Provided, That the radio Control Office shall, upon application, issue a permit and assign a pre-set frequency to a qualified applicant for the installation and operation of radio transceivers on board his fishing boats and home-based stations subject to the rules and regulations prescribed by said office and consistent with the requirements of national security: Provided, Further, That the Philippine coast Guard shall be informed by the Radio Control Office of the pre-set radio frequencies assigned to fishing boat operators.

## B. INLAND FISHERIES

**Section 23.** *Disposition of Public Lands for Fishponds.* Upon the effectivity of the Decree, no public lands suitable for fishpond purposes shall be disposed by sale: Provided, That only fishpond sales patent already processed and approved on or before November 9, 1972, shall be given due course subject to the condition that such application covers a fully developed fishpond not exceeding twenty-four (24) hectares.

**Section 24.** *Lease of Fishponds.* Public lands available for fishpond development including those earmarked for family-size fishponds and not yet leased prior to November 9, 1972 shall be leased only to qualified persons, associations, cooperatives or corporations, subject to the following conditions:

1. The lease shall be for a period of twenty-five (25) years, renewable for another twenty-five (25) years.
2. Fifty per cent (50%) of the area leased shall be developed and be producing in commercial scale within three (3) years and the remaining portion shall be developed and be producing in commercial scale within five (5) years, both periods to begin from the execution of the lease contract;
3. All areas not fully developed within five (5) years from the date of execution of the lease contract shall automatically revert to the public domain for disposition by the

Bureau. Provided, That a lessee who failed to develop the area or any portion thereof shall not be permitted to re-apply for said or any portion thereof or any public land under this Decree; and

4. No portion of the lease shall be sub-leased.

**Section 25. *Size of Fishponds.*** The area of fishponds leased under the preceding section shall not exceed the following:

1. For individuals fifty hectares; and
2. For associations and corporations five hundred hectares.

Provided, That, if circumstances so warrant, a larger area may, with the approval of the Secretary, be leased to qualified applicants.

**Section 26. *Construction and Development of Family-Size Fishponds.*** For the purpose of accelerating the development of fishponds, the Bureau, subject to the approval of the Secretary, shall identify and set aside public lands which shall be subdivided into family-size fishponds and leased in accordance with guidelines established by the Council.

**Section 27. *License to Operate Fishpens.*** No person shall construct and/or operate a fishpen without first securing a license from the Bureau, any license or permit issued by the major of the municipality claiming jurisdiction over the area in which the fish pen will be constructed to the contrary notwithstanding. The License shall be for a period of five (5) years renewable for another five (5) years.

The maximum area that can be licensed for a fish pen shall be ten (10) hectares in the case of an individual and fifty (50) hectares in the case of an association, partnership, cooperative or corporation.

**Section 28. *No obstruction to navigation.*** Nothing in the foregoing sections shall be construed as permitting the lessee or licensee to undertake any construction which will obstruct the free navigation in any stream or lake flowing through or adjoining the fish pen or fishpond, or impede the flow and ebb of the tide to and from the area. Any constructions made in violation hereof shall be removed upon order of the Secretary.

### C. MUNICIPAL FISHERIES

**Section 29. *Grant of Fishery Privileges.*** A municipal or city council, conformably with an ordinance duly approved by the Secretary pursuant to section 4 hereof may:

- (a) grant to the highest qualified bidder the exclusive privilege of constructing and operating fish corrals, oyster culture beds or of gathering "bangus" fry, or the fry of other species, in municipal waters for a period not exceeding five (5) years: Provided, That in the zoning and classification of municipal waters for purposes of awarding, through public bidding, areas for the construction or operation of fish corrals, oyster culture beds or the gathering of fry, the municipal or city council shall set aside not more than one-fifth (1/5) of the area earmarked for the gathering of fry, as may be designated by the Bureau, as government "bangus" fry reservation: Provided, Further,

That no fish corral shall be constructed within two hundred (200) meters of another fish corral in marine fisheries, or one hundred (100) meters in fresh water fisheries, unless they belong to the same licensee, but in no case shall the distance be less than sixty (60) meters, except in waters less than two (2) meters deep at low tide, or unless previously approved by the Secretary;

(b) authorize the issuance to qualified persons of license for the operation of fishing boats three (3) gross tons or less, or for the privilege of fishing in municipal waters with nets, traps or other fishing gear: Provided, That it shall be beyond the power of the municipal or city council to impose a license for the privilege of gathering marine mollusca or the shells thereof, for pearling boats and pearl divers, or for prospecting, collecting, or gathering sponges or other aquatic products, or for the culture of fishery/aquatic products: Provided, further, That a licensee under this paragraph shall not operate within two hundred (200) meters of any fish corral but in no case within sixty (60) meters of said corral. The municipality or city council (60) meters of said corral. The municipality or city council shall furnish the Bureau, for statistical purposes, on forms which shall be furnished by the Bureau, such information and data on fishery matters as are reflected in such forms.

**Section 30.** *Municipality concessions and leases concerning fisheries.* No lease or concession granted by a municipal or city council under authority of an ordinance approved pursuant to section 4 hereof, concerning fishing or fisheries in streams, lakes, rivers, in land and/or municipal waters, shall be valid and enforceable unless the Secretary, upon recommendation of the Director, approves the same.

## **CHAPTER V RESERVE FISHERIES AND FISH SANCTUARIES**

**Section 31.** *Fishing areas reserved for exclusive use of government.* Upon the recommendation of the Director, the Secretary may designate by fishery administrative order, area or areas in the Philippine waters as fishery reservation for the exclusive use of the Government or of any of its political subdivisions, agencies or instrumentalities, or of the inhabitants of any municipality, or for the culture of fish and other aquatic animals for educational, research and scientific purposes.

**Section 32.** *Fish refuges and sanctuaries.* Upon the recommendation of the Director, the Secretary may set aside and establish fish refuges and sanctuaries to be administered in the manner to be prescribed by him. All streams, ponds, and waters within game refuges, bird sanctuaries, national parks, botanical gardens, communal forests and communal pastures are hereby declared fish refuges and sanctuaries.

## **CHAPTER VI PROHIBITION AND PENALTIES**

**Section 33.** *Illegal fishing, dealing in illegally caught fish or fishery/aquatic products.* It shall be unlawful for any person to catch, take or gather or cause to be caught, taken or gathered fish or fishery/aquatic products in Philippine waters with the use of explosives, obnoxious or poisonous substance, or by the use of electricity as defined in paragraphs (1),



(m) and (d), respectively, of Section 3 hereof: Provided, That the Secretary may, upon recommendation of the Director and subject to such safeguards and conditions he deems necessary, allow for research, educational or scientific purposes only, the use of explosives, obnoxious or poisonous substance or electricity to catch, take or gather fish or fishery/aquatic products in specified area: Provided, further, That the use of chemicals to eradicate predators in fishponds in accordance with accepted scientific fishery practices without causing deleterious effects in neighboring waters shall not be construed as the use of obnoxious or poisonous substance within the meaning of this section: Provided, finally, That the use of mechanical bombs for killing whales, crocodiles, sharks or other large dangerous fishes, may be allowed, subject to the approval of the Secretary.

It shall, likewise, be unlawful for any person knowingly to possess, deal in, sell or in any manner dispose of, for profit, any fish or fishery/aquatic products which have been illegally caught, taken or gathered.

The discovery of dynamite, other explosives and chemical compounds containing combustible elements, or obnoxious or poisonous substance, or requirement or device for electric fishing in any fishing boat or in the possession of a fisherman shall constitute a presumption that the same were used for fishing in violation of this Decree, and the discovery in any fishing boat of fish caught or killed by the cause of explosives, obnoxious or poisonous substance or by electricity shall constitute a presumption that the owner, operator or fisherman were fishing with the use of explosives, obnoxious or poisonous substance or by electricity.

**Section 34. *Fishing with fine-mesh nets.*** It shall be unlawful for any person to fish with nets with mesh smaller than that which may be fixed by rules and regulations promulgated conformably with the provisions of section 7 hereof: Provided, That this prohibition in the use of fine-mesh nets shall not apply to the gathering of fry, glass cells and elvers and such species which by their very nature are small but already mature.

**Section 35. *Trawl fishing in waters seven fathoms deep or less.*** Subject to the provisions of Section 17 hereof, no person shall operate trawls in waters seven fathoms deep or less.

**Section 36. *Ban on exportation of Bangus Fry.*** It shall be unlawful for any person to export "bangus" fry.

**Section 37. *Pollution of waters.*** It shall be unlawful to place, cause to be placed, discharge or deposit, or cause to be discharged or deposited, or to pass or place where it can pass into Philippine waters, petroleum, acid, coal, or oil tar, lampblack, aniline, asphalt, bitumen, or residuary products of petroleum or carbonaceous material or substance, mollasses, mining and mill tailings, or any refuse, liquid or solid, from any refinery, gas house, tannery, distillery, chemical works, sugar central, mill or factory of any kind, or any sawdust, shavings, slabs, edgings, or any factory refuse or any substance or material deleterious to fish or fishery/aquatic life.

**Section 38. *Penalties.*** (a) For illegal fishing and dealing in illegally caught fish or fishery/aquatic products. Violation of Section 33 hereof shall be punished as follows:

(1) By imprisonment from ten (10) to twelve (12) years, if explosives are used: Provided, That if the explosion results 1) in physical injury to any person, the penalty shall be imprisonment from twelve (12) to twenty (20) years, or 2) in the loss of human life, then the penalty shall be imprisonment from twenty (20) years to life, or death;

(2) By imprisonment from eight (8) to ten (10) years, if obnoxious or poisonous substances are used: Provided, That if the use of such substances results 1) in physical injury to any person, the penalty shall be imprisonment from ten (10) to twelve (12) years, or 2) in the loss of human life, then the penalty shall be imprisonment from twenty (20) years to life or death;

(3) By imprisonment from two (2) to four (4) years, if electricity is used; and

(4) By imprisonment from two (2) to six (6) years for dealing in illegally caught fish or fishery/aquatic products.

(b) Trawl fishing. Violation of section 35 hereof shall be punished by a fine not exceeding one thousand pesos (P1,000.00) or imprisonment for a period not exceeding one (1) year, or both fine and imprisonment, in the discretion of the Court.

(c) Exportation of "bangus" fry. Violation of section 36 shall be punished by a fine of not less than one thousand pesos (P1,000.00) nor more than five thousand pesos (P5,000.00) or by imprisonment for not less than one (1) year nor more than five (5) years, or both such fine and imprisonment, in the discretion of the Court.

(d) Other violations. Violation of any other provision of this Decree, or of any rule or regulation already existing, or which may be promulgated pursuant to this Decree, shall subject the offender to fine of from five hundred pesos (P500.00) to five thousand pesos (P5,000.00) or imprisonment from six (6) months to four (4) years, or both such fine and imprisonment, in the discretion of the Court: Provided, That the Director of Fisheries and Aquatic Resources is hereby empowered to impose upon the offender an administrative fine of not more than five thousand (P5,000.00) or to cancel his permit or license, in the discretion of the Director: Provided, further, That the Director, or his duly authorized representative, and law enforcement agents are hereby empowered to impound with the assistance of the Philippine Coast Guard, if necessary, the fishing boat including the dynamite, blasting caps and other explosives, obnoxious or poisonous substances, and apparatus used in electric fishing, and other apparatus used in illegal fishing, pending the termination of the criminal case by competent courts: Provided; finally, That any person who unlawfully obstructs or delays the inspection and/or movement of fish and fishery/aquatic products when such inspection and/or movement is authorized under this Decree, shall be subject to a fine of not more than two thousand pesos (P2,000.00) or imprisonment of not more than two (2) years, or both such fine and imprisonment, in the discretion of the Court.

Any public official, who enforces an ordinance, resolution, rule and/or regulation concerning fishing and fisheries not previously approved by the Secretary, shall be criminally prosecuted and, upon conviction, shall suffer the penalty of not more than

five (5) years imprisonment or a fine of not more than ten thousand pesos (P10,000.00) or both such fine and imprisonment, in the discretion of the Court.

Action on any violation mentioned in this Chapter shall be taken if the Secretary so decides.

**Section 39. *Seizure proceedings.*** Any foreign fishing boat illegally engaged in fishing within Philippine waters shall be summarily confiscated administratively, including its catch and fishing equipment, without prejudice to any civil or criminal action that may be taken against its owners and/or operators.

**Section 40. *Persons authorized to enforce this Decree and fisheries rules and regulations.*** Members of the Philippine Coast Guard, Philippine Constabulary, local police force, government law enforcement agencies and other competent government employees duly designated in writing by the Secretary, are hereby made deputies of said Secretary in the enforcement of this Decree and fisheries rules and regulations.

**Section 41. *Compromise.*** With the approval of the Secretary, the Director may, at any stage of the proceeding, compromise any case arising under any provision of the Decree, subject to the following schedule of administrative fines:

a) Vessels entering fishery reserve or closed areas. Any vessel, licensed or unlicensed, entering a fishery reserve or a declared closed area for the purpose of fishing shall be fined in a sum not exceeding five thousand pesos (P5,000.00).

b) Vessels fishing or continuing to fish after the expiration of the license. A vessel continuing to fish within sixty (60) days from the date of expiration of the license shall pay the ordinary annual license fee in full. A vessel fishing or continuing to fish without having produced the renewal of the license therefor shall be fined in a sum not exceeding fifty pesos (P50.00) for every month the license remains unrenewed.

c) Vessel employing unlicensed fishermen. A vessel found employing unlicensed fishermen shall be fined in a sum of not less than fifty pesos (P50.00) nor more than one hundred pesos (P100.00) for each fishermen and for each month such fishermen is employed.

d) Obstruction of fishery officers. The owner, master or operator of any fishing boat, whether licensed or not, who obstructs or hinders, or causes to be obstructed or hindered, any fishery officer from boarding such boat to enable said officer to perform his duty shall be fined in an amount not exceeding five hundred pesos (P500.00). In addition, the license of the fishing boat may be cancelled.

e) Failure to submit required reports. The owner, master or operator of a fishing boat who fails to submit a required report within thirty (30) days after due date shall be fined in an amount not exceeding five pesos (P5.00).

g) Transfer of ownership or lease of fishing boat to be reported. Any owner of a fishing boat who fails to notify the Director of the sale or lease of the boat to another

person within ten (10) days after the sale or lease, shall be fined in an amount not exceeding two hundred pesos (P200.00).

h) Vessel engaging in fishing without license. The owner, master or operator of a fishing boat engaging in fishing operations without a license shall be fined in an amount not exceeding one thousand pesos (P1,000.00) for each month or fraction thereof of operation.

i) Other violations. Other violations may be compromised: Provided, That the fine shall not be less than fifty per cent (50%) of the fine originally imposed for the violation.

## **CHAPTER VII GENERAL PROVISIONS**

**Section 41.** *The Fisheries Loan and Guarantee fund.* There is hereby created the Fisheries Loan and Guarantee Fund which shall be administered by the Central Bank of the Philippines. The fund shall, through the financial institutions mentioned in Section 42 hereof, be available for lending to qualified borrowers to finance the development of the fishery industry.

The Fund shall also guarantee eighty-five per cent (85%) of the losses which may be suffered by the lending institution in case of default by the borrower, with the remaining fifteen per cent (15%) of such losses being absorbed by the lending institution.

**Section 42.** *Loans to the Fishery Industry.* The Development Bank of the Philippines, the Philippine National Bank, and the Philippine Veterans Bank and other government-owned or controlled banking or financial institutions and rural banks shall make loans available to eligible borrowers as their respective charters and articles of incorporation and by-laws provide and policies of the Central Bank of the Philippines allow: Provided, That projects of veterans and their qualified heirs within the purview of the Program shall be funded by the Philippine Veterans Bank, with priority to family-size fishponds: Provided, further, That the Development Bank of the Philippines, the Philippine National Bank, and the Philippine Veterans Bank and other government-owned or controlled banking or financial institutions and rural banks dealing with medium and long-term loans shall:

- a) Grant loans for the development, rehabilitation and maintenance of fishponds, fishpens and acquisitions of fishing boats and fishing equipment;
- b) Extend loan for production, handling, processing and marketing, including the establishment and operation of refrigerating plants and cold storage facilities;
- c) Grant loans to leaseholders of public lands for the development of fishponds: Provided, that the duration of the lease contract shall be longer than the period of repayment of the loan.

