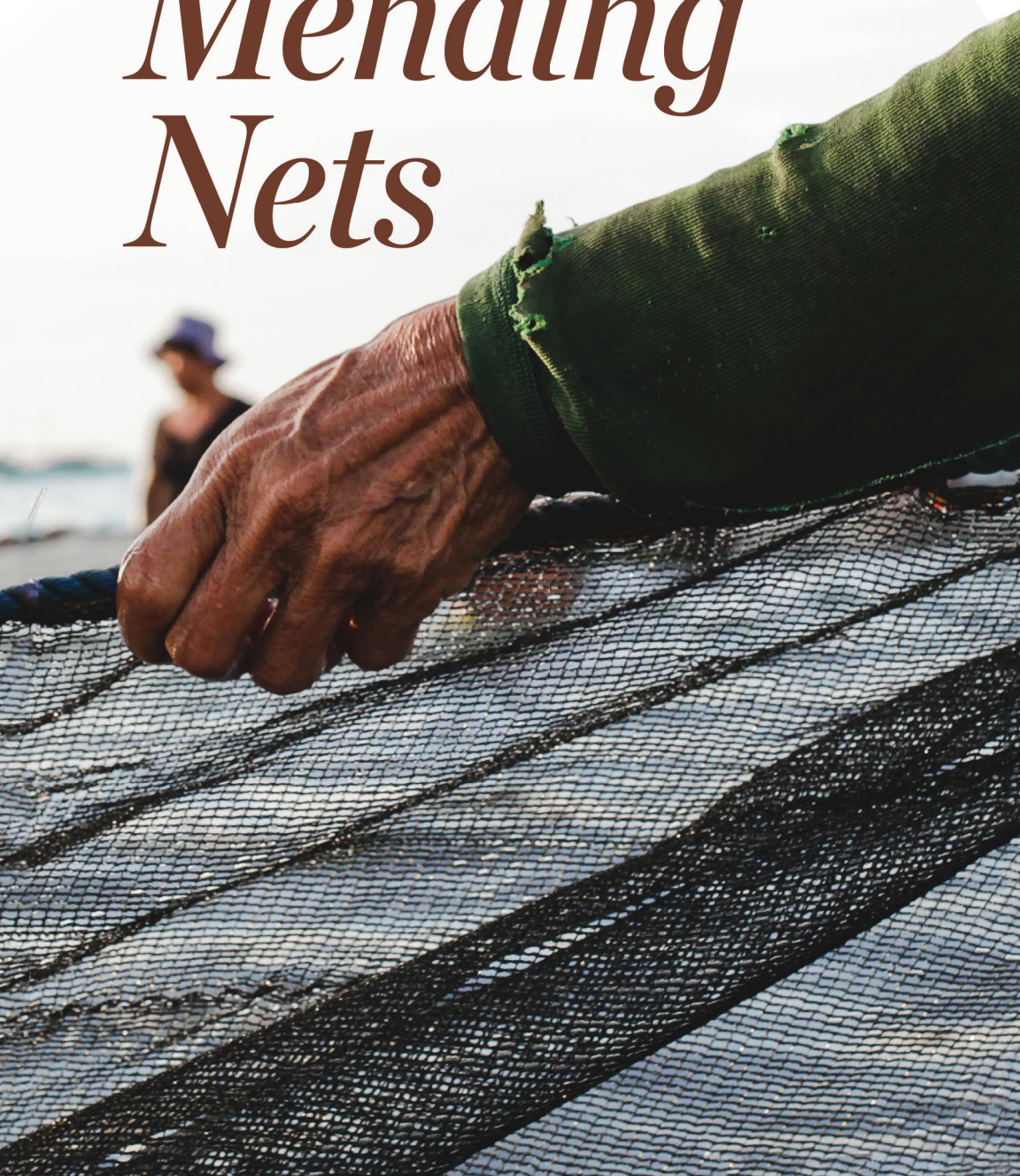


**A handbook on the prosecution of  
fishery and coastal law violations**

THIRD EDITION

# *Mending Nets*



# MENDING NETS

**A handbook on the prosecution of  
fishery and coastal law violations**

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This handbook was produced and published by the



**Environmental Legal Assistance Center**

in collaboration with other assisting organizations through the



**USAID**  
FROM THE AMERICAN PEOPLE

**Coastal Resource Management Project**  
**Fisheries Improved for Sustainable Harvest Project**  
**Ecosystems Improved for Sustainable Fisheries Project**  
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International Development.

**2017**

# Mending Nets: A Handbook on the Prosecution of Fishery and Coastal Law Violations

THIRD EDITION

This edition is published by the **Environmental Legal Assistance Center**, 2<sup>nd</sup> Floor Door 1 Cecilia Apartment, P. Rodriguez St., Capitol Site, Cebu City, URL: <http://www.elac.org.ph>. The Environmental Legal Assistance Center, Inc. (ELAC) is a non-government organization that helps marginalized communities in defending their environmental rights through developmental legal assistance, education & training, research & publications, advocacy, law enforcement, and community-based resource management. It has offices in Cebu, Palawan, and Eastern Visayas.

An earlier edition of this work was published in 2004 and 2008 by the Coastal Resource Management Project of the Department of Environment and Natural Resources and Fisheries Improved for Sustainable Harvest Project of the Department of Agriculture-Bureau of Fisheries and Aquatic Resources.

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THIRD EDITION

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Republic of the Philippines  
SUPREME COURT  
PHILIPPINE JUDICIAL ACADEMY



This Handbook on the Prosecution of Fishery and Coastal Law Violations, aptly titled “MENDING NETS,” is the third generation, with two previous editions published in 2004 and 2008. The need for this latest publication springs from the major developments in environmental law in all branches of the government since then.

In April 2010, the Supreme Court came out with the Rules of Procedure for Environmental Cases (A.M. No. 09-6-8-SC), possibly the first of its kind in the world. It contains provisions on (1) citizen suits; (2) consent decree; (3) environmental protection order; (4) writ of *kalikasan*; (5) writ of continuing mandamus; (6) strategic lawsuits against public participation (SLAPP); and (7) the precautionary principle. A total of 46 writs of *kalikasan* have since been issued under the Rules.

The Court also promulgated decisions implementing environmental protection such as the 2008 case of the *Metropolitan Manila Development Authority v. Concerned Residents of Manila Bay* (G.R. Nos. 171947-48) where it issued a writ of continuing mandamus directing 13 government agencies to clean up, rehabilitate and eventually preserve Manila Bay within a decade. In September 2015 the Amended Philippine Fisheries Code of 2015 (RA No. 10654) was signed into law by former President Benigno S. Aquino III. It provides for more severe civil and criminal penalties than those found in the Philippine Fisheries Code of 1998 (RA No. 8550).

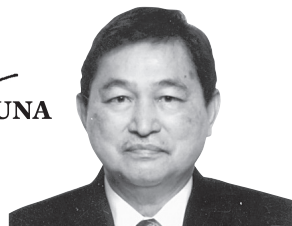
For its part, the Bureau of Fisheries and Aquatic Resources (BFAR) of the Department of Agriculture (DA) issued new administrative orders in furtherance of the amended law.

This 3rd edition features discussions on all these welcome developments and also incorporates a new chapter on Boarding Procedure to guide the fishery law enforcers in conducting seaborne patrol operations.

I congratulate and thank the United States Agency for International Aid (USAID); its project Ecosystems Improved for Sustainable Fisheries (ECOFISH) and the Environmental Legal Assistance Center, Inc., (ELAC) for coming up with this updated and reliable reference for the use of our law enforcers, and for the guidance of our judges and court personnel, in pursuit and dispensation of environmental justice.

All the best.

  
ADOLFO S. AZCUNA  
Chancellor







**Republic of the Philippines**  
**NATIONAL POLICE COMMISSION**  
**NATIONAL HEADQUARTERS PHILIPPINE NATIONAL POLICE**  
**OFFICE OF THE CHIEF, PNP**  
**Camp Crame, Quezon City**

On behalf of the Philippine National Police (PNP), I congratulate the Environmental Legal Assistance Center, Inc. (ELAC) on the publication of the 3rd edition of “Mending Nets: A Handbook on the Prosecution of Fishery/Coastal Law Violations.”

Coastal areas in the country remain in constant danger due to a variety of human activities that are oftentimes in violation of the law. This calls for firmer implementation of fishery/coastal laws, stronger cooperation among concerned agencies, and deeper awareness among members of the community on their responsibilities in the promotion of a healthy and productive maritime environment.

For its part, the PNP has been steadfast in its mission to perform police functions and ensure public safety and internal security over Philippine territorial waters and rivers and sustain the protection of the maritime environment. We thus welcome this 3rd edition of “Mending Nets” as it provides our law enforcement units with an essential and updated reference in the enforcement of fishery/coastal laws including the prosecution of violators.

The publication of the latest version of this handbook is also a call for more focused attention on the effective prosecution of violators. With better informed law enforcers, prosecutors, other concerned officials and members of the community, we hope to eventually resolve the issues on improper dismissal of cases and acquittal of violators of fishery/coastal laws. I enjoin all concerned agencies to work closely together towards this end.

I extend to the ELAC the PNP’s deep gratitude and appreciation for this publication and for the opportunity to help “mend the nets”, so to speak, and fix the gaps in the enforcement of the law and prosecution of violators.

Mabuhay kayo!

  
**RONALD M. DELA ROSA**  
Police Director General  
Chief, PNP



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## LIST OF ACRONYMS

AFMA	Agriculture and Fisheries Modernization Act
AO	Administrative Order
BFAR	Bureau of Fisheries and Aquatic Resources
BFARMC	Barangay FARMC
BP	Batas Pambansa
CA	Court of Appeals
CBFMA	Community-based Forest Management Agreement
CDO	cease and desist order
CENRO	Community Environment and Natural Resources Officer
CEP	Coastal Environment Program
CFVGL	commercial fishing vessel and gear license
CITES	Convention on the International Trade of Endangered Species of Wild Flora and Fauna
CMMO	Coastal and Marine Management Office
CRM	coastal resource management
CRMP	Coastal Resource Management Project
CSC	Civil Service Commission
DA	Department of Agriculture
DAO	DENR Administrative Order
DENR	Department of Environment and Natural Resources
DFA	Department of Foreign Affairs
DFPC	Davao Fish Port Complex
DILG	Department of the Interior and Local Government
DND	Department of National Defense
DOJ	Department of Justice
DOLE	Department of Labor and Employment
DSPWIMD	Directorate on Special Projects for Water and Integrated Ecosystems Management and Development
DSWD	Department of Social Welfare and Development
ECC	Environmental Compliance Certificate
EIA	Environmental Impact Assessment
EIS	Environmental Impact Statement
ELAC	Environmental Legal Assistance Center
EMB	Environmental Management Bureau
EMP	Environmental Management Plan
EO	Executive Order

FAO	Fisheries Administrative Order
FARMC	Fisheries and Aquatic Resources Management Council
FLA	foreshore lease agreement
GT	gross tonnage
HACCP	hazard analysis critical control point
IEE	Initial Environmental Examination
IPRA	Indigenous People's Rights Act
IRR	Implementing Rules and Regulations
LGC	Local Government Code
LGU	local government unit
LOI	Letter of Instruction
MAO	Municipal Agriculture Office
MARINA	Maritime Industry Authority
MARO	Municipal Agrarian Reform Officer
MC	Memorandum Circular
MCTC	Municipal Circuit Trial Court
MeTC	Metropolitan Trial Court
MFARMC	Municipal FARMC
MNR	Ministry of Natural Resources
MTC	Municipal Trial Court
MTCC	Municipal Trial Court in Cities
NALECC	National Law Enforcement Coordinating Committee
NAMRIA	National Mapping and Resource Information Authority
NCIE	National Committee on Illegal Entrants
NCIP	National Commission on Indigenous Peoples
NFARMC	National FARMC
NGA	national government agency
NGO	non-government organization
NIPAS	National Integrated Protected Areas System
NPCC	National Pollution Control Commission
OSHC	Occupational Safety and Health Center
PAMB	Protected Area Management Board
PAWB	Protected Areas and Wildlife Bureau
PCG	Philippine Coast Guard
PD	Presidential Decree
PEA	Public Estates Authority
PENRO	Provincial Environment and Natural Resources Officer
PI	preliminary investigation
PN	Philippine Navy
PNP	Philippine National Police

PNP-MARIG	PNP Maritime Group
PO	people's organization
RA	Republic Act
RED	Regional Executive Director
RPC	Revised Penal Code
RP	Regional Prosecutor
RTC	Regional Trial Court
RTD	Regional Technical Director
RPEC	Rules of Procedure for Environmental Cases
SB	Sangguniang Bayan
SC	Supreme Court
SEMS	Senior Environmental Management Specialist
SFMS	Senior Forest Management Specialist
SLAPP	Strategic Lawsuit Against Public Participation
SP	Sangguniang Panlungsod
TSN	transcript of stenographic notes



## EDITION NOTES AND LIST OF CONTRIBUTORS

The first edition of this book was published in 2004, jointly written by Atty. Jose Andres A. Canivel, Atty. Visminda M. Damayo, Atty. Nelia C. Lagura, Atty. Simeon Q. Mesina III, Atty. Jennifer L. Ramos and edited by Jeneen R. Garcia, with assistance from the following contributors and reviewers:

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The first edition was published with the endorsement of the then heads of national government agencies that hold a mandate in coastal

law enforcement: Environment Secretary Elisea Gozun, Interior and Local Government Secretary Joey Lina and PNP Chief Hermogenes Ebdane.

The revised 2008 edition provides updated information relevant to handling coastal and fishery law violations, including issuances by the Supreme Court and other administrative bodies that came out after the original 2004 edition went to press.

The 2008 edition was written by Atty. Robert Chan, assisted by the following contributors and reviewers:

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Technical and administrative support services were provided by Mar Guidote, Atty. Raul Barbarona, Atty. Dolie Delos Reyes, Howard Cafugauan, Albert Vargas and Police Superintendent Aleta Astronomo.

This revised 2017 edition presents updated information on the new provisions of R.A. 10654 amending R.A. 8550, incorporating the Rules of Procedure for Environmental Cases and inclusion of some jurisprudence on environmental cases and Judicial Affidavit.

This 2017 edition was written by Atty. Astrox V. Canama and Jocelyn D. Caseres, assisted by the following contributors and reviewers:

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Technical and administrative support services were provided by Mar Guidote, Atty. Grizelda Mayo-Anda, Atty. Julius Concepcion and PSupt (Atty.) Oliver Tanseco.

The opinions expressed in this book are those of the authors and do not reflect the views of the United States Agency for International Development. The main authors and the editor assume full responsibility for any errors or controversial opinions that may be found in this book.



# FOREWORD

The state of our coastal areas is the outcome of the dynamics that go into the management of our coastal and fishery resources. Perhaps one of the most critical elements of this is the efficacy of enforcing the relevant laws that are in place to protect and conserve them.

Since 2004, under the Fisheries Improved for Sustainable Harvest (FISH) Project of the USAID and the DENR Coastal Resource Management Project (CRMP), we have endeavored to do our share in the enhancement of our enforcement efforts. We engaged the Environmental Legal Assistance Center (ELAC) to produce and publish a handbook on the prosecution of fishery and law violations called MENDING NETS. A second edition of this Handbook was undertaken in 2008 to update the cases referred to in the Handbook.

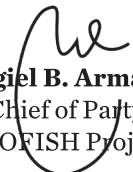
We were truly gratified that the enforcement agencies and prosecuting agencies found Mending Nets as a useful reference in the effective implementation of coastal and fishery laws.

Almost 10 years have passed and since 2009, several developments have taken place relating to the enforcement and prosecution of coastal and fishery laws.

The Ecosystems Improved for Sustainable Fisheries (ECOFISH) Project has therefore engaged ELAC once again to work on the 3rd edition of Mending Nets to integrate new laws and policies affecting our coastal and fishery resources. Similar to its first and second editions, the third edition seeks to enhance enforcement and prosecution efforts concerning coastal and fisheries laws.

We are pleased and inspired that in the producing the first, second and third editions, our partners from various law enforcement agencies, from the prosecution service, judiciary and civil society groups, have participated and shared various insights to produce a useful guidebook. We congratulate ELAC for being a valuable partner in this initiative.

The 3rd edition of Mending Nets certainly reflects our journey in achieving sustainable fisheries in this country. Let us therefore urge all our partners and stakeholders to make full use of it.



**Nygiel B. Armada**  
Chief of Party  
ECOFISH Project

# PREFACE

In our many years with the Environmental Legal Assistance Center (ELAC) working with fisherfolk communities and collaborating with various groups in the fisheries sector, we had been constantly confronted with the depressing status of our fishery resources. Fish stocks and marine habitats continue to dwindle, even with interventions of voluntary groups and individuals seeking to secure our environment against destructive activities and fishing methods,.

The many gaps in fisheries resource management can no longer be left open if we are to succeed in our efforts to rehabilitate and protect what is left of our resources. Among these is the weak law enforcement system, notably prosecution of environmental cases. Many people, even including law enforcers, prosecutors and judges, have bare knowledge about special laws on fisheries. They either fail to properly gather, preserve and present evidence in accordance with these laws. Worse, they do not know that these laws exist. As a result, there have been quite a number of improper dismissal of actions and acquittals of violators.

ELAC has been making efforts to help solve these problems through education initiatives, community organizing and media advocacy. But we can reach out to only so many. In 2003, our Executive Director, Atty. Jose Andres Canivel, shared with us his dream of publishing a book that would reach even the farthest municipalities. His dream did not happen quickly, because we did not have the resources.

One day, Mar Guidote of CRMP, with whom ELAC has a relatively long history of collaboration, handed us a draft of a “prosecution guidebook” for comments, and finally, work on this book started. Our team embarked on a series of debates and brainstorming sessions on what to include in the book, who it should be primarily for and how it should be presented, who would write which chapter and so on.

Writing the book proved to be physically, emotionally and intellectually demanding. At one point, after a consultative review of the draft with invited experts from the national and local governments, non-government organizations and the private sector, we were “forced” to stay together for four days to prepare the final manuscript. The whole process was laborious and challenging, but the team persevered.

On a personal level, it was also a great learning experience. We discovered new and relevant information from all those who shared

with us their experiences and expertise in fisheries law enforcement and prosecution. The series of consultations, reviews, and critiquing sessions that began from conceptualization to final lay-out involved a wide range of participants: local government officials, staff of national government agencies, police investigators, NGO workers, and members of the NALECC. In the end, the pooling of ideas of experienced law enforcers and prosecutors from different offices all over the country made the book richer, more practical and more substantial than what it would have been had we decided to base it on ELAC experiences alone.

This handbook was written with the intention of equipping everyone involved in law enforcement and prosecution with a handy reference material that hopefully contains all the necessary basic information— and some helpful notes as well—that they need in the performance of their tasks.

“Mending Nets” is our contribution towards addressing the gaps in enforcement that allow fisheries law offenders to escape the nets of justice. It is our hope that this book on prosecution will bring us a step closer to improving law enforcement in the Philippines and ultimately to a future where our sea is bountiful once again.

## **The Authors**

## ABOUT THIS BOOK

*In Lanao del Norte, illegal fishers file a countersuit against the Bantay Dagat, and consequently retrieve their confiscated gear. In Palawan, a public prosecutor dismisses a complaint against sand and pebble quarrying on the grounds that the law prohibits quarrying only in the marine, not the coastal, habitat. In Samar, a judge tries a case based on an outdated, 14-year-old fisheries code.*

All across the country, law enforcers work hard to win protracted battles against illegal fishing at sea, only to lose the war in court. Of the thousands of coastal law offenders apprehended every year, only a small fraction are actually charged for their crimes; even fewer are tried in court. Those that are tried and plead guilty often get away with paying a token fine, free once again to repeat their offenses the very next day—and the next.

The Philippines has no shortage of environmental laws; however, any public officer or, for that matter, any concerned citizen seeking to help manage the environment will immediately point to deficiencies in law enforcement as a major factor in continued habitat destruction. Essential to effective coastal resource management then is a strong law enforcement continuum: the prevention, apprehension, and prosecution of crimes committed by those who, despite knowing the tragic consequences for both present and future generations, persist in destroying the environment for personal gain.

Especially crucial to law enforcement is prosecution—the stage where cases are filed and tried in court for appropriate penalties to be meted out. A failure in prosecution, in essence, means a failure in serving justice to the environment and to all who depend on it for survival. Efforts of dedicated law enforcement groups that put life and limb on the line are reduced to nothing; lack of knowledge of current legal issuances and procedures, narrow interpretation of coastal laws, and corruption and intervention of politicians and judicial authorities in law enforcement often put coastal and fisheries law cases at the risk of dismissal at every stage of the prosecution.

Indeed, the nets of justice have many holes that law offenders can easily slip through. “Mending Nets” aims to provide the information needed to strengthen the case for the protection of the coastal and

marine environment, and to deter potential law offenders from robbing communities of their natural resources.

***What is this book?***

- A handbook that is light enough to carry around, but heavy with essential information
- A quick reference at work to help ensure proper handling of coastal law violations
- A refresher on appropriate laws and procedures related to dealing with coastal law violations
- A guide for those who are new at dealing with coastal law violation cases
- A source of ideas and examples for resolving issues not tackled by the law but commonly encountered in actual cases

***Who is it for?***

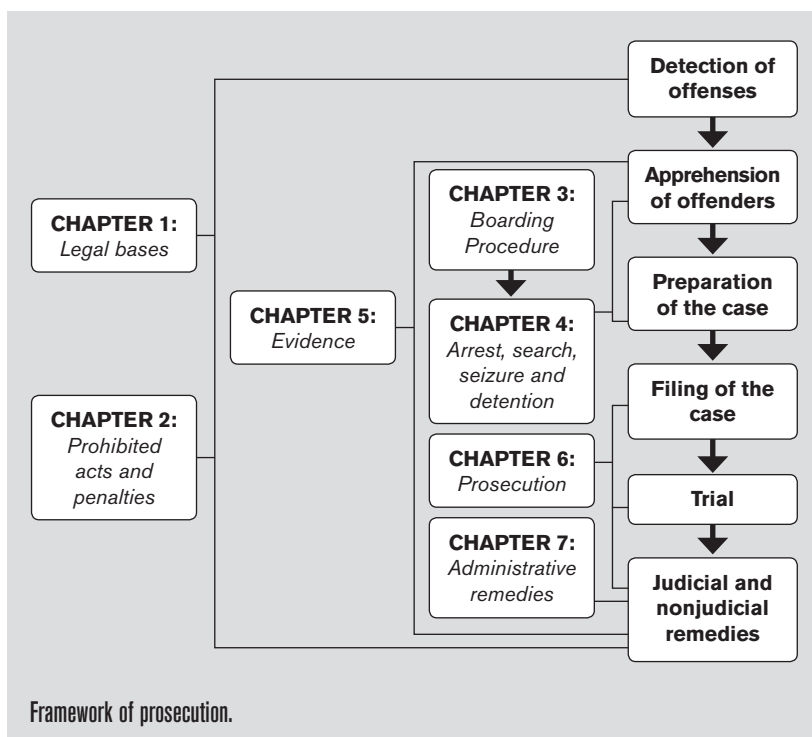
This book is primarily for law enforcers and prosecutors—both lawyers and non-lawyers by profession—who are tasked to bring coastal law offenders to justice. These include fiscals, Chiefs of Police, and other authorized individuals. It is also for judges, uniformed and community-based law enforcers, and local government officials who wish to further define their roles in supporting and facilitating the prosecution of coastal law violations.

Readers from other sectors—such as civil society, national government agencies, and the media—may also find this book a helpful source of information for various applications in their line of work, especially in monitoring the appropriateness of laws, procedures and grounds used by those directly involved in the law enforcement continuum.

***What is its scope?***

Although this book is primarily intended as a handbook on the prosecution of coastal law violators, it necessarily covers more than the filing of cases and trial proper. To help towards the successful prosecution of such cases, this book also describes the larger framework within which prosecution operates.

In this handbook, the word “coastal” is used in its general sense to cover the whole extent of Philippine fisheries within municipal waters, internal waters, territorial sea up to the country’s Exclusive Economic Zone and continental shelf. Violations of laws committed within lakes, rivers, wetlands, beaches and marine areas, as well as the illicit exploitation of resources found in these habitats, are therefore all referred to as “coastal law violations.”



### ***How is it organized?***

#### **Chapter 1 Legal Bases**

- Enumerates laws and legal issuances that may be cited and referred to during prosecution

#### **Chapter 2 Prohibited Acts and Penalties**

- Classifies the prohibited acts according to the nature of the offense or the resource violated for easy reference
- Lists the elements and penalties of each prohibited act as prescribed by the relevant laws
- Discusses the details of each prohibited act as applied in real-life situations, providing tips and reminders where needed

#### **Chapter 3 Boarding Procedure**

- Provide strategies in boarding the commercial fishing vessel, arresting, seizure and gathering of evidence in accordance with the law
- Ensure safety and security of law enforcers and fish wardens

## **Chapter 4 Arrest, Search, Seizure and Detention**

- Deals with procedures prior to prosecution that may make or break fisheries cases

## **Chapter 5 Evidence**

- Lays down the rules on evidence
- Gives guidelines on how different kinds of evidence are presented in court
- Provides a checklist of evidence that may be used to establish probable cause for each prohibited act, providing tips and reminders where needed

## **Chapter 6 Prosecution**

- Answers basic questions on who should prosecute, when, why and where
- Traces the flow of prosecution from investigation to final judgment, and details the procedures involved in different types of coastal law violations

## **Chapter 7 Administrative Remedies**

- Provides the “what” and “how” of cases that law enforcers and prosecutors can file with different government bodies to further discourage offenders from repeating their violations

## **Annexes**

- Some reminders and tips on how to preserve evidence
- Samples of forms to be presented in court for successful prosecution
- A list of agencies and bodies involved in coastal law enforcement, and their respective mandates
- A guide to looking up the laws, rules and cases cited in this book

An Index of Definitions is provided instead of a glossary for easy location of frequently used legal terms already defined within the book.

Each chapter is introduced by a flash page that quickly outlines the chapter’s contents. The flash page also provides the reader with a list of special topics tackled by the chapter, along with a list of figures that illustrate the chapter’s relevant procedures and concepts.



Specific topics are introduced and discussed in the form of questions that the prosecutor would naturally ask in the course of his or her work.

Icons are used throughout the book to help readers quickly find the kind of information they need.



**Definition**

an explanation of legal terms or concepts for users with no background in law



**Example**

particular objects or situations that further explain a concept



**Reminder**

a procedure or legal detail that must be taken note of and always kept in mind



**Warning**

an action that, if committed, might weaken or put the prosecution in danger



**Tip**

an action not required by legal procedure but which may facilitate and improve the prosecution



**Issue**

an actual case, experience or idea commonly found to be an obstacle to effective prosecution or as an object of contention, with discussions on how it may be or has been resolved



# CHAPTER 1

## Legal Bases



**T**he fate of the coastal environment is determined in no small measure by the laws that relate to them. A comprehensive knowledge of these laws is therefore an indispensable requirement to successfully prosecute any environmental case. The following laws are listed according to hierarchy: from pertinent provisions of the Philippine Constitution, to national laws and international treaties and agreements, to Executive Orders of the President, to Administrative Orders and Circulars issued by government agencies. The role of ordinances enacted by local government units is also briefly discussed. In each section, the laws are listed in reverse chronological order, from the most recent to the oldest.



### **THE 1987 PHILIPPINE CONSTITUTION**

The Constitution establishes, limits and defines the fundamental powers of government. It is the highest law of the land, and all other laws and legal issuances may be said to spring from—and must be in

harmony with—its provisions.

The following provisions of the 1987 Philippine Constitution lay down the State policies and principles significant to the coastal environment and to the rights of the people to the country's coastal resources.

### **Article I - National Territory**

“The national territory comprises the Philippine archipelago, with all the islands and waters embraced therein, and all other territories over which the Philippines has sovereignty or jurisdiction, consisting of its terrestrial, fluvial, and aerial domains, including its territorial sea, the seabed, the subsoil, the insular shelves, and other submarine areas. The waters around, between, and connecting the islands of the archipelago, regardless of their breadth and dimensions, form part of the internal waters of the Philippines.”

### **Article II, Section 15**

“The State shall protect and promote the right to health of the people...”

### **Article II, Section 16**

“The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.”

### **Article XII, Section 2**

“All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty *per centum* of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law. In cases of water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant.

“The State shall protect the nation's marine wealth in its archipelagic waters, territorial sea and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens.

“The Congress may, by law, allow small-scale utilization of natural resources by Filipino citizens, as well as cooperative fish

farming, with priority to subsistence fishermen and fish-workers in rivers, lakes, bays, and lagoons.”

### **Article XIII, Section 7**

“The State shall protect the rights of subsistence fishermen, especially of local communities, to the preferential use of the communal marine and fishing resources, both inland and offshore. It shall provide support to such fishermen through appropriate technology and research, adequate financial, production, and marketing assistance, and other services. The State shall also protect, develop, and conserve such resources. The protection shall extend to offshore fishing grounds of subsistence fishermen against foreign intrusion. Fish workers shall receive a just share from their labor in the utilization of marine and fishing resources.”

### **NATIONAL LAWS**



**National laws** are those statutes enacted by the legislative authority of the Philippines. Although legislative authority generally resides in Congress, there have been instances in history when the executive branch exercised this power. One example is Amendment 6 of 1976, which gave full legislative powers to then Pres. Ferdinand Marcos.

As such, certain Presidential Decrees (PDs) issued by Marcos are considered as national laws, such as PD No. 705, otherwise known as “The Forestry Reform Code of the Philippines”, which is still the governing law on forestry.

Some laws listed below might appear as having nothing to do with the coastal environment. These were included as they contain provisions applicable to some aspects of coastal law enforcement. An example would be the Labor Code of the Philippines, which covers agricultural workers, including fish workers.

- **RA 10654** (2015) An Act to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing Amending R.A. 8550, Otherwise known as “The Philippine Fisheries Code of 1998”
- **RA 993** (2009) Philippine Coast Guard Law
- **RA 9367** (2007) Bio fuels Act of 2006  
(provisions on water effluents in accordance with RA 9175)
- **RA No.9344** (2006) Juvenile Justice and Welfare Act of 2006  
(applicable to children involved in fishery violations; no criminal liability for crimes committed by minors below 15 years old, only civil liability; minors aged 15 to below 18 years of age must have acted with discernment, otherwise, they incur no criminal liability)
- **RA 9275** (2004) Philippine Clean Water Act of 2004
- **RA 9147** (2001) The Wildlife Resources Conservation and Protection Act
- **RA 8435** (1997) The Agriculture and Fisheries Modernization Act

- **RA 8371** (1997) The Indigenous Peoples' Rights Act  
(includes the indigenous peoples' ownership and management of their ancestral waters)
- **RA 7586** (1992) The National Integrated Protected Areas Systems Act
- **RA 7942** (1995) The Philippine Mining Act
- **RA 7611** (1992) The Strategic Environmental Plan for Palawan
- **RA 7161** (1991) An Act Incorporating Certain Sections of the National Internal Revenue Code of 1977, as Amended, to PD No. 705, as Amended, Otherwise Known as the "Revised Forestry Code of the Philippines..."  
(Section 4, amending Section 71 of PD 705, prohibits the cutting of all mangrove species)
- **RA 7160** (1991) The Local Government Code of 1991  
(rights and responsibilities of LGUs and offices include management and protection of the coastal environment, see Annex 2)
- **RA 6969** (1990) Toxic Substance, Hazardous and Nuclear Waste Control Act of 1990  
(prohibits the entry and transit of hazardous and nuclear wastes within Philippine territorial waters)
- **PD 1586** (1978) The Environmental Impact Statement Law  
Establishing an Environmental Impact Statement System,  
Including Other Environmental Management Related Measures  
and for Other Purposes
- **PD 1084** (1977) (Amended by EO 525) Creating the Public Estates Authority  
(PEA is responsible for integrating, directing and coordinating all reclamation projects for and in behalf of the government)
- **PD 1198** (1977) Requiring All Individuals, Partnerships or Corporations Engaged in the Exploration, Development or Exploitation of Natural Resources or in the Construction of Infrastructure Projects to Restore or Rehabilitate to Their Original Condition Areas Subject Thereof or Affected Thereby
- **PD 1160** (1977) Vesting Authority in Barangay Captains to Enforce Pollution and Environmental Control Laws and for Other Purposes
- **PD 1152** (1977) The Philippine Environmental Code
- **PD 1067** (1976) The Water Code of the Philippines
- **PD 984** (1976) The Pollution Control Law
- **PD 979** (1976) The Marine Pollution Decree
- **PD 813** (1975) Further Amending RA 4850, Otherwise Known as "An Act Creating the Laguna Lake Development Authority Prescribing Its Powers, Functions and Duties, Providing Funds Therefor and for Other Purposes"
- **PD 705** (1975) The Forestry Reform Code of the Philippines  
(contains provisions covering mangroves)

- **PD 442** (1974) The Labor Code of the Philippines (applicable to agricultural workers, including fish workers)
- **RA 4850** (1966) An Act Creating the Laguna Lake Development Authority, Prescribing Its Powers, Functions and Duties, Providing Funds Therefor and for Other Purposes
- **Commonwealth Act 141** (1936) The Public Land Act

### **INTERNATIONAL TREATIES AND AGREEMENTS**

International treaties and agreements, once ratified by the Senate, become part of Philippine law. Section 21 of the 1987 Constitution provides that treaties and international agreements are valid and take effect when concurred with by at least two-thirds of the Senate.

The following enumeration includes treaties and international agreements entered into by the Philippines that are relevant to the protection of the coastal environment:

- **Cartagena Protocol on Biosafety** (2000)
- **Code of Conduct for Responsible Fisheries** (1995)
- **Action Agenda for Sustainable Development, Earth Summit** (Agenda 21) (1992)
- **Convention on Biological Diversity** (1992)
- **World Commission on Environment and Development** (1987)
- **Convention on Migratory Species** (The Bonn Convention) (1983)
- **United Nations Convention on the Law of the Sea** (1982)
- **Convention on the International Trade of Endangered Species of Wild Flora and Fauna** (CITES) (1973)
- **Convention Concerning the Protection of the World Cultural and Natural Heritage** (1972)
- **Convention on Wetlands of International Importance** (The Ramsar Convention) (1971)

### **EXECUTIVE ORDERS**



**Executive Orders** (EOs) are acts of the President which provide for rules of a general or permanent character to implement constitutional or statutory powers (*De Leon, 1998*).

Following are EOs that are relevant to coastal environment protection:

- **EO 734** (2007) Transferring the Supervision of the Palawan Council for Sustainable Development (PCSD) from the Office of the President to the DENR
- **EO 578** (2006) National Policy on Biological Diversity Particularly Sulu Sulawesi Marine Ecosystem and Verde Island Passage
- **EO 533** (2006) Adopting Integrated Coastal Management as a National Strategy
- **EO 380** (2004) & **EO 380-B** (2006) Transferring the Functions of the Public Estates Authority to the Philippine Reclamation Authority



- **EO No. 305** (2004) Devolving to Municipal and City Governments the Registration of Fishing Vessels Three (3) Gross Tonnage Below
- **EO No. 247** (1995) Prescribing Guidelines for the Prospecting of Biological and Genetic Resources
- **EO No. 240** (1995) Creating the Fisheries and Aquatic Resources Management Councils (FARMCs) in Barangays, Cities and Municipalities, Their Composition and Functions
- **EO No. 149** (1993) Streamlining the Office of the President, Resulting to the Transfer of Administrative Supervision of the Laguna Lake Development Authority to the Department of Environment and Natural Resources
- **EO No. 292** (1987) The Philippine Administrative Code
- **EO No. 192** (1987) The Reorganization Act of the DENR
- **EO No. 927** (1983) Further Defining Certain Functions and Powers of the Laguna Lake Development Authority
- **EO No. 525** (1979) Designating the Public Estates Authority as the Agency Primarily Responsible For All Reclamation Projects
- **EO No. 542** (1979) Creating the Task Force *Pawikan* and Appropriating Funds Therefor

## **ADMINISTRATIVE ORDERS AND CIRCULARS**



**Administrative Orders** (AOs) are issuances directed to particular offices, officials or employees for compliance on specific matters.

**Circulars** are issuances that prescribe policies, rules and regulations and procedures applicable to individuals and organizations outside the government. They are designed to supplement provisions of the law or to provide means and information for carrying out these provisions. (*De Leon, 1998*).

An examination of AOs and circulars issued by government agencies, however, shows that the terms “order” and “circular” are used interchangeably.

Many of the AOs in this list cite related but older AOs as an additional reference. Some of these earlier AOs are still effective, as they have not been expressly repealed, and may contain provisions that remain consistent with newer AOs.

Older AOs that have been supplanted by the newer AOs are still cited because they contain definitions that may prove useful in interpreting the newer AOs. If anything else, these repealed AOs are still helpful in giving the reader a historical perspective of the development of policies regarding the covered subjects.

### **Department of Agriculture (DA) Fisheries Administrative Orders (FAOs)**

- **DA AO No. 10** (Series of 2015) Implementing Rules and Regulations of RA 8550 as Amended by RA 10654

- **FAO 250-1** (Series of 2015) Granting the Grace Period of Eight (8) Calendar Months to Seaweed traders/Exporters to Transport and Export their Remaining Raw Dried Sargassum Stocks Inspected and Audited by BFAR
- **FAO 245-3** (Series of 2015) Regulations and Implementing Guidelines on Group Tuna Purse Seine Operations in High Seas Pocket Number 1 as Special Management Area
- **FAO 250** (Series of 2014) Prohibition of the Collection, Harvesting, Gathering, Selling, and/or Exporting of Brown (alga/sargassum ssp) and Seagrass
- **FAO 249** (Series of 2014) Ban on the Sale and Distribution of Raw/ Fresh and Processed Puffer Fish
- **BAC 253** (Series of 2014) Moratorium on the Issuance of Commercial Fishing Vessel and Gear License and Other clearances
- **BAC 252** (Series of 2014) Rules and Regulations Governing Distant-Water Fishing by Philippine Flagged Fishing Vessel
- **FAO 245-2** (Series of 2014) Regulations and Implementing Guidelines on Group Tuna Purse Seine Operations in High Seas Pocket Number 1 as Special Management Area
- **FAO 236-4** (Series of 2015) Extension of FAO 236-3 series of 2014 on the Rules and Regulation on the Operation 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 2014-01
- **BAC No. 253** (Series of 2014) Moratorium on the Issuance of Commercial Fishing Vessel and Gear License and Other Clearances
- **BAC No. 252** (Series of 2014) Rules and Regulations Governing Distant-Water Fishing by Philippine-Flagged Fishing Vessel
- **BFAR AC No. 251** (Series of 2014) Traceability System for Fish and Fishery Products
- **DA-DILG Joint Administrative Order (JAO) No. 2** (Series of 2014) Establishing a Closed Season for the Conservation of Small Pelagic Fishes in Davao Gulf
- **FAO 246** (Series of 2013) Banning the Operation of Danish Seine and Modified Danish Seine in Philippine Waters
- **BFAR AC No 248** (Series of 2013) Size Regulation for Sea Cucumber Collection and Trade
- **BFAR AC No. 247** (Series of 2013) Conservation of the Ludong in Northern Luzon
- **FAO 245-1** (Series 2013) Regulations and Implementing Guidelines on Group Tuna Purse Seine Operations in High Seas Pocket Number 1 as Special Management Area
- **FAO 236-2** (Series of 2013) Extension of FAO 236 series of 2010 or the Rules and Regulation on the Operation 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 2012-01

- **FAO 245** (Series of 2012) Regulation and Implementing Guidelines on Group Tuna Purse Seine Operations in High Seas Pocket Number 1 a Special Management Area
- **FAO 197-1** (Series of 2012) Revised Rules and Regulations governing the Lease of Public Lands for Fishpond and Mangrove-Friendly Aquaculture
- **FAO 244** (Series of 2012) National Tuna Fish Aggregating Device (FAD) Management Policy
- **FAO 243** (Series of 2012) Guideline on Environmentally Sound Culture of the Pangasuis in the Philippines
- **FAO 242** (Series of 2012) Reinstating the Ban on the Export of Elvers
- **FAO 241** (Series of 2012) Regulation and Implementation of the Vessel Monitoring System (VMS) in the High Seas
- **FAO 240** (Series of 2012) Rules and Regulation in the Implementation of Fisheries Observer Program in the High Seas
- **FAO 238** (Series of 2012) Rules and Regulation Covering the Implementation of Council Regulation (EC) No. 1005/2008 on the Catch Certification Scheme
- **FAO 236-1** (Series of 2012) Extension of FAO 236 series of 2010: Rules and Regulation on the Operation 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
- **FAO 233-2** (Series of 2012) Amending Section 1 and Section 35.1E of Fisheries Administrative Order No. 233, series of 2010
- **FGMD No. 001-A** (Series of 2012) Amending Fisheries General Memorandum Order No. 001 series of 2011 on the Pre and Post Border Requirements in the Application of SPS Clearance for Importation of Fish/Fishery Products from Japan
- **FAO 231-1** (Series of 2011) Amending Fisheries Administrative Order No. 233, series of 2010
- **DA-DILG JAO Order No. 1** (Series of 2011) Establishing a Closed Season for the Conservation of Sardines in East Sulu Sea, Basilan Strait and Subuguey Bay
- **FGMO 001** (Series of 2011) Pre and Post Border Requirements in Application of SPS Clearance for Importation of Fish/Fishery Products from Japan
- **FAO 237** (Series of 2010) Regulations Requiring the Installation of Juvenile and Trash fish Excluder Device (JTED) in Trawls in Philippine Waters
- **FAO 236** (Series of 2010) Rules and Regulation on the Operation 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 2008-1

- **FAO 235** (Series of 2010) Safety and Quality Control Standard for PSP
- **FAO 234** (Series of 2010) Accreditation of Marine Biotoxin Testing Center
- **FAO 233** (Series of 2010) Aquatic Wildlife Conservation
- **FAO 232** (Series of 2010) Limiting Commercial Fishing in Manila Bay
- **DA-AO No. 9** (Series of 2010) Rules & Regulations on the Importation of Plant, Plant products, Animals, animal products and by-products.
- **FAO 230** (Series of 2009) Allowing the Importation and Culture of the Brood stock and Post Larvae of Specific Pathogen Free/Specific Pathogen Resistant (SPF/SPR) Black Tiger Shrimp, *Penaeus Monodon* and the Culture of the Offspring thereof
- **FAO 230-1** (Series of 2009) Guidelines for the Importation and Culture of the Broodstock and/ Postlarvae of Specific Pathogen Free/Specific Pathogen Resistant (SPF/SFR) Black Tiger Shrimp (*Panaeus monodon*) and Culture of Offspring thereof
- **FAO 225-1** (Series of 2007) Guidelines for the Importation of the Broodstock of Pacific White Shrimo (*penaeus vannamei*)
- **FAO 225** (Series of 2007) Allowing the Importation of the Brood Stock of Pacific White Shrimp, *Penaeus vannamei*, and the Culture of the Offspring Thereof
- **FAO 223-1** (Series of 2004) Amending Sec. 1 and 2 of FAO No. 223, Series of 2003 Re: Moratorium on the Issuance of New Commercial Fishing Vessel and Gear License (CFVGL)
- **FAO 224** (Series of 2004) Establishment of Tuna Productivity Project in Davao Gulf
- **DA AO No. 01** (Series of 2004) Guidelines for Delineating/ Delimiting Municipal Waters for Municipalities and Cities without Offshore Islands
- **FAO 221** (Series of 2003) Further Regulating the Importation of Live Fish and Fishery/Aquatic Products under FAO No. 135 s. 1981 to Include Microorganisms and Biomolecules
- **FAO 223** (Series of 2003) Moratorium on the Issuance of New Commercial Fishing Vessel and Gear License (CFVGL) as Part of a Precautionary Approach to Fisheries Management
- **FAO 206** (Series of 2001) Disposal of Confiscated Fish and Other Items in Fishing through Explosives and Noxious or Poisonous Substances
- **FAO 207** (Series of 2001) Prohibiting the Importation and Culture of Imported Live Shrimp and Prawn of All Stages (see FAO 189 s. 1993: Prohibiting the Importation of Live Shrimp and Prawn of All

Stages)

- **FAO 208** (Series of 2001) Conservation of Rare, Threatened and Endangered Fishery Species (see FAO 185 s. 1992: Ban on Taking or Catching, Selling, Purchasing, Possessing, Transporting and Exporting of Dolphins)
- **FAO 209** (Series of 2001) Guidelines on the Production and Transportation of Shellfish for Implementation of the Local Government
- **FAO 210** (Series of 2001) Rules and Regulations on the Exportation of Fresh, Chilled and Frozen Fish and Fishery/Aquatic Products (see FAO 162 s. 1986: Rules and Regulations Governing the Issuance of Permit for the Exportation of Live Mud Crabs or Alimango (*Scylla serrata*);
- **FAO 168** (Series 1990) Rules and Regulations Governing the Gathering, Culture and Exportation of Shelled Mollusks [Phylum Mollusca]
- **FAO 212** (Series of 2001) Guidelines on the Implementation of Hazard Analysis Critical Control Point (HACCP) System
- **FAO 213** (Series of 2001) Establishment and Maintenance of BFAR's Quality Control Laboratories and Collection of Fees and Charges for Examination Services
- **FAO 214** (Series of 2001) Code of Practice for Aquaculture (see FAO 160 s. 1986: Rules and Regulations Governing the Construction, Establishment or Operation of Fishpens Fish pens and Fish Cages in Philippines;
- **FAO 161** s. 1986: Revised Rules and Regulations Governing the Issuance of Lease for Pearl Culture; FAO 168 s. 1990: Rules and Regulations Governing the Gathering, Culture and Exportation of Shelled Mollusks [Phylum Mollusca]
- **FAO 216** (Series of 2001) Obstruction to Navigation in Streams, Rivers, Lakes and Bays
- **FAO 217** (Series of 2001) Obstruction to Defined Migration Paths
- **FAO 218** (Series of 2001) Yearly Report on Aquaculture Projects
- **FAO 198** (Series of 2000) Rules and Regulations on Commercial Fishing (see FAO 156 s. 1986: Covers Regulations Prohibiting the Operation of Commercial Trawl and Purse Seine in Marine Water Areas Within a Distance of Seven Kilometers from the Shoreline; FAO 188 s. 1993: Regulations Governing the Operation of Commercial Fishing Boats in Philippine Waters Using Tuna Purse Seine Nets; FAO 190 s. 1994: Regulations Governing Pa-aling Fishing Operation in Philippine Waters)
- **FAO 202** (Series of 2000) Ban on Coral Exploitation and Exportation (see FAO 184 s. 1992: Guidelines on the Experimental Collection of Precious and Semi-precious Corals in Philippine Waters)

- **FAO 203** (Series of 2000) Banning Fishing by means of “Muro-ami” and the Like Destructive to Coral Reefs and Other Marine Habitats (see FAO 163 s. 1986: Prohibition on the Operation of “Muro-ami” and “Kayakas” in All Philippine Waters)
- **FAO 204** (Series of 2000) Restriction on the Use of Superlights in Fishing
- **FAO 199** (Series of 2000) Guidelines on Fish Transshipment
- **FAO 200** (Series of 2000) Guidelines and Procedures in Implementing Section 87 of the Philippine Fisheries Code of 1998
- **FAO 201** (Series of 2000) Ban on Fishing with Active Gear (see FAO 156 s. 1986: Guidelines and Procedures in the Effective Implementation of Letter of Instruction [LOI] No. 1328; FAO 188 s. 1993: Regulations Governing the Operation of Commercial Fishing Boats in Philippine Waters Using Tuna Purse Seine Nets; FAO 190 s. 1994: Regulations Governing Pa-aling Fishing Operation in Philippine Waters)
- **FAO 197** (Series of 2000) Rules and Regulations Governing the Lease of Public Lands for Fishponds Development (see FAO 125 s. 1979: Rules and Regulations Governing Conversion of Ordinary Fishpond Permits and Ten (10) Year Fishpond Lease Agreements into Twenty-Five (25) Year Fishpond Lease Agreements and Other Related Matters)
- **FAO 196** (Series of 2000) Guidelines on the Creation and Implementation of Fisheries and Aquatic Resources Management Councils (FARMCs)
- **FAO 195** (Series of 1999) Rules and Regulations Governing Importation of Fresh/Chilled/Frozen Fish and Fishery/Aquatic Products (see FAO 183: Prohibiting the Importation of Yellow Fin Tuna and Tuna Products from Certain Countries)
- **FAO 193** (Series of 1998) Ban on the Taking, Catching, Selling, Purchasing and Possessing, Transporting and Exporting of Whale Sharks and Manta Rays
- **FAO 164** (Series of 1997) Rules and Regulations Governing the Operation of Hulbot-Hulbot in the Philippines Waters
- **FAO 191** (Series of 1994) Employment of Foreign Crew Members Aboard Highly Specialized Commercial Fishing Vessels
- **FAO 190** (Series of 1994) Regulations Governing Pa-aling Fishing Operation in Philippine Waters
- **FAO 155-1** (Series of 1994) Amending Section 2 of FAO No. 155, Regulating the Use of Fine-meshed Nets in Fishing
- **FAO 189** (Series of 1993) Prohibiting the Importation of Live Shrimp and Prawn of All Stages
- **FAO 188** (Series of 1993) Regulations Governing the Operation of Commercial Fishing Boats in Philippine Waters Using Tuna Purse Seine Nets

- **FAO 185** (Series of 1992) Ban on Taking or Catching, Selling, Purchasing, Possessing, Transporting and Exporting of Dolphins
- **FAO 184** (Series of 1992) Guidelines on the Experimental Collection of Precious and Semi-precious Corals in Philippine Waters
- **FAO 183-1** (Series of 1992) Amending Section 1 of FAO 183 s.1992
- **FAO 183** (Series of 1992) Prohibiting the Importation of Yellow Fin Tuna and Tuna Products from Certain Countries
- **FAO 173-1** (Series of 1991) Amending Section 1 of FAO No. 173 s. 1991, Banning the Exportation of Bangus Fingerlings (Hatirin)
- **FAO 173** (Series of 1991) Banning the Exportation of Bangus Fingerlings (Hatirin)
- **FAO 168** (Series of 1990) Rules and Regulations Governing the Gathering, Culture and Exportation of Shelled Mollusks (Phylum Mollusca)
- **FAO 163** (Series of 1986) Prohibiting the Operation of “Muro-ami” and “Kayakas” in All Philippine Waters
- **FAO 162** (Series of 1986) Rules and Regulations Governing the Issuance of Permit for the Exportation of Live Mud Crabs or Alimango (*Scylla serrata*)
- **FAO 161** (Series of 1986) Revised Rules and Regulations Governing the Issuance of Lease for Pearl Culture
- **FAO 160** (Series of 1986) Rules and Regulations Governing the Construction, Establishment or Operation of FishpensFish pens and FishcagesFish cages in the Philippines
- **FAO 158** (Series of 1986) Prohibition on the Gathering, Taking, Conducting, Selling, Transporting, or Possessing for Sale of Mollusks Belonging to the Genus *Triton charonia* and *Cassis*
- **FAO 156-1** (Series of 1986) Prohibition on the Gathering, Taking, Collecting, Selling, Transporting, or Possessing of Mollusk Belonging to the Genus *Triton* and *Cassis*
- **FAO 156** (Series of 1986) Guidelines and Procedures in the Effective Implementation of LOI No. 1328 (covers regulations prohibiting the operation of commercial trawl and purse seine in marine water areas within a distance of 7 km from the shoreline)
- **FAO 155** (Series of 1986) Regulating the Use of Fine-meshed Nets in Fishing
- **FAO 125** Rules and Regulations Governing Conversion of Ordinary Fishpond Permits and Ten (10) Year Fishpond Lease Agreements into Twenty-Five (25) Year Fishpond Lease Agreements and Other Related Matters
- **FAO 88** (Series of 1968) Regulations for the Conservation of Turtles, Turtle Eggs and Turtle Shells in the Philippines
- **FAO 76** Regulations Governing the Collecting and Gathering of Marine Turtles



- **FAO 68** (Series of 1968) Amending Section 2 of FAO No. 36, prohibiting the Killing, Gathering, Possessing and Selling of Marine Turtles
- **FAO 36** Establishing a Closed Season Period for the Gathering or Killing of Marine Turtles, Turtle Eggs and Turtle Shells
- **FGMO No. 2** Requirements for the Export of Live Aquatic Animals, Crustaceans, Fish and Invertebrates

## Department of Environment and Natural Resources (DENR) Administrative Orders (DAOs) and Circulars

- **DENR AO 282** (Series of 2010:) Intensifying the Protection of the Whale Shark (*Rhincodon typus*), Popularly known as “Butanding” in the Philippine Waters
- **Joint DA-DENR-DILG AO No. 1 s. 2008:** Defining/Identifying the Areas of Cooperation and Collaboration among the Department of Agriculture, DENR and DILG in the Planning, Management and Control of Aquaculture Development to Mitigate Impacts on the Environment (Series of 1997) Setting of Moratorium on the Deployment of Artificial Reefs Nationwide
- **DAO 20** (Series of 2007) Rules and Regulations governing the issuance of permit over reclamation projects and Special Patents over reclaimed lands
- **DAO 17** (Series of 2007) Rules and Regulations governing Special Uses within Protected Areas (provisions on sustainable ecotourism, irrigation/waterways and aquaculture within Protected Areas)
- **DMC 1** (Series of 2006) Non-titling of lands and areas suitable for fishery purposes/operations even within alienable and disposable (A&D) lands
- **DAO 24** (Series of 2005) Guidelines on the grant of Coastal Area Special Use Agreement (temporarily suspended by DMC 2006-86 and SO 2006-467 authorizing the conduct of workshops in Luzon, Visayas and Mindanao re: DAO 2005-24)
- **DMC Jan. 5, 2006,** Re: Cancellation of all existing IFMA, ITPLA, SIFMA & CBFMA subject to certain exceptions (superseded by DENR Special Order 2006 – 371 re: Creating a DENR Committee on Appeals to review and evaluate appeals of cancelled ITPLAs, IFMAs SIFMAs and CBFMAs)
- **DMC Nov. 30, 2005,** Re: Cancellation of CBFMAs with low or unsatisfactory performance rating (superseded by DENR Special Order 2006 – 371 re: Creating a DENR Committee on Appeals to review and evaluate appeals of cancelled ITPLAs, IFMAs SIFMAs and CBFMAs)

- **Joint DENR-DA-PCSD AO No. 01** (Series of 2004) Joint Implementing Rules and Regulations (IRR) Pursuant to Republic Act No. 9147: “An Act Providing for the Conservation and Protection of Wildlife Resources and their Habitats, Appropriating Funds Therefor and for Other Purposes”
- **Memorandum Circular No. 2004-01** (Series of 2004) Providing for the Guidelines in the Collection, Deposit and Distribution of Management/Service/Environmental User’s Fee on the Extraction of Seabed Dredgefill Materials for Government Reclamation Projects
- **Joint DENR-NCIP Memorandum Circular No. 2003-01** (Series of 2003) Harmonization of the Implementation of the Indigenous People Rights Act (IPRA) and Environment and Natural Resources (ENR) Laws and Policies
- **DAO 30** (Series of 2003) Implementing Rules and Regulations (IRR) for the Philippine Environmental Impact Statement (EIS) System
- **DAO 7** (Series of 2003) Revocation of DENR AO 17 s. 2000 (DAO 17 provides guidelines for the delineation of municipal waters)
- **DAO 6** (Series of 2003) Revocation of DENR AO No. 2000-83 and Memorandum Circular 2001-05  
(Revokes regulations governing management and development of small islands and their coastal areas, and lifts the moratorium [dated 6 July 1999] on the disposition and granting of any title, concession, permit or lease on all small islands nationwide)
- **DAO 2** (Series of 2001) Amending Relevant Provisions of DAO 2000-68, Institutionalizing the Directorate on Special Projects for Water and Integrated Ecosystems Management and Development (DSPWIEMD) and DAO No. 2000-70, Suspending DAO 2000-68 and Including Biodiversity Conservation Programs and Projects Within the Protected Areas and Wildlife Bureau (PAWB)  
(DENR’s coastal and marine resource management and development program and biodiversity conservation programs/projects/activities are institutionalized under PAWB.)
- **DA-DENR Joint Memorandum Order No. 1** (Series of 2000) Identifying/Defining Areas of Cooperation and Collaboration between the DA and DENR in the Implementation of RA 8550, the Philippine Fisheries Code
- **DAO 83** (Series of 2000) Guidelines for the Management and Development of Small Islands, including Its Coastal Areas
- **DAO 68** (Series of 2000) Institutionalization of the DSPWIEMD and Related Functions
- **DAO 57** (Series of 2000) Guidelines Governing the Implementation and Management of Mangrove Sub-projects under the Forestry Sector Project

- **DAO 35** (Series of 1999) Revised Guidelines in the Implementation of the Resource Use Permit in Community-based Forest Management (CBFM) Program
- **DAO 17** (Series of 1999) Updating DAO No. 35 s. 1990, otherwise known as the Revised Effluent Regulations of 1990, Revising and Amending the Effluent Regulations of 1982
- **DAO 10** (Series of 1998) Guidelines on the Establishment and Management of CBFM Projects within Mangrove Areas
- **Memorandum Circular 06** (Series of 1998) Guidelines in Water Quality Monitoring
- **DAO 39** (Series of 1997) Chemical Control Order for Cyanide and Cyanide Compounds
- **DAO 32** (Series of 1997) Rules for Adjudication of Illegal Forest Products
- **DAO 27** (Series of 1997) Amendment of Section 15 (Transitory Provisions) of DAO No. 96-20, also known as the Implementing Rules and Regulations on the Prospecting of Biological and Genetic Resources
- **DAO 17** (Series of 1997) Establishing the Disposition Program for Confiscated and Donated Wildlife in the Custody of DENR Wildlife Rescue Centers and Similar DENR Facilities and Providing Guidelines Thereof
- **DAO 5** (Series of 1997) Procedures in the Retention of Areas within CBFM Areas
- **DAO 37** (Series of 1996) Revising DENR AO No. 21 s. 1992, Further Strengthening the Implementation of the EIS System
- **DAO 29** (Series of 1996) Rules and Regulations for the Implementation of EO 263, Otherwise Known as the Community-based Forest Management Strategy (CBFMS)
- **DAO 20** (Series of 1996) Implementing Rules and Regulations on the Prospecting of Biological and Genetic Resources
- **DAO 3** (Series of 1996) Implementing Guidelines on the Granting of Preferential Treatment to Small Fisherfolk Relative to the 15-km Municipal Waters
- **DAO 19** (Series of 1993) Establishing the Coastal Environment Program (CEP) and Providing Funds Therefor
- **DAO 25** (Series of 1992) National Integrated Protected Areas System (NIPAS) Implementing Rules and Regulations
- **DAO 17** (Series of 1992) Delineation of Functions and Implementation of the Integrated Social Forestry Program After the Devolution of Functions to the Local Government Units (LGUs)
- **DAO 55** (Series of 1991) Declaring Dugong or Sea Cow (*Dugong dugon*) as Protected Marine Mammal of the Philippines
- **DAO 48** (Series of 1991) Establishment of a National List of Rare (R), Endangered (E), Threatened (T), Vulnerable (V), Indeterminate (I) and Insufficiently Known (K) Species of the Philippine Wild Birds, Mammals and Reptiles

- **DAO 34** (Series of 1991) Guidelines for Issuance of Environmental Compliance Certificates (ECCs) for Fishpond Development
- **DAO 3** (Series of 1991) Policy and Guidelines for the Award and Administration of the Mangrove Stewardship Agreement
- **DA-DENR General Memorandum Order No. 3** (Series of 1991) Guidelines for Cancellation and Reversion of Foreshore Lease Agreements (FLAs) into Mangrove Forestlands
- **DAO 15** (Series of 1990) Regulations Governing Management of Mangroves
- **DAO 7** (Series of 1989) Suspending Acceptance of Prospecting Permits in Reservations
- **DAO 76** (Series of 1987) Establishing Buffer Zones in Coastal and Estuarine Mangrove Areas
- **MNR (Ministry of Natural Resources) AO 42** (Series of 1986) Expanding Mangrove Buffer Zones in Typhoon Prone Areas
- **MNR Memorandum** (1982) Management Authority over Marine Turtles
- **MNR Memorandum Order 6** (Series of 1982) Suspension of Permits on Maritime Turtle Exploitation
- **MNR Special Order 201** (1980) Creation of an Implementing Organization of the *Pawikan* Task Force to Implement the *Pawikan* Conservation Program of the Philippines
- **MNR AO 12** (Series of 1979) Regulations for the Conservation of Marine Turtles
- **Bureau of Forestry Development Circular 2** (Series of 1979) Regulations for the Conservation of Marine Turtles in the Philippines
- **Bureau of Forestry AO 1** (Series of 1974) Regulations Governing the Collecting, Gathering and/or Disposing of Marine Turtles, Turtle Eggs and Its By-Products

#### **Department of the Interior and Local Government (DILG) Memorandum Circulars (MC)**

- **Joint DENR-DA-DILG (Department of the Interior and Local Government)-DND (Department of National Defense) AO No. 01 s. 2008**
- **Joint DENR-DILG MC No. 2003-01** Strengthening and Institutionalizing the DENR-DILG-LGU Partnership on Devolved and other Forest Management Functions
- **DILG MC 129** (Series of 2002) Banning the Use of Compressor as Breathing Apparatus in All Fishing Activities (“Enjoins” LGUs to enact local ordinances that ban the use of compressors as breathing apparatus in all fishing activities)

#### **Department of Justice (DOJ)**

- **DOJ Opinion No. 23** (Series of 1994) (interpreting RA 7161, the

prohibition on all types of cutting of mangroves, which is in conflict with DENR DAO 10, Series of 1998 allowing the harvesting of plantation mangroves)

### **Philippine National Police**

- Memorandum of Agreement (MOA) with the DENR, November 10, 2003, Establishing the Police Environment Desk Officer (PEDO) nationwide

### **Office of the Ombudsman**

- **Office Order Nos. 57 and 25** (Series of 2008) Creating a Task Force for Environmental Concerns
- **Office Order No. 16** (Series of 2004) Creating the Office of the Environmental Ombudsman

### **Philippine Reclamation Authority (PRA)**

- **PRA AO No.1** (Series of 2005) Special Registration of Unauthorized/ Illegal Reclamation Projects

## **SUPREME COURT ISSUANCES**



**Supreme Court issuances** are acts of the High Court designed to govern the implementation of rules of procedures to be implemented in all courts within the country.

