Archipelagic Principle: Towards Charting the Municipal Waters

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I. Introduction

On February 9, 1998, the Senate and House of Representatives passed Republic Act 8550 or the Philippine Fisheries Code. It took eleven (11) years, from the early years of the administration of President Corazon Aquino in 1987 until the latter years of the administration of President Fidel Ramos, to legislate a significant law that would govern the affairs of the fishery sector. The main purpose of the law is to address the depleting coastal resources in the country. It provides management options of the country's coastal resources and significantly recognizes the important roles of all the direct users in the management process. As the most recent binding law on fisheries, R.A. 8550 outdated Presidential Decree 704, which was passed during the administration of President Ferdinand Marcos.

Prior to the passage of the Philippine Fisheries Code of 1998, the Agriculture and Fisheries Modernization Act (AFMA) or Republic Act 8435 was made into law on December 15, 1997. R.A. 8435 facilitates the extension of support for infrastructures, credit and post-harvest facilities to agriculture and fisheries. The main purpose of AFMA is to "prescribe urgent measures for the modernization of the agriculture and fisheries sectors for profitability and in preparation for the challenges of the current international economic trend of globalization and liberalization".[1]

R.A. 8550 and R.A. 8435 adhere to sustainable development as primary end goal of government's development agenda in the fisheries sector. By recognizing the sole importance of environmental management, both laws strengthened the management component in the development process. However, to attain sustainable development, property rights over fisheries resource should be properly delineated. To this date, issues surrounding the provision of granting the preferential rights of municipal fishers to use the municipal waters challenge the country's attainment of sustainable development.

[1] Danilo C. Israel and Ruchel Marie Grace R. Roque, Toward the Sustainable Development of the Fisheries Sector: An Analysis of the Philippine Fisheries Code and Agriculture and Fisheries Modernization Act, Philippine Institute for Development Studies, Discussion Paper No. 99-01 6, 10 (1999).

II. Objectives

The task of this paper is to discuss the policy issues on the delineation of municipal waters in the Philippines. In particular, this paper will point out that the root of the problem stems from the deficiency on the definition of municipal waters in the Philippine Fisheries Code of 1998. Policy implications will also be discussed in relation to the actual implementation of the guidelines on the delineation of municipal waters in the coastal areas of the country. To address this particular policy issue, this paper suggests that the viable solution is for the country to adapt the archipelagic principle in the delineation of its municipal waters. This paper will rationalize that in order to realize the objective of sustainable development as espoused by R.A. 8550 and R.A. 8435, the preferential rights of the municipal fishers over the municipal waters should be recognized and respected.

This paper is arranged as follows. The third section presents an historical overview of the concept of municipal waters, as adapted in various Philippine national laws. The fourth section discusses the issues surrounding the controversial Department Administrative Order-17 (DAO-17), which provides guidelines on the delineation of municipal waters. Under this section, the differing positions of various fisheries groups will also be presented. The trends and directions of the campaign of various groups will likewise be presented. The fifth section traces the root of these policy issues to the definition of municipal waters in the Philippine Fisheries Code of 1998. This paper will argue that through this ambiguity in the definition of municipal waters, the attainment of sustainable development is threatened. The sixth section provides the policy option to address the issue, which is to incorporate the archipelagic principle in the Philippine Fisheries Code of 1998. The last section of the paper provides the conclusion and recommendation.

III. Historical Overview of Municipal Waters in the Philippines

The municipal waters concept developed with the passage of time and in accordance with the growing consciousness of the public to environmental issues. The municipal waters concept is a welcome imovation for fisheries management. It has been in existence for eighty-seven (87) years. However, it was not until DENR DAO-17 that there came the first opportune to concretize this legal concept. Acknowledging the importance of the guidelines on the delneation of municipal waters, then Minister Rokhmin Dahuri of the Ministry of Marine Affairs of Indonesia congratulated then DENR Secretary Heherson Alvarez for the issuance of DENR DAO-17. Minister Dahuri stated that the DENR DAO-17 "is a landmark action that strives to push forward the wise

management and use of coastal water in the Philippines and serves as an example for other countries in the region."[2]

To further appreciate the importance of municipal waters in the country, the discussion below will deal with the development of the municipal waters concept under Philippine laws.

