

# THE SURGING AND RECEDING ISSUE ON THE DELINEATION OF MUNICIPAL WATERS\*

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## INTRODUCTION

The 7,107 islands<sup>1</sup> of the Philippine archipelago lie at the crossroads of the Pacific like splinters of broken glasses: small, brittle, and fragmented. Despite its relatively small size of 300,000 square kilometers,<sup>2</sup> the country is divided into seventy-nine provincial political subdivisions, where each province is further divided into municipalities, a cluster of municipalities and component cities.<sup>3</sup> To date, the Philippines has 1,500 municipalities<sup>4</sup> and 116 cities,<sup>5</sup> and 915 of these local government units lie along coasts.<sup>6</sup> 301 have offshore islands.<sup>7</sup>

This geographic profile dictates the politics, economics, lifestyle, habits, and even diet of the country's inhabitants. For instance, fish remains the chief protein source of Filipinos. In 1993, fish and fish products accounted for 67% of the per capita consumption of animal protein.<sup>8</sup>

## KINDS OF FISHING IN THE PHILIPPINES

Philippine fisheries are classified into aquaculture, municipal, and commercial fisheries.<sup>9</sup> Municipal fishing "refers to fishing within municipal waters using

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<sup>1</sup> www.gov.ph, *About the Philippines*, ¶5 at <http://www.gov.ph/aboutphil/general.asp> (last visited August 30, 2004).

<sup>2</sup> Department of Agriculture, *Profile*, at <http://www.da.gov.ph/about/profile.htm> (last modified in 1999).

<sup>3</sup> LOCAL GOVT CODE, § 459 (Rep. Act No. 7160, otherwise known as the Local Government Code of 1991).

<sup>4</sup> National Statistical Coordination Board, *List of Municipalities*, ¶1, at <http://www.nscb.gov.ph/activestats/psgc/listmun.asp> (last modified in July 2004).

<sup>5</sup> National Statistical Coordination Board, *List of Cities*, ¶1, at <http://www.nscb.gov.ph/activestats/psgc/listcity.asp> (last modified in July 2004).

<sup>6</sup> Statistics obtained by the author from the Bureau of Fisheries and Aquatic Resources.

<sup>7</sup> *Id.*

<sup>8</sup> ALAN WHITE & ANNABELLE CRUZ-TRINIDAD, COASTAL RES. MGMT. PROJECT, THE VALUES OF PHILIPPINE COASTAL RESOURCES: WHY PROTECTION AND MANAGEMENT ARE CRITICAL 45 (1998).

<sup>9</sup> DEPT. OF ENV'T. AND NATURAL RES. (hereinafter "DENR"), BUREAU OF FISHERIES AND AQUATIC RES. (hereinafter "BFAR") OF THE DEPT. OF AGRIC. & DEPT. OF THE INTERIOR AND LOCAL GOVT,

fishing vessels of three (3) gross tons or less, or fishing not requiring the use of fishing vessels.”<sup>10</sup> On the other hand, the law defines commercial fishing as:

[T]he taking of fishery species by passive or active gear for trade, business or profit beyond subsistence or sports fishing, to be further classified as:

Small-scale commercial fishing – fishing with passive or active gear utilizing fishing vessels of 3.1 gross tons (GT) up to twenty (20) GT;

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

Large scale commercial fishing – fishing utilizing active gears and vessels of more than one hundred fifty (150) GT.<sup>11</sup>

Municipal waters are “streams, lakes, inland bodies of water and tidal waters within the municipality” as well as “marine waters included between two (2) lines drawn perpendicular to the general coastline from points where the boundary lines of the municipality touch the sea at low tide and a third line parallel with the general coastline including offshore islands and fifteen (15) kilometers from such coastline.”<sup>12</sup>

Section 18 of the Philippine Fisheries Code clearly identifies municipal fisherfolk and their cooperatives and organizations as the sole users of municipal waters. The Code also allows small and medium commercial vessels to fish within 10.1 to 15 kilometers from the shoreline, subject to certain conditions.<sup>13</sup>

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COASTAL RES. MGMT. PROJECT, PHILIPPINE COASTAL MANAGEMENT GUIDEBOOK NO. 6: MANAGING MUNICIPAL FISHERIES (2001); Christina Lim et al., *Problems and Constraints in Philippine Municipal Fisheries: The Case of San Miguel Bay, Camarines Sur*, 19:6 ENV'T'L MGMT. (undated), at 837, available at <http://www.adnu.edu.ph/Centers/SSRC/articles/art02.htm> (last visited August 30, 2003). Other authors classify fisheries into only two categories: municipal fisheries and commercial fisheries. They treat aquaculture under municipal fishing.

<sup>10</sup> FISHERIES CODE, § 4(57) (Rep. Act No. 8550).

<sup>11</sup> *Id.*, § 4 (10).

<sup>12</sup> *Id.*, § 4 (8).

<sup>13</sup> *Id.*, § 18. “Users of Municipal Waters. All fishery related activities in municipal waters, as defined in this Code, shall be utilized by municipal fisherfolk and their cooperatives/organizations who are listed as such in the registry of municipal fisherfolk.

