

# THE EVOLUTION OF PHILIPPINE FISHERIES LEGISLATION

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## I. INTRODUCTION

The Philippine Fisheries Code of 1998 is only the latest development in fisheries legislation that traces its roots back to the beginning of the twentieth century, when the American colonial government introduced legal reforms to transform the aged Spanish legal and political system into a more modern republican system patterned after that of the United States. The reorganization of government, through the enactment of the Administrative Code, led to the apportionment of management jurisdiction over the fishery resources of the country, which up to that time, had not been truly tapped and integrated into national production and development plans.

The purpose of this paper is to summarize the development of fisheries management in the Philippines, as embodied in legislation through several decades, in order that the historical roots of many current issues in management may be viewed with a more comprehensive and historical perspective. Through knowledge of previous policies, legislation, management strategies and techniques, current efforts at institutional and legal reform may benefit from the lessons of previous experiences. An overall analysis will also determine the over-arching trends in fisheries policy, and anticipate the future development of fisheries management in the country.

## II. THE ADMINISTRATIVE CODE OF 1917

Fisheries management in the Philippines began with the rather simple provisions of the Administrative Code of 1917, in the title on Local Autonomy,

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which provided for the authority of the municipal council, for purposes of profit, to grant the exclusive privilege of fishery or right to conduct a fish-breeding ground within any definite portion, or area, of the municipal waters.<sup>1</sup> This did not extend to pearl farms and shell fisheries, however.<sup>2</sup> When the fishery or breeding-ground was granted to a private party, the same was let to the highest bidder.<sup>3</sup> In case an exclusive privilege of fishery in municipal waters was not granted, the municipality was authorized to impose a license tax upon the privilege of taking fish in such waters with nets, traps, or other fishing tackle, but no such license could confer an exclusive right of fishery.<sup>4</sup>

### III. THE FISHERIES ACT OF 1932 AND SUBSEQUENT AMENDMENTS

This simple system for management of fisheries remained unchanged until 1932, when Act No. 4003, the first Fisheries Act was introduced.<sup>5</sup> Subsequent amendments to the Fisheries Act, among them the substantial changes introduced by Commonwealth Act No. 471 in 1939, further expanded and refined fisheries management into an intermediate stage that prevailed from the 1930s up to the early 1970s.<sup>6</sup> Act No. 4003 created a national administrative regime for fisheries by placing fisheries management directly under the jurisdiction of the Secretary of Agriculture and Natural Resources, with the proviso that he may delegate such power to a subordinate representative, bureau, office, or service. Subsequent administrative actions identified this to be the Bureau of Fisheries.<sup>7</sup>

The Secretary exercised general protective powers such as the power to establish and declare closed seasons, prohibit the use of obnoxious or poisonous substances in fishing, prohibit the use of explosives, protect fry or fish eggs, and regulate importation and exportation of fish. Additionally, the deposition of substances deleterious to fish or aquatic life was prohibited.<sup>8</sup> Although pursuant to the general policy of local autonomy, provinces and municipalities could still enact

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<sup>1</sup> Act No. 2711 (1917), sec. 2321. In the original Act, municipal waters were defined as including "not only streams, lakes, and tidal waters included within the municipality, not being the subject of private ownership, but also marine waters included between two lines drawn perpendicular to the general coast line from points where the boundary lines of the municipality touch the sea at high tide, and a third line parallel with the general coast line, and distant from it three marine leagues. Where two municipalities were situated on opposite shores that there is less than six marine leagues of marine waters between them the third line was a line equally distant from the opposite shores of the respective municipalities."

<sup>2</sup> *Id.*, sec. 2628.

<sup>3</sup> *Id.*, sec. 2323.

<sup>4</sup> *Id.*, sec. 2324.

<sup>5</sup> Act No. 4003 (1932)

<sup>6</sup> These amendments and revisions were enacted through amendatory laws such as Commonwealth Act No. 115, 297, and 471, and Republic Acts No. 294, 462, 659 and 1088.

<sup>7</sup> *Id.*, sec. 3.

<sup>8</sup> *Id.*, art. III.

ordinances, rules, and regulations on fishing or fisheries, such issuances could be disapproved by the Secretary.<sup>9</sup> Enforcement of the act was to be accomplished through the deputation of a very extensive number of government officers such as the Philippine Constabulary, municipal police, the secret service force, customs inspectors, guards, and wharfingers, internal revenue agents, coast guard officers, lighthouse keepers, and any other competent officials, employees, or persons designated by the Secretary.<sup>10</sup>

Fisheries were originally classified into insular, municipal, and reserve fisheries.<sup>11</sup> Insular fisheries included the operation of deep-sea or offshore fishing by vessels of more than three gross tons, and such vessels were regulated by the Secretary through licensing.<sup>12</sup> Only citizens of the Philippines or the United States, or corporations and associations at least 61% owned by Filipinos or Americans, could be issued licenses to operate these fishing vessels.<sup>13</sup> But these vessels were generally prohibited from operating within three (3) nautical miles of the shore.<sup>14</sup> Fishermen's licenses were required of all persons employed or engaged in or in connection with the operation of the vessel;<sup>15</sup> and such persons could be Filipinos, Americans, or any other nationality whose laws reciprocally allowed Filipinos or Americans to fish in their jurisdictions.<sup>16</sup> The Secretary was empowered to extract fees for fish and other aquatic products caught based on the gross weight of the catch.<sup>17</sup>

Specific provisions regulated marine mollusca fisheries and pearling or shell-collecting-boat licenses.<sup>18</sup> Shell-divers' licenses were required of persons engaged in these activities,<sup>19</sup> and the Philippines was divided into twenty-eight (28) pearling districts for purposes of administration.<sup>20</sup> The Secretary could impose restrictions on the number of licenses to be issued and the number of licensees allowed to operate, to the point that he could refuse or cancel licenses.<sup>21</sup> He could also fix the minimum sizes of shells to be taken and regulate the shipment or exportation of shells of any species.<sup>22</sup>

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<sup>9</sup> *Id.*, sec. 4.

<sup>10</sup> *Id.*, sec. 5.

<sup>11</sup> *Id.*, art. IV.

<sup>12</sup> *Id.*, art. V.

<sup>13</sup> *Id.*, sec. 20.

<sup>14</sup> *Id.*, sec. 21.

<sup>15</sup> *Id.*, sec. 22.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*, sec. 23.

<sup>18</sup> *Id.*, art. VI.

<sup>19</sup> *Id.*, sec. 27.

<sup>20</sup> *Id.*, sec. 30.

<sup>21</sup> *Id.*, sec. 34.

<sup>22</sup> *Id.*, sec. 37.

Another special fishery was the sponge fisheries, which included the collection or gathering of sponges, seaweeds, or other minor aquatic products from the sea bottom or reefs.<sup>23</sup> These fisheries were accessed by private persons through the grant of exclusive concessions<sup>24</sup> that could have a term of up to twenty (20) years, as determined by the Secretary.<sup>25</sup> Concession fees were computed either on a per-square-kilometer basis or on the per-lineal-kilometer of coastline.<sup>26</sup> Records of collection of such products were required to be kept by the concessionaires,<sup>27</sup> and trade in sponges, seaweeds, and similar products were subject to stringent regulations.<sup>28</sup> Hawksbill turtle fisheries were also considered a legitimate activity at the time.<sup>29</sup> The inland fisheries were subject to exclusive leases and permits of up to twenty (20) years were also issued by the Secretary.<sup>30</sup> A specific portion of all fees and charges collected by the Insular Government were required to be set aside annually to be applied to fisheries research.<sup>31</sup>

With respect to municipal fisheries, Act No. 4003 also reiterated most of the provisions of the Local Autonomy Act, and added a few more features. Within the municipal waters, the municipal council had the authority to grant the exclusive privilege of erecting fish corrals, constructing and operating fishponds or oyster culture beds, taking or catching bangus fry or fry of other species.<sup>32</sup> An individual or entity could be granted a permit for a period of not more than five (5) years, unless with the approval of the provincial board, a ten- (10) year period is permitted or the Secretary provides for a longer period not exceeding twenty-five (25) years.<sup>33</sup> Fish corrals were required to be at least 200 meters apart, unless they were owned by the same person, in which case they shall not be less than 60 meters apart except in waters less than two meters deep.<sup>34</sup> In case of disputes over overlapping jurisdictions within freshwater lakes, or where freshwater or tidal streams form the boundaries between municipalities, the municipal councils could refer the dispute to the provincial board for recommendation to the Governor General as to the manner of settling the boundaries or recommending the passage of legislation.<sup>35</sup>

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<sup>23</sup> *Id.*, sec. 38.