The following issuances are relevant to the prosecution of fishery violations:

- **AO No. 23** (Series of 2008) Designation of Special Courts to Hear, Try and Decide Environmental Cases
- **Administrative Memorandum No. 05-8-26-SC** (2005) Amendment of Rules 112 and 114 of the Revised Rules on Criminal Procedure by Removing the Conduct of Preliminary Investigation from Judges of the First Level Courts
- **Administrative Memorandum No. 03-1-09-SC** (2004) Guidelines to be observed by Trial Court Judges and Clerks of Court in the conduct of Pre-trial and use of Deposition-Discovery measures

## **ORDINANCES OF LOCAL GOVERNMENT UNITS**



**Ordinances** are the legislative enactments of the respective *Sanggunian* (council) of LGUs. The power of LGUs to enact ordinances is based on the Local Government Code (RA 7160). Although ordinances issued by LGUs must not contravene any law passed by Congress, such ordinances may address local concerns that national laws fail to deal with. They are vital, as they may plug in gaps in statutes or orders, especially related to problems particular to a province or municipality that national laws do not respond to.



An application of this is the ban on the use of compressors in fishing. While there is no express prohibition in RA 10654 regarding the use of compressors in fishing, it is commonly known that they are employed as breathing device by fishers using cyanide, which is by itself destructive and prohibited by law. Another concern raised is the use of compressors as a breathing device which is detrimental to the health of fishers and fish workers.. Several cities and municipalities have filled the gap left by RA 10654 by enacting ordinances that ban the mere possession of compressors on board a *banca*, or by a fisherfolk.

Ordinances, when carefully crafted, may also prove to be a greater deterrent for coastal law offenders, even though under RA 7160, the maximum imposable penalty by legal ordinance is only a fine of P2,500 and imprisonment of six months. Violations of RA 10654 are often penalized by a fine **and/or** imprisonment; the court, at its discretion, usually imposes only a minimal fine. Violators are not deterred from criminal acts, and usually even plead guilty to the crimes, because the fine is a very small fraction of their profit from illegal activities.



Local government units, on the other hand, may enact fishery ordinances with a minimum penalty of both fine **and** imprisonment, leaving no discretion to the court. This will ensure that violators not only pay the fine, but are also imprisoned when they plead guilty. To increase the amount of the fine, and thereby discourage violators from committing the crime again, the P2,500-maximum fine may be imposed per individual just as RA 10654 does (e.g. for each crew member in a fleet of illegal commercial fishing vessels) instead of per violation. Aside from this, the ordinance may also include as penalty the confiscation of fishing vessels and all its appurtenances, fishing gears, and fish catch to prevent offenders from using these in other crimes.

Penalties imposed accrue exclusively and automatically to the municipal treasury (*RA 7160, sec. 18*).

# CHAPTER 2

## Prohibited Acts and Penalties



**A**s the primary law on fisheries, Republic Act (RA) 10654, is usually referred to in determining what acts are prohibited or regulated. This law and its implementing rules and regulations (IRR) integrate most of the coastal laws previously issued and provide penalties for a wide range of offenses.

This chapter divides the prohibitions/regulations and penalties in RA 10654, into four main categories for easier reference: based on fishing method employed, based on location of fishery activity, based on resource exploited, and other prohibited/regulated acts.

This classification is based on the major elements of the offenses associated with the prohibited acts of RA 10654. For example, commercial fishing with all the necessary permits is not a crime unless it is done within the first 10 km of municipal waters. A major element of the offense, therefore, is **where** the fishing was done; commercial fishing within municipal waters (Sec. 86) has been classified in this chapter under Prohibitions Based on Location of Fishery Activity.

All provisions cited are from RA 10654, unless otherwise indicated. A section citing other legal issuances that may affect the coastal environment and its resources is also included to provide a background on other laws that may be used to prosecute violations covered or not covered by RA 10654.

### **PROHIBITIONS/REGULATIONS UNDER RA 10654**

#### **A. Based on Fishing Method Employed**

##### **1. Section 92, paragraph (a) - Actual Use of Explosives, Noxious or Poisonous Substances and/or Electricity for Illegal Fishing (See FAO 206 Series of 2001)**

Elements	Criminal Penalty	Administrative Penalty
<b>Fishing with explosives</b> (Sec. 3, par. 42) Two modes of fishing with the use of explosives: First: → The use of dynamite, fertilizer explosive, other explosives or other chemical compounds	<ul style="list-style-type: none"><li>Imprisonment of 5-10 years</li></ul>	<ul style="list-style-type: none"><li>confiscation of catch including those not caught illegally if co-mingled with those caught illegally</li><li>confiscation of gear, explosives</li></ul>





grounds shall not be construed as illegal fishing.



This prohibition is not limited to dynamite or cyanide fishing. As long as the substances used fall within the definition of “explosives” and “noxious and poisonous substances”, the prohibition applies.

Fish samples should be brought immediately to the laboratory for analysis (see guidelines in Annex 1: Preservation of Evidence).



### Are blasting caps “explosives”?

Yes. The definition of “explosives” in Sec. 3, par. 42 of RA 10654 is broad enough to include blasting caps.

Then Secretary of Justice Serafin Cuevas, in Department of Justice Resolution No. 137 s. 1999 (respecting the case of SPO1 Rolando T. Amurao R.C., Palawan Provincial Command vs. Roger Aganan, I.S. No.

96-117, for Illegal Possession of Explosives Intended for Illegal Fishing) explicitly ruled that: “... blasting caps contain highly combustible elements. They are thus within the context of the 3rd paragraph of Section 33 of Presidential Decree No. 704.”

### Is it always necessary to catch violators in the act of fishing for this prohibition to apply?

No. Sec. 92, par. (a) states that the discovery of dynamite, other explosives and chemical compounds which contain combustible elements, or noxious or poisonous substances, or equipment or device for electrofishing **on board a fishing vessel, or in the possession of any fisherfolk, boat operator, fishing boat official or fish worker** constitutes *prima facie* evidence that the same were used for illegal fishing.

The same provision also states that **discovery in any fishing vessel of fish** caught or killed with the use of explosives, noxious or poisonous substances or by electricity shall constitute *prima facie* evidence that the fisherfolk, boat operator, boat official or fish worker is fishing with the use thereof.



### What does “*prima facie*” evidence mean?

***Prima facie*** evidence is evidence that establishes a fact and that, unless rebutted or explained, becomes conclusive and is considered as proved. This amount of evidence is sufficient to counterbalance the general presumption of innocence and warrant a conviction, if not contradicted by other evidence that renders the fact improbable. (*Regalado, 2000*).

Department of Environment and Natural Resources Administrative Order (DENR DAO) 39 s. 1997 (Chemical Control Order for Cyanide and Cyanide Compounds) may prove useful for enforcing the prohibitions on cyanide fishing.



Separate criminal cases with their respective penalties can also be filed against the violator when the use of such explosives, noxious or poisonous substances and/or electrofishing devices result in physical

injury or loss of human life.

**2. Section 92, paragraph (b) - Mere Possession of Explosives, Noxious or Poisonous Substances for Illegal Fishing**

Elements	Criminal Penalty	Administrative Penalty
<p>→ Explosives, noxious or poisonous substances and/or electrofishing devices were discovered <b>not on board</b> a fishing vessel</p> <p>→ Explosives, noxious or poisonous substances and/or electrofishing devices were found in the possession of persons <b>other than fisherfolk, boat operator, fishing boat official or fish worker</b></p> <p>→ Explosives, noxious or poisonous substances and/or electrofishing devices <b>were used or are to be used</b> for illegal fishing</p>	<ul style="list-style-type: none"><li>• Imprisonment of 6 months to 2 years and fine equivalent to twice the amount of the administrative fine</li><li>• Forfeiture of explosives, noxious or poisonous substances and/or electrofishing devices, catch and gear</li></ul>	<ul style="list-style-type: none"><li>• confiscation of catch, gear, and</li><li>• administrative fine equivalent to five (5) times the value of the catch or the amount indicated below whichever is higher:<ul style="list-style-type: none"><li>(1) P10,000.00 for municipal fishing;</li><li>(2) P100,000.00 for small-scale commercial fishing;</li><li>(3) P500,000.00 for medium scale commercial fishing; and</li><li>(4) P1,000,000.00 for large scale commercial fishing.</li></ul></li></ul>

**What is the difference between “possession” under Section 92 paragraph (a) and Section 92 paragraph (b)?**

In paragraph (a), possession of explosives, noxious or poisonous substances and/or electrofishing devices is by fisherfolk, operator, fishing boat official or fish worker. “Possession” under this provision may also be the mere discovery of these materials on board any fishing vessel. “Possession” under paragraph (a) is enough evidence to presume that the materials were used for fishing in violation of RA 10654. Under paragraph (b), the materials are discovered in the possession of persons who are not fisherfolk, operator, fishing boat official or fish worker.

**Why is it important to determine who is in possession and whether possession is on board a fishing vessel or not?**



Since possession by any fisherfolk, boat operator, fishing boat official or fish worker, or on board a fishing vessel is *prima facie* evidence of **actual use**, it is meted a much higher penalty than mere possession (as defined above).

**How should confiscated fish be disposed of?**

Those **deemed fit for human consumption** may be donated to charitable or penal institutions, provided that these institutions execute a promissory note of their willingness to return the value

of the catch upon acquittal of the accused. Fish ***not deemed fit for human consumption***, especially those caught by cyanide or other noxious substances, are to be discarded by the apprehending officer in the presence of a third ranking officer of the Bureau of Fisheries and Aquatic Resources (BFAR), a representative of the Office of the Prosecutor, or the Philippine National Police. The disposal process must be documented properly.

### Who examines the illegally caught fish?

Samples of fish caught in blast fishing cases are brought to a fish examiner at the nearest BFAR office, Provincial Fishery Office, Municipal Agriculture Office or to any municipal health office or crime/hospital laboratory for examination. In cases of fish caught using noxious substances, samples must be brought to the BFAR Laboratory or any government crime/hospital laboratory for examination. (FAO 206) (For further guidelines, see Annex 1: Preservation of Evidence).

### 3. Section 93 - Use of Fine Mesh Net

(See FAO 155 s. 1986 and FAO 155-1 s. 1994)

Elements	Criminal Penalty	Administrative Penalty
<ul style="list-style-type: none"> <li>→ The mesh size of nets is smaller than that allowed by the Department of Agriculture (DA)</li> <li>→ Such nets are used to engage in fishing</li> <li>→ The fisheries species gathered are not fry, glass eels, elvers, <i>tabios</i>, <i>alamang</i> and other species which by their nature are small but mature, to be identified by DA</li> </ul>	<ul style="list-style-type: none"> <li>• Imprisonment of 6 months to 2 years; and/or</li> <li>• Fine equivalent to twice the administrative fine and confiscation of catch and gear</li> </ul>	<ul style="list-style-type: none"> <li>• confiscation of the catch;</li> <li>• confiscation of fishing gear, and</li> <li>• administrative fine equivalent to three (3) times the value of the catch or the value indicated below, whichever is higher:               <ol style="list-style-type: none"> <li>(1) P20,000.00 for municipal fishing: <i>Provided</i>, That if the municipal fisherfolk fails to pay the fine, he shall render community service;</li> <li>(2) P50,000.00 for small-scale commercial fishing;</li> <li>(3) P1 00,000.00 for medium-scale commercial fishing;</li> <li>(4) P200,000.00 for large-scale commercial fishing.</li> </ol> </li> </ul>



**Fine-mesh nets** are ***currently defined*** as those with mesh sizes less than 3 cm between 2 opposite knots of a full mesh when stretched

(Sec. 4, par. 21).



If committed by a commercial fishing vessel, the boat captain or master fisherman are criminally liable.



The owner, operator, captain or master fisherman in case of commercial fishing vessel, or the municipal fisherfolk are administratively liable.

**Exceptions:**

Allowed through a specific gear license or permit:

- 1. If the net is used to catch:
  - (a) Padas (Siganidae), bangus fry (Chanoschanos), sugpo fry (Penaeidae), banak fry (Mugilidae), glass eels and elvers (Anguilidae) and such other immature species for culture purposes;
  - (b) Aquarium/ornamental animals; and,
  - (c) Other species already mature such as, but not limited to, alamang (*Acetes spp.*), tabios (*Pandacapygmea*), sinarapan (*Mistichthysluzonen sis*), dilis (*Engraulidae*), and snails(*Ampularialuz onica* and *Vivipora spp.*),
- 2. In cases of ring nets, purse seines for sardines, mackerels and scads, and bagnets, wherein the mesh size is 1.9 centimeters (17 knots), measured between two opposite knots of a full mesh when stretched: provided, however, that the operator is required to take measures to ensure that no juvenile will be caught. **(Rule 93.1, IRR of RA 10654)**

**4. Section 95 - Use of Active Gear in Municipal Waters, Bays and Other Fishery Management Areas**

(See FAO 201 s. 2000)

Elements	Criminal Penalty	Administrative Penalty
<ul style="list-style-type: none"><li>➔ Fishing gear/device is used for fishing</li><li>➔ Fishing gear/device used is characterized by the pursuit of the target species by towing, pushing the gears, surrounding, covering, dredging, and scaring the target species to impoundments (Section 3, paragraph 44, RA 10654 amending RA 8550)</li></ul>	<ul style="list-style-type: none"><li>• Imprisonment of 2 to 6 years and fine equivalent to twice the administrative fine</li><li>• Confiscation and forfeiture of the fishing gear and catch</li></ul>	<ul style="list-style-type: none"><li>• confiscation and forfeiture of the catch and fishing gears, and</li><li>• administrative fine equivalent to three (3) times the value of the catch or the value indicated below, whichever is higher:<ul style="list-style-type: none"><li>(1) P20,000.00 for municipal fishing: <i>Provided</i>, That if the offender fails to pay the fine, he shall render community service;</li><li>(2) P50,000.00 for small-scale commercial fishing;</li><li>(3) P100,000.00 for medium-scale commercial fishing; and</li><li>(4) P500,000.00 for large-scale commercial fishing.</li></ul></li></ul>

**Exceptions.** –The following gears are not covered by the prohibition:

1. Gill nets, other than bottom-set gill nets, not more than 500 meters in length per boat used by registered municipal fisherfolk, which shall be regulated by the LGU;
2. “Sudsud” or push net used to catch *Acetes* sp. “alamang” and *Stolephorus* sp. “dilis,” which is operated by a registered municipal fisherfolk/fisherfolk cooperative/association, either manually or by the use of a registered and licensed municipal motorized boat with single piston engine of not more than sixteen (16) horsepower, during approved fishing season for the species, and covered by a management plan duly approved by the LGU;
3. Active gears such as purse seine or “pangulong”, ring net or “taksay” and such other gears that do not touch the sea bottom, used by small and medium commercial fishing vessels authorized by the LGU pursuant to Section 18 of this Code and pertinent rules,<sup>3</sup> to fish in the 10.1 to 15 km. of municipal waters only, as reckoned from the general coastline. **(Rule 95.2., IRR of RA 10654)**



The penalty of imprisonment is imposed on the offender. If the owner/operator is a corporation, the fine is imposed on the chief executive officer of the corporation. If the owner/ operator is a partnership, the fine is imposed on the managing partner.



The owner, operator, boat captain and master fisherman of the vessel, or the chief executive officer in a corporation, or the managing partner in a partnership are administratively liable.

### **Is the prohibition on active gear applicable to handheld fishing gear used by municipal fishers?**

No. Sec. 1 of FAO 201 provides that the prohibition on the use of active gear refers to **those found on fishing boats**, whether municipal or commercial, **but not on fishers**.

### **What law then can address concerns that handheld fishing gears are destructive to the aquatic environment?**



Sec. 97 of RA 10654, amending RA 8550, not only prohibits muro-ami but also other fishing methods and gears destructive to coral reefs, seagrass beds and other fishery marine life habitat. Destructive, handheld fishing gears are therefore prohibited under this provision.

### **5. Section 97 Paragraph (a) - Ban on *Muro-ami* and Any of Its Variations**

(See FAO 203 s. 2000)

Elements	Criminal Penalty	Administrative Penalty
<ul style="list-style-type: none"> <li>➔ Method and gear used for fishing require diving and other physical or mechanical acts to pound coral reefs and other habitats</li> <li>➔ Act of pounding coral reefs and other habitats is meant to entrap, gather or catch fish</li> </ul>	<ul style="list-style-type: none"> <li>• Imprisonment of 2 to 10 years for the boat captain, master fisherman and recruiter or organizer of the fish workers who violate this prohibition; and fine equivalent to twice the amount of the administrative fine</li> </ul>	<ul style="list-style-type: none"> <li>• fine equivalent to 5 times the value of the fish caught or P2,000,000.00, whichever is higher, and</li> <li>• confiscation of catch and gear.</li> <li>• For the fish workers who serve as pounders:               <ol style="list-style-type: none"> <li>(1) fine of P20,000.00 or</li> <li>(2) community service in case of failure to pay the fine</li> </ol> </li> </ul>



The penalty of imprisonment is imposed only on the boat captain, master fisherman and recruiter or organizer of fish workers who violate this prohibition.



The owner, operator, boat captain, master fisherman, and recruiter or organizer of fish workers are administratively liable.



**Determination of Other Destructive Methods and Gears.** – The following fishing gears/methods and their variations are considered destructive to coral reefs, seagrass, seabed, and other fishery marine life habitat:

- Muro-ami and Kayakas; and
- Danish Seine and modified Danish Seine. **(Rule 97.1., IRR of RA 10654)**

### What is the difference between *muro-ami* and *pa-aling* methods of fishing?

*Muro-ami:*

- A fishing method used in reef fishing
- Consists of a movable *bagnet*, detachable wings and scarelines having plastic strips and iron/steel/stone weights
- Effecting fish capture by spreading the net in an area around the reefs or shoals and
- With the use of scare lines, a cordon of fishers drive the fish towards the waiting net while pounding the corals by means of heavy weights like iron/steel/stone or rock, making it destructive to the corals

(FAO 203 s. 2000, sec.1, par. [a])

*Pa-aling:*

- A fishing gear consisting of a net set at coral/shoal reef areas
- Whereby fish are driven towards the net by means of air bubbles produced by compressors

(FAO 190 s. 1994)

*Pa-aling* was meant as a non-destructive alternative to *muro-ami*, as it employs basically the same method, but uses bubbles instead of weights or stones to scare and drive the fish towards the set-in net.



### Why is it important to distinguish between *muro-ami* and *pa-aling*?

*Muro-ami* fishing operators often raise the defense that they are engaged in *pa-aling* fishing, as the latter is merely a legal variation of the former. It is always useful to determine whether the fishing vessel is in compliance with the provisions of FAO 190. An inventory of the fishing equipment on board the vessel, such as the number of weights, small boats, hoses, compressors, including the number of fish workers, will usually not only show a violation of this FAO, but will also reveal the true fishing operation conducted by the fishing vessel. In any case, *pa-aling* is considered as active gear fishing and therefore prohibited within municipal waters.

## 6. Section 97 (a) - Ban on Gear and Method which Destroy Coral Reefs, Seagrass Beds and Other Fishery/Marine Life Habitats

Elements	Criminal Penalty	Administrative Penalty
<ul style="list-style-type: none"> <li>→ Any person or entity engaged in fishing activity</li> <li>→ Gear and method used for fishing are destructive to coral reefs, seagrass beds and other fishery/ marine life habitats as may be determined by DA</li> </ul>	<ul style="list-style-type: none"> <li>• Imprisonment of 2 to 10 years for the boat captain, master fisherman and recruiter or organizer of the fish workers who violate this prohibition; and a fine equivalent to twice the amount of the administrative fine</li> </ul>	<ul style="list-style-type: none"> <li>• fine equivalent to 5 times the value of the fish caught or P2,000,000.00, whichever is higher, and confiscation of catch and gear.</li> <li>• For the fish workers who serve as pounders:               <ol style="list-style-type: none"> <li>(1) fine of P20,000.00 or</li> <li>(2) community service in case of failure to pay the fine</li> </ol> </li> </ul>

### Is it necessary for DA to issue a listing of destructive fishing gear before this prohibition can be enforced?

No. The phrase “as may be determined by the Department”, found in the first paragraph of Sec. 97, actually refers to “other fishery/ marine life habitat”.



It has been argued that the phrase “as may be determined by the Department” requires that DA first issue a list of destructive fishing gear for this provision to be enforceable. However, the intention of the legislature and the purpose of the law would be defeated if this requirement is interpreted from the provision, as offenders are always quick to modify their gear to evade technical definitions and circumvent rules and regulations. The law is clear that as long as a fishing gear is



proven to be destructive, it falls under the prohibition of Sec. 92.

7. Section 98 - Illegal Use of Superlight or Fishing Light Attractor within Municipal Waters

(See *FAO 204 s. 2000*)

Elements	Criminal Penalty	Administrative Penalty
<ul style="list-style-type: none"><li>➔ Any person or entity engaged in fishing</li><li>➔ Fishing activity is conducted within municipal waters</li><li>➔ Such person or entity uses superlight or fishing light attractor using candlelight power or intensity beyond the standards set by the DA</li></ul>	<ul style="list-style-type: none"><li>• Imprisonment of 6 months to 2 years; and fine of P40,000.00 per superlight or fishing light attractor</li><li>• Confiscation of catch, superlight or fishing light attractor and gears</li><li>• Community service if offender is a municipal fisherfolk</li></ul>	<ul style="list-style-type: none"><li>• fine of P20,000.00 per superlight or fishing light attractor, and</li><li>• confiscation of catch, superlight or fishing light attractor and gears:</li><li>• If the offender is a municipal fisherfolk, he may render community service in lieu of fine.</li></ul>

Are there instances where superlight fishing is allowed within municipal waters?



Yes. *FAO 204* provides that a gratuitous permit may be issued by the local chief executive, in consultation with its Fisheries and Aquatic Resources Management Council (*FARMC*), to any government or private research and educational institution for research, experimental, educational and scientific purposes, subject to such terms and conditions the local chief executive may deem wise to impose. However, aside from the above exemption, superlight fishing is prohibited within municipal waters ***regardless of the wattage of the bulb***. The wattage of the superlight bulb only matters for superlight fishing outside municipal waters (*FAO 204 s. 2000*).

8. Section 98 - Illegal Use of Superlight or Fishing Light Attractor Outside Municipal Waters

(See *FAO 204 s. 2000*)

Elements	Criminal Penalty	Administrative Penalty
<ul style="list-style-type: none"><li>➔ Any person or entity engaged in fishing</li><li>➔ Fishing activity is conducted outside municipal waters</li><li>➔ Bulb used for fishing is pursuant to the definition of “superlights” beyond the standards set by the DA</li></ul>	<ul style="list-style-type: none"><li>• Imprisonment of 6 months to 2 years; and fine of P40,000.00 per superlight or fishing light attractor</li><li>• Confiscation of catch, superlight or fishing light attractor and gears</li><li>• Community service if offender is a municipal fisherfolk</li></ul>	<ul style="list-style-type: none"><li>• fine of P20,000.00 per superlight or fishing light attractor, and</li><li>• confiscation of catch, superlight or fishing light attractor and gears:</li><li>• If the offender is a municipal fisherfolk, he may render community service in lieu of fine.</li></ul>



The following specifies the allowable wattage according to the size of the fishing boat:

- Small scale (3.1 to 20 GT): 20 KW per vessel
- Medium scale (20.1 to 150 GT): 36 KW per vessel
- Large scale (more than 150 GT): 40 KW per vessel (*FAO 204 s. 2000*)

Gratuitous permits to use superlight fishing outside municipal waters may be issued by the Director of the BFAR, in consultation with the national FARMC, to any government or private research and educational institution for research, experimental, educational and scientific purposes, subject to such terms and conditions the director may deem wise to impose.

(FAO 204 s. of 2000, the implementation of which is suspended for 18 months from the effectivity of the IRR pursuant to Rule 44.1, in order to conduct a scientific study as basis for the review thereof)

## B. Based on Location of Fishery Activity

### 1. Section 86 - Commercial Fishing Vessels Fishing within Municipal Waters

(See FAO 198 s. 2000)

Elements	Criminal Penalty	Administrative Penalty
<ul style="list-style-type: none"> <li>→ Fishing must be for trade, business or profit, and not subsistence or for leisure</li> <li>→ Fishing vessel must weigh at least 3.1 GT</li> <li>→ Fishing activity must be located within 15 km from coastline</li> </ul>	<ul style="list-style-type: none"> <li>• Imprisonment of 6 months</li> <li>• Fine equivalent to twice the amount of the administrative fine</li> <li>• Confiscation of catch and fishing gears</li> </ul>	<ul style="list-style-type: none"> <li>• confiscation of catch and gear, and</li> <li>• administrative fine of 5 times the value of the catch or the amount indicated below, whichever is higher:               <ol style="list-style-type: none"> <li>(1) P50,000.00 to P100,000.00 for small-scale commercial fishing;</li> <li>(2) P150,000.00 to P500,000.00 for medium-scale commercial fishing; and</li> <li>(3) P1,000,000.00 to P5,000,000.00 for large-scale commercial fishing.</li> </ol> </li> </ul>



The penalties of imprisonment and fine are imposed only on the boat captain and the three highest officers of the vessel.



The boat captain and the three (3) highest officers of the commercial fishing vessel and the owner or operator are administratively liable.

**Are commercial fishing vessels absolutely prohibited from fishing within municipal waters?**

No. Commercial fishing vessels may fish within municipal waters if the following conditions are met:



- A municipal/city ordinance is passed allowing commercial fishing vessels to fish within 10.1 to 15 km of the municipal waters. The ordinance may only allow small-scale (3.1 to 20 GT) and medium-scale (20.1 to 150 GT) commercial fishing vessels.
- No commercial fishing is allowed in waters less than 7 fathoms (42 feet) deep, as certified by the appropriate agency.
- The fishing methods and gear used by the fishing vessel are consistent with national policies set by DA, and are in accordance with existing laws. Use of active gear within municipal waters or *muro-ami* fishing cannot be allowed as it is prohibited by RA 10654.
- The ordinance was passed after consultation, through a public hearing with the municipal/city FARMC.
- Small-scale and medium-scale commercial fishing vessels apply for and are issued a permit from the municipal/city government.
- The applicant vessel, as well as the ship owner, employer, captain and crew have been certified by the appropriate agency as not having violated RA 10654, as well as other environmental and related laws.

(Sec. 18)

**Must a municipality/city first enact a fisheries ordinance delineating its waters before this prohibition can be enforced?**



No. Although Rule 16.1 of IRR of RA 10654 amending RA 8550 mandates municipal/city governments to enact a basic Municipal Fisheries Ordinance (MFO) delineating the boundaries of their municipal waters, there is nothing in this rule that requires the passage of an MFO for the provisions of RA 10654 on municipal waters to apply. The extent of municipal waters is sufficiently defined under Sec. 4, par. 66 of RA 10654.



The discovery of any person in an area where he has no permit or registration papers for a fishing vessel constitutes *prima facie* evidence that such person and/or vessel is engaged in unauthorized fishing.

**2. Section 86, paragraph (b) - Commercial Fishing Activities by Municipal Fisherfolk within Municipal Waters without Being Listed in the Registry of Municipal Fisherfolk**

Elements	Administrative Penalty
<ul style="list-style-type: none"><li>➔ If fishing vessel is involved, it must be less than 3.1 GT</li><li>➔ Municipal fisherfolk involved is not listed in the registry of municipal fisherfolk</li></ul>	<ul style="list-style-type: none"><li>• Administrative fine equivalent to twice the value of catch or P5,000.00 whichever is higher, if offender fails to pay, he shall render community service</li><li>• Confiscation of catch and gear</li></ul>



The discovery of any person in an area where he has no permit or registration papers for a fishing vessel constitutes *prima facie* evidence that such person and/or vessel is engaged in unauthorized fishing.

### 3. Section 88 Paragraph (a) – Failure to Secure Fishing Permit prior to engaging in Distant Water Fishing

Elements	Criminal Penalty	Administrative Penalty
<ul style="list-style-type: none"> <li>→ Any person fishing in the high seas, territorial seas, archipelagic waters, and Exclusive Economic Zones of other states</li> <li>→ Using a Philippine-flagged fishing vessel</li> <li>→ Without fishing permit from the DA and authorization from the coastal state</li> </ul>	<ul style="list-style-type: none"> <li>• Imprisonment of 6 months and a fine equivalent to twice the amount of the administrative fine</li> <li>• Confiscation of catch and gear</li> </ul>	<ul style="list-style-type: none"> <li>• confiscation of the catch and gear</li> <li>• administrative fine equivalent to 5 times the value of the catch or the amount indicated below, whichever is higher:               <ol style="list-style-type: none"> <li>(1) P2,000,000.00 to P9,000,000.00 for small-scale commercial fishing;</li> <li>(2) P10,000,000.00 to P15,000,000.00 for medium-scale commercial fishing; and</li> <li>(3) P16,000,000.00 to P20,000,000.00 for large-scale commercial fishing vessels less than 750 gross tons, and P25,000,000.00 to P45,000,000.00 for large-scale commercial fishing vessels 750 gross tons or more.</li> </ol> </li> </ul>



The penalties of imprisonment and fine are imposed only on the three highest officers of the vessel.



Only the owner, operator, and the three highest officers of the commercial fishing vessel are administratively liable.



Possession of a fishing gear or operating a fishing vessel without a fishing permit from the Department or authorization from the coastal state shall constitute a *prima facie* presumption that the person is in violation of this provision.

#### 4. Section 88 Paragraph (b) – Violation of the Terms and Conditions stated in the Distant Water Fishing Permit

Elements	Criminal Penalty	Administrative Penalty
<ul style="list-style-type: none"> <li>→ Any person fishing in the high seas, territorial seas, archipelagic waters, and Exclusive Economic Zones of other states</li> <li>→ Using a Philippine flagged fishing vessel</li> <li>→ With a fishing permit from the DA and authorization from the coastal state</li> <li>→ Violated the terms and conditions of the fishing permit</li> </ul>	<ul style="list-style-type: none"> <li>• Imprisonment of 6 months and a fine equivalent to twice the amount of the administrative fine</li> <li>• Confiscation of catch and gear</li> </ul>	<ul style="list-style-type: none"> <li>• confiscation of the catch and gear</li> <li>• administrative fine equivalent to 5 times the value of the catch or the amount indicated below, whichever is higher:               <ol style="list-style-type: none"> <li>(1) P2,000,000.00 to P9,000,000.00 for small-scale commercial fishing;</li> <li>(2) P10,000,000.00 to P15,000,000.00 for medium-scale commercial fishing; and</li> <li>(3) P16,000,000.00 to P20,000,000.00 for large-scale commercial fishing vessels less than 750 gross tons, and P25,000,000.00 to P45,000,000.00 for large-scale commercial fishing vessels 750 gross tons or more.</li> </ol> </li> </ul>



The penalties of imprisonment and fine are imposed only on the three highest officers of the vessel.



Only the owner, operator, and the three highest officers of the commercial fishing vessel are administratively liable.

#### 5. Section 91 - Poaching in Philippine Waters

(See FAO 200 s. 2000)

Elements	Criminal Penalty	Administrative Penalty
<ul style="list-style-type: none"> <li>→ Foreign person, corporation or entity fishes or operates the fishing vessel</li> <li>→ Such fishing activity or operation of fishing vessel was conducted within Philippine waters</li> </ul>	<ul style="list-style-type: none"> <li>• Fine of US\$1,200,000.00</li> <li>• Confiscation of the catch, fishing equipment and fishing vessel</li> <li>• If caught within internal waters, imprisonment of 6 months and 1 day to 2 years and 2 months. Second time offender, imprisonment of 3 years and fine of US\$2,400,000.00 or its equivalent in Philippine currency</li> </ul>	<ul style="list-style-type: none"> <li>• fine of US\$600,000.00 to US\$1,000,000.00 or its equivalent in Philippine currency.</li> </ul>



The DA may also impose an administrative fine of US\$600,000.00 to US\$1,000,000.00 or its equivalent in Philippine currency.



No foreign person shall be deported without the payment of the imposed judicial and/or administrative fines and service of sentence, if any.

### **Does the mere entry of foreign fishing vessels within Philippine waters automatically lead to the presumption that they are poaching within the same?**



While Sec. 91 provides that mere entry of foreign fishing vessels into Philippine waters is *prima facie* evidence that they are fishing or operating within the country's area of sovereignty, Rule 91.1 of the Implementing Rules and Regulations of RA 10654 clarifies this portion of Sec. 91 by providing circumstances under which mere entry constitutes *prima facie* evidence and also provides exceptions.

### **What if the poacher not caught in internal waters fails to pay the fine?**



Under Art. 39 of the Revised Penal Code (RPC), subsidiary imprisonment may be imposed on offenders in relation to violation of Sec. 91, Paragraph 1, Art. 10 of the RPC, provided that subsidiary imprisonment is supplementary to special laws, unless the special law particularly provides for the contrary. The case of *People v. Moreno (60 Phil. 712)* also provides that subsidiary imprisonment applies to special laws unless the law provides for another manner of service in case of insolvency.

### **May enforcers, complainants in a poaching case, petition a higher court to overturn a judge's ruling allowing the plea bargaining of the case?**



No. Enforcers, although public officers, have no legal standing to file a petition for certiorari against a judge's ruling allowing plea bargaining of a poaching case, because they are not considered persons aggrieved by the assailed decision. The rules on criminal procedure provide that criminal cases be prosecuted under the direction and control of the prosecutor. And any action filed in the interest of the Republic of the Philippines, such as the petition to overturn the judge's ruling, may only be brought by the Solicitor General (*Laraya, et. al. vs. Judge Pe, et. al., C.A.-G.R. SP. NO. 80927*)

## 6. Section 94 - Fishing in Overexploited Fishery Management Areas

Elements	Criminal Penalty	Administrative Penalty
<ul style="list-style-type: none"> <li>→ Any person or entity engaged in fishing</li> <li>→ Fishing activity is within an area declared to be overexploited</li> </ul>	<ul style="list-style-type: none"> <li>• Imprisonment of 6 months and 1 day to 6 years, and fine of P500,000.00 to P5,000,000.00</li> <li>• Forfeiture of catch and fishing equipment used</li> <li>• Cancellation of fishing permit or license</li> </ul>	<ul style="list-style-type: none"> <li>• confiscation of catch and fishing gears, and</li> <li>• administrative fine equivalent to the value indicated below:               <ol style="list-style-type: none"> <li>(1) 3 times the value of catch or P20,000.00, whichever is higher, for municipal fishing: <i>Provided</i>, That if the offender fails to pay the fine, he shall render community service;</li> <li>(2) 5 times the value of catch or P100,000.00, whichever is higher, for small-scale commercial fishing;</li> <li>(3) 5 times the value of catch or P300,000.00, whichever is higher, for medium-scale commercial fishing;</li> <li>(4) 5 times the value of catch or P500,000.00, whichever is higher, for large-scale commercial fishing.</li> </ol> </li> </ul>

### Who determines or declares overfished areas outside of municipal waters?



It would seem that RA 10654 only provides for the declaration of overfished areas within municipal waters. There are express provisions in RA 10654 covering determination and declaration of **overfished** areas within municipal waters (*Sec. 23*), but there are no express provisions covering determination and declaration of overfished areas **outside municipal waters**. However, the powers of DA are broad enough to include the declaration of overfished areas outside of municipal waters or outside the jurisdiction of special agencies.

### Who determines or declares closed seasons?

- The DA, if beyond municipal waters (*Sec. 9*)
- The LGU, on its own initiative but in consultation with FARMC, if within municipal waters



The DA may also declare closed seasons over areas under the jurisdiction of special agencies or within municipal waters, but it must first secure the concurrence and approval of the concerned special agencies, or the LGU and FARMC, whichever is appropriate.

## 7. Section 101 - Fishing in Marine Protected Areas, Fishery Reserves, Refuge and Sanctuaries

Elements	Criminal Penalty	Administrative Penalty
<ul style="list-style-type: none"> <li>→ Any person or entity engaged in fishing</li> <li>→ Fishing activity is conducted within a marine protected area, reserve, refuge or sanctuary</li> <li>→ Such marine protected area, fishery reserve, refuge or sanctuary was declared as such by DA or the LGU</li> </ul>	<ul style="list-style-type: none"> <li>• Imprisonment of 2 to 6 years and fine twice the amount of the administrative fine</li> <li>• Forfeiture of catch and gear</li> <li>• Cancellation of fishing permit or license</li> </ul>	<ul style="list-style-type: none"> <li>• confiscation of catch and gear, and</li> <li>• fine of twice the value of the catch or the amount indicated below, whichever is higher:               <ol style="list-style-type: none"> <li>(1) P20,000.00 for municipal fishing: <i>Provided</i>, That if the offender fails to pay the fine, community service shall be rendered;</li> <li>(2) P200,000.00 for small-scale commercial fishing;</li> </ol> </li> </ul>

### What is the difference between a marine protected area, fishery refuge and sanctuary, and a fishery reserve?



**Marine Protected Area** – defined area of the sea established and set aside by law, administrative regulation, or any other effective means in order to conserve and protect a part of or the entire enclosed environment through the establishment of management guidelines (*Sec. 4, par. 60*)

**Fishery refuges and sanctuaries** are designated areas where fishing or other forms of activities that may damage the ecosystem of the area **are prohibited**. Human access may be restricted (*Sec. 4, par. 40*).

A **fishery reserve** is a designated area where activities **are regulated** and set aside for educational and research purposes (*Sec. 4, par. 41*).

### Are fishery reserves, refuges and sanctuaries declared by local governments covered by this prohibition?

No. Sec. 101 refers only to those reserves, refuges and sanctuaries declared by DA. If the violation is committed within a municipality/ city-declared refuge or sanctuary, then the local ordinance declaring the reserve/refuge/sanctuary applies, and not Sec. 101.

This is to be distinguished from fishing within **over-exploited** areas prohibited under Sec. 94, and fishing during closed season under Sec. 100, as these prohibitions apply to those areas declared **by municipalities/cities or by DA**.

## 8. Section 95 - Use of Active Gear in Municipal Waters, Bays and Other Fishery Management Areas

(*See p. 28*)



9. Section 98 - Illegal Use of Superlight or Fishing Light Attractor within Municipal Waters

(See p. 32)

(Note: These last two provisions are repeated in this category of prohibitions, because although these concern fishing gear, the location where these gears are used is also an essential element of these prohibitions.)

C. Based on Resource Exploited

1. Section 96- Ban on Coral Exploitation and Exportation

(See FAO 202 s. 2002)

Elements	Criminal Penalty	Administrative Penalty
<p>➔ Ordinary, precious and/or semi-precious corals, whether raw or in processed form, are gathered, possessed, commercially transported, sold or exported by any person or corporation</p> <p>➔ Such activities in respect to corals are not for scientific or research purposes</p>	<ul style="list-style-type: none"><li>• Imprisonment of 10 years to 20 years and fine equivalent to twice the administrative fine</li><li>• Forfeiture of the subject corals</li></ul>	<ul style="list-style-type: none"><li>• administrative fine equivalent to 8 times the value of the corals gathered, possessed, commercially transported, sold, or exported, or the amount of P500,000.00 to P10,000,000.00, whichever is higher, and</li><li>• forfeiture of the subject corals</li><li>• payment of the compensation for the restoration of the damaged corals reefs.</li></ul>



The penalties of imprisonment and fine are imposed only on the boat captain, master fisherman, and recruiter or organizer of fish workers.



Only the owner/operator of the fishing vessel/s, boat captain, master fisherman, and recruiter or organizer of fish workers are administratively liable.



The offender shall also be required to pay the cost of restoration of the damaged coral reefs as determined by the Department

Are dead corals included in this prohibition?

Yes. The prohibitions found in Sec. 96 apply to *whatever stage* the corals may be found, *whether in raw or processed form*.

Are the old laws on coral gathering still applicable?

No. This section repeals PD 1219 and PD 1698, which were the old laws on coral gathering. A significant feature of Sec. 96 is the express prohibition on the *mere possession*, as well as sale, of ordinary, precious and semi-precious corals.



How are the confiscated corals to be disposed of?

Sec. 91 of R.A. 8550 specifically stated that confiscated corals must be

returned to the sea, donated to schools and museums for educational or scientific purposes, or disposed of through other means. However, Sec. 96 of R.A. 10654 is silent regarding the disposition of confiscated corals.

### Who issues special permits for the gathering of corals?

The DA Secretary, through the Director of BFAR, may issue a special permit for the gathering of corals in limited quantities for scientific or research purposes, **except** those coral species listed in the appendices of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (*FAO 202 s. 2002, sec. 3*).

### 2. Section 96, paragraph 1, 2<sup>nd</sup> Sentence – It shall also be unlawful for any person, corporation or entity to commit any activity that damages the coral reefs.

Elements	Criminal Penalty	Administrative Penalty
<ul style="list-style-type: none"> <li>→ Any person, corporation or entity engaged in any activity</li> <li>→ Such activity damages coral reefs and marine environment</li> </ul>	<ul style="list-style-type: none"> <li>• Imprisonment of 10 years to 20 years and fine equivalent to twice the administrative fine</li> <li>• Forfeiture of the subject corals</li> </ul>	<ul style="list-style-type: none"> <li>• administrative fine equivalent to 8 times the value of the corals gathered, possessed, commercially transported, sold, or exported, or the amount of P500,000.00 to P10,000,000.00, whichever is higher, and</li> <li>• forfeiture of the subject corals</li> <li>• payment of the compensation for the restoration of the damaged corals reefs.</li> </ul>

### 3. Section 97, paragraph (b) - Ban on Gathering, Possessing, Commercially Transporting, Selling, Exporting of Coral Sand, Coral Fragments, Coral Rocks, Silica, and Any Other Substances that Make Up any Marine Habitat

Elements	Criminal Penalty	Administrative Penalty
<ul style="list-style-type: none"> <li>→ Coral Sand, Coral Fragments, Coral Rocks, Silica, and Any Other Substances that Make Up any Marine Habitat, gathered, possessed, commercially transported, sold or exported unless allowed by law</li> <li>→ Such Coral Sand, Coral Fragments, Coral Rocks, Silica, and Any Other Substances that Make Up any Marine Habitat are gathered from the coastal and marine environment</li> </ul>	<ul style="list-style-type: none"> <li>• Imprisonment of 2 to 10 years and fine equivalent to twice the administrative fine</li> <li>• Confiscation of catch or substance and equipment or gear</li> </ul>	<ul style="list-style-type: none"> <li>• fine of P5,000,000.00 or 5 times the value of the coral rocks, sand, or silica gathered, possessed, commercially transported, sold, or exported, whichever is higher, and confiscation of the substance.</li> </ul>

### Is beach quarrying covered by this prohibition?



Yes. Offenders as well as some government agencies have argued that the white sand, silica, pebbles and other substances referred to in Sec. 97 are not those taken from the **coastal environment**, but from the “marine habitat”. The prohibition therefore applies only to substances found at sea and not along the beaches or coasts.

To construe the term “marine habitat” as only referring to areas beyond the coastal domain would be to defeat the very purpose of the law. Previous to the enactment of RA 10654, **pebble picking was allowed by DAO 28-92**, but extraction of **sand and gravel from beaches was prohibited by Batas Pambansa Blg. 265**.

A Memorandum for then Pres. Fidel V. Ramos on the effects of beach quarrying at Luna, La Union, sent by the Office of the Executive Secretary on 24 September 1996, specifically recognized the importance of sand, gravel and pebbles along beaches in protecting coastal areas from erosion:

“The deposits of gravel and pebbles along the 7-km stretch of beach in Luna attain a height of five meters from the shoreline. These serve as natural barriers against big waves and thus protect the coastal villages by the shores.

The long years of pebble picking and extraction of sand and gravel has resulted in the coastal degradation of the area, as shown by the exposure of the base of the Spanish watchtower at Barangay Victoria. Continued extraction of sand and gravel along the beach would further reduce the width of the natural barrier which serves to protect the coastal villages from the onrush of big waves.”



The Supreme Court issued a Writ of Kalikasan against a mining firm and the government for “black sand” mining activities along the Ilocos coastline that had caused the destruction of a marine habitat (SC En Banc Decision, May 8, 2012)

Sec. 97 was primarily instituted to protect coastal areas from degradation as a result of widespread quarrying of sand and gravel, as well as pebbles, along beaches and shorelines. To interpret the term “marine habitat” as not applying to coastal areas would imply that Congress, rather than addressing the problem, even lifted the prohibition on sand and gravel quarrying along beaches. Ecologically, coastal areas are also necessarily part of the marine ecosystem because some marine species, such as turtles, can only lay their eggs along beaches.

#### 4. Section 99 - Conversion of Mangroves

(See FAO 197-1 s. 2012)

Elements	Criminal Penalty	Administrative Penalty
<ul style="list-style-type: none"> <li>➔ Mangroves are converted into fishponds, and/or</li> <li>➔ For any other use or purpose (e.g., mangrove clearing for the establishment of resorts, mangrove cutting for charcoal, de-barking as raw material for dyes, varnish, thinner, etc.)</li> </ul>	<ul style="list-style-type: none"> <li>• Imprisonment of 6 months and 1 day to 12 years, base fine of P80,000 and fine equivalent to administrative penalties</li> </ul>	<ul style="list-style-type: none"> <li>• fine equivalent to the ecological value of a hectare of mangrove based on available studies, or</li> <li>• fine of P10,000,000.00 per hectare, whichever is higher</li> <li>• If the area requires rehabilitation or restoration as determined by the Department,</li> <li>• restoration or payment for the restoration of the damaged area.</li> </ul>



If the area requires rehabilitation or restoration, as determined by the court, the offender shall be required to restore, or pay for the restoration of the damage. The offender shall be liable for environmental damages computed at P500,000.00 per hectare per year until the area is restored.



The municipal government may also file a civil case against the violator to recover civil indemnity. This indemnity may consist of compensation for the damage done to the environment, or payment of the cost of rehabilitation and restoration of the damaged area.

#### Exceptions:

The prohibition on conversion does not apply to any of the following:

1. Areas covered by FLA, Aquasilviculture Stewardship Contract or Gratuitous Permit and other tenurial instruments;
2. Private property not classified as mangrove forest; and
3. Development activities duly covered and approved by competent authorities. (Rule 99.1, IRR of RA 10654)

#### Are there instances when mangroves may be legally cut?

As a tree species, mangroves are covered by the provisions of PD 705 (Forestry Code). Hence, they fall under the primary jurisdiction of DENR. DENR DAO 10 s. 1998 allows Community-Based Forestry Management Agreement (**CBFMA**) **holders** to harvest plantation mangroves, but **not natural growth trees**. Uprooting of trees and natural regeneration growing in the mangrove areas is prohibited, except if wildlings are collected for plantation purposes.



However, Section 4 of RA 7161, which amends certain portions of PD 705, **expressly prohibits the cutting of all species of mangroves**,

without distinction or qualification. It would seem then that pursuant to RA 7161, any form or type of permit for the cutting of mangroves may no longer be issued. This has been further reinforced by Section 99 of RA 10654, which specifically prohibits the **conversion** of mangroves, not only into fishponds but also for any other purposes, without exception. Furthermore, the Department of Justice had previously issued an opinion on the interpretation of RA 7161, stating that the prohibition against the cutting of all mangroves is clear and unqualified and all that is called for is to apply the statute.

**5. Section 102, Paragraph (a) - Fishing or Taking of Rare, Threatened or Endangered Aquatic Species listed in Appendix I of CITES or categorized by IUCN as threatened and determined by DA**  
(See FAO 208 s. 2001)

Elements	Criminal Penalty	Administrative Penalty
<ul style="list-style-type: none"> <li>➔ Fishing or taking, catching, gathering, selling, purchasing, possessing, transporting, exporting, forwarding or shipping out of aquatic species</li> <li>➔ Such aquatic species are listed in Appendix I of CITES or categorized by IUCN as threatened and determined by DA</li> </ul>	<ul style="list-style-type: none"> <li>• Imprisonment of 12 years and 1 day to 20 years and fine equivalent to twice the administrative fine</li> <li>• Forfeiture of species</li> <li>• Cancellation of fishing permit</li> </ul>	<ul style="list-style-type: none"> <li>• fine equivalent to 5 times the value of the species or P500,000.00 to P5,000,000.00, whichever is higher, and</li> <li>• forfeiture of the species.</li> </ul>

**Must the fishery species be included both in CITES, IUCN and DA lists for it to be covered by this prohibition?**

No. Offenders have argued that the wording of Section 102 requires that the species be **both** included in the CITES Appendices **and** determined by DA before the prohibition can cover it. However, such an interpretation would defeat the purpose of the law and unduly limit the authority of DA. It would remove DA’s right to include in its list any species that it may determine to be rare, threatened or endangered in the Philippines, if such species is not included in any of the CITES Appendices.

**Are fishery species under DENR jurisdiction covered by this prohibition?**

Yes. Although jurisdiction over such species is granted to DENR, the taking of these species still constitutes a violation of Sec. 102 of RA 10654, because they are included in the CITES Appendices.  
The DENR is responsible for the management of dugong, marine

turtles and crocodiles (*Joint DA-DENR Memorandum Order No. 1 s. 2000, Art. III, sec. 1, par. [a]*). The Wildlife Act of 2001 expanded this authority by providing that DENR has jurisdiction over “all turtles and tortoises and wetland species, including but not limited to crocodiles, water birds and all amphibians and dugong.” Sec. 102 applies to all fishery species that may be classified as rare, threatened or endangered; it makes no distinction on departmental jurisdiction.

## 6. Section 102, Paragraph (b) - Fishing or Taking of Rare, Threatened or Endangered Aquatic Species listed in CITES Appendices II and III

Elements	Criminal Penalty	Administrative Penalty
<ul style="list-style-type: none"> <li>→ Fishing or taking, catching, gathering, selling, purchasing, possessing, transporting, exporting, forwarding or shipping out of aquatic species not for scientific research or conservation breeding simultaneous with commercial breeding</li> <li>→ Such aquatic species are listed in CITES Appendices II and III</li> <li>→ Scientific assessment shows that such species cannot remain viable under pressure of collection and trade</li> </ul>	<ul style="list-style-type: none"> <li>• Imprisonment of 5 years to 8 years and fine equivalent to twice the administrative fine</li> <li>• Forfeiture of species</li> </ul>	<ul style="list-style-type: none"> <li>• fine equivalent to 3 times the value of the species or P300,000.00 to P3,000,000.00, whichever is higher, and</li> <li>• forfeiture of the species</li> </ul>

## 7. Section 102, Paragraph (c) - Fishing or Taking of Captive-Bred Species that have been Transplanted to the Wild

Elements	Criminal Penalty	Administrative Penalty
<ul style="list-style-type: none"> <li>→ Gathering, taking, possessing, transporting, exporting, forwarding or shipping out captive-bred species that have been transplanted to the wild</li> <li>→ That such captive-bred species have been transplanted to the wild</li> </ul>	<ul style="list-style-type: none"> <li>• Imprisonment of 5 years to 8 years and fine equivalent to 3 times the value of species or P3,000,000 whichever is higher</li> <li>• Forfeiture of species</li> </ul>	<ul style="list-style-type: none"> <li>• fine equivalent to 3 times the value of the species or P300,000.00 to P3,000,000.00, whichever is higher, and forfeiture of the species</li> </ul>



Under Section 102 of RA 10654, should the violation be committed by a vessel manned by more than two (2) persons, the captain, master, and two highest ranking officers of the vessel involved in the fishing

or taking of such protected marine life shall be presumed to have committed the prohibited act.

**8. FAO 193 s. 1998 - Ban on the Taking or Catching, Selling, Purchasing, and Possessing, Transporting, and Exporting of Whale Sharks and Manta Rays**

(Pursuant to Sections 65 and 107 of RA 8550)

Elements	Penalty
→ Any person or entity takes, catches, sells, purchases, possesses, transports or exports whale sharks or manta rays	• Imprisonment of 6 months to 4 years and/or fine of P500 to P5,000



The BFAR Director is empowered to impose an administrative fine of not more than P5,000 and to cancel the permit/license of the offender. The administrative penalty may include the confiscation of the whale shark and/or manta rays for proper disposition/documentation of the government.

**What does taking, catching, selling, purchasing, possessing, transporting or exporting mean?**



- FAO 193 defines such activities as follows:
- **Sell** – to barter, exchange, or offer or expose for sale
  - **Possess** – to have actual or constructive possession or control of
  - **Transport** – to carry or move or cause to be carried or moved
  - **Export** – to send or ship out of the country

**This prohibition is based on FAO 193 s. 1998. Are whale sharks also covered by Section 102?**

Yes. Whale sharks were included in the CITES Appendix (II) on 13 February 2003. But although this recent inclusion now qualifies whale sharks under Sec. 102 of RA 10654, FAO 193 s. 1998 may still be used.

**Are manta rays also protected under Section 102?**



No. Manta rays are not yet part of the CITES appendices, nor have they been classified by DA as rare, threatened or endangered. As such, FAO 193 is still the main prohibition on the taking, catching, possession, transport and export of manta rays.



Both whale sharks and manta rays are also covered by RA 9147, otherwise known as the Wildlife Act.

## 9. Section 103 - Capture of *Sabalo* and Other Breeders/Spawners

Elements	Criminal Penalty	Administrative Penalty
<ul style="list-style-type: none"> <li>→ Catching, gathering, capturing or possessing mature milkfish or <i>sabalo</i> and/or</li> <li>→ Catching, gathering, capturing or possessing of such other breeders/spawners as may be determined by DA</li> <li>→ Such activities are not for local breeding or scientific or research purposes as may be allowed by DA</li> </ul>	<ul style="list-style-type: none"> <li>• Imprisonment of 6 months and 1 day to 8 years and fine equivalent to twice the amount of the administrative fine</li> <li>• Forfeiture of catch and fishing equipment used</li> <li>• Suspension or Revocation of license</li> </ul>	<ul style="list-style-type: none"> <li>• fine equivalent to 5 times the value of the <i>sabalo</i>, other breeders, or spawners gathered or captured, or P500,000.00, whichever is higher, and</li> <li>• forfeiture of catch and gear.</li> </ul>

## 10. Section 104 - Exportation of Breeders, Spawners, Eggs or Fry

Elements	Criminal Penalty	Administrative Penalty
<ul style="list-style-type: none"> <li>→ Exportation of breeders, spawners, eggs or fry as prohibited by related provisions of RA 10654 unless allowed under the regulations to be promulgated by DA</li> </ul>	<ul style="list-style-type: none"> <li>• Imprisonment of 8 years to 10 years</li> <li>• Confiscation of breeders, spawners, eggs or fry, and fine equivalent to twice the amount of administrative fine</li> <li>• Revocation of fishing license and/ or suspension or revocation of registration as explorer</li> </ul>	<ul style="list-style-type: none"> <li>• administrative fine equivalent to 3 times the value of the breeders, spawners, eggs, or fry exported or P100,000.00 to P500,000.00, whichever is higher,</li> <li>• confiscation of breeders, spawners, eggs or fry,</li> <li>• suspension or revocation of license for commercial fishing and/or registration as exporter.</li> </ul>

Failure on the part of the shipping or forwarding company from whose possession the breeders, spawners, eggs, or fry are discovered or seized to fully cooperate in the investigation conducted by concerned government authorities on the matter shall create a presumption that there is connivance or conspiracy between the company and the shipper to violate the provisions of this section.

### What related provisions of RA 10654 are referred to by Sec. 104?

Sec. 61 (b) provides that spawners, breeders, eggs and fry of ***bangus*, prawn and other endemic species**, as may be determined by DA, shall not be exported or caused to be exported by any person.



## 11. Section 110 - Gathering and Marketing of Shell Fishes or Other Aquatic Species

Elements	Criminal Penalty	Administrative Penalty
<ul style="list-style-type: none"> <li>→ Gathering, taking, selling, transferring, possessing, commercially transporting, exporting, forwarding or shipping out of sexually mature shellfish or other aquatic species</li> <li>→ Such shellfish or other aquatic species identified by DA, below the minimum size or above the maximum quantities prescribed by for the species</li> </ul>	<ul style="list-style-type: none"> <li>• Imprisonment of 1 month and 1 day to 6 months and fine equivalent to twice the amount of administrative fine</li> <li>• Cancellation of permit or license</li> </ul>	<ul style="list-style-type: none"> <li>• fine equivalent to the value of the species or P50,000.00, whichever is higher, and</li> <li>• confiscation of the same, and</li> <li>• cancellation of permit or license shall be imposed upon the offender.</li> </ul>

### D. Other Prohibited/Regulated Activities

#### 1. Section 86, Paragraph (a) - Engaging in Any Fishery Activity Without a License or Permit from DA or LGU

Elements	Criminal Penalty	Administrative Penalty
<ul style="list-style-type: none"> <li>→ Capturing or gathering fish, fry or fingerlings of any fishery species or fishery products or</li> <li>→ To cause the capture or gathering of fish, fry or fingerlings of any fishery species or fishery products</li> <li>→ Such activities are conducted without the benefit of any license or permit from DA or LGU</li> </ul>	<ul style="list-style-type: none"> <li>• Imprisonment of 6 months</li> <li>• Fine equivalent to twice the amount of the administrative fine</li> <li>• Confiscation of catch and fishing gear</li> </ul>	<ul style="list-style-type: none"> <li>• confiscation of catch and gear, and</li> <li>• administrative fine of 5 times the value of the catch or the amount indicated below, whichever is higher:               <ol style="list-style-type: none"> <li>(1) P50,000.00 to P100,000.00 for small-scale commercial fishing;</li> <li>(2) P150,000.00 to P500,000.00 for medium-scale commercial fishing; and</li> <li>(3) P1,000,000.00 to P5,000,000.00 for large-scale commercial fishing.</li> </ol> </li> </ul>



The penalties of imprisonment and fine are imposed only on the boat captain and the three highest officers of the vessel.



Only the boat captain and the three (3) highest officers of the commercial fishing vessel and the owner or operator are administratively liable.



This section may be regarded as the “catch-all provision” of RA 10654 with respect to prohibited acts, as it prohibits any fishery activity without a license or permit.

Theoretically, Section 86 may also be used in connection with violations committed within protected area waters under the National Integrated Protected Areas System (NIPAS) Act. Fishery activities conducted within protected area waters without the benefit of proper permit from the Protected Area Management Board may also constitute a violation of Sec. 86 of RA 10654.



An example of an act which may fall under this violation would be fishing in Philippine waters by commercial fishing vessels without the benefit of any license or permit or whose license or permit has expired.