All loans shall be extended under supervised credit as prescribed by Republic Act Numbered Sixty-three hundred and ninety or other laws, or under project supervision.

**Section 43.** *Financing of Municipal and/or Small-Scale fishing.* Municipal and/or small-scale fisherman who are members of a cooperative may avail of financing from any fund

administered by the Central Bank or from rural banks under a supervised credit scheme. Such loan may cover the acquisition and/or repair of bancas, engines and fishing equipment.

**Section 44.** *Establishment and Operation of Refrigerating and Cold-Storage Plants.* Any provision of law to the contrary notwithstanding, any person, association, cooperative or corporation may establish and operate subject to the guidelines established by the Council and the approval of the Secretary, refrigerating and cold storage plants which shall serve the fishing industry exclusively.

**Section 45.** *Exemption of Fisherman from Operation of the Blue Sunday Law and the Eight-Hour Labor Law.* Fishermen on board fishing boats engaged in fishing operations are hereby exempted from the provisions of the Blue Sunday Law and the Eight-Hour Labor Law.

**Section 46.** *Auditor.* The Chairman, Commission on Audit, shall act as the ex-officio auditor of the Fishery Industry Development Council and the Bureau of Fisheries and Aquatic Resources. The provisions Section 584 of the Revised Administrative Code, as amended by Presidential Decree No. 61, shall apply to the office of the representative of the said Chairman in the Council and the Bureau.

**Section 47.** *Receipts of Bureau automatically appropriated for certain purposes.* In addition to the amount appropriated for the Bureau in the annual general appropriations act/decree, all fees collected pursuant to this Decree and the rules and regulations promulgated by virtue of this Decree and other laws, bonds that may be forfeited, fines, proceeds from the sale of fish and fishery/aquatic products raised in fish farms, experimental and demonstration stations, rentals from fishponds and receipts from other sources except the proceeds of the sale of assets of the Bureau, will be released by the President upon recommendation of the Secretary annually and made available to the Bureau for the conservation and development of fishery/aquatic resources, construction of permanent improvement including offices and other buildings and acquisition of sites, promotion and development of the fishing industry, operation and maintenance of experimental fishery stations, and for salaries and wages of necessary personnel.

**Section 48.** *Appropriation.* The sum of twenty-one million pesos (P21,000,000.00), one million pesos (P1,000,000.00) of which shall be for the operational expenses of the Fishery Industry Development Council for the current fiscal year and the remaining balance to constitute the Fisheries Loan and Guarantee Fund, is hereby authorized to be appropriated out any funds in the National Treasury not otherwise appropriated.

**Section 49.** *Repealing Clause.* Presidential Decrees Nos. 43, 534 and 553, Act No. 4003, as amended, Republic Acts No. 428, as amended, 3048, 3512, and 3586, and all Decrees, Acts, Executive Orders, rules, regulations or parts thereof inconsistent with the provisions of this Decree are hereby repealed or modified accordingly.

**Section 50.** *Separability Clause.* The provisions of this Decree are hereby declared to be separable and, if any clause, sentence, provision or section of this Decree or application thereof to any person or circumstances should for any reason be held invalid, such invalidity shall not affect the other provisions or application of this Decree.

**Section 51.** *Effectivity.* This Decree shall take effect upon promulgation.

Done in the City of Manila, this 16th day of May, in the year of Our Lord, nineteen hundred and seventy-five.

MALACAÑANG PALACE  
Manila

Executive Order No. 209

GUIDELINES AND PROCEDURES FOR THE AVAILMENT BY COMMERCIAL FISHERS OF THE TAX AND DUTY EXEMPT IMPORTATION OF FISHING VESSELS, EQUIPMENT AND PARAPHERNALIA AND TAX AND DUTY REBATES ON FUEL CONSUMPTION PROVIDED FOR UNDER SECTION 35 OF REPUBLIC ACT NO. 8550, OTHERWISE KNOWN AS THE PHILIPPINE FISHERIES CODE OF 1998

WHEREAS, Section 35 of Republic Act 8550, otherwise known as "The Philippine Fisheries Code of 1998" provides for incentives for commercial fishers to fish farther into the Exclusive Economic Zone (EEZ),

WHEREAS, paragraphs b) and c) thereof provide:

"b) commercial fishing vessel operators of Philippine registry shall enjoy a limited period of tax and duty exemptions on the importation of fishing vessels not more than five (5) years old, equipment and paraphernalia, xxx

c) commercial fishing operator of Philippine registry engaged in fisheries in the high seas shall be entitled to duty and tax rebates on fuel consumption for commercial fisheries operations. xxx"

WHEREAS, in order to encourage fishing vessel operators to fish farther in the EEZ and beyond, these new incentives shall be granted in addition to incentives already available from the Board of Investments (BOI) under the Omnibus Investment Code of 1987. Such incentives shall be granted subject to exhaustive evaluation of resource and exploitation conditions in the specified areas of fishing operations;

WHEREAS, Sections 104 and 401 of the Tariff and Customs Code of 1978 (Presidential Decree. No. 1464), as amended, empower the President of the Republic of the Philippines, upon the recommendation of the National Economic and Development Authority, to increase, reduce, or remove existing protective rates of import duty, as well as to modify the form of duty.

NOW, THEREFORE, I, JOSEPH EJERCITO ESTRADA, President of the Republic of the Philippines, by virtue of the powers vested in me by law, do hereby order:

SECTION 1. The rules and regulations for (a) tax and duty exemption on the importation of fishing vessels/boats, equipment, and paraphernalia and (b) tax and duty rebates on fuel consumption shall be in accordance with and as outlined in, ANNEX "A" hereof.

SECTION 2. The importation of articles specifically listed in ANNEX "B" hereof, classified under Section 104 of the Tariff and Customs Code of 1978, as amended, shall be accorded zero percent (0%) tax and duty for a period of five (5) years from the effectivity of this Executive Order. Provided that the importation of said articles shall be accompanied by an

Authority to Import (ATI) issued by the Maritime Industry Authority (MARINA) and/or Certificate of Eligibility (CE) issued by the Bureau of Fisheries and Aquatic Resources (BFAR).

SECTION 3. The importation of articles specifically listed in ANNEX "C" hereof, classified under Section 104 of the Tariff and Customs Code of 1978, as amended, shall be accorded zero percent (0%) tax and duty for a period of five (5) Years from the effectivity of this Executive Order. Provided that such articles are not locally available of comparable quality, quantity and price as determined by the Board of Investments through the issuance of a Certificate of Non-Availability (CNA).

SECTION 4. The Department of Agriculture, Department of Finance and Board of Investments, in consultation with concerned private sector and other government institutions shall conduct an annual review of the attached ANNEXES "A, B & C" and shall report the findings of said review and recommend possible amendments to the President.

SECTION 5. All presidential issuances, administrative rules and regulations, or parts thereof, which are inconsistent with this Executive Order are hereby revoked or modified accordingly.

SECTION 6. This Executive Order shall take effect thirty (30) days following its complete publication in two (2) newspapers of general circulation in the Philippines.

DONE in the City of Manila, this 9th day of February in the year of our Lord, Two Thousand.

By the President:

RONALDO B. ZAMORA  
Executive Secretary

Executive Order 209

**ANNEX "A"**

**IMPLEMENTING RULES AND REGULATIONS FOR THE AVAILMENT OF THE  
TAX AND DUTY EXEMPT IMPORTATION OF  
FISHING VESSELS, EQUIPMENT AND PARAPHERNALIA AND TAX AND DUTY  
REBATES ON FUEL CONSUMPTION**

**Rule 1**

**DEFINITION OF TERMS**

For purposes of this Executive Order (E0), the following terms are defined as:

1. ***Authority to Import*** - refers to a certificate issued by the Maritime Industry Authority (MARINA), upon endorsement of BFAR, to a qualified commercial fishing vessel operator for tax and duty-exempt importation of fishing vessels/boats covered in ANNEXES "B and C".



2. ***Certificate of Eligibility*** - refers to a certificate issued by the Bureau of Fisheries and Aquatic Resources (BFAR) to a qualified commercial fishing vessel operator for tax and duty-exempt importation of fishing equipment and paraphernalia covered in ANNEX "B".

3. ***Certificate of Non-Availability (CNA)*** - refers to a certificate issued by the Board of Investments (BOI) to a qualified commercial fishing vessel operator verifying that a particular article or articles covered under ANNEX "C" is/are not locally available of comparable quality, quantity and price. This certificate shall also serve as an authority to import said article/s tax and duty-exempt.

4. ***Commercial Fishing Boat License (CFBL)*** - refers to a license/permit issued by BFAR for fishing vessel/boat with minimum capacities more than three (3) gross tons (GT) to be used for fishing operation in Philippine territorial waters/seas, exclusive economic zone, and in the high seas.

5. ***Commercial Fishing*** - refers to the taking of fishery species by passive or active gear for trade, business or profit beyond subsistence or sports fishing, to be further classified as:

a) ***Small-scale commercial fishing*** - fishing with passive or active gears utilizing fishing vessels of above three (3) gross tons (GT) up to twenty (20) GT.

b) ***Medium-scale commercial fishing*** - fishing utilizing active gears and vessels above twenty (20) GT up to one hundred fifty (150) GT; and

c) ***Large-scale commercial fishing*** - fishing utilizing active gears and vessels of more than one hundred fifty (150) GT.

6. ***Commercial Fishing Vessel Operator*** - refers to any person, enterprise, cooperative, corporation of Philippine citizenship presently engaged in commercial fishing as defined in Number 5 above, duly registered with the Securities and Exchange Commission (SEC) or other appropriate government institutions, as the case may be.

7. ***Exclusive Economic Zone (EEZ)*** - refers to an area beyond and adjacent to the territorial sea, which shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.

8. ***Fishing vessel*** - refers to any boat, ship or other watercraft equipped to be used for taking of fishery species or aiding or assisting one (1) or more vessels in the performance of any activity relating to fishing, including, but not limited to preservation, supply, storage, refrigeration, transportation and/or processing.

9. ***Fishing equipment and paraphernalia*** - refers to instruments, devices, tools, gadgets carried or installed in a fishing vessel, used in the process of finding, attracting, catching, conveying, storing, preserving fishery species including but

not limited to navigational and communication equipment, fishing gears such as hydraulic winches, hoist, fishing net, puretic power blocks, fishing lights, refrigeration system, power generators.

10. **Fuel** - refers to diesel oil or bunker fuel in its finished form ready for use to propel international fishing vessel, excluding lubricants and greases and other petroleum products.

11. **General Arrangement Plan of the Vessel** - refers to the layout/plans of information as to ship's deck outlines derived from the hull form, as developed, and main waterlight transverse bulkheads, properly positioned with reference with floodable length.

12. **High Seas** - refer or apply to all parts of the sea that are not included in the exclusive economic zone, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State.

13. **Integral parts of fishing vessel** - refers to items which are built into or protrude through the ship's hull, such as sea chests, bow thrusters, stern thrusters, stabilizers, waterjet intakes, waterjet nozzles, tailshafts, rudder pintels and gudgeons. Integral parts are considered to have a direct affect on the water-tightness and structural integrity of the vessel.

14. **Latest survey report from the country of origin** - refers to the latest report from the country of origin after the examination or inspection of a ship or parts of its cargo or equipment to determine its condition, responsibility for damage and disposition to be made.

15. **Lease-Purchase Agreement** - refers to an agreement for the lease of a foreign-owned vessel to a Filipino citizen, qualified corporation or association for commercial fishing by a foreign person, corporation or entity with the option granted to the lessee to purchase the vessel.

16. **Not locally produced/available** - refers to not locally produced articles relative to quantity, quality and price.

17. **Tax and duty-exempt importation** - refers to the bringing in of goods from the country of origin through a normal business transaction process wherein the payment of the corresponding duties on the goods involved as well as the value added tax (VAT) for the said transaction, are waived. In this case, the goods referred to are the fishing vessels, equipment and paraphernalia.

18. **Tax and duty rebate** - shall mean a credit against taxes and duties equal to those actually paid in the purchase of fuel oil used in the commercial fishing operation, which shall be evidenced through the issuance of a Tax Credit Certificate by the Department of Finance (DOF) One Stop Shop Tax Credit and Duty Drawback Center.

19. *Valid Certificate of Vessel's Registry from the Country of Origin* - a valid document issued by the government establishing the nationality and ownership of a vessel.

## **Rule II**

### **TAX AND DUTY-EXEMPT IMPORTATION**

#### **OF FISHING VESSELS, EQUIPMENT AND PARAPHERNALIA**

##### **Section 1. Covered Articles**

A. The tax and duty-exempt importation under this EO shall cover the following:

- 1) Articles listed in ANNEX "B" of this EO, subject to the completion of the requirements as provided for under Section 4 hereof.
- 2) Articles listed in ANNEX "C" of this EO, subject to BOI's certification stating that an article to be imported is not locally available of comparable quality, quantity and price.
- 3) Fishing vessels/boats covered under ANNEXES "B & C" of this EO shall be not more than five (5) years old.

B. The importation of articles shall be subject to all existing import rules, regulations, and requirements, as the case may be.

##### **Section 2. Covered Enterprises**

All commercial fishing vessel operators of Philippine registry as defined in Number 6 of Rule 1 hereof are eligible to avail of the tax and duty incentives provided for herein.

##### **Section 3. Period of Exemption**

A. The tax and duty exemption may be availed of within five (5) years from the date of the effectivity of this EO.

B. Imported articles already in transit when the incentive is still effective but will arrive at any Philippine port when the period of incentive has already expired, shall be granted with tax and duty exemption. Provided that, The corresponding letter of credit has been opened prior to or during the day of expiration of the effectivity of the EO.

##### **Section 4. Procedures for the Availment of Tax and Duty Exemption**

###### **A. *Fishing vessels/boats and its integral parts***

1) A qualified commercial fishing vessel operator shall file the following documents to the BFAR in order to avail of the tax and duty-exempt importation of fishing vessels/boat listed in ANNEXES "B & C".

- a) Application letter/request;
- b) Commercial Fishing Boat License (CFBL) or in the case of a newly formed fishing company:

1. Latest business registration issued by SEC, CDA, DTI, and Municipal LGUs, as the case may be; and
2. In the case of newly formed corporation or cooperatives, By-Laws or Articles of Incorporation.

c) In the case of a cooperative or corporation.

1. Duly notarized resolution of the company's Board of Directors, certified by the Board Secretary, authorizing the filing of the application and designating the authorized representative to represent the company;
2. Latest certificate of good standing showing the current list of directors/officers of Company Seal of Business Registration of the registered owner; and
3. Duly notarized/authenticated Power of Attorney of Board Resolution authorizing the signatory to the Memorandum of Agreement to act as such in behalf of the registered owner.

d) Valid Certificate of Vessel's Registry from the country of origin;

e) General arrangement plan of the vessel;

f) Latest survey report from the country of origin;

g) Sworn statement that the vessel to be imported is for the exclusive use of the importing enterprises;

h) Any of the following; and:

1. Valid Memorandum of Agreement/Lease-Purchase Agreement, or
2. Pro-forma Invoice or Purchase Order; or
3. Deed of Sale.

i) In the case of fishing vessel/boat covered under ANNEX "C", Certificate of Non-Availability issued by BOI.

2) BFAR shall review and process applications for tax and duty-free importation provided that the required documents under Section 4 A of this Rule are complete and in order. Based on the documents submitted, BFAR shall determine whether the applicant is a qualified fishing vessel operator and subsequently issue an endorsement together with the documents referred in Section 4 A of this Rule to MARINA within three (3) working days from the date of receipt, stating therein its favorable endorsement for the tax and duty-exempt importation of the fishing vessel/boat.

3) Only upon receipt of BFAR's endorsement with the supporting documents mentioned above, MARINA shall evaluate the sea worthiness of the vessel and issue an Authority to Import (ATI) to the applicant and shall forward a copy (with a copy of BFAR's endorsement) to Department of Finance (DOF) Revenue Office within three working days. The Administrator or his duly authorized representative shall be the signatory to the Authority to Import.