<sup>24</sup> *Id.*, sec. 39.

<sup>25</sup> *Id.*, sec. 42.

<sup>26</sup> *Id.*, sec. 43.

<sup>27</sup> *Id.*, sec. 45.

<sup>28</sup> *Id.*, secs. 46-50.

<sup>29</sup> *Id.*, art. VIII.

<sup>30</sup> *Id.*, sec. 63.

<sup>31</sup> *Id.*, sec. 65-66.

<sup>32</sup> *Id.*, sec. 67.

<sup>33</sup> *Id.*, sec. 69.

<sup>34</sup> *Id.*, sec. 67.

<sup>35</sup> *Id.*, sec. 68.

A municipality could also issue licenses for the privilege of operating a fishing vessel of three tons or less, or of taking fish within its municipal waters with nets, traps, or other fishing gear.<sup>36</sup> Licenses could not be exclusive like concessions, however, and could not cover matters within the licensing jurisdiction of the Secretary of Agriculture and Natural Resources.<sup>37</sup>

The Secretary could designate fishery reservations for governmental, education, and scientific purposes and for the exclusive use of the inhabitants of the Philippines.<sup>38</sup> Fishery farms, experimental stations, and other fishery projects were also within the control of the Secretary.<sup>39</sup> Fishery refuges and sanctuaries could similarly be established, though all game refuges, bird sanctuaries, national parks, botanical gardens, communal forests and pastures were automatically declared fish refuges and sanctuaries.<sup>40</sup> The Secretary, additionally, could establish and administer any portion of the municipal waters as communal fisheries for the particular use of the inhabitants of any municipality or municipal district within the same or neighboring province.<sup>41</sup> Otherwise, all persons were permitted to take fish or other fishery products for personal purposes from any municipal waters.<sup>42</sup>

Prohibited acts included the use of obnoxious and poisonous substances, explosives;<sup>43</sup> violation of rules and regulations in deep-sea fishing;<sup>44</sup> unlawful taking of marine mollusca;<sup>45</sup> illegal taking of sponges;<sup>46</sup> failure to report the kind and quantity of fish caught;<sup>47</sup> and other violations of the rules and regulations issued pursuant to the Act.<sup>48</sup> The act banned blast fishing, and provided the legal presumption that a fishing boat found with explosives on board was to be deemed to have committed the crime.<sup>49</sup> Informers who assist in the apprehension of violators were entitled to one-half of the fine imposed as a reward.<sup>50</sup> The Secretary could approve a compromise of any of the cases arising from the provisions of the Act; this was to entered into between the violator and the official or chief of the bureau, office or service designated to carry out its provisions.<sup>51</sup>

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<sup>36</sup> *Id.*, sec. 70.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*, sec. 73.

<sup>39</sup> *Id.*, sec. 74.

<sup>40</sup> *Id.*, sec. 75.

<sup>41</sup> *Id.*, sec. 73-A.

<sup>42</sup> *Id.*, sec. 73-C.

<sup>43</sup> *Id.*, sec. 76.

<sup>44</sup> *Id.*, sec. 78.

<sup>45</sup> *Id.*, sec. 79.

<sup>46</sup> *Id.*, sec. 81.

<sup>47</sup> *Id.*, sec. 82.

<sup>48</sup> *Id.*, sec. 83.

<sup>49</sup> *Id.*, sec. 12.

<sup>50</sup> *Id.*, sec. 77.

<sup>51</sup> *Id.*, sec. 80.

## IV. DEVELOPMENTS IN THE 1970S

The fishery regime remained essentially the same throughout the 1940s up to the 1960s, and outside of various amendments of specific provisions, the only major innovation in fishery management during this time was the creation of the special fishery jurisdiction over Laguna Lake through the creation of the Laguna Lake Development Authority (LLDA).<sup>52</sup> The LLDA was innovative in the sense that it was the first time a major fishing region was placed under the management of a corporate body operating autonomously from the Secretary of Agriculture. Substantial reforms began to be introduced only in the early 1970s, when there was a flurry of fishery-related legislation, beginning with the penalization of electro-fishing in 1972.<sup>53</sup> Many of these laws, however, took the form of penal legislation prohibiting specific acts, or increasing their penalties.

Under the Fishing Industry Development Decree of 1972,<sup>54</sup> the fishing industry became a pioneer investment priority of the Board of Investments for the purpose of promoting integrated and accelerated development of the sector.<sup>55</sup> It created a multi-sectoral body called the Fishing Industry Development Council which was tasked with policy guidance and creating a healthy investment climate for fishing industry development through the formulation of a Fishing Industry Development Program.<sup>56</sup> The Bureau of Fisheries was appointed as the research, advisory, and executive arm of the council, and its powers and organizational set-up were strengthened accordingly.<sup>57</sup> It was empowered to directly issue or promulgate instructions, orders, rules and regulations for the development and management and/or conservation of fish and fishery resources; declare or establish closed seasons and gear restrictions; prescribe fees for permits, licenses, concessions, import and export, and other fishery privileges; grant or execute fishpond leases; grant concessions for the gathering of marine mollusks, shells, seaweeds, sponges, and other aquatic products; undertake fisheries training programs and provide assistance to fishery educational institutions; regulate all fishing vessels of more than three (3) gross tons; issue all types of import and export permits for fish or fishery products; issue permits for scientific research and educational purposes in fisheries, as well as all other types of fishing licenses; designate Deputy Fish Wardens; maintain a system of data- and statistics-gathering; undertake applied fishery research; designate and set the boundaries of Fishery Districts and promote the organization of District Fishery Corporations or Cooperatives that would engage in the buying, processing, storing,

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<sup>52</sup> Rep. Act No. 4850 (1966).

<sup>53</sup> Rep. Act No. 6451 (1972).

<sup>54</sup> Pres. Decree No. 43 (1972).

<sup>55</sup> *Id.*, sec. 2.

<sup>56</sup> *Id.*, sec. 5.

<sup>57</sup> *Id.*, sec. 6.B.18.

and marketing of fish and fishery products; promote the organization of small fishermen's associations and cooperatives; determine and designate fish landing points throughout the Philippines; regulate fishery imports and exports; and promote a viable fish meal industry.<sup>58</sup> The Central Bank was tasked with seeking ways and means of financing the Fishery Industry Development Program in all its aspects,<sup>59</sup> while the Secretary of National Defense was required to extend all assistance in the enforcement of fishery laws and regulations.<sup>60</sup>

Then, Presidential Decree No. 461(1974) reorganized the Department of Agriculture and Natural Resources into two separate departments, one for agriculture and another for natural resources, and placed the Bureau of Fisheries (now renamed Bureau of Fisheries and Aquatic Resources) and the Fishery Industry Development Council under the latter.<sup>61</sup>

Presidential Decree No. 534 (1974) defined the crime of "illegal fishing" and prescribed very high penalties ranging up to twelve (12) years or even life imprisonment in extreme cases, for fishing with obnoxious or poisonous substances, explosives, and electro-fishing.<sup>62</sup> The Secretary of Agriculture was empowered to institute price controls on fish products and trade upon the recommendation of the Bureau of Fisheries and Aquatic Resources by Presidential Decree No. 553 (1974).<sup>63</sup>

In 1975, all prior fishery legislation was codified into the Fisheries Decree of 1975,<sup>64</sup> which would form the backbone of Philippine fisheries legislation until well into the 1990s.<sup>65</sup> Continuing the policy of accelerated and integrated development of the fishery industry, it emphasized keeping the fishery production of the country at optimum levels,<sup>66</sup> and promoting maximum economic utilization of fishery resources by the private sector.<sup>67</sup> Exportation of fish products was the key to incorporating fisheries production into the national development agenda.<sup>68</sup> The jurisdiction and responsibility of the Bureau of Fisheries and Aquatic Resources to manage, conserve, develop, protect, utilize and dispose of all fishery and aquatic resources of the

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<sup>58</sup> *Id.*, sec. 6.B.