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

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

### LEGISLATIVE ANTECEDENTS

The municipal fishing zone had not always been set at fifteen kilometers as indicated in Section 4(58) of the Fisheries Code.<sup>14</sup> In 1932, Commonwealth Act No. 4003 set municipal water boundaries at three nautical miles<sup>15</sup> or 5.556 kilometers<sup>16</sup> from the general coastline. By 1975, Pres. Decree No. 704 banned commercial fishing within 3.76 nautical miles or seven kilometers from the shoreline, and in waters less than seven fathoms deep.<sup>17</sup> In 1991, the Local Government Code<sup>18</sup> increased the municipal fishing zone to fifteen kilometers from the general coastline, and this was maintained by the Fisheries Code of 1998.

### I. BASELINES AND DELINEATING THE BOUNDARIES OF MUNICIPAL WATERS

Despite existing legislation regarding fishing zones, attempts to delimit these are relatively recent. On June 13, 2001, then Department of Environment and Natural Resources (DENR) Secretary Heherson Alvarez issued Administrative Order No. 17 to establish guidelines for delineation. The order provided for the use of normal,<sup>19</sup> straight<sup>20</sup> and archipelagic baselines,<sup>21</sup> and combinations<sup>22</sup> of these.

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

<sup>14</sup> DENR, *supra* note 9.

<sup>15</sup> Com. Act No. 4003, art. II, § 6 (1932) (The Fisheries Act). “Municipal waters’, includes not only streams, lakes, and tidal waters induced within the municipality, not being the subject of private ownership, and not comprised within national parks, public forests, timber lands, forest reserves, or fishery reserves, but also marine waters included between two lines drawn perpendicular to the general coastline from points where the boundary lines of the municipality touch the sea at low tide and a third line parallel with the general coastline and distant from it three nautical miles.”

<sup>16</sup> One nautical mile is equivalent to 1.85200 kilometers.

<sup>17</sup> Pres. Decree No. 704, chap. IV, § 17. “*Provided, Furthermore*, That commercial fishing boats shall be allowed to operate only in Philippine waters of seven (7) or more fathoms deep subject to the conditions that may be stated therein and the rules and regulations that may, from time to time, be promulgated by the Secretary: *Provided, However*, That the President of the Philippines may upon the recommendation of the Secretary ban the operation of commercial or other fishing gears in waters within a distance of seven (7) kilometers (3.76 nautical miles) from the shoreline if public interest so requires or if the ecology of the marine resources may be impaired: *Provided Finally*, That the Secretary may, upon the recommendation of the Director, establish a closed season in any Philippine water if necessary for conservation or ecological purposes.”

<sup>18</sup> Rep. Act No. 7160.

<sup>19</sup> DENR Adm. Order No. 2001-17, § 5(B)(1). “a) *Use of normal baselines*

- i. Where the coastline is not deeply indented or cut into, and there are no outlying or fringing islands, reefs, or rocks, the normal baseline shall be the low water line.
- ii. The normal baseline shall determine the general coastline of the municipality for purposes of delineation and delimitation.
- iii. The outer limits of the municipal waters of the municipality shall be determined by a line parallel to the normal baselines and fifteen (15) kilometers therefrom.”

<sup>20</sup> *Id.* “b) *Use of straight baselines*

- i. Where the coastline is deeply indented and/or there are outlying or fringing reefs or rocks, the outermost points of the coastline may be connected by straight baselines, provided that the length of such baselines does not exceed thirty (30) kilometers.

On March 17, 2003, Alvarez's replacement Elisea Gozun issued Administrative Order No. 2003-07 revoking Order No. 2001-17, claiming that the department had no power to authorize the National Mapping and Resource Information Authority (NAMRIA) to designate and chart navigational lanes in fishery areas. Certain fisheries groups supported Gozun's move, partly because they claimed the 2001 order's use of the archipelagic method widened municipal waters beyond what the Fisheries Code contemplated.<sup>23</sup> The spokesman of the Alliance of Philippine Fishing Federations, Inc. strongly objected to this exclusive fifteen-kilometer zone. According to him, the three-ton fishing boats of municipal fishers were not built to travel to areas beyond fifteen kilometers.<sup>24</sup> He also insisted that straight baselines were easier and less complicated for fishermen to follow.<sup>25</sup> He feared that the 2001 order's implementation would spell the closure of small and medium scale commercial fishers.

The Department of Agriculture, which has authority over NAMRIA, corrected DENR's error by issuing Administrative Order No. 2004-01 on January 14,

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- ii. In such cases, the straight baselines shall determine the general coastline of the municipality for purposes of delineation and delimitation.
  - iii. Reefs, rocks, cays, shoals, sandbars, and any other features which are submerged during high tide shall not be used as basepoints. Neither shall they have their own coastlines.
  - iv. The outer limits of the municipal waters of the municipality shall be determined by a line parallel to the straight baselines and fifteen (15) kilometers therefrom."

<sup>21</sup> *Id.* "c) Use of municipal archipelagic baselines

- i. Where the territory of a municipality includes several islands, the outermost points of such islands shall be used as basepoints and connected by municipal archipelagic baselines, provided that the length of such baselines shall not exceed thirty (30) kilometers.
- ii. The municipal archipelagic baselines shall determine the general coastline of the municipality for purposes of delineation and delimitation.
- iii. Islands, isles, or islets located more than thirty (30) kilometers from the mainland on the municipality shall have their own separate coastlines.
- iv. Rocks, reefs, cays, shoals, sandbars, and other features which are submerged during high tide shall not be used as basepoints for municipal archipelagic baselines. Neither shall they have their own coastlines.
- v. The outer limits of the municipal waters of the municipality shall be enclosed by a line parallel to the municipal archipelagic baselines and fifteen (15) kilometers therefrom."