***B. Fishing equipment and paraphernalia covered under ANNEX "B" excluding fishing vessels/boats***

1. A qualified commercial fishing vessel operator shall file the following documents to BFAR in order to avail of the tax and duty-exempt importation of fishing equipment and paraphernalia listed 'ANNEX "B".

- a) Application letter/request;
- b) Commercial Fishing Boat License (CFBL);
- c) Pro-forma Invoice from prospective foreign supplier or Purchase Order of an enterprise to a foreign supplier; and
- d) A sworn statement that the articles to be imported are for the exclusive use of the importing enterprise/applicant.

2. BFAR shall review and process the application, provided that the required documents under Section 4 A of this Rule are complete and in order and shall issue a Certificate of Eligibility (CE) and forward a copy to DOF within three (3) working days from the date of receipt of the application/request. The BFAR Director or his/her duly authorized representative shall be the signatory to the CE.

***C. Fishing vessels/boats, equipment and paraphernalia covered under ANNEX "C"***

1. A qualified commercial fishing vessel operator must first secure a Certificate of Non-Availability (CNA) from the Board of Investments (BOI) in order to avail of the tax and duty-exempt importation of fishing equipment and paraphernalia listed in ANNEX "C". For this purpose, a vessel operator must submit to BOI the following documents.

- a. Application letter/request;
- b. CFBL;
- c. Pro-forma Invoice from prospective foreign supplier or Purchase Order of an enterprise to a foreign supplier; and
- d. A sworn statement that the articles to be imported are for the exclusive use of the importing enterprise.

2. Based on the documents submitted, BOI finds that the article to be imported is not locally produced of comparable quantity, quality and price, the BOI shall issue a Certificate of Non-Availability (CNA) for tax and duty-exempt importation and forward a copy to DOF Revenue Office within ten (10) working days from the date of receipt of the application with supporting documents. The BOI Executive Director or his duly authorized representative shall sign the CNA.

3. In the case of fishing vessels/boats covered under ANNEX "C", however, the importing commercial fishing vessel operator issued with CNA is still subject to the requirements and procedures provided under Section 4 A of this Rule.

### **Section 5. Arrival and release of shipment**

A. Upon arrival of the articles covered under ANNEXES "B or C" at any of the Philippine ports, the importer shall submit the corresponding ATI, CE, or CNA including its corresponding documents referred in Section 4 of this Rule, as the case may be, to DOF Revenue Office for processing and evaluation.

B. The DOF Revenue Office shall subsequently issue an endorsement to the BOC Tax Exempt Division for the release of the tax and duty-exempt articles within three (3) working days from the date of receipt of request/application submitted by the importing fishing vessel operator.

C. Upon receipt of the DOF's endorsement, the BOC Tax Exempt Division shall forward the same to the Collector of Customs at the concerned port.

D. The Customs Collector shall then instruct the release of the imported fishing vessel, equipment and/or paraphernalia.

E. The BOC shall then release the imported vessel upon completion of the requirements and documents within 5 working, days.

## **Rule III**

### **TAX AND DUTY REBATE ON FUEL CONSUMPTION**

#### **Section 1. Covered Enterprises**

All commercial fishing vessel operators of Philippine registry engaged in fishing in the high seas as defined in Number 12 of Rule 1 are eligible to avail of duty and tax rebates on fuel consumption being granted under Section 35 of Republic Act No. 8550 otherwise known as The Philippine Fisheries Code of 1998.

#### **Section 2. Covered Fuel Consumption**

Taxes and duties paid on fuel as defined in 10 of Rule I and consumed by covered enterprises for their commercial fishing operations, shall be eligible for tax and duty rebates, provided the fuel involved is consumed within one (1) Year from the date of purchase.

#### **Section 3. Documentation Requirements**

A commercial fishing vessel operator operating in the high seas availing of the fuel oil tax and duty rebates must submit the following documents to the Department of Finance (DOF)- ONE-STOP-SHOP TAX CREDIT AND DUTY DRAWBACK CENTER.

A. Inspection of Vessels for high seas water issued by MARINA (certified true copy by MARINA),

B. Commercial Fishing Boat License issued by BFAR,

C. Notarized Certificate of Fuel Loaded issued by BOC Customs Inspector;

D. Documents as proof of fuel consumed,

1) Certification under oath of commercial fishing vessel operator the average fuel oil consumption of the subject vessel for a given period of time indicating therein the following information:

a. Name of fishing vessel and its registry number;

b. Quantity of fuel oil bought;

c. Invoice Number; and

d. Date and place of delivery.

2) Certification under oath of the Chief Engineer as attested by the Skipper/Captain as to the total fuel oil consumed for the duration of the fishing expedition;

3) A sworn statement attesting that the distance/areas reflected in the attached copy of the portion of the logbook of the vessel indicating therein the areas in Longitudes and latitudes scales based on international standard maritime chart/map are the actual areas/distance traveled by the subject fishing vessel.

E. Documents as proof of fuel purchased, and

1) Original copy of sales invoices, official, receipts

2) Bunkering fuel permit issued by the Office of the Customs Collector or the Port Operations Division of the Bureau of Customs, as the case may be.

3) Certification under oath from the fuel company attesting to the payment of customs duties and excise taxes.

F. Documents as proof of fuel oil delivered.

1) Certification under oath by the Captain of the ship relative to the quantity and amount of fuel delivered on board;

2) Certification under oath by the owner/operator of the vessel relative to the quantity and amount of fuel delivered on board.

3) Certification under oath by the Oil companies/Fuel suppliers as to the actual delivery of fuel on board.

#### **Section 4. Procedures for the availment of tax and duty rebate on fuel consumption**

A. The applicants for tax and duty rebate shall file the documents referred in Section 3 of this Rule together with an accomplished Claimant Information Sheet (CIS) to the DOF-ONE-STOP DUTY DRAWBACK CENTER and shall pay a non-refundable filing fee to the DOF-CENTER. The filing fee can be paid in cash or in manager, cashier or company check.

B. The application will be checklisted within five (5) working days as to completeness of the documents. Once the documents submitted are complete, a claim stub shall be issued to the claimant. The Claimant shall again pay a non-refundable processing fee to the DOF-CENTER. Also, the processing fee can be paid in cash or in manager, cashier or company check.

C. Subsequently, a tax credit certificate corresponding to the amount of the approved rebates be issued within thirty (30) working days after the issuance of the claim stub, subject to the DOF-CENTER's policies, rules and regulations, and other applicable laws governing the issuance of tax credits.

#### **Section 5. Transferability of Tax Credit Certificate**

The fuel tax credit certificates issued under this EO shall be transferable only to fuel oil companies where the commercial fishing vessel operator sourced the fuel consumed in their commercial fishing operations in the high seas.

#### **Rule IV**

#### **PENAL PROVISION**

**Section 1.** Any person who will make any fraudulent claim under the Act, regardless of whether or not a tax incentive has been granted, shall, in addition to other penalties provided by law, shall be punished in accordance with the governing provisions under Title X, Statutory Offenses and Penalties of the National Internal Revenue Code of 1997.

**Section 2.** Furthermore, all tax and duty-exempt importation pursuant to these rules and regulations when sold, transferred or disposed of to non-exempt persons/entities, shall be liable to pay twice the amount of taxes and duties waived or subject such articles to compensation and/or seizure in accordance with the provisions of the Tariff and Customs Code, as amended. Civil penalties such as payment of surcharge and interest shall be imposed pursuant to Sections 243 and 249 of the National Internal Revenue Code, as amended.

#### **Executive Order 209**

#### **ANNEX "B"**

#### **LIST OF FISHING VESSEL, FISHERY EQUIPMENT AND PARAPHERNALIA ELIGIBLE FOR TAX AND DUTY-FREE IMPORTATION FOR FIVE (5) YEARS**

*(Authority to Import must be secured from MARINA and/or Certificate of Eligibility must be secured from BFAR )*



<b>HEADING NO.</b>	<b>H.S. CODE</b>	<b>PRODUCT DESCRIPTION</b>
73.26	7326.90 10	Ships' rudders, of steel
84.08	8408.10 00	Marine propulsion engines
84.09	8409.99 00	Parts of marine propulsion engines
84.13	8413.50 00 8413.60 00 8413.70 10 8413.70 90 8413.81 00 8413.91 90	Other reciprocating positive displacement pumps for hydraulic equipment Other rotary positive displacement pumps for hydraulic equipment Centrifugal brine water pumps, single stage, single suction, horizontal shaft type suitable for belt drive or direct coupling (except pumps with shafts common with prime mover) Other centrifugal pumps Other pumps for liquid (e.g. hydraulic pump) Parts of pumps of subheading nos. 8413.50 00, 8413.60 00, 8413.70 90 and 8413.81 00
84.14	8414.30 00 8414.80 00 8414.90 00	Compressors of a kind used in refrigerating equipment Other air compressors Parts of Hdgs. 8414.30 and 8414.80 00
84.19	8419.50 90	Heat exchange units
84.21	8421.21 00	Machinery and apparatus for filtering or purifying water (water dessalinator)
84.25	8425.31 00 8425.39 00	Winches powered by electric motor Other winches
84.79	8479.89 00	Ice crushers with accessories
84.83	8483.10 00 8483.40 00	Propeller shafts (including cam shafts and crank shafts) and cranks Gears and gearing, other than toothed wheels, chain sprockets and other transmission

elements presented separately; ball or roller screws; gear boxes and other speed changers, including torque converters

<b>HEADING NO.</b>	<b>H.S. CODE</b>	<b>PRODUCT DESCRIPTION</b>
84.85	8485.10 00	Ships' or boat's propellers and blades therefor
85.02	8502.12 00	Marine generating sets of an output exceeding 75 kVA but not exceeding 375 kVA
	8502.13 00	Marine generating sets of an output exceeding 375 kVA
85.03	8503.00 00	Parts of marine generating sets of an output exceeding 75 kVA
85.25	8525.10 00	Transmission apparatus other than apparatus for radio-broadcasting or television
	8525.20 00	Transmission apparatus incorporating reception apparatus
85.26	8526.10 00	Radar apparatus
	8526.91 00	Radio navigational aid apparatus (e.g. radio buoy, global positioning system, other marine electronic equipment)
89.02	8902.00 10	Fishing vessels 40 GT and above
90.14	9014.10 00	Direction finding compasses
	9014.80 00	Scanning sonar and fishfinders
94.05	9405.40 90	Other electric lamps and lighting fittings (e.g. underwater lights)

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**ANNEX "C"**

**LIST OF FISHING VESSEL, EQUIPMENT AND PARAPHERNALIA  
ELIGIBLE FOR TAX AND DUTY EXEMPT IMPORTATION FOR FIVE  
(5) YEARS**

*(Certificate of Non-Availability must be secured from BOI)*

<b>HEADING NUMBER</b>	<b>H.S. CODE</b>	<b>PRODUCT DESCRIPTION</b>
32.08	3208.10 90	Paints and varnishes based on polyester
	3208.20 90	Paints and varnishes based on acrylic or vinyl polymers
	3208.90 00	Paints other than those based on polyester, acrylic or vinyl polymers
39.26	3926.90 20	Fishing floats
56.08	5608.11 00	Purse seine fishing nets (complete)
72.07	7207.20 90	ABS Steel plates /MS Steel plates
73.04	7304.29 00	Steel tubes and pipes
73.05	7305.31 10	Stainless steel pipes and tubes
	7305.31 90	Other steel pipes and tubes
73.12	7312.10 90	Purse seine cables
73.15	7315.82 00	Alloy chains
79.01	7901.11 00	Zinc, anode not alloyed containing by weight 99.99% or more of zinc
	7901.12 00	Zinc, not alloyed containing by weight less than 99.99% of zinc

85.01	8501.20 00	Universal AC/DC motors of an output exceeding 37.5W
	8501.31 00	
	8501.32 00	Other DC motors/generators of an output not exceeding 750W
	8501.33 00	Other DC motors/generators of an output exceeding 750 W but not exceeding 75 KW
	8501.34 00	
	8501.51 00	Other DC motors/generators of an output exceeding 75 KW but not exceeding 375 KW
	8501.52 00	
	8501.53 00	Other DC motors/generators of an output exceeding 375 KW
	8501.61 00	AC motors, multi-phase of an output not exceeding 750 W
	8501.62 00	
		AC motors, multi-phase of an output exceeding 750W but not exceeding 75 KW
		AC motors, multi-phase of an output exceeding 75 KW
		AC generators (alternator) of an output not exceeding 75 kVA
		AC generators (alternator) of an output exceeding 75 kVA but not exceeding 375 kVA
	8501.63 00	AC generators (alternator) of an output exceeding 375 kVA but not exceeding 750 kVA
	8501.64 00	AC generators (alternator) of an output exceeding 750 kVA
85.13	8513.10 90	ASA attraction light (with battery as a source of energy)
89.02	*8902.00 90	Fishing vessels above 3 GT but below 40 GT
89.05		Skiff boats
	*8902.00 90	Light boats
	*8905.90 00	

Republic of the Philippines  
DEPARTMENT OF AGRICULTURE  
Office of the Secretary  
Elliptical Road, Diliman, Quezon City

FISHERIES ADMINISTRATIVE  
ORDER NO. 183 : Series of 1992.

**SUBJECT: Prohibiting the importation of yellow fin tuna and tuna products from certain countries.**

Pursuant to the provisions of Sections 4, 7 and 18 of Presidential Decree No. 704, as amended, otherwise known as the "Fisheries Decree of 1975," the following rules and regulations are hereby promulgated for the information and guidance of all concerned:

**"SECTION 1. Prohibition.** - It shall be unlawful for any person, association, cooperative, partnership, or corporation to import yellowfin tuna (*Thunnus albacares*) and tuna products from the countries of Mexico and Venezuela." (As amended by FAO No. 183-1)

**SEC. 2. Penal clause.** - Violation of this Order shall subject the offender to a fine of not less than Five Hundred (P500.00) Pesos but not more than Five Thousand (P5,000.00) Pesos or imprisonment from six (6) months to four (4) years, or both such fine and imprisonment, in the discretion of the Court: Provided, however, That the Director of Fisheries and Aquatic Resources is hereby empowered to impose upon the offender an administrative fine of not more than Five Thousand (P5,000.00) Pesos including the confiscation of the imported tuna and tuna products.

**SEC. 3. Effectivity.** - This Order shall take effect immediately.

ISSUED this 31st day of January 1992, in Quezon City, Philippines.

(SGD.) **SENEN C. BACANI**  
Secretary

RECOMMENDING APPROVAL:

(SGD.) **NATIVIDAD M. LAGUA**  
Officer-in-Charge

PUBLISHED: FEBRUARY 2, 1992  
1. PHILIPPINE DAILY INQUIRER  
2. PHILIPPINE STAR

EFFECTIVITY STARTS: FEBRUARY 18, 1992

Republic of the Philippines  
DEPARTMENT OF AGRICULTURE  
Office of the Secretary  
Elliptical Road, Diliman, Quezon City

FISHERIES ADMINISTRATIVE  
ORDER NO. 188 : Series of 1993.