### Is this prohibition applicable to all types of fishing vessels?



No. This general prohibition would seem to apply ***only to violations committed by commercial fishing vessels***, as no penalties are provided for vessels of smaller size. A specific penalty is also provided for municipal fisherfolk who engage in commercial fishing activities within municipal waters without being listed in the municipal registry; however, no penalty is provided for fisherfolk who engage in commercial fishing activities without any license or permit ***outside of municipal waters***.



The discovery of any person in an area where he has no permit or registration papers for a fishing vessel constitutes *prima facie* evidence that the person and/or vessel is engaged in unauthorized fishing.

Fishing for daily food sustenance, leisure (but not for commercial purposes), occupation or livelihood purposes may be allowed.

## 2. Section 87 – Engaging in Unauthorized Fisheries Activities

Elements	Criminal Penalty	Administrative Penalty
<ul style="list-style-type: none"> <li>→ Exploiting, occupying, producing, breeding or culturing fish, fry or fingerlings of any fishery species or fishery products or</li> <li>→ Constructing and operating fish corrals, fish traps, fish pens and fish cages or fishponds</li> <li>→ Such activities are conducted without the benefit of any license, lease or permit</li> </ul>	<ul style="list-style-type: none"> <li>• Imprisonment of 6 months</li> <li>• Fine equivalent to twice the amount of the administrative fine</li> <li>• dismantling or removal of the structure at the expense of the offender, the rehabilitation of the area affected by the activity and confiscation of stocks</li> </ul>	<ul style="list-style-type: none"> <li>• administrative fine of P500,000.00 to P1,000,000.00</li> <li>• the dismantling or removal of the structure at the expense of the offender</li> <li>• rehabilitation of the area affected by the activity and</li> <li>• confiscation of stocks.</li> </ul>

The discovery of any person engaging in any of the above activities without a lease, license or permit shall constitute & *prima facie* presumption that the person is engaged in unauthorized fisheries activity.

### 3. Section 89 – Unreported Fishing Within Waters of National Jurisdiction

Elements	Criminal Penalty	Administrative Penalty
<ul style="list-style-type: none"> <li>→ Engaging in unreported fishing within waters of national jurisdiction or</li> <li>→ Failing to comply with the reportorial requirements</li> <li>→ In violation of Section 38 of RA 10654</li> </ul>	<ul style="list-style-type: none"> <li>• Imprisonment of 6 months</li> <li>• Fine equivalent to twice the amount of the administrative fine</li> <li>• confiscation of catch and gear</li> </ul>	<ul style="list-style-type: none"> <li>• administrative fine equivalent to the value of the catch or the amount indicated below, whichever is higher:               <ol style="list-style-type: none"> <li>(1) P5,000.00 for municipal fishing: <i>Provided, That if the offender fails to pay the fine, he shall render community service;</i></li> <li>(2) P100,000.00 for small-scale commercial fishing;</li> <li>(3) P200,000.00 for medium-scale commercial fishing; and</li> <li>(4) P500,000.00 for large-scale commercial fishing.</li> </ol> </li> </ul>



The penalties of imprisonment and fine are imposed only on the three highest officers of the commercial fishing vessel.



Only the owner or operator of the municipal or commercial fishing vessel and the three (3) highest officers of the commercial fishing vessel are administratively liable.

### 4. Section 89 – Unreported Fishing in Waters Beyond the National Jurisdiction

Elements	Criminal Penalty	Administrative Penalty
<ul style="list-style-type: none"> <li>→ Engaging in unreported fishing in the area of competence of a relevant RFMO or</li> <li>→ Failing to comply with the reportorial requirements</li> <li>→ In violation of Section 38 of RA 10654</li> </ul>	<ul style="list-style-type: none"> <li>• Imprisonment of 6 months</li> <li>• Fine equivalent to twice the amount of the administrative fine</li> <li>• confiscation of catch and gear</li> </ul>	<ul style="list-style-type: none"> <li>• administrative fine equivalent to five (5) times the value of the catch or the amount indicated below, whichever is higher:               <ol style="list-style-type: none"> <li>(1) P2,000,000.0) to P9,000,000.00 for small-scale commercial fishing;</li> <li>(2) P10,000,000.00 to P15,000,000.00 for medium-scale commercial fishing; and</li> <li>(3) P16,000,000.00 to P20,000,000.00 for large-scale commercial fishing vessels less than 750 gross tons, and P25,000,000.00 to P45,000,000.00 for large-scale commercial fishing vessels 750 gross tons or more.</li> </ol> </li> </ul>



The penalties of imprisonment and fine are imposed only on the three highest officers of the commercial fishing vessel.



Only the owner, operator, and the three (3) highest officers of the commercial fishing vessel are administratively liable.

## 5. Section 90 – Unregulated Fishing Within Waters of National Jurisdiction

Elements	Criminal Penalty	Administrative Penalty
<ul style="list-style-type: none"> <li>→ A vessel is engaged in fishing activities;</li> <li>→ Said fishing is done within waters of national jurisdiction;</li> <li>→ Said vessel is without nationality;</li> <li>→ Said vessel is operated by Filipino and/or Filipino corporation.</li> </ul>	<ul style="list-style-type: none"> <li>• Imprisonment of 6 months</li> <li>• Fine equivalent to twice the amount of the administrative fine</li> <li>• confiscation of catch and gear</li> </ul>	<ul style="list-style-type: none"> <li>• confiscation of catch and gear and</li> <li>• administrative fine equivalent to the value of the catch or amount indicated below, whichever is higher:               <ul style="list-style-type: none"> <li>(1) (P5,000.00 for municipal fishing: <i>Provided, That if the offender fails to pay the fine, he shall render community service;</i></li> <li>(2) P100,000.00 for small-scale commercial fishing;</li> <li>(3) P200,000.00 for medium-scale commercial fishing; and</li> <li>(4) P500,000.00 for large-scale commercial fishing.</li> </ul> </li> </ul>



The penalties of imprisonment and fine are imposed only on the three highest officers of the commercial fishing vessel.



The owner, operator, of the municipal or commercial fishing vessel and the three (3) highest officers of the commercial fishing vessel are administratively liable.

Note: The following are considered unregulated fishing in Philippine waters:

1. The act of a fisherman or fisherfolk of working in an unregistered fishing vessel; or
2. The act of a corporation or enterprise of operating an unregistered fishing vessel. (Rule 90.2 of IRR of RA 10654)

### 6. Section 90 – Unregulated Fishing Within Waters of Beyond National Jurisdiction

Elements	Criminal Penalty	Administrative Penalty
<ul style="list-style-type: none"> <li>→ A vessel is engaged in fishing activities;</li> <li>→ Said fishing activities are done in waters beyond national jurisdiction;</li> <li>→ Said vessel is anyone of the following:               <ul style="list-style-type: none"> <li>(a) The vessel is without nationality but operated by Filipino and/or Filipino corporation; or</li> <li>(b) The vessel is a Philippine flagged fishing vessel operating in areas managed by RFMOs to which the Philippines is not a party;</li> <li>(c) The vessel is a Philippine flagged fishing vessel operating in areas or fish stocks where there are no applicable conservation and management measures.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Imprisonment of 6 months</li> <li>• Fine equivalent to twice the amount of the administrative fine</li> <li>• confiscation of catch and gear</li> </ul>	<ul style="list-style-type: none"> <li>• confiscation of catch and gear and an administrative fine equivalent to 5 times the value of the catch or the amount indicated below, whichever is higher:               <ul style="list-style-type: none"> <li>(1) P2,000,000.00 to P9,000,000.00 for small-scale commercial fishing;</li> <li>(2) P10,000,000.00 to P15,000,000.00 for medium-scale commercial fishing; and</li> <li>(3) P16,000,000.00 to P20,000,000.00 for large-scale commercial fishing vessels less than 750 gross tons, and P25,000,000.00 to P45,000,000.00 for large-scale commercial fishing vessels 750 gross tons or more.</li> </ul> </li> </ul>



The penalties of imprisonment and fine are imposed only on the three highest officers of the commercial fishing vessel.



The owner, operator, and the three (3) highest officers of the commercial fishing vessel are administratively liable.

### 7. Section 100 – Fishing During Closed Season

Elements	Criminal Penalty	Administrative Penalty
<ul style="list-style-type: none"> <li>→ Engaging in fishing</li> <li>→ Fishing is done during closed season</li> </ul>	<ul style="list-style-type: none"> <li>• Imprisonment of 6 months and 1 day to 6 years</li> <li>• Fine equivalent to twice the amount of the administrative fine</li> <li>• confiscation of catch and gear</li> <li>• cancellation of license or permit</li> </ul>	<ul style="list-style-type: none"> <li>• confiscation of catch and gear and</li> <li>• administrative fine of:               <ul style="list-style-type: none"> <li>(1) Three times the value of the catch or P20,000.00 for municipal fishing, whichever is higher: <i>Provided</i>, That if the offender fails to pay the fine, community service shall be rendered;</li> <li>(2) Five times the value of the catch or P100,000.00, whichever is higher for small-scale commercial fishing;</li> <li>(3) Five times the value of catch or P300,000.00, whichever is higher for medium-scale commercial fishing; and</li> <li>(4) Five times the value of catch or P500,000.00, whichever is higher for large-scale commercial fishing.</li> </ul> </li> </ul>

## 8. Section 105 - Importation or Exportation of Fish or Fishery Species

Elements	CriminalPenalty	Administrative Penalty
<ul style="list-style-type: none"> <li>→ Importation or exportation of fish or fishery species</li> <li>→ Importation or exportation is in violation of RA 10654</li> </ul>	<ul style="list-style-type: none"> <li>• Imprisonment of 8 years and fine of twice the administrative fine</li> <li>• Destruction and/or forfeiture of the species</li> <li>• Ban on violators from being members or stockholders of companies currently engaged in fisheries, or companies to be created in the future (guidelines to be promulgated by DA)</li> </ul>	<ul style="list-style-type: none"> <li>• administrative fine of 5 times the value of the species or P300,000.00 to P500,000.00, whichever is higher, and</li> <li>• forfeiture and/or destruction of the species.</li> </ul>

Failure on the part of the shipping or forwarding company from whose possession the fish or fishery species imported or exported are discovered or seized to fully cooperate in the investigation conducted by concerned government authorities shall create a presumption that there is connivance or conspiracy between the shipping company and the shipper to perpetrate the aforementioned offense.

### What are the guidelines for the importation and exportation of fishery species?

These guidelines are mostly set by Sec. 61 of RA 10654:

- Any importation or exportation requires a permit from DA (*Sec. 61 [d]*).
- Exportation of fishery products is regulated whenever it affects domestic food security and production. Exportation of live fish is prohibited except for those hatched or propagated in accredited hatcheries and ponds (*Sec. 61 [a]*).
- Fishery products may be imported only when certified as necessary by DA, in consultation with FARMC, and when all the requirements of RA 10654, 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 must still have secured a permit from DA (*Sec. 61 [c]*).



See the following related FAOs on exportation and importation:

- FAO 173 s. 1991, FAO 173-1 s. 1991, FAO 183 s. 1992 (all on the Importation of Yellow Fin Tuna and Tuna Products from Certain Countries)
- FAO 189 s. 1993 (Prohibiting the Importation of Live Shrimp and Prawn of All Stages)
- FAO 195 s. 1999 (Rules and Regulations Governing Importation of

Fresh/Chilled/Frozen Fish and Fishery Aquatic Products)

- FAO 207 s. 2001 (Prohibiting the Importation and Culture of Imported Live Shrimp and Prawn of All Stages)
- FAO 212 s. 2001 (Guidelines on the Implementation of the Hazard Analysis Critical Control Points System)

## 9. Section 106 - Violation of Harvest Control Rules

Elements	Criminal Penalty	Administrative Penalty
<ul style="list-style-type: none"> <li>→ Fishing conducted is in violation of harvest control rules</li> <li>→ Harvest control rules are determined by DA</li> </ul>	<ul style="list-style-type: none"> <li>• Imprisonment of 6 months and 1 day to 6 years and fine twice the administrative fine</li> <li>• Confiscation of catch and fishing equipment</li> <li>• Revocation of license</li> </ul>	<ul style="list-style-type: none"> <li>• confiscation of catch and fishing gear, revocation of license and fine of:               <ol style="list-style-type: none"> <li>(1) Three times the value of the catch or P20,000.00 for municipal fishing, whichever is higher: <i>Provided</i>, That if the offender fails to pay the fine, community service shall be rendered;</li> <li>(2) Five times the value of the catch or P100,000.00 whichever is higher for small-scale commercial fishing;</li> <li>(3) Five times the value of the catch or P1,000,000.00, whichever is higher for medium-scale commercial fishing; and,</li> <li>(4) Five times the value of the catch or P5,000,000.00, whichever is higher, for large-scale commercial fishing.</li> </ol> </li> </ul>

### Who exercises the power to declare catch ceilings?

The DA Secretary has the power to declare catch ceilings (*Sec. 8*).

### What about harvest control rules in Municipal Waters and waters under the jurisdiction of special agencies?

The DA-BFAR shall assist the LGUs and special agencies in establishing Harvest Control Rules in municipal waters and waters under the jurisdiction of special agencies (*IRR of RA 10654, Rule 8.4*).

## 10. Section 107 - Aquatic Pollution

Elements	Criminal Penalty	Administrative Penalty
<p>Aquatic pollution may be committed by:</p> <p>First,</p> <p>→ The introduction by human or machine, directly or indirectly of substances or energy to the aquatic environment which results, or is likely to result, in such deleterious effects as to harm living and nonliving aquatic resources</p> <p>Second,</p> <p>→ The introduction by human or machine, directly or indirectly of substances or energy to the aquatic environment which poses potential and/or real hazards to human health</p> <p>Third,</p> <p>→ The introduction by human or machine, directly or indirectly of substances or energy to the aquatic environment which poses a hindrance to aquatic activities such as fishing and navigation</p> <p>Fourth,</p> <p>→ Dumping/disposal of waste and other marine litter from any water, land or air transport or other human-made structure</p> <p>Fifth,</p> <p>→ 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</p> <p>Sixth,</p> <p>→ Deforestation which causes similar hazards and deleterious effects</p> <p>Seventh,</p> <p>→ Unsound agricultural practices, such as the use of banned chemicals, intensive use of artificial fish feed and wetland conversion which cause similar hazards and deleterious effects (RA 10654, sec. 4, par. 4)</p>	<ul style="list-style-type: none"> <li>• Imprisonment of 6 years and 1 day to 12 years and fine twice the amount of the administrative fine and an additional P15,000 per day until such violation ceases and the fines are paid</li> <li>• imposition of cease and desist order, closure or suspension of the development, construction or facility, or cessation of operations, or disconnection of water supply (order may be issued <i>ex parte</i> pending resolution of the case)</li> </ul>	<ul style="list-style-type: none"> <li>• fine of P300,000.00 to P500,000.00 and an additional fine of P15,000.00 per day until the violation ceases and the fines are paid</li> <li>• the imposition of cease and desist order, closure or suspension of the development, construction or facility, or cessation of operations, or disconnection of water supply.</li> </ul>



Imposition of cease and desist order, closure or suspension of the development, construction or facility, or cessation of operations, or disconnection of water supply may be issued by DA *ex parte* pending resolution of the case.

**Is it always necessary to prove the deleterious effects of aquatic pollution?**



No. Under the law, aquatic pollution is committed with the introduction of substances that either results, or is *likely to result*, in deleterious effects.

**Is a laboratory analysis of the alleged pollutive substances always necessary to prove aquatic pollution?**

No. The definition of aquatic pollution under Section 4, paragraph 4 of RA 10654 includes the mere introduction of substances or matter that may pose a hindrance to fishing and navigation. For cases requiring laboratory analysis, see guidelines in Annex 1: Preservation of Evidence.

**What other legal issuances can be used to prove aquatic pollution?**

For those types of aquatic pollution that require laboratory analyses or evidence of a more technical or scientific nature, refer to the following policy issuances by DENR:

- DAO 39 s. 1997 (Chemical Control Order for Cyanide and Cyanide Compounds)
- DAO 38 s. 1997 (Chemical Control Order for Mercury and Mercury Compounds)
- MC No. 06 s. 1998 (Guidelines in Water Quality Monitoring)
- DAO 17 s. 1999 (Updating DAO 35 s. 1990, Otherwise Known as the Revised Effluent Regulations of 1990, Revising and Amending the Effluent Regulations of 1982)

FAO 214 s. 2001 (Code of Practice for Aquaculture) also provides regulations on water discharge and sludge/effluent management for aquaculture.

**11. Section 108 - Failure to Comply with Minimum Safety Standards**

Elements	Criminal Penalty	Administrative Penalty
<p>→ The owner and captain of a commercial fishing vessel are engaged in fishing</p> <p>→ They fail to exhibit or show proof of compliance with the safety standards provided under RA 10654</p>	<ul style="list-style-type: none"><li>• Imprisonment of 1 month and 1 day to 6 months</li><li>• Fine of twice the amount of the administrative fine,</li><li>• Suspension or cancellation of permit or license and impoundment of the vessel until the safety standard has been complied with</li></ul>	<ul style="list-style-type: none"><li>• fine of P100,000.00 and</li><li>• suspension or cancellation of permit or license and</li><li>• impoundment of the vessel until the safety standard has been complied with.</li></ul>



The penalties of imprisonment and fine are imposed only on the Owner and captain of a commercial fishing vessel.



The Owner and captain of a commercial fishing vessel are administratively liable.

Upon apprehension, the fishing vessel shall be escorted to the nearest port or landing point and prevented from continuing with the fishing activity.

### **What are these minimum safety standards?**

Provisions in RA 10654 on “safety standards” generally refer to standards to be provided by other related government agencies or offices. Regulations on the safety of vessels are mainly issued by the Maritime Industry Authority. Section 37 mandates that all fishing vessels be supplied with adequate medical supplies and life-saving devices to be determined by the Occupational Safety and Health Center (OSHC).

## **12. Section 109 - Failure to Submit Yearly Report on Fishponds, Fish pens and Fish cages**

(See FAO 197-1 s. 2012)

Elements	Criminal Penalty	Administrative Penalty
<ul style="list-style-type: none"> <li>→ Owner of a fishpond, fish pen or fish cage has valid license or permit</li> <li>→ Owner fails to render to DA a yearly report on type of species and volume of production</li> </ul>	<ul style="list-style-type: none"> <li>• Twice the amount of the administrative fine which is Five thousand pesos (P5,000.00) per unreported hectare</li> </ul>	<ul style="list-style-type: none"> <li>• fine of P5,000.00 per unreported hectare.</li> </ul>

### **What other provisions of RA 10654 are relevant to this offense?**

Section 57 of RA 10654 requires all fishpond, fish pen and fish cage operators to submit an annual report to DA on the type of species and volume of production in areas devoted to aquaculture. See FAO 197-1 s. 2012 (Revised Rules and Regulations governing the Lease of Public Lands for Fishpond and Mangrove-Friendly Aquaculture).

### **Does failure to submit the required annual report result in the immediate cancellation of FLA?**

In case the fishpond is covered by FLA, non-submission of a report for two (2) consecutive years shall result to its cancellation. (Sec. 109)

### 13. Section 111 - Obstruction to Navigation or Flow and Ebb of Tide in any Stream, River, Lake or Bay

(See FAO 216 s. 2001)

Elements	Criminal Penalty	Administrative Penlaty
→ Construction or placing of any structure in any stream, river, lake or bay	<ul style="list-style-type: none"> <li>• Imprisonment of 1 month and 1 day to 6 months and fine of twice the amount of the administrative fine</li> <li>• confiscation of stocks and dismantling of the obstruction, fish corrals/traps, fish pens or fish cages at the expense of the violator</li> </ul>	<ul style="list-style-type: none"> <li>• fine of (P200,000.00) and</li> <li>• dismantling of the obstruction, fish corrals/traps, fish pens or fish cages at the expense of the offender.</li> </ul>

#### What happens when the obstruction is a structure for the culture of fish with an appropriate permit from the government unit concerned?

Those structures will still be removed. Lessees, permittees or licensees are bound by this prohibition regardless of their leases, permits or licenses (*Sec. 55*). See FAO 216 s. 2001, which specifically includes in its coverage any person, lessee, licensee or permittee.

### 14. Section 112 - Noncompliance with Good Aquaculture Practices

(See FAO 214 s. 2001)

Elements	Criminal Penalty	Administrative Penalty
<ul style="list-style-type: none"> <li>→ Fishery operation involving the breeding and farming of fish and other fishery species</li> <li>→ Such operation fails to comply with good aquaculture practices and the guidelines for environmentally-sound design and operation promulgated by DA</li> </ul>	<ul style="list-style-type: none"> <li>• Imprisonment of 3 years and fine of twice the amount of the administrative fine</li> </ul>	<ul style="list-style-type: none"> <li>• fine of P10,000.00 to P100,000.00 per day until the violation ceases and the fines are paid.</li> </ul>

Non-compliance with good aquaculture practice and environmentally-sound design refer to violations of standards, which, after failure of the owner or operator to comply thereto and to adopt the required remedial measures, despite prior written notice of such violations, result into any of the following situations:

- a. 50% mortality of the cultures fish stocks of an aquaculture zone comprised of several contiguous farms owned by different individuals;

- b. Poisoning of wild fish population;
- c. Widespread contamination of pests and diseases; or
- d. Aquatic pollution as defined under Par. 4, Sec. 4 of R.A. 10654 (Rule 112.1, IRR of R.A. 10654)

### What about fishponds constructed without a permit in public but non-mangrove areas?

This prohibition seems to have left out construction and operation of fishponds in public, non-mangrove areas without the benefit of any permit/license. Nonetheless, Section 25 of FAO 197 s. 2000 (Rules and Regulations Governing the Lease of Public Lands for Fishpond Development) provides that any improvements in areas intended for fishpond development introduced without a lease (prior to the effectivity of FAO 197) will be forfeited in favor of the government. The person illegally occupying the area without a lease will be made to vacate the area immediately.



If the person occupying the area is an applicant, he is charged double the ordinary rental charges. Upon failure to pay the charges mentioned, the applicant is liable for prosecution, and upon conviction may suffer a penalty of imprisonment from 6 months to 4 years and/or a fine of P5,000.

### Do private fishponds need FLAs?

No. But even though private fishponds are not required to procure FLAs, they are still subject to regulation by the government. Section 57 of RA 10654 provides that private fishponds **must be registered** with the LGUs, which prescribe minimum standards for such facilities in consultation with DA. Section 57 also expressly provides that DA shall conduct a yearly inventory of all fishponds whether in public or private lands.



Interestingly, Section 57 provides that **all fishpond owners** must annually report to DA the type of species found in their fishpond and their volume of production.

### 15. Section 113, Paragraph (a) - Commercial Fishing Vessel Operators Employing Unlicensed Fisherfolk, Fish worker or Crew (See FAO 198 s. 2000)

Elements	Criminal Penalty	Administrative Penalty
<ul style="list-style-type: none"> <li>→ Employment of fisherfolk or fish worker or crew in a commercial fishing vessel operation</li> <li>→ Fisherfolk, fish worker or crew is unlicensed</li> </ul>	<ul style="list-style-type: none"> <li>• Administrative fine of P4,000.00 for each unlicensed fisherfolk or fish worker or crew and suspension or revocation of license for commercial fishing</li> </ul>	<ul style="list-style-type: none"> <li>• fine of P4,000.00 for each unlicensed fisherfolk or fish worker or crew and</li> <li>• suspension or revocation of license for commercial fishing.</li> </ul>



The penalties of imprisonment and fine are imposed only on the owner and operator of the commercial fishing vessel



The owner or operator of a commercial fishing vessel employing unlicensed fisherfolk or fish worker or crew are administratively liable.



Section 30 of FAO 198 s. 2000 (Rules and Regulations on Commercial Fishing) provides for the issuance by the Regional Director of a Fish worker Identification Card subject to the submission of certain requirements.

## 16. Section 113, Paragraph (b) - Fishing Vessel Engaged in Distant Water Fishing Employing Unlicensed Fisherfolk or Fish worker or Crew

Elements	Criminal Penalty	Administrative Penalty
<ul style="list-style-type: none"> <li>→ Employment of fisherfolk or fish worker or crew in a Philippine flagged fishing vessel engaged in distant water fishing</li> <li>→ Fisherfolk, fish worker or crew is unlicensed</li> </ul>	<ul style="list-style-type: none"> <li>• Fine with twice the amount of the administrative fine and suspension or cancellation of license</li> </ul>	<ul style="list-style-type: none"> <li>• fine of P40,000.00 for each unlicensed fisherfolk, fish worker or crew and</li> <li>• suspension or cancellation of license.</li> </ul>



The presentation of an official receipt covering a completed application for renewal of a Fisherman's License and a certification from the DA-BFAR that the renewal is being processed shall be accepted as proof to negate liability under this section.



The owner and operator of the commercial distant water fishing vessel are criminally and administratively liable.

## 17. Section 114 - Obstruction to Defined Migration Paths (See FAO 217 s. 2001)

Elements	Criminal Penalty	Administrative Penalty
<ul style="list-style-type: none"> <li>→ Construction is undertaken</li> <li>→ Such construction obstructs defined migration paths of anadromous, catadromous and other migratory species</li> </ul>	<ul style="list-style-type: none"> <li>• Imprisonment of 7 years to 12 years and fine of twice the amount of the administrative fine</li> <li>• Dismantling of the obstruction at the expense of the offender, and the suspension or revocation of the permit or license</li> </ul>	<ul style="list-style-type: none"> <li>• fine of P150,000.00 to P500,000.00</li> <li>• dismantling of the obstruction at the expense of the offender, and</li> <li>• suspension or revocation of the permit or license.</li> </ul>

## What happens when the obstruction is a structure for the culture of fish with an appropriate permit from the government unit concerned?



Section 56 of RA 10654 provides that lessees, permittees or licensees of fishponds, fish pens or fish cages are bound by this prohibition regardless of their leases, permits or licenses.

## Have migration paths and migratory species been identified by DA?

Yes. FAO 217 s. 2001 enumerates the rivers identified to be migratory paths, and the migratory species that pass through these rivers for breeding or feeding purposes, or as part of their life cycle. Section 3 of FAO 217 also provides that the prohibition extends up to 1 km seaward and 1 km upward of the mouths of the identified rivers

## 18. Section 115 - Obstruction to Fishery Law Enforcement Officer

(See FAO 198 s. 2000)

Elements	Criminal Penalty	Administrative Penalty
<ul style="list-style-type: none"> <li>→ Fishery law enforcement officer, authorized inspector or observer, deputized fish warden of the LGU, or any lawfully-boarding government officer seeks to perform his duty</li> <li>→ Fishing vessel owner, master or operator or any other person acting on behalf of any fishing vessel assaults, resists, intimidates, harasses, seriously interferes with, or unduly obstructs or delays such fishery law enforcement officer from the performance of his duty</li> </ul>	<ul style="list-style-type: none"> <li>• Imprisonment from 6 months to 2 years and a fine twice the amount of the administrative fine</li> <li>• Cancellation of license or permit</li> </ul>	<ul style="list-style-type: none"> <li>• cancellation of license or permit and</li> <li>• fine of P1,000,000.00 for fishing vessels operating in Philippine waters or P2,000,000.00 for fishing vessels operating beyond Philippine waters.</li> </ul>

Any person who does not allow any authorized officer or an observer to exercise any of the legal duties shall be deemed to be obstructing that officer or person.



Section 26 of FAO 198 s. 2000 (Rules and Regulations on Commercial Fishing) provides that the Director, or any duly authorized fishery law enforcement officer in the performance of his official duties, must 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, as well as investigating the persons on the vessel.

**19. Section 116, Paragraph (a) - Philippine distant water fishing vessel to sail without a fisheries observer on board as required by RFMO conservation and management measures**

Elements	Criminal Penalty	Administrative Penalty
<ul style="list-style-type: none"> <li>→ Philippine distant water fishing vessel is sailing</li> <li>→ Without a fisheries observer on board as required by RFMO conservation and management measures</li> </ul>	<ul style="list-style-type: none"> <li>• Imprisonment of 1 month and 1 day to 6 months and fine of twice the amount of the administrative fine</li> <li>• Confiscation of catch and suspension or cancellation of license</li> </ul>	<ul style="list-style-type: none"> <li>• fine (P500,000.00) and</li> <li>• forfeiture of the catch and gear.</li> </ul>

**20. Section 116, Paragraph (b) - Commercial fishing vessel sailing without a fisheries observer in compliance with this Code and the rules and regulations promulgated by DA**

Elements	Criminal Penalty	Administrative Penalty
<ul style="list-style-type: none"> <li>→ Commercial fishing vessel is sailing</li> <li>→ Without a fisheries observer in compliance with this Code and the rules and regulations promulgated by the Department.</li> </ul>	<ul style="list-style-type: none"> <li>• Imprisonment of 1 month and 1 day to 6 months and fine of twice the amount of the administrative fine</li> <li>• Confiscation of catch and suspension or cancellation of license</li> </ul>	<ul style="list-style-type: none"> <li>• fine of P500,000.00 and</li> <li>• forfeiture of the catch and gear</li> </ul>

**21. Section 117 - Noncompliance with Port State Measures**

Elements	Criminal Penalty	Administrative Penalty
<ul style="list-style-type: none"> <li>→ Foreign fishing vessel seeks entry into Philippine port but failed to provide at least 24-hour prior notice to DA or</li> <li>→ Foreign fishing vessel is granted entry but failed to provide a catch report or</li> <li>→ Any person who fails to comply with other rules on port state measures promulgated by DA</li> </ul>	<ul style="list-style-type: none"> <li>• Failure to comply with the 24-hour period may result in denial of permission to enter or use of port facilities and the vessel may be subject to onboard inspection and/or impoundment</li> </ul>	<ul style="list-style-type: none"> <li>• Failure to comply with the 24-hour period:               <ol style="list-style-type: none"> <li>(1) denial of permission to enter or use of port facilities, and</li> <li>(2) the vessel may be subject to onboard inspection and/or impoundment.</li> </ol> </li> </ul>

## 22. Section 118 - Failure to Comply with Rules and Regulations on Conservation and Management Measures

Elements	Criminal Penalty	Administrative Penalty
<ul style="list-style-type: none"> <li>→ Failure to comply with conservation and management measures</li> <li>→ Such measures adopted in rules and regulations to be promulgated by DA pursuant to international conventions, RFMO resolutions and laws of coastal states where Philippine vessels fish</li> </ul>	<ul style="list-style-type: none"> <li>• Imprisonment of 6 months and fine twice the amount of the administrative fine</li> <li>• Confiscation of catch and suspension or cancellation of license</li> </ul>	<ul style="list-style-type: none"> <li>• confiscation of catch and</li> <li>• suspension or cancellation of license or permit, and</li> <li>• fine of twice the value of the catch or the amount indicated below whichever is higher:               <ol style="list-style-type: none"> <li>(1) P20,000.00 for municipal fishing or community service in case of failure to pay the fine;</li> <li>(2) P1,000,000.00 for small-scale commercial fishing;</li> <li>(3) P2,500,000.00 for medium-scale commercial fishing; and</li> <li>(4) P5,000,000.00 for large-scale commercial fishing.</li> </ol> </li> </ul>

## 23. Section 119 - Noncompliance with Vessel Monitoring Measures

Elements	Criminal Penalty	Administrative Penalty
<ul style="list-style-type: none"> <li>→ Municipal, commercial or distant water fishing vessel engaging in fishing activity</li> <li>→ Without complying with the vessel monitoring measures promulgated by DA in coordination with the LGU or</li> <li>→ Intentionally tamper with, switch off or disable the vessel monitoring system.</li> </ul>	<ul style="list-style-type: none"> <li>• Imprisonment of 6 months to 2 years and fine twice the amount of the administrative fine</li> <li>• Confiscation of catch and suspension or revocation of the license</li> </ul>	<ul style="list-style-type: none"> <li>• confiscation of catch</li> <li>• suspension or revocation of the license and</li> <li>• fine equivalent to twice the value of the catch or the amount indicated below, whichever is higher:               <ol style="list-style-type: none"> <li>(1) P10,000.00 for municipal fishing or community service in case of failure to pay the fine;</li> <li>(2) P250,000.00 for small-scale commercial fishing;</li> <li>(3) P500,000.00 for medium-scale commercial fishing; and</li> <li>(4) P2,500,000.00 for large-scale commercial fishing.</li> </ol> </li> </ul>



For vessels operating in Philippine waters, only the catcher vessel shall be covered by the requirement in this Section.



Only the master or any other person acting on behalf of the vessel owner shall be punished with imprisonment.





In case of violation committed in waters beyond national jurisdiction, the administrative fine shall be equivalent to five times the value of the catch or twice the amount indicated above, whichever is higher.

## 24. Section 120 - Constructing, Importing or Converting Fishing Vessels or Gears Without a Permit from DA

Elements	Criminal Penalty	Administrative Penalty
<ul style="list-style-type: none"> <li>→ Constructing or importing fishing vessels or gears or converting other vessels into fishing vessels</li> <li>→ Without a permit from DA</li> </ul>	<ul style="list-style-type: none"> <li>• Imprisonment from 1 month and 1 day to 6 months and fine of twice the amount of the administrative fine.</li> </ul>	fine of: <ol style="list-style-type: none"> <li>(1) P50,000.00 for small-scale commercial fishing;</li> <li>(2) P500,000.00 for medium-scale commercial fishing; and</li> <li>(3) P2,500,000.00 for large-scale commercial fishing.</li> </ol>

## 25. Section 121 - Use of Unlicensed Gear

Elements	Criminal Penalty	Administrative Penalty
<ul style="list-style-type: none"> <li>→ Using a fishing gear or method for commercial fishing</li> <li>→ Without a license from DA</li> </ul>	<ul style="list-style-type: none"> <li>• Fine from P400,000.00 to P1,000,000.00 depending on the seriousness of the violation</li> </ul>	<ul style="list-style-type: none"> <li>• fine from P200,000.00 to P500,000.00 per gear depending on the seriousness of the violation.</li> </ul>



Official Receipts covering an application for renewal of gear license and a certification from the DA-BFAR that the gear license is undergoing renewal shall be accepted as proof of renewal of license pending issuance of the gear license. (Rule 121.2 of IRR of RA 10654)

## 26. Section 122 - Falsifying Concealing or Tampering with Vessel Markings, Identity or Registration

Elements	Criminal Penalty	Administrative Penalty
<ul style="list-style-type: none"> <li>→ Falsifying, concealing vessel identity or lack of registration; or</li> <li>→ tampering with the vessel markings, identity or registration</li> </ul>	<ul style="list-style-type: none"> <li>• Imprisonment from 2 years to 6 years and a fine equivalent to twice the amount of the administrative fine</li> <li>• Confiscation of catch and suspension or cancellation of license</li> </ul>	<ul style="list-style-type: none"> <li>• confiscation of catch and</li> <li>• suspension or cancellation of license and</li> <li>• fine of:               <ol style="list-style-type: none"> <li>(1) P10,000.00 for municipal fishing or community service in case of failure to pay the fine;</li> <li>(2) P100,000.00 for small-scale commercial fishing;</li> <li>(3) P1,000,000.00 for medium-scale commercial fishing; and</li> <li>(4) P5,000,000.00 for large-scale commercial fishing.</li> </ol> </li> </ul>



In case of violation by distant water fishing vessels, the administrative fine shall be twice the amount indicated above.

## 27. Section 123 - Concealing, Tampering or Disposing of Evidence Relating to an Investigation of a Violation

Elements	Criminal Penalty	Administrative Penalty
<ul style="list-style-type: none"> <li>→ Concealing, tampering or disposing evidence</li> <li>→ Such evidence relates to an investigation of a violation under RA 10654</li> </ul>	<ul style="list-style-type: none"> <li>• Imprisonment from 5 years to 10 years and fine equivalent to twice the administrative fine</li> <li>• Suspension or cancellation of the license</li> </ul>	<ul style="list-style-type: none"> <li>• suspension or cancellation of license and</li> <li>• administrative fine of:               <ol style="list-style-type: none"> <li>(1) P10,000.00 for municipal fishing or community service in case of failure to pay the fine;</li> <li>(2) P100,000.00 for small-scale commercial fishing;</li> <li>(3) P1,000,000.00 for medium-scale commercial fishing; and</li> <li>(4) P5,000,000.00 for large-scale commercial fishing.</li> </ol> </li> </ul>

Note: In case of violation by distant water fishing vessels, the administrative fine shall be twice the amount indicated above.

## 28. Section 124 - Noncompliance with the Requirements for the Introduction of Foreign or Exotic Aquatic Species

Elements	Criminal Penalty	Administrative Penalty
<ul style="list-style-type: none"> <li>→ Importing, introducing, or breeding, foreign or exotic aquatic species</li> <li>→ Without the conduct of risk analysis and prior approval of DA</li> </ul>	<ul style="list-style-type: none"> <li>• Imprisonment of 6 years to 12 years and fine from P400,000.00 to P12,000,000.00, confiscation of foreign or exotic species and the costs for containment, eradication or restoration.</li> <li>• Confiscation of foreign or exotic species and the costs for containment, eradication or restoration.</li> </ul>	<ul style="list-style-type: none"> <li>• fine of P200,000.00 to P6,000,000.00 and</li> <li>• confiscation and destruction of the foreign or exotic species.</li> <li>• Should the species become invasive and result to predation of native aquatic biota, loss of income or damage to the habitat, the offender shall bear the costs of containment, eradication and/or restoration.</li> </ul>



The importation, introduction to the wild, or breeding of foreign or exotic aquatic species or genetically modified aquatic species, their by-products and derivatives, shall be governed by the provisions of R.A. 9147 or the Wildlife Act, FAO No. 221, Series of 2003, and EO No. 514, Series of 2006. (Rule 124.1 of IRR of RA 10654)

### 29. Section 125 - Failure to Comply with Standards and Trade-Related Measures

Elements	Criminal Penalty	Administrative Penalty
<ul style="list-style-type: none"> <li>→ Failing to comply with standards for weights, volume, quality and other requirements for all fishery transactions and trade and trade-related measures</li> <li>→ Such standards are prescribed by DA</li> </ul>	<ul style="list-style-type: none"> <li>• Imprisonment from 6 months to 2 years and a fine from P100,000.00 to P4,000,000.00 depending on the seriousness, extent and volume of trade associated with the violation</li> <li>• Confiscation of the shipment or fishery products and suspension or revocation of registration or license</li> </ul>	<ul style="list-style-type: none"> <li>• fine of P50,000.00 to P2,000,000.00, depending on the seriousness, extent and volume of trade associated with the violation,</li> <li>• confiscation of the shipment or fishery products and</li> <li>• suspension or revocation of registration or license.</li> </ul>

### 30. Section 126 - Possessing, Dealing in or Disposing Illegally Caught or Taken Fish

Elements	Criminal Penalty	Administrative Penalty
<ul style="list-style-type: none"> <li>→ Shipping, commercially transporting, offering for sale, selling, importing, exporting, or have custody, control, or possession of, or to deal in or in any manner dispose of any fish or species</li> <li>→ Such fish or species caught, taken or retained in violation of RA 10654</li> </ul>	<ul style="list-style-type: none"> <li>• Imprisonment from 6 months to 2 years, and fine of 8 times the value of the species or from P100,000.00 to P500,000.00, whichever is higher</li> <li>• Confiscation of the fish or fishery products and suspension or revocation of registration or license</li> </ul>	<ul style="list-style-type: none"> <li>• fine of P50,000.00 to P200,000.00 or 5 times the value of fish or species, whichever is higher, and</li> <li>• confiscation of the same.</li> </ul>



The discovery of any fish or species caught with the use of explosives or noxious or poisonous substances shall constitute a *prima facie* presumption that the possessor, seller, fish dealer, transporter, importer, or exporter thereof has knowledge that the fish or species was caught or taken in violation of this Code.

Exception: The prohibited acts mentioned in this section do not

apply to acts undertaken to dispose confiscated fish flowing seizure or confiscation in accordance with existing rules. (Rule 126.3 of IRR of RA 10654)

### 31. Section 127 - Unauthorized Disclosure of Sensitive Technical Information

Elements	Criminal Penalty
<ul style="list-style-type: none"> <li>→ Data from the vessel monitoring system or vessel monitoring measure and other related data arising therefrom</li> <li>→ Such data is disclosed without authorization from DA</li> </ul>	<ul style="list-style-type: none"> <li>• Imprisonment of 6 months and 1 day to 6 years</li> <li>• Removal from office and forfeiture of all retirement benefits, where applicable</li> </ul>

Note: The data include 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. (SEC. 155)

Exception: The following instances are authorized disclosure, provided, the affected party is informed of such disclosure:

1. When officially requested by a government agency to be used as evidence for the prosecution of fishery or other offense;
2. When requested by the flag, coastal or port state for its own investigation or traceability; and
3. Other analogous circumstances. (Rule 127.1 of IRR of RA 10654)

### 32. Section 128 - Other Violations

Elements	Administrative Penalty
<ul style="list-style-type: none"> <li>→ DA issue fishery administrative orders or regulations</li> <li>→ Such order or regulation is violated</li> </ul>	<ul style="list-style-type: none"> <li>• Fine of P100,000.00 to 5,000,000.00, depending on the socioeconomic impact and seriousness of the violation, volume and value of the fisheries product, damage to the environment due to the violation, and the habituality of the offender.</li> <li>• Removal from office and forfeiture of all retirement benefits, where applicable</li> </ul>



The fines prescribed under RA 10654 shall be increased by at least 10% every 3 years to compensate for inflation and to maintain the deterrent function of such fines. (SEC. 129)

**OTHER LAWS PROHIBITING/REGULATING ACTIVITIES IN COASTAL AREAS**

**NIPAS Act - RA 7586**

Coastal Activities Covered	Penal Provisions
<ul style="list-style-type: none"><li>➔ Activities conducted within protected areas, since “protected area” encompasses inland bodies of water, and coastal and marine areas</li><li>➔ Activities involving all species and resources found in such protected areas</li></ul>	<ul style="list-style-type: none"><li>• Sections 20 and 21</li></ul>

**Wildlife Act - RA 9147**

Coastal Activities Covered	Penal Provisions
<ul style="list-style-type: none"><li>➔ Activities involving all wildlife resources and habitats in the Philippines, which include all aquatic species and their habitats</li></ul>	<ul style="list-style-type: none"><li>• Sections 27 and 28</li></ul>

**Mining Act - RA 7942**  
(See DENR DAO No. 96 s. 1996)

Coastal Activities Covered	Penal Provisions
<ul style="list-style-type: none"><li>➔ Activities involving mineral resources within the territory and exclusive economic zone of the Philippines, which include the coastal and marine environment</li></ul>	<ul style="list-style-type: none"><li>• Sections 103 and 108</li><li>• Sections 79 (a) of</li><li>• DAO 96 s. 1996</li></ul>



- e.g.**
- Quarrying along beaches 200 m from the mean low tide level
  - Mining in offshore areas within 500 m from the coast
  - Violation of the Environmental Compliance Certificate

**IPRA - RA 8371**

Coastal Activities Covered	Penal Provisions
<ul style="list-style-type: none"><li>➔ Activities within ancestral waters, which are included in the definition of ancestral Domains</li></ul>	<ul style="list-style-type: none"><li>• Section 72</li><li>• Customary laws of indigenous peoples</li></ul>

### EIA Law - PD 1586

(See DENR DAO 30-03 and National Environmental Protection Council Office Circular No. 3 s. 1983)

Coastal Activities Covered	Penal Provisions
<ul style="list-style-type: none"> <li>→ Environmentally Critical Projects and projects located within, or that may affect, the coastal environment and its resources</li> <li>→ Undertakings within coastal areas classified as Environmentally Critical Areas</li> </ul>	<ul style="list-style-type: none"> <li>• Section 16, Article IV of DAO 30-03</li> </ul>



e.g:

- Reclamation projects that involve the filling or draining of areas equal to or exceeding 1 ha
- Infrastructure in national parks, wildlife preserves and sanctuaries

### Forestry Code - PD 705

Coastal Activities Covered	Penal Provisions
<ul style="list-style-type: none"> <li>→ Illegal occupation of coastal areas</li> <li>→ Illegal cutting, gathering, collecting and/or possession of mangroves</li> </ul>	<ul style="list-style-type: none"> <li>• Section 78</li> <li>• Section 79</li> </ul>

### Clean Water Act - RA 9275

Coastal Activities Covered	Penal Provisions
<ul style="list-style-type: none"> <li>→ Discharge or transport of pollutants in water bodies and the margins of any surface water</li> <li>→ Land-based facilities that allow the direct or indirect pollution of water bodies, including groundwater sources, willfully or through gross negligence</li> </ul>	<ul style="list-style-type: none"> <li>• Chapter 5</li> </ul>

### Water Code - PD 1067

Coastal Activities Covered	Penal Provisions
<ul style="list-style-type: none"> <li>→ Activities involving water above ground, which includes rivers and lakes</li> <li>→ Activities involving waters of the sea within the territorial jurisdiction of the Philippines</li> </ul>	<ul style="list-style-type: none"> <li>• Article 90</li> </ul>



e.g. Establishment of salvage or easement zones at the banks of rivers and streams, and at the shores of seas and lakes (*Article 51*)

**Public Land Act - Commonwealth Act 141**

Coastal Activities Covered	Penal Provisions
→ Use of foreshore areas	• Chapter XVI



**e.g.** Lease of foreshore lands (*Chapter IX*)

# CHAPTER 3

## Boarding Procedure



**T**he procedure for Board, Search, Arrest and Seizure (BSAS) of all types of vessel involved in illegal fishing activities to be used by all coastal law enforcers and deputized wardens shall ensure the safety and security and adherence to existing procedures adopted from the Police Operational Procedure (POP) of the Philippine National Police (PNP), the Fishery Law Enforcement Manual of Operations (FLEMO) of the Bureau of Fishery and Aquatic Resources (BFAR) and existing international protocols on Visit, Board, Search and Seizure (VBSS) and maritime interdiction and boarding.

### Definition of Key Terms

a. Unopposed/Compliant Boarding. An unopposed or compliant boarding is one in which the captain of the suspect vessel complies with the Team Leader's (TL) instructions and the following additional conditions are met:

- (1) No apparent passive/active resistance measures employed by suspect vessel's crew.
- (2) No apparent indications of threat observed during the patrol observation & surveillance (POS).

b. Non-cooperative/Non-compliant Boarding. A non-cooperative or non-compliant boarding is one in which there is no intelligence to indicate a threat, and any or all of the conditions listed below are met:

- (1) The captain of the suspect vessel does not acknowledge communication, fails to cooperate or continuously refuses to follow instructions in allowing the boarding to take place.
- (2) Passive measures in place are intended to delay, impede, complicate and/or deter boarding of the suspect vessel and can be overcome by mechanical means.
- (3) Passive resistance measures in place are intended only to delay, impede, complicate and/or deter search and seizure of suspect vessel and can be overcome by mechanical means.

c. Opposed Boarding. Opposed boarding is one in which any or all of the following conditions are met:

- (1) The captain of the suspect vessel actively refuses to allow boarding to take place.
- (2) Passive resistance measures in place are clearly intended to



inflict harm on the boarding party or create a very dangerous environment.

- (3) Intelligence indicates a possible threat on board the suspect vessel or the vessel is suspected of carrying illicit cargoes.

### **Patrol Observation & Surveillance (POS)**

All vessels within the designated coastal law enforcement patrol area should be observed and monitored for violations of fishery laws and regulations. All available members of the enforcement team should assist in the patrol observation and surveillance using all available means including binoculars to detect, identify, and observe actual violations that should be immediately recorded in the team operations logbook and individual notebook/tickler to serve as a basis for the apprehension report and as a reference during presentation in court.

The experienced members of the coastal law enforcement team must be able to distinguish any attempt by the suspect vessel to disguise their fishery violations by employing tricks to and to delay the boarding including feigning mechanical breakdown, declaring false vessel name/registration/origin/destinations and attempting to speed away or flee from the scene.

A reliable intelligence based on information gathered from the surveillance of the suspect vessel is vital to knowing that the coastal law enforcement team patrol area is the usual fishing ground for fishing vessel that violates fishery laws and regulations.

### **Essential Elements of Information on the Suspect Vessel**

The Essential Elements of Information (EEI) that should be recorded during the patrol observation and surveillance should include, but are not limited to, the following:

- a. Name, description, markings and approximate location of the fishing vessel.
- b. Number of personnel onboard, activities of the fishing vessel and their reactions to the presence of the coastal law enforcers.
- c. Number and type of dangerous weapons (bladed weapons, firearms, etc.).
- e. Evidence of hidden cargo holds, false waterlines, newly painted hull markings etc.
- d. Unusual obstructions on deck or any evidence of preparations to repel or impede the boarding operations.
- h. Maneuvers by suspect vessel to evade interdiction or impede the boarding.

### **Patrol Boat Positioning**

The patrol boat should be maneuvered in a position and direction to

minimize susceptibility to a hostile act, such as ramming or dropping nets or other materials to obstruct the boarding. Always maintain a safe distance that minimizes the risk to the members of the team. Additionally, give consideration to positioning the ship ‘up sun’ and on the suspect vessel’s port quarter or starboard quarter to provide the security team reasonable space and time to react to any hostile act of the suspect vessel’s crew.

### **Boarding Team Composition**

The BSAS boarding party shall consist of the following:

- a. The Team Leader (TL)
- b. Assistant Team Leader (ATL)
- c. Evidence Custodian/Recorder
- d. Security Team
- e. Search Team

### **Patrol Observation and Surveillance Communication Procedures**

It is important that the overall conduct of any calling, hailing or questioning of the suspect vessel by the Team Leader be firm, respectful and non-confrontational. In case, the boat captain and crew of the fishing vessel are not proficient in the local dialect, appropriate consideration should be made to ensure that instructions are understood to limit miscommunication during all stage of the board, search, arrest and seizure procedures.

a. The Team Leader should make initial contact with the suspect vessel via the marine band radio on VHF Channel “16” aided by other means to attract its attention including the use of siren, whistle and flashing lights or spot lights at night or in reduced visibility, if available. To gain the attention of the suspect vessel, specifically if the vessel’s name is still unrecognizable from a safe distance during the initial approach, the suspect vessel’s position in reference to a known geographic reference point, or to the relative position of the patrol boat should be announced when hailing it on the radio.

b. The Team Leader must make all available means to inform the suspect vessel of the following:

- (1) Identity and authority of the coastal law enforcement team.
- (2) Violation(s) of the fishing vessel.
- (3) Intention of the team to conduct boarding and search of the suspect vessel.

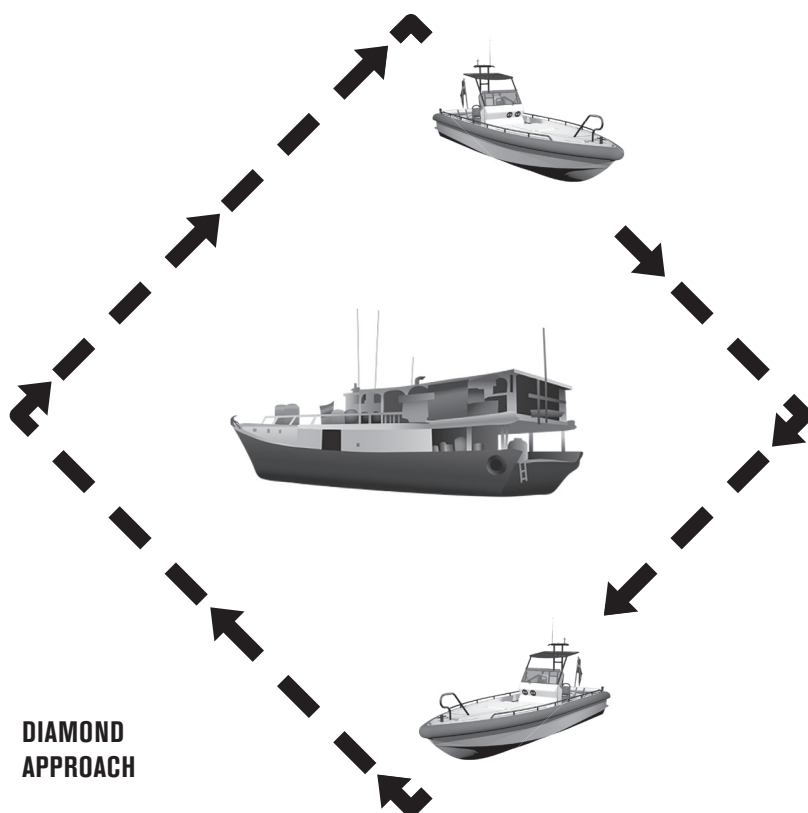
c. The Team Leader should instruct the captain of the suspect vessel to slow down, stop the vessel and allow the safe boarding.

d. The following additional information should be obtained:

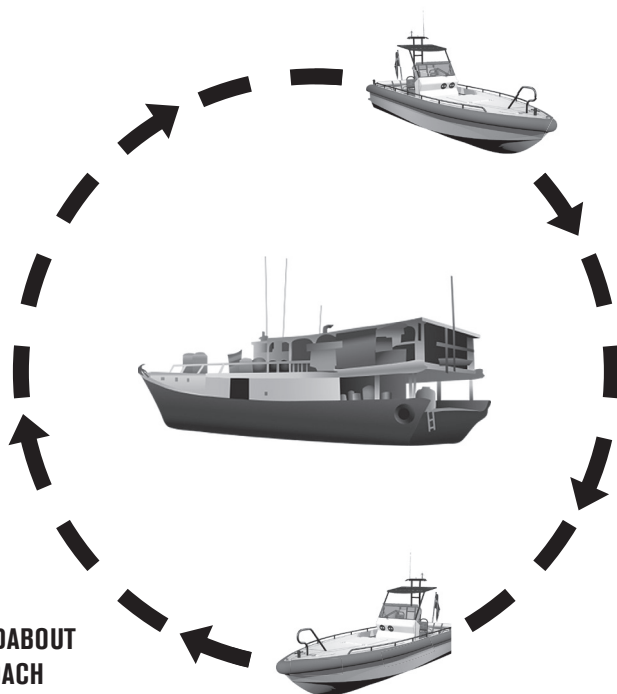
- (1) The total number of people onboard the vessel.
- (2) Whether or not animals are carried on board the vessel.
- (3) Any weapons and their location on board the vessel.

e. In addition, the Team Leader should instruct the vessel's captain to:

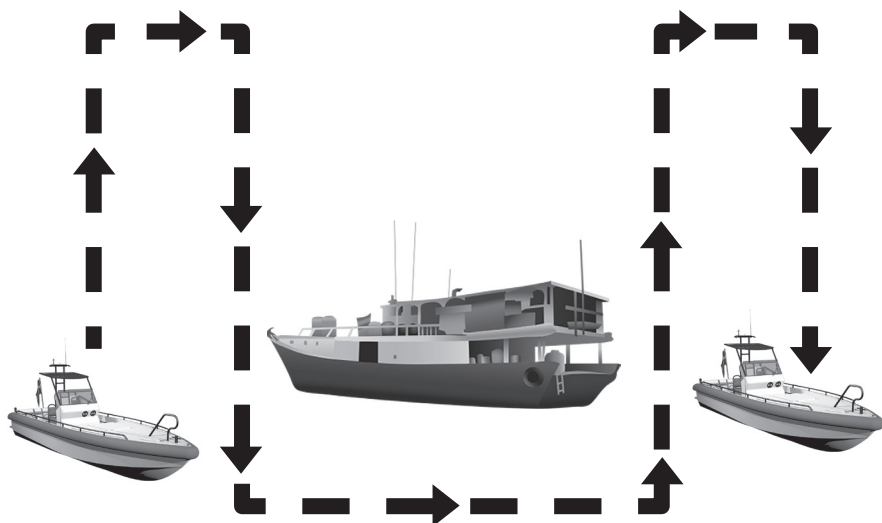
- (1) Have his crew muster in open view of the security team preferably in the suspect vessel's bow.
- (2) When applicable, a member of the crew may be allowed to remain near the deck where the patrol boat is to approach to assist the security team in boarding particularly during strong winds and moderate to rough sea conditions.
- (3) Turn on all interior lights (and exterior, if at night or during reduced visibility) if applicable.
- (4) Have all cargo and storage spaces opened as much as possible.
- (5) Have all the fishing vessel documents and crew identification on hand for inspection.

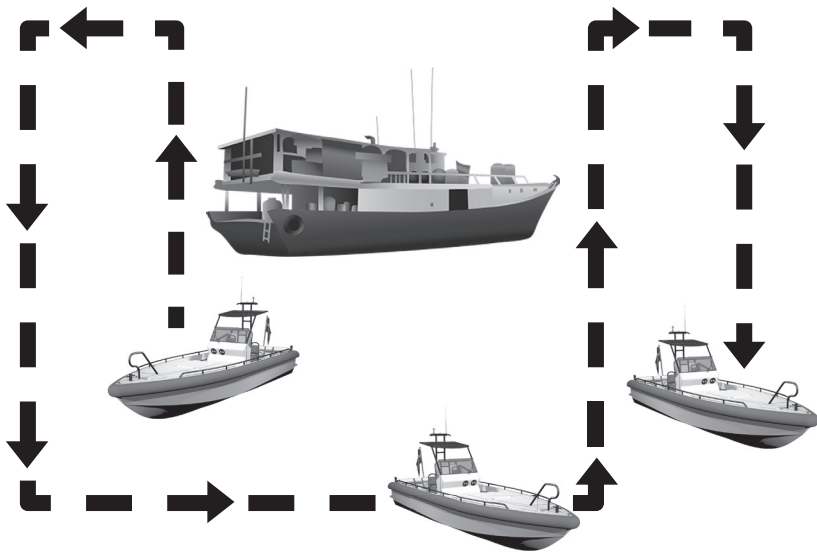


**ROUNDBOUT  
APPROACH**



**HORSE SHOE  
APPROACH**





**MODIFIED H/S APPROACH -  
THE 'U' APPROACH**

### **Approach Procedures**

The patrol boat's approach should be deliberate with outmost importance on the safety and security of the entire boarding party while allowing the security team to react in case of any hostile action of suspect vessel's crew to oppose the boarding.

The approach procedure shall depend upon the available number of personnel and the number of patrol boat used in the coastal law enforcement operations. The following shall be the procedure for board, search, arrest and seizure using a single or multiple patrol boats:

#### **a. One Patrol Boat Approach Tactic**

The single approach procedures consist of the following:

- (1) The patrol boat should be positioned abaft the beam on the windward quarter of the suspect vessel, if possible, at a safe distance until the initial pre-boarding instruction to the suspect vessel have been complied. Remaining abaft the beam reduces exposure to possible threats to the patrol boat while providing the best possible view of the accommodation, cargo hold and bow of the suspect vessel for the security team to observed and identify any possible actions by the crew to resist or delay the boarding.
- (2) If the operation is being conducted at night, all available flashlight and lighting devices should be employed to observe the suspect vessel and its crew.

- (3) When the Team Leader is satisfied with the initial threat assessment, the patrol boat shall approach the suspect vessel side where the intended boarding is to done.
- (4) The initial approach should be characterized by extreme caution since the true intentions of the crew of suspect vessel are still unknown.

**b. Two Patrol Boat Approach Tactics**

- (1) The lead patrol boat should approach in accordance with preceding paragraph.
- (2) The support patrol boat should maneuver in the opposite quarter of the suspect vessel with a greater distance between it and the suspect vessel and it should be visible to the boarding team at all times.
- (3) Members of the support patrol boat should continue to observe the movement of the crew of the suspect vessel crew and other fishing vessels in the area that might try to oppose or obstruct the boarding.

c. The support patrol boat should at all times be ready to assist the primary patrol boat when required.

### **Board and Search**

The boarding and searching phase:

a. The boarding phase is potentially dangerous because of the risk involved when boarding from the patrol vessel to the suspect vessel in open sea with less than ideal visibility, sea and wind conditions.

b. Boarding party members may be required to climb from their patrol boat to the deck of the suspect vessel at night and in poor weather conditions, so physical conditioning and practice is a must.

### **Boarding Party Composition**

a. The coastal law enforcement team should be composed of a minimum of six (6) members designated as follows:

- (1) Team Leader (TL) - The TL is usually the most senior and experienced in the team. He should be knowledgeable of the other articles covered in this guidebook.
- (2) Assistant Team Leader (ATL) - The ATL must be ready to assume the responsibilities and functions of the TL when needed. He can also be a member of the other teams when no other personnel are available. He also acts as the Recorder, Photographer and Evidence Custodian.
- (3) Security Team - The security team must preferably be a uniformed personnel of law enforcement agencies (PNP-MG, PCG, BFAR etc.) that are trained in high risk boarding. All authorized firearms carried by qualified personnel should be recorded.