<sup>22</sup> *Id.* "d) Combination of baselines." A combination of normal and straight baselines, or normal and municipal archipelagic baselines, may be used depending on the circumstances and in the interest of simplicity

<sup>23</sup> See S. Res. No. 281, 12th Cong., 1st Sess. (2002). "A Resolution Urging the Senate Committees on Agriculture and Food, and Environment and Natural Resources, to Conduct an Inquiry, in Aid of Legislation, into the Issuance of, and Delay in the Implementation of, DENR Administrative Order NO. 17 (DAO-17) which sets Guidelines for the Delineation/Delimitation of Municipal Waters and its Alleged Legal Infirmities, with Delineation of Municipal Waters, of Reviewing the Implementation of RA 8550, or the Fisheries Code of the Philippines, and of Introducing Possible Amendments Thereto," introduced by Senator Loren Legarda Leviste on April 29, 2002.

<sup>24</sup> Ma. Carmela Salazar, *Rough sailing seen for fisheries delineation order*, BALIKKALIKASAN, August 16-31, 2001, ¶10 (Joseph Virtucio trans.), available at [http://www.bwf.org/bk/2001/16/n\\_01\\_01.html](http://www.bwf.org/bk/2001/16/n_01_01.html). "5 kilometers away from the shore is no longer a fishing ground and can no longer be reached by boats. Beyond this point big waves will be encountered (sic) and for sure will wipe out 3-gros ton boat with 30 horsepower that we are using" Minase said. He added "Who ever (sic) recommended DAO 17 is not a fisherman for he knows nothing in fishing."

<sup>25</sup> *Id.*, ¶11.

2004. This limited its coverage to municipal waters of municipalities and cities without offshore islands.

During consultations conducted by the department in the Hotel Rembrandt, Quezon City on December 12-13, 2003, the Bureau of Fisheries and Aquatic Resources (BFAR) proposed to apply the archipelagic baselines only to municipalities whose offshore islands were within five kilometers or less from the mainland. As for the eighty-three municipalities which had offshore islands more than five kilometers from the coast, the department proposed to reckon the baseline only from the mainland and not from the offshore islands. BFAR remained firm on compliance with Section 18(a) of the Fisheries Code and insisted on disallowing commercial fishing around the waters of these excluded islands in places shallower than seven fathoms.

*Table 1. Cities and Municipalities with Offshore Islands*<sup>26</sup>

Province	Municipality	Province	Municipality
1. Antique	1. Caluya 2. Culasi 3. Sebaste	16. Negros Occidental	1. Bago City 2. Sagay City
2. Basilan	1. Isabela City	17. Negros Oriental	1. Dauin
3. Batanes	1. Itbayat	18. Oriental Mindoro	1. Baco
4. Batangas	1. Batangas City	19. Occidental Mindoro	1. Lubang 2. San Jose
5. Bohol	1. Baclayon 2. Buenavista 3. Clarin 4. Inabanga 5. Jetafe 6. Loon 7. Panglao 8. Pres. CP Garcia 9. Talibon 10. Tubigon 11. Ubay	20. Pangasinan	1. Alaminos City 2. Bolinao
6. Cagayan	1. Aparri 2. Calayan	21. Palawan	1. Balabac 2. Bataraza 3. Busuanga 4. Culion 5. Coron 6. Cuyo 7. Dumaran 8. El Nido 9. Kalayaan
7. Camarines Norte	1. Jose Panganiban	22. Quezon	1. Perez
8. Capiz	1. Pilar	23. Romblon	1. Banton

<sup>26</sup> BFAR, Philippine Fisheries Profile (2002).

	2. Roxas City		2. Romblon
9. Catanduanes	1. Camoran	24. Samar	1. Almagro 2. Pagsanghan 3. Tarangnan
10. Cebu	1. Bantayan 2. Bogó 3. Daanbantayan 4. Madridejos	25. Sulu	1. Luuk 2. Marungas 3. Pangutaran 4. Parang 5. Siasi 6. Tapul 7. Tongkil
11. Compostela Valley	1. Mabini	26. Surigao del Norte	1. Dapa 2. del Carmen 3. Loreto 4. Placer 5. San Benito 6. Surigao City 7. Tagana-an
12. Eastern Samar	1. Dolores 2. Guiaun	27. Tawi Tawi	1. Sapa-sapa 2. Turtle Islands
13. Iloilo	1. Batad 2. Carles 3. Concepcion 4. Estancia 5. San Dionisio	28. Zambales	1. Sta. Cruz
14. Marinduque	1. Mogpog	29. Zamboanga del Norte	1. Dapitan City 2. Labason
15. Masbate	1. Cataingan 2. Placer 3. San Pascual 4. Milagros	30. Zamboanga del Sur	1. Lapuyan

The department's proposed exclusion of such islands is an attempt to placate both municipal and commercial fishermen. The primary issue, then, is the wisdom of ignoring these outlying islands in fixing baselines. This article shall consider the advisability selectively using archipelagic baselines and its potential repercussions. First, however, a background discussion of baselines is in order.<sup>27</sup>

The primary consideration is a coast's geographical shape. The others include the physical, political, economic, juridical, and managerial factors. To these, this author adds a sixth, which she calls the conservational framework. Coasts' geographies are widely diverse and varied. This alone makes the process of