**SUBJECT Regulations governing the operation of commercial fishing boats in  
: Philippine waters using Tuna Purse Seine Nets.**

*WHEREAS*, Section 2 of Chapter I of Presidential Decree No. 704 declared the policy of the State to accelerate and promote the integrated development of the fishery industry and to keep the country's fishery resources in optimum productive condition through proper conservation and protection;

*WHEREAS*, Fisheries Administrative Order No. 155, s. of 1986, prohibits any person/association/partnership or cooperative to fish in Philippine waters with the use of fine mesh nets, defined as a mesh size less than three (3) centimeters measured between two (2) opposite knots of a full mesh when stretched;

*WHEREAS*, the National Agricultural and Fishery Council, Committee on Fisheries and Aquaculture (NAFC-CFA) and the Bureau of Fisheries and Aquatic Resources have determined the severe depletion of our tuna resources in our fishing grounds;

*WHEREAS*, the NAFC-CFA submitted a resolution proposing an increase in mesh size for tuna nets;

*WHEREAS*, BFAR/NAFC conducted three (3) public hearings in General Santos City, Quezon City and Zamboanga City, respectively, wherein concerned sectors, individuals and associations expressed their views and observations on the NAFC-CFA resolution;

*NOW, THEREFORE*, pursuant to Sections 4, 7 and 34 of Presidential Decree No. 704, as amended, the following rules and regulations governing the operation of commercial fishing boats in Philippine waters using tuna purse seine nets are hereby promulgated:

**SECTION 1. Definition of terms.** - For the purpose of this Order, the following phrase and terms shall mean:

- a) *Tuna Purse Seine Net* - refers to a fishing gear to catch tuna consisting of a long net buoyed by floats at the upper portion and provided with leads or chain weights at the lower portion with the bunt or landing piece located in any side of the net and a pursing device which consists of a series of purse rings attached to the footrope by straps or ring bridles that closes the bottom of the seine when pulled.

b) *Mesh* - refers to the rhombic (diamond-shaped) opening enclosed by four bars of twines of equal length firmly knotted and/or knotless at the four corners.

c) *Tuna* - refers to yellowfin, big-eyed or skipjack.

**SEC. 2. Prohibition.** - It shall be unlawful for any person, association, cooperative, partnership or corporation to operate commercial fishing boats using tuna purse seine net in Philippine waters with mesh size less than three and a half (3.5) inches.

**SEC. 3. Grace Period.** - Persons, associations, cooperatives, partnerships or corporations now engaged in commercial fishing operation using tuna purse seine nets with mesh size less than three and a half (3.5) inches shall be given a grace period of five (5) years from the effectivity of this Order within which to change or replace their nets to comply with this Order. This grace period, however, shall apply only to nets with mesh sizes of three (3) cm. or more in accordance with FAO 155.

**SEC. 4. Repealing Clause.** - Fisheries Administrative Order No. 155 regulating the use of fine meshed nets in fishing is hereby modified insofar as commercial fishing boats using tuna purse seine nets are concerned.

**SEC. 5. Penal Clause.** - Violation of Section 2 of this Order shall subject the offender to a fine of from five hundred pesos (P500.00) to five thousand pesos (P5,000.00) or imprisonment from six (6) months to four (4) years, or both such fine and imprisonment in the discretion of the court: Provided, That the Director of Fisheries and Aquatic Resources is hereby empowered to impose upon the offender an administrative fine of not more than five thousand pesos (P5,000.00) or to cancel his permit or license, or to impose such fine and to cancel his permit or license in the discretion of the Director.

**SEC. 6. Effectivity.** - This Order shall take effect fifteen (15) days after its publication in the Official Gazette and/or in two (2) newspapers of general circulation.

Issued this 17th day of September, 1993, in Quezon City, Metro Manila, Philippines.

(SIGNED)

**ROBERTO S. SEBASTIAN**

Secretary

Recommending Approval:

(SIGNED)

**GUILLERMO L. MORALES**

Director

Bureau of Fisheries and Aquatic Resources

PUBLISHED: OCTOBER 2, 1993

1. PHILIPPINE DAILY INQUIRER

2. PHILIPPINE STAR

EFFECTIVITY STARTS: OCTOBER 18, 1993





Republic of the Philippines  
DEPARTMENT OF AGRICULTURE  
Elliptical Road, Diliman, Quezon City

FISHERIES ADMINISTRATIVE )  
ORDER NO. 191 : Series of 1995 )

**SUBJECT: Employment of foreign crew members aboard highly specialized commercial fishing vessels**

Pursuant to Sections 7, 17 and 21 of Presidential Decree No. 704, as amended, and P.D. No. 760, as amended by PD No. 1711, the following guidelines on the employment of foreign crew members on board highly specialized commercial fishing vessels is hereby promulgated.

**SECTION 1. Definition.** - for purposes of this Order, the following terms shall mean:

- a) *Foreign crew member* - an alien hired for his expertise in the operation of highly specialized commercial fishing vessels of Philippine registry.
- b) *Highly specialized commercial fishing vessels* - vessels intended for a specific type of fishing which are considered by BFAR as new/uncommon locally and environment-friendly. They cover vessels with new designs and/or techniques in navigation, fishing operation, post harvest, refrigeration and hydraulics.

These techniques include, but are not limited to, the following:

- 1) Vessels using refrigerated seawater, chilled seawater, air blast;
- 2) Vessels using deepsea longlining for catching tuna, or other big pelagic/demersal fishes where additional fishing effort may still be allowed;
- 3) Purse seiners using triplex net rollers; and
- 4) Technology that allows fishing vessels maneuvering in highly turbulent and agitated waters.

**SEC. 2. Prohibition.** - It shall be unlawful to employ a foreign crew member on board highly specialized commercial fishing vessels of Philippine registry without a valid license issued for the purpose by the Bureau of Fisheries and Aquatic Resources.

**SEC. 3. Application for a foreign crew member's license.** - All applications for foreign crew member's license shall be filed with the Bureau of Fisheries and Aquatic Resources, accompanied by the following documents:

- a) Two color pictures, passport size (2" x 2") of the applicant;
- b) Alien Employment Permit (AEP) issued by the Department of Labor;
- c) A certified photocopy of applicant's passport and/or Seaman's Book;

- d) A certified photocopy of Authority to Employ issued by the Bureau of Immigration, Department of Justice;
- e) Bio-data using BFAR form.

**SEC. 4. Validity of license.** - The license shall be valid for a period of one (1) year from date of issuance, renewable for another year depending upon the turnover rate of understudies, language barriers and cultural differences between the foreign crew members and their local understudies.

**SEC. 5. Allowable number of foreign crew members for each fishing vessel.** – Not more than four (4) foreign crew members shall be employed aboard each highly specialized commercial fishing vessel, distributed as follows:

- a) One (1) for the engine/machinery;
- b) One (1) for the refrigeration;
- and
- c) Two (2) for the fishing gear.

**SEC. 6. Special qualifications of foreign crew members.** - The applicant must possess skills and techniques not locally available or, even if locally available, are inadequate or unsuitable to the unique features of the highly specialized commercial fishing vessel, engine or gear.

**SEC. 7. Training of Filipino understudies** - Each foreign crew member shall train at least two (2) Filipino understudies for the duration of his employment. The understudies shall take over the foreign crew member's job upon the expiration of the latter's employment contract.

**SEC. 8. Application and license fees.** - An application fee of two hundred pesos (P200.00) and annual license of one thousand pesos (P1,000.00) shall be collected from each applicant.

**SEC. 9. Non-transferability of license.** - The license is non-transferable and shall be carried at all times by the holder during fishing operations, to be readily presented to any authorized fishery law enforcement officer upon demand.

**SEC. 10. Grounds for revocation of license.** - The license may be revoked on any of the following grounds:

- a) Failure to use the same within three (3) months from the date of issue;
- b) Misrepresentation of facts or false statement in the application;
- c) Violation of the terms and conditions of the employment;
- d) Violation of any provision of this Order, and
- e) When public interest so requires.

**SEC. 11. Penalty.** - Violation of any provisions of this Order shall subject the offender to a fine from five hundred pesos (P500.00) to five thousand pesos (P5,000.00) or imprisonment from six (6) months to four (4) years, or both such fine and imprisonment in the discretion of the court: Provided, That the Director of Fisheries and Aquatic Resources is hereby empowered to impose upon the offender an administrative fine of not more than five thousand pesos (P5,000.00) or cancel his license, or impose both fine and cancellation of

license.

**SEC. 12. Repeal** - All previous orders, rules and regulations or their parts inconsistent with the provisions of this Order are hereby repealed or modified accordingly.

**SEC. 13. Effectivity**. - This Order takes effect fifteen (15) days after its publication in the Official Gazette and/or in two (2) newspapers of general circulation.

ISSUED on this 22nd day of February 1995 at Quezon City, Metropolitan Manila, Philippines.

(SIGNED)

**ROBERTO S. SEBASTIAN**

Secretary

RECOMMENDED BY:

(SIGNED)

**GUILLERMO L. MORALES**

Director of Fisheries & Aquatic Resources

PUBLISHED: FEBRUARY 16, 1995

1. THE PHILIPPINE STAR
2. THE PHIL. DAILY INQUIRER

EFFECTIVITY STARTS: MARCH 4, 1995

Republic of the Philippines  
DEPARTMENT OF AGRICULTURE  
Office of the Secretary  
Elliptical Road, Diliman, Quezon City

FISHERIES ADMINISTRATIVE )  
ORDER NO. 198 : Series of 2000 )

**SUBJECT : Rules and Regulations on Commercial Fishing**

Pursuant to the provisions of Sections 3, 6, 18, 26, 27, 29, 30, 31, 32, 33, 38, 39, 65 and 86 of Republic Act No. 8550, otherwise known as the Philippine Fisheries Code of 1998, the following rules and regulations on commercial fishing in Philippine waters are hereby promulgated:

**SECTION 1.** Definition of Terms and Phrases. As used in this Order, the following words and phrases shall mean:

- a. *Person* – natural or juridical entities such as individuals, associations, partnerships, cooperatives or corporations.
- b. *Fishing Gear License* – refers to the document issued by the Bureau which permit the kind of fishing gear to be used by fisherfolk in its fishing operation in Philippine waters.
- c. *Fishing Vessel License* – refers to the document issued by the Bureau which permit a vessel to conduct fishing operations in Philippine waters.
- d. *Fishworker License* – refers to the document issued by the Department through the Bureau for qualified fisherfolk who seek employment as fishworker or pearl diver.
- e. *Fishing* – the taking of fishery species from their wild state or habitat, with or without the use of fishing vessel.
- f. *Commercial Fishing* – the taking of fishery species by passive or active gear for trade, business or profit beyond subsistence or sports fishing, to be further classified as:
  1. Small scale commercial fishing – fishing with passive or active gear utilizing fishing vessels 3.1 gross tons (GT) up to twenty (20) gross tons;
  2. Medium scale commercial fishing – fishing utilizing active gears and vessels of 20.1 GT up to one hundred fifty (150) GT; and
  3. Large scale commercial fishing – fishing utilizing active gears and vessels of more than one hundred fifty (150) GT.

- g. Fishing Gear – any instrument or device and its accessories utilized in taking fish and other fishery species.
  - 1. **Active fishing gear** – is a fishing device characterized by gear movements and/or the pursuit of its target species by towing; lifting and pushing the gears surrounding, covering dredging, pumping and scaring the target species to impoundments, such as, but not limited to trawl, purse seine, Danish seine, bag nets, pa-aling, drift gill net and tuna longline.
  - 2. **Passive fishing gear** – is characterized by the absence of gear movements and/or the pursuit of the target species such as, but not limited to hook and line, fishpots, traps and gill nets set across the path of the fish.
- h. Fishing vessel– any boat, ship or other watercraft equipped to be used for taking of fishery species or aiding or assisting one (1) or more vessels in the performance of any activity relating to fishing, including, but not limited to, preservation, supply, storage, refrigeration, transportation and/or processing.
- i. CFVGL – refers to the Commercial Fishing Vessel and Gear License.
- j. Certificate of Clearance– a document issued to owners/operators of duly licensed commercial fishing vessels before departure from its homeport or any port to the fishing ground.
- k. Fishworker – a person regularly or not regularly employed in commercial fishing and related industries, whose income is either in wage, profit-sharing or stratified sharing basis, including those working in fish pens, fish cages, fish corrals/traps, fishponds, prawn farms, sea farms, salt beds, fish ports, fishing boat or trawlers, or fish processing and/or packing plants. Excluded from this category are administrator, security guards, and overseers.
- l. Resource rent – the difference between the value of the products produced from harvesting a publicly owned resource less the cost of producing it, where cost includes the normal return to capital and normal return to labor.
- m. Department – the Department of Agriculture.
- n. Secretary– The Secretary of the Department of Agriculture.
- o. Director– the Director of Fisheries and Aquatic Resources.

SEC. 2. License to Operate a Commercial Fishing Vessel/Gear. – No person shall operate a commercial fishing vessel in Philippine waters without a license duly granted by the Bureau: *Provided*, That no such license shall be required of a fishing vessel engaged in scientific, research or educational purposes within Philippine waters pursuant to an international agreement of which the Philippines is a signatory and which agreement defines the status, privileges, and obligations of said vessel and its crew and the non-Filipino official of the

international agency under which said vessel operates. *Provided, further;* that before a commercial fishing vessel holding a commercial fishing vessel license may begin fishing operations, the fishing gear that it will utilize in fishing shall be registered and the corresponding license issued by this Bureau.

**SEC. 3. Persons Eligible to Apply for CFVGL.** –

- a) Citizen of the Philippines; and
- b) Corporations, partnerships, or associations and cooperatives duly registered in the Philippines at least sixty percent (60%) of the capital stock of which is owned by Filipino citizens.

**SEC. 4. Application for CFVGL.** – An application for a license shall be filed with the Office of the Director, of the Fisheries Regional Office or the Provincial Fishery Office which has jurisdiction over the homeport of the vessel.

**SEC. 5. Requirements for the Issuance of a New Commercial Fishing Vessel License** -

- a) Duly accomplished BFAR application for fishing vessel license;
- b) Two (2) copies of 8”x10” vessel picture showing the port, starboard and name of the vessel;
- c) Grid map indicating the proposed fishing ground/s;
- d) Original or authenticated photocopy of the following:
  - d.1 Certificate of Vessel Registry (CVR);
  - d.2 Certificate of Ownership (CO); and
  - d.3 Current Certificate of Inspection (CI).
- e) Approved Articles of Incorporation and By-Laws for corporation, the primary or secondary purpose of which is to engage in fishing, or business name registration, certificate for single proprietorship or partnership to accompany the first vessel of the applicant to be licensed; and
- f) Fishing logbook for catcher vessel for registration and approval by BFAR upon payment of registration fee of fifty pesos (P50.00).

**SEC. 6. Requirements for the Issuance of a Gear License.** –

- a) Duly accomplished BFAR registration forms for gear license (2 copies);
- b) Drawing of gear design and its specifications, showing the mouth, body and bunt/bag of the fishing gear;
- c) Official Receipt of CFVL fee; and
- d) Official Receipt of Fishing Gear Registration (FGR) fee.

**SEC. 7. Inspection of Fishing Vessel and Fishing Gear.** – The inspection of fishing vessel (catcher) and fishing gear shall be annual and the request shall be made three (3) days before the said actual inspection.

**SEC. 8. Application and Registration Fees.** – The application for Commercial Fishing Vessel (CFVL) and the registration of the fishing gear (RFG) shall be Four Hundred (P400.00) and Two Hundred (P200.00) Pesos, respectively, payable to the Bureau which is non-transferable and non-refundable.

**SEC. 9. Licenses and Registration Fees.** - The annual license fee shall be payable to the Bureau in accordance with the following rates:

a. For Commercial Fishing Vessel License.

- |   |   |
|---|---|
| 1) For vessels of 3.1 to 20.0 gross tons -    | P200.00 + P2.00/GT or a fraction thereof    |
| 2) For vessels of 20.1 to 50.0 gross tons-    | P250.00 + P2.00 /GT or a fraction thereof   |
| 3) For vessels of 50.1 to 100.0 gross tons -  | P300.00 + P2.00/GT or a fraction thereof    |
| 4) For vessels of 100.1 to 125.0 gross tons-  | P500.00 + P3.00 /GT or a fraction thereof   |
| 5) For vessels of 125.0 to 150.0 gross tons - | P1,000.00 + P3.00/GT or a fraction thereof  |
| 6) For vessels of 150.1 to 250.0 gross tons-  | P1,500.00 + P3.00 /GT or a fraction thereof |
| 7) For vessels of 250.01 and above            | P2,500.00 + P4.00/GT or a fraction thereof  |

b) For Gear License.