<sup>59</sup> *Id.*, sec. 6.C.

<sup>60</sup> *Id.*, sec. 6.D.

<sup>61</sup> *Id.*, sec. 9.

<sup>62</sup> Pres. Decree No. 534 (1974), secs. 2 and 3.

<sup>63</sup> Pres. Decree No. 553 (1974).

<sup>64</sup> Pres. Decree No. 704 (1975).

<sup>65</sup> However, on account of the manner in which the codification was enacted, a good number of provisions of previous fishery laws remained in force. It is clear that P.D. 704 was not intended to replace the entirety of Act 4003 because the national fisheries management jurisdiction of the Bureau of Fisheries was still based on the provisions of Act 4003 (e.g. sponge fisheries, mollusk fisheries).

<sup>66</sup> *Id.*, sec. 2.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

country was reiterated, but similar jurisdiction and responsibility for all fishing activities within municipal waters, other than fish pens and seaweed culture, were expressly excepted therefrom and placed under the municipal or city government concerned.<sup>69</sup> However, these cities' and municipalities' powers were limited by the need for approval of the Secretary of all ordinances and resolutions on fisheries.<sup>70</sup> The actual task of preparing and implementing a Fishery Industry Development Program was turned over to the BFAR, and the Fishery Industry Development Council needed only to approve the program.<sup>71</sup>

All forms of exploitation of fishery resources were to be regulated by licenses, lease, or permits, and still subject to price-controls by the Secretary if necessary.<sup>72</sup> The system of national licensing for commercial fishing boats was retained, i.e. the Bureau had the sole responsibility.<sup>73</sup> Commercial fishing boats had to be owned by Filipino citizens or associations and corporations at least sixty percent (60%) of which was owned by Filipinos,<sup>74</sup> but charter contracts, lease or lease-purchase agreements, and contracts for assistance in commercial fishing could be entered into with foreign persons or corporations subject to the approval of the Secretary,<sup>75</sup> and on the condition that payments for such contracts or agreements would be in kind, i.e. in export items of fish and/or fishery and aquatic products.<sup>76</sup>

The Philippine Coast Guard was assigned the task of performing all functions pertaining to registration, documentation, inspection, and manning of all types of fishing boats.<sup>77</sup>

Public lands suitable for fishpond purposes could no longer be disposed of by sale,<sup>78</sup> and the new Code permitted only disposition by means of a twenty-five-(25) year lease.<sup>79</sup> Individuals could lease up to 50 hectares, while corporations could lease up to 500 hectares.<sup>80</sup> Family-size fishponds were also permitted.<sup>81</sup> Fishpen operators' licenses were issued by the Bureau, superseding any licenses issued by the

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<sup>69</sup> *Id.*, sec. 4.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*, sec. 16.

<sup>73</sup> *Id.*, sec. 17.

<sup>74</sup> *Id.*, sec. 20.

<sup>75</sup> *Id.*, sec. 21.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*, sec. 17.

<sup>78</sup> *Id.*, sec. 23.

<sup>79</sup> *Id.*, sec. 24.

<sup>80</sup> *Id.*, sec. 25.

<sup>81</sup> *Id.*, sec. 26.



municipality.<sup>82</sup> Fishpens could not be larger than ten (10) hectares for individuals and fifty (50) hectares for corporations, cooperatives, or associations.<sup>83</sup>

Licensing and issuance of permits for fishery privileges, and of fishing boats of three (3) gross tons or less, within municipal waters, were made the responsibility of the cities and municipalities. Although they were allowed by law to issue municipal ordinances to this effect, such ordinances required approval of the Secretary upon recommendation of the Bureau.<sup>84</sup> No agreements for concessions or leases concerning fisheries could be entered into by the city or municipality without such approval.<sup>85</sup> Enforcement of an ordinance, resolution or rule concerning fisheries without the requisite approval of the Secretary subjected the public official to criminal prosecution.<sup>86</sup>

Reserve fisheries and fish sanctuaries could be created only by the Secretary, upon recommendation of the Director of the Bureau.<sup>87</sup>

Prohibited acts included not only illegal fishing, but also dealing in illegally caught fish or fishery/aquatic products;<sup>88</sup> fishing with fine-mesh nets as determined by the Bureau;<sup>89</sup> trawl fishing in waters seven fathoms deep or less;<sup>90</sup> exportation of *bangus* (milkfish) fry;<sup>91</sup> and pollution of waters.<sup>92</sup> Foreign fishing boats illegally engaged in fishing within Philippine waters were to be summarily confiscated administratively, including their catch and equipment, without prejudice to civil or criminal action against its owners and/or operators.<sup>93</sup> Relatively heavy penalties were prescribed for such violations; however, any violation of the Decree, including its penal provisions, could be subject to compromise entered into by the Director of the Bureau with the approval of the Secretary.<sup>94</sup>

Enforcement of the decree was vested in the Philippine Coast Guard, Philippine Constabulary, local police force, government law enforcement agencies,

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<sup>82</sup> *Id.*, sec. 27.

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*, sec. 29.

<sup>85</sup> *Id.*, sec. 30.

<sup>86</sup> *Id.*, sec. 38.

<sup>87</sup> *Id.*, secs. 31-32.

<sup>88</sup> *Id.*, sec. 33.

<sup>89</sup> *Id.*, sec. 34.

<sup>90</sup> *Id.*, sec. 35.

<sup>91</sup> *Id.*, sec. 36.

<sup>92</sup> *Id.*, sec. 37.

<sup>93</sup> *Id.*, sec. 39.

<sup>94</sup> *Id.*, sec. 41.

and any other competent government employees duly designated in writing by the Secretary.<sup>95</sup>

The provisions of Pres. Decree No. 704 on funding provided for financial incentives for fishing, such as loans and guarantee funds.<sup>96</sup> It also provided that the proceeds of fees, fines, rentals and other receipts for the Bureau would be automatically appropriated and released by the President to the Bureau for the latter's purposes, in addition to any appropriations provided in the annual appropriations act/decreed.<sup>97</sup>

The following year, in 1976, the Philippine Fish Marketing Authority was created.<sup>98</sup> This was intended to create a more organized and efficient marketing and distribution system for fish through the establishment and operation of fish markets and the efficient operation of fishing ports, harbors, and other marketing facilities.<sup>99</sup> The PFMA was an independent agency directly under the Secretary of Natural Resources.<sup>100</sup> It was organized as a government-owned and controlled corporation, and could acquire and develop property for purposes of maintaining fish markets, fishing ports and harbors, infrastructure facilities, factory buildings, warehouses, cold storage and ice plants, and other structures; provide market intelligence, market information and advisory and promotional services; regulate enterprises which the PFMA authorized to be established within its facilities; fix and collect fees for the use, lease, or sale of its property; regulate the use of wharves, piers, or anchorages, as well as stevedoring and arrastre services; undertake the marketing of fish and fishery products for domestic consumption and export; among several other incidental functions.<sup>101</sup> Its Board of Directors was composed of five (5) government officials and two (2) private sector representatives appointed by the President.<sup>102</sup>

Pres. Decree No. 1058 (1976) increased the penalties for illegal fishing or dealing with illegally caught fish; it provided for penalties reaching up to life imprisonment in some instances,<sup>103</sup> and placed illegal fishing cases under the jurisdiction of Military Tribunals.<sup>104</sup>

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<sup>95</sup> *Id.*, sec. 40.