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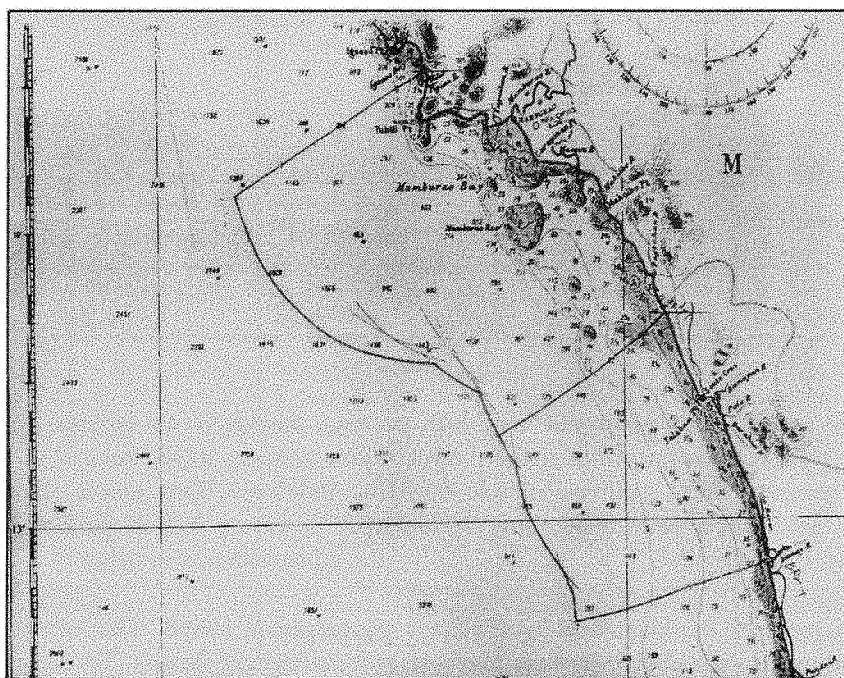
<sup>27</sup> This section utilizes most of the conceptual approaches articulated by Dr. Douglas Johnston in his book entitled *The Theory and Practice of Ocean Boundary-Making* to achieve a holistic and integrated analysis on the convoluted interests involved in delineation.

delineation unavoidably complex,<sup>28</sup> and requires very technical procedures and expertise.

### A. NORMAL BASELINE

D.C. Kapoor and Adam Kerr define a baseline as “the line from which the outer limits of the territorial sea, the contiguous zone, the exclusive economic zone (EEZ) etc. are measured to the appropriate breadth.”<sup>29</sup> During low tide, an appreciable line often appears along the coast, marking where the water has receded. This low-water line is often used as a reckoning point, and is popularly called the normal baseline.<sup>30</sup> Figure 1 shows the municipality of Mamburao, Mindoro Occidental province and its relatively simple coastal configuration. The use of a normal baseline is appropriate here.

*Figure 1. Municipality of Mamburao, Province of Mindoro Occidental<sup>31</sup>*



<sup>28</sup> DOUGLAS JOHNSTON, *THE THEORY AND PRACTICE OF OCEAN BOUNDARY-MAKING* 95 (1988).

<sup>29</sup> D.C. KAPOOR & ADAM KERR, *A GUIDE TO MARITIME BOUNDARY DELIMITATION* 29 (1986).

<sup>30</sup> 1 *INTERNATIONAL MARITIME BOUNDARIES* 153 (Martinus Nijhoff, Jonathan Charney & Lewis Alexander eds. 1993). See United Nations Convention on the Law of the Sea (hereinafter “UNCLOS”), December 10, 1982, art. 5, U.N. Doc. A/CONF.62/122 and Corr.1 to 11.

<sup>31</sup> This and subsequent maps prepared by NAMRIA Engineer Enrique A. Macaspac.

### B. STRAIGHT BASELINE

The normal baseline method is inappropriate for coasts that are markedly indented and highly irregular. This was recognized as early as 1951 by the International Court of Justice:

Where a coast is deeply indented and cut into... the base-line becomes independent of the low-water mark, and can only be determined by means of a geometric construction. In such circumstances the line of the low-water mark can no longer be put forward as a rule requiring the coast line to be followed in all its sinuosities; nor can one speak of exceptions when contemplating so rugged a coast in detail. Such a coast, viewed as a whole, calls for the application of a different method. Nor can one characterize as exceptions to the rule the very many derogations which would be necessitated by such a rugged coast. The rule would disappear under the exceptions.<sup>32</sup>

Article 7 of the United Nations Convention on the Law of the Sea (UNCLOS) codifies the application of straight baselines. Kapoor and Kerr limit the provision's application only to instances when coastline features make the use of normal baseline impractical. They argue that there must be a deeply indented coastline and a fringe of islands along the coast, where a fringe of islands "implies a number of off-lying islands, islet, rocks, etc. spread out over some distance so as to form a continuous fringe along the coast."<sup>33</sup> Figure 2 shows another Philippine municipality, one with a deeply indented and jagged coastline. The use of straight baselines that follow the complex general coastline makes the baseline easier to determine.