- 1) Small-scale commercial fishing - P200.00 per year
- 2) Medium-scale commercial fishing - P400.00 per year
- 3) Large-scale commercial fishing - P600.00 per year

**SEC. 10. Cash Bond Deposit for Fishing Vessel.** - Before a license is issued, the applicant, as guaranty of good faith and for satisfactory compliance with the terms and conditions of the license, shall post a cash bond deposit to the Bureau which shall be non-transferable in accordance with the following rates:

- |                                     |         |
|-------------------------------------|---------|
| a. For vessels of 3.0 to 20 GT -    | P250.00 |
| b. For vessels of 20.1 to 50 GT -   | P350.00 |
| c. For vessels of 50.1 to 75 GT -   | P450.00 |
| d. For vessels of 75.1 to 100 GT -  | P550.00 |
| e. For vessels of 100.1 to 150 GT - | P650.00 |
| f. For vessels of 150.1 to 250 GT - | P750.00 |

g. For vessels of 250.1 to 500 GT - P850.00

h. For vessels of 500.1 and above - P950.00

**SEC. 11. Forfeiture of Cash Bond Deposit** - The Director may forfeit the cash bond deposit in favor of the government upon the cancellation of the license for cause.

**SEC. 12. Refund of Cash Bond Deposit** - A cash bond deposit may be refunded upon the request of the licensee, the assignees, heir/s or administrators upon the submission of the original Official Receipt therefor, to the Director together with the letter citing the reason for such refund. In case of loss of said Official Receipt, an affidavit declaring the circumstances of such loss may be submitted in lieu thereof together with the said letter.

**SEC. 13. Surrender of CFVGL** - The CFVGL should be surrendered at any point when the fishing vessel is being used for purposes other than fishing or converted to other activity.

**SEC. 14. Validity of Licenses** - The CFVGL shall be valid for a period of three (3) years to commence from the date of issuance of the license unless suspended, revoked, terminated or cancelled sooner for cause.

**SEC. 15. Renewal of CFVGL** - The license may be renewed within sixty (60) days before its expiration, subject to the submission of the following requirements:

- a) Duly accomplished BFAR application forms for CFVGL;
- b) Original or authenticated copy of current/valid Certification of Inspection (CI) issued by MARINA/Philippine Coast Guard;
- c) Fishing logbook report/catch effort report;
- d) Duly notarized Certification/Affidavit from the company that the vessels is not involved in any administrative and/or judicial case;
- e) Annual\Inspection Report; and
- f) Official Receipt of payment for CFVGL.
- g) An affidavit stating the operator has complied with Section 25 of RA 8550.

The renewal of CFVGL of fishing vessel whose homeport is within the jurisdiction of a particular Regional Office shall be filed at the said Fisheries Regional Office. However, prior to the renewal of the CFVGL, the fishing vessel shall be made available for inspection by BFAR in case the vessel is in Metro Manila and in the BFAR Regional Office if the vessel is in the Region.

**SEC. 16. Display of the CFVGL** - The original/certified true copies of the CFVGL shall be framed and exhibited in conspicuous places aboard the fishing boat, ready for easy inspection by fishery law enforcers. An additional duplicate copy of the original CFVGL shall henceforth, be issued as the owner's copy.



**SEC. 17. Report of Transfer of Ownership.** - The owner/operator of a duly licensed commercial fishing vessel shall notify the Department thru BFAR in writing of the transfer of the ownership of the vessel and/or the gear with a copy of such document within ten (10) days after its transfer to another person who is qualified to own the same.

**SEC. 18. Limitation on the Transfer, Lease, or Assignment of Interest.** - The licensee of any fishing vessel and gear involved in any judicial or administrative case shall not transfer, lease or assign his interest thereon during the existence of the case.

**SEC. 19. Fishing by Philippine Commercial Fishing Fleet in International Waters.** - Fishing vessels of Philippine registry which have been licensed to operate within the Philippine waters, may operate in international waters or waters of other countries which allow such fishing operations: *Provided*, That they comply with the safety, manning and other requirements of the Maritime Industry Authority and other agencies concerned. *Provided, However*; That they secure an international fishing permit and Certificate of Clearance from the Bureau, and that the fish caught by such vessels shall be considered as caught in Philippine waters and therefore, not subject to all import duties and taxes only when the same are landed in duly designated fish landings and fish ports in the Philippines.

The permit to fish in international waters shall be valid for a period of three (3) years to commence from the date of its issuance unless suspended, revoked, terminated or cancelled sooner for cause.

**SEC. 20. Requirements for International Fishing Permit and Certificate of Clearance.** -

- (a) Must be an owner/operator of a Commercial Fishing Vessel, duly issued with a CFVGL;
- (b) Letter of Intent to fish in international waters;
- (c) Duly accomplished BFAR application form;
- (d) Original copy of the CFVGL;
- (e) Application Fee of P1,000.00; and
- (f) Permit Fee of P1,500.00

**SEC. 21. Importation of Fishing Vessels or Construction of New Fishing Boats.** - Prior to the importation of fishing vessels and the construction of new fishing vessels, the approval/clearance of the Bureau must be first obtained.

**SEC. 22. Keeping of Record Books of Fish Catch.** - The owner, licensee, master, or any person-in-charge of a fishing vessel shall have a record book on board the boat reflecting the fish catch, fishing area, the quantity in tubs/boxes or other containers in kilograms of fish catch, spoilage, landing point, transshipment and/or other means of disposal for a period of five (5) years (remove parenthesis after years) from the last entry. These entries and notations shall be made within twenty-four (24) hours after the catch was made and shall be written legibly in ink or ball pen.

**SEC. 23. Registration of Record Book.** - The record book mentioned in the preceding section shall be registered with their pages numbered consecutively and kept intact with no missing pages/numbers and shall be presented to the Director or his duly authorized representatives for registration upon payment of the registration fee of Fifty (P50.00) Pesos for each book.

Such approval shall be indicated in the inner side of the cover opposite the first page thereof as follows:

*Approved in accordance with the Fisheries Administrative Order No. \_\_\_\_\_ consisting of \_\_\_\_\_ pages.*

\_\_\_\_\_  
*Director of Fisheries and Aquatic Resources*

*Registration Fee:* \_\_\_\_\_

*O.R. No.* \_\_\_\_\_

*Date:* \_\_\_\_\_

**SEC. 24. Inspection of Record Books.** - These record books shall be kept on board the fishing vessel at all times and to be presented upon demand by duly authorized fishery law enforcers except when the boat is drydocked or undergoing repairs and therefore not operating.

**SEC. 25. Restrictions on Commercial Fishing.** - No commercial fishing vessel shall operate in Philippine waters declared as reserved or restricted areas under existing fishery laws, rules and regulations.

**SEC. 26. Obstruction in the Performance of Official Duty.** - The Director or any duly authorized fishery law enforcement officer in the performance of his official duties, shall not be obstructed or hindered from lawfully boarding fishing vessels, whether licensed or not, for the purpose of inspecting the fish holds or boxes containing fish or fishery/aquatic products and investigating persons found therein.

**SEC. 27. Taking of fish Samples for Examination.** - The owner, licensee, master, patron, or any person-in-charge of the fishing boat or the possessor in places other than a fishing vessel shall allow duly deputized fishery law enforcement officers to take fish samples in quantity of not more than one (1) kilo, or only (1) fish if it weighs more than a kilo, for an on-the-spot or scientific examination to determine whether the same was caught by means of explosives, or by poisonous or obnoxious substances. The receipt of the samples identified in its vernacular, English and/or scientific names, shall be countersigned by the owner/possessor thereof.

**SEC. 28. Certificate of Clearance.** - No fishing boat shall depart from its homeport or any port of departure to the fishing ground without first securing the prescribed Certificate of Clearance either from the Regional Office or Provincial Office. A Certificate of Clearance shall only be issued upon actual inspection and verification of the fishing vessel.

**SEC. 29. Clearance Fee.** - A Certificate of Clearance shall be valid for a period of one (1) month from the date of issuance, with a fee of One Hundred Pesos (P100.00) regardless of tonnage and number of voyage.

**SEC. 30. Fishworker Identification Card.** - The fishworker identification card shall be issued by the Regional Director free of charge upon submission of the following requirements:

- (a) Community Tax Certificate;

- (b) 2 copies of 1" by 1" ID picture; and
- (c) Barangay clearance.

**SEC. 31. Grounds for Cancellation or Revocation of the CFVGL.** - The CFVGL shall be subject to cancellation or revocation on any of the following grounds:

- (a) Violation of any existing fishery laws, decree, letter of instructions or its implementing rules and regulations;
- (b) Non-compliance with the terms and conditions of the license;
- (c) False or fraudulent statements in the application thereof by the applicant or his representative; and
- (d) When public interest so requires.

**SEC. 32. Penalty Clause.** - Any commercial fishing vessel captain or the three (3) highest officers of the vessel who commit any of the above prohibited acts upon conviction shall be punished by a fine equivalent to the value of catch or Ten Thousand Pesos (P10,000.00), whichever is higher and imprisonment of six (6) months, confiscation of catch and fishing gears and automatic revocation of the CFVGL.

**SEC. 33. Repealing Clause.** - All existing administrative orders, rules and regulations which are inconsistent with the provisions of this order are hereby repealed.

**SEC. 34. Effectivity.** - This Administrative Order shall take effect fifteen (15) days after its publication in the Official Gazette and/or in two (2) newspapers of general circulation.

(SIGNED)

**EDGARDO J. ANGARA**

Secretary

Recommended by:

(SIGNED)

**CESAR M. DRILON, JR.**

Undersecretary for Fisheries and Livestock,

Chairman, NFARMC

(SIGNED)

**MALCOLM I. SARMIENTO,  
JR.**

Director, Bureau of Fisheries and

Aquatic Resources

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Republic of the Philippines  
DEPARTMENT OF AGRICULTURE  
Office of the Secretary  
Elliptical Road, Diliman, Quezon City

FISHERIES ADMINISTRATIVE)  
ORDER NO. 199 :Series of 2000 )

**SUBJECT: GUIDELINES ON FISH TRANSSHIPMENT**

Pursuant to Sections 3, 41 and 42 of Republic Act No. 8550, the following guidelines on the transshipment of fish caught outside Philippine waters by foreign fishing vessels are hereby promulgated for compliance by all concerned:

**SECTION 1. OBJECTIVES**

This set of guidelines aims to carry out and implement various functions of government agencies relative to fish transshipment activities like entry and berthing of foreign fishing vessels, fish unloading, processing, and eventual transshipment of fish and its by-products to the foreign markets and to facilitate and expedite the processing of the necessary documents and other requirements relative to the transshipment operation of the foreign fishing vessels in the Davao Fish Port Complex in Davao City or any duly designated government-owned or -controlled regional fishport complexes in the Philippines.

**SECTION II. DEFINITION OF TERMS**

As used in these guidelines, the following terms and phrases shall mean:

1. BFAR - The Bureau of Fisheries and Aquatic Resources
2. BI - The Bureau of Immigration
3. BOC - The Bureau of Customs
4. DA - The Department of Agriculture
5. DFA - The Department of Foreign Affairs
- 6.
6. DFPC - The Davao Fish Port Complex
7. Foreign Fishing Vessels— Fishing Vessels registered in countries other than Philippines
8. Foreign Fishing Operator— One who owns and provides the means including labor, capital, fishing gear, and vessel, which may or may not be engaged in direct fishing duly licensed by another country.
9. LGUs - The Local Government Unit

- 10 LOA - The Length Over All of the Vessel.  
.
- 11 NQO - The National Quarantine Office  
.
- 12 One Stop Action Center (OSAC) - A multi-agency government center created pursuant to Memorandum of Agreement duly notarized on August 8, 1996, whose principal tasks include but not limited to the processing of documents of fishery products that are to be transshipped to foreign markets and the documentation of incoming and outgoing foreign vessels.
- 13 PCG - The Philippine Coast Guard  
.
- 14 PFDA - The Philippine Fisheries Development Authority  
.
- 15 PN - The Philippine Navy  
.
- 16 PNP-ASG - The Philippine National Police-Aviation Security Group  
.
- 17 PNP-MG - The Philippine National Police-Maritime Group  
.
- 18 POEA - The Philippine Overseas Employment Administration  
.
- 19 Philippine Waters - include all bodies of water within the Philippine territory such as lakes, rivers, streams, creeks, brooks, ponds, swamps, lagoons, gulfs, bays and seas and other bodies of water now existing or which may hereafter exist in the provinces, cities, municipalities, and barangays and the water around, between and connecting the islands of the archipelago regardless of their breadth and dimensions, the territorial sea, the sea beds, the insular shelves, and all other waters over which the Philippines has sovereignty and jurisdiction including the 200-nautical miles Exclusive Economic Zone and the continental shelf.  
.
- 20 Skipper - The deck officer in command of the vessel.  
.
- 21 Transshipment - The process in which the fish from foreign vessel is unloaded, cleaned, classified and packed at the DFPC or any other designated  
.

government-owned or –controlled regional fish port complex, and transshipped by air freight to other countries of destination.

- 22 Transshipment Agent - Any person, partnership or corporation duly organized and existing under and virtue of the laws of the Republic of the Philippines, having an office inside the premises of the DFPC, or any duly designated government-owned or –controlled regional fishpond complex, and who acts as the legal agent/representative of the foreign fishing operator intending to utilize the fish port facilities for the transshipment of fish caught in international waters for foreign market destinations.

### **SECTION III. PASSAGE**

Foreign fishing vessels intending to call at any duly designated government-owned or –controlled regional Fish Port for unloading of fish caught outside Philippine waters for transshipment shall pass through the navigational lane to be designated for this purpose. Navigational lanes for other government-owned or –controlled regional fishports to be designated as transshipment points shall be determined and identified through separate Fisheries Administrative Orders accordingly.

### **SECTION IV. TRANSSHIPMENT**

Foreign fishing vessels wishing to avail of land, air and sea facilities available in the Philippines to transport fishery products which are caught outside Philippine territorial waters to its final destination shall call only at duly designated government-owned or -controlled regional fishport complexes after securing clearance from the Department of Agriculture, thru the BFAR.

### **SECTION V. ORGANIZATION OF ONE-STOP ACTION CENTER**

A One-Stop Action Center (OSAC) shall be organized in every designated government-owned or –controlled regional fishport complex whose principal tasks include but not limited to the processing of documents of fishery products that are to be transshipped to foreign markets and the documentation of incoming and outgoing foreign vessels. This office shall be composed of representatives of government agencies including the Philippine Fisheries Development Authority (PFDA), Bureau of Customs (BOC), Bureau of Immigration (BI), National Quarantine Office (NQO), Philippine Navy (PN), Philippine Coast Guard (PCG), PNP-Maritime Group (PNP-MG), Philippine Overseas Employment Administration (POEA), and the Bureau of Fisheries and Aquatic Resources (BFAR) as the lead agency.

### **SECTION VI. CLEARANCE**

Foreign fishing vessels intending to call at any designated government-owned or –controlled regional fish port complex shall first be accredited by the BFAR and shall secure entry clearance from the Department of Foreign Affairs (DFA) or its duly designated agency before entering Philippine territorial waters and shall notify the Bureau of Immigration (BI) of the name of the vessel, its registry number, its last port of call, the names of its skipper and all its

crew and their nationalities.

## **SECTION VII. GENERAL PROCEDURES**

### *1 Vessel Accreditation*

The transshipment agent shall initiate the accreditation of foreign fishing vessels under their stewardship. All applicants for accreditation shall be filed with the designated regional fish ports. The port manager shall recommend the application for accreditation to the Bureau of Fisheries and Aquatic Resources in accordance with the prescribed manual of operations on the matter.

Applications for accreditation shall be accompanied by the following documents:

- 1.1 Name of fishing vessel, registry number, previous names, national flag and port of registry.
- 1.2 Applications for accreditation shall be accompanied by a 5" x 10" picture;
- 1.3 Name and address of owner or owners;
- 1.4 Name and address of operator (manager) or operators (managers);
- 1.5 International Radio Call Sign and Radio Frequency;
- 1.6 Where and when built;
- 1.7 Type of vessel;
- 1.8 Type of fishing method or methods;
- 1.9 Length of Admeasurement (LOA);
- 1.10 Moulded depth;
- 1.11 Breadth;
- 1.12 Gross and net registered tonnage;
- 1.13 All applications shall be accompanied by an accreditation fee of P5,000.00 per vessel. In addition, a departure clearance of P100.00 shall be charged to each vessel by the BFAR.
- 1.14 Profile and pictures of the skipper and all its crew members for verification and derogatory investigation.