<sup>96</sup> *Id.*, secs. 41-A-43.

<sup>97</sup> *Id.*, sec. 47.

<sup>98</sup> Pres. Decree No. 977 (1976).

<sup>99</sup> *Id.*, sec. 1.

<sup>100</sup> *Id.*, sec. 2.

<sup>101</sup> *Id.*, sec. 4.

<sup>102</sup> *Id.*, sec. 6.

<sup>103</sup> Pres. Decree No. 1058 (1976).

<sup>104</sup> *Id.*, sec. 5.

The Coral Resources Development and Conservation Decree<sup>105</sup> provided the framework for regulation of the exploitation of coral resources within the territorial waters and marine economic zone of the country. Under this decree, the gathering and collection of ordinary coral was prohibited,<sup>106</sup> but the Secretary of Natural Resources was allowed to exempt certain species in selected areas from this prohibition. Special permits could also be issued, and concessions for exploitation of precious and semi-precious corals could be awarded.<sup>107</sup> Semi-precious and precious corals could be exported if they were processed and manufactured into finished products in the Philippines.<sup>108</sup>

Subsequently, regulation of coral exploitation was placed under the jurisdiction of the Bureau of Fisheries and Aquatic Resources.<sup>109</sup> The use of ordinary corals in raw or processed form in any quantity was prohibited, and the power to exempt certain areas from the prohibition was removed.<sup>110</sup> Only one person or corporation for a limited period could conduct experimental collection of precious and semi-precious corals.<sup>111</sup> Heavier penalties were imposed for gathering corals without the permits provided for.<sup>112</sup>

Exec. Order No. 772 (1982) amended Pres. Decree No. 977 and renamed the PFMA as the Philippine Fisheries Development Authority (PFDA), attached to the Ministry of Natural Resources.<sup>113</sup> The PFDA was tasked with the establishment, management, operation, and development of all fish port complexes in the country, particularly the Navotas Fishing Port Complex.<sup>114</sup> The net assets of the Authority, including the Navotas Fishing Port Complex, and appropriations for the Authority in 1981 and 1982 were used to subscribe shares in the capital stock of PFDA. A sinking fund was allowed to be established, into which all the revenues of all of the PFDA's fish ports would be deposited for subsequent use by the PFDA or invested in such manner as may be advantageous to the Authority.<sup>115</sup> The marketing function of the PFMA, including the construction and operation of cold storage facilities, procurement and distribution of fishery productions, and operation of transportation facilities, was transferred to the National Food Authority.<sup>116</sup>

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<sup>105</sup> Pres. Decree No. 1219 (1977).

<sup>106</sup> *Id.*, sec. 5.

<sup>107</sup> *Id.*, sec. 7.

<sup>108</sup> *Id.*, sec. 9.

<sup>109</sup> Pres. Decree No. 1698 (1980), sec. 1.

<sup>110</sup> *Id.*, sec. 2.

<sup>111</sup> *Id.*, sec. 4.

<sup>112</sup> *Id.*, sec. 5.

<sup>113</sup> Exec. Order No. 772 (1982), sec. 1.

<sup>114</sup> *Id.*, sec. 2.

<sup>115</sup> *Id.*, sec. 3.

<sup>116</sup> *Id.*, sec. 5.

In 1984, the Ministry of Agriculture was turned into the Ministry of Agriculture and Food.<sup>117</sup> This led to the transfer of the Bureau of Fisheries and Aquatic Resources to the newly renamed ministry, and its reorganization into a staff Bureau.<sup>118</sup> The Fishery Industry Development Council was abolished,<sup>119</sup> and the Philippine Fisheries Development Authority was likewise transferred from the Ministry of Natural Resources.<sup>120</sup> Three (3) years later, in 1987, the Ministry of Agriculture and Food was again renamed as Ministry of Agriculture,<sup>121</sup> and the Bureau was placed under the Production Group of the ministry.<sup>122</sup>

The fisheries management system under Pres. Decree No. 704, as modified by the subsequent issuances mentioned above, prevailed until fisherfolk groups and non-government associations reached a critical mass that began lobbying for fisheries reforms in the early 1990s. After several years of constant advocacy, the Fisheries Code of 1998 was finally enacted.<sup>123</sup>

#### V. THE FISHERIES CODE OF 1998

Republic Act No. 8550, otherwise known as the Philippine Fisheries Code of 1998, prioritizes food security as the overriding concern in protecting and conserving fisheries resources, and institutionalizes a general policy goal of limiting access to resources and reserving them for Filipino citizens, ensuring rational and sustainable development, protecting the rights of fisherfolk and small communities, providing support to the fishery sector, managing the resources in consonance with integrated coastal area management concepts, and partnership between government and the resource users.<sup>124</sup>

The application of the Code was extended throughout all Philippine waters, including the 200-nautical mile Exclusive Economic Zone and the continental shelf previously established by law and recognized under international law;<sup>125</sup> as well as all lands devoted to aquaculture, and businesses or activities relating to fisheries.<sup>126</sup> It emphasized the Constitutional mandate to reserve Philippine fishery and aquatic resources for the benefit solely of Filipino citizens.<sup>127</sup>

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<sup>117</sup> Exec. Order No. 967 (1984).

<sup>118</sup> *Id.*, sec. 3.

<sup>119</sup> *Id.*, sec. 4.

<sup>120</sup> *Id.*, sec. 7.

<sup>121</sup> Exec. Order No. 116 (1987).

<sup>122</sup> *Id.*, sec. 13.

<sup>123</sup> Rep. Act No. 8550 (1998).

<sup>124</sup> *Id.*, sec. 2.

<sup>125</sup> See Pres. Decree No. 1599, Establishing an Exclusive Economic Zone and For Other Purposes (1979), in relation to Arts. 55-75, United Nations Convention on the Law of the Sea.

<sup>126</sup> Rep. Act No. 8550 (1998), sec. 3.

<sup>127</sup> *Id.*, sec. 5.

The major change was the definitive allocation of fisheries jurisdiction between the cities and municipalities and the national government. Prior to the enactment of the Fisheries Code of 1998, the Local Government Code of 1991 expanded the outer limits of municipal waters to 15 kilometers for purposes of imposition of fishery charges, fees, and rentals,<sup>128</sup> but did not clarify the extent of related jurisdictions such as fishery management and law enforcement. The Local Government Code also permitted local government units to enact and enforce local fishery ordinances without need of approval from the national government.<sup>129</sup>

Rep. Act No. 8550 overhauled the jurisdictional responsibilities over fisheries. Within the municipal waters, the cities and municipalities exercised jurisdiction over fisheries which included management powers through the enactment of ordinances and law enforcement,<sup>130</sup> while the national government, through the Bureau of Fisheries and Aquatic Resources, exercised jurisdiction beyond the municipal waters and over areas under fishpond lease agreements. This clear division of jurisdiction applied to the imposition of license fees, charges, and rentals;<sup>131</sup> closed seasons;<sup>132</sup> and the designation of fish reserves, refuges, and sanctuaries.<sup>133</sup> The Code also mandated extensive consultation and cooperation between the local government units and national government, with recommendations from the former being essential for certain actions of the latter, in the case of setting of catch limits;<sup>134</sup> designation of reserves for special or limited use, educational, research or special management purposes;<sup>135</sup> and limitation of prohibition of fishery activities in overfished areas.<sup>136</sup>

Local governments manage capture fisheries through the power to grant and regulate all fishery privileges and activities within municipal waters.<sup>137</sup> Resident municipal fisherfolk and their cooperatives and associations have priority to exploit municipal waters,<sup>138</sup> and the local government unit is mandated to maintain a registry of municipal fisherfolk, which can be the basis for management decisions such as exclusion from the municipal waters.<sup>139</sup> Municipal waters are generally reserved for municipal fishing, i.e. fishing with vessels of 3 gross tons or less, or without the use

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<sup>128</sup> Rep. Act No. 7160 (1991), sec. 149 in relation to sec. 131(r).