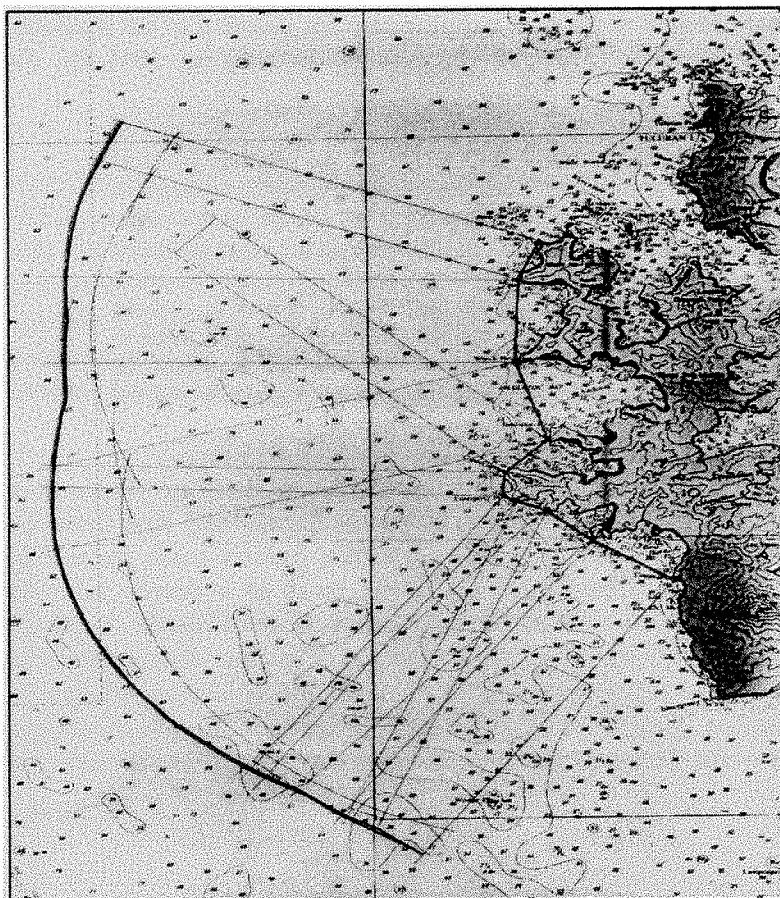
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<sup>32</sup> Fisheries (U.K. v. Nor.), 1951 I.C.J. 116, 128.

<sup>33</sup> KAPOOR & KERR, *supra* note 29, at 34.



*Figure 2. Western part of Taytay, Palawan*



### C. ARCHIPELAGIC BASELINE

The term archipelago did not exist prior UNCLOS, which defined it as:

“archipelago” means a group of islands, including parts of islands, interconnecting waters and other natural features which are so closely inter-related that such islands, waters and other natural features form an intrinsic geographical, economic and political entity, or which historically have been regarded as such.<sup>34</sup>

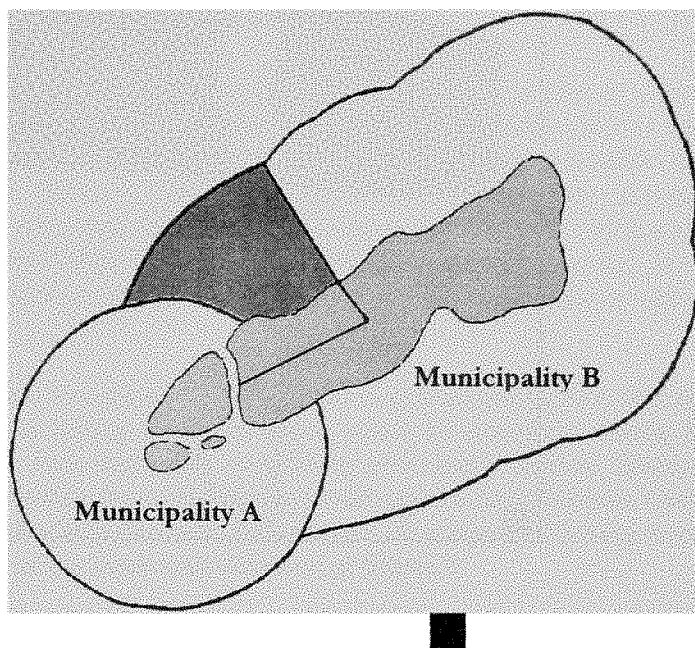
The Philippines and Indonesia have pushed for the recognition of their unique status as archipelagos, proposing their islands must be treated as component parts of a whole. Thus, separate islands that are historically regarded as intrinsically united with others geographically, economically and politically must be taken as a

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<sup>34</sup> UNCLOS, art. 46.

single territorial unit.<sup>35</sup> Consequently, archipelagic baselines must be drawn to encompass the outermost islands and not just the general coastline of what may be arbitrarily considered as the mainland.