The BFAR shall furnish, on a monthly basis, the pertinent bureaus the list of its accredited



vessels.

## 2. *Pre-Arrival Requirements*

Any foreign fishing vessel intending to dock at the DFPC, or any other government-owned or –controlled regional fish port complex as a transshipment and re-supply point, shall, thru its duly authorized agent, notify OSAC 48 hours before the vessel’s estimated time of arrival (ETA). The arrival notice shall contain the following information:

- 2.1 Name of vessel;
- 2.2 Registry number of the vessel;
- 2.3 Accreditation no. of the vessel, if already accredited;
- 2.4 LOA/DRAFT;
- 2.5 Estimated time of arrival (Date and Hour);

Hours should be in military form:

e.g. 1:00 AM should read 0100 HRS

12:00 Noon should read 1200 HRS.

2:00 PM should read as 1400 HRS.

10:00 PM should read 2200 HRS.

12:00 MN should read as 2400 HRS.

- 2.6 Exact coordinates of the Vessel when notice was transmitted;
- 2.7 Name and nationality of the Skipper or Boat Captain;
- 2.8 Number, name and nationality of Crewmen on board;
- 2.9 Volume of Catch by species, fishing areas and exact coordinates;
- 2.10 Nature of sickness and/or injuries of crew, if there is any; and
- 2.11 Emergency or security assistance, if needed.

## 3. *Berthing and Boarding Formalities*

A foreign vessel, upon arrival, proceeds to the space reserved or designated quarantine anchorage for boarding formalities with a yellow quarantine flag hoisted on its mast. Boarding formalities shall be conducted by the authorized personnel of the NQO, BOC, BI, PCG and BFAR Quarantine Office. Only after a clearance has been granted by the boarding team, may the vessel be allowed to proceed and dock at her Agent's designated berthing space.

The BOC shall issue special permit to unload fish, special permits to load fishing paraphernalia, parts, supplies and other provisions.

The Bureau of Immigration (BI) shall be responsible for the assignment of personnel on board said fishing vessels while at berth to ensure that foreign nationals are guarded.

To expedite the processing of the boarding formalities, the vessel's skipper shall produce the following documents:

- 3.1 Outward Foreign Manifest of its Last Port of Call;
- 3.2 Ship's Particular;
- 3.3 Crew list;
- 3.4 Maritime Declaration of Health and valid Deratting Certificate;
- 3.5 Seaman's books and/or Passports of Crew;
- 3.6 Cargo Manifest; and
- 3.7 Miscellaneous Listings;

Foreign fishing vessels cleared by the Boarding Team shall remain under the custody of the BI and shall be off limits to any unauthorized person.

Upon completion of the boarding formalities, the foreign fishing vessel shall proceed to her shipping agent's designated berthing space.

After the vessel has been securely berthed at her Agent's designated berthing space, the skipper of the foreign fishing vessel or its duly authorized shipping agent shall submit to the Fish Port its Roll Book for entry stamping, and shall accomplish the prescribed APPLICATION FORM for Vessel Berthing, Repair, Unloading and Loading (BRUL).

The Bureau of Fisheries and Aquatic Resources (BFAR) personnel, in coordination with the transshipment agency and in compliance to the Observers Programs, can send observers (Fishery Technologist/Biologist) to board the fishing vessels after the boarding formalities to collect fisheries data which may be useful in the formulation of policies at the designated berthing space.

#### 4. *Unloading of Fish Cargo*

Actual unloading, cleaning, classifying, and packing of fish shall, at all times, be witnessed by representatives of the BOC, PNP-MG, BFAR, PFDA and the PNP-ASG.

The Transshipment Agent or shipping agent shall start its unloading operation of the Vessel's fish cargo at their designated berthing space only after securing a special permit to unload its cargo from the BOC and BFAR.

The Transshipment Agent shall first secure from the BOC a permit to transship the sashimi grade tuna and other tuna-like species and assign conduction guard for the transport of the fish to the airport.

The PNP-ASG personnel shall likewise escort the fish cargo from the Fish Port to an International Airport for aviation security purposes.

5. *Loading of Vessel Provisions*

All foreign vessels shall be allowed to load fuel provision only after securing a bunkering permit from the Bureau of Customs. A copy of a bunkering permit shall be furnished by the Transshipment Agent to the Fish Port Office for record purposes.

Loading of other voyage provisions like baits, water, ice and foodstuffs shall be undertaken only when prior clearance from the OSAC, Fish Port Complex and other government agencies concerned has been secured and the Loading Permit Form has been accomplished and submitted to the same fish port.

For monitoring purposes, Fish Port personnel shall board the vessel berthed at the harbor basin to conduct ocular inspection of the vessel's fuel and water requirements.

The PCG, BFAR, PNP-MG and the PFDA port personnel shall closely monitor the compliance of all fishing vessels at port to Anti-Pollution and SOLAS laws.

The PNP-MG shall investigate and arrest the crew members who are on the Wanted List of the BI and other agencies and/or for any criminal offenses/complaints that they may commit while the fishing vessel is in the fishport complex.

6. *Pre-Departure Requirements*

The skipper of the foreign vessel shall first secure a departure clearance from the Fish Port complex. Clearance issued by the Fish Port is a pre-requisite for the issuance of clearance by the OSAC. DFPC departure clearance shall only be issued upon payment of a clearance fee of One Hundred Pesos (P100.00) per foreign fishing vessel to the PFDA and after all regular port charges and other accountabilities have been settled.

The clearance from BI, NQO, Livestock, Plant & Fisheries Quarantine, PFDA and POEA shall be attached to the BOC clearance. The BOC shall issue the final exit departure clearance of the vessel.

A copy of the BOC clearance of a vessel to a Foreign Port and Outward Foreign Manifest of the departing vessel together with the Master Oath of Safety Departure issued by the PCG shall be provided to the Fish Port Office by the vessel's shipping

agent.

Departure from the port without the necessary clearances from the Fish Port and OSAC shall result to the disaccreditation of the vessel and the blacklisting of the owner and the transshipment agent, without prejudice to their criminal prosecution under immigration, labor and other applicable laws, rules and regulations.

## 7. *Vessel Movements*

### 7.1 *Mobility of Berthed Vessels*

All vessels berthed at duly designated government-owned or –controlled regional fish port complexes shall, at all times, be manned by a deck officer and engine room personnel competent to move the vessel when needed. A vessel that cannot be moved to other berthing areas because of the absence of a competent officer shall be towed outside of the harbor basin at the account of the vessel captain, or the owner of the vessel or its Transshipment or Shipping Agent.

### 7.2 *Vessels Needing Repair*

Vessels needing repair shall first secure a permit to repair from the Fish Port office before commencement of repairs. Due to lack of berthing area for repair purposes, only minor repairs which could be completed within 48 hours shall be allowed. Any vessel repair needing a longer period shall need a special permit from the Port Manager.

### 7.3 *Sunken Vessels*

In case a vessel sinks within the harbor basin due to causes beyond the control of the owner/operator, the owner/operator or the Transshipment Agent shall re-float and tow away the vessel outside the harbor basin within fifteen (15) calendar days reckoned from the date of receipt of the notice, after which the Fish Port management shall salvage the vessel at the account of the owner or its shipping agents.

## 8. *Sanitation and Anti-Pollution*

The PCG, BFAR and PFDA port personnel shall closely monitor the compliance of all fishing vessels at port to Anti-Pollution Laws.

The Fish Port Complex, BFAR, PCG, and NQO shall strictly implement measures to maintain the cleanliness and sanitation of its harbor facilities and the good condition of the marine environment. As such, the following anti-pollution regulations shall be strictly followed:

### 8.1 All foreign vessels entering Fish Port complex should have proper human waste

storage and disposal system on board. In the absence of such system, all vessel personnel must use the public toilets strategically located within the port complex. Discharging of garbage within the harbor basin is strictly prohibited.

- 8.2 Garbage and other inorganic wastes from the vessels shall be properly disposed of in the garbage containers placed along the harbor area. Discharging of human waste within the harbor basin is strictly prohibited.
- 8.3 Discharge of bilged water and oil is strictly prohibited in the harbor basin.
- 8.4 Transshipment Agents shall provide garbage containers in respective workplaces in the market hall for the proper disposal of their garbage and wastes in the cleaning of tuna, and shall have the full responsibility to observe the sanitation and hygiene practices in the area.
- 8.5 The penalties and sanctions provided for under the existing pertinent pollution laws will be imposed by the Fish Port management and the Philippine Coast Guard to violators thereof.

#### 9. *Shore Pass and Immigration Guarding*

All foreign crew intending to leave the port to secure provisions or for rest and recreation shall secure a Shore Pass from the BI. At no instance shall a foreign crew be allowed to leave the port premises without a Shore Pass issued by the BI and without immigration guarding.

#### 10. *Recruitment & Vessel Manning*

The POEA shall conduct investigations regarding the working conditions and contracts of Filipino crew on board foreign fishing vessels and shall encourage more Filipinos to board these foreign vessels as crew member. The POEA shall adopt a fast-track procedure in issuing overseas workers employment clearance with less requirements for local hires.

#### 11. *Security and Order*

The Transshipment Agent shall be responsible for securing the properties on board foreign vessels they service. The PNP-MG shall implement police functions on internal security and peace and order inside the port complex and within their jurisdictional area of responsibility. The PNP-MG shall therefore take the lead in curbing the incidence of criminality inside the port complex and its vicinity.

### SECTION VIII. PENALTY CLAUSE

Violation of any of the provisions of this Administrative Order shall cause the cancellation of the accreditation of the foreign vessel and loss of right to avail of the transshipment of its fish and fishery/aquatic products in any Philippine port and prosecution under any applicable

Philippine laws, rules and regulations, if any there be.

**SECTION IX. REPEALING CLAUSE**

All previous orders that are inconsistent herewith are deemed revoked.

**SECTION X. EFFECTIVITY**

This Order shall take effect fifteen (15) days after its publication in the Official Gazette and/or in two (2) newspapers of general circulation.

(SIGNED)

**EDGARDO J. ANGARA**

Secretary

Recommended by:

(SIGNED)

**CESAR M. DRILON, JR.**

Undersecretary for Fisheries and Livestock,

Chairman, NFARMC

(SIGNED)

**MALCOLM I. SARMIENTO,  
JR.**

Director, Bureau of Fisheries

& Aquatic Resources

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DEPARTMENT OF AGRICULTURE  
Office of the Secretary  
Elliptical Road, Diliman, Quezon City

FISHERIES ADMINISTRATIVE)  
ORDER NO. 200 : Series of 2000)

**SUBJECT: Guidelines and Procedures in Implementing Section 87 of the Philippine Fisheries Code of 1998**

Pursuant to Section 87 of RA 8550 otherwise known as the Fisheries Code of 1998 and Section 87.1 of the Department of Agriculture Administrative Order No. 3 Series of 1998, providing for its Implementing Rules and Regulations and in order to effectively implement the provisions of the said section, the following guidelines and procedures are hereby promulgated:

**SECTION 1. Definition of Terms.** – As used in this order, the following terms shall mean:

- (a) *Poaching* – means fishing or operating any fishing vessel in Philippine waters, committed by any foreign person, corporation, or entity, provided that this does not include foreigners engaged in leisure or game fishing as may be defined by the Department pursuant to Section 86.1 of DAO No. 3, Series of 1998;
- (b) *Prima facie evidence* – means one which establishes a fact and unless rebutted or explained by the evidence becomes conclusive and is to be considered as if fully proved;
- (c) *Philippine territorial waters* – all waters from the baselines to the outerlimits described in the Treaty of Paris of 10 December 1898, the treaty concluded at Washington, D.C. between the United States and Spain on 7 November 1900, the agreement between the United States and the United Kingdom of 2 January 1930, and the Convention of 6 July 1932 between the United States and Great Britain; and described in the Republic Act No. 3046 (as amended);
- (d) *Exclusive Economic Zone or EEZ* – an area beyond and adjacent to the territorial sea which shall not extend beyond 200 nautical miles from the baselines as defined under existing laws;
- (e) *Internal waters* – all waters around, between and connecting different islands belonging to the Philippine Archipelago, irrespective of their width or dimension, are necessary appurtenances of its land territory, forming an integral part of the national or inland waters, subject to the exclusive sovereignty of the Philippines;
- (f) *Foreign fishing vessel (FFV)* – a fishing vessel not duly licensed with the Philippine government.

SECTION 2. Prohibition. – It shall be unlawful for any foreign person, corporation or entity to fish or operate any fishing vessel in Philippine waters.

**SECTION 3. Prima facie Evidence of Poaching.** – The entry of any foreign fishing vessel in the Philippine waters shall constitute a prima facie evidence that the vessel is engaged in poaching in Philippine waters under the following circumstances:

- (a) Entry of an FFV into Philippine waters under the following circumstances:
  - (i) Navigating with its fishing gear deployed and/or not stowed;
  - (ii) Navigating with an irregular track or route;
  - (iii) Navigating through Philippine territorial waters without prior notice to, clearance ) of, or permission from the appropriate Philippine authority;
  - (iv) Navigating in a manner that does not qualify as innocent passage nor navigating ) outside traditional routes or in identified fishing grounds;
  - (v) Navigating without flying its national flag.
  
- (b) When an FFV is found within Philippine waters:
  - (i) Under the circumstances enumerated in the previous paragraph;
  - (ii) Lying-to or anchoring without any valid reasons or circumstances that may indicate the existence of force majeure, distress, or for the purpose of rendering assistance to persons, ships or any sea craft that is endangered or in distress;
  - (iii) Lying-to, anchoring at, or anchoring near to or within known fishing grounds or ) marine protected areas.
  
- (c) When an FFV, after having been inspected within Philippine waters, in accordance with the procedures set forth in this FAO, is found to contain freshly caught fish on deck or in storage, corals, mollusks.

SECTION 4. Reports by Philippine Commercial Fishing Vessels or Municipal Fishers. – When an FFV has been reported by any person to be suspected of poaching in Philippine waters, any of the persons authorized to enforce this Order shall immediately take action to pursue and conduct an inspection of the FFV in question, to determine whether it is in fact engaged in poaching.

**SECTION 5. Persons Authorized to Enforce this Order.** – The following are authorized to enforce the provisions of this Order:

- (a) Law enforcement officers of the Bureau of Fisheries and Aquatic Resources
- (b) The Philippine Navy
- (c) The Philippine Coast Guard



- (d) The Philippine National Police Maritime Group
- (e) Law enforcement officers of the local government units
- (f) Duly deputized Fish Wardens of the Bureau of Fisheries and Aquatic Resources

The Secretary may deputize through the Bureau of Fisheries and Aquatic Resources other competent government officials and employees, the Punong Barangays of all coastal provinces, cities, municipalities, and barangays; officers and members of the fishermen's associations who have undergone training on law enforcement by BFAR as Fish Wardens to enforce the provisions of this order, as well as all other existing and related fishery laws, rules and regulations.

**SECTION 7. Inspection and Apprehension Procedure.** – The following constitute inspection and apprehension procedures:

- (a) Upon receipt of a report that an FFV is engaged in poaching, or upon the sighting of an FFV under any of the circumstances enumerated under Section 1(a) and 1(b), the officer/s or person/s authorized to enforce this Order shall establish the violation, exact location with coordinates of the FFV and its distance: from the nearest shore, nature of and/or cause of apprehension, weather condition at the time of sighting or apprehension, and the description/condition of the FFV with appropriate identifying features and marks during sighting and apprehension. Where practicable, photographs of the FFV should be taken.
- (b) The FFV shall be approached to within a safe distance to the leeward side of the ship, and given visible or audible signals for the vessel to stop.
- (c) Once the FFV has stopped, the officer or person authorized to enforce this Order shall clearly identify himself and the unit or organization to which he belongs. He shall state clearly that he wishes to conduct an inspection of the FFV on the ground that he has reason to suspect that the FFV may be engaged in poaching, and therefore committing a violation of Philippine law.
- (d) Upon boarding the FFV, the master of the vessel shall be asked to stop its operations and drop anchor, the captain and crew shall be identified. As far as practicable, the state of the fishing gear at the time of boarding, any visible catch that may be on deck, and other conditions on board the FFV which indicate that it is poaching, shall be recorded. The position of the FFV shall be plotted on a map indicating its location. A technician or engineer from the apprehending vessel should ascertain and record the status of the engine of the apprehended vessel. The status of all navigational and other instruments in the vessel, whether it is working and operational at the time of apprehension, should be indicated as detailed as possible.
- (e) The boarding officer should read to the arrested persons his/her rights under the Philippine Constitution in English, or in the common language or dialect of the arrested person, if possible.
- (f) The master of the vessel shall be required to sign and conform with the plotted position

of the FFV and be informed of the violation committed.