- (4) Search Team - The search team is responsible for the conduct of actual search of the suspect vessel.

### **Pre-boarding Instructions to the Suspect Vessel:**

a. Prior to the final approach and boarding, the suspect vessel must have complied with the following instructions:

- (1) Slowed to a complete stop, engine is stop and it has already anchored, if applicable.
- (2) The selected boarding side is cleared of obstruction to allow the safe and easy boarding of the security team.
- (3) All interior lights (exterior also if at night) are switched on.
- (4) All personnel of the suspect vessel are in topside near the bow and visible to the members of the security team. Depending on the situation such crew maybe asked to put their hands above their heads and lift their shirt to show that they are not carrying or concealing deadly weapons.

b. In addition to the above, the suspect vessel may be asked if it has weapons aboard including licensed firearms that must be secured inside the suspect vessel prior to boarding.

### **Boarding Party Communications**

#### **Pre-boarding Briefs**

Instructions prior to boarding:

- a. Possible threats on the suspect vessel.
- b. Safety concerns in relation to the existing conditions present at the time (weather, visibility, sea condition, etc.).
- c. Reminder on the respect for human rights and adherence to the BSAS procedures.
- d. Use of 'Code Words' including hand signals to indicate possible threats and presence of illegal items onboard the suspect vessel.
- e. Emergency procedures in case of any eventualities.

#### **Two BSAS Conditions:**

- a. Unopposed/Compliant Boarding
- b. Opposed/Non-compliant Boarding

#### **Unopposed Boarding Procedures**

One of the most dangerous parts of any coastal law enforcement operations is the actual boarding of the suspect vessel. Boarding operations are often conducted at night and/or in any weather conditions. The Security Team should board first and conduct an initial security sweep of the suspect vessel including all open areas as well as ensure that the crew are not carrying or concealing any dangerous weapons. Once the suspect

vessel is relatively secured, the remainder of the boarding party should follow with the Team Leader being the last to board.

**Search Team Procedures** - The function of a Search Team is to conduct the actual search of the suspect vessel to locate, properly tag, preserve and submit for examination, if applicable any pieces of evidence to support the case(s) to be filed in court. The Search Team plays a critical role in gathering and preserving evidence.

The importance of maintaining the chain of custody of the evidence seized and collected from the suspect vessel should always be remembered. The use of all available means (photograph, video and testimony) to document the exact location where such were found onboard the suspect vessel and the description of said evidence must at all times be observed.

**Initial Security Sweep** - An initial security sweep will be conducted by the Security Team to determine the presence of any unaccounted personnel and dangerous weapons on board the suspect vessel and to look and identify for any obvious safety hazards that might harm or endanger the boarding party. Results of the security sweep must be reported to the Team Leader, who shall only allow the boarding of the other teams upon such confirmation.

**Sweep of Cargo Holds/Tanks** - The Search Team must exercise extreme caution when entering enclosed fish holds/tanks or storage spaces. Lighting in said areas are often poor or nonexistent; ladders may be structurally weak or damaged; decks and ladders may be oily; noxious or hazardous vapors may be present (especially in engine rooms and enclosed storage spaces); air may be oxygen deficient; cargo may not be securely stowed; and other hazards exist separate from the threat of armed resistance. It is important that members of the boarding party never open any hatch, door, package, container, etc. This is to avoid injury of the boarding party by badly stowed containers, boxes, or holds. Have a crew of the fishing vessel open all doors and hatches and enter all spaces first. Do not handle and move any suspicious dangerous and sensitive explosives components (blasting caps/detonators and improvised explosives mixtures used in blast fishing).

### **Dealing with the Suspect Vessel's Crew**

While coastal law enforcement are generally compliant and non-hostile, the security team should not assume the crew will not be hostile. Caution, alert observation and sound judgment are essential. The following are some “do’s” and “don’ts” during BSAS operations:

- a. Do perform the following:



- (1) Be firm, but polite in issuing instructions, respect of human rights is paramount at all times.
- (2) Utilize the suspect vessel's chain of command. Have the captain or other officers give orders to the crew.
- (3) Be sensitive to the religious customs of the crew.
- (4) Keep the crew of the suspect vessel at a safe distance from the Security Team to prevent them from being overpowered or disarmed.

b. Do not perform the following:

- (1) Threaten or provoke the crew.
- (2) Accept food or drinks.
- (3) Fail to be on guard.
- (4) Allow any crew or passengers to leave the assembly area unescorted.
- (5) Give away any information that may be useful to the suspect vessel.
- (6) Discuss boarding party procedures or intentions.

### **Opposed/Non-Compliant Boarding**

Tactical Boarding of the Suspect Vessel. In case of actual resistant and blatant disregard of the crew of the suspect vessel to comply with the instructions from the Team Leader to enable a routine board and search, the team shall proceed with heightened level of BSAS. It is imperative that trained and armed personnel (BFAR, PNP-MG, PCG, PN, NBI etc.) composed the Security Team for this purpose.

The Revised Police Operational Procedure (POP) of the Philippine National Police (PNP) shall guide the coastal law enforcement team during Opposed/Non-Compliant Boarding, to wit:

### **Use of Force during Police Operations (Rule 7, Revised Philippine National Police Operation Procedure series of 2013)**

#### **Use of Excessive Force Prohibited**

The excessive use of force during police operation is prohibited. However, in the lawful performance of duty, a police officer may use necessary force to accomplish his mandated tasks of enforcing the law and maintaining peace and order.

#### **Issuance of Verbal Warning**

The police officer must first issue a verbal warning before he could use force against an offender. As far as practicable, the verbal warning shall be in the dialect that is known to the offender or in the national language. Basically the verbal warning shall consist of the following: the police officer identifying himself; his intention; and what he wants the offender to do. If

the offender is a foreigner, the verbal warning shall be done in the English language followed by a demonstrative act of the police officer's intent. The verbal warning shall be done in a loud and clear manner.

### **Non-Issuance of Verbal Warning When Excusable**

The failure to issue a verbal warning is excusable in cases where threat to life or property is already imminent, and there is no other option but to use force to subdue the offender.

### **Use of Non-Lethal Weapon**

When suspect is violent or threatening, and that less physical measures have been tried and deemed inappropriate, a more extreme, but non-deadly measure can be used such as baton/truncheon, pepper spray, stun gun and other non-lethal weapon to bring the suspect under control, or effect an arrest.

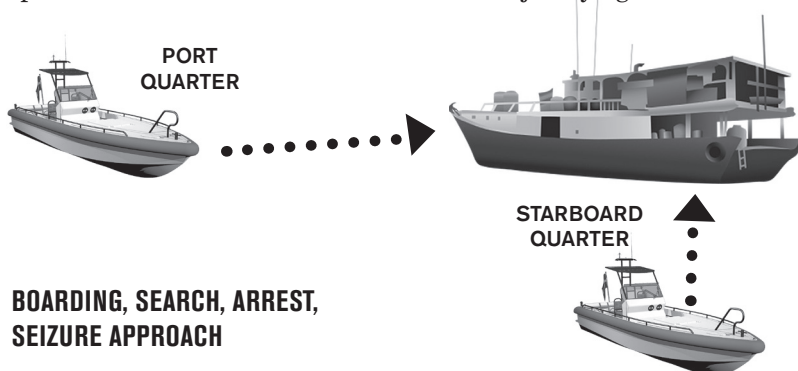
### **Application of Necessary and Reasonable Force**

During confrontation with an armed offender, only such necessary and reasonable force should be applied as would be sufficient to overcome the resistance put up by the offender; subdue the clear and imminent danger posed by him; or to justify the force/act under the principles of self-defense, defense of relative, or defense of stranger.

### **Use of Firearm during Police Operations (Rule 8, Revised Philippine National Police Operation Procedure series of 2013)**

#### **Use of Firearm When Justified**

The use of firearm is justified if the offender poses imminent danger of causing death or injury to the police officer or other persons. The use of firearm is also justified under the doctrines of self-defense, defense of a relative, and defense of a stranger. However, one who resorts to self-defense must face a real threat on his life, and the peril it sought to be avoided must be actual, imminent and real. Unlawful aggression should be present for self-defense to be considered as a justifying circumstance.





## CHAPTER 4



### Arrest, Search, Seizure and Detention

A winning case, or a losing one, starts before the actual prosecution—that is, from the time of arrest, search and seizure. Arrests, if not properly made, become unlawful. Search and seizure, if not legally conducted, will render seized evidence inadmissible. Admissions and confessions, if not elicited in a manner prescribed by law, may amount to uncounseled confession. Protocols forgotten or ignored may result in countersuits against the law enforcers themselves.

Arrest, search, seizure and detention or ASSD refers to the groundwork that must be done—and done properly—prior to prosecution, for the purpose of establishing probable cause, if not the guilt, of the accused. It includes custodial investigation of the apprehended person, as well as custody of seized items. These activities may be done by law enforcement officers, or by private persons under citizens' arrest in instances of valid warrantless arrests.

All Rules cited are from the Revised Rules of Court, unless otherwise indicated.

#### **ARREST**



**Arrest** is the taking of a person into custody so he may answer charges for an offense. This may be made by actual restraint of the person to be arrested or by his voluntary submission to the custody of the person making the arrest (*Rule 113, sec. 1 & 2*).

Arrests may be made in two ways: first, with a warrant and second, through a valid warrantless arrest.

#### **Is there a difference between the procedure for arresting violators of environmental law and the procedure for arresting offenders for ordinary crimes?**

No. The procedure for arresting suspects in environmental crimes is the same as the procedure for suspects in ordinary crimes.

#### **Who can make arrests?**

Police officers, officers charged with the enforcement of coastal laws, or deputized fish wardens may conduct an arrest. Ordinary civilians may conduct arrests only in cases of valid warrantless arrests.



The earlier the Miranda Warning is given, the better. (See Custodial Investigation Rights). This removes any cause for the arrested person

to claim later on that he was taken for questioning without being informed of his rights. The occasion when the Miranda Warning was given should be included in the affidavit.

However, the failure to give the Miranda Warning is not a ground for the dismissal of the case when the arresting officer merely asked about personal circumstances or made a general inquiry. It is a ground for dismissal when the question is already incriminating on the part of the arrested person under custodial investigation.

### **How are deputized environmental law enforcers protected when making arrests?**

Individuals deputized by the proper government agency enjoy the presumption of regularity in the performance of official duty, when effecting arrests for violations of environmental laws. (Rules of Procedure for Environmental Cases, Part V, Rule 11, Section 1(b))

### **Arrest Made with Warrant**

Arrests are generally unlawful when not accompanied by a warrant. Whenever possible, a warrant must first be secured before the arrest is actually made.

### **What documents are required in procuring a warrant?**



- Complaint signed by the offended party (e.g. Bantay Dagat, fish warden, fisherfolk)
- Or complaint subscribed by peace officer (usually the Chief of Police) or any other public officer charged with enforcing the law (e.g. Bureau of Fisheries and Aquatic Resources [BFAR] representative, municipal agricultural officer)
- Or information signed by the prosecutor
- Resolution by the prosecutor (for offenses requiring Preliminary Investigation)
- Other supporting affidavits and documents (e.g. certification of fine mesh, certification of non-registration) (*Rule 110, sec. 3 & 4 and Rule 112, sec. 6*)

### **How is a warrant of arrest issued?**

Warrants can only be issued by a judge. The procedure for issuing the warrant depends on the type of offense, as distinguished below.

### **Offenses requiring preliminary investigation**



Preliminary Investigation (PI) is required for offenses that have an imposable penalty of at least 4 years, 2 months and 1 day, without regard to the fine. (e.g. use of active gear, where the penalty imposed is 2 years to 6 years).

A PI is conducted by a prosecutor for the purpose of determining

whether there is probable cause. To do this, the prosecutor requires the respondent to submit a counter-affidavit, after which he issues a resolution based on the complaint and counter-affidavit. After the PI, the judge evaluates the resolution of the prosecutor and its supporting evidence. If the judge finds probable cause, he issues the warrant of arrest. (*Rule 112, sec. 6*).



**Probable cause** is the existence of facts and circumstances that would lead an average person (even if not knowledgeable about the technical rules of evidence) to believe that an offense has been committed and that the item, article or object sought to be seized is in the place to be searched (*People v. Aruta, 288 SCRA 626, 1998*).



### ***Offenses not requiring preliminary investigation***

This covers offenses that have a prescribed penalty of less than 4 years, 2 months and 1 day, without regard to the fine, but are not covered by the rule on summary procedure. (e.g. use of fine-mesh net, where the penalty imposed is 6 months to 2 years).

#### **1. If the case is filed with the prosecutor**

The prosecutor makes a resolution based on the complaint, the supporting affidavits and other documents. No counter-affidavits are needed from the respondents. The judge issues the warrant of arrest if he finds probable cause based on the resolution of the prosecutor and the supporting documents. (*Rule 112, sec. 9[a]*)

#### **2. If the case is filed with the MTC or MCTC**

The investigating judge personally evaluates the evidence, or examines in writing and under oath the complainant and his witnesses in the form of searching questions and answers. If the judge finds probable cause, the warrant is issued. (*Rule 112, sec. 9[b]*)



### **What about offenses falling under the Summary Procedure?**

A Summary Procedure covers violations of municipal ordinances and other criminal cases where the prescribed penalty does not exceed 6 months (see Chapter 6: Prosecution). No warrant of arrest is issued for this type of offense. The judge issues a warrant of arrest only if the accused fails to appear whenever required by the court. (*Revised Rules on Summary Procedure, Sec. 16*). (e.g. violation of an ordinance regulating compressor fishing).



### **What makes a warrant of arrest valid?**

The following have to be present for a warrant of arrest to be valid:

- Existence of probable cause
- Judge has examined the complainant and witnesses under oath

- Issuance is determined by the judge himself
- A particular description of the person to be arrested is provided

### **Does a warrant of arrest expire after 10 days?**

No. Unlike a search warrant, a warrant of arrest does not expire within 10 days from receipt by the apprehending officer. It is only required that a return be made to the judge who issued the warrant after a lapse of 10 days, i.e., the judge must be informed that the warrant has not yet been served. (*Rule 113, sec. 4*)

### **What must be remembered when arresting with a warrant?**



- Arrest may be made at any time of the day or night. (*Rule 113, sec. 6*)
- The person to be arrested must be informed of the cause of the arrest and the fact that a warrant of arrest has been issued. (*Rule 113, sec. 7*)
- Arrest may be made even if the officer does not have the warrant in his possession at the time of arrest, but it must be shown later. (*Rule 113, sec. 7*)
- All warrants of arrest shall be accompanied by a certified true copy of information filed with the issuing court. (*Rule 11, Sec. 2 of RPEC*)

### **What kind of force may be used when making the arrest?**



No unnecessary force should be used in restraining the accused (*Rule 113, sec. 2*). Warning shots are prohibited. Officers must use peaceful means in intervention, such as megaphones, whistles or other similar means (*Rule 4*). Use of firearms is justifiable only by virtue of the:

- Doctrine of Self-defense
- Defense of Relative
- Defense of Stranger, if the police has probable cause to believe that the suspect poses an imminent danger of death or serious physical injury to the police or other persons (*Philippine National Police [PNP] National Police Operational Procedure, Rules of Engagement, Rules 4 & 5, 2002*) e.g. when illegal fishers fire at law enforcers.



### **What if illegal fishers do not stop their vessels when asked by law enforcers?**



The law enforcers still should not fire warning shots, but instead simply pursue the vessel. If they cannot overtake it, they should at least secure a positive identification of the vessel, such as its name markings, colors, numbers, size description and general direction where it sailed away, as well as of the suspected illegal fishers.

### **Warrantless Arrest**

In coastal law enforcement, warrantless arrests become the general rule rather than the exception. Because the violators are aboard motor vessels that could easily speed away before a single sentence is written

on the complaint, law enforcers must act quickly.

Warrantless arrests are valid only in the following instances: (*Rule 113, sec. 5*)

### **1. While the offense is being committed**

A person may be arrested when he has committed, is actually committing or is attempting to commit an offense in the presence of the person making the arrest.

e.g.



- A person is caught in the act of fishing inside a sanctuary
- A dynamite is seen inside the fishing vessel of a fisherman
- A person sees the offense from a distance or hears the disturbance created by it and proceeds at once to the scene (*People v. Sucro 195 SCRA 388, 1991*). This may apply to blast fishing.

### **2. When the offense has just been committed and probable cause exists**

A person may be arrested when the offense has just been committed and the arresting officer or private person has probable cause to believe, based on personal knowledge of facts or on indicative circumstances, that that person was the one who committed the crime.

To be valid, this exception requires two conditions:



- The offense has just been committed
- The arresting officer has probable cause to believe, based on personal knowledge, that the person to be arrested has committed the offense.

### **When is an offense considered “has just been committed”?**

The longest that the Supreme Court has allowed under the phrase “has just been committed” is 12 hours after the commission of the crime (*People v. Sinoc, 275 SCRA 357, 1997*). It nullified an arrest made after 19 hours (*People v. Manlulu, 231 SCRA 701, 1994*). Therefore, a warrantless arrest made within 12 hours is legally permissible under this exception. If the warrantless arrest is made between the 12th and 19th hours, the legality is debatable.

### **What does personal knowledge mean?**

The decisions in some cases state that personal knowledge is derived from the sense perception of the arresting officers (*People v. del Rosario, 305 SCRA 740, 1999*). Most cases, however, validate an arrest based on the knowledge derived by the arresting officer from his investigation and the testimony of witnesses (*People v. Posadas, 342 SCRA 388, 2000*).



As a minimum, however, and to prevent abuse, an eyewitness or victim must accompany the arresting officer during the arrest. At the



very least, material or physical evidence must be found linking the person to be arrested to the crime. In *People v. Sinoc* (275 SCRA 357, 1997), the Court validated the arrest of the accused in a robbery case, because he was holding the key to the stolen vehicle. This would at least ensure that arrests are not based on mere suspicion.

**3. When the person has escaped from detention**

A person may be arrested when he has escaped from a penal institution, or any place where he is serving sentence or is temporarily confined while his case is pending.



An arrest made without a warrant or made under an invalid warrantless arrest will make the documents, things or articles seized during the illegal arrest inadmissible as evidence (*People v. Domatay*, 307 SCRA 1, 1999).

**Who may conduct warrantless arrests?**

Peace officers or private persons may conduct warrantless arrests. Deputized fish wardens or members of fisherfolk organizations usually apprehend illegal fishers while on patrol or while they themselves are fishing.

**How is a warrantless arrest made?**

The officer must inform the person to be arrested of his authority and of the cause of the arrest. This does not apply when:

- the person to be arrested is committing the offense, is pursued after its commission, has escaped, flees or forcibly resists arrest before the officer has had the opportunity to inform him
- giving such information will imperil the arrest.

**When must a person arrested without a warrant be delivered to judicial authorities?**

A person arrested and detained by virtue of a warrantless arrest must be delivered to proper judicial authorities within the following periods:



Penalty Imposed	Penalty Imposed	Period
<b>Light</b>	Imprisonment of 1 to 30 days/fine of less than P200	12 hours
<b>Correccional</b>	Imprisonment of 1 month & 1 day to 6 years/fine of not more than P6,000 but not less than P200	18 hours
<b>Afflictive or capital</b>	Imprisonment of 6 years & 1 day to 20 years/fine exceeding P6,000	36 hours

(RPC, Art. 125)



Use of active gear in municipal waters is penalized with an imprisonment of 2 years to 6 years, which falls under *correccional* penalties. The case must thus be filed within 18 hours.

### **delay in the delivery & arbitrary detention**



#### **What does “delivery” mean?**

**Delivery** of a person to judicial authorities is the filing of a complaint or information before the court. Physical delivery of the accused to the police station is not delivery; neither is the filing of the complaint with the Office of the Prosecutor for the purpose of inquest investigation. Therefore, the time it takes for the prosecutor to conduct an inquest and prepare the information must be considered in order to deliver the accused to the court within the required period. (See Prescriptive Periods in Chapter 6: Prosecution.)



Failure to comply with the requirement on delivery will make the detention officer or employee liable for delay in the delivery of detained persons to the proper judicial authorities under Article 125 of the RPC. **Arbitrary detention** is the deprivation **by a public officer** of the liberty of a person **without any legal ground** (*art. 124 of the RPC*). Thus, failure of an apprehending officer to file a case within the prescribed periods against a person arrested will make the officer liable for delay in delivery, whereas arresting and detaining one without any offence at all, is arbitrary detention. If the same is done by a private individual conducting citizen's arrest, the crime is illegal detention (*art. 267-268 of the RPC*).

The requirement, however, does not apply to arrests made by virtue of a warrant. In arrests made with a warrant, the person can be detained indefinitely.

#### **What if the offender is arrested on a Saturday, Sunday or holiday?**

On Saturdays and holidays, most prosecutor's offices have a prosecutor assigned to conduct the inquest investigation.

#### **What if no prosecutor is assigned to the municipality to conduct the inquest?**

The complaint, together with the affidavits, may be filed directly by the offended party or peace officer in the proper court. (*Rule 112, sec. 7*)

#### **What if the courts are not open, or far from the place of arrest?**

The hours during which the courts are closed are not to be counted (*People v. Acasio, 60 Phil. 1030*). Also, the means of communication, hour of arrest and other circumstances, such as the time of surrender, should be considered in determining the applicable period for delivery (*People v. Acosta, CA, 54 O.G. 4739*).



If the complaint simply cannot be filed in time, it is better to release the suspect to avoid violating Article 125. The complaint can then be filed directly in court as soon as possible, and a warrant of arrest secured after a Pl. (See Arrests Made with Warrant.)

## charges for resisting arrest

### What is the liability of persons resisting arrest?

The following criminal cases can be filed against a person who resists or hinders arrest, or abducts or assaults law enforcers:

Charge	Legal Bases	Applicability
Obstruction to fishery law enforcers	Section 115, RA 10654	Law enforcers of DA and DENR (e.g. deputized fish wardens)
Direct assault	Article 148, Revised Penal Code	Persons in authority or agents of persons in authority (e.g. mayors, heads of Departments, barangay captains and councilors [ <i>kagawad</i> ], PNP, PCG, <i>Bantay Dagat</i> )
Indirect assault	Article 149, Revised Penal Code	Persons coming to the aid of persons in authority or their agents (e.g. private individuals)
Resistance and disobedience to a person in authority or his agents	Article 151, Revised Penal Code	Persons in authority and their agents, deputized law enforcers
Kidnapping and serious illegal detention	Article 267, Revised Penal Code, as amended	Persons in authority and their agents, deputized law enforcers, private citizens
Slight illegal detention	Article 268, Revised Penal Code	Persons in authority and their agents, deputized law enforcers, private citizens

## **STRATEGIC LAWSUIT AGAINST PUBLIC PARTICIPATION IN CRIMINAL CASES (SLAPP)**

### What protection is provided by the rules for law enforcers subjected to harassment suits?

The rules adopted the concept and remedy known as Strategic Lawsuit Against Public Participation (SLAPP). This refers to an action filed with the intent to harass, vex, and exert undue pressure upon the law enforcer for his acts of enforcing environmental laws or protecting the environment. (Rules of Procedure for Environmental Cases Part II, Rule 6 & Part IV, Rule 19)

**How do you apply the SLAPP as remedy against a harassment suit?**

Upon the filing of an information in court and before arraignment, the accused may file a motion to dismiss on the ground that the criminal action is a SLAPP.

As a result of the filing of the defense of SLAPP, the proceedings on the main case may be deferred. The court is required to rule on the defense of SLAPP.

The court must rule on the defense of SLAPP within sixty (60) days. (Rules of Procedure for Environmental Cases Part II, Rule 6 & Part IV, Rule 19)



**TIP:** You may raise the defense of SLAPP even at the prosecutor’s office so that the prosecutor conducting the investigation will know that the complaint is filed with the intent to harass upon the law enforcer for his acts of enforcing environmental laws or protecting the environment.

**CUSTODIAL INVESTIGATION**



**Custodial investigation** refers to questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.



In *People v. Bolanos (211 SCRA 262, 1992)*, while the accused was being brought to the police station on board a police jeep, he was asked by the police if he killed the victim. The accused admitted the crime. The Supreme Court ruled that while on board the police jeep, the accused was already under custodial investigation.

**When does questioning become custodial investigation?**

The investigation ceases to be a general inquiry when questioning focuses on a specific suspect of whom the police ask questions that tend to elicit statements that can be used to prosecute the suspect. (*People v. de la Cruz G.R. No. 118866-68, 17 September 1997*)



General inquiry:	Questions that may elicit incriminatory statements:
What is your name? Where are you from?	Where did you catch the fish? What is the GT of your boat?

**Custodial Investigation Rights**

A person under custodial investigation must be meaningfully informed of the Miranda rights, which are:

- Right to remain silent
- Right to a counsel of his own choice
- Right to be furnished an independent counsel by the State if he cannot afford one

- Right to be informed of these rights



These rights must be explained to the accused in a language or dialect understood by him.



Section 4 of RA No. 7438 imposes a maximum penalty of 10 years imprisonment to an arresting or investigating officer who fails to warn the accused of his rights.

### **Why is it important to inform the person under custodial investigation of his rights?**

If an accused makes an admission or confession during custodial investigation, his admission is not admissible in any proceeding if he was not informed of his rights. Moreover, to be admissible, the admission must be in writing, signed by him in the presence of his counsel. The written admission must state that the same was made in the presence of the counsel of the arrested person. (*RA 7438, sec. 2 [d]*)

The requirement, however, does not apply to voluntary confessions made to a person other than the investigating officer (*Arroyo v. CA, 203 SCRA 750, 1991*). These include admissions or confessions given to civilians (*People v. Cabiles, 248 SCRA 199, 1998*) or media (*People v. Bernardo, 220 SCRA 31*) and *res gestae* statements (*People v. Dy, 158 SCRA 111, 1998*).



***Res gestae*** statements are spontaneous statements made in connection with a startling occurrence (*People v. Nartea, 74 Phil 10*). e.g. A police officer was asked by Mr. A if the police station is still open. The police answered yes and asked him why he wanted to know. Mr. A confessed that he accidentally killed B when he was fishing using dynamite.



### **How is the right to a lawyer validly waived?**

The waiver must be in writing and in the presence of counsel (*People v. Cabiles, 248 SCRA 199, 1998*).

### **What if he can't afford the services of his own counsel?**



If such person cannot afford the services of his own counsel, he must be provided with competent and independent counsel by the investigating officer (*sec. 2b, RA 7438*). However, lawyers engaged by law enforcers generally do not satisfy the standard of independent and competent counsel because the relationship of the two has often been described by the High Court as symbiotic (*People vs Saguid, CA-GR. CR-H.C. no. 00557*). Thus, counsel must be secured by the accused himself, his relatives or by the court (*ibid.*).

### **To whom should a person make an admission if he has validly waived his right to a lawyer?**

The person may make a valid waiver and/or admission in the

presence of any of his parents, older siblings, spouse, municipal mayor, municipal judge, district school supervisor, or priest or minister of the gospel (*RA 7438, sec. 2*).

### What about admissions made during the PI?



PI is no longer part of custodial investigation. The prosecutors or judges who conduct it are not law enforcers. It would be best to have the admission or confession of the offender put down in writing if it is not being recorded by the prosecutor or judge conducting the PI.



One case in point is an experience in Davao del Sur where the accused made an admission during the PI. When the resolution came out, the investigating judge dismissed the case for lack of probable cause. Because the admission was not made in writing, the law enforcers had nothing to show for the alleged admission.

### Bail



When a person is detained, he may be allowed provisional liberty by posting bail. **Bail** is the security given for the release of a person, on the condition that he will appear before the court whenever required. Bail may be given in the form of cash deposit, corporate surety, property bond or recognizance.

### Is right to bail available for the accused under the new Rules of Procedure for Environmental Cases?

Yes. Accused can file bail in the same manner as with other criminal cases

### When is bail available?

A detained person has the right to apply for bail, but whether this is granted or not depends on certain conditions.

#### 1. In the following instances, **bail is a matter of right:**

- Before and after conviction by the MTC, MCTC or MTC in cities (MTCC)
- Before conviction by the RTC of an offense not punishable by death, *reclusion perpetua* or life imprisonment (*Rule 114, sec. 4*)



In these cases, the prosecutor cannot oppose or present evidence against the granting of bail.

#### 2. In the following instances, **bail may or may not be granted to the person detained:**

- Before conviction of a capital offense or a crime punishable by death, *reclusion perpetua* or life imprisonment, when the evidence of guilt is strong
- Upon conviction by the RTC of an offense where the penalty

imposed is imprisonment exceeding 6 years but not more than 20 years (*Rule 114, sec. 5*)



Under these circumstances, bail is discretionary. The prosecutor has the right to present evidence for the denial of bail.

### **When may bail be denied or cancelled?**

If the accused has been convicted and the imposed penalty is imprisonment exceeding 6 years, bail may be denied if the prosecution is able to show the following or other similar circumstances:

- The accused is a recidivist, quasi-recidivist or habitual delinquent, or has committed the crime aggravated by the circumstance of reiteration.
- The accused is found to have previously escaped from legal confinement, evaded sentence or has violated the condition of his bail without valid justification.
- The accused is found to have committed the offense while on probation, parole or under conditional pardon.
- The circumstances of the accused or his case indicate the probability of flight if released on bail.
- There is undue risk that during the pendency of the appeal, the accused may commit another crime.

(*Rule 114, sec. 5*)

### **What are the special conditions for the grant of bail under the new Rules of Procedure for Environmental Cases?**

1. Before the grant of bail, the judge must read the information in a language known to and understood by the accused;
2. The judge shall require the accused to sign a written undertaking, which contains the following:
  - That accused will appear during arraignment and whenever required by the court;
  - That if accused fails to appear without justification, to waive the reading of the information, to authorize the court to enter a plea of not guilty in his behalf and for the court to proceed with the trial in absentia. (Rules of Procedure for Environmental Cases, Part V, Rule 14, Section 2)

## **SEARCH AND SEIZURE**

Searches and seizures are conducted by law enforcers to obtain evidence. As a general rule, any evidence obtained without a search warrant is inadmissible.

### **Search and Seizure with Warrant**



A **search warrant** is an order in writing issued in the name of the People of the Philippines and signed by the judge. It is directed to a peace

officer, commanding him to search for personal properties described in the warrant and to bring them before the court. (*Rule 126, sec. 1*)

### **What documents are required in procuring a search warrant?**

The affidavits of the complainant and/or his witnesses are needed. The judge issues the warrant if he determines that there is probable cause after he examines the complainant and the witnesses. (*Rule 126, sec. 4 & 5*)

### **Where is the application for a search warrant filed?**

- Any court within whose territorial jurisdiction the crime was committed
- For compelling reasons, any court within the judicial region where the crime was committed, if the place of the commission of the crime is known, or any court within the region where the warrant will be enforced  
(*Rule 126, sec. 2*)



If *muro-ami* was committed in Puerto Princesa, Palawan, the RTC in Puerto Princesa is the appropriate court. However, if the warrant is to be enforced in Santander, Cebu, then the application may also be filed there even if the *muro-ami* was committed in Puerto Princesa, provided there is a compelling reason.



If an information has already been filed, the application for the search warrant can only be made in the court where the criminal action is pending.

### **What makes a search warrant valid?**

- Existence of probable cause
- Judge has examined complainant and the witnesses under oath
- Issuance is determined by the judge himself
- A particular description of the place to be searched and things to be seized is provided
- Issuance is in connection with one specific offense  
(*Rule 126, sec. 4*)

### **When does a search warrant expire?**



A search warrant is valid only for 10 days, after which it becomes void. Search and seized items under a void warrant are inadmissible. (*Rule 126, sec. 9*)

### **What must be remembered when conducting searches and seizures?**



- Searches are generally made only in the daytime, unless the warrant states that the search may be made at any time of the day or night  
(*Rule 126, sec. 9*).
- Doors or windows may be broken by the officer only if he is refused




admittance to the place to be searched (*Rule 126, sec. 7*).

- The search warrant must particularly describe the places to be searched and the things to be seized. Thus the officer armed with the warrant should go only to the place stated in the warrant, and seize only the thing particularly described in the warrant. (*Constitution, Art. II, sec. 2*)

## countersuits

### What must be done to prevent countersuits?

- 
- No search of house, room or any other premises (e.g. fishing vessel) should be made without the presence of the lawful occupant or any member of his family or, in the absence of the latter, two witnesses of sufficient age and discretion residing in the same locality. (*Rule 126, sec. 8*) This is to negate the defense of **planting of evidence**.
  - A detailed receipt of the seized property must be given to the lawful occupant of the premises. In the absence of the occupant, the receipt must be left in the premises, in the presence of two witnesses of sufficient age and discretion. If possible, take pictures of the act of giving the receipt for seized property or leaving the same in the premises. This is to avoid countersuits of **robbery or theft**.
  - The occupant must not be asked to sign the receipt. In *Gutang v. People* (335 SCRA 479, 2000), the Court declared that a receipt of property seized signed by an accused without a counsel is considered an **uncounseled confession**. The entire document was excluded as evidence. Witnesses must instead be asked to sign the receipt, with the occupant's name stated in the document.
  - An accurate description of the condition and quantity of the items seized must be indicated to avoid countersuits of robbery, theft or **civil suit for damages**.
  - The officer must immediately deliver the property seized to the judge who issued the warrant, together with the inventory of seized items duly verified under oath.
  - Ten days after the issuance of the warrant, the officer must make a return to the judge if the warrant was not used. Failure to either make a return or deliver the seized items within 10 days constitutes **contempt of court**. (*Rule 126, sec. 12*)
  - Any countersuit filed can be opposed with a claim of presumption of regularity in the performance of official duty, and in the absence of any motive to falsely impute a crime, the presumption shall prevail (*People vs. Tuason, GR no. 175783, September 3, 2007*)

## Warrantless Search and Seizure

Searches and seizures may be conducted without warrant under the following exceptional circumstances, provided there is probable cause.

### 1. Search incidental to a lawful arrest

A person lawfully arrested by officers with or without a warrant may be searched for dangerous weapons, or anything that may have been used in or that may constitute proof of the commission of an offense (*Rules of Court, Rule 126, sec. 13*). In this case, the search must be made during the arrest, as the search is only “incidental” to the arrest (*Nolasco v. Cruz Pano, 139 SCRA 152, 1985*). (e.g. fine- mesh nets, dynamite, blasting caps or the fishing vessel)



The search may extend beyond the person arrested to include the premises or surroundings under his immediate control (*People v. Musa, 217 SCRA 597*). In the case of fishing vessels, “premises under immediate control” would mean the entire vessel, considering that in fishery offenses, the vessel itself is an essential tool in committing the offense.



### 2. Search of moving motor vehicle

Motor vehicles include fishing vessels and boats breaching fishery laws because these vessels are normally powered by high-speed engines that enable them to elude arrest by ships of the Philippine Navy, PCG or other government authorities (*Hizon v. CA, G.R. No. 119619, 13 December 1996*). However, there must be probable cause for searching the vessel. In its most recent pronouncement, the High Court ruled that a tip from an informer as to the complicity of a vehicle or vessel to an offence is sufficient to satisfy the standard of probable cause authorizing a warrantless search of the same (*People vs. Tuason, GR no. 175783, September 3, 2007*).

### 3. Customs search

Seizure of dutiable or contraband items may be made by officers exercising authority under customs laws if there is probable cause. Probable cause may be based on a mere report. Vessels, warehouses, stores and enclosures may be searched, but not residences.

### 4. Seizure of evidence in plain view

Seizures may be made when prohibited articles are “open to the eye and hand”, or when a police officer accidentally comes upon an incriminating object (*People v. Musa, 217 SCRA 597*). An object is incriminating if it is a tool used in the commission of the crime, a contraband or otherwise subject to seizure.



- Endangered species aboard a vessel can be seized by law enforcers if these are discovered while a regular inspection is being conducted.
- Fish wardens see a compressor installed in a boat in a municipality where mere possession of a compressor is *prima facie* evidence of cyanide fishing.

### 5. **Consented warrantless search**

When the officers conducting the search have no right to do so, but the person subject to the search, or occupying the premises to be searched, consents to the search, then the person searched has waived his rights. For a valid waiver, the following must concur:

- The right exists
- The person involved had knowledge of the existence of such right
- The person had actual intention to relinquish such right  
(*de Garcia v. Locsin*, 65 Phil 689)



It is best to have the waiver written down to negate charges of lack of consent should the person later on deny that he consented to the search. Include two witnesses who can testify to the valid waiver, in case the accused later on alleges that he was pressured by police officers to give his consent to the search.

### 6. **Stop and frisk**

Stop and frisk is an act of a law enforcer to stop a person on the street, interrogate him and pat him for weapons or contraband. For this exception to apply, the person to be searched must be acting suspiciously. In *Manalili v. CA* (280 SCRA 400), policepersons were conducting surveillance based on information that the Kalookan Cemetery was a haven for drug addicts when they chanced upon a man who appeared to be high on drugs. He had reddish eyes and swayed when he walked. He tried to avoid the police and resisted when asked what he was holding in his hands. The Supreme Court ruled that such actuations were suspicious.

### **Who may conduct warrantless searches and seizures?**

Law enforcers may conduct warrantless searches and seizures. Civilians may do so only if the search and seizure is incidental to a valid citizen's arrest.

### **What may be seized?**

- Subject matter of the offense
- Stolen or embezzled and other proceeds or fruits of the offense
- Objects used or intended to be used as a means of committing an offense (e.g. fishing vessels, dive mask, compressor, blasting caps, nets, fishery species)



## **CUSTODY AND DISPOSITION OF SEIZED ITEMS**

### **What rules govern the custody and disposition of seized items, equipment, paraphernalia, conveyances and instruments during the pendency of the case in court?**

If there are rules promulgated by the concerned government agency

in the custody and disposition of seized items, these rules shall govern. (Rules of Procedure for Environmental Cases, Part V Rule 12, Section 1)

**If no rule is promulgated by the concerned government agency, how should the custody and disposition be done?**

The following procedure shall be observed:

1. INVENTORY by apprehending officer;
2. REPORT by apprehending officer submitted to:
  - a. If with search warrant - court that issued the search warrant;
  - b. In case of warrantless arrest - to public prosecutor (including Inventory Report, Compliance Report, Photographs, Representative samples, other pertinent documents);
3. MOTION by any interested party for auction of seized items; FIXING of BID PRICE by judge, after hearing and based on recommendations by government agency;
4. NOTICE of auction – to the accused, person from whom items were seized, owner, government agency; POSTING of notice in 3 conspicuous in place where items seized;
5. AUCTION SALE conducted by sheriff
6. PROCEEDS held in trust and deposited with government depository bank for disposition according to judgment. (Rules of Procedure for Environmental Cases, Part V, Rule 21, Section 2)

**liability of custodians**

**What kind of diligence must a custodian exercise over seized articles?**

Since the law is silent, custodians need to exercise only ordinary diligence. Thus, a custodian's responsibility is to exercise ordinary care and vigilance like a good father of a family, taking into consideration the nature of the articles and circumstances of persons, time and place (*Baer Sr. & Co. v. Compañía Marítima*, 6 Phil. 218).

**Are custodians liable if seized articles or vessels are lost while in the custody of the law?**

Custodians are liable for malversation of public property (*RPC, Art. 217*) if the seized articles are lost due to inexcusable negligence amounting to malice or fraud (*Gregorio, 1997*).

**Are custodians civilly liable when seized articles are damaged while in their custody?**

Custodians are liable only when negligence is proved. This is based on torts, a civil case where the owner of the seized articles and the custodian have no pre-existing contract. If the owner alleges damage, he must prove negligence on the part of the custodian.



### Are custodians liable if the fishing vessel is damaged by a storm?


No. By principle of law, no one is liable for damages brought about by *force majeure* or acts of God.

### What is the remedy if public officers refuse to take custody of seized articles from apprehending officers who cannot take the articles with them?


A criminal case of Dereliction of Duty may be filed against public officers who unreasonably refuse to take custody of seized articles in order to assist apprehending officers who out of practicality, could not take the seized items (such as boats, vessels, nets, sacks of pebbles or mangrove timber) with them. The same is a violation of section 208 of the Revised Penal Code.

## affidavit of undertaking

### Is an affidavit of undertaking valid?




When what are involved are seized items, the Revised Rules on Criminal Procedure are silent on the facility of accepting affidavits of undertaking. In fact, the High Court, in passing on a case squarely on this issue, admonished a lower court judge as being **grossly ignorant of the law** when the latter ordered the release of confiscated commercial fishing nets on an undertaking to produce the same when needed in court. The High Court also imposed on the judge a fine of P10,000.00 with a warning that another infraction would be dealt with severely (*Senson vs. Judge Pangilinan, MTC Puerto Princesa City, A.M. no. MTJ-02-1430, September 8, 2003*).



Prosecutors are advised, therefore, to oppose orders from the judge releasing seized items, since these are critical evidence and their integrity should be preserved. There have been cases where fine-mesh nets were replaced. During PI, the prosecutors should also be circumspect in releasing seized items back to owners. The courts and prosecutors should instead have the seized items placed in the custody of the PNP-Maritime, PCG, Philippine Navy, or other government agencies or private institutions that have adequate facilities.

Fishing vessels should **not** be released to the owner if the penalty of the offense includes confiscation of vessel. Otherwise, the possibility of its being returned to the court would be difficult. If the penalty does not include confiscation, it is sufficient to take a picture of the vessel. But if there are available berthing facilities, the vessel should be impounded.



If the confiscated property is lost or misappropriated while in the custody of the owner who signed the affidavit of undertaking, he may be charged with malversation of public property (*RPC, Art. 217*).

### Will replevin prosper in cases of seized articles in the custody of law enforcement officers or local government officials?

No. In a **replevin** case, the plaintiff's cause of action has to be grounded, among others, on the fact that:

- The property is wrongfully detained by the defendant (the custodian of the seized property) and
- The property has not been placed under *custodia legis* (Rule 60, sec. 2 [b] & [c]).

Since lawfully seized fishing gear, superlights and vessels are under *custodia legis* and not wrongfully detained, the plaintiff has no cause of action against the defendant. It is basic that if the property is in *custodia legis*, a replevin suit will not prosper for the owner's recovery of the item (*Pagkalinawan v. Gomez*, 21 SCRA 1275).

**Replevin** is the return to—or recovery by—a person of goods or chattels claimed to be wrongfully detained. This is granted, however, on the condition that the person gives an assurance to try the matter in court, and to return the goods if the claim of unlawful detention is disproved. (*Tillson v. Court of Appeals*, 197 SCRA 587). **Unlawful detention** is the keeping of property by a person without any pretense of authority or right.

An item is in **custodia legis** when it is shown that it has been, and is subjected to, the official custody of a judicial or executive officer. Property lawfully seized with a search warrant or under a valid warrantless search and seizure is also considered in *custodia legis*. (*Bagalihog v. Fernandez*, 198 SCRA 614).

### May administrative bodies or courts other than the court of jurisdiction issue a writ of replevin?

No. The jurisdiction acquired by a court over vessels through the fling of an information charging fishery violations cannot be interfered with by a co-equal and coordinate court. Only the court of jurisdiction can order the release of the vessel. In *Roldan, Jr. v. Arca*, 65 SCRA 336, not even the Agriculture & Natural Resources Secretary or the Fisheries Commissioner could direct that the fishing boat be turned over to any person or agency without risking contempt of court. It does not matter that the vessel may later be found within the territorial jurisdiction of another court. Once vested, jurisdiction attaches.

The court issues the writ of replevin *ex parte*, or without notice to the defendant. Thus, the defendant (e.g., BFAR field staff, police officers, LGU officials and community leaders) learn of the case only when the sheriff serves a copy of the writ with the intention of taking the property into his possession. Hence, the defendant is caught by surprise and is unable to make any legal move to prevent or at least delay the taking.

### What is the countermeasure against a writ of replevin?

After the writ of replevin is served upon the person/s having custody, the defendant must immediately file an Omnibus Motion to Dismiss and to

Quash Writ of Replevin. The Omnibus Motion is based on the ground that the complaint does not state a cause of action.

**What are the remedies when the motion to quash the writ of replevin is denied?**

The defendant should file with the Court of Appeals a petition for certiorari and prohibition under Rule 65 of the Rules of Court. The petition, which must be filed within 60 days from receipt of the order of denial, should include an application for a temporary restraining order/preliminary injunction to prevent the trial court from further proceeding with the case during the pendency of the petition.



Likewise, as the property shall have been delivered to the plaintiff at the time the petition is filed, there could also be a prayer for a preliminary mandatory injunction directing the trial court to return the property to the custody of the defendant. Should the Court of Appeals dismiss the petition, the defendant has a final remedy—a petition for review before the Supreme Court, within 30 days from receipt of the Court of Appeals' decision.

# CHAPTER 5

## Evidence



**S**uccessful prosecution of coastal law violations is often hampered by the dismissal of actions at the preliminary investigation stage or after trial—an obstacle often traced to lack of evidence linking the offender to the crime, or even failure to prove that the alleged offense was indeed committed.

Evidence is needed to establish truth and prove facts before the courts and quasi-judicial bodies. Knowing what evidence to present at which time and in what manner can make or break a criminal case.

All Rules cited are from the Revised Rules of Court, unless otherwise indicated.



### **KINDS OF EVIDENCE**

Evidence presented in court may be classified as:



#### **1. Object or Real Evidence**

Evidence that consists of tangible things exhibited or demonstrated either:

- in open court for examination or viewing
- in an ocular inspection, or
- at a place designated by the court for its view or observation of an exhibition, experiment or demonstration

*(Rule 130, sec. 1)*



(e.g. fish samples, fishing gear, fishing vessels, mangrove area converted into a fishpond, or the part of the coastline affected by aquatic pollution)



#### **2. Documentary Evidence**

Evidence that may be:

- supplied by written instruments
- documents consisting of writings
- any material containing letters, words, numbers, figures, symbols, or
- other modes of written expressions offered as proof of their contents

*(Rule 130, sec. 2)*



(e.g. permits and licenses, inventory and seizure receipts, or certifications from government agencies)





### 3. Testimonial Evidence

Evidence submitted to the court through the testimony or deposition of a witness (e.g. testimony of members of the apprehending team, or depositions of witnesses)



#### Weight of Evidence

Evidence is weighed according to quality rather than quantity. Generally speaking, the weight of evidence is not a question of mathematics, but of its ***effect in inducing belief***.

Generally, the court determines the weight of evidence by evaluating:

- the power of one side to have produced, and the power of the other side to have contradicted, the proof
- the reasonableness of the given evidence in producing the proof
- the surrounding circumstances and the inherent probabilities In criminal cases, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt.



Proof **beyond reasonable doubt** does not mean a degree of proof that, excluding possibility of error, produces absolute certainty. What is required is moral certainty, or the degree of proof that would convince an unprejudiced mind of the guilt of the accused. (*Rule 133, sec. 2*)

However, before guilt can be proven, the culpability of the accused for the offense charged must first be established.

#### How is culpability established?

The fact that the offense was indeed committed is proved either through direct evidence or circumstantial evidence.



#### 1. Direct Evidence

Direct evidence is evidence that, if believed, proves the existence of the fact in issue without need for any presumption. e.g. A witness deposes that he saw X throw an explosive device to sea, which exploded, killing fish

#### 2. Circumstantial Evidence

Circumstantial evidence is evidence that, without directly proving the existence of a fact, gives rise to a logical conclusion that such fact does exist.

Circumstantial evidence is sufficient for conviction in criminal cases if:

- there is more than one circumstance leading to the conclusion of the fact
- the conclusions or inferences are derived from facts duly proven

- the combination of all the evidence produces conviction beyond reasonable doubt.

(Rule 113, sec. 4)



e.g. Fish are found dead along a pier. X was earlier seen dumping a drum of liquid substances into the water, and is found in possession of an empty drum. Tests of the liquid found in the drum indicate that it is the same liquid that caused the death of the fish.

### What is the difference between direct and circumstantial evidence?

In direct evidence, the witness testifies directly of his own knowledge on the main facts to be proved. In circumstantial evidence, proof is given of facts and circumstances from which the court may reasonably infer other connected facts, which according to common human experience could logically be concluded from the proven facts.

### Admissibility of Evidence

A piece of evidence is relevant to an alleged fact when it tends to prove or disprove the fact in issue. It becomes admissible in court when it is both competent and material to the fact in issue (*Rule 130*).



Evidence is **competent** when it is not excluded by the Rules on Evidence, statutes, or the Constitution. It is **material** when it is **directed** to prove the fact in issue, **as determined by the rules** of substantive law and proceedings.

### OFFER OF EVIDENCE

The court will not consider evidence that has not been formally offered or presented. Testimonial evidence must be offered at the time the witness is called to testify. Documentary and object evidence are offered after the presentation of a party's testimonial evidence. This offer is done orally, unless the court allows the offer to be done in writing. The purpose for which the evidence is offered must also be specified. (*Rule 132, sec. 33 & 34*)



A transcript of the record of the entire trial or hearing, usually called the transcript of stenographic notes (TSN) and certified by the official stenographer, is deemed *prima facie* a correct statement of such proceedings (*Rule 132, sec. 2*). Make it a practice to obtain copies of the TSN, because this can be used as evidence for or against the prosecution, especially for appeals or motions for re-investigation.

### Object or Real Evidence

When an object is relevant to a fact in issue, it may be exhibited to, examined or viewed by the court. The presentation of object evidence

may be done as part of the testimony of the person who seized the object evidence, or who has custody of it. Object evidence must be authenticated, either by identification by witnesses, or admission by the parties. (*Rule 130, sec. 1*)

### **Documentary Evidence**

As a general rule, when the subject of inquiry is the contents of a document, no evidence may be admissible other than the original document itself.

### **What are considered as originals?**

Documents considered as originals are those:

- whose contents are the subject of inquiry
- executed in two or more copies at about the same time, with identical contents
- entries made in the regular course of business, one being copied from another, at or near the time of the transaction to which they refer

### **What if the original is not available?**

Exceptions to the general rule may be accepted in the following cases:

- when the original has been lost or destroyed without bad faith
- when the original is in the custody of the other party, who fails to produce it after reasonable notice
- when the original consists of numerous accounts or documents that cannot be examined by the court without great loss of time, and if the fact to be established from them is the general result of the whole
- when the original is a public record in the custody of a public officer or is recorded in a public office.

(*Rule 130, sec. 3*)

### **In these cases, what may be presented in lieu of the original?**

When the original document cannot be offered in evidence, its contents may be proved by:

- a copy
- a recital of its contents in some authentic document
- the testimony of witnesses.



These may be presented so long as proof of the original's execution or existence, and the cause of its unavailability are provided.

## public and private documents

### What are public and private documents?

For purposes of presentation in evidence, documents are either public or private. **Public documents** are:

- public records of official acts
- notarized documents
- public records of private documents required to be entered as public records.

All other writings are private. (*Rule 132, sec. 20*)

### Why is it important to distinguish between public and private documents?

Entries in public records made in the performance of a duty by a public officer are *prima facie* evidence of the facts stated in the document. All other public documents are evidence of:

- the facts that gave rise to their execution, and
- the date of their execution. (*Rule 132, sec. 23*)

## presenting photos as evidence

### How are photographs, videos and similar evidence be made admissible in Court?

Photographs, videos and similar evidence may be made admissible in court when authenticated by:

- a) the person who took the same;
  - b) by some other person present when said evidence was taken; or
  - c) by any other person competent to testify on the accuracy thereof.
- (Rules of Procedure for Environmental Cases, Part V, Rule 21, Section 1)

The admissibility of a photo is determined by its accuracy in portraying the scene of the crime. The correctness of the photo as a faithful representation of the object portrayed can be proved *prima facie*, therefore, either by the person who took it or by other competent witnesses who can testify to its exactness and accuracy (*Sison v. People, 250 SCRA 58*). These witnesses may be persons who are in the photo, or members of the apprehending team.

## Testimonial Evidence

As a general rule, witnesses may testify only on matters that they themselves have witnessed or observed. Testimony given on matters not directly observed by a witness is considered as hearsay, and is not admissible.

### **Are there exceptions to the general rule?**

Yes. Testimony on matters not directly observed by a witness is allowed in cases when:

- the person having direct knowledge of the matter communicated the relevant information to the witness just before the person died
- the offended party has previously declared in speech or in writing a statement from which the witness can conclude a fact that is against a party's interest
- the statement was made during, or immediately after or before, a startling occurrence
- the testimony is based on entries in official records
- the person having direct knowledge is deceased or is unable to testify, but the testimony is based on entries made in the course of his regular duty
- the testimony is the opinion of an expert witness
- commonly known facts on a party's reputation exist prior to the case
- the person deceased or unable to testify has previously deposed on the same matter involving the same parties at a former proceeding (*Rule 130*)

### **Who can testify as a witness?**

As a general rule, any person can be a witness, provided that he has the capacity to perceive, and the capacity to make his perception known to others.

### **What factors may render a witness incapable of testifying?**

The testimony of a witness *may* be excluded by reason of the witness':

- mental immaturity or insanity
  - marriage to one of the parties
  - communication with a party made in confidence as his legal counsel, doctor (or other medical professional), minister or priest, or as a public official protecting the public interest
  - direct filial relationship with a party
- (*Rule 130*)

### **How is the witness examined?**

Witnesses presented in a trial or hearing are examined in open court, and under oath or affirmation. As a general rule, the answers of witnesses are given orally, unless the witness is incapacitated to speak, or the question calls for a different mode of answer. (*Rule 132, sec. 1*)

The order in which an individual witness may be examined is as follows:

1. direct examination by the proponent
2. cross-examination by the opposing counsel
3. re-direct examination by the proponent
4. re-cross-examination by the opposing counsel. (*Rule 132, sec. 4*)

### **What are the rights of a witness?**

A witness must answer the questions asked of him, even if his answer may tend to establish a claim against him. However, it is the right of a witness:

- to be protected from irrelevant, improper or insulting questions, and from a harsh or insulting demeanor
- not to be detained longer than the interests of justice require
- to be examined only on matters pertinent to the issue
- not to give answers that will tend to subject him to a penalty for an offense
- not to give an answer that will tend to degrade his reputation, unless his reputation is the fact in issue. However, a witness must answer to the fact of his previous final conviction for an offense.

(*Rule 132, sec. 3*)

### **How may a witness be impeached?**

A witness may be impeached by the party whom he was called against by:

- contradictory evidence
- evidence that his general reputation for truth, honesty, or integrity is bad
- evidence that he has made at other times that is inconsistent with his present testimony.

(*Rule 132, sec. 11*)




On any trial or hearing, the judge may exclude from the court any witness not under examination at that time, to prevent him from hearing the testimony of other witnesses. The judge may also order witnesses to be kept separate and prevented from conversing with one another until all have been examined. (*Rule 132, sec. 15*)

### **ESTABLISHING CRIMINAL LIABILITY**

The evidence necessary to establish criminal liability depends on the particular elements of an offense. The tables below contain suggested evidence that law enforcers and prosecutors can use to prove the existence of the elements of an offense (see Chapter 2: Prohibited Acts and Penalties). The source is also indicated to facilitate the gathering of evidence.

The list is not all-inclusive; alternative methods to establish culpability are only limited by the law enforcer’s or prosecutor’s creativity. Also, the evidence listed below need not be presented at once during the preliminary investigation or inquest proceedings. What is necessary at the preliminary investigation stage is the evidence sufficient to establish probable cause that the offense was committed by the accused.

The prohibitions/regulations in this section are organized in the same way as Chapter 2.


 Annex 1: Preservation of Evidence provides reminders and tips on how to preserve some of the evidence usually required in court.

**Based on Fishing Method Employed**

For offenses concerned mainly with illegal fishing gear or methods, it is important that the objects used in committing the crime are seized, identified by BFAR personnel and labeled accordingly. The objects or gear must be presented as evidence in court; if impractical or physically impossible, a photo of the gear may be presented instead. Generally, affidavits by witnesses must also describe the gear and how it was used, to clearly illustrate that the gear is indeed active or—if not active—destructive to the environment.

**1. Section 92, paragraph (a) - Actual Use of Explosives, Noxious or Poisonous Substances and/or Electricity for Illegal Fishing**

Suggested Evidence	Source
Affidavit indicating: → use of explosives, noxious or poisonous substances or electricity in fishing or → possession of explosives, noxious substances or electrofishing devices and fish catch ( <i>People v. Vergara</i> , 270 SCRA 624)	Members of the apprehending team and/ or other witnesses
Apprehension report with inventory and seizure receipt	Team leader of apprehending team
Fish samples	Custodial officer
Results of fish examination	Fish examiner
If recovered, samples of explosives, noxious or poisonous substances, or electrofishing devices	Custodial officer

 Annex 1: Preservation of Evidence provides guidelines on preserving fish samples.

## 2. Section 92, paragraph (b) - Mere Possession of Explosives, Noxious or Poisonous Substances for Illegal Fishing

Suggested Evidence	Source
Affidavit showing possession by accused and proof of intent to use in illegal fishing	Apprehending team and other witnesses
Apprehension report with inventory and seizure receipt	Investigating officer and/or apprehending team
Samples of explosives, poisonous substances or electrofishing devices	Property custodian or apprehending team
Results of examination of sample	Examiner
Or certification that materials are noxious substances	DENR/BFAR/other competent authority
Or identification that confiscated gear is used for illegal fishing	BFAR/municipal agricultural officer (MAO)/ other competent authority



When the explosives, noxious or poisonous substances and/or electrofishing devices are found on board any fishing vessel, or in possession of any fisherfolk, boat operator, fishing boat official or fish worker, the discovery is *prima facie* evidence that such substances or devices were used for illegal fishing.

## 3. Section 93 - Use of Fine Mesh Net

Suggested Evidence	Source
Affidavit indicating actual use	Apprehending team and other witnesses
Apprehension report with inventory and seizure receipt	Investigating officer and/or apprehending team
Fishing net, a part of the net, or a picture of the net indicating mesh size	Apprehending team
Identification of nets as fine-meshed	BFAR/MAO/other competent authority
Fish samples	Property custodian
Identification of species	BFAR/MAO/other competent authority



**4. Section 95 - Use of Active Gear in Municipal Waters, Bays and Other Fishery Management Areas**

Suggested Evidence	Source
Affidavit indicating actual use and location	Apprehending team
Photo of nets in the water, with fish, to indicate actual use and photo of boat/ vessel with mainland as background to indicate location (within municipal waters)*	Apprehending team
Apprehension report with inventory and seizure receipt	Investigating officer and/ or apprehending team
Gear used or picture of gear used	Property custodian or apprehending team
Certification of gear as active gear	BFAR/MAO/other competent authority
Documentary/testimonial evidence indicating position of vessel	Apprehending team and/ or other witnesses

*\*This is to belie any averment by the accused that they were not fishing and were merely cleaning their nets, which is a common excuse given by violators*

**5. Section 97 Paragraph (a) - Ban on *Muro-ami* and Any of Its Variations**

Suggested Evidence	Source
Affidavit indicating fishing activity and nature of operations	Apprehending team and other witnesses
Photo of nets in the water, with fish, to indicate actual use	Apprehending team
Apprehension report with inventory and seizure receipt	Investigating officer and/ or apprehending team
Inventory of crew	Apprehending team
Certification as to the nature of fishery operations or gear use	BFAR/MAO/other competent authority
Debris from nets or pictures of debris tangled in nets	Property custodian and/ or apprehending team
Identification of debris	BFAR/MAO/other competent authority

## 6. Section 97 (a) - Ban on Gear and Method which Destroy Coral Reefs, Seagrass Beds and Other Fishery/Marine Life Habitats

Suggested Evidence	Source
Affidavit indicating fishing activity and nature of operations	Apprehending team and other witnesses
Apprehension report with inventory and seizure receipt	Investigating officer and/or apprehending team
Inventory of crew	Apprehending team
Certification as to the nature of fishery operations or gear use	BFAR/MAO/other competent authority
Debris from nets or pictures of debris tangled in nets	Property custodian and/or apprehending team
Identification of debris	BFAR/MAO/other competent authority

## 7. Section 98 - Illegal Use of Superlight or Fishing Light Attractor within Municipal Waters

Suggested Evidence	Source
Affidavit indicating actual use	Apprehending team or other witnesses
Photo of nets in the water, with fish, to indicate actual use and photo of boat/vessel with mainland as background to indicate location (within municipal waters)*	Apprehending team
Apprehension report with inventory and seizure receipt	Investigating officer and/or apprehending team
Bulbs or pictures of bulbs indicating the components of a superlight (halogen or metal halide, ballast, regulator, etc.)	Custodial officer or apprehending team
Certification of bulbs as superlights or fishing light attractor	BFAR/other competent authority
Documentary/testimonial evidence indicating position of vessel	Apprehending team

*\*When mainland photographed at night as background cannot be seen due to the darkness, wait until the dawn breaks, as this is the time when the nets are raised as well.*

8. Section 98 - Illegal Use of Superlight or Fishing Light Attractor Outside Municipal Waters

Suggested Evidence	Source
Affidavit indicating actual use	Apprehending team
Apprehension report with inventory and seizure receipt	Investigating officer and apprehending team
Bulbs or pictures of bulbs indicating wattage	Property custodian or apprehending team or other witnesses
Certification of bulbs as superlights or fishing light attractor	BFAR/other competent authority
Documentary/testimonial evidence indicating position of vessel	Apprehending team and/or other witnesses

Based on Location of Activity

The position of the fishing vessel, whether within municipal waters or not, is an element and necessary piece of evidence common to the offenses in this category. Failure to establish the position of the vessel is fatal to the charge.