*Figure 3. Municipality of Bongao, Tawi Tawi*

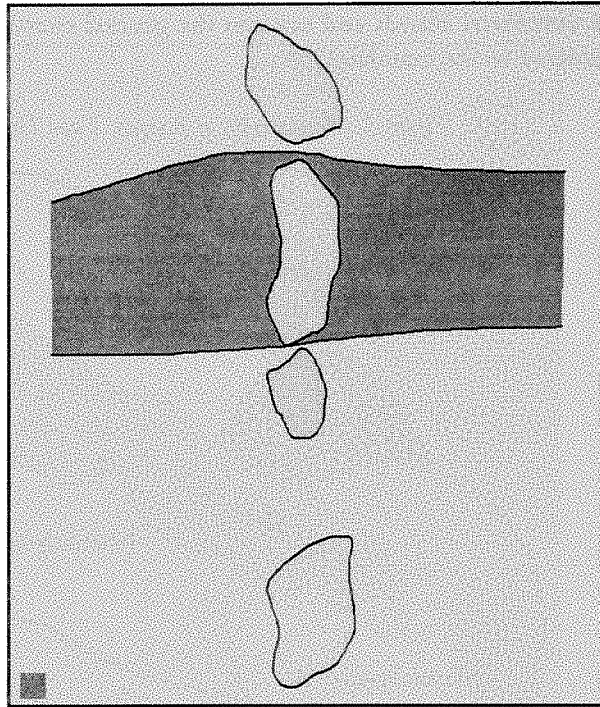


Some municipalities' geographic profiles are such that only the application of archipelagic baselines allows them to maintain their territorial integrity. For example, municipalities like Bongao, Tawi Tawi have their mainland<sup>36</sup> in an outlying island smaller than the rest of the municipality. In Figure 3, the shaded waters will be considered as waters of Municipality B even if found along the coast of Municipality A. On the other hand, other municipalities such as those in Figure 4 have bigger islands closer to another municipality than to the mainland. Using normal baselines in these instances might lead to inequity. With respect to Figure 3, for example, the waters surrounding the larger portion of municipality B's land mass would now form part of municipality A's territory.

*Figure 4. Municipalities of San Jose, Occidental Mindoro and Sapa Sapa, Tawi Tawi have a similar configuration.*

<sup>35</sup> JOHNSTON, *supra* note 28, at 115.

<sup>36</sup> The municipal hall is located on the outlying island.



## II. THE POLITICAL FRAMEWORK

Johnston underscores the highly political nature of delineations, and local, regional, national, and even international interests must be seriously deliberated.<sup>37</sup> In the Philippines, it is crucial to realize that municipalities are charged with enforcing fisheries law in their waters.<sup>38</sup> The Local Government Code provides that a political territory “need not be contiguous if it comprises two (2) or more islands.”<sup>39</sup> Should archipelagic baselines be ignored in delimitation, municipalities such as those in Figures 3 and 4 will be effectively barred from exercising jurisdiction over waters surrounding most of their land areas. It will be harder to restrain people from fishing in waters which they know form part of their municipalities.

The selective use of archipelagic baselines for municipalities with offshore islands as proposed during the Summit presents grave difficulties. During the Fisheries Code deliberations in 1997, senators were careful to harmonize domestic legislation with international treaty obligations. At one point, Senator Miriam Santiago questioned the use of the terminology “internal waters” in the bill, as opposed to archipelagic waters. She has maintained that no confusion must arise in

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<sup>37</sup> JOHNSTON, *supra* note 29, at 22.

<sup>38</sup> LOCAL GOV'T CODE, § 17(2)(i).

<sup>39</sup> *Id.*, § 442(b).

the use of terms, to avoid a “foreign predator-state from questioning the validity of Fisheries Code should it be brought to international adjudication or arbitration.”<sup>40</sup> In the same proceedings, Senator Leticia Shahani mentioned that the Philippine archipelago’s outer limits have not been delimited due to the unresolved issues regarding the Kalayaan (Spratlys) Islands and Sabah.<sup>41</sup> The Philippines has submitted a formal claim for archipelagic status before the United Nations,<sup>42</sup> but has yet to present its delimited maritime boundaries.

Although each process of international delimitation is unique, courts and tribunals consider state practice and past decisions.<sup>43</sup> The former must be uniform and sufficiently longstanding. Selectively using the archipelagic baseline method presents particular difficulty because some affected islands are actually the basepoints used in reckoning the national boundaries.<sup>44</sup> Should the DOA go by the BFAR proposal, the Philippines risks inconsistency in its state practice. In effect, the use of these islands as basepoints becomes potentially susceptible to opposition from other states.

On a further though unrelated point, it is also crucial to note that the law excludes commercial fishing from municipal waters to encourage fishing in the exclusive economic zone and avoid overfishing near coasts. Senator Shahani, for example, outlined funding incentives incorporated into the draft Fisheries Code that were intended for the “improvement, construction, acquisition of fishing boats and other equipments” of the small-scale commercial fishers.<sup>45</sup>

### III. ECONOMIC FACTORS

Johnston also places much weight on delineations’ “resource implications.”<sup>46</sup> In the case of municipal waters, small and medium scale commercial fishers present the strong argument of their possible displacement when the fifteen-kilometer zone is strictly set. The municipal fishers, on the other hand, have long maintained that their food security is at stake.

Of the almost one million people supported by the fishing sector, 68% are municipal fishers, while only 6% are commercial fishers.<sup>47</sup> The preferential treat-

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<sup>40</sup> J. OF THE 10TH CONG., 2ND REGULAR SESS., PHIL. SENATE, SESS. NO. 79, March 12-13, 1997, at 7.

<sup>41</sup> *Id.* See also MERLIN MAGALLONA, INTERNATIONAL LAW ISSUES IN PERSPECTIVE 201-223 (1996).

<sup>42</sup> R.R. CHURCHILL & A.V. LOWE, THE LAW OF THE SEA 121-122 (1999).

<sup>43</sup> *Id.* at 182.