- (g) The registration papers, logbook and navigational chart of the FFV, the Seaman's Book and other documents should be confiscated as evidence, to enable the proper authorities to establish the sailing experience of the apprehended person, and for review by the same appropriate Philippine authorities (PN, PCG, PNP/MARIG, etc.)
- (h) In the absence of such documents, the apprehending officer should inquire from the master of the FFV of his years of sailing experience, and which should be duly indicated in an Investigation and Apprehension Report.
- (i) The apprehending agency shall take custody of the evidence until turned over to the concerned government agency or inter-agency committee for its proper disposition.
- (j) The captain of the FFV shall bring the vessel or towed by the apprehending vessel to the nearest port.
- (k) A more thorough inspection of the vessel shall be conducted as soon as the FFV has docked at port. An Investigation and Apprehension Report shall be prepared and sent to the Department of Agriculture and the Bureau of Fisheries Head office copy furnished the National Committee on Illegal Entrants of the Department of Foreign Affairs, and the Bureau of Immigration.
- (l) The fishing gear found on the FFV shall be impounded. Any fish found on the vessel shall be confiscated, photographed, the species, numbers, and volume duly recorded as if the same were duly landed by a domestic fishing vessel, and thereafter donated to charitable and penal institutions within the vicinity where the violation was committed provided that the Directors thereof execute a promissory note of their willingness to pay the face value of the catch if the accused are acquitted from the charge. The FFV subject of the offense shall be examined thoroughly by BFAR assessing its efficiency and effectiveness in catching fish before auctioning the same, the proceeds of which shall be submitted automatically to the National Treasury in accordance to PD 1177.
- (m) The apprehending authorities shall turn over the arrested illegal entrants to the police or military authorities in his/her jurisdiction for the temporary detention; the National, Regional or Provincial Committee on Illegal Entrants; or to the Bureau of Immigration to be dealt with in accordance to applicable immigration laws.

**SECTION 8. Submission of Reports.** – Persons duly authorized to enforce this Order shall submit a report of accomplishments to their respective agencies concerned, copies furnished to the nearest office of the Bureau of Fisheries and Aquatic Resources.

**SECTION 9. Penalties.** – Violation of Sections 2 & 3 of this Order shall subject the offender to prosecution and upon conviction shall be punished by a fine of not exceeding US\$100,000.00 and confiscation of its catch, fishing paraphernalia and vessel. *Provided,* That the Secretary of Agriculture upon the recommendation of the Director of the Bureau of Fisheries and Aquatic Resources is empowered to impose an additional administrative fine of

not less than US\$50,000.00 but not more than US\$200,000.00 or its equivalent in Philippine currency.

**SECTION 10. Effectivity.** - This Order shall take effect fifteen (15) days after its publication in the Official Gazette and/or in two newspapers of general circulation.

(SIGNED)

**EDGARDO J. ANGARA**

Secretary

Recommended by:

(SIGNED)

**CESAR M. DRILON, JR.**

Undersecretary for Fisheries and Livestock,

Chairman, NFARMC

(SIGNED)

**MALCOLM I. SARMIENTO,  
JR.**

Director, Bureau of Fisheries

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FISHERIES ADMINISTRATIVE )  
ORDER NO. 222 : Series of 2003 )

**SUBJECT: Regulations on the Operation of Danish Seine (Hulbot-Hulbot)**

Pursuant to Section 92 of RA No. 8550, this Order regulating the operation of Danish Seine in Philippine waters is hereby promulgated for the information, guidance and compliance of all concerned.

**SECTION 1. Definition of Terms** – The terms used in this Order shall be construed as follows:

- a. *Danish Seine* - is an active fishing gear which consists of a conical net with a pair of wings, the ends of which are connected to a rope embedded with buri, plastic strips, sinkers or any similar materials to serve as scaring/herding device and hauled through a mechanical winch or by manpower.
- b. *Modified Danish Seine* – is an active fishing gear locally termed as holbot-holbot, palisot, zipper, bira-bira, hulahoop, liba-liba, buli-buli and other coined names consists of a conical net with a pair of wings, the ends of which are connected to a rope embedded with buri, plastic strips, sinkers or any similar materials to serve as scaring/herding device as hauling ropes passing through a ring permanently attached to a tom weight (lingote) and hauled through a mechanical winch or by manpower.
- c. *Municipal Fishing* – refers to fishing within municipal waters using fishing vessels of three (3) gross tons or less, or fishing not requiring the use of fishing vessels.
- d. *Commercial Fishing* – the taking of fishery species by passive or active gear for trade, business or profit beyond subsistence or sports fishing, to be further classified as:
  1. Small-scale commercial fishing – fishing with passive or active gear utilizing fishing vessels of 3.1 GT to twenty (20) GT.
  2. Medium-scale commercial fishing – fishing utilizing active gears and vessels of 20.1 GT up to one hundred fifty (150) GT; and
  3. Large-scale commercial fishing – fishing utilizing active gears and vessels of more than one hundred fifty (150) GT.
- e. *Municipal Waters* – include not only streams, lakes, inland bodies of water and tidal

waters within the municipality which are not included within the protected areas as defined under Republic Act No. 7586 (The NIPAS Law), public forest, timber lands, forest reserves or fishery reserves but also marine waters included between two (2) lines drawn perpendicular to the general coastline from points where the boundary lines of the municipality touch the sea at low tide and a third line parallel with the general coastline including offshore islands and fifteen (15) kilometers from such coastline. Where two (2) municipalities are so situated on opposite shores that there is less than thirty (30) kilometers of marine waters between them, the third line shall be equally distant from opposite shore of the respective municipalities.

- f. *Tom weight (lingote)* – is a type of weight made of lead, iron, stone or concrete materials of various shapes and provided with rings weighing about 1 kilogram and above which is lowered to the sea bottom or hung above the sea bottom by means of a rope where the pull ropes pass the rings during hauling operations.
- g. *Bureau* - refers to the Bureau of Fisheries and Aquatic Resources
- h. *Director* - refers to the Director of the Bureau of Fisheries & Aquatic Resources
- i. *Person* – refers either to a natural or juridical person.

**SECTION 2. Prohibition** – It shall be unlawful for any person to operate municipal and commercial fishing boats using Danish seine and modified Danish Seine in catching fish within municipal waters, bays and management areas. The operation of modified Danish Seine may, however, be allowed in waters beyond fifteen (15) kilometers from the shoreline of any municipality provided that it shall not use tom weights and any method/accessories that destroys coral reefs, seagrass beds and other fishery marine habitats and that the minimum mesh size of the net shall not be less than three (3) centimeters.

**SECTION 3. Penalty** - The operator, boat captain, master fisherman and recruiter / organizer violating this Order shall suffer a penalty of imprisonment from two (2) to ten (10) years and a fine of not less than one hundred thousand pesos (P100,000.00) to five hundred thousand pesos (P500,000.00) or both fine and imprisonment at the discretion of the court. The catch and gear shall be confiscated.

**SECTION 4. Repeal** - All orders, rules and regulations or parts thereof which are inconsistent with this Order are hereby repealed or modified accordingly.

**SECTION 5. Effectivity** – This Order shall take effect fifteen (15) days after its publication in the Official Gazette and / or in two (2) newspapers of general circulation and fifteen (15) days after its registration with the Office of National Administrative Registrar.

Issued this 30th day of October, 2003 at Quezon City.

(SIGNED)

**LUIS P. LORENZO, JR.**

Secretary

Department of Agriculture

Recommended by:

(SIGNED)

**MALCOLM I. SARMIENTO, JR.**

Director, Bureau of Fisheries & Aquatic Resources

(SIGNED)

**CESAR M. DRILON, JR.**

Undersecretary for Fisheries and  
Livestock, Chairman, NFARMC

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Republic of the Philippines  
DEPARTMENT OF AGRICULTURE  
Office of the Secretary  
Elliptical Road, Diliman, Quezon City

FISHERIES ADMINISTRATIVE )  
ORDER NO. 223 : Series of 2003)

**SUBJECT : Moratorium on the issuance of new Commercial Fishing Vessel and gear License (CFVGL) as part of a precautionary approach to fisheries management**

WHEREAS, Article 192 of the United Nations Convention on the Law of the Sea, which was ratified by our country in 1984 and which entered into force in 1994, binds the Philippine government to protect and preserve the marine environment.

*WHEREAS*, Principle 15 of the 1992 Rio Declaration of the United Nations Conference on Environment and Development, Article 6.5 of the Food and Agriculture Organization's Code of Conduct for Responsible Fisheries (CCRF) and other international fisheries instruments prescribe a precautionary approach in the utilization and management of living aquatic resources;

*WHEREAS*, Article 7.1.8 of the CCRF urges States to take measures to prevent or eliminate overfishing and excess fishing capacity and to ensure that levels of fishing effort are commensurate with the sustainable use of fishery resources;

*WHEREAS*, the International Plan of Action (IPOA) for the Management of fishing Capacity recommends that States should make a preliminary assessment and monitoring of fishing capacity and develop appropriate records of fishing vessels;

*WHEREAS*, the IPOA to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IUU fishing) recommends that States should maintain a record of fishing vessels entitled to fly its flag and should ensure that these do not engage in or support IUU fishing;

*WHEREAS*, Section 7 of Republic Act 8550 or the Philippine Fisheries Code of 1998 mandates the Department of Agriculture (DA) to issue such number of licenses and permits for the conduct of fishery activities subject to the limits of the Maximum Sustainable Yield of the resource as determined by scientific studies or best available evidence;

*WHEREAS*, Section 107 of RA 8550 authorizes the DA to issue regulations for the conservation, preservation, management and sustainable development of fishery and aquatic resources;

*WHEREFORE*, in view of these premises, this guideline temporarily suspending the issuance of new CFVGL intended to facilitate an inventory of licensed and unlicensed commercial fishing vessels and gears is hereby issued for the information and guidance of all concerned.

**Section 1. Registration for inventory.** – Prior to the one-year moratorium, the Bureau of

Fisheries and Aquatic Resources (BFAR) of the DA shall first register for inventory all Philippine commercial fishing vessels and gears and shall issue new or renew licenses during a six-month period from January 21, 2004 to July 21, 2004, inclusive under the following conditions:

- a. All owners/operators shall register their commercial fishing vessels and gears, whether or not licensed by the BFAR and whether or not registered by the Maritime Industry Authority (MARINA), with the BFAR or its regional offices having jurisdiction where the owner/operator is holding office. No fee whatsoever shall be charged for such registration and the forms to be used for the purpose;
- b. Holders of licenses expiring from July 22, 2004 to July 22, 2005 shall cause the same to be registered and licensed. Holders of licenses expiring beyond July 22, 2005, need only to register for inventory their commercial fishing vessels and gears;
- c. Owners/Operators must have their unlicensed commercial fishing vessels and gears registered for inventory preparatory to their licensing during the period. To be submitted are proof that they have been fishing regularly including documentation on the construction or acquisition of the boat and gear, entries in the course of business, fishing logbooks, document on transactions involving catch, among others, including vessel registration issued by MARINA. Those who will cooperate in this exercise are assured that their cooperation will not constitute confession of any wrongdoing and will not result in legal action against them.

Section 2. Moratorium on the Issuance of New Licenses. – In order to maintain the current level of fishing effort in Philippine waters during the inventory process and to facilitate the establishment of a computerized commercial fishing vessel and gear register, a one-year moratorium on the issuance of new licenses will be put into effect from July 22, 2004 to July 22, 2005, which will apply to the following transactions:

- a. No new commercial fishing licenses will be issued;
- b. No new gear or gear types will be licensed;
- c. Vessels sold or alienated within the period of suspension will not be licensed, except for vessels that have been registered for inventory, which can be licensed during the period of suspension;
- d. No clearances for importation of fishing vessels will be issued; and
- e. Suspension of the implementation of relevant provisions of Fisheries Administrative Order No. 198, except Sections 16-18 and Sections 22-32 thereof.

Section 3. Exception to the One-Year Moratorium. – The following are not covered by the one-year suspension:

- a. Fishing vessels operating in distant or international waters or waters of other countries which allow such fishing operations and those that maybe imported for distant water



- fishing will be issued international fishing permits during the period of suspension;
- b. Fishing vessels that are sold or alienated during the period of suspension, provided these were registered for inventory during the six-month registration period;
  - c. Replacement of fishing vessels which are lost or destroyed during the period of suspension, provided these were registered for inventory during the six-month registration period; and
  - d. New applications for long line fishing vessels.

Section 4. Administrative Sanctions. – Non-participation in the inventory process shall be a ground for:

- a. the cancellation of existing licenses;
- b. non-inclusion in the national fishing vessel register to be submitted to the relevant regional fisheries management organizations in compliance with international conventions; and
- c. exclusion from the fishery should new access rules be imposed in the future.

Section 5. Effectivity. – This order shall take effect fifteen (15) days after publication in the Official Gazette and/or in two (2) newspapers of general circulation and upon registration with the National Administrative Register.

ISSUED this 29th day of December 2003, at Quezon City, Metropolitan Manila, Philippines.

(Sgd.) **LUIS P. LORENZO, JR.**  
Secretary

Recommending approval:

(SIGNED)

**MALCOLM I. SARMIENTO, JR.**

Director, Bureau of Fisheries & Aquatic Resources

(SIGNED)

**CESAR M. DRILON, JR.**

Undersecretary for Fisheries and  
Livestock, Chairman, NFARMC

Republic of the Philippines  
DEPARTMENT OF AGRICULTURE  
Office of the Secretary  
Elliptical Road, Diliman, Quezon City

FISHERIES ADMINISTRATIVE )  
ORDER NO. 223-1: Series of 2004 )

**SUBJECT : Amending Sections 1 and 2 of Fisheries Administrative Order No. 223, s. of 2003, re: Moratorium on the issuance of new Commercial Fishing Vessel and gear License (CFVGL)**

**Section 1.** The period of registration for inventory of Philippine commercial fishing vessels and gears provided in Section 1 of Fisheries Administrative Order No. 223 (FAO 223) is hereby extended up to October 29, 2004.

**Section 2.** The one-year period of moratorium on the issuance of new CFVGL imposed under Section 2 of FAO 223 is hereby adjusted accordingly to begin on October 30, 2004 and to end on October 30, 2005.

**Section 3.** This Order shall take effect immediately upon publication in two (2) newspapers of general circulation and upon filing with the Office of the National Administrative Register.

ISSUED this July 27, 2004, in Quezon City, Philippines.

(Sgd.) **LUIS P. LORENZO, JR.**  
Secretary

Recommending approval:

(SIGNED)

**MALCOLM I. SARMIENTO, JR.**

Director, Bureau of Fisheries & Aquatic Resources

(SIGNED)

**CESAR M. DRILON, JR.**

Undersecretary for Fisheries and  
Livestock, Chairman, NFARMC

Republic of the Philippines  
DEPARTMENT OF AGRICULTURE  
Office of the Secretary  
Elliptical Road, Diliman, Quezon City

FISHERIES ADMINISTRATIVE )  
ORDER NO. 224: Series of 2004 )

**SUBJECT: Establishment of Tuna Productivity Project in Davao Gulf**

**WHEREAS**, the indiscriminate utilization of the Philippine fishing grounds has resulted to the massive depletion of fish stocks, thereby compelling the small-scale and medium-scale commercial fishing vessels to venture farther out to the international waters to fish;

**WHEREAS**, there is an urgent need to revive the viability of the local fishing grounds by discouraging the harvest of juvenile fish and by encouraging the practice of environmentally sound fishing methods;

**WHEREAS**, one of the effective fish attracting devices is the payao while the traditional handline or hook and line is found to be an environmentally sound fishing method;

**WHEREAS**, the small-scale and medium-scale commercial fishing boat operators of Malita, Davao del Sur and Governor Generoso, Davao Oriental have organized into a cooperative and, in order to revitalize the fishing grounds in the Southern Philippines, have embarked on a tuna fishing project where the use of “payao” and the traditional handline or hook and line fishing method shall be integrated into the Tuna Productivity Project in Davao Gulf;

**NOW, THEREFORE**, for and in consideration of the foregoing premises and pursuant to Sections 4 (14) and 86 of R.A. No. 8550, this order for the establishment of the Tuna Productivity Project in Davao Gulf beyond municipal waters is hereby issued for the information, implementation and compliance by all those concerned.