<sup>129</sup> See *Tano vs. Socrates*, G.R. No. 110249, 278 SCRA 155 (1997).

<sup>130</sup> Rep. Act No. 8550 (1998), sec. 16.

<sup>131</sup> *Id.*, sec. 6.

<sup>132</sup> *Id.*, sec. 9.

<sup>133</sup> *Id.*, sec. 81.

<sup>134</sup> *Id.*, sec. 8.

<sup>135</sup> *Id.*, sec. 80.

<sup>136</sup> *Id.*, sec. 23.

<sup>137</sup> *Id.*, sec. 18.

<sup>138</sup> *Id.*, sec. 21.

<sup>139</sup> *Id.*, sec. 19.

of vessels.<sup>140</sup> Commercial fishing may be allowed only in small or medium-scale, and only in the 10.1 to 15 kilometer zone of municipal waters, under stringent conditions.<sup>141</sup>

Mariculture through fishpens, fishcages, and fishtraps may be operated only within designated zones which must not cover more than 10% of the surface area of lakes and rivers;<sup>142</sup> moreover, from the year 2003, such structures are no longer allowed in lakes.<sup>143</sup> The privilege to operate such facilities should be granted only municipal fisherfolk and their organizations.<sup>144</sup>

In cases where municipal waters are within the area jurisdiction of special agencies pursuant to special laws (e.g., the LLDA or within areas declared to be under the National Integrated Protected Areas System under Rep. Act No. 7586), the issuance of licenses remains with the special agencies,<sup>145</sup> and management of the municipal waters will have to be in consonance with the special law.

Recognizing the difficulties of disparate and uncoordinated management in shared fishery areas such as rivers and lakes, the Code mandates that contiguous fishery resources which straddle several municipalities, cities, or provinces should be managed as single resource systems and in an integrated manner which is not dependent on political subdivisions of municipal waters.<sup>146</sup> Such contiguous resources are inferred to include bays, gulfs, lakes, rivers, and dam-areas.<sup>147</sup> The local government units sharing or bordering such resources may group themselves and coordinate with each other for purposes of integrated fishery resource management.<sup>148</sup>

To support the local government units in the management of fishery resources, Fisheries and Aquatic Resource Management Councils (FARMC) were created in all cities and municipalities abutting municipal waters.<sup>149</sup> FARMCs are basically multi-sectoral councils with advisory and recommendatory functions, providing assistance to the national or local government units in matters of fishery development planning, enactment of ordinances, management, and enforcement.<sup>150</sup> FARMCs serve as the main sounding board for the local governments in matters of

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<sup>140</sup> *Id.*, sec. 4(57).

<sup>141</sup> *Id.*, sec. 18.

<sup>142</sup> *Id.*, sec. 51.

<sup>143</sup> *Id.*, sec. 45.

<sup>144</sup> *Id.*, sec. 53.

<sup>145</sup> *Id.*, sec. 17.

<sup>146</sup> *Id.*, sec. 16, last paragraph.

<sup>147</sup> *Id.*, sec. 16 in relation to sec. 76.

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*, sec. 69.

<sup>150</sup> *See id.*, secs. 68-79.

fishery management. Consultations with FARMCs are required for all vital activities such as setting of license fees, charges, and rentals;<sup>151</sup> imposition of closed seasons;<sup>152</sup> setting of catch limits;<sup>153</sup> management of municipal waters and enactment of fishery ordinances;<sup>154</sup> and authorization of the operation of small and medium-scale commercial fishing vessels in the 10.1 to 15 kilometer zone of municipal waters.<sup>155</sup> They must also be consulted on the formulation of inclusion and exclusion procedures for users of municipal waters;<sup>156</sup> establishment and allocation of zones for fish pens, cages, traps and similar structures;<sup>157</sup> determination of spaces between fishery structures and defined migration paths of fish;<sup>158</sup> settlement of resource-use conflicts;<sup>159</sup> and creation of fishery reserves, refuges, and sanctuaries.<sup>160</sup> A National FARMC was also created at the national level with corresponding functions to provide support for the national fishery management.<sup>161</sup>

Another innovation introduced by the Code was the priority granted for municipal fisherfolk and the more prominent role given to fisherfolk associations and cooperatives. Municipal fisherfolk have priority in terms of the allocation and use of fishery resources in their municipal waters.<sup>162</sup> Municipal fisherfolk associations and cooperatives are further granted preference or priority in the grant of fishing privileges in municipal waters;<sup>163</sup> utilization of all fishery related activities;<sup>164</sup> use of demarcated fishery areas for fish capture, mariculture, or fish farming;<sup>165</sup> exploitation of municipal and demarcated fishery areas;<sup>166</sup> grant of demarcated fishery rights for mariculture operations in areas designated by the Department ;<sup>167</sup> issuance of commercial fishing boat licenses;<sup>168</sup> access to credit and guarantee funds;<sup>169</sup> and the issuance of Fishpond Lease Agreements.<sup>170</sup> They are also entitled to participation in the development of a Code of Practice for

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<sup>151</sup> *Id.*, sec. 6.

<sup>152</sup> *Id.*, sec. 9.

<sup>153</sup> *Id.*, sec. 8.

<sup>154</sup> *Id.*, sec. 16.

<sup>155</sup> *Id.*, sec. 18.

<sup>156</sup> *Id.*, sec. 19.

<sup>157</sup> *Id.*, sec. 51.

<sup>158</sup> *Id.*, sec. 56.

<sup>159</sup> *Id.*, sec. 65.

<sup>160</sup> *Id.*, secs. 80-81.

<sup>161</sup> *Id.*, sec. 70.

<sup>162</sup> *Id.*, secs. 18 and 21.

<sup>163</sup> *Id.*, sec. 17.

<sup>164</sup> *Id.*, sec. 18.

<sup>165</sup> *Id.*, sec. 20.

<sup>166</sup> *Id.*, sec. 21.

<sup>167</sup> *Id.*, sec. 22.

<sup>168</sup> *Id.*, sec. 27.

<sup>169</sup> *Id.*, sec. 34.

<sup>170</sup> *Id.*, secs. 45-46.

Aquaculture;<sup>171</sup> participation in post-harvest operations and ancillary industries;<sup>172</sup> participation in the formation of FARMCs;<sup>173</sup> preference in the grant of fisheries financial facilities;<sup>174</sup> and consultation in the identification of community infrastructure facilities such as fish landing ports, ice plants, and cold storage facilities.<sup>175</sup>

The national government, through the BFAR, retains its management jurisdiction over commercial fisheries and aquaculture. BFAR itself was reconstituted into a line bureau under the Department of Agriculture,<sup>176</sup> with extensive powers and functions.<sup>177</sup> The position of Undersecretary of Fisheries and Aquatic Resources was created within the Department of Agriculture solely for the purpose of attending to the needs of the fishing industry.<sup>178</sup> These structural changes reflected the increased attention demanded by fisheries management.