<sup>44</sup> Amanan Island is some 30.8 kilometers from the mainland of the Municipality of Itbayat, Batanes. Balintang Island is forty-four kilometers from the mainland of the Municipality of Sabtang, Batanes. Suluan Island is eighteen kilometers from the mainland of the Municipality of Guiuan, Eastern Samar. Mangsee Island is some forty-two kilometers from the mainland of the Municipality of Balabac, Palawan. Data provided by NAMRIA Engineer Enrique Macaspac.

<sup>45</sup> J. OF THE 10TH CONG., *supra* note 45, at 7.

<sup>46</sup> JOHNSTON, *supra* note 28, at 43.

<sup>47</sup> Lim et al., *supra* note 9, ¶3.

ment accorded to the former recognizes their continued marginalization despite their overwhelming numbers.<sup>48</sup> Further, commercial fishers' catches equal or exceed those of municipal fishers, far out of proportion to the number of people in these sectors.

The table below shows the continued increase in commercial catches compared to those of municipal fishers despite the setting of the fifteen-kilometer municipal zone in 1998.

*Table 2. Volume of Fish Production in Metric Tons<sup>49</sup>*

Year	Aquaculture	Municipal	Commercial	Total
2002	1,338,175	988,938	1,042,193	3,369,306
2001	1,220,456	969,535	976,539	3,166,530
2000	1,100,902	945,945	946,485	2,993,332
1999	1,048,679	926,339	948,754	2,923,772
1998	997,841	891,146	940,533	2,829,520
1997	984,439	924,466	884,651	2,793,556
1996	1,007,676	909,248	879,073	2,795,997
1995	940,589	972,043	893,232	2,805,864
1994	869,083	992,578	859,328	2,720,989
1993	<b>793,620</b>	<b>1,013,969</b>	<b>824,356</b>	2,631,945

A joint study prepared by the DENR and Coastal Resource Management Project concludes that while the Philippines is one of the world's Top 40 fish-producing nations, it is also among the Top 10 food-deficient countries.<sup>50</sup> The report mentions that in 1997, the country sustained a national nutritional deficit of 666,140 tons of food.<sup>51</sup> It concludes that municipal and commercial fishers directly compete for fish catches. The continued expansion of commercial fishing will invariably lead to the municipal sector's decline, especially considering the virtual absence of government regulation. It adds that while the municipal sector accounted for 70% of the fish catch in the 1950s, this has been reduced to 46%.<sup>52</sup> It is difficult to reconcile the disparity between fish catches and the nutritional deficit unless one theorizes that most of commercial catches are exported rather than locally consumed.

<sup>48</sup> Dept. of Agric. Joint Adm. Order No. 3, April 25, 1996. "Implementing Guidelines on the Granting of Preferential Treatment to Small Fisherfolk Relative to the 15-KM Municipal Water."

<sup>49</sup> BFAR, *supra* note 26, at 8.

<sup>50</sup> STUART GREEN ET AL., COASTAL RES. MGMT. PROJECT, PHILIPPINE FISHERIES IN CRISIS: A FRAMEWORK FOR MANAGEMENT 31 (undated)

<sup>51</sup> *Id.* at 32

<sup>52</sup> *Id.* at 33

The Fisheries Code represents an effort to correct the disproportionate state of affairs. It provides incentives for commercial fishers to venture into the exclusive economic zone and cease competition with municipal fishers. These include loans and financing, duty exemptions on vessel importation, duty and tax rebates on fuel, among others.<sup>53</sup> The Code, however, considers the unique situation of small and medium commercial fishers and has refused to ban them altogether. Instead, it authorized LGUs to grant licenses within the 10.1 to 15 kilometer area, subject to conditions.<sup>54</sup>

Regarding the contested eighty-three municipalities, it is curious that none of their waters actually extends outward to the exclusive economic zone or the high seas. These are all located within the internal waters and have adjacent municipalities. Thus, there is no reason to argue that the boats of municipal fishers are not built to venture past the fifteen kilometer mark.

#### IV. JURIDICAL FACTOR

It is important to scrutinize the language used in Philippine fishery zoning statutes. Again, Section 4(58) of the Fisheries Code sets out municipal waters as:

streams, lakes, inland bodies of water and tidal waters within the municipality... [as well as] marine waters included between two (2) lines drawn perpendicular to the general coastline from points where the boundary lines of the municipality touch the sea at low tide and a third line parallel with the general coastline including offshore islands and fifteen (15) kilometers from such coastline.

The phrase “with the general coastline including offshore islands” has given rise to dispute. Some argue that the general coastline refers to the mainland’s coastline; others maintain that it includes the edges of offshore islands. Some BFAR officials view the phrase as a mere grammatical lapse that should not be considered at all.

The rules of statutory construction help resolve this ambiguity. First, to treat this phrase as mere surplusage runs afoul of the elementary rule that each word must be given effect.<sup>55</sup> Second, the legislative intent must have been to include the contested phrase since the earlier Local Government Code of 1991, where the fifteen-kilometer zone was first set out, contains a definition of municipal

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<sup>53</sup> FISH. CODE, § 34, 35.

<sup>54</sup> *Id.*, §18.