The Administrative Code of 1917

The definition of municipal waters under Section 2321 of Act No. 2711, *The Administrative Code of 1917*, is set at three (3) marine leagues. It excluded from the coverage of the definition those bodies of water that are subject of private ownership. Previously, land grants granted by the Spaniards and Americans could include rivers, streams or lakes situated within the property. The importance of delineating municipal waters is the determination of the fluvial area wherein a municipal council can exercise its authority to grant exclusive privilege of fishery or right to conduct a fish-breeding ground for purposes of profit.[3]

The Fisheries Act of 1932

Section 6 of Act No. 4003, otherwise known as *The Fisheries Act of 1932,* likewise excluded from the coverage of the definition of municipal waters those bodies of water that are subject of private ownership. As an innovation to *The Revised Administrative Code of 1917*, the definition of municipal waters under Act No. 4003 excluded those that are comprised within national parks, public forests, timber lands, forest reserves, or fishery reserves. The extent of the municipal waters in coastal areas is three (3) nautical miles. The municipal council has authority to grant exclusive privilege of erecting fish corrals, or operating fishponds, or taking or catching "bangus" fry.[4] The municipal council is also empowered to promulgate rules and regulations regarding the issuance to qualified applicant of licenses for the operation of fishing vessels of three tons or less and the grant of the privilege of taking fish within the municipal waters with nets, traps, or other fishing gear subject to approval of the Secretary of Agriculture.[5]

The Fisheries Decree of 1975

Section 3(p) of Presidential Decree No. 704, otherwise known as *The Fisheries Decree of 1975,* also excluded from the definition of municipal waters those being the subject of

[2] Letter from Rokhmin Dahuri, Minister, Ministry of Marine Affairs and Fisheries, Republic of Indonesia to Honorable Heherson T. Alvarez, Secretary, Department of Environmental and Natural Resources 1 (July 12, 2001 Jakarta time) (on file with NAMRIA).
[3] THE ADMINISTRATIVE CODE OF 1917, § 2321.
[4] THE FISHERIES ACT OF 1932, art. XI, ch. III, § 67.
[5] *Ibid.*, § 70.

private ownership and those within national parks, public forests, timber lands, forest reserves, or fishery reserves.

The authority of the municipal council is a consolidation of what were previously given under the Administrative Act of 1917 and Act No. 4003. The municipal council is authorized to pass ordinances regarding the issuance to qualified applicants of licenses for the operation of fishing vessels of three tons or less and the grant of the privilege of taking fish within the municipal waters with nets, traps, or other fishing gear subject to the approval of the Secretary of Agriculture.[6]

The municipal council can grant exclusive privilege of constructing and operating fish corrals and oyster culture beds, or of gathering *bangus* fry, or fry of other species to the highest qualified bidder and for a period not exceeding five (5) years.[7]The requirement as to the conduct of bidding and the limitation to five (5) years of the exclusive privileges mentioned is a stop-gap measure for the propensity of granting privileges to a few individuals for long periods of time.
Under Presidential Decree No. 704, the prohibition of commercial fishing vessels, those that weigh more than 3 gross tons, is reckoned from the depth of the waters. Commercial fishing boats are not allowed within waters less than seven (7) fathoms.[8] The President of the Philippines, may upon the recommendation of the Secretary of Natural Resources, ban the operation of commercial or other fishing gear in waters within a distance of seven (7) kilometers (3.78 nautical miles) from the shoreline if public interest so requires or if the ecology of the marine resources may be impaired.[9]