Commercial fishing has been divided into small-scale, medium-scale, and large-scale commercial fishing depending on the tonnage and gear of the vessel used, with those of 20 gross tons or less classified as small-scale, and those in excess of 150 gross tons categorized as large-scale.<sup>179</sup> Commercial fishing vessel and their gear must be issued licenses by BFAR,<sup>180</sup> and the crewmembers must likewise be registered fisherfolk.<sup>181</sup>

Fishponds may continue to be operated under Fishpond Lease Agreements (FLAs) covering public lands, although qualified fisherfolk associations and cooperatives are now given preference in their grant if the current lessor does not extend the existing lease agreement.<sup>182</sup> The FLAs have a term of 25 years, renewable for another 25 years, and an individual may lease up to 50 hectares while corporations or associations are entitled to a maximum of 250 hectares.<sup>183</sup> The FLA may be cancelled for failure to be commercially productive within 5 years from approval of the contract; for being subleased in whole or in part; for failure to

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<sup>171</sup> *Id.*, sec. 47.

<sup>172</sup> *Id.*, sec. 58.

<sup>173</sup> *Id.*, sec. 69.

<sup>174</sup> *Id.*, sec. 114.

<sup>175</sup> *Id.*, sec. 119.

<sup>176</sup> *Id.*, sec. 64.

<sup>177</sup> *Id.*, sec. 65.

<sup>178</sup> *Id.*, sec. 63.

<sup>179</sup> *Id.*, sec. 4(10).

<sup>180</sup> *Id.*, secs. 26 and 29.

<sup>181</sup> *Id.*, sec. 26 in relation to sec. 86.

<sup>182</sup> *See id.*, sec. 45.

<sup>183</sup> *Id.*, sec. 46.



minimize environmental pollution; or acquisition of foreign citizenship by the lessor.<sup>184</sup>

The Code codified practically all fishery violations then existing in Philippine law, and consolidated them in the chapter on prohibitions and penalties. This extensive list of prohibited acts includes unauthorized fishing, or engaging in unauthorized fishing activities;<sup>185</sup> poaching in Philippine waters;<sup>186</sup> fishing through explosive, noxious, or poisonous substances or electricity;<sup>187</sup> use of fine mesh nets;<sup>188</sup> use of active gear in municipal waters, bays, or other fishery management areas;<sup>189</sup> coral exploitation and exportation;<sup>190</sup> *mao-ani* and other destructive gear or methods;<sup>191</sup> use of superlights in municipal waters and bays;<sup>192</sup> conversion of mangroves;<sup>193</sup> fishing during closed seasons or in overfished areas;<sup>194</sup> fishing in fishery reserves, refuges, or sanctuaries;<sup>195</sup> fishing or taking of rare, endangered, or threatened species;<sup>196</sup> capture of *sabalo*, other breeders or spawners, eggs, or fry;<sup>197</sup> violation of catch ceilings;<sup>198</sup> aquatic pollution;<sup>199</sup> minor violations;<sup>200</sup> employment of unlicensed fisherfolk, fishworkers, or crew;<sup>201</sup> obstruction of defined migration paths;<sup>202</sup> and obstruction of fishery law enforcement officers.<sup>203</sup>

## VI. HISTORICAL TRENDS AND THE FUTURE OF FISHERIES MANAGEMENT

Decades of legislation indicate distinct trends that are likely to be driving fisheries management policy reforms at present. These trends may be seen in the following key areas:

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<sup>184</sup> *Id.*, secs. 46 and 50.

<sup>185</sup> *Id.*, sec. 86.

<sup>186</sup> *Id.*, sec. 87.

<sup>187</sup> *Id.*, sec. 88.

<sup>188</sup> *Id.*, sec. 89.

<sup>189</sup> *Id.*, sec. 90.

<sup>190</sup> *Id.*, sec. 91.

<sup>191</sup> *Id.*, sec. 92.

<sup>192</sup> *Id.*, secs. 44 and 93.

<sup>193</sup> *Id.*, sec. 94.

<sup>194</sup> *Id.*, sec. 95.

<sup>195</sup> *Id.*, sec. 96.

<sup>196</sup> *Id.*, sec. 97.

<sup>197</sup> *Id.*, secs. 98-100.

<sup>198</sup> *Id.*, sec. 101.

<sup>199</sup> *Id.*, sec. 102.

<sup>200</sup> *Id.*, sec. 103.

<sup>201</sup> *Id.*, sec. 104.

<sup>202</sup> *Id.*, sec. 105.

<sup>203</sup> *Id.*, sec. 106.

### A. Municipal-level Management of Fisheries

Fisheries activities have always been treated as locally-based activities, part and parcel of the ordinary life of Philippine coastal communities and settlements. That the Administrative Code of 1917 provided for the authority of the municipal councils to regulate the grant of exclusive fishery rights and conduct fish-breeding grounds (aquaculture and mariculture activities) within the three (3) nautical mile municipal waters is a clear indication that fisheries were originally within the concern of municipal governments. The municipality originally had the option of establishing a monopoly of fishing in favor of a single entity for profitable considerations, or unrestricted public access in exchange for license revenues. Over time, this expanded to include construction of fish corrals, fishponds and oyster culture beds, and the catching of fry, licensing of fishing boats of three tons or less, and taking fish from the waters by means of nets, traps, or other fishing gear. It may be said that the devolution of fisheries management jurisdiction will probably be the ultimate result of any and all policy reforms in fisheries.

One particular aspect of municipal fisheries management that should be looked into is the recognition, under previous legislation, of exclusive concessions as one of the techniques of local fisheries management. Exclusive fishery concessions are still very much in use today. However, this fishery management technique does not have clear specific basis in fishery legislation, but rather relies upon the general law on public contracts. As such, the only concern is the concession price and the appropriate procedure for the contract, but not how it will contribute to fisheries management in terms of such issues like conserving stock or controlling fishing effort. This technique bears a closer look.

In the past, the province appears to have been granted some legislative jurisdiction over fisheries management, but the extent of this is unclear. The old legislation impliedly acknowledged that the provincial governments could promulgate fisheries ordinances, subject to the approval of the Secretary. Beyond this general statement, however, in all fisheries legislation, the role that a province may take has historically been ignored from a fisheries management perspective. It would be useful to explore options, under current legislation, for a more active provincial role in fisheries management. These local government units, as superiors of the component cities and municipalities, may be pivotal in terms of conflict resolution between constituent municipalities and in terms of support to municipal initiatives. As higher-level planning units, they also might serve as the overall link that harmonizes development efforts in fisheries at the municipal level.

It is clear that municipal level governance of fisheries has always been recognized by law; but the extent to which local governments could exercise powers

relevant to fisheries management began from a very limited range of activities (either the grant of an exclusive privilege or a license tax upon everyone in the fishery) and expanded to a wider and wider scope. The legality of the licensing jurisdiction of cities and municipalities is beyond question, and the extent to which they can impose terms, conditions, and limitations has not been subject to specific limitations. In the context of Rep. Act No. 8550, these point toward a greater and more elaborate local management system for municipal fisheries, and thus it is necessary that municipal governments develop their capacity to set up and maintain adequate licensing systems that will aid their management of fisheries. As a corollary to this, the national government must be adequately staffed and equipped to assist and support local management of fisheries, since in order to be effective, licensing must be backed up by sound and reliable information.

### **B. National Fisheries Management Concerns**

National fisheries management used to be concerned with specific sectors that produced fishery products of high commercial value. These sectors included all offshore or insular fisheries, marine mollusca fisheries, pearl fisheries, and sponge fisheries. In the 1970s, the operation of fishponds, which used to be within the municipality's general control, was transferred to the national government on account of its large potential for producing export-oriented species. Individual fishing efforts, subsistence fishing, and/or marginal fishing were not within the national government's priority concerns as these were left to the local governments. This institutional disinclination against local fishing activities, however, must change in light of the new policy that emphasizes food security as among the objectives of the new Fisheries Code. The priority placed on food security implies that policies and programs must be directed towards ensuring access to adequate food supplies. The ensuing coastal communities' direct access to fisheries resources is among the best means of ensuring food security.