The position of a vessel can be established with the use of a compass and a map, a GPS device, or even through reckoning from established and visible landmarks. If there is a lack of technical skill in determining distance, other forms of measurement—such as the travel time from the shore, or a photo taken of the vessel’s radarscope—may also be used and validated later. The vessel’s position must be immediately established upon boarding to avoid discrepancies caused by the vessel’s drifting or deliberate movement to another area. It is recommended that the position of the vessel be plotted in a navigational chart during the apprehension to facilitate its presentation as evidence.

For prohibitions in this category, maps or navigational charts are essential evidence in court. These, coupled with documents demarcating the area where fishing activities are prohibited or regulated, can ascertain the culpability of the violator. Affidavits of witnesses must indicate the method used to establish the position of the vessel. If travel time and landmarks were used as basis, the speed of the patrol boat, the time, and the location of the landmarks must be specified in the affidavit. A more creative and practical practice by enforcers is to take pictures of the vessel with the mainland as background to indicate that the activity was indeed done within municipal waters as it can be estimated being close to shore.



Discovery of any person in an area where he has no permit or registration papers for fishing constitutes *prima facie* evidence that such person and/or vessel is engaged in unauthorized fishing. (Sec. 86)

## 1. Section 86 in Relation to Section 18 - Commercial Fishing Vessels Fishing within Municipal Waters

Suggested Evidence	Source
Affidavit indicating fishing activity and location	Apprehending team and other witnesses
Photo of nets in the water, with fish, to indicate actual use and photo of boat/ vessel with mainland as background to indicate location (within municipal waters)*	Apprehending team
Apprehension report with inventory and seizure receipt	Investigating officer and/or apprehending team
Assessment of value of catch	BFAR or other competent authority
Fishing vessel or photographs of the fishing vessel	Apprehending team or custodial officer
Documentary/testimonial evidence indicating position of vessel	Apprehending team
Copy of license or certification as to gross tonnage	BFAR/Maritime Industry Authority (MARINA)/ Philippine Coast Guard (PCG)

*\*This is to belie any averment by the accused that they were not fishing and were merely cleaning their nets, which is a common excuse given by violators. Municipal waters include all bodies of waters over which the municipality has jurisdiction, as defined in RA 10654.*

## 2. Section 86, paragraph (b) - Commercial Fishing Activities by Municipal Fisherfolk within Municipal Waters without Being Listed in the Registry of Municipal Fisherfolk

Suggested Evidence	Source
Affidavits indicating fishing	Apprehending team or other witnesses
Apprehension report with inventory and seizure receipt	Investigating officer and/or apprehending team
Fishing vessel or photographs of the fishing vessel	Apprehending team or custodial officer
Certification that the accused is not registered	LGU concerned
Documentary/testimonial evidence indicating position of vessel	Apprehending team or other witnesses

### 3. Section 88 Paragraph (a) – Failure to Secure Fishing Permit prior to engaging in Distant Water Fishing

Suggested Evidence	Source
Affidavits indicating fishing activity and location	Apprehending team and other witnesses
Apprehension report with inventory and seizure receipt	Investigating officer and/or apprehending team
Fishing vessel or photographs of the fishing vessel	Apprehending team or custodial officer
Assessment of fish catch	BFAR or other competent authority
Documentary/testimonial evidence indicating position of vessel	Apprehending team or other witnesses
Certification that no permit was issued in favor of the accused	BFAR

### 4. Section 88 Paragraph (b) – Violation of the Terms and Conditions stated in the Distant Water Fishing Permit

Suggested Evidence	Source
Affidavits indicating fishing activity and location	Apprehending team and other witnesses
Apprehension report with inventory and seizure receipt	Investigating officer and/or apprehending team
Fishing vessel or photographs of the fishing vessel	Apprehending team or custodial officer
Assessment of fish catch	BFAR or other competent authority
Documentary/testimonial evidence indicating position of vessel and violation of the terms and conditions of the fishing permit	Apprehending team or other witnesses
Certification that no permit was issued in favor of the accused	BFAR

## 5. Section 91 - Poaching in Philippine Waters

Suggested Evidence	Source
Affidavits indicating activity and identification as foreign vessel	Apprehending team and other witnesses
Apprehension report with inventory and seizure receipt	Investigating officer and/or apprehending team
Fishing vessel or photographs of the fishing vessel	Apprehending team or custodial officer
Assessment of fish catch	BFAR or other competent authority
Documentary/testimonial evidence indicating position of vessel	Apprehending team or other witnesses
Photo of vessel with mainland as background to indicate location (within Philippine waters)*	Apprehending team

*\*There is no need for pictures of the act of fishing as mere entry is a presumption of fishing, although it would be ideal to include it for an airtight case. Philippine waters include all bodies of water over which the Philippines has sovereignty as defined in RA 10654.*

## 6. Section 94 - Fishing in Overexploited Fishery Management Areas

Suggested Evidence	Source
Affidavit indicating activity	Apprehending team
Apprehension report with inventory and seizure receipt	Investigating officer and/or apprehending team
Fishing vessel or photographs of the fishing vessel	Apprehending team or custodial officer
Proof of declaration	BFAR or LGU concerned
Documentary/testimonial evidence indicating position of vessel	Apprehending team

**7. Section 101 - Fishing in Marine Protected Areas, Fishery Reserves, Refuge and Sanctuaries**

Suggested Evidence	Source
Affidavit indicating activity	Apprehending team
Apprehension report with inventory and seizure receipt	Investigating officer and/or apprehending team
Fishing vessel or photographs of the fishing vessel	Apprehending team or custodial officer
Proof of declaration	BFAR or LGU concerned
Documentary/testimonial evidence indicating position of vessel	Apprehending team

**8. Section 95 - Use of Active Gear in Municipal Waters, Bays and Other Fishery Management Areas**

Suggested Evidence	Source
Affidavit indicating actual use	Apprehending team
Photo of nets in the water, with fish, to indicate actual use and photo of boat/vessel with mainland as background to indicate location (within municipal waters)*	Apprehending team
Apprehension report with inventory and seizure receipt	Investigating officer and/or apprehending team
Gear used or picture of gear used	Custodial officer or apprehending team
Certification that such gear is active gear	BFAR/MAO/other competent authority
Documentary/testimonial evidence indicating position of vessel	Apprehending team or other witnesses

*\*This is to belie any averment by the accused that they were not fishing and were merely cleaning their nets, which is a common excuse given by violators.*

# 9. Section 98 - Illegal Use of Superlight or Fishing Light Attractor Within Municipal Waters

Suggested Evidence	Source
Affidavit indicating actual use	Apprehending team
Apprehension report with inventory and seizure receipt	Investigating officer and apprehending team
Photo of boat/vessel with mainland as background to indicate location (within municipal waters)*	
Bulbs or pictures of bulbs indicating wattage	Property custodian or apprehending team or other witnesses
Certification of bulbs as superlights or fishing light attractor	BFAR/other competent authority
Documentary/testimonial evidence indicating position of vessel	Apprehending team and/or other witnesses

*\*This is to belie any averment by the accused that they were not fishing and were merely cleaning their nets, which is a common excuse given by violators.*

## Based on Resource Exploited

Vital to the prosecution of offenses in this category is proving that a resource has indeed been extracted or exploited. Thus, the most important evidence is a sample or photo of the resource. During the apprehension, the resource itself, as well as the gear or device used in extracting it, must be confiscated, identified by BFAR, and properly labeled or tagged for presentation in court. It is also helpful to take photos of the area from which the resource was extracted.

## 1. Section 96- Ban on Coral Exploitation and Exportation

Suggested Evidence	Source
Affidavit indicating possession and/or ownership of corals	Apprehending team and other witnesses
Apprehension report with inventory and seizure receipt	Investigating officer and/or apprehending team
Samples or picture of corals	Custodial officer, apprehending team or other witnesses
Identification of samples as corals	BFAR/DENR/other competent authority
Certification that no permit was issued in favor of the accused	BFAR/DENR



**2. Section 96, paragraph 1, 2<sup>nd</sup> Sentence – It shall also be unlawful for any person, corporation or entity to commit any activity that damage coral reefs.**

Suggested Evidence	Source
Affidavit indicating activity that damaged coral reefs	Apprehending team and other witnesses
Apprehension report with inventory and seizure receipt	Investigating officer and/or apprehending team
Samples or picture of damaged corals	Custodial officer, apprehending team or other witnesses
Identification of samples as corals	BFAR/DENR/other competent authority

**3. Section 97, paragraph (b) - Ban on Gathering, Possessing, Commercially Transporting, Selling, Exporting of Coral Sand, Coral Fragments, Coral Rocks, Silica, and Any Other Substances that Make Up any Marine Habitat**

Suggested Evidence	Source
Affidavit indicating activity and possession of materials	Apprehending team and other witnesses
Apprehension report with inventory and seizure receipt	Investigating officer and/or apprehending team
Samples of Coral Sand, Coral Fragments, Coral Rocks, Silica, and Any Other Substances that Make Up any Marine Habitat found in the possession of the accused	Custodial officer and apprehending team
Certification as to nature of items and probable source	BFAR/MAO

**4. Section 99 - Conversion of Mangroves**

Suggested Evidence	Source
Affidavit indicating either conduct of destructive activity or its destructive results	Apprehending team and other witnesses
Apprehension report with inventory and seizure receipt	Investigating officer and/or apprehending team
Samples of mangroves cut or pictures of the area	Custodial officer and apprehending team or other witnesses
Identification and scaling sheet	DENR/other competent authority
Certification that no permit was issued in favor of the accused	BFAR/DENR

**5. Section 102, Paragraph (a) - Fishing or Taking of Rare, Threatened or Endangered Aquatic Species listed in Appendix I of**

**CITES or categorized by IUCN as threatened and determined by DA**

Suggested Evidence	Source
Affidavit indicating activity or control and possession of species	Apprehending team
Apprehension report with inventory and seizure receipt	Apprehending team
Samples or picture of specimen in possession of accused	Custodial officer and apprehending team and other witnesses
Identification of species	BFAR/DENR/other competent authority
Certification that such species are listed in Appendix I of CITES or categorized by IUCN as threatened	BFAR

**6. Section 102, Paragraph (b) - Fishing or Taking of Rare, Threatened or Endangered Aquatic Species listed in CITES Appendices II and III**

Suggested Evidence	Source
Affidavit indicating activity or control and possession of species	Apprehending team
Apprehension report with inventory and seizure receipt	Apprehending team
Samples or picture of specimen in possession of accused	Custodial officer and apprehending team and other witnesses
Identification of species	BFAR/DENR/other competent authority
Certification that such species are listed in CITES Appendices II and III	BFAR

**7. Section 102, Paragraph (c) - Fishing or Taking of Captive-Bred Species that have been Transplanted to the Wild**

Suggested Evidence	Source
Affidavit indicating activity or control and possession of species	Apprehending team
Apprehension report with inventory and seizure receipt	Apprehending team
Samples or picture of specimen in possession of accused	Custodial officer and apprehending team and other witnesses
Identification of species	BFAR/DENR/other competent authority
Certification that such species have been transplanted to the wild	BFAR

8. Section 103 - Capture of *Sabalo* and Other Breeders/Spawners

Suggested Evidence	Source
Affidavit indicating possession and/or control of specimen	Apprehending team
Apprehension report with inventory and seizure receipt	Investigating officer and/or apprehending team
Sample or picture of specimen	Custodial officer and/or apprehending team and other witnesses
Identification of species	DENR/BFAR
Certification that no permit was issued in favor of the accused	BFAR/DENR

9. Section 104 - Exportation of Breeders, Spawners, Eggs or Fry

Suggested Evidence	Source
Affidavit indicating possession and/or control for purposes of exportation	Apprehending team and other witnesses
Apprehension report with inventory and seizure receipt	Investigating officer and/or apprehending team
Sample or picture of specimen	Custodial officer and/or apprehending team and other witnesses
Identification of species	DENR/BFAR
Certification that no permit was issued in favor of the accused	BFAR

10. Section 110 - Gathering and Marketing of Shell Fishes or Other Aquatic Species

Suggested Evidence	Source
Affidavit indicating the act of collecting, gathering and marketing of shellfish	Apprehending team and other witnesses
Apprehension report with inventory and seizure receipt	Investigating officer and/or apprehending team
Samples of shellfish	Custodial officer and/or apprehending team
Certification that the samples are: (a) sexually mature, (b) below minimum size or (c) above the maximum quantities for the particular species	BFAR/MAO/other competent authority

## Other Prohibited/Regulated Activities

### 1. Section 86, Paragraph (a) - Engaging in Any Fishery Activity Without a License or Permit from DA or LGU

Suggested Evidence	Source
Affidavit indicating: (a) conduct of fishery activity, (b) location where activity was conducted and (c) that upon apprehension, no permit, license or lease was presented by the accused	Apprehending team
Fishing vessel or photographs of the fishing vessel	Apprehending team or custodial officer
Apprehension report with inventory and seizure receipt	Investigating officer and/or apprehending team
Certification that no permit, lease or license was issued in favor of the accused	BFAR/LGU/other competent authority



Discovery of any person in an area where he has no permit or registration papers for a fishing vessel constitutes *prima facie* evidence that such person and/or vessel is engaged in unauthorized fishing. (Sec. 86)

### 2. Section 87 – Engaging in Unauthorized Fisheries Activities

Suggested Evidence	Source
Affidavit indicating: (a) conduct of fishery activity, (b) location where activity was conducted and (c) that upon apprehension, no permit, license or lease was presented by the accused	Apprehending team
Fishing vessel or photographs of the fishing vessel	Apprehending team or custodial officer
Apprehension report with inventory and seizure receipt	Investigating officer and/or apprehending team
Certification that no permit, lease or license was issued in favor of the accused	BFAR/LGU/other competent authority

### 3. Section 89 – Unreported Fishing

Suggested Evidence	Source
Affidavit indicating fishing activity	Apprehending team
Fishing vessel or photographs of the fishing vessel	Apprehending team or custodial officer
Apprehension report with inventory and seizure receipt	Investigating officer and/or apprehending team
Certification that the vessel failed to report or comply with the reportorial requirement	BFAR

4. Section 90 – Unregulated Fishing

Suggested Evidence	Source
Affidavit indicating fishing activity	Apprehending team
Fishing vessel or photographs of the fishing vessel	Apprehending team or custodial officer
Apprehension report with inventory and seizure receipt	Investigating officer and/or apprehending team
Certification that the vessel is not registered	BFAR

5. Section 100 – Fishing During Closed Season

Suggested Evidence	Source
Affidavit indicating fishing activity	Apprehending team
Fishing vessel or photographs of the fishing vessel	Apprehending team or custodial officer
Apprehension report with inventory and seizure receipt	Investigating officer and/or apprehending team
Certification that the fishing activity was done during closed season	BFAR/LGU/other competent authority

6. Section 105 - Importation or Exportation of Fish or Fishery Species

Suggested Evidence	Source
Affidavit indicating possession and/or control for purposes of exportation and/or importation	Apprehending team and other witnesses
Apprehension report with inventory and seizure receipt	Investigating officer and/or apprehending team
Sample or picture of specimen	Custodial officer and/or apprehending team and other witnesses
Identification of species	DENR/BFAR
Certification that no permit was issued in favor of the accused	BFAR

## 7. Section 106 - Violation of Harvest Control Rules

Suggested Evidence	Source
Affidavit indicating activity	Apprehending team and other witnesses
Apprehension report with inventory and seizure receipt	Investigating officer and/or apprehending team
Proof of declaration of harvest control rules	DA-BFAR
Documentary/testimonial evidence indicating position of vessel	Apprehending team

## 8. Section 107 - Aquatic Pollution

Suggested Evidence	Source
Affidavit indicating specific acts of introduction of substances or matter that cause or are likely to cause pollution or that pose a hindrance to fishing and navigation	Apprehending team and other witnesses
Apprehension or inspection report	Apprehending or investigating team
Water sample or sample of substance or matter	Custodial officer and/or inspection team
Laboratory analysis report	BFAR/DENR/other competent authority
Picture or sketch of materials that pose a hindrance to fishing and navigation	Apprehending team and other witnesses



A laboratory analysis report is not necessary if the case is for dumping of materials or for objects that pose a hindrance to fishing and navigation. For cases needing laboratory analysis, Annex 1: Preservation of Evidence provides guidelines for preserving and analyzing fish and water samples.

## 9. Section 108 - Failure to Comply with Minimum Safety Standards

Suggested Evidence	Source
Affidavit indicating conduct of inspection and specific violations of safety standards	Apprehending team and other witnesses
Investigation report	Investigating officer and/or apprehending team
Photographs of the interior of the vessel	Apprehending team

**10. Section 109 - Failure to Submit Yearly Report on Fishponds, Fish pens and Fish cages**

Suggested Evidence	Source
Affidavit of complaint indicating failure to file the necessary reports despite notice	Apprehending team and other witnesses
Investigation report	Investigating officer and/or apprehending team
Certification that the accused failed to file reports	Concerned BFAR office

**11. Section 111 - Obstruction to Navigation Or Flow and Ebb of Tide in any Stream, River, Lake or Bay**

Suggested Evidence	Source
Affidavit indicating existence of structures constructed in a waterway that is a migration path	Apprehending team and other witnesses
Investigation report	Investigating officer and/or apprehending team
Picture or sketch of the structures	Apprehending team or other witnesses
Assessment or study that categorizes the allegedly obstructed waterway as a migration path	BFAR/other competent authority

**12. Section 112 - Noncompliance with Good Aquaculture Practices**

Suggested Evidence	Source
Affidavit of complaint indicating breeding and farming of fish and other fishery species	Apprehending team and other witnesses
Investigation report	Investigating officer and/or apprehending team
Certification that the accused failed to comply with good aquaculture practices and the guidelines for environmentally-sound design and operation	Concerned BFAR office

### 13. Section 113, Paragraph (a) - Commercial Fishing Vessel Operators Employing Unlicensed Fisherfolk, Fish worker or Crew

Suggested Evidence	Source
Affidavit indicating that (a) at the time of apprehension, persons who were later found out to be unlicensed were employed as fish workers or crew, and that (b) the apprehending team asked for their licenses but none could be presented	Apprehending team
Investigation report	Investigating officer and/or apprehending team
Inventory of crew	Apprehending team
Certification that no license had been issued in the name of the alleged unlicensed fish workers and/or crew	Appropriate BFAR office

### 14. Section 113, Paragraph (b) - Fishing Vessel Engaged in Distant Water Fishing Employing Unlicensed Fisherfolk or Fish worker or Crew

Suggested Evidence	Source
Affidavit indicating (a) location of the vessel; (b) that at the time of apprehension, persons who were later found out to be unlicensed were employed as fish workers or crew, and that (c) the apprehending team asked for their licenses but none could be presented	Apprehending team
Investigation report	Investigating officer and/or apprehending team
Inventory of crew	Apprehending team
Certification that no license had been issued in the name of the alleged unlicensed fish workers and/or crew	Appropriate BFAR office

### 15. Section 114 - Obstruction to Defined Migration Paths

Suggested Evidence	Source
Affidavit indicating existence of structures in a waterway and the effect or impact of such structures on the ebb and flow of water	Apprehending team and other witnesses
Investigation report	Investigating officer and/or apprehending team
Picture or sketch of the structures	Apprehending team or other witnesses
Assessment or study declaring that such structures impede navigation or the ebb and flow of tides	PCG/other competent authority



## 16. Section 115 - Obstruction to Fishery Law Enforcement Officer

Suggested Evidence	Source
Affidavit indicating specific acts that prevented the officer from boarding, inspecting the vessel, examining records of the vessel and crew, and other actions of similar nature	Apprehending team and other witnesses
Apprehension report	Apprehending team and/or other witnesses
Results of a physical examination, if the officer suffered injuries as a result of the obstruction	Medico-legal officer

## 17. Section 116, Paragraph (a) - Philippine distant water fishing vessel to sail without a fisheries observer on board as required by RFMO conservation and management measures

Suggested Evidence	Source
Affidavit of complaint indicating distant fishing vessel sailing without fisheries observer	Apprehending team and other witnesses
Apprehension/Investigation report	Investigating officer and/or apprehending team
Photographs of the vessel	Apprehending team

## 18. Section 116, Paragraph (b) - Commercial fishing vessel sailing without a fisheries observer in compliance with this Code and the rules and regulations promulgated by DA

Suggested Evidence	Source
Affidavit of complaint indicating commercial fishing vessel sailing without fisheries observer	Apprehending team and other witnesses
Apprehension/Investigation report	Investigating officer and/or apprehending team
Photographs of the vessel	Apprehending team

## 19. Section 117 – Noncompliance with Port State Measures

Suggested Evidence	Source
Affidavit of complaint indicating failure (a) of foreign fishing vessel to provide 24-hour prior notice to DA; or (b) foreign fishing vessel to provide a catch report; or (c) any person to comply with other rules on port state measures promulgated by DA, as the case may be	Apprehending team and other witnesses
Investigation report	Investigating officer and/or apprehending team
Certification that the accused failed to give 24-hour prior notice or give a catch report or violated other rules on port state measures, as the case may be	Concerned BFAR office

## 20. Section 118 - Failure to Comply with Rules and Regulations on Conservation and Management Measures

Suggested Evidence	Source
Affidavit of complaint indicating failure to comply with conservation and management measures	Apprehending team and other witnesses
Investigation report	Investigating officer and/or apprehending team
Certification that the accused failed to comply with conservation and management measures	Concerned BFAR office

## 21. Section 119 - Noncompliance with Vessel Monitoring Measures

Suggested Evidence	Source
Affidavit of complaint indicating failure to comply with the vessel monitoring measures	Apprehending team and other witnesses
Investigation report	Investigating officer and/or apprehending team
Certification that the accused failed to comply with the vessel monitoring measures	Concerned BFAR office

**22. Section 120 - Constructing, Importing or Converting Fishing Vessels or Gears Without Permit from DA**

Suggested Evidence	Source
Affidavit of complaint indicating constructing or importing fishing vessels or gears or converting other vessels into fishing vessels	Apprehending team and other witnesses
Investigation report	Investigating officer and/or apprehending team
Certification that no permit was issued	Concerned BFAR office

**23. Section 121 - Use of Unlicensed Gear**

Suggested Evidence	Source
Affidavit of complaint indicating using a fishing gear or method for commercial fishing	Apprehending team and other witnesses
Investigation report	Investigating officer and/or apprehending team
Photographs of the gear and vessel	Apprehending team
Certification that no license was issued	Concerned BFAR office

**24. Section 122 - Falsifying Concealing or Tampering with Vessel Markings, Identity or Registration**

Suggested Evidence	Source
Affidavit of complaint indicating falsifying, concealing vessel identity or lack of registration; or tampering with the vessel markings, identity or registration	Apprehending team and other witnesses
Investigation report	Investigating officer and/or apprehending team
Photographs of the vessel	Apprehending team
Certification of registration	Concerned BFAR office

**25. Section 123 - Concealing, Tampering or Disposing of Evidence Relating to an Investigation of a Violation**

Suggested Evidence	Source
Affidavit of complaint indicating concealing, tampering or disposing evidence relating to an investigation of a violation under RA 10654	Apprehending team and other witnesses
Investigation report	Investigating officer and/ or apprehending team
Photographs of the evidence	Apprehending team

**26. Section 124 - Noncompliance with the Requirements for the Introduction of Foreign or Exotic Aquatic Species**

Suggested Evidence	Source
Affidavit of complaint indicating importing, introducing, or breeding, foreign or exotic aquatic species	Apprehending team and other witnesses
Investigation report	Investigating officer and/ or apprehending team
Certification that no permit was issued	Concerned BFAR office

**27. Section 125 - Failure to Comply with Standards and Trade-Related Measures**

Suggested Evidence	Source
Affidavit of complaint indicating failure to comply with standards and trade-related measures	Apprehending team and other witnesses
Investigation report	Investigating officer and/ or apprehending team
Pictures of fishery products	apprehending team
Certification of failure to meet the standards and trade-related measures	Concerned BFAR Office

**28. Section 126 - Possessing, Dealing in or Disposing Illegally Caught or Taken Fish**

Suggested Evidence	Source
Affidavit indicating possession and/or disposition	Apprehending team and other witnesses
Apprehension report with inventory and seizure receipt	Investigating officer and/or apprehending team
Samples of fisheries species	Property custodian
Results of fish examination	Fish examiner

**29. Section 127 - Unauthorized Disclosure of Sensitive Technical Information**

Suggested Evidence	Source
Affidavit of complaint indicating disclosure of data from vessel monitoring data	Apprehending team and other witnesses
Investigation report	Investigating officer and/or apprehending team
Certification that no authorization was issued	Concerned BFAR Office

**30. Section 128 – Other Violations**

Suggested Evidence	Source
Affidavit of complaint indicating violation of administrative orders or regulations	Apprehending team and other witnesses
Investigation report	Investigating officer and/or apprehending team

# CHAPTER 6

## Prosecution



**T**o ensure environmental protection, laws are created to regulate and prohibit acts perceived to be detrimental to the environment. These laws aim to deter the commission of the acts that pose a danger to the sustainability of resources and to people's health by imposing penalties. Environmental laws, however, will not serve their purpose without effective prosecution.

Existence of environmental laws resolves only a part of the misery that we now experience. The other part deals with ensuring that these laws are enforced by putting in place the proper and appropriate mechanisms and institutional structures that will set in motion the much needed action.

The Supreme Court, as its contribution to address the clamor for strengthened environmental law enforcement, promulgated the new Rules of Procedure for Environmental Cases. These took effect on April 29, 2010. The Rules of Court and the Rules of Procedure for Environmental Cases are not necessarily incompatible. Matters that are not specifically found in the Rules of Procedure for Environmental Cases are supplied by the Rules of Court.

To help ensure the successful prosecution of coastal law violators, therefore, it is imperative to know and follow the Rules of Procedure for Environmental Cases. The Rules cites in this chapter are from the Rules of Procedure for Environmental Cases, unless otherwise indicated.

### **INSTITUTION OF CRIMINAL ACTIONS**

The Rules of Procedure for Environmental Cases provides the basics in the institution of criminal actions for violation of an environmental law.

These rules have to be observed to avoid the dismissal of the case or the acquittal of the accused by mere technicalities.

### **How is a criminal action for violation of an environmental law instituted?**

By filing of a complaint with the Office of the Prosecutor of the place where the crime is committed. (Part IV, Rule 9, Sections 1 & 2.)



#### **What is a complaint?**

A complaint is a sworn written statement, in question and answer

form, charging a person with an offense, subscribed by the offended party, any peace officer or other public officer charged with the enforcement of the environmental law violated. (Part IV, Rule 16, Section 2 (g))

### **Who can file a complaint?**

Any offended party, peace officer or any public officer charged with the enforcement of an environmental law can file a complaint. (Part IV, Rule 9, Section 1)

### **Who are the public officers authorized to file complaints for violations of fishery laws, rules, regulations and ordinances?**



- Law enforcement officers of the Department of Agriculture (DA)
- Philippine Navy (PN)
- Philippine Coast Guard (PCG)
- Philippine National Police (PNP)
- PNP-Maritime Command
- Law enforcement officers of local government units (i.e. *Bantay Dagat*)
- Other government enforcement agencies
- Fish wardens deputized in writing by DA (e.g. competent government officials and employees, barangay captains and officers, members of fisherfolk associations who have undergone training on law enforcement)
- Sangguniang Bayan members can prosecute any applicable fishery law violation under sec. 149 (b) (3) of RA7160

### **Can police officers directly file the complaints without involving other government agencies such as the DENR or BFAR?**

Yes, they can file the case directly if technical consideration is not necessary to determine probable cause. However, in cases where technical certifications are necessary, then the corresponding agency must be involved for the case to prosper.

### **Can a complaint be filed directly with the court?**

No. A complaint for violation of environmental law can no longer be filed directly with the court. It can only be filed with the concerned Office of the Prosecutor. Only an information charging a person with a violation of an environmental law and subscribed by the prosecutor can be filed with the court. (Part IV, Rule 9, Section 2)

### **What must a complaint or information contain?**



It must contain the following:

- The name of the accused

The alias or the nickname for which a person is known is allowed. If the name or alias is unknown, he must be described

under a fictitious name such as John Doe.

In cases of John Doe warrants, there must be a particular description of the accused in such a way that he can be easily identified and will not leave to the arresting officer any discretion as to who to arrest.

e.g. 5'4" male with butterfly tattoo on his left cheek, 30 years old, medium build, curly hair

- The designation of the offense given by the statute
- The acts of omissions complained of as constituting the offense
- The name of the offended party
- The approximate time of the commission of the offense
- The place where the offense was committed.

A complaint must always be under oath.

### How many offenses may the complaint or information charge?

A complaint or information filed before the courts must charge only one offense. In cases, therefore, where several offenses were committed by the same person or group of persons on one occasion, there must be one complaint or information for each violation.

A fishing boat is seen fishing within municipal waters using superlights and cyanide. In this situation, two violations of Republic Act (RA) 10654 are violated: (1) illegal use of superlights and (2) fishing with the use of a poisonous substance. Separate actions, therefore, must be instituted: (1) a complaint for Fishing with Illegal Use of Superlights under Section 98, and (2) an information for Fishing with the Use of a Poisonous Substance under Section 92(a).

### double jeopardy

#### Does the filing of both complaint and information in the example above constitute double jeopardy?

No. In the example above, there are two **different acts** and two **different offenses**; thus, there is no **double jeopardy**.

**Double jeopardy** is putting a person twice at the risk of being punished for the same offense or act. If an act is punishable by a law and an ordinance, conviction or acquittal under one or the other constitutes a bar to another prosecution for the same act.

There are two prohibitions in respect to double jeopardy: the first refers to being punished twice for the same offense; the second refers to being punished twice for the same act (*1987 Constitution, Art. 3, sec. 21*).

Two offenses are said to be the **same offense** when:

- The second offense is merely a frustration of or an attempt to commit the first, or
- The first offense necessarily includes, or is necessarily included, in the



second offense

(Rule 117, sec. 7, Rules of Court)

An offense charged **necessarily includes** another offense when some of its essential elements, as alleged in the complaint or information, constitute the second offense. It is **necessarily included** in another offense when its elements are included in the elements of the second offense (Rule 120, sec. 5, Rules of Court).



Two acts are considered the **same act** if:

- the acts took place on the same occasion
- the acts were committed by the same person
- there is a continuing intent or voluntary design or negligence.

(People v. Relova, 148 SCRA 292)



Thus, the acquittal or conviction in a criminal case filed against the accused for violating an ordinance that prohibits Fishing with the Use of Active Gear within Municipal Waters will bar the filing of a criminal case for violating Section 95 of RA 10654, which also involves fishing with an active gear inside municipal waters. These two prohibitions involve the same offense and punish the same act.



Double jeopardy applies in this example even if the case is dismissed due to mere technicalities, as long as the accused has been duly arraigned (see Uniform Procedure). However, if the accused has not been arraigned, any of the criminal cases for violations of both a law and an ordinance may be filed. If the violations do not involve the same act or constitute the same offense, any number of cases may be filed both under the law and the ordinance. Administrative cases may be filed at any time without risk of double jeopardy (See Chapter 7: Administrative Remedies).

## ***national law vs. ordinance***



### **If both a national law and an ordinance punish an offense, on which grounds should the case be filed?**

The prosecution of coastal law violations has one primary objective: to deter violators from repeatedly destroying the coastal and marine environment. Although national laws are broader and more comprehensive in scope, ordinances may achieve this objective more effectively in particular instances (See Ordinances by Local Government Units in Chapter 1: Legal Bases). The case should be filed based on the law or ordinance that provides the more severe penalty. Ideally, this penalty should include the cancellation of fishing licenses, and the confiscation of fishing vessels, fishing gears and other instruments used in committing the crime.

### **When can a case be validly dismissed on the ground of double jeopardy?**

A motion to dismiss the complaint or information is only valid if **all** of the

following elements were obtained in the previous prosecution:

- The case was based on a valid complaint or information
- The court had jurisdiction
- The accused had been arraigned and had pleaded
- The accused was either convicted or acquitted, or the case against him was dismissed or otherwise terminated without his express consent.
- In the absence of one of the elements, the complainant or prosecutor may oppose the motion filed by the defendant to dismiss the case on the ground of double jeopardy.

The conviction of the accused for one offense does not bar the prosecution of another offense that necessarily includes the offense charged in a previous complaint or information if the plea of guilty to the lesser offense was made without the consent of the fiscal and of the offended party.



### Prescriptive Periods

Criminal actions must be filed within the prescriptive periods. The **prescriptive period** is the time set by law within which an action must be filed.

#### When does the prescriptive period begin?

It starts to run from the time of the commission of the crime or, when unknown, from the discovery of the crime. The institution of proceedings—such as the filing of a complaint for Preliminary Investigation—interrupts the prescriptive period.

The following are the prescriptive periods for violations of special laws and municipal ordinances, unless otherwise provided in such special laws or ordinances:

Type of Offense	Prescriptive Period
Offenses punishable by a fine or imprisonment of not more than 1 month or both	1 year
Offenses punishable by imprisonment of more than 1 month but less than 2 years	4 years
Offenses punishable by imprisonment of 2 years or more but less than 6 years	8 years
Offenses punishable by imprisonment of 6 years or more	12 years
Violations of municipal ordinances	2 months

*(Act No. 3326, as amended)*



When the last day allowed for filing a complaint, information or any other pleading falls on a Saturday, Sunday or a non-working day, the filing may be done on the next working day.



If a violation of a municipal ordinance was committed on 27 October 2003, a case must be filed anytime from that date until 27 December 2003. The filing of a complaint on 28 December 2003 or later is no longer allowed. However, if the violation was known only on 1 November 2003 then the two-month prescriptive period starts to run from this date. A complaint for the violation, therefore, may be filed until 1 January 2004. But since January 1 is a holiday, the last day for filing is the next working day.



The filing of a case beyond the prescriptive period is a ground for dismissal.



The prescriptive period does not run when the offender is out of the country.

## Jurisdiction



Complaints and information must be filed in the court or prosecutor's office with the proper jurisdiction. In criminal prosecution, **jurisdiction** is the authority of a court to hear and try a particular offense, and to impose the appropriate punishment provided by law (*Albano, 1998*).



The filing of a case before a court that does not have jurisdiction over a particular offense causes the dismissal of the case. The erroneous filing does not stop the running of the prescriptive period. It is therefore important to correctly determine which court the case should be filed at.

## How is jurisdiction determined?

In determining the court of proper jurisdiction, two questions must be asked:

1. Does the court have jurisdiction over the offense based on the imposable penalty and its nature?
2. Was the offense committed within the territorial jurisdiction of the court?

(*Agpalo, 2001*)

## According to imposable penalty and nature of offense

Below are the different courts and corresponding cases within their jurisdiction based on the imposable penalties and nature of offense:

### 1. Municipal Trial Courts (MTCs)

- All violations of municipal or city ordinances committed within their territorial jurisdiction
- All offenses punishable with imprisonment not exceeding 6 years, irrespective of the amount of the fine (*BP Blg. 129, sec. 32, as*

*amended by RA 7691)*

- All offenses where the impossible penalty is only a fine not exceeding P4,000

## 2. Regional Trial Courts (RTCs)

- All criminal cases not within the exclusive jurisdiction of any other court, tribunal or body, except those falling under the exclusive and concurrent jurisdiction of the Sandiganbayan (*BP Blg. 129, sec. 20*)
- Offenses punishable with imprisonment of at least 6 years and 1 day
- Offenses where the impossible penalty is only a fine exceeding P4,000



Where the applicable penalty is imprisonment and/or a fine, jurisdiction is based on the penalty of imprisonment, and not on the fine.



If an offense provides for an imprisonment of 3 years and a fine of P6,000, the complaint or information must be filed before the MTC, MCTC or Metropolitan Trial Court (MeTC) even if the impossible fine is in excess of P4,000.

## 3. Sandiganbayan

Violations of the following laws by all national and local officials classified as “grade 27” or above:

- RA 3019, as amended, otherwise known as the Anti-graft and Corrupt Practices Act
- Bribery and Indirect Bribery of Public Officials (Articles 210 & 211 of the RPC)



These are the offenses applicable to fisheries cases, and are only two of several offenses cognizable by the Sandiganbayan.

### ***According to the place of commission of the crime***

It is important to know where the offense or any of its essential elements were committed to determine which court has territorial jurisdiction. As a general rule, the action is instituted and tried in the court of the municipality or territory where the offense was committed, or where any one of its elements took place (*Rule 110, sec. 15*).



e.g.

- Fishing with the use of fine-mesh net (*RA 10654, sec. 93*) was committed in Bogo, Cebu. The penalty impossible is a maximum imprisonment of only 2 years. Therefore, the case is under the jurisdiction of the MTC. Since it was committed in Bogo, the complaint must be filed in the MTC of Bogo.
- Mr. A was seen catching a whale shark, an endangered species, within the province of Bohol. The offense is punishable by imprisonment of up to 20 years. The case must therefore be filed in

the RTC of Bohol.

For offenses committed on vehicles, the following rules apply for the filing of the action:

Place of Commission	Place to File
On board a vessel of Philippine registry in the course of its voyage e.g. possession of corals, endangered species and explosives	Proper court of the first port of entry, or of any municipality or territory through which the vessel passed during such voyage, subject to the generally accepted principles of international law
On an unregistered vessel or a foreign vessel	Court that has territorial jurisdiction over the sea where the vessel was at the time of the commission of the offense

*(Rule 110, sec. 15, Rules of Court)*



e.g. A complaint against a foreign vessel fishing within the waters of Puerto Princesa must be filed with the RTC of Puerto Princesa.

It follows that for cases requiring Preliminary Investigation, the complaint is filed before the proper prosecutor following the above rule.

### ***conflicts in jurisdiction over municipal waters***

#### **Which court has jurisdiction when a fishing vessel is caught on the boundary of two municipalities?**

This is possible if the vessel is stationary and is on the boundary of two jurisdictions. At any rate, Section 15(a) of Rule 111 is applicable. The courts of either municipality can assume jurisdiction. The principle in Article 360 of the RPC should also apply by analogy—the court where the case is first filed acquires jurisdiction, to the exclusion of all other courts.



#### **Does the absence of an ordinance delineating the municipal waters of a municipality or city deny the concerned LGU the right to manage its municipal waters?**

No. The absence of such ordinance does not negate the LGU's authority to manage, conserve, rehabilitate and protect its municipal waters, the extent of which has been laid down by RA 10654. The LGU may still enforce all fishery laws, rules, regulations and ordinances within its jurisdiction. Therefore, a complaint for a fishery violation must be filed in the proper MTC, MeTC, MCTC or RTC that has jurisdiction over such municipal waters.

## **PROCEDURES IN PROSECUTION**

The different procedures that comprise the prosecution process begin with determining whether the accused should be subjected to a trial, and end with final decision by the Supreme Court, if either the prosecution or the defense avails of remedies to amend or reverse decisions by lower courts. These procedures, laid down in the Rules of Court, ensure that the right of both the complainant and the accused to due process is protected.

### **Who is in charge of prosecuting environmental cases?**

The Office of the Public Prosecutor is in charge of prosecuting environmental cases.

### **Can private lawyers help in the prosecution of environmental cases even if there is no private offended party?**

Yes. In criminal cases where there is no private offended party, a counsel whose services are offered by any person or organization may be allowed by the court to appear as special prosecutor, with the consent of and subject to the control and supervision of the public prosecutor. (Part V, Rule 21, Section 3)

### **Preliminary Investigation**



**Preliminary Investigation** (PI) is an inquiry or proceeding to determine whether there is sufficient ground to cause a well-founded belief that a crime has been committed, and that the respondent is probably guilty of that crime and should be held for trial. (*Rule 112, sec. 1, par. 1, Rules of Court*)

### **When is a PI a matter of right?**

It is a matter of right where the imposable penalty of the offense charged is at least 4 years, 2 months and 1 day, without regard to fine (*Rule 112, sec. 1, par. 2, Rules of Court*). A PI must first be conducted before a complaint or information is filed in court by the prosecutor.

### **When is a PI not a matter of right?**

When the accused is lawfully arrested without a warrant, the complaint or information may be filed by the prosecutor without need for a PI, even if the imposable penalty of the offense requires a PI. An inquest investigation is instead conducted. (See Inquest Investigation)

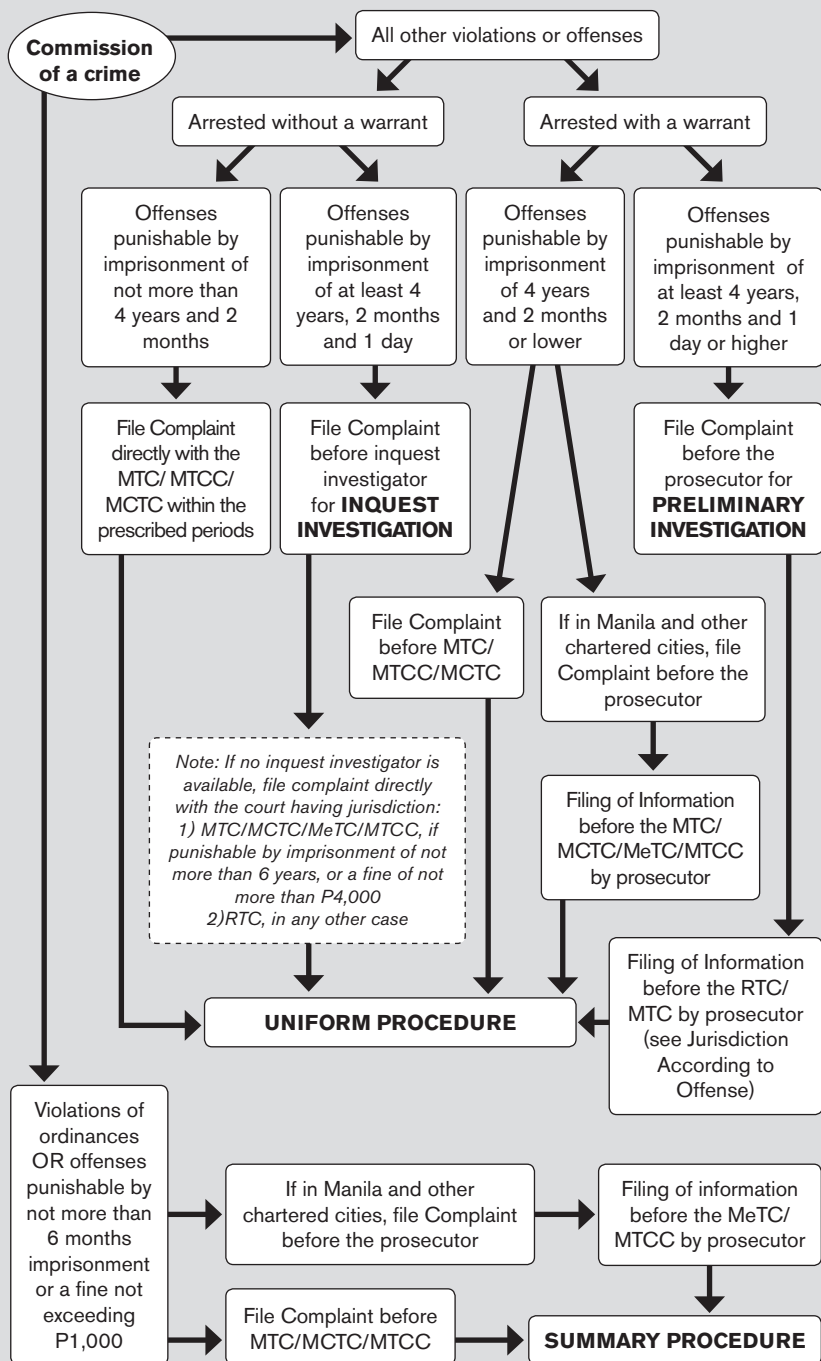


Figure 6.1. Procedures in prosecution.

### How is a PI initiated?

It is initiated by the filing of a complaint before the officers authorized to conduct PIs. The complaint must state the known address of the accused, and be accompanied by affidavits of the complainant and his witnesses, as well as other supporting documents. It must be sworn before a fiscal, state prosecutor or government official authorized to administer oaths.



It may also be sworn before a notary public, who must certify that he has personally examined the affiants and that he is satisfied that they have voluntarily executed and understood their affidavits (*Rule on Summary Procedure, sec. 9a*).

### Who may conduct PIs?

The following officers are authorized to conduct PIs:

- Provincial or city prosecutors and their assistants
- National and Regional Prosecutors
- Other officers as may be authorized by law (e.g. Ombudsman). (*Rule 112, sec. 2, Rules of Court*)



The authority of the Ombudsman to conduct PIs is limited to offenses committed by public officials.



The number of copies of the complaint, as well as the supporting affidavits and other documents, must be the same as the number of respondents, plus 2 copies for the official file. At least two copies of all documents filed are best retained for the complainant's own file. These must also be signed and dated by the office where the documents were filed.



If a complaint is filed against two respondents, at least 6 copies of the complaint and its supporting documents and affidavits would be prepared.



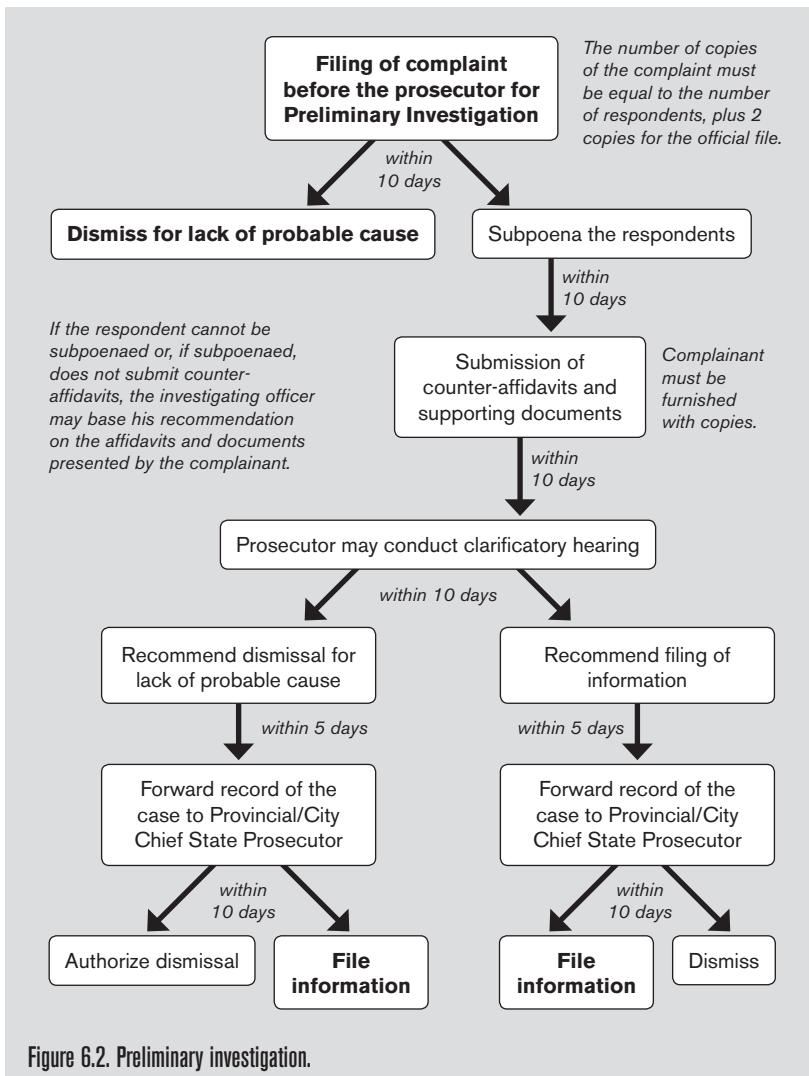
A PI is not a trial but merely an inquiry to determine the existence or non-existence of a probable cause. The right of the accused, therefore, to cross-examine witnesses against him does not yet apply at this stage. The accused may, however, suggest to the investigating officer questions that may be asked of the complainant and his witnesses.

### Is the lack of a PI a ground for dismissal?



No. However, if the accused invokes his right to a PI, the court must hold the case in abeyance or suspend the proceedings, and remand the case to the Office of the Prosecutor for PI.

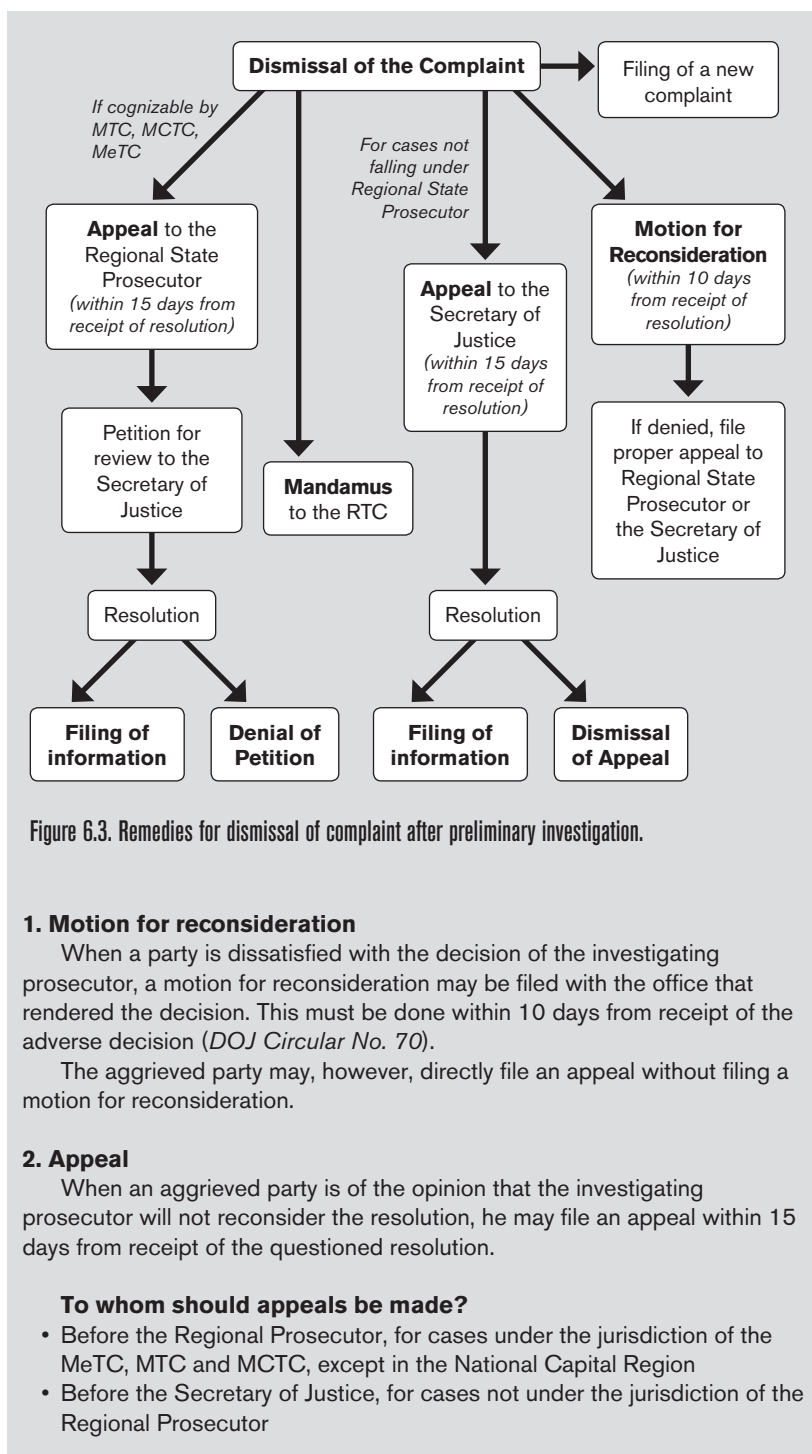




## remedies for dismissal of complaint

**What remedies are available if the complaint is dismissed after the PI?**

1. Motion for reconsideration
2. Appeal
3. Mandamus
4. Filing of another complaint
5. Administrative action or criminal complaint against the officer who conducted the PI





The Secretary of Justice may review the resolutions of the Regional State Prosecutor in appealed cases (*DOJ Circular No. 70-A*).



The appeal must allege that that appellant has caused the appeal to be prepared, has read and knows its contents, and that the allegations in the appeal are true to his own knowledge.

### 3. Mandamus

Mandamus may be filed when there is grave abuse of discretion on the part of the prosecutor. It is filed before the RTC.



The prosecutor may file an information in court at his discretion. Generally, the courts cannot intervene in this executive territory. However, mandamus may still be availed of in exceptional cases where there are unmistakable signs of grave abuse of discretion.



**Mandamus** is an order commanding the respondent to perform an act that must be done to protect the rights of the petitioner. Mandamus generally compels the performance of a ministerial duty. A duty is **ministerial** if fulfilling it does not require the exercise of either official discretion or judgment. It is a duty that an officer cannot refuse to do when all the legal requirements have been complied with by the petitioner. Thus, The High Court had on occasion ruled that mandamus can be filed by a paper company to compel the DENR Secretary to issue an IFMA on the ground of grave abuse of discretion. However, in that case no abuse of discretion was proven (*PICOP vs. Alvarez*, GR no. 164516, November 29, 2006).



#### What may be considered as the prosecutor's ministerial duties?

When a complaint has been validly filed for a PI, the prosecutor cannot refuse to conduct a PI. Also, if there is very clear evidence against the accused, the prosecutor cannot refuse to file the information. Through a mandamus, he may be compelled to fulfill these duties.

### 4. Filing of another complaint



The dismissal of a complaint by the prosecutor is not a bar to the filing of another complaint. This does not constitute double jeopardy since the PI is not part of the trial. (See previous discussion on Double Jeopardy.) The new complaint must, however, be filed within the prescriptive period.

### 5. Filing of an administrative and a criminal case

In cases where the investigating prosecutor has maliciously refrained from instituting a case for the punishment of law violators, a criminal case under Section 208 of the RPC may be filed. An administrative action may also be filed against the prosecutor for appropriate disciplinary action. (See Chapter 7: Administrative Remedies)

## Inquest Investigation

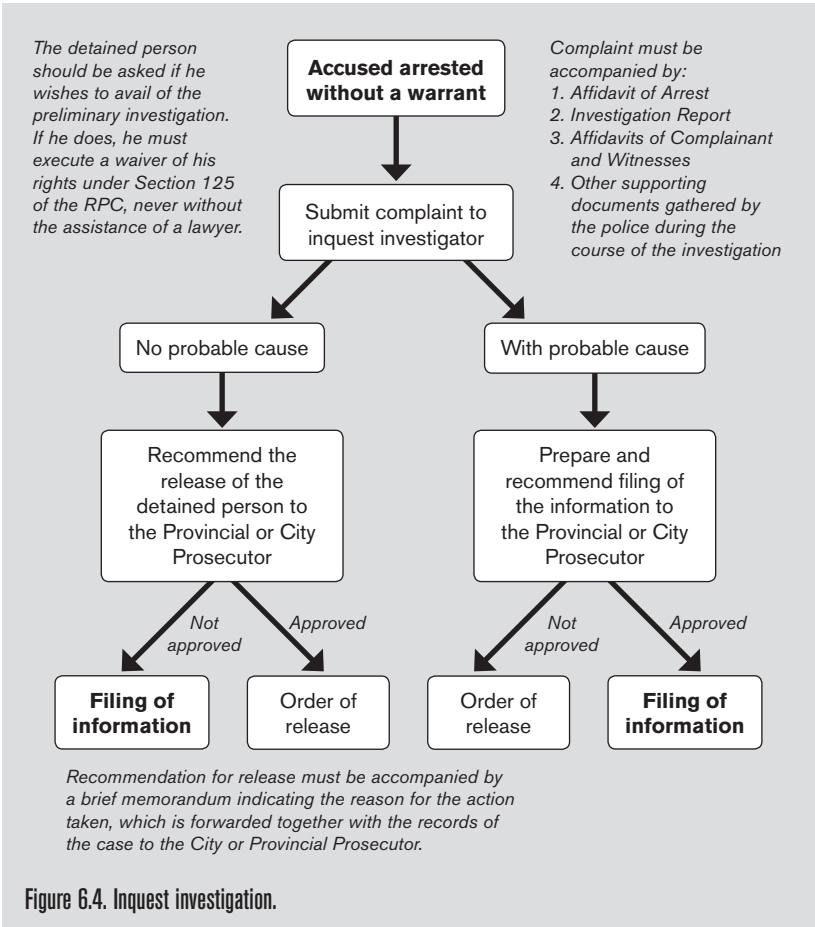


An **inquest investigation** is an inquiry conducted by a prosecutor to determine whether or not the warrantless arrest was valid. (See

Warrantless Arrests in Chapter 4: ASSD). An inquest investigation takes the place of a PI if the accused is arrested without a warrant of arrest.

**What authority does the inquest investigator have?**

- Order the release of the accused if he finds lack of sufficient ground to believe that the accused was lawfully arrested without a warrant
- Conduct further investigation
- File the complaint or information



**When should the complaint or information be filed by the inquest investigator?**

To avoid liability under Article 125 of the RPC, the complaint or information must be filed by the investigator within the periods

provided below:

Nature of Penalty	Period for Filing
• Light	12 hours
• <i>Correccional</i>	18 hours
• Afflictive or capital	36 hours

(Rule 112, sec. 7)



In case the complaint or information is not filed within the prescribed periods, the accused must be released, otherwise, the detention officer will be held liable for delay in the delivery of detained persons. However, the case may still be filed against the person arrested, and a PI conducted instead.



When the distance between the place of arrest and the courts makes it impossible to file the case in time, the complaint or information may be filed beyond the prescribed periods, but within the ***soonest possible time***.

### **What if no inquest investigator is available?**



In case the assigned inquest investigator is not available, the complaint may be filed directly by the peace officer in the proper court, on the basis of the affidavits of the arresting officer or person (*Rule 112, sec. 7, Rules of Court*).

### **Can the accused ask for a PI pending inquest investigation?**

Yes, the accused may do so, provided he signs a waiver of his rights under Article 125 of the RPC in the presence of a lawyer. The accused may also ask for a PI within 5 days from the time he learns of the filing of a case in court against him.

## **Uniform Procedure**

The Rules of Procedure for Environmental Cases shall govern the procedure in civil, criminal and special civil actions before the Regional Trial Courts, Metropolitan Trial Courts, Municipal Trial Courts in Cities, Municipal Trial Courts and Municipal Circuit Trial Courts involving enforcement or violations of environmental and other related laws, rules and regulations. (Part I, Rule 1, Section)

### **1. Filing**

A criminal proceeding in court begins with the filing of an information sufficient in form and substance. (See Institution of Criminal Actions.)