**SECTION 1. Definition.** – The terms as used in this order shall be construed as follows.

- a) TPP – refers to the Tuna Productivity Project in Davao Gulf of the BFAR jointly with the cooperative of small-scale and medium-scale commercial fishing vessels using only the traditional handline or hook and line gear in catching tuna in the network of “payaos.”
- b) “Payao” or fish shelter – is a fish aggregating device consisting of a floating raft or drums anchored by a weighted line with suspended materials such as palm fronds which attract pelagic and schooling species of fish.

**SECTION 2. Area** - There is hereby established the TPP in Davao Gulf with an area of 25,613.16 hectares or 256.16 square kilometers (14 n.m. or 25.9 km from Malita, Davao del Sur and 15 n.m. or 27.7 km. from Governor Generoso, Davao Oriental) formed by the following coordinates and reflected on the accompanying map.

Pt. 1	6°32'37" N	Pt. 5	6° 17'45" N
	125 ° 48'00" E		125 ° 53'45" E
Pt. 2	6 ° 34'00" N	Pt.6	6°18'50"N
	125 ° 51'00" E		125 ° 56'45"E
Pt. 3	6 ° 26'45" N	Pt. 7	6 ° 09'30"N
	125 ° 50'15" E		125° 57'00"E
Pt. 4	6 ° 27'37" N	Pt. 8	6° 10'37" N
	125 ° 53'15" E		126° 00'00"E

**SECTION 3. Management** – The TPP shall be under the control and supervision of the project presided by the Regional Director or his designated representative of Fisheries Regional Office No. XI, Davao City, the membership of which coming from the Davao Gulf Fishermen’s Cooperative and the municipal governments of Malita, Davao del Sur and Governor Generoso, Davao Oriental.

The site for the construction of payaos shall be determined upon consultation with the Philippine Coast Guard to ensure that such areas shall be away from navigational hazards.

The Davao Gulf Enforcement and Protection Alliance shall assist the TPP Management Board in implementing the applicable provisions of the fishery law within the project area, particularly in securing the “payaos” from illegal fishing, destructive elements and unwanted intrusions. Cooperative members, for their part, shall submit daily reports to the management board as to the status or condition of the “payaos.”

Small-scale and medium-scale commercial fishing vessels of cooperative members with valid license using only handlines or hook and line may be issued by the Fisheries Regional Office No. XI a special permit to fish in the TPP area upon payment of an application fee of P500.00 and special permit fee in the amount of P5,000.00 per annum which shall neither be refundable nor transferable.

**SECTION 4. Prohibition** – It shall be unlawful to catch fish in the TPP area by means of purse seine, ringnet, bag net, or other types of active gear other than handline or hook and line notwithstanding any special permit that may have been issued for the purpose by the Fisheries Regional Office No. XI: Provided, That the discovery of any person in the area where he has no permit or license for his fishing vessel shall constitute a prima facie evidence that he is engaged in unauthorized fishing therein.

**SECTION 5. Penalty** – Violation of this order shall hold the commercial fishing boat captain or the three (3) highest officers of the boat liable to the penalty of fine equivalent to the value of the catch or ten thousand pesos (P10,000.00), whichever is higher, and imprisonment for

six (6) months, confiscation of catch and fishing gear, and revocation of commercial fishing vessel and gear license.

**SECTION 6. Effectivity.** – This order shall take effect fifteen (15) days after its publication in the Official Gazette and/or in two (2) newspapers of general circulation and fifteen (15) days after its registration with the Office of the National Administrative Register.

Issued this \_\_\_\_\_ day of \_\_\_\_\_, 2004 at Quezon City, Metro Manila, Philippines.

(SGD) **LUIS P. LORENZO, JR.**  
Secretary

Recommended by:

(SIGNED)

**MALCOLM I. SARMIENTO, JR.**

Director, Bureau of Fisheries & Aquatic Resources

(SIGNED)

**CESAR M. DRILON, JR.**

Undersecretary for Fisheries and  
Livestock, Chairman, NFARMC

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Republic of the Philippines  
DEPARTMENT OF AGRICULTURE  
Office of the Secretary  
Elliptical Road, Diliman, Quezon City

FISHERIES ADMINISTRATIVE )  
ORDER NO. 226: Series of 2008 )

**SUBJECT: Regulation on the Mesh Size of Tuna Purse Seine Nets and Trading of Small Tuna**

Pursuant to the provisions of Section 2 paragraph c, Section 65, paragraph n and Section 89 of the Philippine Fisheries Code of 1998 (Republic Act 8550), the following management and conservation measures to minimize/reduce the catching of small tuna by tuna purse seine nets are hereby promulgated:

WHEREAS ,tuna is one of the top marine export product of the Philippines and the fishery resources have been exploited by purse seine net which are observed to catch significant number of small tunas;

WHEREAS, the harvest of small tuna has caused alarm and grave concern since it affects the recruitment of tuna stock as significant numbers are caught before reaching maturity;

WHEREAS, the commercial fisheries sector is manifesting the strains of reduced catch since purse seine net contribute to the harvest of small tuna;

WHEREAS, the Philippine waters, particularly Davao Gulf, Moro Gulf, Sulu Sea and Celebes Sea is known as the breeding grounds of tuna species.

WHEREAS, the Fisheries Code of 1998 and other international agreements call for the management and conservation of highly migratory fish stocks.

NOW, THEREFORE, the following management and conservation measures to prescribe the mesh size of tuna purse seine nets in catching tuna and regulation on the trading of small tuna are hereby promulgated;

**SECTION 1. Definition of Terms** – The terms as used herein shall be construed as follows:

- a. **Bycatch Ceiling** – refers to the ceiling of ten percent (10%) of small tunas caught during fishing operation.
- b. **Small tuna** – are young of tuna fish less than 500 grams which includes yellowfin tuna, big eye tuna, and skipjack tuna.
- c. **Mesh size for tuna purse seine nets** – refers to the minimum mesh size not less than 3.5 inches (8.89 cm) at the bunt or bag portion for catching tuna.

- d. **Tuna** – are migratory pelagic fishes characterized by their streamline, spindle-shaped bodies which taper to a slender caudal fin and series of detached finlets behind the dorsal and anal fins. Under this order, the tuna referred to belongs to the two commercially exploited genera, namely, Thunnus and Katsuwonus.
- e. **Tuna Purse Seine** – a classification of fishing gear which surrounds a school of tuna fish attracted by payao, lights and /or from free school or drifting logs using a rectangular net with floats at the upper portion and purse rings at the lower section where the purse rope or cable passes through to close the net bottom during fishing operations. The net is either hauled manually or through a mechanical or hydraulic net hauler/power block.
- f. **Trading** – the selling and buying of small tuna in the landing/market places such as fish ports with estimated volume of more than 10% of the bycatch ceiling.

Section 2. Prohibition. It shall be unlawful for any person, association, cooperative, partnership or corporation to operate tuna purse seine nets with mesh size smaller than 3.5 inches (8.89 cm) at the bag or bunt portion in catching tuna. It shall be unlawful also to trade small tuna caught beyond the bycatch ceiling.

**SECTION 3. Penal Clause.** Violation of Section 2 of this order shall subject the offender to a fine of from Two Thousand Pesos (P2,000.00) to Twenty Thousand Pesos (P20,000.00) or imprisonment from six (6) months to two (2) years or both such fine and imprisonment at the discretion of the court; Provided that if the offense is also committed by a commercial fishing vessel, the boat captain and the masterfisherman shall also be subject to the penalties provided herein; Provided further that the owner/operator of the commercial fishing vessel who violates this provision shall be subjected to the same penalties provided herein: Provided, finally, that the Department is hereby empowered to impose upon the offender an administrative fine and/or cancel his permit or license or both.

**SECTION 4. Transitory Provision.** Persons, associations, cooperatives, partnerships or corporations now engaged in tuna fishing operation using purse seine nets with mesh size less than 3.5 inches (8.89 cm) at the bag or bunt portion shall be given a grace period of three (3) years from the effectivity of this order within which to change or replace gradually their nets to comply to this order. However, the compliance of nets to the legal mesh size should start in the first year of the grace period where 10% of the total number of purse seine catchers should phased out the illegal mesh size; on the 2nd year, it will be 20% and on the 3rd year will be 70%. After the grace period, all nets should have changed to the 3.5 inches legal mesh size. No registration of tuna purse seine catchers for new entrants will be made without complying with this Fisheries Administrative Order.

**SECTION 5. Repealing Clause.** Fisheries Administrative Order Nos. 155 and 155-1 regulating the use of fine meshed nets in fishing is hereby modified insofar as commercial fishing boats using tuna purse seine nets are concerned while Fisheries Administrative Order No. 188, Series of 1993 is hereby repealed.

**SECTION 6. Effectivity.** This Order shall take effect fifteen (15) days after its publication in the official gazette and/or in two (2) newspapers of general circulation.  
Issued this 1st day of August 2008 at Quezon City, Metro Manila, Philippines.

(SIGNED) **ARTHUR C. YAP**  
Secretary  
Department of Agriculture

Recommended by:

(SIGNED)

**MALCOLM I. SARMIENTO, JR.**

Director, Bureau of Fisheries & Aquatic Resources

(SIGNED)

**JESUS EMMANUEL M. PARAS**

OIC, Undersecretary for Fisheries  
and Livestock, DA and  
Concurrently Chairman, NFARMC

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Republic of the Philippines  
DEPARTMENT OF AGRICULTURE  
Office of the Secretary  
Elliptical Road, Diliman, Quezon City

FISHERIES ADMINISTRATIVE )  
ORDER NO. 236 : Series of 2010 )

**SUBJECT: Rules and Regulations on the Operations of Purse Seine and Ring Net Vessels Using Fish Aggregating Devices (FADs) locally known as Payaos during the FAD Closure Period as Compatible Measures to WCFPC CMM 2008-01**

WHEREAS, the Western and Central Pacific Fisheries Commission (WCPFC) approved Conservation and Management Measure (CMM) 2008-01 entitled “**CONSERVATION AND MANAGEMENT MEASURE FOR BIGEYE AND YELLOWFIN TUNA IN THE WESTERN AND CENTRAL PACIFIC OCEAN**”. Said CMM states in paragraph 8, to wit:

8. The purse seine fishery provisions of this Measure herein apply to the Convention Area bounded by 20°N and 20°S with the objective of achieving over a 3-year period commencing from the date this measure comes into effecting 2009, a 30% reduction in fishing mortality on bigeye tuna in the purse seine fishery in that area and a reduction in the risk of overfishing yellowfin tuna.

WHEREAS, said CMM also states in paragraph 17 thereof that there is a closure on the use of FADs from July 1 to September 30 during 2010 and 2011 for Parties to the Nauru Agreement (PNA) Cooperating Country Members (CCMs). Said paragraph reads as follows:

Measures for 2010-2011 EEZs Waters under the jurisdiction of PNA members

17. For the members of the FFA who are members of the PNA, this measure will be implemented through their domestic processes and legislation, including:

- a. the VDS which limits total days fished in the EEZ of PNA members to no greater than 2004 levels (Attachment C); and
- b. the Third Arrangement Implementing the Nauru Agreement of May 2008 which comprises a 3 month FAD closure period in the EEZs of the PNA member countries from 0000 hours on 1 July each year until 2400 hours on 30 September each year; full catch retention and other conditions for the purse seine fleet in national waters;

WHEREAS, paragraph 18 of said CMM allows non-PNA CCMs, of which the Philippines

belongs, to determine and implement measures compatible to the prescribed FAD Closure during 2010-2011 to limit the fishing on bigeye tuna in their respective EEZs, to wit:

Waters under the jurisdiction of non-PNA members

18. Other non-PNA CCMs shall implement compatible measures to reduce purse seine fishing mortality on bigeye tuna in their EEZs;

WHEREAS, there are Philippine flagged vessels that fish in the Philippine EEZ using FADs and target skipjack and small pelagic fishes which on occasion also catch an insignificant volume of bigeye tuna;

WHEREAS, it has been observed that with respect to the vertical distribution of tunas in FADs, the bigeye and yellowfin tuna inhabit the deeper portions of the water column;

WHEREAS, recent Philippine studies show that the bigeye tuna catch of ring nets and purse seine comprise only approximately 0.5% of their total catch if the net depths of the ring nets and purse seine are not more than 125 fathoms depth stretched (FDS);

WHEREAS, there is a need to define the measures compatible to the above-mentioned FAD closure period, the purpose of which is to reduce or avoid the by-catch of bigeye tuna, as well as to provide the implementing procedures for the conduct of FAD fishing by purse seine and ring net vessels during said period such as vessel registration and fishing license, reduction in net depth, accreditation, inspection, monitoring and evaluation;

WHEREFORE, in view of these premises, this Order is hereby promulgated for the information, guidance and compliance of all concerned.

**Section 1.** Definition of Terms. For purposes of this Order, the following words and phrases shall mean:

- a) *Convention* – Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean
- b) *HMFS* – Highly Migratory Fish Stocks as listed in Annex 1 of the 1982 Convention on the Law of the Sea.
- c) *WCPFC* – Western and Central Pacific Fisheries Commission
- d) *Ring Net* – a surrounding net used for catching pelagic fishes hauled manually or by winch
- e) *Purse Seine* – a surrounding net used for catching pelagic fishes characterized by a bag or bunt located on one end of the net hauled by electric power block
- f) *FDS* – fathoms depth stretched; refers to the depth of the net with all the meshes fully stretched
- g) *Maximum Stretched Net Depth* – refers to the stretched depth of the net at its deepest portion, from float line to sinker line, which is usually located in the central portion of the net.

h) *Catcher Vessel* – fishing vessel which carries the fishing net on board and does the actual fish catching.

I) *BFAR* – Bureau of Fisheries and Aquatic Resources

**Section 2.** This Order shall apply to all duly registered and licensed Philippine flagged commercial purse seine and ring net catcher vessels that conduct FAD fishing in the Philippine EEZ during the period of July 1 to September 30 of 2010 and 2011.

**Section 3.** These purse seine and ring net catcher vessels should be properly accredited by BFAR for authorization to fish on FADs during the said period.

**Section 4.** The nets of these purse seine and ring net catcher vessels should be modified such that their maximum stretched net depths are reduced by ten (10) fathoms from 125 FDS in order to ensure that there is further reduction in the catch of bigeye tuna.

**Section 5.** The depth of the fishing net shall be verified by BFAR before the purse seine and ring net catcher vessel can be accredited and authorized to fish on FADs during the said period.

**Section 6.** In order to continuously improve this compatible measure herein described, all purse seine and ring net catcher vessels fishing on FADs during the said period shall carry on board Monitors who shall gather data and recommend further improvements during the aforementioned period.

**Section 7.** Non-compliance to any of the above provisions shall be a ground for suspension of fishing operations during the time period, or cancellation/revocation of the Commercial Fishing Vessel/Gear License (CFVGL).

**Section 8.** Effectivity. This Order shall take effect fifteen (15) days after the publication in the Official Gazette and/or in two (2) newspapers of general circulation and upon registration with the National Administrative Register.

ISSUED this 31st day of May, 2010 at Quezon City, Metro Manila, Philippines

**Recommending Approval:**

**SIGNED MALCOLM I. SARMIENTO, JR.**

BFAR Director

DATE OF PUBLICATION:

JUNE 20, 2010 - PHILIPPINE DAILY INQUIRER PHILIPPINE STAR