The other side of the equation is ensuring that such fisheries resources, to which coastal communities have access to, are sustainable. Policies and programs that tend to ensure conservation, effective management, and sustainable utilization of fisheries resources must therefore come hand-in-hand. In this regard, likewise noticeable is the fact that habitat-protection and species-conservation measures are no longer the exclusive prerogative of the national government, acting through the Secretary, as provided for in previous eras. Under Rep. Act No. 8550, local governments are now vested with similar powers effective within their own territorial jurisdictions.

One interesting issue which is worthy of attention at this point is the matter of communal fisheries that the Secretary could designate within municipal waters,

which were provided for under Act No. 4003, but no longer appears in subsequent legislation. Communal fisheries are expressly mentioned in the 1987 Constitution, and yet there is no mention of the concept in the current legislation. The idea of communal fisheries, according to the legislation, implies an exclusive access arrangement that segregates a particular area of water for the particular use of an identified group of inhabitants of any municipality or district within the same or neighboring province. This runs a bit counter to the concept, likewise in the fisheries legislation, of allowing all persons to take fish or other fishery products for personal purposes from any municipal waters; an open access arrangement. There may be a lesson that can be derived from this, in that, properly exercised, communal fishing areas might be a useful tool for resolving standing conflicts between municipalities competing for access or control to bodies of water over which their jurisdictions overlap. It may also be another means of limiting access to specific fishing grounds. While admittedly there is doubt as to whether the old provisions of law survived the numerous amendments that followed it, as well as the new codifications in 1975 and 1998, still the idea of designating specific areas for joint use of communities is not expressly prohibited. The mandate for integrated management of contiguous or shared fishery resources, in fact, lends credence to its continuing utility as a management option.

### C. Criminalization of Fisheries Violations

The range of activities that are expressly prohibited and penalized under fisheries laws appear to have been not constant over time. While some offenses, such as the use of obnoxious and poisonous substances and explosives, remained, all the types of offenses do not appear as consistently throughout the different codifications. For example, under Act No. 4003, unlawful taking of marine mollusca and sponges and failure to report the kind and quantity of fish caught were among the main crimes; under Pres. Decree No. 704, these included only illegal fishing, dealing with illegality caught fish, exportation of *bangus* fry, and pollution. Currently Rep. Act No. 8550 includes a very long list of different punishable offenses. Moreover, the penalties for various offenses have been increasing, not only in terms of the amount of the fine, but also in terms of the length of time of imprisonment imposable. This seems to indicate that throughout the history of the fisheries legislation, the previous attempts at fisheries management through criminalization of the acts (i.e., making violations criminal acts that require court processes) have been mostly unsuccessful; otherwise there would be no need to keep increasing the penalties in response to the assumed proliferation of violations.

At the same time, there was a diminishing reliance on administrative processes as a means of domestic fisheries enforcement. By the time Pres. Decree No. 704 (1975) was issued, the only administrative process available was the

summary confiscation of a foreign fishing boat illegally engaged in fishing. Previous provisions empowering the national government to impose administrative fines based on gross weight of catch, and to compromise penalties, were no longer reiterated in current legislation.

However, this implies that only the judicial mode is available for redress of offenses; such a system can be too tedious and time-consuming to be effective. Granting that the provision allowing compromise of penalties would appear to be dubious in practice, the power to impose administrative sanctions needs to be re-examined and incorporated in current fisheries management schemes because the legislative history also shows that judicial modes of fishery law enforcement have not been reliable or effective. The judicial mode is too cumbersome and expensive for a relatively simple matter like fisheries enforcement. It also results in the unneeded clogging of the dockets of the court, with individual violations such as fishing without a license demanding the same attention from the court as that required by heinous crimes.

#### **D. Centralization and Decentralization of Fisheries Management**

The requirement for approval of provincial or municipal ordinances by the Secretary shows that this local legislative power was subject to the control and supervision of the executive branch of the national government. But whereas under Act No. 4003, such resolutions and ordinances only needed to be submitted for approval and could be enforced unless a notice of disapproval was sent by the Secretary within thirty (30) days from submission, Pres. Decree No. 704 (1975) required not only that local ordinances be approved by the Secretary first, but also subjected public officials to criminal prosecution if any attempt was made by a local government to enforce an ordinance, resolution, or rule on fisheries on its own. In other words, the local governments had much more effective autonomy prior to the 1970s; thereafter, they were placed under strict control and supervision by the national government.

This power of control and supervision remained in place until the Local Government Code of 1991, implementing the policy of the 1987 Constitution mandating full local autonomy, superseded the provisions of the Pres. Decree No. 704. It was not until the Fisheries Code of 1998 was enacted that the exclusive jurisdiction of local governments over regulation of fisheries in municipal waters was recognized (albeit still subject to some exceptions). This is enhanced by provisions promoting wider participation of the local community through the Fisheries and Aquatic Resources Management Councils.

The creation of the Philippine Fish Marketing Authority served to centralize operation and monopolize control of fish markets, fishports and harbors, and related infrastructure, while the Coral Resources Development and Conservation Decree similarly created a monopoly over exploitation of coral. Broadly seen, Pres. Decree No. 704 also allowed the national government to establish monopolies in specific areas with respect to fish pens, seaweed culture, gathering of fry, fishponds, and all types of leases and concessions concerning fisheries.

This trend since the early 1970s is now countermanded by a movement towards more decentralized management, as embodied by Rep. Act No. 8550. Centralized fisheries management results in inflexibility and inability to respond quickly to the demands of the resource and the environment, aside from the attendant evils of monopolization of the economic sector. Fisheries resources thrive in a dynamic and often diverse underwater environment, and in the context of the ecosystem diversity of the archipelago, require a decentralized system.

However, it is likely that it will take some time before the management institutions of government will be able to fully adjust to a decentralized system; after all, it bears the weight of more than twenty (20) years of experience only in centralized control. Within government institutions themselves involved in fisheries, there is a need for a conscious re-orientation towards a more flexible, dynamic, and non-centralized planning and decision-making. Otherwise, the range of options that government will devise to respond to the demands of fisheries management will always be very limited.

## VII. CONCLUSION

There are many lessons that may be gained from the past, and perusing previous fisheries legislation provides us with some that may prove very useful in the attempt to reform fisheries management policy. Aside from possibly useful text, tried-and-true or unused techniques, bright ideas that were never implemented, and precedents that support current proposals, the legislative history provides an insight as to the development of national policy over time, and where it is likely to head in the future. Anticipating the future allows more deliberate thought to be given to future proposals for reform and current recommendations for action.

From the foregoing discussion, we may surmise that certain key and historical trends will play a dominant role in the molding of fisheries management within the next decade. First is the continued devolution of management responsibilities to local levels. The archipelagic nature of the country and the environment requires decentralization and devolution of management functions to similarly "archipelagic" structures of governance. However, this will create

heightened demand and require increasing support for capacity- and capability-building for fisheries management on the part of the local governments. If the national government cannot respond to such demands and requirements, local governments will need alternative sources of guidance, such as non-government organizations and the private sector, in order to give direction to their resource management.

Second, national fisheries management will have to refocus and concentrate its energies onto specific and defined fisheries production sectors that are less geographically bound to municipal jurisdictions. It must also expand and turn its management functions toward addressing the needs of support sectors and services such as post-harvest facilities, domestic and international fish trade, and research and development. This will entail a redefinition and reorientation of the role of national government in fisheries management, a restructuring of the fisheries management bureaucracy, and a retooling of fisheries management systems at both national and local levels. The emerging roles of national fisheries management institutions are likely to be less concerned with the actual "field" management functions and implementation responsibilities, and will eventually be turned increasingly toward technical and financial support, and broad policy guidance.

Third, fisheries policy formulation will become an increasingly complex task, as the inherent tensions between local and national concerns and priorities will likely become the source of prolonged discussions and disputes at the policy-making levels. The process of devolution and decentralization will continue to present interesting and unique challenges, and in fisheries management, the primary concern will be finding the right balance between the various national and local management bodies in their areas of concern. Fisheries management reform initiatives therefore cannot work without institutional reform components, because while the existing laws provide the basis for innovations in management techniques, such techniques will not be successful or sustainable over the long term without a concomitant change in the management structures that will rely upon them.