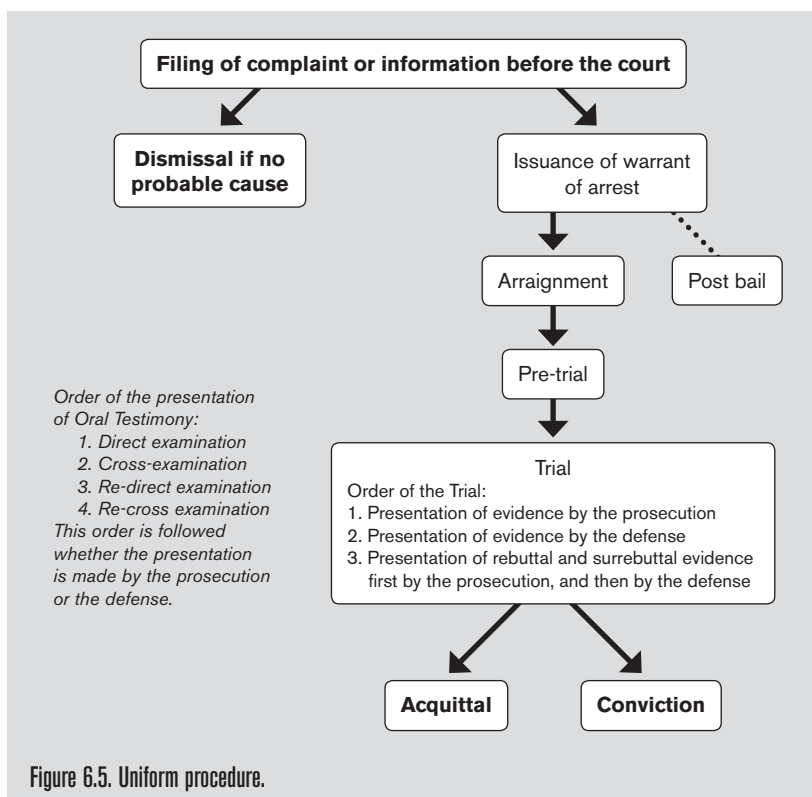


Figure 6.5. Uniform procedure.


## ***motion to quash***


### **Can the accused oppose the case at this stage?**

Yes. Immediately after the case is filed and before the accused enters his plea, he may file a ***motion to quash*** the complaint or information on the following grounds:

1. The facts charged do not constitute an offense. The facts stated in the complaint and affidavits must constitute the elements of the crime (see Chapter 2: Prohibited Acts & Penalties).
2. The court has no jurisdiction over the offense charged.  
e.g. A case for a crime punishable by 1 year is filed before the RTC, or the case for an offense committed in Tagbilaran City is filed in the MTC of Panglao, Bohol.
3. The court has no jurisdiction over the person of the accused. e.g. The accused has not been served the summons.
4. The officer who filed the case had no authority to do so.  
e.g. The information is filed by the investigating prosecutor without

the authority of the city, provincial or state prosecutor, or is filed by a prosecutor who did not conduct the PI himself.

- 
5. The complaint or information substantially does not conform to the prescribed form.  
e.g. The complaint filed was not subscribed under oath.
  6. More than one offense is charged.  
e.g. Filing a single complaint before the MTC for violation of Sections 89 & 92 of RA 10654.  
This ground is not valid when a single punishment for various offenses is prescribed by law.
  7. The criminal action or liability has been extinguished.  
e.g. A complaint for violation of an ordinance is filed 3 months after the offense was committed or was known to have been committed.
  8. The complaint or information contains averments which, if true, would constitute a legal excuse or justification.  
e.g. The age of the accused is below 9 years old. (*Rule 117, sec. 3, Rules of Court*)



Failure of the accused to file a motion to quash before he enters his plea is deemed a waiver of the grounds of the motion to quash.

### **Once the accused has entered his plea, can he still oppose the case?**

Yes. The accused can still move to quash even if he has already pleaded if the motion is filed on the following grounds:


- No offense charged
- Lack of jurisdiction of the court over the offense charged
- Extinction of the offense or penalty
- Double jeopardy  
(*Rule 117, sec. 9, Rules of Court*)

## **provisional dismissal**

### **Can the court dismiss the case at this stage?**

Yes, the court may provisionally dismiss a case. Cases subjected to **provisional dismissal** must be revived by the prosecution within:

- 1 year if the offense is punishable by imprisonment of not more than 6 years, or a fine of whatever amount
- 2 years if the offense is punishable by imprisonment of more than 6 years.



Failure to revive the case within the specified period will make the provisional dismissal permanent.

## 2. Arraignment



**Arraignment** is the stage of prosecution when the accused is formally informed of the charges against him by the reading of the complaint or information in a language or dialect he can understand. He is then asked if he pleads **guilty** or **not guilty** of the offense charged.

At the arraignment, the trial court may allow the accused, with the consent of the offended party and the prosecutor, to **plea bargain**. **Plea bargaining** is the opportunity given to the accused to plead guilty to a lesser offense, i.e., an offense that imposes a lower penalty.

### What is the role of the concerned government agency in plea bargaining?

Unlike in ordinary cases, the presence and consent of concerned government agency is required in plea bargaining for environmental cases. (Part IV, Rule 15)

### plea bargaining



#### Should the offended party consent to plea bargaining?

It is discouraged, since this is one of the strategies used by violators to escape the full extent of the punishment provided by law. By plea bargaining, violators usually only receive the penalty of a fine without imprisonment. This undermines the very objective of environmental laws to protect coastal habitats. It creates the impression that offenders can continue violating environmental laws as long as they can afford to pay the fine. In most cases, the fine is far below the value of the coastal resource degraded or destroyed by the illegal act.



The plea is valid only if **all** of the following are present:



1. The lesser offense is necessarily included in the offense charged (*Amatan vs. Anjero, 248 SCRA 511*)  
e.g. Actual Use of Dynamite in Fishing is reduced to Possession of Dynamite. The elements constituting Possession of Dynamite are included in the elements of the offense of Actual Use.
2. Consent of offended party
3. Consent of prosecutor
4. The plea is made during arraignment. The plea may also be made after arraignment, but before the trial and after the withdrawal of the plea of not guilty.  
(Rule 116, sec. 2, Rules of Court)



If the plea is valid, the filing of another case based on the same act or offense will constitute double jeopardy.



### 3. Pre-trial

#### When should the pre-trial be scheduled?

After arraignment, a pre-trial is scheduled within thirty (30) days. (Rule 16, Section 1)

#### What happens during pre-trial?

*The following happens during the pre-trial:*

1. Identification of issues
2. Marking of evidence to be presented as exhibits
3. Comparison of copies attached to the records with the original documents
4. Stipulation of facts and admissions
5. Settlement of the civil aspect of the case
6. Other matters that may aid in the prompt disposition of the case

#### What is the role of the law enforcer during pre-trial?



The law enforcer should be present during pre-trial and assist in the identification and marking of sworn statements and other exhibits. He/she should also inform the prosecutor on matters related to stipulation of facts and admissions.

### 4. Trial

#### How long will the trial on environmental cases be held?

The court shall endeavor to conduct continuous trial which shall not exceed three (3) months from the date of the issuance of the pre-trial order. (Rule 17, Section 1)

Unless the accused has pleaded guilty and has interposed a lawful defense, the order of the trial is as follows:

1. Presentation of evidence by the prosecution
2. Presentation of evidence to prove defense by the accused
3. Presentation of rebuttal and surrebuttal evidence by the prosecution, and then by the accused



In case the judge fails to order a pre-trial or trial within the period prescribed by the rules, a motion to set the case for trial can be filed to avoid the dismissal of the case on the ground of violation of the right of the accused to a speedy trial.

#### What happens during the trial proper?

During the trial, the prosecutor presents the evidence and testimonies to prove the guilt of the accused. The defense, on the other hand, present evidence and testimonies to show that the accused is not guilty of the offense charged.

### **How is the testimony of the witnesses presented during the trial?**

Unlike in ordinary criminal cases, the testimony of the witnesses is presented in the form of judicial affidavits. Thereafter, the opposing party is allowed to cross-examine the witness based on the contents of the affidavit. (Rule 17, Section 2)

### **How long should the direct and cross-examination of a witness be conducted?**

Except for justifiable reasons, the direct and cross-examination of each witness must be conducted in one (1) day. (Rule 4, Section 3)

### **When should the court decide on the case?**

The court shall decide the case within a period of ten (10) months from the date of arraignment. (Rule 17, Section 4)

### **What other actions can the accused file to dismiss the case during trial?**

A common tactic used by the defense is the filing of a **demurrer to evidence**. This is an objection by one of the parties to the sufficiency of the evidence presented by the other party. It is a motion for the dismissal of the case on the ground that the prosecution has failed to establish guilt beyond reasonable doubt.

### **How is a demurrer to evidence filed?**

- With leave of court

If with the permission or “leave” of the court, a motion for leave must first be filed within a non-extendible period of 5 days after the prosecution rests its case. Even if the motion for leave is denied, the accused will still be allowed to present evidence to prove his defense.

- Without leave of court

If no leave or permission is secured before filing a demurrer and the court denies the demurrer to evidence, the accused will no longer be allowed to present evidence to prove his defense. The court will then render a decision based on the evidence presented by the prosecution.

### **5. Judgment**

**Judgment** is the decision by the court on whether the accused is **guilty or not guilty** of the offense charged, and on what proper penalty must be imposed on the accused (*Rule 120, sec. 1, Rules of Court*). The prosecution or the defense may still move for the modification or for the setting aside of the judgment if the judgment is not final. (See Remedies After Decision)

In case of a judgment of conviction, the prosecutor is encouraged

to notify the BFAR, DENR and PCG to facilitate the implementation of administrative remedies that will help discourage the offender from repeating the offense. (See Chapter 7: Administrative Remedies)

### Summary Procedure

Some cases that fall under the jurisdiction of the MTC based on the imposable penalty are covered by the Rule on Summary Procedure. These are:

- Violations of municipal or city ordinances
- Criminal cases where the penalty prescribed by law for the offense charged does not exceed 6 months imprisonment or a fine of P1,000, or both (*Combate v. San Jose, Jr., 135 SCRA 693, 1985*).

These cases are started either by a complaint or information filed directly in court without need of a PI. However, in Metropolitan Manila and chartered cities, such cases are started only by the filing of an information. (*Rule on Summary Procedure, sec. 9a*)



Affidavits required to be submitted under this rule must state only facts of direct personal knowledge of the affiants. These are the only admissible evidence. The affiants must also show their competence to testify on the matters stated in their affidavits. (*Rule on Summary Procedure, sec. 20*)

### What pleadings are prohibited under the Rule on Summary Procedure?

The filing of the following pleadings will not be admitted in court:

- Motion to dismiss or quash except for lack of jurisdiction
- Motion for a bill of particulars
- Motion for new trial, reconsideration or re-opening of a trial
- Petition for relief from judgment
- Motion for extension of time to file pleadings or any other pleading
- Petition for certiorari, mandamus or prohibition against any interlocutory order of the court
- Motion to declare defendant in default
- Dilatory motions for postponement
- Reply
- Third-party complaints
- Interventions



No warrant of arrest is issued in cases covered by the Rules on Summary Procedure, except when the accused fails to appear in court when his presence is required. If the accused is under the custody of the law, he is immediately released.

## **REMEDIES AFTER DECISION**

Before the court's decision becomes final, the parties may avail of the following remedies:

- Appeal
- Motion for Reconsideration
- Motion for New Trial
- Certiorari

### ***Appeal***



An **appeal** is the opportunity given to any aggrieved party to question the decision of the court hearing the case (*Rule 121*).



Aside from the right to appeal, the accused may also be allowed to file a motion for reconsideration and a motion for new trial. As a general rule, the prosecution is not allowed to file an appeal, as it might place the accused in double jeopardy.

### **When is an appeal by the prosecution allowed?**

Appeals by the prosecution on judgments of dismissal or acquittal are allowed when the action does not place the accused in double jeopardy (*Rule 122, sec. 2*).

There is no double jeopardy if all of the following are true:

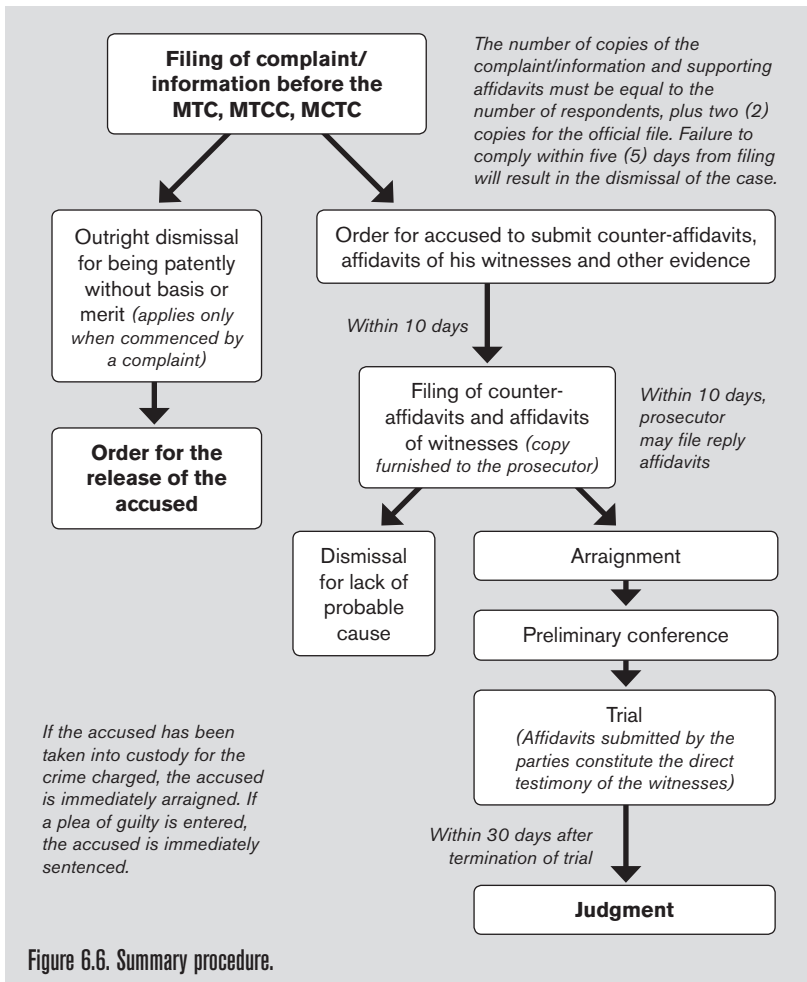
- The dismissal is made upon the motion, or with the express consent, of the accused
- The dismissal is not an acquittal based on the consideration of the evidence or of the merits of the case
- The question to be passed upon by the appellate court is purely legal (*People v. Villalon, 192 SCRA 521, 1990*).

### **Where must the appeal be made?**

- To the RTC, in cases decided by the MTC, MCTC or MeTC
- To the Court of Appeals (CA), in cases decided by the RTC in either its original or appellate jurisdiction
- To the Supreme Court, in cases decided by the Court of Appeals (*Rule 122, sec. 3*)



The other party must always be furnished with a copy of the appeal.

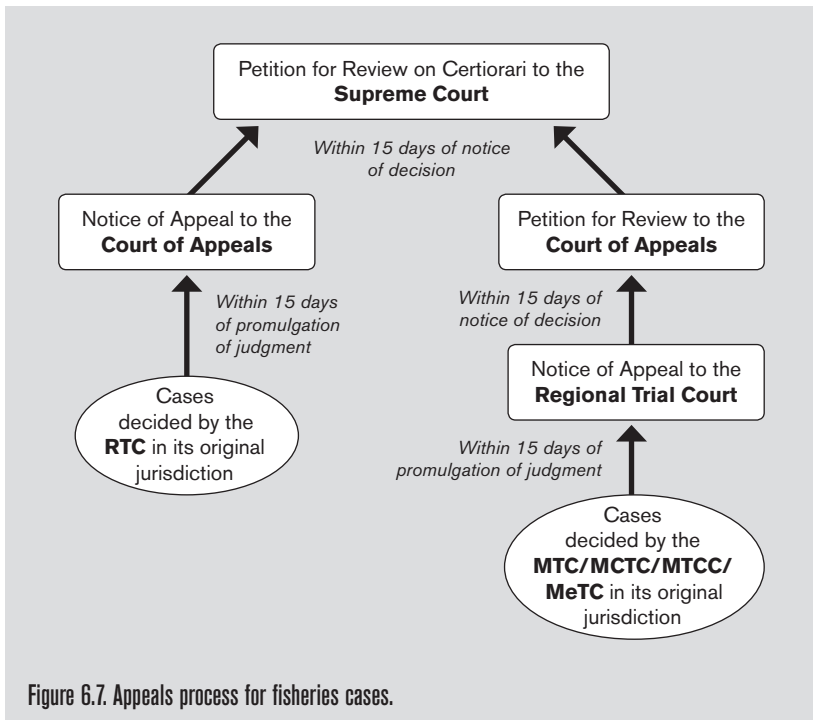


### When should the appeal be made?

Appeals must be filed with the proper appellate court within 15 days of the promulgation of the adverse judgment. If a decision already appealed to the RTC is to be appealed again to the CA, the appeal must be filed within 15 days of the notice of the decision of the RTC.



**Promulgation of judgment** is the reading of the judge's decision or sentence in the presence of the accused. If the conviction is for light offenses, promulgation before the counsel or representative is sufficient.



### ***Motion for new trial***

The court may, at the motion of the accused, or at its own instance but with the consent of the accused, grant a new trial when:

- Errors of law or irregularities prejudicial to the substantial rights of the accused have been committed during the trial
- New and material evidence have been discovered that the accused could not have, with reasonable diligence, discovered and produced at the trial and which, if introduced and admitted, would probably change the judgment

*(Rule 121, sec. 1)*



Only the defense may file a motion for new trial.

### ***Motion for reconsideration***

The court grants reconsideration of its decision on the ground of errors of law or fact in the judgment. This motion requires no further proceeding. Only the defense may file a motion for reconsideration.

### ***Certiorari***

The judgment or order of acquittal may be challenged in a petition for certiorari in cases where the lower court did not merely commit

reversible errors, but also **grave abuse of discretion** amounting to lack or excess of jurisdiction, or resulting from a denial of due process by the prosecution or the court.



Any judgment rendered without proper jurisdiction is void. The rule on double jeopardy, therefore, will not apply if the same case is re-filed with the proper court.

### **FINAL JUDGMENT**



**Final judgment** is a judgment that can no longer be appealed and thus must be executed. A judgment becomes final under any of the following conditions:

- The 15-day period for perfecting an appeal has lapsed
- The sentence has been partially or totally satisfied or served
- The accused expressly waives in writing his right to appeal
- The accused applies for probation

(Rule 120, sec. 7)



As a rule, judgments rendered by the Supreme Court are considered final.

### **alternatives to criminal cases**

#### **What can the complainant still do if the final judgment is an acquittal?**



A new complaint for an offense that **necessarily includes** the offense charged in the original complaint or information may be filed if the plea of guilty to a lesser offense was made by the accused without the consent of the prosecutor and of the offended party.

Filing an administrative case may be an option (See Chapter 7: Administrative Remedies)

### **CIVIL CASE**

Another alternative is the filing of a civil case. The new Rules of Procedure for Environmental Cases cover **civil** cases, **criminal** cases, and **special civil actions** involving the enforcement or violations of environmental laws and other related laws, rules and regulations, and other existing laws that relate to the conservation, development, preservation, protection and utilization of the environment and natural resources. (Rules of Procedure for Environmental Cases, Sec. 2, Rule 1)

#### **Who can file civil cases under the new Rules?**

1. A **real party in interest** whether Filipino citizen or not;
2. The **Government**;

3. **Juridical entities** such as people’s organizations, and non-government organizations. (*Sec. 4, Rule 2*)

### **What is a real party in interest?**

A **real party in interest** is a person who stands to be benefited or injured by the judgment in the case. Unless allowed by law or the Rules of Court, every action must be prosecuted or defended in the name of the real party in interest. (*Sec. 2, Rule 3, Rules of Court*)

### **Is it necessary that a person who is directly injured can file an environmental case?**

Under the new Rules of Procedure for Environmental Cases, a person can file an environmental case through a “citizen suit”. Direct injury to a petitioner or complainant is no longer required for purposes of filing a case. Any Filipino citizen – whether an individual or a corporation – in representation of others, including minors or ‘generations yet unborn’, may file action to enforce rights or obligations under environmental laws. (*Sec. 5, Rule 2*)

### **EXAMPLE – citizen’s suit**

A case for Injunction and Damages filed with the Regional Trial Court by one women’s organization, or association, representing women and minor girls or others yet unborn, to enforce rights or obligations under the Water Code of the Philippines. The organization, however, must show accreditation, registration, recognition.

The liberalized rule on standing is now enshrined in the Rules of Procedure for Environmental Cases which allows the filing of a citizen suit in environmental cases. The provision on citizen suits in the Rules “collapses the traditional rule on personal and direct interest, on the principle that humans are stewards of nature,” and aims to “further encourage the protection of the environment.” (**INTERNATIONAL SERVICE FOR THE ACQUISITION OF AGRI-BIOTECH APPLICATIONS, INC. VS. GREENPEACE SOUTHEAST ASIA (PHILIPPINES), ET AL.**, G.R. No. 209271, December 8, 2015)

In the case of **RESIDENT MARINE MAMMALS OF THE PROTECTED SEASCAPE TAÑON STRAIT, e.g., TOOTHED WHALES, DOLPHINS, PORPOISES, AND OTHER CETACEAN SPECIES, ET AL. VS. REYES, ET AL.**, G.R. No. 180771. April 21, 2015, the Supreme Court ruled:

“It is worth noting here that the Stewards are joined as real parties in the Petition and not just in representation of the named cetacean species. The Stewards, Ramos and Eisma-Osorio, having shown in their petition that there may be possible violations of laws concerning the habitat of the Resident Marine Mammals, are therefore declared to possess the legal standing to file this petition.”



**Is payment of filing fee required during filing of the case?**

***Payment of filing and other legal fees is deferred*** or is no longer required on the day of filing, but, is postponed until judgment. This rule is in addition to the rule on indigent litigants, who are exempt from paying filing and other legal fees. (Sec. 12, Rule 2)

**Is a bond required for application of a Temporary Environmental Protection Order?**

***Payment of bond is not required*** for application for a Temporary Environmental Protection Order (“TEPO”). (Sec. 8, Rule 2)

**What is the proceeding in nature?**

Proceeding is summary in nature. Both complaint and answer must include affidavits of witnesses and material evidence. (Sec. 3, Rule 1)

**Pre-Trial**

The ***pre-trial stage is maximized***, where possibility of settlement is explored, issues simplified, and the evidence procured through depositions, and properly identified and marked. (Rule 3)

**Trial**

***Direct examination is made through affidavits***; the long process of question and answer in court is no longer required. (Sec. 3, Rule 2)

The *Rules* provides that ***examination of witness should be completed in one (1) day*** only. (Sec. 3, Rule 4)

The *Rules* specifies that the court has only ***one (1)-year to try and decide the case***. The judge must file a petition with the Supreme Court to ask for extension. (Sec. 5, Rule 4)

The *Rules* allows a memorandum to be submitted in ***electronic form*** (e.g., through e-mail) within a non-extendible period.

**Is the decision under the new rules immediately executory?**

Under the *Rules*, ***decisions*** directing the performance of acts for the protection, preservation or rehabilitation of the environmental ***must be immediately implemented*** even if an appeal is filed, unless, the appeals court stops the implementation. (Sec. 2, Rule 5)

**SPECIAL CIVIL ACTIONS**

**What are the Special Civil Actions available under the new rules?**

The *Rules* provides for two (2) special writs, which are speedy remedies, conducted within a short period of time – the ***writ of kalikasan*** and ***writ of continuing mandamus***.

The writ of kalikasan is given the same level of priority as the writs

of habeas corpus, amparo and habeas data.

## **ALTERNATIVE REMEDIES**

### **What other alternative remedies available under the new rules?**

The complainant can ask for an Environmental Protection Order (EPO) or Writ of Kalikasan or Writ of Continuing Mandamus from the court.

## **ENVIRONMENTAL PROTECTION ORDER (EPO)**

### **What is an EPO?**

An Environmental Protection Order is an order issued by the court directing or enjoining any person or government agency to perform, or desist from performing an act, in order to protect, preserve or rehabilitate the environment. (Sec. 4 (d), Rule 1)

### **What is a Temporary Environmental Protection Order (TEPO)?**

A Temporary Environmental Protection Order is an EPO, but, with a time period during which it is effective or in force – whether seventy-two (72) hours; or, until the determination of the case. An EPO is a permanent TEPO. (Sec. 4 (d), Rule 1 and Sec. 8, Rule 2)

### **When may a TEPO issue?**

If it appears from the verified Complaint asking for issuance of EPO that the matter is of extreme urgency and the applicant will suffer grave injustice and irreparable injury, the judge may issue *ex parte* (*that is, without hearing, as of the moment, the side of the defendants*) a TEPO effective for only seventy-two (72) hours from date of the receipt of the TEPO by the party or person enjoined. Within the 72-hour period, the court where the case is assigned, shall conduct a summary hearing to determine whether the TEPO may be extended until the termination of the case. (1<sup>st</sup> par., Sec. 8, Rule 2)

### **What are the duties of the court regarding TEPOs or EPOs?**

The court must periodically monitor existence of acts concerning the TEPO. (2<sup>nd</sup> par., Sec. 8, Rule 2)

The judge is also required to make regular reports to the Supreme Court through the Office of the Court Administrator regarding any action taken on a TEPO, EPO, TRO, or a preliminary injunction, including its modification or dissolution. (Sec. 11, Rule 2)

### **May a TEPO be dissolved or lifted?**

Yes. After hearing, the judge may dissolve a TEPO if it is shown that its issuance or continuance would cause irreparable damage to the

party or person enjoined, while the applicant may be fully compensated for damages that may be suffered. The party applying for dissolution of the TEPO is required to pay sufficient bond. (Sec. 9, Rule 2)

The court may also lift the TEPO anytime if called for by circumstances. (Sec. 8 and 11, Rule 2)

### **What else may the judge do regarding TEPOs or EPOs?**

In the Decision or Judgment, the judge may convert the TEPO to a permanent EPO, or issue a writ of continuing mandamus directing the performance of acts which shall be effective until the judgment is fully satisfied. (Sec. 3, Rule 5)

### **May a court, through a TRO or writ of preliminary injunction, stop the actions of government agencies that enforce environmental laws or prevent violations thereof?**

Only the Supreme Court can issue a TRO or writ of preliminary injunction against lawful actions of government agencies that enforce environmental laws or prevent violations thereof. (Part II, Rule 2, Section 10)

### **Can TEPO or EPO be availed of in criminal cases?**

A TEPO or EPO may be availed of in criminal cases covered by the Rules. The procedure concerning TEPO or EPO in civil cases is to be followed. (Sec. 2, Rule 13)

## **WRIT OF KALIKASAN**

### **What is a Writ of Kalikasan?**

The Writ of *Kalikasan* is an extraordinary legal remedy introduced in the *Rules of Procedure for Environmental Cases*, which may be filed with the Supreme Court and the Court of Appeals only, by persons, on behalf of others, whose constitutional right to a balanced and healthful ecology is violated, or threatened with violation by an unlawful act or omission of a public official or employee, or private individual or entity involving environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two (2) or more cities or provinces. (Sec. 1, Rule 7)

### **Who may file a petition for this writ?**

On behalf of others, whose constitutional right to a balanced and healthful ecology is violated, or threatened with violation by an unlawful act or omission of a public official or employee, or private individual or entity involving environmental damage of such

magnitude as to prejudice the life, health or property of inhabitants in two (2) or more cities or provinces, the following may file a petition for the issuance of the Writ of *Kalikasan*:

1. natural person (i.e., human beings), or
2. juridical person (i.e., corporations),
3. entity authorized by law, people's organization, non-governmental organization, or any public interest group accredited by or registered with any government agency. (Sec. 1, Rule 7)

### **Who may be included as respondents?**

The petition may be filed against:

1. Public officials or employees, i.e., the Government, or persons working for the government; and/or
2. Private persons or corporations, organizations, associations, etc.

### **Where or with which court may the petition be filed?**

The petition shall be filed with the **Supreme Court**, or any station of the **Court of Appeals** only. (Sec. 3, Rule 7)

### **How much is the filing fee?**

The petitioner does not pay docket or filing fees for the petition for writ of *kalikasan*. (Sec. 4, Rule 7)

### **In a successful petition, what may the SC or CA ORDER?**

If the writ of *kalikasan* is granted, the Supreme Court or Court of Appeals may order the following:

- **PERMANENTLY CEASE AND DESIST** from violating environmental laws, or committing acts, or neglecting performance of a duty, in violation of environmental laws resulting in environmental destruction or damage.
- **PROTECT, PRESERVE, REHABILITATE, RESTORE** the environment
- For all respondents to **MONITOR STRICT COMPLIANCE** with decision and court orders;
- Direct all respondents to write **PERIODIC REPORTS** regarding execution of the final judgment;
- **OTHER RELIEFS** relating to right of people to a balanced and healthful ecology or to protection, preservation, rehabilitation or restoration of the environment.

### **Can damages be awarded?**

No. Damages may not be awarded in favor of individual petitioners. (Sec. 15, Rule 7)

### **What can petitioner do next if petition is denied?**

If the petition was filed with the Court of Appeals, the losing or aggrieved party has fifteen (15) days to appeal to the Supreme Court. (Sec. 16, Rule 7)

If the petition was filed with the Supreme Court, the losing party may file a motion for reconsideration.

### **Can Petitioner file other cases?**

Yes. The filing of a Petition for issuance of writ of *Kalikasan* shall not prevent the filing of separate civil, criminal or administrative cases. (Sec. 17, Rule 7)

### **What are the contents of the Petition?**

1. Personal circumstances of petitioner;
2. Name, personal circumstances, assumed name, alias of respondent;
3. Environmental law, rule, regulation violated or threatened to be violated;
4. Act or omission complained of, and the environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two (2) or more cities or provinces;
5. All relevant and material evidence, including object evidence, if possible;
6. Reliefs or specific protection prayed for including prayer for TEPO;
7. Verification and certificate of non-forum shopping. (Sec. 2, Rule 7)

### **ISSUE: Can the validity of an ECC be challenged via a WRIT OF KALIKASAN?**

Yes, but subject to certain qualifications. The writ of *kalikasan* is principally predicated on an actual or threatened violation of the constitutional right to a balanced and healthful ecology, which involves environmental damage of a magnitude that transcends political and territorial boundaries. A party, therefore, who invokes the writ based on alleged defects or irregularities in the issuance of an ECC **must not only allege and prove such defects or irregularities, but must also provide a causal link or, at least, a reasonable connection between the defects or irregularities in the issuance of an ECC and the actual or threatened violation of the constitutional right to a balanced and healthful ecology of the magnitude contemplated under the Rules.** (PAJE VS. CASIÑO, G.R. No. 207257, Feb. 3, 2015)

## **WRIT OF CONTINUING MANDAMUS**

### **What is this Writ of Continuing Mandamus?**

The special civil action of Writ of Continuing Mandamus may be filed to ask the court to compel the government or its officers or agents to perform an act or acts specifically required by law, so that the right to a balanced and healthful ecology may be protected. This writ allows the court to retain authority even after judgment is issued in an environmental case, in order to ensure the successful implementation of the reliefs granted in the decision. One of these reliefs that the court may order is to compel the submission of compliance reports from the respondent government agency. The court may order other means to monitor compliance with its decision.

The Supreme Court also explains that this special civil action integrates the ruling of the SC in the leading case where it ordered the cleanup of Manila Bay, and the present rule under the “*Rules of Court*” on the issuance of the writ of mandamus. In terms of procedure, the filing of a petition for continuing mandamus is similar to the filing of an ordinary writ of mandamus, however, with continuing mandamus, the Temporary Environmental Protection Order is available as additional remedy.

Reminder: A writ of continuing mandamus may also be prayed for as a relief in other environmental cases, and in a petition for the writ of *kalikasan*.

The case of **Metro Manila Development Authority, DENR, et. al. vs. Concerned Citizens of Manila Bay, G.R. Nos. 171947-48, (December 18, 2008)**, involved the implementation of the Solid Waste Management act, the Fisheries Code, Pollution Control law, and the Clean Water act, by different government agencies tasked to take care of Manila Bay under the said laws. Concerned citizens sued the officials of these agencies and requested the High Court to direct these agencies to clean up, rehabilitate and protect Manila Bay. The government agencies defended themselves by saying that the clean up was a discretionary duty and there must be a specific pollution incident first before they are required to act. The Supreme Court ruled that the government agencies are duty bound to clean Manila Bay as they are mandated by law to enforce and comply with provisions of applicable law. The Cleaning or Rehabilitation of Manila Bay can be compelled by Mandamus. Generally, the writ of mandamus serves to require the execution of a ministerial duty.

### Who may be respondents?

A Petition for Continuing Mandamus may be filed against:

- a. Any agency or instrumentality of the government, or
- b. Any officer of the agency or instrumentality of the government.

Reminder: Only the Government or its officers may be named as respondents in a petition for continuing mandamus.

### What acts are covered by this writ?

The subject matter of this special civil action are the:

1. **Unlawful neglect in the performance of an act or duty** by any office or officer of the government, in connection with the enforcement or violation of an environmental law, rule or regulation or a right therein; or
2. **Unlawful exclusion** of another from the use or enjoyment of such right.

In both instances, a petition for writ of continuing mandamus may be filed where there is no other plain, speedy and adequate remedy in the ordinary course of law.

### Who may file a petition?

This special civil action is available only to person/s personally aggrieved by the unlawful neglect, or unlawful exclusion. (Sec. 1, Rule 8)

### What are the contents of the Petition?

The following must be included in the petition:

1. **Facts** of the case;
2. All **evidence**;
3. Environmental **law**, rule, or regulation;
4. **Reliefs**; and
5. **Verification** and **Certificate** of non-forum shopping. (Sec. 1, Rule 8)

### Where is a petition filed?

The petition may be filed with the **Regional Trial Court** exercising jurisdiction over the territory where the unlawful neglect or exclusion occurred. It may also be filed with the **Court of Appeals**, or the **Supreme Court**. (Sec. 2, Rule 8)

### How much is the filing fee?

There is no filing fee required; petitioner is exempt from the payment of docket fees. (Sec. 3, Rule 8)

### WHAT may petitioner ask the court?

The petitioner may ask that respondent/s be ordered by the court to:

1. **Do** an act or series of acts until the judgment is fully satisfied;
2. **Pay damages** to petitioner caused by respondent's malicious neglect to perform its duties. (Sec. 1, Rule 8)

### What may the court order contain?

If warranted, the court shall grant the privilege of the writ of continuing mandamus and -

- a. Require respondents to **perform acts or series of acts** until judgment is fully satisfied,
- b. Grant **other reliefs**,
- c. Require respondent to **submit periodic reports** detailing the progress and execution of judgment, and a **final report**.

The court, a commissioner, or the appropriate government agency, may evaluate and monitor respondent's compliance with the judgment. (Sec. 7, Rule 8)

### WHAT ELSE may a petitioner do after favorable Decision or Judgment?

Petitioner may submit comments or observations on the execution of the judgment by the respondent Government Agency or officer. (Sec. 7, Rule 8)

### APPLICATION OF THE PRECAUTIONARY PRINCIPLE

The *precautionary principle* comes from international law. It is introduced in Philippine law through the *Rules of Procedure for Environmental Cases*. The principle states that **when human activities may lead to threats of serious and irreversible damage to the environment that is scientifically plausible but uncertain, actions shall be taken to avoid or diminish that threat**. (Sec. 3 (f), Rule 1)

### How is this principle applied?

When there is a **lack of scientific certainty** in establishing a causal link between human activity and environmental effect, the court shall apply the precautionary principle **when considering the evidence** and in **resolving the case** before it.

The *Rules* says the constitutional right of the people to a balanced and healthful ecology shall be given the benefit of the doubt. (Sec. 1, Rule 20)

### What factors may the court consider in applying the principle?

The court may consider the following, among other factors:

1. Threats to human life or health;
2. Inequity to present or future generations; or
3. Prejudice to the environment without legal consideration of the



environmental rights of those affected. (Sec. 2, Rule 20)

In the case of **INTERNATIONAL SERVICE FOR THE ACQUISITION OF AGRI-BIOTECH APPLICATIONS, INC. VS. GREENPEACE SOUTHEAST ASIA (PHILIPPINES), ET AL.**, G.R. No. 209271, December 8, 2015, the Supreme Court applied the PRECAUTIONARY PRINCIPLE in this wise:

“For purposes of evidence, the precautionary principle should be treated as a principle of last resort, where application of the regular Rules of Evidence would cause in an inequitable result for the environmental plaintiff — (a) settings in which the risks of harm are uncertain; (b) settings in which harm might be irreversible and what is lost is irreplaceable; and (c) settings in which the harm that might result would be serious. When these features — uncertainty, the possibility of irreversible harm, and the possibility of serious harm — coincide, the case for the precautionary principle is strongest. When in doubt, cases must be resolved in favor of the constitutional right to a balanced and healthful ecology. Parenthetically, judicial adjudication is one of the strongest fora in which the precautionary principle may find applicability.

Assessing the evidence on record, as well as the current state of GMO research worldwide, the Court finds all the three conditions present in this case — uncertainty, the possibility of irreversible harm and the possibility of serious harm.”

### **STRATEGIC LAWSUIT AGAINST PUBLIC PARTICIPATION IN CIVIL CASES (SLAPP)**

(Note: For SLAPP in criminal cases please see page 94 of Chapter 4)

#### **How is a SLAPP may be used in civil cases?**

The **DEFENDANT** in a civil case may use SLAPP as a *defense*, and write this in the “Answer”. The defendants must support SLAPP defense with all relevant evidence including documents, affidavits, or papers. The defendant may ask the court for damages, attorney’s fees, and costs of suit.

The **PLAINTIFF** may file an *opposition*. (Sec. 2, Rule 6)

#### **How is the hearing conducted in SLAPP defense?**

A summary hearing is conducted. In this summary hearing, the plaintiff must convince the court by *preponderance of evidence* that the SLAPP is a valid case and not just a ‘harassment’ case. Also in this summary hearing, the defendant must convince the court by *substantial evidence* that the act complained of is a legitimate action for the protection, pres-

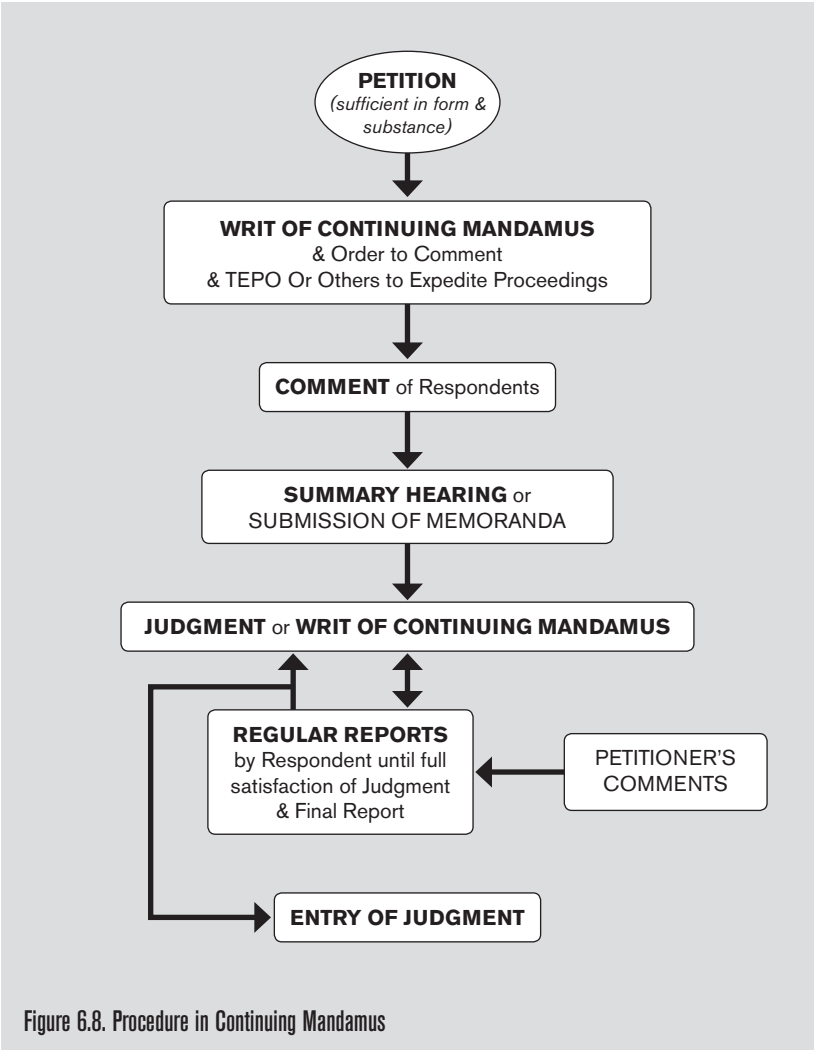
ervation and rehabilitation of the environment. (Sec. 3, Rule 6)

**How will the Court resolve the issue of SLAPP?**

Within thirty (30) days after summary hearing, the Court shall resolve the issue.

The court may believe defendant and *dismiss* the SLAPP or ‘harassment’ case. Damages, attorney’s fees and costs of suit may be awarded, if asked for by defendant.

Or, the court may order the case to *proceed*; rejecting the defense of a SLAPP. The evidence in the summary hearing regarding SLAPP shall be treated as evidence in the main case. (Sec. 4, Rule 6)



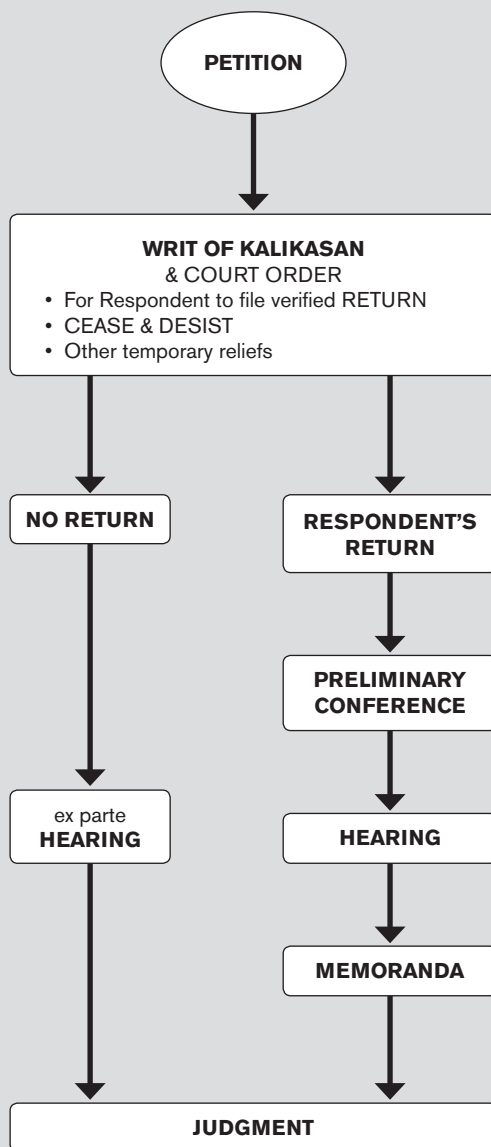


Figure 6.9. Procedure in Writ of Kalikasan



Figure 6.10. Flow of prosecution



## CHAPTER 7

### Administrative Remedies



**J**udicial procedures are often tedious and expensive. They demand a lot of time and effort from those who dare pursue justice to its end. The high rate of cases dismissed due to the technical rigidity of the Rules on Criminal Procedure often discourages coastal law enforcers, who feel that all their labor goes to waste when coastal law violators go unpunished for their environmentally destructive acts.



An **administrative remedy** is a plain, speedy and effective non-judicial remedy provided by administrative agencies (*US v. Morton No. 1-4345*). It provides law enforcers with a venue for obtaining appropriate remedies for coastal law violations without the hassles, expenses and delays usually associated with judicial proceedings.

Arguably, administrative remedies are even more effective in deterring further destruction of the coastal environment. Administrative penalties, such as the closure and cessation of a commercial fishing operation or the confiscation of fishing vessels and gears, discourage the violator from further violating the law because of the bigger financial costs involved compared to the inadequate fines imposed by the regular court.

#### What process is used to resolve administrative cases?



**Administrative adjudication** refers to the process adopted by an administrative agency for the formulation of a final order or decision. This process includes the different principles and procedures in the resolution of both routine and contested matters, including the settlement of conflicting claims between an executive or administrative authority and an individual or private right. (*EO 292, Book Seven*)

#### Who may initiate an administrative action?



- Any aggrieved party
- An administrative agency on its own initiative, motion or complaint
- Stakeholders

**Stakeholders** are persons who may be significantly affected by the project or undertaking. Examples would be members of the local community, industry, local government unit, national government agencies, non-government organizations and people's organizations. (*DAO 2003-30, sec. 3*)

### **Who has the authority to adjudicate administrative cases?**

- Any department, bureau, office, commission, authority or officer of the National Government authorized by law or executive order to issue licenses, grant rights or privileges, and adjudicate cases
  - Research institutions with respect to licensing functions
  - Government corporations with respect to functions regulating private right, privileges, occupation or business
  - Public officials in the exercise of disciplinary power
  - Local government units
- (EO 292, Book Seven)



Although this list is broad in scope, an agency's authority to adjudicate is bestowed by the Constitution or by-laws that provide the agency its mandates. This power, however, need not be expressly conferred upon it, but may be fairly or necessarily implied from what has been expressly provided.

### **Can a criminal and administrative case be filed simultaneously?**

Administrative remedies can be availed of at any time because administrative cases are distinct and different in nature from criminal cases. They are governed by separate rules and regulations. Thus, a final conviction in a judicial or regular court is not necessary before an administrative case can be filed against the violator. Administrative remedies may also be resorted to without having to file a case in regular court, or even when a case is pending in court.



A final conviction for violations of RA 10654 is not a requirement for the cancellation of a commercial fishing vessel and gear license (CFVGL). FAO 198 provides that any violation of fishery-related laws is a ground for its cancellation. The violation can be proven by competent evidence other than a court's final decision.

### **GENERAL PROCEDURES**

The general guideline for administrative proceedings is provided in the Administrative Code of the Philippines (EO 292). This guideline automatically applies when an administrative body has no specific rules and regulations of its own (see Specific Rules and Procedures). The Rules of Court are also used in administrative cases, but they apply only in a suppletory manner and without regard to the rigidity of technical rules.

### **To what agencies are the general procedures applicable?**

The general procedures apply to all administrative proceedings undertaken by government agencies. Exceptions to this are proceedings by Congress, the Judiciary, the Constitutional Commissions, military establishments in all matters relating exclusively to Armed Forces personnel, the Board of Pardons and Parole, and state universities and colleges. (EO 292, Book Seven)

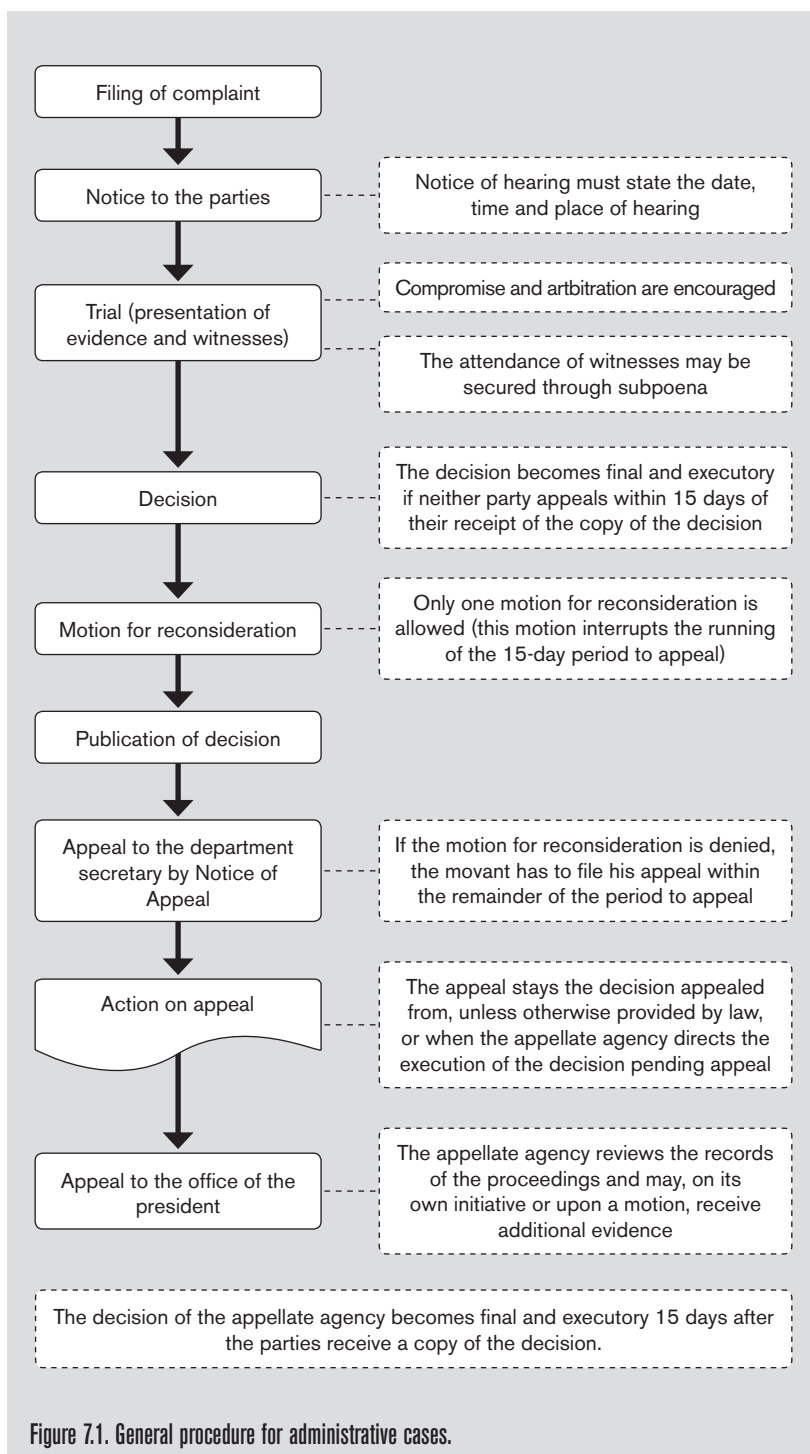


Figure 7.1. General procedure for administrative cases.



## Rights of the Parties in Administrative Cases

The rights of the parties to due process are protected even in administrative adjudication. This is the doctrine laid down in *Ang Tibay v. Court of Industrial Relations* (69 Phil. 365) where the Supreme Court provides that the parties in administrative proceedings have cardinal primary rights that must be respected even in this kind of proceedings. These rights are the following:

- Right to a hearing, which includes the right of the party interested or affected to present his own case and submit evidence in support of it.
- Not only must the party be given an opportunity to present his case, but the tribunal must also consider the evidence he presents.
- The decision must be supported by facts.
- The evidence on which the decision is based must be substantial.
- The decision must be rendered on the evidence presented at the hearing or at least contained in the record and disclosed to the parties affected.
- The judges must act on their own independent consideration of the law and facts of the controversy.
- The decision must be rendered in such a manner that the parties to the proceeding can be informed of the various issues involved and the reasons for the decision rendered.

In *Air Manila Inc. v. Balatbat* (38 SCRA 489), the Supreme Court laid down additional fundamental procedural rights of the accused in administrative cases. These are the rights to:

- A notice, be it actual or constructive
- Reasonable opportunity to appear and defend his rights, and to introduce witnesses and relevant evidence in his favor
- A tribunal so constituted as to give him reasonable assurance of honesty and impartiality, and of competent jurisdiction
- A finding or decision by that tribunal supported by substantial evidence presented at the hearings or at least ascertained in the records or disclosed to the parties

## What is due process in administrative proceedings?



**Due process** refers to the right of each party to be notified of the charges against him affecting his own person, property or right, and the opportunity for him to be heard and to present evidence on his behalf before any judgment is rendered against him (*Central Bank v. Cloribel*, 44 SCRA 307).

## What kind of notice must be provided to the parties?

1. If the statute or rule provides the manner, form and time of notice, the notice must substantially conform to the prescribed provisions.  
If the statute or rule provides that notice by publication is



sufficient to acquire jurisdiction, then service of the notice of hearing personally to the accused is not necessary (*Lumiqued v. Exevea*, 89 SCRA 125). But if personal service is required, the posting of the notice on a billboard or in public places is not sufficient.

2. If the law or the rule does not specify a particular requirement, the notice must give the party sufficient time and information to prepare his defense or to meet the issues involved.

### **Is a formal hearing necessary in administrative proceedings?**

No. It is sufficient that the accused party be given an opportunity to defend his interests. This opportunity is the very essence of due process; it respects the rights of the parties without having to conduct a formal hearing.



This opportunity for the accused to defend and present his case includes the responsibility of the administrative agency to consider the evidence presented, and to act on its own consideration of the law and the facts of the controversy. The agency must not simply accept the view of a subordinate who has conducted initial investigations, because a partial proceeding violates the right of the party to due process (*Doruelo v. Commission on Elections*, 183 SCRA 382).

### **Is a lawyer required in administrative proceedings?**

No. In fact, some administrative agencies prohibit the appearance of a counsel in the proceedings.

### **What rules on evidence apply in administrative proceedings?**

Administrative agencies are not bound by the strict rules governing the reception of evidence in court proceedings. However, they are mandated to observe some basic rules.

In the case of *Cortes v. Agcaoile* (294 SCRA 423), the Supreme Court provides that in administrative proceedings, there must be substantial evidence to support a finding or conclusion.



**Substantial evidence** is that amount of relevant evidence adequate and acceptable enough for a reasonable mind to justify a conclusion or support a decision. (*Rule 133, sec. 4*)

In case of contested cases, the following are the minimum guidelines:

- The agency may admit and give probative value to evidence commonly accepted by reasonably prudent men in the conduct of their affairs.
- Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, the parties are given the opportunity to compare the copy with the

original. If the original is in the official custody of a public officer, a certified copy of the original may be accepted.

- Every party has the right to cross-examine witnesses presented against him and to submit rebuttal evidence.
- The agency may take notice of judicially cognizable facts and of generally cognizable technical or scientific facts within its specialized knowledge. The parties are notified and afforded an opportunity to contest the facts.

*(EO 292, Book Seven, sec. 12)*

### **Remedies after Decision**

The decision on the administrative case can still be modified for as long as it is not final yet, and the case is still within the control of the administrative authorities.

### **When is the decision final?**

The decision becomes final and executory if the parties do not appeal the case within 15 days after receipt of the copy of the decision *(De Leon, 1998)*.

### **How is judgment modified?**

Either party can move to modify the decision by filing a motion for reconsideration or an appeal within 15 days from receipt of the decision on the grounds of fraud of imposition, mistake, surprise, inadvertence, newly discovered evidence, or a changed condition.

### ***Motion for Reconsideration***

The filing of a motion for reconsideration interrupts the 15-day period to appeal. However, if the motion for reconsideration is denied, an appeal must be filed within the remaining period to appeal.

A motion for reconsideration should be filed only before the tribunal that made the decision. Only one motion for reconsideration may be filed.

### ***Appeal***

An appeal delays the execution of a decision, unless otherwise provided by law or when the appellate agency directs execution pending appeal.

### **Where is it filed?**

If the decision is rendered by the Regional Director, it may be appealed to the Department Secretary. If the decision is rendered by the Department Secretary, the aggrieved party has two options:

- To file a notice of appeal with the Office of the President; this office exercises supervisory powers over all executive departments

- To file a petition for review with the Court of Appeals, as provided under Rule 43 of the Rules of Court



The principle of exhaustion of remedies does not apply when the respondent is a Department Secretary who acts as an alter-ego of the President, and whose decision bears his implied or assumed approval. The exhaustion of remedies, which in this case is to file an appeal before the Office of the President, is no longer necessary.

### ***Other Remedies***

If administrative adjudication does not yield the desired result, the party may also file the following petitions in the regular court:

#### **1. Petition for certiorari**

Annuls or modifies the proceedings of the tribunal, board or officers, and grants such incidental reliefs as law and justice may require

#### **2. Petition for mandamus**

Causes the concerned administrative official to perform an act necessary to protect the rights of the petitioners, and to pay the damages sustained by the petitioners due to his wrongful act

#### **3. Petition for prohibition**

Causes the tribunal to desist from further proceedings in the action or matter in question, and grants incidental reliefs as law and justice may require

### **What are the requisites for filing these petitions?**

- The tribunal has acted without or in excess of its jurisdiction, or acted with grave abuse of discretion amounting to lack or excess of jurisdiction, and
- No appeal, or any plain, speedy, and adequate remedy in the course of the law is available



Administrative adjudication does not prevent the aggrieved party from filing an action in regular court, especially if administrative adjudication does not yield the desired result or causes unreasonable delays.

### **SPECIFIC RULES AND PROCEDURES**

Many administrative bodies tasked with implementing coastal laws have issued their own rules and regulations for adjudicating administrative cases. In summary, these legal issuances are:

- RA 10654 empowers the DA to impose administrative fines and penalties and in connection thereof, it shall promulgate rules and regulations for the conduct of administrative adjudication
- DAO 32 s. 1997, governing the administrative confiscation of illegal forest products, tools, instruments and conveyances
- DAO 96-37, governing the imposition of fines and the cancellation/

revocation of Environmental Compliance Certificates

- PD 984, governing the imposition of fines and penalties in pollution cases
- Coast Guard MC No. 3 s. 1994, governing the administrative adjudication of marine pollution cases
- Ombudsman AO No. 07, governing the adjudication and investigation of cases filed against public officials.

These legal issuances provide for guidelines in the adjudication of administrative cases specific to each relevant government body, as well as the acts or omissions that may be a basis for filing an administrative complaint.

## **National Government Agencies**

### ***Bureau of Fisheries and Aquatic Resources***

Section 65 of RA 10654 empowers the DA-BFAR to enforce all laws, and to formulate and enforce all rules and regulations governing the conservation and management of fishery resources, except in municipal waters. BFAR is also mandated to settle conflicts of resource use and allocation in consultation with the national and local Fisheries and Aquatic Resources Management Councils and LGUs.



RA 10654 empowers the DA to impose administrative fines and penalties and in connection thereof, it shall promulgate rules and regulations for the conduct of administrative adjudication and the disposition of confiscated catch, gears, equipment and other paraphernalia. It shall also issue subpoena duces tecum and ad testificandum in administrative cases before it.



**Violation under RA 10654 can be simultaneously prosecuted criminally and administratively. (Please see Chapter 2 on Prohibited Acts and Penalties)**

### **How can an administrative proceeding against any person who violates any order, rule or regulation issued by the DA pursuant to RA 10654 be instituted?**

The DA shall, on its own instance or upon verified complaint by any person, institute administrative proceedings. (Sec. 131, RA 10654)

### **How can an administrative action be commenced?**

Administrative action is commenced upon filing of a verified complaint before the Adjudication Committee, through the Secretariat, provided, that in cases initiated by the BFAR, the law enforcement officer shall file the complaint before the Adjudication Committee immediately after completion of the investigation of the violation. (Rule 131.1, IRR of RA 10654)



The verified complaint must be supported by affidavits of witnesses and documentary evidence.

### **Can the case be settled prior to commencement of any criminal action in court?**

Prior to the commencement of any criminal action in court, the violation may be subject to an administrative settlement based on a schedule to be promulgated by the Adjudication Committee. (Rule 131.2, IRR of RA 10654)



The settlement penalty shall not be lower than 30% of the minimum of the imposable penalty prescribed under the law; Provided, further, that the settlement penalty imposed after the filing of an Answer or responsive pleading but before a decision is rendered, shall not be lower than 50% of the imposable penalty under the law. (Rule 131.2, IRR of RA 10654)

### **Can an offender always avail an administrative settlement?**

An offender may avail of an administrative settlement, as a matter of right, twice within the three-year period of their license. Thereafter, the acceptance of an offer to settle shall be decided upon by the Adjudication Committee. (Rule 131.2, IRR of RA 10654)

### **What is the formula in the computation of penalties?**

*Settlement Penalty = (ACTUAL GT ÷ MAX GT) x  
Compromise Rate x Minimum Penalty amount*

### **What if the above formula is not applicable?**

In case the formula is inapplicable, the rate in Rule 131.2 shall apply. (Rule 131.3, IRR of RA 10654)

### **Is the settlement entered into by the offender can be considered as an admission of his liability?**

A settlement, through the written offer of the offender, approved by the Adjudication Committee, shall not be considered as an admission of any liability, provided, that an offer to settle made and accepted after the filing of an Answer or any responsive pleading, but before the promulgation of judgment, shall warrant a higher rate. (Rule 131.4, IRR of RA 10654)

### **Is the DA has the power to issue Cease and Desist Orders and to Summarily Evict without Judicial Order?**

The Department shall, subject to the requirements of administrative due process, issue cease and desist order/s upon violator/s and to summarily eject, without the necessity of judicial order, the holder of FLA, other tenurial instrument, permit or license

from areas of the public domain covered by such FLA, tenurial instrument, permit or license. (Sec. 132, RA 10654)

**Can the BFAR Director or the Duly Authorized Representative issue Notice of Violation and Order Confiscation?**

In all cases of violations of this Code or other fishery laws, rules and regulations, the Director of the BFAR or the duly authorized representative, may issue a notice of violation and order the confiscation of any fish, fishery species or aquatic resources illegally caught, taken or gathered, and all equipment, paraphernalia and gears in favor of the Department, academic institutions or LGUs and to dispose of the same in accordance with pertinent laws, rules, regulations and policies on the matter. (Sec. 133, RA 10654)

**When is the Notice of Violation issued?**

The Notices of Violation (NOV) shall be issued immediately upon apprehension or arrest of the offender.