<sup>55</sup> RUBEN AGPALO, STATUTORY CONSTRUCTION 251 (4th ed. 1998), *citing* *Almeda v. Florentino*, G.R. No. 23800, Dec. 21, 1965, 15 SCRA 514 (1965); *United States v. Estapia*, 37 Phil. 17 (1917); *JMM Promotions & Mgmt., Inc. v. National Labor Relations Comm’n*, G.R. No. 109835, 228 SCRA 129, Nov. 22, 1993.

waters that is almost identical to the Fisheries Code definition except for the phrase in question:

“Municipal Waters” includes not only streams, lakes, and tidal waters within the municipality, not being the subject of private ownership and not comprised within the national parks, public forest, timber lands, forest reserves or fishery reserves, but also marine waters included between two lines drawn perpendicularly to the general coastline from points where the boundary lines of the municipality or city touch the sea at low tide and *a third line parallel with the general coastline and fifteen (15) kilometers from it*. Where two (2) municipalities are so situated on the opposite shores that there is less than fifteen (15) kilometers of marine waters between them, the third line shall be equally distant from opposite shores of the perspective municipalities (emphasis added)<sup>56</sup>

This demonstrates Congress’s intent to include offshore islands when determining the general coastline, from which the third parallel line will be determined. Finally, employing *noscitur a sociis*,<sup>57</sup> the phrase “including offshore islands” coupled with the preceding phrase “general coastline” must be understood in the same general context.

## V. MANAGERIAL FRAMEWORK

Kapoor and Kerr counsel that it is ideal to have simple fishery boundaries for fishermen’s sakes.<sup>58</sup> Again, Figure 4 illustrates the inherent difficulty in forbidding municipal fishermen living in the northernmost island from fishing in their very shores. Further, one municipality will face difficulty enforcing fishery rules in waters that otherwise belong another.

It is noteworthy to highlight too that fishery regulations are enforced intermittently in the Philippines. Commercial fishers openly and regularly fish in municipal waters with impunity, as do foreign poachers:

Policy, however, has yet to be translated into action. To begin with, the municipal waters of most of the country’s 832 coastal municipalities and 75 coastal cities have yet to be properly delineated and enforced. Intrusion by commercial fishers in municipal waters is rampant. Overall, law enforcement is spotty. Many commercial fishers, long used to fishing everywhere, continue to do so without legal consequences. They insist they are being unjustly driven out of their traditional fishing grounds. However, the law gives small

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<sup>56</sup> LOCAL GOVT CODE, § 131(23).

<sup>57</sup> “[W]here a particular word or phrase is ambiguous in itself or is equally susceptible of various meanings, its correct construction may be made clear and specific by considering the company of words in which it is found or with which it is associated.” *AGPALO*, *supra* note 55, at 204, *citing* *Co Kim Cham v. Valdez Tan Keh*, 75 Phil. 371 (1945); *Aisporna v. Court of Appeals*, G.R. No. 39419, 113 SCRA 459 (1982), Apr. 12, 1982.

<sup>58</sup> *KAPOOR & KERR*, *supra* note 29, at 58.

fishers priority access to only 17% of the total marine waters in the country; commercial fishers can still use the remaining 83%.

All this has resulted in a lopsided competition between the two key stakeholders of Philippine fisheries, who, for the most part, catch the same fish, in the same fishing grounds and sell to the same market. It is well-known that commercial fishing boat continue to operate within the municipal waters, directly competing with municipal fishers. In the absence of a clear move out into the EEZ and in the face of weak enforcement of prohibitions against commercial fishing in municipal waters, subsidies for commercial fishers are creating unfair competition to small fishers.<sup>59</sup>

## VI. CONSERVATIONAL FRAMEWORK

During the Fisheries Code deliberations, Senator Shahani articulated a pressing reason for expanding the municipal zone to fifteen kilometers:

Senator Shahani explained that these incentives were targeted to help and encourage small commercial fishers, who comprise the major category of the country's fishing industry, to go into medium-scale fishing. She stressed that unless the fishing industry gets out of the municipal waters, the erosion and depletion of the aquatic and marine resources would continue.<sup>60</sup>

To describe the fishing situation as critical is perhaps an understatement. Studies have attributed the rapid decline to a de facto "open access regime" system of management,<sup>61</sup> or perhaps, mismanagement. There is presently no regulation of who may fish and where, nor on the types, sizes, or amounts of fish caught.<sup>62</sup> The State finds itself unable to regulate fish resources nor enforce existing regulations.

The Philippine fish situation evokes comparisons to the Grand Banks crisis. Northern Luzon fishing grounds reached the point of maximum sustainable yield over twenty years ago.<sup>63</sup> Without drastic intervention, scientists warn that by 2010, only ten kilograms of fish will be available for each Filipino annually.<sup>64</sup>

## CONCLUSION

A considered examination of municipal waters delimitation inevitably leads to larger issues regarding the country's fishery resources. To ignore these interrelations is folly and involves disbelieving hard reality. Reducing the issue into a

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<sup>59</sup> GREEN ET AL., *supra* note 50, at 40.

<sup>60</sup> J. OF THE 10TH CONG., *supra* note 45, at 10.

<sup>61</sup> GREEN ET AL., *supra* note 50, at 18.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.* at 8.

<sup>64</sup> *Id.* at 14.



debate of commercial versus municipal fisher grossly oversimplifies it. Beyond these local stakeholder interests, there are higher concerns relating to food security and national territorial integrity that must be given paramount importance. Eighty-three municipalities may appear negligible in the greater scheme of things, but the resolution of their boundary issues has crucial ramifications. In the end, delineation requires a delicate balancing of interests. For all the argument about water boundary lines, however, there may be nothing left under those waters to squabble over.

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