The one trend that is not consistent with the three foregoing is the tendency towards excessive criminalization of fisheries offenses. This is because reliance on the judicial mode of penalizing offenses is essentially a centralized national mechanism; it follows a strict body of rules and procedures as well as a rigid hierarchy of adjudicatory and appellate institutions. By nature, the judiciary essentially eschews autonomy and generally encourages conservative and strict adherence to the rules of procedure and precedent. What this results in is an inflexible mechanism for enforcement, which quickly bogs down when saddled with the myriad of other day-to-day concerns of the administration of justice in any

normal society. Unless the judiciary creates a means for courts to be devoted exclusively and primarily to fisheries enforcement, reliance on criminal statutes for fisheries management purposes will be misplaced. What needs to be seriously considered is likewise “devolving” and “decentralizing” the mechanisms for penalizing violations of fisheries laws, ordinances, rules, and regulations. A return to an administrative system of enforcement, with the local governments as primary actors, bounded and made accountable by a clear set of rules and guidelines to ensure against abuse and inconsistency, is a more appropriate mechanism for a decentralized and archipelagic governance structure.

In sum, the next decade in fisheries policy formulation and program implementation will be occupied with an attempt to strike a new balance between institutional forces, and to resolve the tensions created by a historical movement towards decentralized fishery management. How government, non-government organizations, the private sector, the concerned sectors, and the general public will respond to the challenges presented by this will define their future roles in the newly emerging system of fisheries management in the country.

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**MAJOR FISHERIES LEGISLATION OF THE PHILIPPINES**  
Including Important and Related Laws and Issuances

Legislation	Title	Date Approved
Act No. 4003	An Act to Amend and Compile the Laws Relating to Fish and Other Aquatic Resources of the Philippine Islands, and For Other Purposes	December 5, 1932
Commonwealth Act No. 115	An Act to Amend Act Numbered Four Thousand and Three Entitled "An Act to Amend and Compile the Laws Relating to Fish and Other Aquatic Resources of the Philippine Islands, and For Other Purposes"	November 3, 1936
Commonwealth Act No. 297	An Act to Amend Section Seventy of Act Numbered Four Thousand and Three, Known as The Fisheries Act, as Amended by Commonwealth Act Numbered One Hundred and Fifteen	June 9, 1938
Commonwealth Act No. 471	An Act to Amend Act Numbered Four Thousand and Three Entitled "An Act to Amend and Compile the Law Relating to Fish and Other Aquatic Resources of the Philippine Islands, and For Other Purposes"	June 16, 1939
Rep. Act No. 294	An Act to Amend Section Sixty-six of Act Numbered Four Hundred Thousand Three, Entitled "An Act to Amend and Compile the Law Relating to Fish and Other Aquatic Resources of the Philippine Islands, and for Other Purposes" As Amended by Commonwealth Act Numbered Four Hundred Seventy One	June 16, 1948
Rep. Act No. 428	An Act to Declare Illegal the Possession, Sale or Distribution of Fish or Other Aquatic Animals Stupefied, Disabled or Killed by Means of Dynamite or Other Explosive or Toxic Substances and Providing Penalties Therefor	June 7, 1950

Legislation	Title	Date Approved
Rep. Act No. 1535	An Act Amending Sections One, Two, Three, and Four of Republic Act Numbered Four Hundred Twenty-Eight, Entitled "An Act to Declare Illegal the Possession, Sale, or Distribution of Fish or Other Aquatic Animals Stupefied, Disabled, or Killed by Means of Dynamite or Other Explosive or Toxic Substances and Providing Penalties Therefor"	June 16, 1956
Rep. Act No. 3048	An Act Prohibiting the Operation of Trawls in Fishing Areas Seven Fathoms Deep or Less	June 17, 1961
Rep. Act No. 3512	An Act Creating a Fisheries Commission Defining its Powers, Duties and Functions, and Appropriating Funds Therefor	March 20, 1963
Rep. Act No. 3586	An Act Prohibiting the Exportation of Bangus Fry	June 21, 1963
Rep. Act No. 3931	An Act Creating the National Water and Air Pollution Control Commission	June 18, 1964
Rep. Act No. 4850	An Act Creating the Laguna Lake Development Authority, Prescribing its Powers, Functions, and Duties, Providing Funds Therefor, and For Other Purposes	July 18, 1966
Pres. Decree No. 43	Providing for the Accelerated Development of the Fishery Industry of the Philippines	November 9, 1972
Pres. Decree No. 461	Reorganizing the Department of Agriculture and Natural Resources into Two Departments, Namely: Department of Agriculture and Department of Natural Resources, Amending for This Purpose Chapter I, Part VIII of the Integrated Reorganization Plan	May 17, 1974
Pres. Decree No. 534	Defining Illegal Fishing and Prescribing Stiffer Penalties Therefor	August 8, 1974

Legislation	Title	Date Approved
Pres. Decree No. 704	Revising and Consolidating All Laws and Decrees Affecting Fishing and Fisheries	May 16, 1975
Pres. Decree No. 977	Creating the Philippine Fish Marketing Authority, Defining its Functions and Powers, and For Other Purposes	August 11, 1976
Pres. Decree No. 1058	Amending Presidential Decree No. 704, Dated May 16, 1975, By Increasing the Penalties for Certain Forms of Illegal Fishing, Dealing in Illegally Caught Fish or Fishery/Aquatic Products, and For Other Purposes	December 1, 1976
Pres. Decree No. 1152	Philippine Environmental Code	June 6, 1977
Pres. Decree No. 1219	Providing for the Exploration, Exploitation, Utilization and Conservation of Coral Resources	October 17, 1977
Pres. Decree No. 1599	Establishing an Exclusive Economic Zone and For Other Purposes	June 11, 1978
Pres. Decree No. 1698	Amending Certain Provisions of Presidential Decree No. 1219 dated October 14, 1977, Providing for Re-exploitation, Exploitation, Utilization and Conservation of Coral Resources	May 22, 1980
Exec. Order No. 656	Amending Executive Order No. 81, Series of 1976, Creating a Committee to Coordinate the Investigation, Handling and Disposition of Apprehended Illegal Entrants and Foreign Vessels Violating Philippine Laws	February 26, 1981
Exec. Order No. 772	Amending Presidential Decree No. 977 Creating the Philippine Fish Marketing Authority, Defining Its Functions and Powers, and For Other Purposes	February 8, 1982
Exec. Order No. 967	Renaming the Ministry of Agriculture as the Ministry of Agriculture and Food, Transferring to it Certain Agencies Engaged in Food Production and For Other Purposes	June 30, 1984

Legislation	Title	Date Approved
Rep. Act No. 6734	An Act Providing for An Organic Act for the Autonomous Region in Muslim Mindanao	August 1, 1989
Exec. Order No. 236	Organizing the National Committee on Illegal Entrants, Repealing E.O. 656, Series of 1981, to Ensure Effective Coordination Among Member Agencies in the Investigation and Disposition of Cases Involving the Illegal Entry of Foreign Nationals and Vessels, and Providing Funds for its Operation	April 22, 1995
Rep. Act No. 8435	An Act Prescribing Urgent Related Measures to Modernize the Agriculture and Fisheries Sectors of the Country in Order to Enhance their Profitability, and Prepare Said Sectors for the Challenges of Globalization Through an Adequate, Focused, and Rational Delivery of Necessary Support Services, Appropriating Funds Therefor and for Other Purposes	December 22, 1997
Rep. Act No. 8550	An Act Providing for the Development, Management, and Conservation of the Fisheries and Aquatic Resources, Integrating All Laws Pertinent Thereto, and For Other Purposes	February 25, 1998