**To whom the NOV be issued?**

It shall be issued to the offender, owner on record of the vessel or gear. (Rule 133.1, IRR of RA 10654)

**What document should be issued pertaining to the items confiscated?**

A Seizure Receipt shall be issued to the offender together with the NOV containing an inventory of fish, fishery species or aquatic resources that are subjects or proceeds of the offense committed and all fishing equipment, paraphernalia and gears that may be confiscated as provided for by law.

**Who shall sign the Seizure Receipt?**

The receipt must be signed by the authorized representative of the Bureau and a witness.

**What document should be prepared after NOV and Seizure Receipt were issued?**

A Proof of Receipt, attesting to the fact that the offender was issued an NOV, and a Seizure Receipt, shall be prepared by the authorized representative of the DA-BFAR, for the signature of the offender.

**What if the offender refused to sign the proof of receipt?**

If the offender refuses to sign the receipt, such fact shall be indicated in the document and attested to by the authorized representative of the Bureau and a witness. (Rule 133.2, IRR of RA 10654)

### **What is the effect of the issuance of NOV?**

A Notice of Violation shall inform the apprehended party of the offense committed, the imposable penalties for the violation, the fact that he will be charged administratively before the Adjudication Committee, and that he may offer a settlement in accordance with these rules. (Rule 133.3, IRR of RA 10654)

### **What happen if the offender offer to settle and the offer is accepted?**

The offender will not be administratively charged before the Adjudication Committee.

### **What is the effect of issuance of Seizure Receipt?**

1. Allows the authorized representatives to seize any fish, fishery species or aquatic resources illegally caught, taken or gathered on behalf of the government, for distribution to LGUs, orphanages, homes for the aged, and similar charitable institutions, as they may deem appropriate, after the proper documentation necessary for adjudication and/or litigation purposes have been taken.
2. Allows the authorized representatives to seize on behalf of the government, regardless of a settlement, the following:
  - a. fish, fishery species or its products or by-products prohibited by law to be possessed, transported or traded;
  - b. fishing equipment, paraphernalia or gears prohibited by law to be used in fishing;
  - c. fishing equipment, paraphernalia or gears prohibited by law to be possessed, transported or traded without the necessary permit;
  - d. fish, fishery species, aquatic resources, its products or by-products, fishing gear, equipment or paraphernalia abandoned by the offender during the conduct of law enforcement operations; and
  - e. other items prohibited by law. (Rule 133.4, IRR of RA 10654)

### **How are the confiscated items disposed?**

1. Turn over living aquatic wildlife to the aquatic wildlife rescue centers recognized by the DA-BFAR for rehabilitation before release to the wild;
2. Turn over dead aquatic wildlife to the nearest DA-BFAR Regional or Provincial Fisheries Office; and
3. Dispose confiscated gears, paraphernalia and equipment, in accordance with the guidelines to be promulgated by the Adjudication Committee. (Rule 133.5, IRR of RA 10654)



### **Can the DA be stopped from enforcing RA 10654?**

No injunction or restraining order from the Municipal Trial Courts and Regional Trial Courts shall lie against the Department and BFAR upon the *ex parte* motion or petition filed by any person or entity in the exercise by the Department and BFAR of its regulatory functions in support of the implementation of this Code. (Sec. 134, RA 10654)



### **Sec. 10, Rule 2, of the Rules of Procedure for Environmental Cases, provides:**

“Except the Supreme Court, no court can issue a TRO or writ of preliminary injunction against lawful actions of government agencies that enforce environmental laws or prevent violations thereof.”

### **What are the additional sanctions for serious violation of RA 10654?**

The Adjudication Committee may impose the following additional sanctions to the administrative penalties imposed for serious violations:

1. confiscation of fishing gear;
2. impoundment of fishing vessel;
3. temporary suspension or permanent revocation of license or permit;
4. temporary or permanent ban from the availment of applicable duty and tax rebates;
5. inclusion in the IUU fishing vessel list;
6. denial of entry and other port services;
7. blacklisting; and
8. increase in the amount of fines but not to exceed five (5) times the value of the catch. In case of repeated violations within a five-year period, the amount of fine may be increased up to eight (8) times the value of the catch. (Sec. 135, RA 10654)



During the pendency of the administrative or the criminal case, the Department may impound the vessel/conveyance, gear and other paraphernalia used in the commission of the offense.

### **What is the effect of the fines and penalties imposed upon the properties of the violator?**

Fines and penalties imposed pursuant to this Code shall constitute a lien upon the personal and immovable properties of the violator. (Sec. 136, RA 10654)

### **What if the offender is a municipal fisherfolk or has no property?**

In case the offender is a municipal fisherfolk or has no property over which the Department may impose the fines and penalties prescribed

for the offense, community service may be rendered in lieu of the fine. (Sec. 137)

**Department of Environment and Natural Resources**

The DENR generally has the power to adjudicate cases related to forestry products and protected areas.

Section 2 of EO 277 (amending Section 68 of PD 705) gives authority to the DENR Secretary or his duly authorized representatives (e.g. Community Environment and Natural Resources Officer) to order the confiscation of any forest products illegally cut, gathered, removed, possessed or abandoned, and all conveyances used either by land, water or air in the commission of the offense. The same provision bestows it the authority to dispose of both products and conveyances in accordance with pertinent laws, regulations or policies.

DAO 32-97 provides guidelines on the administrative confiscation of illegal forest products and their conveyances. DAO No. 24 s. 2003 authorizes the administrative confiscation of chainsaws possessed, or used in the cutting, gathering, collection, removal and/or processing of timber or forest products without legal documents. The procedure provided in DAO 32-97 is adopted.

Section 10 of the National Integrated Protected Areas System law (RA 7586) empowers the DENR Secretary to extract administrative fees and fines for violations of the guidelines and rules and regulations of this act that endanger the viability of protected areas.

**1. Remedies for violations of forestry laws**

Remedies	Grounds	Legal Bases
Administrative confiscation of illegally cut, gathered, removed or possessed forest products	Cutting, gathering, collection, removal and/ or processing of timber or forest products under any of the following conditions: <ul style="list-style-type: none"><li>• Without license or permit</li><li>• Necessary documents incomplete</li><li>• Necessary documents already expired, cancelled or containing false information</li><li>• Fake license or documents</li></ul>	DAO 32-97
Administrative confiscation of chainsaws	<ul style="list-style-type: none"><li>• Cutting, gathering, collection, removal and/or processing of timber or forest products using a chainsaw without legal documents</li><li>• Possession of chainsaws without legal documents</li></ul>	DAO 24 s. 2003



Mangroves are considered timber under PD 705.



**Seizure** is the removal of the illegal forest products from the possession of the law offenders during apprehension. The items are temporarily taken into custody while the administrative case is

pending. **Confiscation**, on the other hand, is the permanent forfeiture of the seized items in favor of the government.

**Who are authorized to seize illegal forest products?**

- DENR officials
- Deputized DENR personnel
- Law enforcement agencies
- Private citizens



All the original documents or permits should always be carried by a person transporting or carrying forest products. The absence of the necessary documents is enough cause for the apprehension of the person and for the seizure of the forest products without need of a warrant.

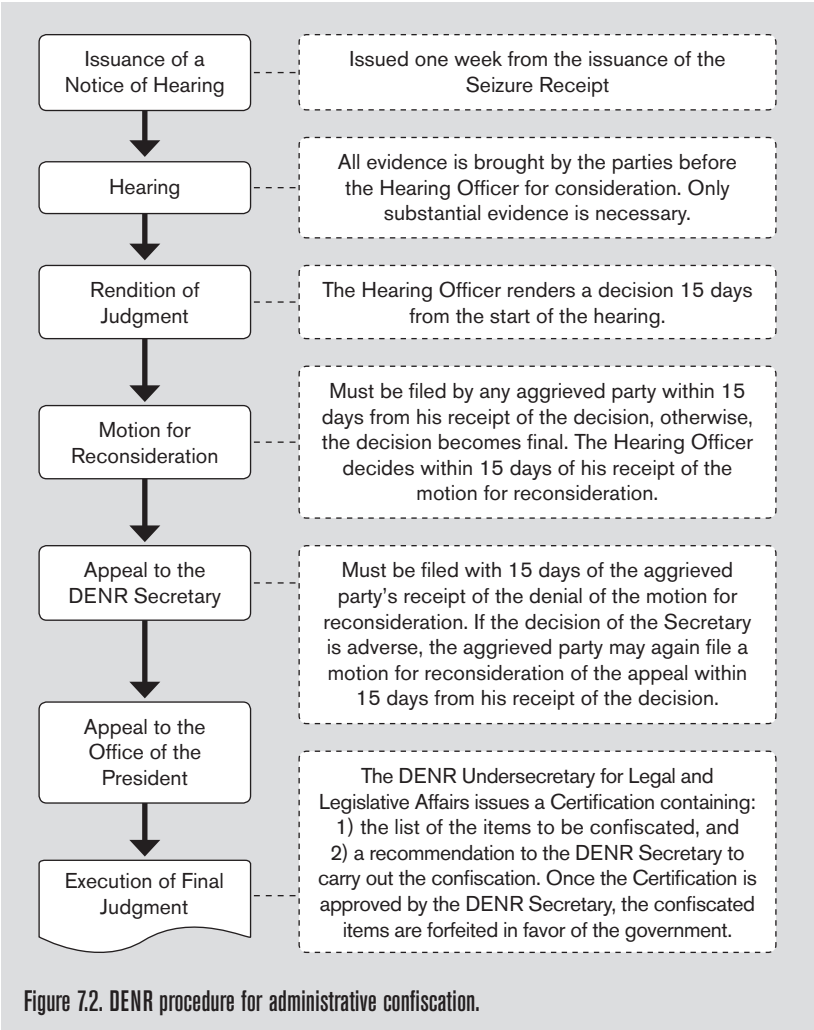


Figure 7.2. DENR procedure for administrative confiscation.

### What rules are followed in seizing illegal forest products?

1. The seizure must be due to the commission of an act violating any forestry-related law and/or its rules and regulations.
2. The seized items must be brought to the nearest Seizure Officer. If no Seizure Officer is available, the items may be deposited temporarily at the nearest government office or, if not practical, taken into custody by the apprehending team or person.
3. Upon receiving the items, the Seizure Officer issues a Seizure Receipt indicating the date and time of seizure, the name of the apprehending person, and a list of all the items seized.
4. The Seizure Officer must then determine if there is a *prima facie* case against the apprehended person.



A *prima facie* case exists if evidence shows that the forest products are illegal.

5. If there is a finding of a *prima facie* case, the Seizure Officer issues a seizure order.

### Who are the Seizure Officers?

- DENR Regional Executive Director (RED) or, in his absence, the Regional Technical Director (RTD)
- Provincial Environment and Natural Resources Officer (PENRO) or, in his absence, any Senior Forest Management Specialist or Senior Environmental Management Specialist based in the area where the seizure is conducted
- Community Environment and Natural Resources Officer (CENRO) or, in his absence, any DENR Forester III or Land Management Officer III assigned to the area where the seizure is conducted
- Any other person designated by the DENR Secretary



After the administrative hearing, the Hearing Officer must file a criminal complaint against the offender. (See Chapter 6: Prosecution for the Rules on Criminal Procedure)

### vehicles used in transporting illegal forest products

#### What happens to the conveyance used in transporting the seized items while the administrative case is pending?

It may be released subject to the following conditions:

1. The owner of the conveyance submits to DENR his registration papers and other supporting documents.
2. He is not one of the accused in the pending administrative case.
3. He has not been previously found guilty of violating a forestry-related law and/or any of its rules and regulations.
4. Evidence does not show that he had any knowledge or participation in the transport of the seized products.

5. He is willing to execute an affidavit stating the following:
  - a. That he is the legal owner of the said vehicle
  - b. That he has not been previously found guilty of violating any forestry-related law and/or its rules and regulations in any administrative or criminal case
  - c. The legal purpose for which he intends to use his vehicle while the administrative case is pending
  - d. The current market value of the vehicle
  - e. That he will return the vehicle to DENR for final disposition
6. He is willing to pay a bond equal to 125% of the value of the vehicle.

### ***abandoned illegal forest products***

#### **If the illegal forest products have been abandoned, what procedure is followed?**

1. The abandoned forest products are seized and brought to the Seizure Officer.
2. A Notice of Apprehension is posted on a surface, wall or structure located near the area where the forest products were abandoned.
3. The Hearing Officer then issues a Notice of Hearing, which is posted at the barangay hall, municipal hall and DENR Office of the place where the products are seized. The Notice must be posted three times for three consecutive weeks.
4. If no person claims ownership, the seized products are then subjected to the Summary Confiscation Proceeding by the Hearing Officer.

## **2. Remedies for violations of Protected Area laws**

<b>Remedies</b>	<b>Grounds</b>	<b>Legal Bases</b>
Administrative fines and penalties	Hunting, destruction, disturbance or possession of any plant, animal or products derived from protected areas without a permit	RA 7586



Confiscation and forfeiture of flora, fauna or any other product derived from protected areas is determined by a regular court.

### ***Environmental Management Bureau***

The Environmental Management Bureau (EMB), a line bureau of the DENR, is specifically authorized to adjudicate cases related to environmentally critical projects or projects in environmentally critical areas, and coastal pollution.

The Environmental Impact Statement (EIS) Law (PD 1586) gives EMB the authority to impose administrative penalties for violations of the provisions of EIS laws, and provides the procedure for the adjudication of such cases. Section 6, Article IX of DAO 96-37 provides the procedures for adjudicating cases of violations of the Environmental Compliance Certificate (ECC); DAO 30-2003 provides the remedies available to the aggrieved party.

Section 6 of the Pollution Control Law (PD 984) authorizes EMB to revoke, suspend or modify any permit issued under this decree whenever necessary, to prevent or abate pollution after due notice and hearing. The remedies are provided in Section 8 of PD 984.

### 1. Remedies for violations of EIS laws



An **ECC** is the document issued by the DENR Secretary or RED certifying the following:

- The proposed project or undertaking will not cause a significant negative environmental impact.
- The proponent has complied with all the requirements of the EIS System.
- The proponent is committed to the implementation of the approved Environmental Management Plan (EMP) in its EIS, or mitigation measures in its Initial Environmental Examination (IEE).

### When does the EIS apply to fisheries activities?



All activities or projects that may affect the quality of the environment must have a detailed EIS (*IRR of RA 10654, sec. 12*). All government agencies, private corporations, firms and entities must prepare an EIS **prior** to their undertaking of a development activity or project.

### What fisheries activities need an ECC?

- Operation of fishpond
- Operation of Pearl Farm Lease
- Operation of aquaculture activities
- Operation of ancillary activities as defined in RA 10654
- Sea farming
- Shellfish production
- Operation of processing plants



This list does not exclude other activities that may be determined to be detrimental to the environment.

DAO 30-2003 provides the legal bases for adjudicating EIS violation cases.

Remedies	Grounds
Closure of business and imposition of administrative fine	Operating without an ECC
Suspension/cancellation of ECC, closure of business and/or imposition of administrative fine	Violation of ECC conditions, EMP or Rules and Regulations
Suspension/cancellation of ECC and/or imposition of administrative fine	Misrepresentations in IEE/EIS or other documents
Withdrawal of accreditation of IEE/EIS preparers	Misrepresentations in IEE/EIS or other documents

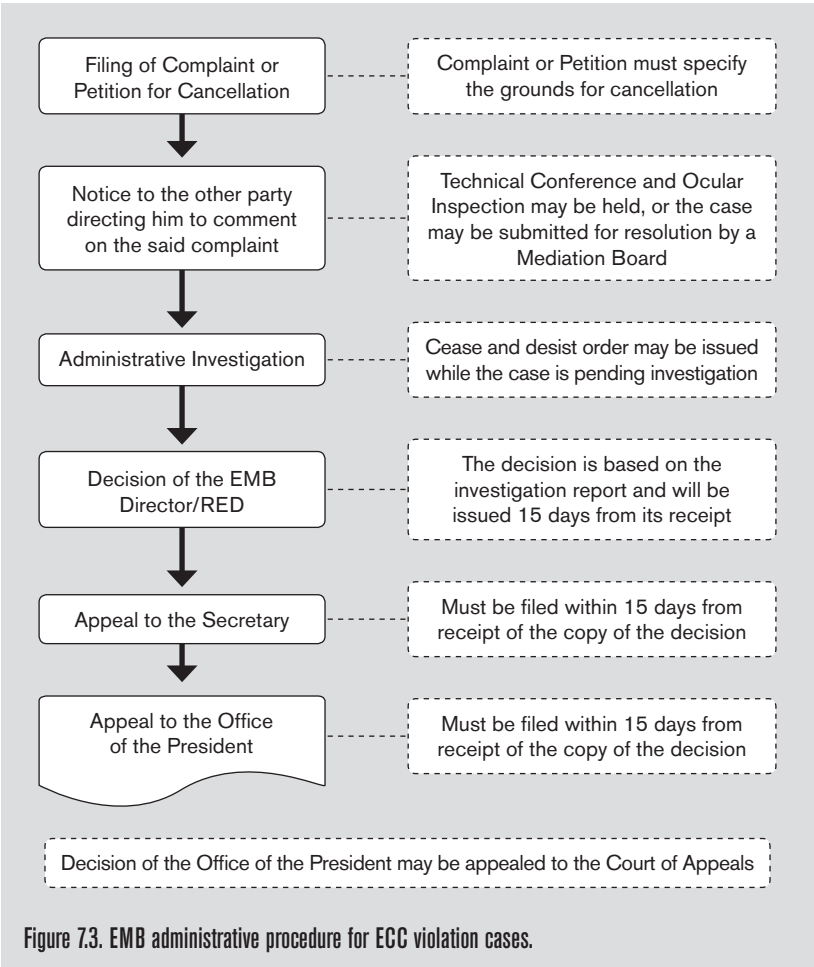


Figure 7.3. EMB administrative procedure for ECC violation cases.

**Can the operation of the activity in question be stopped while the case is pending?**

Yes, the complainant can request for the issuance of a cease and

desist order (CDO) on the ground that continuing the operation poses grave and irreparable injury to the environment. Once issued, the CDO becomes effective immediately.

## 2. Remedies for violations of pollution laws



### Pollution is:

- Any alteration of the physical, chemical and biological properties of any water, air and/or land resources of the Philippines
- Any discharge of any liquid, gaseous or solid wastes that will or is likely to create or to render such water, air and land resources harmful, detrimental or injurious to public health, safety or welfare
- Any discharge of any liquid, gaseous or solid wastes that will adversely affect the utilization of these resources for domestic, commercial, industrial, agricultural, recreational or other legitimate purposes

Section 8 of PD 984 provides the legal bases for adjudicating pollution cases.

Remedies	Grounds
Imposition of fine	Violation of or failure to comply with any order, decision or regulation of the Commission for the control or abatement of pollution
Closure of the operation of the establishment until the fine is paid	Failure to pay the fine within the time specified in the order or decision



The fine is imposed for every day that the violation or default continues. “Commission” refers to the National Pollution Control Commission (NPCC), which is in charge of adjudicating pollution cases at the national level. The EMB represents the Commission at the regional level.

### ***cease and desist order***

#### **Can the EMB issue a CDO while the administrative case is pending?**

Yes. The CDO may be issued by the Commission even without a hearing when, upon investigation, it is shown that the discharged sewage or wastes are an immediate threat to life, public health, safety or welfare, or to animal or plant life. A CDO may also be issued if the discharge exceeds the allowable standards set by the Commission.

#### **What is the effect and duration of the CDO?**

The CDO is immediately executory and remains in force until the establishment or person prevents or abates the pollution to comply with the allowable standards, or until the CDO is modified or nullified by a competent court.



### How does EMB enforce its decision in pollution cases?

The EMB issues a writ of execution directing the City or Provincial Sheriff (or other peace officers it may appoint) to enforce the fine, or the order of closure or stoppage of operations.



A public hearing is required in promulgating a decision that orders the discontinuance of discharge of sewage, industrial wastes or other wastes.

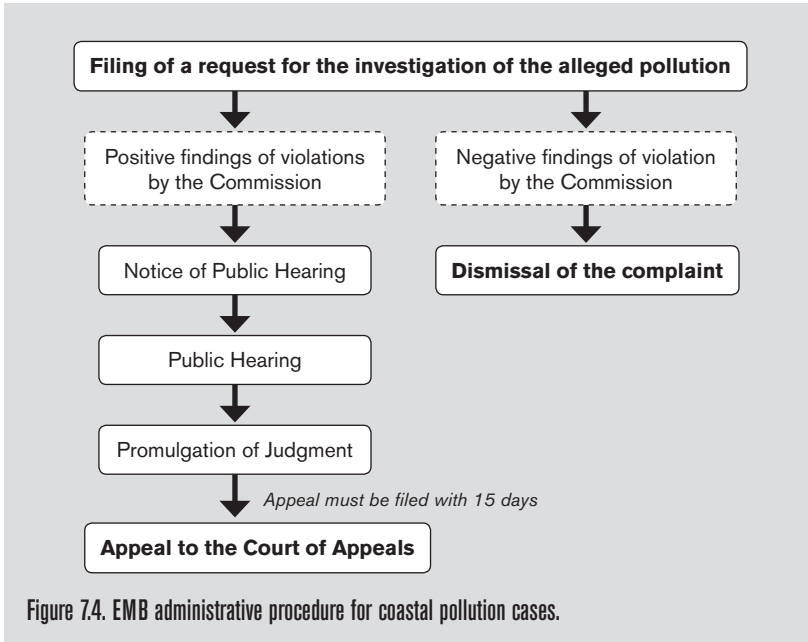


Figure 7.4. EMB administrative procedure for coastal pollution cases.

### Philippine Coast Guard

Section 7 of the Marine Pollution Decree (PD 979) authorizes the Philippine Coast Guard (PCG) to provide in its rules and regulations reasonable administrative penalties necessary for the effective implementation of this decree. It also gives the PCG authority to adjudicate cases of marine pollution in all bodies of water within the territorial jurisdiction of the Philippines, including ports, coastlines, lakes, rivers and their tributaries.



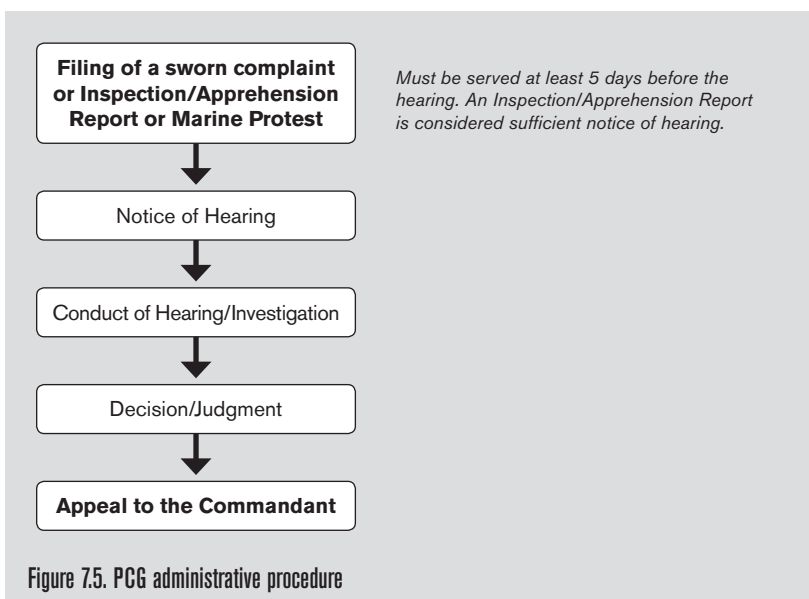
Discharges/dumping of oil/wastewater **from industries and manufacturing plants** in any body of water of the Philippines are not under the jurisdiction of the PCG but are instead regulated by the EMB (PD 979).



**Marine pollution** is the alteration of the physical, chemical and biological properties of any body of water by discharges of substances in any form (liquid, gaseous or solid) that is likely to create or render such waters harmful, detrimental or injurious to public health, marine life, sea birds, safety and welfare, as well as to domestic, commercial, industrial, agricultural, recreational or other legitimate uses.

Coast Guard MC No. 03 s. 1994 provides the legal bases for the adjudication of cases violating PD 979, including the grounds and remedies available.

Remedies	Grounds
<ul style="list-style-type: none"> <li>• Administrative fine of P4,000 to P7,000 and/or</li> <li>• Reprimand of person responsible or suspension of his exercise of the marine profession/license for not more than 6 months.</li> </ul>	Discharge or dumping of oil or oily mixture (first offense)
<ul style="list-style-type: none"> <li>• Administrative fine of not less than P5,000 and not more than P8,000 upon the vessel, oil company/refinery or depot owners/ operators, and/or</li> <li>• Suspension of the person directly responsible for the spill/ discharge from the exercise of his marine profession/license for not less than 6 months and 1 day to a maximum of 1 year.</li> </ul>	Discharge or dumping of oil or oily mixture (second offense)
<ul style="list-style-type: none"> <li>• Administrative fine of not less than P7,000 and not more than P10,000 upon the vessel, oil company/refinery or depot owners/ operators, and/or</li> <li>• Revocation or cancellation of license of the person(s) or officer(s) directly responsible for the spill/discharge</li> </ul>	Discharge or dumping of oil or oily mixture (third offense)
<ul style="list-style-type: none"> <li>• Administrative fine of P7,000 upon the owner/ operator of vessels, and/or</li> <li>• Suspension of the officer directly responsible from the exercise of his marine profession for not more than 1 year</li> </ul>	Discharge or dumping of hazardous or noxious substances (first offense)
<ul style="list-style-type: none"> <li>• Administrative fine of P10,000 upon the owner/operator of vessels, and</li> <li>• Revocation or cancellation of license of the responsible officer and/or crew member</li> </ul>	Discharge or dumping of hazardous or noxious substances (second offense)
<ul style="list-style-type: none"> <li>• Administrative fine of not less than P5,000 but not more than P7,000 upon the owner/ operator of vessel or oil company, and</li> <li>• Reprimand or suspension of not more than</li> <li>• 6 months of the person/officer directly responsible</li> </ul>	Throwing or dumping of any refuse matter (first offense)
<ul style="list-style-type: none"> <li>• Administrative fine of not less than P6,000 but not more than P8,000 upon the owner/ operator of vessel or oil company, and/or</li> <li>• Suspension of not more than 1 year of the responsible officer/person/crew member</li> </ul>	Throwing or dumping of any refuse matter (second offense)
<ul style="list-style-type: none"> <li>• Administrative fine of not less than P8,000 but not more than P10,000 upon the owner/ operator of vessel or oil company, and</li> <li>• Revocation or cancellation of license of the person/master or officer directly responsible</li> </ul>	Throwing or dumping of any refuse matter (third and subsequent offenses)
<ul style="list-style-type: none"> <li>• Administrative fine of P8,000 to P10,000, or</li> <li>• Suspension/revocation of license of the Master/Chief Engineer at the discretion of the PCG Commandant, depending on the volume of the spill</li> </ul>	Failure of Master/Chief Engineer of vessel and Salvor who spilled/ discharged oil or oily wastes, noxious gases or harmful substances to notify PCG of incident



### Where must the complaint be filed?

The sworn complaint must be filed before the Investigation and Adjudication Officer of PCG.

### What remedy is available if the decision is adverse?



In case of an adverse decision, a Notice of Appeal can be filed with the PCG Commandant within 30 days. A Notice of Appeal must specify and designate the judgment or decision or the part of it that is appealed.

### Office of the Ombudsman

Section 15 of RA 6770 gives the Office of the Ombudsman the authority to investigate and prosecute any act or omission of any public officer or employee, office or agency when the act or omission appears to be illegal, unjust, improper or inefficient.

### Who is subject to adjudication by the Ombudsman?

The Office of the Ombudsman is given disciplinary authority over all elective and appointive officials of the government and its subdivisions, instrumentalities and agencies. These include members of the Cabinet, local governments, government-owned or -controlled corporations, and their subsidiaries.



The Office of the Ombudsman has **no** disciplinary authority over officials who may be removed only by impeachment, and over members of Congress and the Judiciary.

## ***liabilities for marine pollution***

### **What other liabilities does the offender have in marine pollution cases?**

- In the event that other agencies/entities assist in the clean-up, the spiller must pay for the corresponding cost spent in the clean-up operation as determined by the PCG, or
- The parties responsible may conduct clean-up operations using their personnel and resources as necessary until the clean-up is complete.

### **What measures will ensure the offender's compliance with these other liabilities?**

The PCG Station Commander may require a cash bond to cover clean-up and containment costs as follows:

Type of Discharge	Cash Bond (P)
Minor discharge	100,000-500,000
Medium discharge	501,000-1,000,000
Major discharge	1,001,001-5,000,000

### **In case of damage to properties and persons, can the offender be required to post a cash bond to ensure payment of damages?**

Yes. The amount is as follows:

Estimated Cost of Damage	Cash Bond (P)
P10,000 to P50,000	P1,000
P51,000 to P1,000,000	P10,000
P1,001,001 or more	P20,000



In case of non-payment of fines and other monetary obligations, the subject vessel's clearance for departure from any port of the Philippines may be withheld until appropriate measures are taken.

### **What are the tasks of the Environmental Ombudsman?**

The office of the environmental ombudsman shall have the following tasks:

- To evaluate formal complaints relating to violation of environmental laws.
- To conduct preliminary investigation and/or administrative adjudication on these complaints, or endorse them to the appropriate office.
- With prior leave of the Ombudsman or his deputy, and subject to the control and supervision of the appropriate authority, to

prosecute complaints against public officials and employees for failure to properly implement or enforce environmental laws.

### **What are the grounds for administrative complaints?**

Administrative complaints can be filed against acts or omissions committed by any of the above-mentioned public officials that:

- are contrary to law or regulation
- are unreasonable, unfair, oppressive or discriminatory
- are inconsistent with the general course of an agency's functions, though in accordance with the law
- proceed from a mistake of law or an arbitrary ascertainment of facts
- are in the exercise of discretionary powers but for an improper purpose
- are otherwise irregular, immoral or devoid of justification.



Public officials who obstruct the implementation of RA 10654 may be charged on any of these grounds. Criminal cases may also be filed against them. Aside from their criminal liability as law offenders, public officials directly violating the provisions of RA 10654 are also administratively liable under the first ground cited above.

### **Who can initiate an administrative case before the Ombudsman?**

- Any person, by filing a written complaint under oath accompanied by affidavits of witnesses and other evidence in support of the charge
- The Ombudsman, by filing case on its own initiative, or on the basis of a criminal complaint, a grievance complaint or a request for assistance

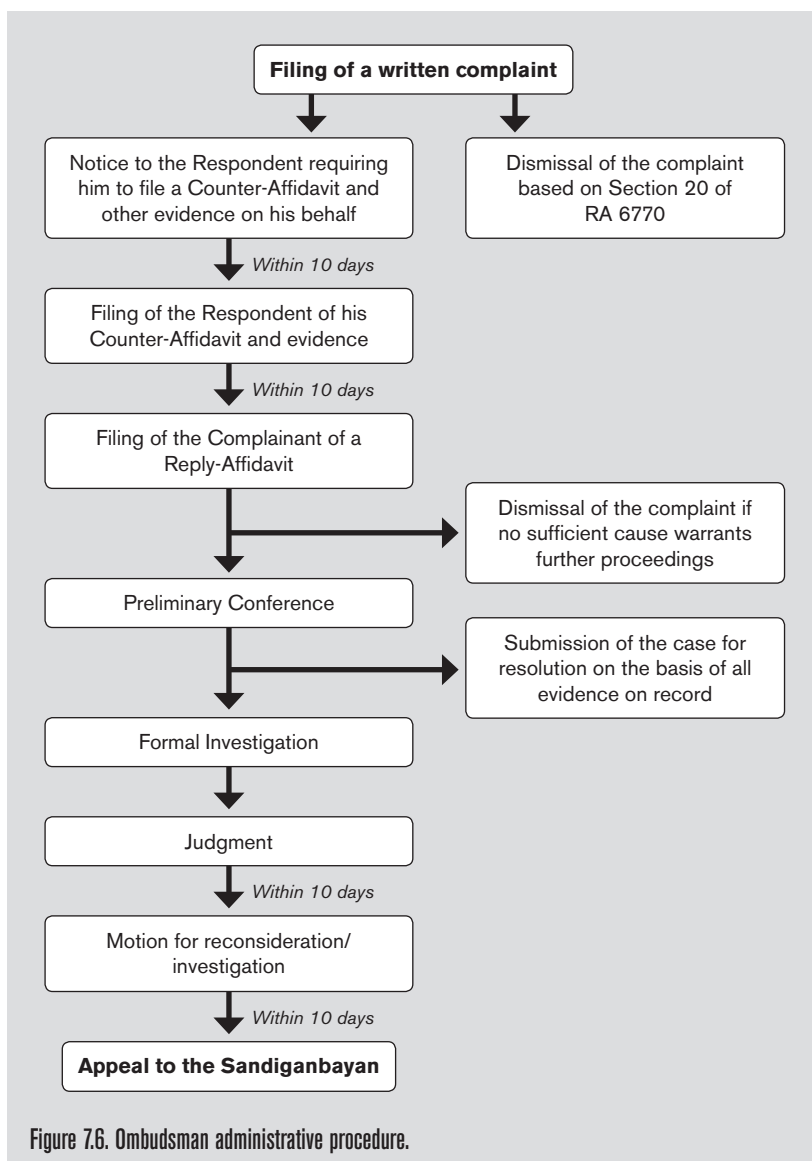
### **When may the complaint be dismissed?**

The following are the possible grounds for the dismissal of a complaint:

- The complainant has an adequate remedy in another judicial or quasi-judicial body
- The complaint pertains to a matter outside the jurisdiction of the Office of the Ombudsman
- The complaint is trivial, frivolous, vexatious or made in bad faith
- The complainant has no sufficient personal interest in the subject matter of the grievance
- The complaint was filed one year after the occurrence of the act or omission complained of.

### **Is failure of either party to appear at the hearing a ground for the dismissal of the complaint?**

No, but the party present will be allowed to present his evidence even in the absence of the adverse party, who is duly notified.



### Who is allowed to testify before the Ombudsman?

Only a witness who submits his affidavit that has been served to the adverse party at least 5 days before he is presented as a witness may be allowed to testify at the hearing.



### What is the privilege of a witness before the Ombudsman?

Any person whose testimony or production of evidence is necessary

to determine the truth in an inquiry, hearing or proceeding may be granted immunity from criminal prosecution.

**Can a person subpoenaed by the Ombudsman refuse to testify?**

No, but he will be granted immunity from prosecution for any incriminating matter arising from his testimony.

**Can the Ombudsman suspend the official under investigation while the case is pending?**

Yes. The Ombudsman can preventively suspend any officer or employee under his authority pending an investigation, if in his judgment the evidence of guilt is strong and:

- the charge against such officer or employee involves dishonesty, oppression or grave misconduct or neglect in the performance of duty
- the charge would warrant removal from the service, or
- the respondent's continued stay in office may prejudice the case filed against him.

**Is the decision of the Ombudsman final?**

The decision of the Ombudsman is not final and can be appealed to the Sandiganbayan, **except** when the decision:

- absolves the respondent from the charges
- imposes the penalty of reprimand or public censure
- imposes the penalty of suspension of not more than one month
- imposes the penalty of a fine equivalent to not more than one month's salary



The decision can no longer be appealed if 10 days have elapsed since the parties' receipt of the decision.

**What are the grounds for filing a Motion for Reconsideration?**

- New evidence has been discovered that materially affects the order, directive or decision
- Irregularities or errors of fact or law have been committed that are prejudicial to the interest of the movant

**Local Government Units**

The Local Government Code (RA 7160) and RA 10654 give LGUs the authority to manage, develop, conserve, protect, utilize and dispose of all fish and fishery/aquatic resources within their respective municipal waters.

### Where does the LGU derive its administrative authority to adjudicate cases?



Even though there is no direct provision that gives the LGU this power, it is nevertheless implied in RA 10654 as a necessary function for the effective management of the fishery resources found in its municipal waters.

RA 7160 also gives the LGU the power to enact administrative rules as its incidental and implied power. When an ordinance is passed, the LGU may provide administrative details for its effective implementation (*Nolledo, 1992*). Furthermore, statutes conferring powers on administrative agencies should be liberally construed to enable the agencies to fulfill their assigned duties in accordance with the intention of the law (*Solid Homes, Inc. v. Payawal, 177 SCRA 72*).

### How can the LGU exercise its power to adjudicate?

An ordinance must be passed by the Sangguniang Bayan authorizing the administrative adjudication of cases arising from violations of its ordinances. The following are the minimum requirements for valid adjudication:

1. There must be a valid ordinance. For an ordinance to be valid, it must:
  - be within the authority of LGU
  - be in consonance with the Constitution
  - be reasonable and not arbitrary
  - provide for the imposition of penalties for violations
  - fix or define such penalties
  - be posted and published, as required under Article 114 of the LGC.
2. The ordinance must authorize the adjudication of the cases by the LGU's executive branch, or by another body created for that purpose.
3. The LGU must still have jurisdiction over the case, i.e. it has not yet been filed in the regular court.
4. The accused must be afforded due process as provided in *Ang Tibay v. CA* and *Air Manila Inc. v. Balatbat*. (See Rights of the Parties in Administrative Cases)



The procedure governing the adjudication of cases by the LGU is dependent on the provisions of the ordinance, provided that the minimum requirements specified in *Air Manila Inc. v. Balatbat* are followed.



## compromise agreements



Entering into **compromise agreements** or imposing administrative fines without meeting the minimum requirements for adjudication is unlawful. It is without valid authority from the Sangguniang Bayan and violates the right of the accused to due process. Officials who enter into compromise agreements without valid authority or without affording the accused due process may be sued for direct bribery, violation of the Anti-Graft and Corrupt Practices Act (RA 6713), and violation of the Code of Conduct and Ethical Standards for Public Officials and Employees (RA 3019).

Also, it must be remembered that administrative adjudication is essentially a procedure in coastal law enforcement, and therefore has two primary objectives: the protection of coastal resources, and the effective deterrence of coastal law violators. These two objectives **must** be the main consideration in determining the penalties to be imposed.

### The Municipality

Section 16 of RA 10654 gives jurisdiction to the municipal/city government over municipal waters, and authorizes it to enact appropriate ordinances for this purpose in coordination with the FARMC. (See Responsibilities and Rights of LGUs in Municipal Waters in Annex 3: Mandates in Coastal Law Implementation).

Remedies	Grounds
Imposition of fines and confiscation of fishing vessel, its appurtenances and gear	Depends on the conditions specified in the ordinance
Cancellation of Permit to Operate Commercial Fishing within Municipal Waters	Violations of any existing fishery laws, decrees, letters of instruction, or implementing rules and regulations ( <i>implied from RA 10654, sec. 18</i> )
Cancellation of registration in Municipal Fisherfolk Registry	Depends on the conditions specified in the ordinance
Cancellation of Pearl Farm Lease	Depends on the conditions specified in the ordinance
Cancellation of privileges in special demarcated areas	Depends on the conditions specified in the ordinance
Cancellation of Permit to Engage in Mariculture or Fish Farming	Depends on the conditions specified in the ordinance
Cancellation of other special permits as specified in the ordinance	Depends on the conditions specified in the ordinance
Cancellation of accreditation of non- government organization, people's organization or cooperative	Depends on the conditions specified in the ordinance

**The Province**

Sections 42 and 45 of Chapter VII of The Philippine Mining Act of 1995 (RA 7942) gives the Provincial Governor the authority to issue and cancel quarry permits, provided that before the cancellation of the permit, the permit holder is given the opportunity to be heard in an investigation conducted for the purpose.



The governor’s authority covers only quarry operations with a maximum area of 5 ha. Sand and gravel extraction falls under his authority.

Remedies	Grounds
Cancellation of small-scale quarry permit	<ul style="list-style-type: none"><li>• Violation of the Terms and Conditions of permit</li><li>• Violation of the provisions of RA 7942</li><li>• Violation of the Rules and Regulations of RA 7942</li></ul>



# ANNEX 1

## Preservation of Evidence



**C**rucial to the conviction of law offenders is the credibility and integrity of evidence presented to the court. This section offers guidelines and tips on how evidence gathered during the arrest is best preserved. Specifically, it deals with three types of evidence: fish and water samples, photos, and affidavits.

### **FISH AND WATER SAMPLES**

All samples of fish and shellfish (in the case of fishkills due to environmental pollution) must be at least 100 g in weight, and number 3 to 5 pieces for big fish or 10 to 20 pieces for small fish or fingerlings. The water sample, preservation method, and analysis will depend on whether the fish was killed due to:

	Size of water sample	Preservation method before analysis	Laboratory Analysis	Inspecting Authority
<b>1. Use of Explosives</b>	None	Frozen or packed in ice	Dissection and observation	Licensed fish inspector
<b>2. Use of Noxious Substances</b>	One liter of water from scene of offense	Packed in polyethylene plastic; frozen or placed in a closed container or bottle with ice, ethyl alcohol or absolute alcohol (formalin must <b>never</b> be used); any container as long as water sample is analyzed within 4 hours	Cyanide testing	Cyanide Detection Laboratory at BFAR or other government crime/ hospital laboratory
<b>3. Aquatic Pollution</b>	Half-liter of water or any liquid sample from various sampling sites	Stored on ice, <b>not</b> frozen	Heavy metals or pesticides (depending on suspected cause), BOD, dissolved oxygen, pH, salinity, temperature (preferably on-site)	BFAR or EMB



Samples should be brought ASAP to the laboratory to preserve the composition of the sample. The sample may be analyzed at any hospital or agency with an appropriately equipped laboratory, such as the BFAR, EMB, PNP or NBI.

### **PHOTOS**

Photos are generally helpful to corroborate evidence of fishery violations, especially when the evidence to be presented is perishable. The following should especially be documented through photos:

- Fishery products seized, with proper identification visible
- Orderly conduct of the arrest, search or seizure to help negate allegations of planting of evidence
- Net with ruler indicating size

After the apprehension, secure the negatives and make duplicates.

### **JUDICIAL-AFFIDAVIT**

Case congestion and delays plague most courts in cities, given the huge volume of cases filed each year and the slow and cumbersome adversarial system that the judiciary has in place. About 40% of criminal cases are dismissed annually owing to the fact that complainants simply give up coming to court after repeated postponements. Few foreign businessmen make long-term investments in the Philippines because its courts are unable to provide ample and speedy protection to their investments, keeping its people poor.

In order to reduce the time needed for completing the testimonies of witnesses in cases under litigation, on 21 February 2012 the Supreme Court approved for piloting by trial courts in Quezon City the compulsory use of judicial affidavits in place of the direct testimonies of witnesses. It is reported that such piloting has quickly resulted in reducing by about two-thirds the time used for presenting the testimonies of witnesses, thus speeding up the hearing and adjudication of cases.

On September 4, 2012, the Supreme Court issued **A.M. No. 12-8-8-SC, approving the Judicial-Affidavit Rule** which is intended to expedite court proceedings.

#### **What type of cases is the rule applicable?**

The Rule may apply to criminal cases in three situations, as follows:

**(1) The maximum of the imposable penalty does not exceed six years; (2) regardless of the penalty involved, with respect to the civil aspect of the actions, or where the accused agrees to the use of the Rule.**

#### **What are the required contents of a Judicial-Affidavit under the**

### **Judicial-Affidavit Rule?**

The judicial affidavit shall contain the following:

1. The name, age, residence or business address, and occupation of the witness;
2. The name and address of the lawyer who conducts or supervises the examination of the witness and the place where the examination is being held;
3. A statement that the witness is answering the questions asked of him, fully conscious that he does so under oath, and that he may face criminal liability for false testimony or perjury;
4. **Questions asked of the witness and his corresponding answers**, consecutively numbered, that:
  - (i) Show the circumstances under which the witness acquired the facts upon which he testifies;
  - (ii) Elicit from him those facts which are relevant to the issues that the case presents; and
  - (iii) Identify the attached documentary and object evidence and establish their authenticity in accordance with the Rules of Court;
5. The signature of the witness over his printed name;
6. A jurat with the signature of the notary public who administers the oath or an officer who is authorized by law to administer the same.
7. Attestation of the lawyer.

### **What language should be used in the affidavit?**

A judicial affidavit shall be prepared in the language known to the witness and, if not in English or Filipino, accompanied by a translation in English or Filipino.

### **How should the party presenting the witness identify and mark documentary evidence?**

The parties' documentary or object evidence, if any, which shall be attached to the judicial affidavits and marked as Exhibits A, B, C, and so on in the case of the complainant or the plaintiff, and as Exhibits 1, 2, 3, and so on in the case of the respondent or the defendant.

### **How can the party or witness keep the original of the documentary or object evidence?**

The Rule provides for the following procedure:

1. **Attach the document or evidence to the judicial affidavit of the witness/es.** This must be done obviously before the pre-trial conference or the hearing. This is done by attaching the photocopy of the document, or the reproduction or photograph of the object evidence. The Rule provides that should a party or a witness desire to keep the original document or object evidence in his possession,

he may, after the same has been identified, marked as exhibit, and authenticated, warrant in his judicial affidavit that the copy or reproduction attached to such affidavit is a faithful copy or reproduction of that original.

- 2. Bring the original during the pre-trial or preliminary conference.** This is required under pre-trial rules, so the document may be preliminarily marked as evidence and compared with the original, if needed. The Rule provides that the party or witness shall bring the original document or object evidence for comparison during the preliminary conference with the attached copy, reproduction, or pictures, failing which the latter shall not be admitted. As provided under pre-trial rules and reiterated in the Rule, evidence not pre-marked shall not be admissible as evidence.

### **How is the formal offer of documentary or object evidence be made?**

The formal offer is made orally in open court, which shows an obvious intent to do away with the option of filing a written formal offer of evidence allowed under existing rules. A party shall immediately make an oral offer of evidence of his documentary or object exhibits, piece by piece, in their chronological order, stating the purpose or purposes for which he offers the particular exhibit.

After each piece of exhibit is offered, the adverse party shall state the legal ground for his objection, if any, to its admission, and the court shall immediately make its ruling respecting that exhibit.

### **What are the effects of non-compliance with the Judicial-Affidavit Rule?**

There are different consequences in case of: (1) failure to file the judicial affidavit; (1) failure to comply with the prescribed requirements; or (3) absence during the scheduled trial date.

#### **1. Failure to file judicial affidavit**

A party who fails to submit the required judicial affidavits and exhibits on time shall be deemed to have waived their submission. The Rule allows for an exception, provided the following requirements are present:

- a. It must be with leave of court. The court has the discretion whether to allow it.
- b. The delay must be for a valid reason.
- c. It would not unduly prejudice the opposing party.
- d. The defaulting party pays a fine of not less than P1,000.00 nor more than P5,000.00, at the discretion of the court.
- e. It is availed only once.

## 2. Failure to comply with required contents

The court shall not admit as evidence judicial affidavits that do not conform to the content requirements of Section 3 and the attestation requirement of Section 4 above. The court may, however, allow only once the subsequent submission of the compliant replacement affidavits before the hearing or trial provided the delay is for a valid reason and would not unduly prejudice the opposing party and provided further, that public or private counsel responsible for their preparation and submission pays a fine of not less than P1,000.00 nor more than P5,000.00, at the discretion of the court.

## 3. Absence during the scheduled trial date

The court shall not consider the affidavit of any witness who fails to appear at the scheduled hearing of the case as required. Counsel who fails to appear without valid cause despite notice shall be deemed to have waived his client's right to confront by cross-examination the witnesses there present.



Judicial Affidavits of arrest, search and seizure should be prepared as soon as possible. The longer the time elapsed between apprehension and preparation of judicial affidavits, the less reliable the affidavits become. (See Annex 2: Forms)

The following are points to remember when preparing affidavits:

- Always include the Who, What, When, Where, Why and How.
- Be brief and direct to the point, but do not sacrifice accuracy for brevity.
- If someone else is preparing the affidavit for the affiant, the interviewer should ask probing questions. The affiant might not realize that he or she knows facts which are relevant to the case.
- Write the facts in chronological order. Start from the events leading to the arrest.
- Conclusions of law should be avoided. Stick to the facts as they were observed or seen during the proceedings, and give detailed descriptions.
- *e.g.* instead of stating “Caught with a fine mesh net”, state the actual size of the net.
- Match the facts with the elements of the offense committed. (See Chapter 2: Prohibited Acts & Penalties).
- State the name of the accused and his address. If not known, give a substantial description.
- Ascertaining the place of the commission of the crime is important to determine which court has jurisdiction.
- The exact location of the vessel should be stated in cases of offenses







committed within municipal waters. (See prohibitions Based on Location of Fishery Activity in Chapter 5: Evidence)

**e.g.** instead of stating “fishing inside municipal waters”, the specific geographic location or landmark should be described. This is also done to avoid making a conclusion of law.

- If someone else is preparing the affidavit for the affiant, the interviewer should explain the content again to the affiant before having the affidavit notarized.
- Affidavits must be notarized by a private lawyer, a prosecutor or a judge.

# ANNEX 2

## Forms



**T**his annex contains sample forms that are necessary or may be helpful in the course of prosecution.

Words enclosed in brackets and italicized describe the information that must be supplied on the form. These words should be excluded from the actual form.

**A. Legal Forms (Initiatory Pleadings and Affidavits)**  
**1. Complaint for Preliminary Investigation**

Republic of the Philippines  
OFFICE OF THE PROVINCIAL PROSECUTOR  
Department of Justice  
Province of Cebu

[Complainant/Arresting Officer] ,

Plaintiff,

– versus –

I.S. No. \_\_\_\_\_

FOR: Violation of Section 92 of RA 10654

(Fishing With the Use of Explosives,

Noxious or Poisonous Substance, and/or

Electricity)

[Name of Accused] ,

Accused

X -----/

**COMPLAINT**

The undersigned accuses:

1. [name] , of legal age, and a resident of [address] and
2. [name] , of legal age, and a resident of [address]

of violating Section 92 of RA 10654 known as Fishing through Explosives, Noxious or Poisonous Substance and/or Electricity committed as follows:

That on or about [date] , at around [time] in the waters of [place of commission] , the afore-named accused deliberately and intentionally did there and then used cyanide, a poisonous substance in catching fish.

This complaint is supported by the following:

- a) Joint affidavit of the arresting officers
  - a-1) \_\_\_\_\_
  - a-2) \_\_\_\_\_;
- b) \_\_\_\_\_ Plastic bottles (blue and black) of liquefied cyanide;
- c) Receipt of \_\_\_\_\_ kilo of assorted small fish identified as \_\_\_\_\_ and others;
- d) \_\_\_\_\_ unit/s of paddle boat;
- e) \_\_\_\_\_ of mesh nets estimated at \_\_\_\_\_ length each;
- f) BFAR scientific/laboratory examination results;
- g) Letter of request to Director \_\_\_\_\_ for availability of Fish Examiners.

CONTRARY TO LAW.

Cebu City, Philippines. September 25, 2003.

[Complainant/Arresting Officer]

Complainant/Arresting Officer

An investigation was conducted by the undersigned on this particular case under my supervision, having examined the witnesses, depositions and other evidence. The complainant reserved his/her rights to adduce additional evidence as circumstances warrant.

Investigated by:

APPROVED:

\_\_\_\_\_  
(Signature over Printed Name)

\_\_\_\_\_  
(Signature over Printed Name)  
Station Chief

## 2. Complaint for Cases under MTC, MCTC, MeTC

Republic of the Philippines  
MUNICIPAL CIRCUIT TRIAL COURT  
Loay-Albur-Baclayon  
Province of Bohol

**PEOPLE OF THE PHILIPPINES**

Plaintiff,

– versus –

I.S. No. \_\_\_\_\_

FOR: Violation of Section 3 of Municipal Ordinance No. 12 known as Fishing with the Use of Fine-mesh Nets in Municipal Waters

**[NAME OF ACCUSED]**,

Accused

X - - - - - /

**COMPLAINT**

The undersigned accuse:

1. [name], of legal age, and a resident of [address] and
2. [name], of legal age, and a resident of [address]

of violating Section 3 of Municipal Ordinance No. 12 known as Fishing with the Use of Fine-Mesh Nets in Municipal Waters committed as follows:

That on or about [date], at around [time], the said accused deliberately, intentionally and unlawfully did there and then used FINE-MESH NETS in catching small and immature fishes within the municipal waters of [place of commission].

This complaint is supported by the following:

- a) Joint affidavit of the arresting officers
  - a-1) \_\_\_\_\_;
  - a-2) \_\_\_\_\_;
- b) \_\_\_\_\_ unit/s of paddle boat;
- c) \_\_\_\_\_ of mesh nets estimated at \_\_\_\_\_ length each;
- d) BFAR certification;
- e) Receipt of distributed confiscated fish;
- f) Letter of request to Director \_\_\_\_\_ for availability of Fish Examiners.

CONTRARY TO LAW.

\_\_\_\_\_, PNP-[branch], \_\_\_\_\_, 20\_\_\_\_.

*Complainant*

\_\_\_\_\_, PNP-[branch], \_\_\_\_\_, 20\_\_\_\_.

*Complainant*

SUBSCRIBED AND SWORN TO BEFORE me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_, Philippines, by \_\_\_\_\_ and \_\_\_\_\_. I hereby certify that I have personally examined the herein affiants and I am convinced and satisfied that they freely and voluntarily executed the foregoing complaint and that they understood the contents thereof, the same being within their personal knowledge.

### 3. Joint Judicial Affidavit of Witnesses

REPUBLIC OF THE PHILIPPINES)  
PROVINCE OF \_\_\_\_\_ )  
MUNICIPALITY OF \_\_\_\_\_ )S.s.

#### JOINT JUDICIAL AFFIDAVIT

This Joint Judicial Affidavit of, [name of apprehending officer], and [name of apprehending officer], of the [name of apprehending team], is taken before [name of lawyer who conducted the examination of the witnesses], at his/her office address at [place where the examination is being held]. The said witnesses are answering the questions asked of them, fully conscious that they so under oath and that they may face criminal liability for false testimony or perjury.

1. QUESTION [Q.] Please state your name, age, occupation, and address?

ANSWER [A.] We, [name of apprehending officer], and [name of apprehending officer], are of legal age, [occupation and occupation], respectively, and with office address at [state the address].

2. Q. Where is your present assignment, if any?

A. We are presently assigned with the [name of apprehending team] whose office is located at [address];

3. Q. What are your tasks, if any?

A. As member of [name of apprehending team], we are tasked, among others to guard and keep watch over the fishery and aquatic resources within our area of jurisdiction, as well as, to apprehend violators of the pertinent provisions of fishery laws;

4. Q. Where were you at around [time] H on or about [date], 20\_\_?

A. That around [time] H on or about [date], 20\_\_, while we were on a seaborne patrol in the vicinity of the seawater of [place of commission], about \_\_\_\_\_ meters from the shore, we spotted several fishermen in a fishing boat, some ten (10) meters away from where we were, who had in their possession and control bottles containing a substance which appeared to be cyanide, a poisonous substance;

5. Q. What did you do if any after you spotted several fishermen having in possession and control bottles containing poisonous substance?

A. We immediately rushed to their position and saw dead fish floating around their boat;

6. Q. After you saw dead fish floating around their boat, what did you do, if any?

A. We plotted their position in a map.

7. Q. Showing to you an original copy of a map with a plot of the position which will be marked as Annex "A", is this the one you are referring to?

A. Yes.

8. Q. What else did you see if any?

A. We also saw 10 "*banyeras*" of fish, more or less, inside the fishing boat of herein accused.

9. Q. After you saw 10 "*banyeras*" of fish, more or less, inside the fishing boat, what did your group do, if any?

A. We identified ourselves as members of the [name of apprehending team] and effected arrest on the fishermen.

10. Q. What did you do if any with the 10 "*banyeras*" inside the fishing boat?

A. We recovered and seized from the fishermen the 10 *banyeras* of fish and the following articles which they intended to use in fishing as well as bottles which contain traces of used up cyanide, as follows:

- a) \_\_\_\_\_
- b) \_\_\_\_\_
- c) \_\_\_\_\_

11. Q. After seizing the 10 *banyeras* of fish and the above-said articles, what did you do, if any?

A. We informed the arrested fishermen of their constitutional rights and in the investigation that followed, they gave their names and addresses, to wit:

Name \_\_\_\_\_

Name \_\_\_\_\_

Age \_\_\_\_\_

Age \_\_\_\_\_

Status \_\_\_\_\_

Status \_\_\_\_\_

Address \_\_\_\_\_

Address \_\_\_\_\_

12. Q. Do you affirm and confirm the truth and veracity of your joint judicial affidavit?

A. Yes.

IN WITNESS WHEREOF, we have hereunto affixed our signatures this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ in \_\_\_\_\_, Philippines.

\_\_\_\_\_  
Affiant

\_\_\_\_\_  
Affiant

Type of ID#. \_\_\_\_\_

Type of ID#. \_\_\_\_\_

Valid until \_\_\_\_\_

Valid until \_\_\_\_\_

SUBSCRIBED AND SWORN TO BEFORE me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, at [city or municipality, province], Philippines, affiants exhibited to me their respective competent evidence of identity as above-indicated and I hereby certify that I have personally examined the herein affiants and I am convinced that they freely and voluntarily executed the foregoing affidavit.

Doc. No. \_\_\_\_;

Page No. \_\_\_\_;

Book No. \_\_\_\_;

Series of \_\_\_\_.

#### **-SWORN ATTESTATION-**

I hereby attest that I faithfully recorded the questions I asked and the corresponding answers that the witness gave and neither me nor any other person then present or assisting them coached the witness regarding the latter's answers.

[Name of the Lawyer who conducted the examination]

**SUBSCRIBED AND SWORN TO**, BEFORE ME this \_\_\_\_\_, at \_\_\_\_\_, Philippines, affiant exhibited to me his competent evidence of identity as above-indicated.

Doc. No. \_\_\_\_;

Page No. \_\_\_\_;

Book No. \_\_\_\_;

Series of \_\_\_\_.

*[See Annex 1: Preservation of Evidence for more tips on preparing affidavits.]*

#### 4. Application for a Search Warrant

Republic of the Philippines  
REGIONAL TRIAL COURT  
7th Judicial Region  
Branch \_\_\_\_\_  
Cebu City

**PEOPLE OF THE PHILIPPINES**  
Plaintiff,

SEARCH WARRANT NO. \_\_\_\_\_  
FOR: POSSESSION OF CORALS

– versus –

**[NAME OF ACCUSED]**,  
of [address of the accused]  
Accused

X - - - - - /

#### APPLICATION FOR A SEARCH WARRANT

COMES NOW, the undersigned applicant and unto this Honorable Court respectfully alleges THAT:

1. He is presently the \_\_\_\_\_ [ position ] \_\_\_\_\_ of \_\_\_\_\_ Police Office, [address] \_\_\_\_\_;
2. The applicant has been duly informed and verily believes that subject person at above premises are in possession and control of properties subject of the offense, or used or intended to be used as the means of committing an offense and stolen or embezzled and other proceeds or fruits of the offense;
3. That the undersigned has verified the report and found it to be true and in fact has the reasons/knowledge to believe that a search warrant should be issued to enable the undersigned to take possession and bring to the court the following [describe the properties]:

: Corals

THEREFORE, the undersigned prays to this Honorable Court to issue a search warrant commanding any Peace Officer to search the premises described in this application, and to seize and bring to this Honorable Court the personal property/properties above-described to be dealt with as the law directs.

Cebu City, Philippines.

\_\_\_\_\_ [name of officer] \_\_\_\_\_  
-Applicant-

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ th day of August 2\_\_\_\_, at Cebu City, Philippines.

[name of judge]  
PRESIDING JUDGE  
RTC BR. \_\_\_\_\_  
CEBU CITY

## B. Forms Used in Arrests

### 1. Warrant of Arrest

Republic of the Philippines  
REGIONAL TRIAL COURT  
7th Judicial Region  
Branch \_\_\_\_\_  
Cebu City

**PEOPLE OF THE PHILIPPINES,**

CBU- Plaintiff,

– versus –

**[NAME OF ACCUSED],**

Accused

X -----/

CRM. CASE No. \_\_\_\_\_

#### WARRANT OF ARREST

TO: ANY OFFICER OF THE LAW:

THRU: \_\_\_\_\_

YOU ARE HEREBY COMMANDED TO ARREST [name of person to be arrested] who is/ are said to be found at [address of person to be arrested] and who has been charged before me with the offense of [offense charged] and deliver him to the nearest Police for bail if applicable.

YOU ARE HEREBY DIRECTED TO SERVE THIS WARRANT OF ARREST within ten (10) days from receipt hereof and within ten (10) days after expiration of period, you shall make a report to the undersigned issuing judge and in case of failure to execute the same state the reason therefore.

FOR the purpose of this warrant, an arrest may be made on any day and any time of the day or night.

THE BAIL for the release of the accused in this case is fixed at P \_\_\_\_\_ which may be furnished either in;

1. Cash bond - by the accused or any person acting in his/her behalf by depositing in cash with the nearest collecting or internal revenue or Provincial/City or Municipal Treasurer the said amount and subscribing a written undertaking showing compliance with the requirements of Section 24, Rule 114 of the 1983 Rules of Criminal Procedure or
2. Property bond - a written undertaking constituting as lien on the real property described therein, given as security for the amount of bail subscribed jointly by the accused and by one or more sureties who shall justify by affidavit taken before the JUDGE that he/she possesses the qualification and certificate of title if the land is registered shall be attached or
3. Corporate surety bond - a written undertaking of any corporation, licensed and currently authorized to act as surety showing compliance with the requirements of the afore- cited Section 2, Rule 114 of the Rules subscribed jointly by the accused and by the officer fully authorized by its board of directors.

IN ALL KINDS OF BONDS, the full name and address of the accused shall be stated, and passport-size photograph recently taken should be attached showing the FACE, LEFT and RIGHT profiles of the accused.

The BOND may be filed with this Court or with Regional Trial Court of the Province or City where the accused is held in the absence of the Regional Trial Judge or Municipal Circuit Trial Judge of said place may accept the bail bond. The judge accepting/approving the bail bond shall order the release of the accused and to forward the release paper together with the original and two copies of the bail bond to the Court.

Cebu City, Philippines, \_\_\_\_\_, 2017.

\_\_\_\_\_  
Judge

RECEIVED ORIGINAL & COPIES FOR SERVICE BY:  
\_\_\_\_\_



## 2. Apprehension Report

### APPREHENSION REPORT

At about \_\_\_\_H \_\_\_\_ 20\_\_\_\_, the undersigned received information that more or less \_\_\_\_ person(s) aboard \_\_\_\_ pump boat(s) were at the sea of [place of commission], [location] who are fishing with the use of dynamite. Elements of this station led by [name of apprehending officer], PNP, and members of [name of apprehending team] namely: [name of member], [name of member], [name of member], and [name of member], immediately proceeded to the area.

Upon seeing the following persons:  
[name of person apprehended],  
[name of person apprehended],  
[name of person apprehended], and  
[name of person apprehended], actually fishing with the use of explosives, we immediately apprehended them and informed them of their constitutional rights;

They are all of legal age, Filipinos and residents of \_\_\_\_\_, \_\_\_\_\_.

Thus, the following were confiscated:

- 1) \_\_\_\_\_
- 2) \_\_\_\_\_
- 3) \_\_\_\_\_

That the apprehended above-named persons were brought to the police station for booking, fingerprinting, photograph and investigation purposes.

A field test on the said fish showed that they were caught through blast or explosion. Copy of the FIELD TEST REPORT is attached hereto.

The said apprehended persons are now detained in this station.

\_\_\_\_th day of \_\_\_\_\_, 20\_\_\_\_ at \_\_\_\_\_, Philippines.

\_\_\_\_\_  
Police Superintendent, PNP  
Chief of Police

*[The report must indicate that the apprehension was made in a regular, orderly manner.]*

**3. Booking Sheet and Arrest Report**

\_\_\_\_\_  
(Date)

**BOOKING SHEET AND ARREST REPORT**

NAME: \_\_\_\_\_ FILE NO. \_\_\_\_\_  
(Last Name) (First Name) (Middle)

ADDRESS: \_\_\_\_\_ TIME/DATE BOOKED \_\_\_\_\_

PLACE AND DATE OF BIRTH: \_\_\_\_\_

NATIONALITY: \_\_\_\_\_ SEX: \_\_\_\_\_ MARITAL STATUS: \_\_\_\_\_

OCCUPATION: \_\_\_\_\_ EDUCATION: \_\_\_\_\_

COMPLEXION: \_\_\_\_\_ SCARS AND MARKS: \_\_\_\_\_

OTHER IDENTIFYING CHARACTERISTICS: \_\_\_\_\_

NAME AND ADDRESS OF NEAREST RELATIVE: \_\_\_\_\_

OFFENSE/VIOLATION: \_\_\_\_\_

ARRESTED BY: \_\_\_\_\_ UNIT: \_\_\_\_\_

WHERE: \_\_\_\_\_ TIME AND DATE: \_\_\_\_\_

FACTS KNOWN TO ARRESTING OFFICER: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

SIGNATURE OF  
PERSON ARRESTED: \_\_\_\_\_

ARRESTING OFFICER: \_\_\_\_\_

**RIGHT-HAND FINGERPRINTS**

1. THUMB	2. INDEX	3. MIDDLE	4. RING	5. LITTLE

**LEFT-HAND FINGERPRINTS**

1. THUMB	2. INDEX	3. MIDDLE	4. RING	5. LITTLE

TAKEN BY: \_\_\_\_\_

TIME: \_\_\_\_\_ DATE: \_\_\_\_\_

\_\_\_\_\_  
(SIGNATURE OF SUBJECT)

**PLAIN FINGER IMPRESSION TAKEN SIMULTANEOUSLY**

LEFT-HAND

RIGHT-HAND

--	--

(Attach picture when possible)

### C. Forms Used in Searches

#### 1. Search Warrant

Republic of the Philippines  
REGIONAL TRIAL COURT

7th Judicial Region

Branch \_\_\_\_\_

Cebu City

**PEOPLE OF THE PHILIPPINES,**

Plaintiff/s,

– versus –

**[NAME OF ACCUSED] ,**

Resident of [address of accused]

Accused

X -----/

SEARCH WARRANT No. \_\_\_\_\_

FOR: POSSESSION OF CORALS

#### SEARCH WARRANT

TO ANY OFFICER OF THE LAW:

GREETINGS:

It appears to the undersigned, after examination under oath of the applicant [*name of applicant*] and his witnesses, [*names of witnesses*], that there is probable cause to believe that a violation of Section 96 (Ban on Coral Exploitation and Exportation) of Republic Act 10654 has been committed and there is sufficient reason to believe that subject aforementioned person/s has/have in his/their possession, care and control:

: semi-precious corals

You are hereby commanded to make an immediate search, at any time of the day or night, of the house and immediate premises above-described, and forthwith seize and take possession of the aforementioned items and bring the said properties to the undersigned to be dealt with as the law directs.

WITNESS MY HAND this \_\_\_\_\_th day of \_\_\_\_ [*month*] \_\_\_\_ [*year*].

VALID UNTIL: \_\_\_\_\_

[*name of judge*]

PRESIDING JUDGE

RTC BR. \_\_\_\_\_

CEBU CITY

## 2. Boarding Certificate

Name of Vessel

## Home Port/Flag State

(Date)

## BOARDING CERTIFICATE

**TO WHOM IT MAY CONCERN:**

THIS IS TO CERTIFY that F/B/F/V/M/V \_\_\_\_\_ [name of vessel] \_\_\_\_\_  
was boarded/inspected by the elements of \_\_\_\_\_ [name of unit] \_\_\_\_\_ at the  
vicinity of \_\_\_\_\_ [place] \_\_\_\_\_ sometime in \_\_\_\_\_ [date] \_\_\_\_\_.

The inspecting team is composed of:

---

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That the inspection was conducted in an orderly manner, without the use of force or violence upon my men, person(s) and properties;

That after the inspection, they disembarked from vessel and issued a receipt for properties seized;

That this statement is freely and voluntarily given without the use of threat or intimidation on us and that before we signed this statement, the contents were translated to us and we understood the same;

Name/Signature of Master

Name/Signature of Chief Engineer

Name of Vessel: \_\_\_\_\_

Owner/Operator: \_\_\_\_\_

Date/Time Boarded: \_\_\_\_\_

Name/Signature of Boarding Officers:

---

---

### 3. Inventory Report of Confiscated Articles

#### INVENTORY REPORT OF CONFISCATED ARTICLES

Place of confiscation: \_\_\_\_\_

Date of confiscation: \_\_\_\_\_

Received the following items believed to be explosives, noxious or poisonous substances in the possession of \_\_\_\_\_ *[name of accused]* at \_\_\_\_\_ *[place of confiscation]* for confiscation in violation of \_\_\_\_\_ *[law violated: with specific section]*.

Quantity	Description	Estimated Value
_____	_____	_____
_____	_____	_____
_____	_____	_____

\_\_\_\_\_ day of \_\_\_\_\_, 2017 at \_\_\_\_\_, Philippines.

NOTE: The foregoing confiscated items were inventoried properly in the presence of the captain of the vessel and the boarding team.

**Inventory Undertaken By:**

\_\_\_\_\_  
(rank/name)

**WITNESSES:**

- 1) \_\_\_\_\_  
2) \_\_\_\_\_

\_\_\_\_\_  
(signature of the leader of apprehending team)  
Series of 2017

*[Inventory reports must include all and only those items found on the vessel.]*

#### 4. Receipt of Confiscated Fish

##### RECEIPT OF CONFISCATED FISH

Place of confiscation: \_\_\_\_\_

Date of confiscation: \_\_\_\_\_

[The place must be indicated with specificity: House no. if any, barangay name, city, province, region and country; the date must indicate the day, month, year and time.]

Confiscated from owner, operator, master or person-in-charge, vendor or other possessor unlawfully caught fish at [fishing vessel and CFVGL no., marketplace or other place] on [date] at [city/municipality/barangay] in the possession of the above-named person.

Vernacular name of fish	Scientific name	Quantity	Value
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Findings

[to indicate if fish caught is positive to explosive substances or through other illegal means]

\_\_\_\_\_  
(fishery law enforcement officer's name and signature)

WITNESSES:

1) \_\_\_\_\_

2) \_\_\_\_\_

\_\_\_\_\_  
(signature of the leader of apprehending team)

Distribution:

- Provincial Governor/Mayor *[whenever applicable]*
- Owner, Operator, Master/Person-in-Charge, Vendor, Other Possessor
- Director of Fisheries
- Regional Director concerned
- Fishery Law Enforcement Officer

*[A seizure receipt must list only the particular items that were seized. The receipt must not be signed by the owner of the seized items.]*

**5. Receipt by Hospitals or Penal Institutions of Confiscated Fish**

**RECEIPT OF CONFISCATED FISH**

TO WHOM IT MAY CONCERN:

This is to certify that we have received the following confiscated fish from

\_\_\_\_\_  
(name of officer)

Name of Fish	No. of Kilos	Market Value
_____	_____	_____
_____	_____	_____
_____	_____	_____

This is to certify that this office shall pay the above market value, in case the court order its reimbursement.

Issued this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ at \_\_\_\_\_, Philippines.

[name of hospital or penal institution]  
Signature of Authorized Officer



## 6. Receipt of Confiscated Gear

### RECEIPT OF CONFISCATED GEAR

Place of Issuance: \_\_\_\_\_

Date of issuance: \_\_\_\_\_

Confiscated from \_\_\_\_\_ [possessor] \_\_\_\_\_, for the reasons stated below, the following gears herein described:

\_\_\_\_\_  
(owner/operator)

\_\_\_\_\_  
(name of vessel)

\_\_\_\_\_  
(commercial fishing gear license)

Reason(s) for Confiscation:

- \_\_\_\_\_ Use of active gear
- \_\_\_\_\_ Dynamite fishing
- \_\_\_\_\_ Possession of dynamite and other explosives
- \_\_\_\_\_ Encroachment on prohibited zone
- \_\_\_\_\_ Others (specify) \_\_\_\_\_

\_\_\_\_\_  
(law enforcement officer's name and signature)

WITNESSES:

1) \_\_\_\_\_

2) \_\_\_\_\_

ACKNOWLEDGMENT

\_\_\_\_\_  
(signature of the leader of apprehending team)

*[A seizure receipt must list only the particular items that were seized. The receipt must not be signed by the owner of the seized items.]*

7. Receipt of Fish Samples Taken for Examination

(Date)

RECEIPT OF FISH SAMPLES  
TAKEN FOR EXAMINATION

(place of issuance)

(city/municipality/province)

RECEIVED from [fishing boats/law enforcement officer/marketplace/etc.]  
on [date] at [time] AM/PM with the following descriptions:

Vernacular Name of Fish	Scientific Name	No. of Pieces	Estimated Market Value

RESULT OF EXAMINATION

(These fish samples were sealed in a bottle of formalin bottle in the presence of the owner, operator, master, person-in-charge, vendor or other possessor named above).

[Note: Fish caught with the use of cyanide must **not** be placed in formalin.]

(fish examiner)

WITNESSES:

## 8. Receipt of Impounded Boat

### RECEIPT OF IMPOUNDED BOAT

Place of Issuance: \_\_\_\_\_

Date of Issuance: \_\_\_\_\_

Received from \_\_\_\_\_ [possessor] \_\_\_\_\_ for impounding, for the reasons stated below, the vessel herein described:

\_\_\_\_\_  
(Owner/Operator)

\_\_\_\_\_  
(CFVGL No.)

\_\_\_\_\_  
(Name of vessel)

Reason(s) for Impounding:

- \_\_\_\_\_ Possession of dynamited fish
- \_\_\_\_\_ Using vessel for dynamite fishing
- \_\_\_\_\_ Possession of dynamite and other explosives
- \_\_\_\_\_ Encroachment on prohibited zone
- \_\_\_\_\_ Others (specify) \_\_\_\_\_

\_\_\_\_\_  
(law enforcement officer's name and signature)

WITNESSES:

1) \_\_\_\_\_

2) \_\_\_\_\_

ACKNOWLEDGMENT

\_\_\_\_\_  
(signature of the leader of apprehending team)

Copy received: \_\_\_\_\_  
(owner/operator of fishing boat)

**9. Receipt of Items for Temporary Custody**

**OFFICE OF THE CITY MAYOR**  
**Bantay Dagat** \_\_\_\_\_  
**Province of** \_\_\_\_\_

**RECEIPT OF ITEMS FOR TEMPORARY CUSTODY**

THIS IS TO CERTIFY that the following items were placed under the TEMPORARY CUSTODY of this office pending final disposition/adjudication of the case for violation of \_\_\_\_\_ [offense] \_\_\_\_\_.

ITEM	DESCRIPTION	QUANTITY	VALUE
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

\_\_\_\_\_  
Receiving Officer/Custodian

Witnesses:  
  
\_\_\_\_\_  
  
\_\_\_\_\_

**D. Forms Used in Scientific Investigations**  
**1. Field Test Report**

**FIELD TEST REPORT**

I, \_\_\_\_\_ [*name of officer*] \_\_\_\_\_, hereby certify that I have conducted a physical examination of the fish caught/seized on \_\_\_\_\_ [*date*] \_\_\_\_\_ at \_\_\_\_\_ [*place*] \_\_\_\_\_ pursuant to the standards provided by the Bureau of Fisheries and Aquatic Resources; that as a result of the examination conducted there is reasonable ground to believe that the examined fish was caught/seized as a consequence of dynamite fishing or use of poisonous or noxious substance.

\_\_\_\_\_th day of \_\_\_\_\_, 20\_\_ at \_\_\_\_\_, Philippines.

FIELD TEST CONDUCTED BY:

\_\_\_\_\_

2. Fish Sample Evidence

FISH SAMPLE EVIDENCE

Place: \_\_\_\_\_

Date: \_\_\_\_\_

Time: \_\_\_\_\_

NAME OF FISHING VESSEL/CARGO VEHICLE (IF APPLICABLE): \_\_\_\_\_

NAME OF OWNER/OPERATOR/OR IN-CHARGE OF FISH: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

KIND AND QUANTITY OF FISH TAKEN AS SAMPLE:

SPECIES	QUANTITY
_____	_____
_____	_____
_____	_____

\_\_\_\_\_  
(law enforcement officer)

[Once completed, this form should be used as label of the sealed bottle containing the fish sample in 7 parts water and 3 parts formalin.]

## SCIENTIFIC EXAMINATION REPORT

MEMORANDUM FOR:

With reference to the fish samples taken for scientific examination during the Joint Operation led by \_\_\_\_\_ *[name of team]* \_\_\_\_\_ of \_\_\_\_\_ on \_\_\_\_\_ at \_\_\_\_\_, please be informed of the following:

SOURCE OF FISH SAMPLE(S): \_\_\_\_\_

NAME OF OWNER/CLAIMANT: \_\_\_\_\_

DATE FISH SAMPLES WERE TAKEN: \_\_\_\_\_

DATE AND TIME SAMPLES WERE EXAMINED: \_\_\_\_\_

CARRIER: \_\_\_\_\_

SUBMITTED FOR EXAMINATION BY: \_\_\_\_\_ *[Apprehending Officers]* \_\_\_\_\_

NAME OF FISH SAMPLE		NO. OF PIECES	REMARKS
Local Name	Scientific Name		
1. _____	_____	_____	_____
2. _____	_____	_____	_____

**CHARACTERISTICS NOTED ON FISH SAMPLES:**

A. EXTERNAL MANIFESTATIONS:

- \_\_\_\_\_
- \_\_\_\_\_

B. INTERNAL MANIFESTATIONS:

- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

CONCLUSION:

Examined by: \_\_\_\_\_

\_\_\_\_\_  
Fish Examiner

Noted by: \_\_\_\_\_

\_\_\_\_\_  
(Chief)

**E. Others**

**1. Commercial Fishing Vessel/Gear License (For Renewal)**

Republic of the Philippines  
Department of Agriculture  
**BUREAU OF FISHERIES AND AQUATIC RESOURCES**  
Regional Office No. 7  
Arellano Blvd. Cebu City  
Tel. Nos. 256-2772-76

**COMMERCIAL FISHING VESSEL/GEAR LICENSE (FOR RENEWAL)**

CFVGL No. (RENEWAL) \_\_\_\_\_

\_\_\_\_\_  
(Name of Company/Person)

\_\_\_\_\_  
(Address)

is hereby licensed to operate

\_\_\_\_\_  
Name of Vessel

\_\_\_\_\_  
Classification

\_\_\_\_\_  
Type of Gear

Vessel side number/call sign \_\_\_\_\_ with a gross tonnage of \_\_\_\_\_

This vessel is licensed to operate in support of the company fishing fleet/or fish with legally approved \_\_\_\_\_ gear for commercial fishing purposes in Philippine waters so authorized for such operation by law.

The owner, operator and Patron/Captain of the Vessel shall conduct fishing operations in accordance with the provisions of Republic Act No. 10654, Fisheries Administrative Orders and the terms and conditions embodied at the back hereof.

The original of this license shall be framed and posted in a conspicuous place on board the fisheries vessel and readily available for inspection by any authorized fishery law enforcement officers.

This license is non-transferable and shall be returned to the Bureau of Fisheries and Aquatic Resources upon suspension, cancellation and revocation.

This license shall be valid for a period of three (3) years commencing from \_\_\_\_\_ until \_\_\_\_\_.

ISSUED this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, Cebu City, Philippines.

*BFAR Official Seal*

\_\_\_\_\_  
Regional Director

Note: FOR NEWLY ISSUED, the same shall be signed/issued by BFAR Director.



2. Gear Registration

Republic of the Philippines  
Department of Agriculture  
**BUREAU OF FISHERIES AND AQUATIC RESOURCES**  
Regional Office No. 7  
Arellano Blvd. Cebu City  
Tel. Nos. 256-2772-76

**GEAR REGISTRATION**

\_\_\_\_\_  
(Name of Company/Person)

\_\_\_\_\_  
(Address)

is the owner of the gear in CFVGL No. \_\_\_\_\_ known and described as  
\_\_\_\_\_ (gear) with the following specifications:

Mouth/Opening: \_\_\_\_\_

Body/Belly: \_\_\_\_\_

Bunt/Bag: \_\_\_\_\_

The said gear is hereby registered to be used for legitimate fishing operation of F/V  
" \_\_\_\_\_ " in the Philippine waters.

ISSUED this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, Cebu City, Philippines.

\_\_\_\_\_  
Regional Director

Registration fee: \_\_\_\_\_  
Under O.R. no.: \_\_\_\_\_  
Dated: \_\_\_\_\_

# ANNEX 3

## Mandates in Coastal Law Implementation



**T**he legal mandates of the following government bodies define the respective roles of the different agencies and offices tasked with the implementation of coastal laws, and clarify their particular jurisdictions. The participation of people in coastal law enforcement is also discussed in the last section to stress the indispensable role of private citizens in resource management and protection.

### **NATIONAL GOVERNMENT AGENCIES**

National government agencies, offices and bodies represent the central government in its executive function of implementing and enforcing coastal laws.

#### ***Department of Agriculture (DA)***

- General mandate** Promote agricultural development
- Coastal-related functions**
- Formulate and enforce all laws, rules and regulations governing the conservation and proper utilization of agricultural and fishery resources (*EO No. 292, Title IV*)
  - Manage all declared aquatic critical habitats and all aquatic resources

(This is subject to the exceptions provided under Section 4 of RA 9147, which grants jurisdiction to DENR over all turtles and tortoises and wetland species, including but not limited to crocodiles, waterbirds and all amphibians and dugong.)

#### ***DA-Bureau of Fisheries and Aquatic Resources (DA-BFAR)***

(BFAR was reconstituted as a line bureau by RA 10654.)

- Main line agency** DA
- Coastal-related functions**
- Enforce all laws governing the conservation and management of fishery resources, except in municipal waters (*RA 10654, sec. 65*)
  - Formulate and enforce all rules and regulations governing the conservation and management of fishery resources, except in municipal waters (*RA 10654, sec. 65*)

- Settle conflicts in respect to resource use and allocation (*RA 10654, sec. 65*)
- Issue licenses for the operation of commercial fishing vessels (*RA 10654, sec. 65*)

### ***Department of Environment and Natural Resources (DENR)***

**General mandate** Manage and protect the country's natural resources (*EO 292 and EO 192, sec. 4*)

- Coastal-related functions**
- Formulate, implement and supervise the implementation of policies, plans and programs related to the management, conservation, development, use and replenishment of the country's natural resources, which include waters, fisheries, wildlife and offshore areas (*EO 292, Title XIV*)
  - Implement the Environmental Impact Statement System (*PD 1586*)
  - Implement and assume overall administration and management of the National Integrated Protected Areas System (*RA 7586*)
  - Manage mangroves in coordination with DA (*DAO 15 s.1990*)
  - Protect all turtles and tortoises and wetland species, including but not limited to crocodiles, waterbirds and all amphibians and dugong (*RA 9147, sec. 4*)
  - Identify and classify lands for fishpond purposes (*FAO 197 s. 2000, sec. 2*)

### ***Protected Area Management Board (PAMB)***

**Main line agency** DENR

- Coastal-related functions**
- Directly administer and manage specific protected areas established under RA 7586 (*RA 7586, sec.11*)

### ***National Mapping and Resource Information Authority (NAMRIA)***

(NAMRIA serves as the central mapping and resource information agency of the Philippines.)

<b>Main line agency</b>	DENR
<b>Coastal-related functions</b>	<ul style="list-style-type: none"><li>■ Provide geographic and resource information through surveying, land classification, remote sensing, mapping, and information management and dissemination services to both government and private sectors</li><li>■ Determine the outer limits of municipal waters, in coordination with BFAR and the local government units concerned (<i>DA AO No. 3 s. 1998, Rule 157.1 and RA 10654, sec. 157</i>)</li><li>■ Designate and chart navigational lanes in fishery areas through an interagency committee with Philippine Navy, Philippine Coast Guard, Maritime Industry Authority, other concerned agencies, and the National Fisheries and Aquatic Resources Management Council (<i>DA AO No. 3 s. 1998, Rule 123.1, and RA 10654, sec. 123</i>)</li></ul>

### ***Philippine Navy (PN)***

<b>General mandate</b>	Naval defense of the Philippines
<b>Coastal-related functions</b>	<ul style="list-style-type: none"><li>■ Enforce laws and regulations related to navigation, safety of life at sea, immigration, customs, revenues, quarantine, fishing and the neutrality of the territorial contiguous waters of the Philippines, as well as other functions provided by law or assigned by higher authorities (<i>EO 292, Title VIII, sec. 52 &amp; 53</i>)</li><li>■ Enforce RA 10654, as well as other fishery laws, rules and regulations (<i>RA 10654, sec. 158</i>)</li></ul>

### ***Philippine Coast Guard (PCG)***

**General mandate** Enforce, or assist in enforcing, all applicable laws upon the high seas and territorial waters of the Philippines (*PD 601, sec. 2*)

- Coastal-related functions**
- Prevent and suppress illegal entry, illegal fishing, illegal gathering of corals and other marine products, smuggling, other customs frauds and violations of other maritime and fishery laws that may be committed within the waters of the Philippines (*PD 601, sec. 5*)
  - Enforce laws for the prevention of marine pollution within the territorial waters of the Philippines (*PD 601, sec. 5*; also see *PD 600 & PD 979*)
  - Promulgate and administer rules and regulations for the prevention of marine pollution within the territorial waters of the Philippines, in coordination with the National Pollution Control Commission (*PD 601, sec. 5*; also see *PD 600 & PD 979*)
  - Assist (within its capabilities and upon request of the appropriate authorities) other government agencies in the performance of their functions, within the waters subject to the jurisdiction of the Philippines, relating to matters and activities not specifically mentioned in *PD 601* (*PD 601, sec. 5*)
  - Act as law enforcement agents of DA-BFAR, among others (*PD 601, sec. 5*)
  - Enforce *RA 10654*, as well as other fishery laws, rules and regulations (*RA 10654, sec. 158*)

### ***Department of the Interior and Local Government (DILG)***

**General mandate** Assist the President in exercising general supervision over local governments and in ensuring autonomy, decentralization and community empowerment (*RA 6975*,

*Department of the Interior and Local Government Act of 1990)*

- Coastal-related functions**
- Implement the state policy of promoting peace and order (*RA 6975*)
  - Ensure public safety through the establishment of an efficient and competent police force that is national in scope and **civilian** in character (*RA 6975*)

### ***Philippine National Police (PNP)***

(The PNP consists of the members of the police forces, merged from the Integrated National Police pursuant to Presidential Decree No. 765, and the officers and enlisted personnel of the Philippine Constabulary.)

**Main line agency** DILG through the National Police Commission (NAPOLCOM) (*RA 6975*)

- Coastal-related functions**
- Enforce all laws and ordinances involving the protection of lives and properties, as well as the maintenance of peace and order (*RA 6975, sec. 24*)
  - Enforce *RA 10654*, as well as other fishery laws, rules and regulations along with the PNP-Marine Command (*RA 10654, sec. 158*)

### ***Maritime Police Unit (PNP Maritime Group or PNP-MARIG)***

(The PNP-MARIG was established as an operational support unit of PNP by *RA 6975*.)

**Main line agency** DILG

- Coastal-related functions**
- Perform all police functions over Philippine territorial waters and rivers (*RA 6975, sec. 35, par. b[1]*)

### ***Maritime Industry Authority (MARINA)***

**Main line agency** DOTC (*PD 474, EO 546 s. 1979, EO 1011 s. 1985, EO 125 & 125-A s. 1987*)

- Coastal-related functions**
- Oversee the promotion and development of the maritime industry
  - Oversee the effective regulation of shipping enterprises, and the establishment of routes, zones or areas of operation of public water services

- Take charge of vessel registration, including issuance of licenses, certificates and related documents
- Ensure safety in vessel construction and operations
- License qualified seamen and harbor, bay and river pilots
- Enforce maritime law

### ***National Commission on Indigenous Peoples (NCIP)***

**General mandate** Formulate and implement policies, plans and programs to protect the rights and well-being of indigenous cultural communities/ indigenous peoples (*RA 8371*)

**Coastal-related functions** ■ Recognize and protect the rights of indigenous peoples to their ancestral domains, which include ancestral waters (*RA 8371*)

### ***Public Estates Authority (PEA)***

**General mandate** Undertake the reclamation of lands and, as a government corporation, ensure their maximum utilization in promoting public welfare and interests (*PD 1084*)

**Coastal-related functions** ■ Integrate, direct and coordinate *all* reclamation projects for, and on behalf of, the National Government (*EO 525*)

■ Recommend reclamation projects for approval of the President; such projects may be undertaken by PEA itself or by executing a proper contract with any person or entity (*EO 525, sec. 1*)

■ Be consulted on the reclamation projects of any national government agency or entity authorized under its charter (*EO 525, sec. 1*)

### ***Department of Labor and Employment (DOLE)***

**General mandate** Serve as the primary policymaking, programming, coordinating and administrative entity of the Executive Branch of the government in the field of labor and employment

- Coastal-related functions**
- Enforce social and labor legislation to protect the working class and regulate relations between employers and employees (*EO 292, Title VII, sec. 2 & 3*)
  - Protect the rights of fish workers, who are covered by the provisions of the Labor Code (*RA 10654, sec. 25*)

### ***Department of Social Welfare and Development (DSWD)***

**General mandate** Care for, protect and rehabilitate individuals, families and communities in need of social welfare assistance and social work intervention (*EO 292, Title XIV, sec. 1 & 2*)

- Coastal-related functions**
- Implement RA 7610, otherwise known as the “Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act” (Violations of fisheries laws, such as *muro-ami* fishing, may involve minors and therefore violate Section 10 of RA 7610.)
  - Take protective custody of minors who are victims of abuse and discrimination (*RA 7610, sec. 28*)

### ***Department of Justice (DOJ)***

(The DOJ is the primary law agency of the national government.)

**General mandate** Act as both legal counsel and prosecution arm of the national government (*EO 292, Title III, sec. 1 & 3*)

- Coastal-related functions**
- Strengthen the prosecution and conviction aspects of fishery law enforcement through:
    1. Augmentation of the current complement of state prosecutors
    2. Continuous training and reorientation on fishery laws, rules and regulations (*RA 10654, sec. 159*)

### ***Civil Service Commission (CSC)***

**General mandate** Serve as the central personnel agency of the government (*1987 Philippine Constitution, Article IX*)



- Coastal-related functions**
- Hear and decide administrative cases instituted by or brought before it directly or on appeal, including contested appointments (*EO 92, sec. 6*)
  - Hold disciplinary jurisdiction over public officials and employees (*EO 292, Book V, Chapter 6, subtitle A, sec. 47*)

## **LOCAL GOVERNMENT UNITS AND OFFICES**

In keeping with the constitutional directive of establishing a more responsive and accountable government structure, local governments have a significant mandate to manage and protect local coastal resources. This system of decentralization is instituted by the Local Government Code and the Philippine Fisheries Code.

### **The Barangay Government**

The barangay is considered the most basic political unit. As such, it serves as the primary planning and implementing unit of government policies, plans, programs, projects and activities in the community. It is also a forum where the collective views of the people may be expressed, determined and considered, and where disputes may be amicably settled (*RA 7160, sec. 384*).

The barangay is particularly important as it is the government unit most rooted in the community and is thus at the forefront of protecting the coastal and marine environment.

#### ***Punong Barangay (Barangay Head)***

**Position** Chief executive of the barangay government

- Coastal-related functions**
- Enforce all laws and ordinances applicable to the barangay, including laws and regulations relating to pollution control and environmental protection (*RA 7160, sec. 389, par. b[1]*)
  - Arrest violators for purposes of enforcing and implementing national and local laws, ordinances, and rules and regulations on pollution control and other activities that create an ecological imbalance or disturbance in environmental conditions (*PD 1160*)

#### ***Sangguniang Barangay (Barangay Council)***

**Position** Legislative body of the barangay

### **Coastal-related functions**

- Enact ordinances that promote the general welfare of its inhabitants (*RA 7160, sec. 391, par. 1*)
- Assist the Punong Barangay in the performance of his functions (*RA 7160, sec. 392, par. a & b*)
- Act as peace officers in the maintenance of public order and safety (*RA 7160, sec. 392, par. a & b*)
- Arrest violators for purposes of enforcing and implementing national and local laws, ordinances, and rules and regulations on pollution control and other activities that create an ecological imbalance or disturbance in environmental conditions (*PD 1160*)

### **The Municipal/City Government**

The municipality or city consists of a group of barangays. It principally serves as a general-purpose government that coordinates and delivers basic, regular and direct services to inhabitants within its territorial jurisdiction through effective governance (*RA 7160, sec. 440 & 448*). Such basic services include extension and on-site research services, and facilities related to agriculture and fishery activities (*RA 7160, sec. 17, par. b[2][i]*).

The role of the municipality/city in the management and protection of the coastal and marine environment is especially indispensable because of its primary jurisdiction over municipal waters. (See Rights and Responsibilities of LGUs over Municipal Waters.)

### **Municipal/City Mayor**

**Position** Chief executive of the municipal/city government

### **Coastal-related functions**

- Enforce all laws and ordinances related to the governance of the municipality/ city (*RA 7160, sec. 444 [b][2] & sec. 455 [b][2]*)
- Adopt measures to safeguard and conserve land, mineral, marine, forest and other resources of the municipality/ city (*RA 7160, sec. 444, par. 3[vii] & sec. 455, par. b[3][vii]*)
- Represent NAPOLCOM, and exercise

operational supervision and control over PNP units in their respective jurisdictions, subject to certain exceptions (*RA 6975*)

- As chair of the local peace and order council, develop and establish integrated area/community public safety plans for implementation by PNP stations (*RA 6975*)
- Choose the chief of police from a list of 5 eligibles recommended by the provincial police director, preferably from the same province, city or municipality (*RA 6975*)
- Administer oaths (*CA 270, as amended by CA 641*)

### ***Sangguniang Bayan/Panlungsod (Municipal/City Council)***

<b>Position</b>	Legislative body of the municipality/city
<b>Coastal-related functions</b>	<ul style="list-style-type: none"> <li>■ Enact ordinances, approve resolutions and appropriate funds for the general welfare of the municipality/city and its inhabitants (<i>RA 7160, sec. 447, par. a &amp; sec. 448, par. a</i>)</li> <li>■ Enact ordinances that protect the environment, and impose appropriate penalties for acts that endanger the environment (<i>RA 7160, sec. 447, par. a[1][vi] &amp; sec. 458, par. a[1][vi]</i>)</li> <li>■ Provide for the establishment, maintenance, protection and conservation of mangroves (<i>RA 7160, sec. 447, par. a[5][i] &amp; sec. 458, par. a[5][i]</i>)</li> <li>■ Authorize the establishment, maintenance and operation of ferries, wharves and other structures, and marine and seashore or offshore activities intended to accelerate productivity (<i>RA 7160, sec. 447, par. a &amp; sec. 458, par. a</i>)</li> <li>■ Grant the exclusive privilege of constructing fish corrals or fishpens, or the taking of <i>bangus</i> fry, prawn fry</li> </ul>

or *kawag-kawag*, or fry of any species of fish within municipal waters (RA 7160, sec. 447, par. a[2][xi] & sec. 458, par. a[2][xi])

***City/Municipal Agriculturist (MAO)***

**Position** Administrative staff under the Mayor, optional for city/municipality

**Coastal-related functions** ■ Provide support to the Mayor to ensure delivery of basic services and facilities involving agricultural services (RA 7160, sec. 482, par. b[1])

***City Environment and Natural Resources Officer (CENRO)***

**Position** Administrative staff under the Mayor, optional for city/municipality (RA 7160, sec. 484, par. a)

**Coastal-related functions** ■ Provide support to the Mayor to ensure delivery of basic services and facilities involving environment and natural resources services (RA 7160, sec. 484, par. b[1])  
 ■ Maintain, protect and preserve mangroves (RA 7160, sec. 484, par. b[2][i])

***City Legal Officer (CLO)***

**Position** Chief legal counsel of municipality/city, mandatory for city but optional for municipality (RA 7160, sec. 481, par. a)

**Coastal-related functions** ■ Represent the municipality/city in all civil actions and special proceedings  
 ■ Draft ordinances, contracts and other legal documents (RA 7160, sec. 481, par. c)  
 ■ Render opinions on any question of law, whenever required by the Mayor or the Sanggunian (RA 7160, sec. 481, par. c)  
 ■ Review and submit recommendations on ordinances approved and executive orders issued by component units (RA 7160, sec. 481, par. c)

## The Provincial Government

The province is composed of a cluster of municipalities, or of municipalities and component cities. It serves as a mechanism for developmental processes and effective governance for LGUs within its territorial jurisdiction (*RA 7160, sec. 459*). The provincial government is also empowered, and tasked, to provide basic services and facilities such as assistance in the organization of farmers' and fishers' cooperatives. It is also responsible for funding infrastructure facilities (e.g. reclamation projects) intended to service the needs of the residents of the province (*RA 7160, sec. 17, par. b[3][i] & [vii]*).

### Governor

<b>Position</b>	Chief executive of the provincial government
<b>Coastal-related functions</b>	<ul style="list-style-type: none"><li>■ Enforce all laws and ordinances related to the governance of the province (<i>RA 7160, sec. 465, par. b[2]</i>)</li><li>■ Ensure that the acts of the component cities and municipalities of the province and of its officials and employees are within the scope of their prescribed powers, duties and functions (<i>RA 7160, sec. 465, par. b[2][1]</i>)</li><li>■ Adopt adequate measures to safeguard and conserve land, mineral, marine, forest and other resources of the province, in coordination with the Mayors of the component cities and municipalities (<i>RA 7160, sec. 465, par. b[3][v]</i>)</li><li>■ Represent the NAPOLCOM (<i>RA 6975</i>)</li><li>■ Choose the Provincial Director of the provincial police force from a list of 3 candidates recommended by the PNP Regional Director (<i>RA 6975</i>)</li><li>■ As chair of the provincial peace and order council, oversee the implementation of the provincial public safety plan, which considers the integrated community safety plans prepared at the municipal/ city level (<i>RA 6975</i>)</li></ul>

### ***Sangguniang Panlalawigan (Provincial Council)***

- Position** Legislative body of the province
- Coastal-related functions**
- Enact ordinances, approve resolutions and appropriate funds for the general welfare of the province and its inhabitants (*RA 7160, sec. 468 [a]*)
  - Enact ordinances that protect the environment, and impose appropriate penalties for acts that endanger the environment (*RA 7160, sec. 468 [a][1][v]*)
  - Enact ordinances against pollution and for the preservation of the natural ecosystem in the province, in consonance with approved standards on human settlements and environmental sanitation (*RA 7160, sec. 468 [a][4][i]*)

### ***Provincial Agriculturist***

- Position** Administrative staff under the Governor, mandatory for province
- Coastal-related functions**
- Provide support to the Governor to ensure delivery of basic services and facilities involving agricultural services (*RA 7160, sec. 482 [b][1]*)

### ***Provincial Environment and Natural Resources Officer (PENRO)***

- Position** Administrative staff under the Governor, optional for province (*RA 7160, sec. 484, par. a*)
- Coastal-related functions**
- Provide support to the Governor to ensure delivery of basic services and facilities involving environment and natural resources services (*RA 7160, sec. 484, par. b[2]*)
  - Maintain, protect and preserve mangroves (*RA 7160, sec. 484, par. b[2][i]*)

### ***Legal Officer***

- Position** Chief legal counsel of province, mandatory for province (*RA 7160, sec. 481, par. a*)

- Coastal-related functions

  - Represent the province in all civil actions and special proceedings (*RA 7160, sec. 481, par. c*)
  - Draft ordinances, contracts and other legal documents (*RA 7160, sec. 481, par. c*)
  - Render opinions on any question of law, whenever required by the Governor, Mayor or the Sanggunian (*RA 7160, sec. 481, par. c*)
  - Review and submit recommendations on ordinances approved and executive orders issued by component units (*RA 7160, sec. 481, par. c*)

**Table 1. Mandates and rights of LGUs in coastal environment protection (RA 7160)**

Mandates/Rights	Legal Bases
Share responsibility with the National Government in managing and maintaining ecological balance within their territorial jurisdictions	Section 3 [i]
Exercise powers granted (or necessarily implied) that are necessary, appropriate or incidental for efficient and effective governance, and for the promotion of the general welfare	Section 16
Enhance the right of the people to a balanced ecology	Section 16
Maintain peace and order and preserve the comfort and convenience of the inhabitants	Section 16
Discharge such other functions and responsibilities necessary, appropriate or incidental to efficient and effective provision of basic services and facilities	Section 17
Have an equitable share in the proceeds from the utilization and development of national wealth and resources within their territorial jurisdictions, and share the proceeds with inhabitants through direct benefits	Section 18
Be consulted in the planning and implementation of any government project or program that may cause pollution, climate change, depletion of non-renewable resources, loss of cropland, rangeland, or forest cover, and extinction of animal or plant species. The goals and objectives of the project or program must be explained to LGUs, as well as its impact on the people and the community in terms of environmental or ecological balance, and the measures that will be undertaken to prevent or minimize its adverse effects.	Sections 2 [C] and 26,
(No project or program shall be implemented by government authorities unless these consultations are complied with, and prior approval of the <i>Sanggunian</i> concerned is obtained [ <i>RA 7160, sec. 27</i> ])	

## responsibilities and rights of LGUs over municipal waters

Jurisdiction over municipal waters is vested primarily with the municipal/city government. In consultation with the FARMC, the municipal/city government is responsible for the management, conservation, development, protection, utilization and disposition of all fish and fishery aquatic resources within municipal waters.

The DA Secretary may establish catch ceilings and closed seasons within municipal waters only upon the concurrence and approval or recommendation of the concerned LGU, in consultation with the FARMC (RA 10654, sec. 8 & 9).

In upholding the preferential right of municipal fishers, no new concessions, licenses, permits, leases and similar privileges for the establishment and operation of fish pens, fish cages, fish corrals/ traps may be granted except to municipal fisherfolk and their organizations (RA 10654, sec. 53). All fish hatcheries, fish breeding facilities and private fishponds must be registered with the LGU (RA 10654, sec. 57).

While management responsibilities for municipal waters lie mostly with the municipal government, barangays still perform essential functions in the protection of coastal resources under RA 7160 (see The Barangay Government). The provincial government is also involved in the management of municipal waters primarily through its review and approval of municipal ordinances.

**Table 2. Responsibilities and rights of LGUs over municipal waters (RA 10654)**

Mandates/Rights	Legal Bases
Enact appropriate ordinances for the management of municipal waters in accordance with the National Fisheries Policy  (Municipal ordinances are subject to review by the <i>Sanggunian</i> of the province)	Section 16
Enact a basic Municipal Fisheries Ordinance (MFO) delineating the boundaries of municipal waters, providing rules and regulations on licensing, issuance of permits and other fisheries activities	Rule 16.1, DA AO No. 10 s. 2015 (IRR of RA 10654)
Establish closed seasons for conservation and ecological purposes (only within municipal waters)	Section 9
Declare an area overfished and prohibit or limit fishery activities (only within municipal waters)	Section 23
Recommend to DA that a portion of the municipal waters be declared as fishery reserves for special or limited use, educational, research and/or special management purposes	Section 80
Establish fish refuges and sanctuaries	Section 81



Accord preference to duly registered fisherfolk organizations/ cooperatives in the grant of fishery rights	Section 17
Maintain a registry of municipal fishing vessels by type of gear and of municipal fisherfolk who fish or may desire to fish in municipal waters, for the purpose of determining priorities among them, limiting entry into municipal waters, and monitoring fishery activities	Section 19
Grant demarcated fishery rights to fishery organizations/ cooperatives for mariculture operation in specific areas identified by the DA	Section 22
Establish zones within municipal waters where fish pens, fish cages, fish traps and other structures for the culture of fish may be constructed and operated, and issue licenses for these	Section 51
Issue auxiliary invoices for fish and fishery products being transported from the municipality	Section 15
Grant pearl farm leases	Section 52
Establish post-harvest facilities for fishing communities	Section 59

## CITIZENS

Any effective effort to manage, conserve and protect coastal and marine resources will necessarily involve those communities who live nearest to, and are most dependent on these resources for their livelihood. The participation of citizens in the protection of the coastal and marine environment cannot be underestimated.

### *Citizen's Arrests*

Private citizens are authorized to arrest violators of fishery laws, rules and regulations under the following circumstances:

- When the person to be arrested has committed, is actually committing or is attempting to commit an offense in the presence of the private citizen
- When an offense has in fact just been committed, and the citizen has personal knowledge of facts indicating that the person to be arrested has committed it
- When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another (*Revised Rules of Court, Rule 113, sec. 5*) (See Warrantless Arrests in Chapter 3: ASSD)

### *Fish Wardens (Bantay Dagat)*

Members of fisherfolk organizations who have undergone training on law enforcement may be designated in writing by the DA as deputy fish wardens (*RA 10654, sec. 158*). Under the LGC, the municipal/city

Mayor also has the power to deputize private citizens as municipal/city fish wardens or volunteer community paralegals (see above for coastal-related functions of Mayors). Likewise, the *Sangguniang Bayan/Panlungsod* is authorized to create or consolidate offices, such as a coastal law enforcement group, in the interest of efficiency and economy (*RA 7160, sec. 443, par. c[2 & 3] & sec. 454, par. c[2 & 3]*).

People's and non-government organizations (POs & NGOs) are encouraged to enter into active partnerships, joint ventures and other cooperative arrangements with local governments in the pursuit of local autonomy (*RA 7160, sec. 34*) and for the delivery of basic services, such as environmental protection and coastal law enforcement (*RA 7160, sec. 35*).

***Fisheries and Aquatic Resources Management Councils (FARMCs)*** One of the most significant avenues for people's participation in the protection and management of coastal resources is the FARMC, which has the power to influence policy-making from the barangay to the national level. FARMCs were originally created under EO 240 in 1995, and further strengthened and institutionalized under RA 10654.

The National FARMC (NFARMC) serves as an advisory/recommendatory body to the DA (*RA 10654, sec. 70*). Of its 15 members, 13 come from the private sector, broken down as follows:

- 5 fisherfolk and fish workers
- 5 from the commercial fishing, and aquaculture operation & processing sectors
- 2 from the academe
- 1 from NGOs involved in fisheries

The Municipal/City FARMCs (M/CFARMCs) have at least 13 representatives, or approximately 75% membership, from the private sector, broken down as follows:

- 1 from an accredited NGO
- 1 from the private sector
- 7 municipal fisherfolk
- 1 fish worker
- 3 commercial fishers

(*RA 10654, sec. 73 & 75*)

The principal functions of M/CFARMCs include making recommendations on the enactment of fishery ordinances (*RA 10654, sec. 77*) and assisting in the enforcement of fishery laws, rules and regulations in municipal waters (*RA 10654, sec. 74*).

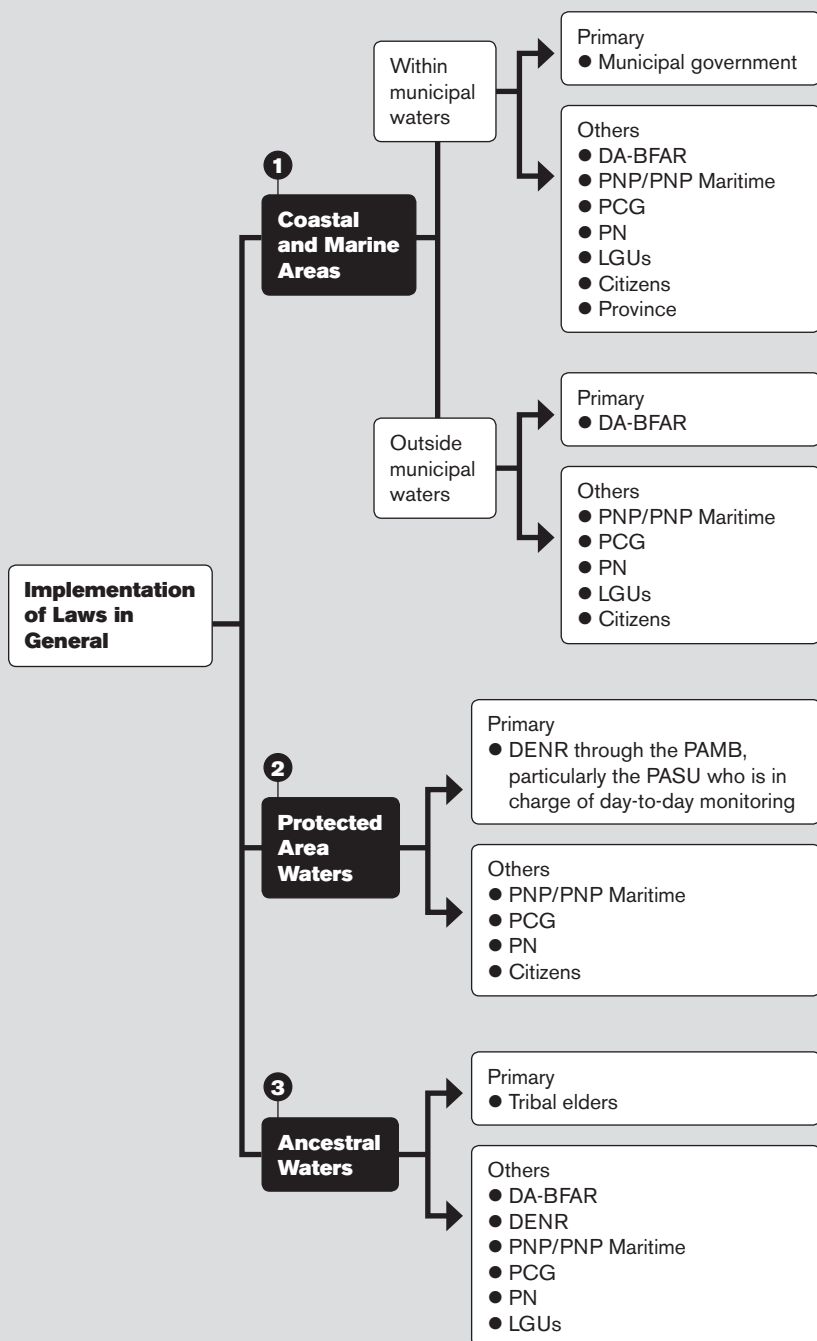
Furthermore, RA 10654 mandates that the DA and/or the municipal government consult the FARMC when:

- establishing closed seasons, fishery refuges and sanctuaries (*RA 10654, sec. 9 & 81*)

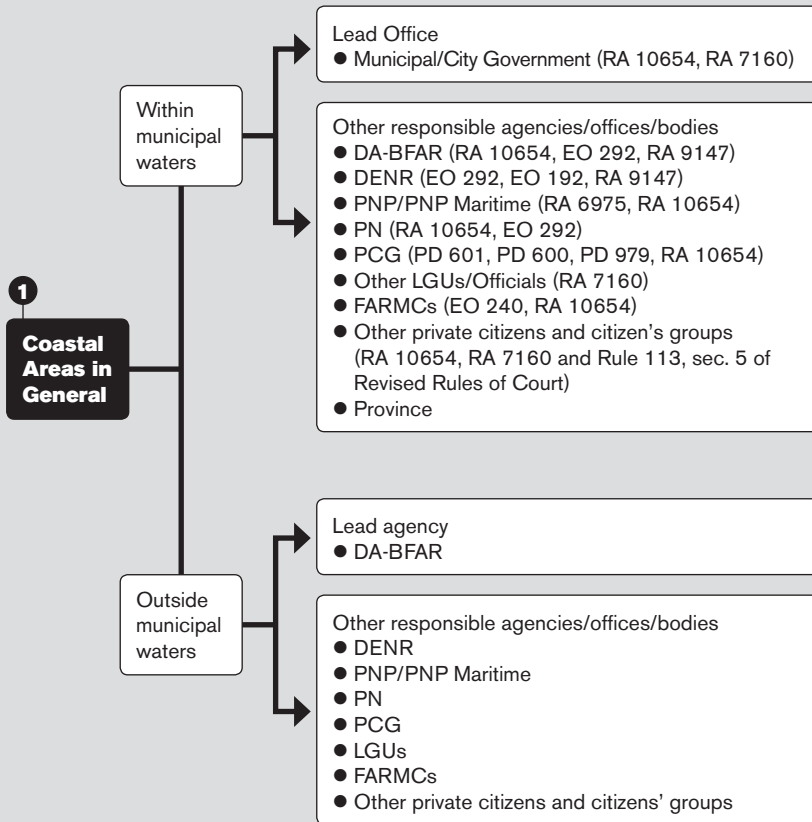
- declaring a portion of the municipal waters as fishery reserves (*RA 10654, sec. 80*)
- establishing catch ceilings and closed seasons within municipal waters (*RA 10654, sec. 8 & 9*)
- designating zones within municipal waters where fish pens, fish cages, fish traps and other structures for the culture of fish may be constructed and operated (*RA 10654, sec. 51*).

Barangay FARMCs may also be created by LGUs under Section 73 of RA 10654.

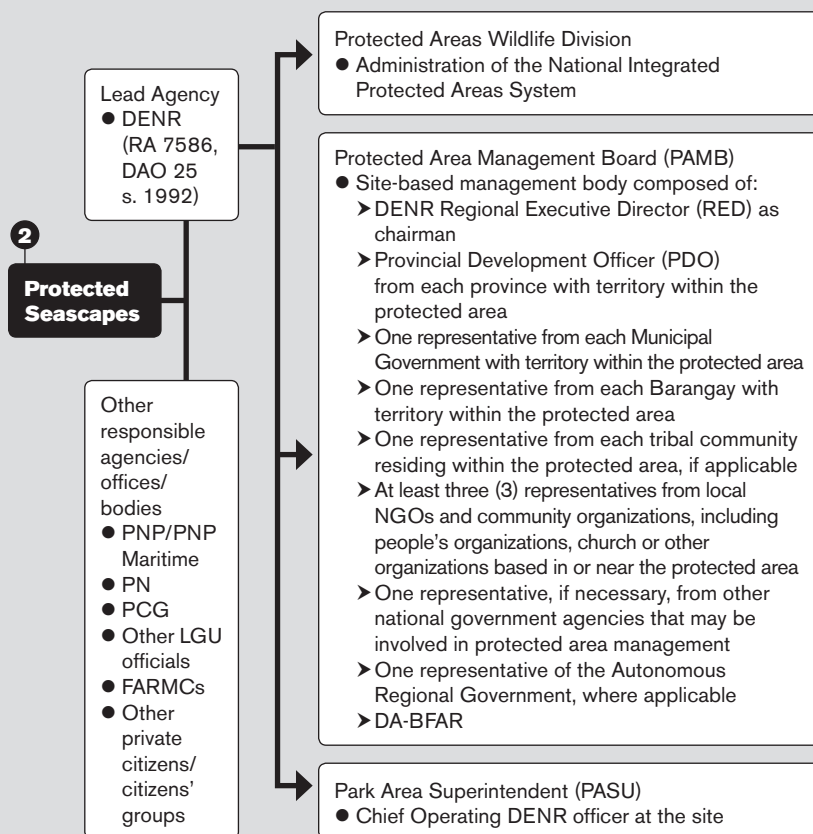
## Area-based mandates for implementation of coastal laws



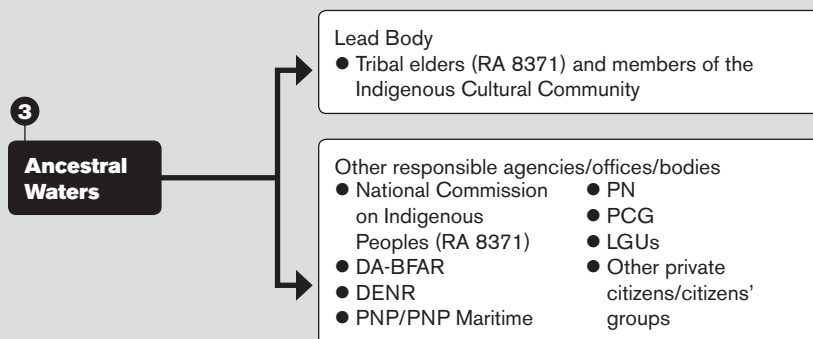
## Mandates for coastal areas in general



## Mandates for protected seascapes



## Mandates for ancestral waters





# ANNEX 4

## Guide to Legal References



**L**egal references can be generally classified into three types:

- 1) jurisprudence
- 2) statutes and legal issuances
- 3) legal texts

Copies of these references may be obtained from the libraries and/or websites of the appropriate government offices ([www.gov.ph](http://www.gov.ph)). The Supreme Court website ([www.supremecourt.gov.ph](http://www.supremecourt.gov.ph)) is particularly useful in researching jurisprudence. Other sources such as law school libraries, bookstores, and the internet (e.g. [www.lawphil.net](http://www.lawphil.net), [www.chanrobles.com](http://www.chanrobles.com), [www.lexlibris.com.ph](http://www.lexlibris.com.ph)) may also be tapped.

This guide classifies the legal references cited in this book, with notes on how to interpret the citations.

### **Jurisprudence**

Jurisprudence are Supreme Court decisions that may be used to support legal arguments or decisions of lower courts. Cases are reported in different compilations and are cited as follows:

Case name, vol. no. report title pg. no. (year of promulgation)  
e.g. *Diaz v. Estrera*, 106 Phil. 637 (1947)

#### Acronym of Report Title

A.M.	Administrative Matters (compiled by the concerned administrative agency)
G.R.	General Reference*
I.S.	Information Sheet (compiled by the concerned public prosecutor)
O.G.	Official Gazette
Phil.	Philippine Reports
SCRA	Supreme Court Reports Annotated

\*If the Supreme Court decision has not been reported in any compilation, the case is cited using the General Reference number assigned to the case, along with its **date** of promulgation. Cases decided by the American judicial system are simply cited using the case reference number.

### **Statutes and Legal Issuances**

Statutes include national laws created by Congress or the President. Legal issuances include rules and regulations, resolutions, circulars,



and other orders issued by administrative agencies to implement the national laws. The DOJ Manual for Prosecutors, for example, is a legal issuance.

The “Rules” cited in this book refer to the Revised Rules of Court, unless otherwise specified. See the List of Acronyms for the meaning of the acronyms used in citing laws.

Although copies of all the laws cited in this book are widely available, the authors have used annotated versions of some of these. The following texts were used:

- Agpalo, Ruben. (2001) *Handbook on Criminal Procedure*. (2001 edition). Manila: Rex Book Store.
- Bernas, Joaquin G., S.J. (1996) *The 1987 Philippine Constitution*. (1996 edition). Manila: Rex Book Store.
- Nolledo, Jose N. (1992) *The Local Government Code of 1991: Annotated*. (1992 edition). Mandaluyong City: National Bookstore.
- Regalado, Florenze D. (2000) *Remedial Law Compendium: Volume Two*. (8th edition). Manila: National Bookstore, Inc.

### **Legal Texts**

The opinions of established legal authorities are occasionally cited in this book. The following publications were referred to:

- Albano, Ed Vincent S. (1998) *Remedial Law Reviewer*. (2nd edition). Manila: Rex Book Store.
- De Leon, Hector S. and Hector M. De Leon, Jr. (1998) *Administrative Law: Text and Cases*. (3rd edition). Manila: Rex Book Store.
- Department of Environment and Natural Resources, Bureau of Fisheries and Aquatic Resources of the Department of Agriculture, and Department of the Interior and Local Government. (2001) *Philippine Coastal Management Guidebook No. 8: Coastal Law Enforcement*. Cebu City: Coastal Resource Management Project of the Department of Environment and Natural Resources.
- Gregorio, Antonio. (1997) *Criminal Law II*. Manila: Rex Book Store.
- Moreno, Federico B. (1988) *Philippine Law Dictionary*. (3rd edition). Manila: Rex Bookstore.
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Too often, coastal law violations escape the nets of justice because the nets have too many holes: limited understanding of coastal laws, lack of knowledge of technical procedures, or simply confusion over the proper way to effectively keep violators from committing more crimes against the environment. **Mending Nets: A Handbook on the Prosecution of Fishery and Coastal Law Violations** is a guide to help patch up those holes so that environmental justice may be truly served.

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