According to the House of Representatives Committee Deliberations on House Bill No. 7366, which later on became RA 8550, the reason for this seven fathom-rule and the 7-kilometer prohibition on commercial fishing is that seven is President Marcos' favorite number.[10]

The Local Government Code of 1991

The municipal waters provided under the RA 7160, *The Local Government Code of 1991*, are for limited taxation and law enforcement purposes. RA 7160 is the first statutory legislation that expressly grants preferential right to a marginalized sector, the marginal fishers.[11] This is in pursuance of the 1987 Constitutional provision on the grant to

[6] THE FISHERIES DECREE OF 1975, ch. IV, § 29 (b).
[7] *Ibid*., § 29 (a).
[8] *Ibid*., § 17.
[9] *Ibid*.
[10] *Records of the House of Representatives Committee Deliberations on House Bill No. 7366*, 25 (June 04, 1997).
[11] THE LOCAL GOVERNMENT CODE OF 1991, ch. I, tit. I, bk. II, § 131 (p). "Marginal Farmer or Fisherman" refers to an individual engaged in subsistence farming or fishing which shall be limited to the sale, barter or exchange of agricultural or marine products produced by himself and his immediate family.

subsistence fishermen, especially of local communities, of the preferential use of the communal marine and fishing resources, inland and offshore.[12]

Section 149 and 151 of the RA 7160 grants the municipalities/cities the exclusive authority to grant fishery privileges in the municipal waters and impose rentals, fees or charges. RA 7160 also grants to the municipality the power to grant the privilege of gathering fry, the power to issue fishing boat licenses three (3) gross tons or less, the power to penalize deleterious modes of fishing, the power to protect the environment and the power to enforce fishery laws.

The Philippine Fisheries Code of 1998

Under Section 4(58) of Republic Act No. 8550, *The Philippine Fisheries Code of 1998*, the municipal waters were set at 15 kilometers. Representative Abad in the House of Representatives Committee Deliberations stated that there was a scientific justification for setting the municipal waters at 15 kilometers under the LGC from the previous 3 nautical miles approximated to be 7 kilometers. This scientific justification is based on a study conducted by the Dean of the College of Fisheries of University of the Philippines – Visayas and University of the Philippines – Diliman.[13] Representative Abad described the role of the outer stretch of municipal waters as "an important transition zone whose biological features support fisheries production in the 0 to 7 kilometers."[14] The 8 to 15 kilometers is "the natural area to sustain the first seven kilometers, a hedge area or transition zone that will help enrich the first seven kilometers."[15]

IV. Issues on Department Administrative Order-17 (DAO-17, Guidelines on the Delineation of Municipal Waters)

Republic Act 8550 or the Philippine Fisheries Code of 1998 grants preferential rights to marginalized fishers in the judicious utilization of municipal waters in the Philippines. Section 2 (b) of RA 8550 expressly states that it is the policy of the State "to protect the rights of fisherfolk, especially of the local communities with priority to municipal fisherfolk, in the preferential use of the municipal waters." However, as a concession for the commercial fishers, RA. 8550 allows commercial fishing within the 10.1-15 kilometers as long as the LGU permits it with due consultation with the local Fisheries and Aquatic Resources Management Councils (FARMCs).

Thus, in accordance to this expressed provision of RA 8550 on granting preferential rights to marginalized fishers to the use of municipal waters, then Secretary of the Department of Environment and Natural Resources (DENR) Heherson Alvarez issued

[12] THE 1987 PHIL. CONST., art. XIII, § 7.
[13] *Records of the House of Representatives Committee Deliberations on House Bill No. 7366*, 37 (June 04, 1997).
[14] *Ibid.*
[15] *Ibid.*

Department Administrative Order No. 17, Series of 2001 (DAO-17). This is in pursuant to a Joint Memorandum Order of the Department of Agriculture and the Department of Environment and Natural Resources, which provided guidelines on the delineation of the municipal waters. The said guidelines were formulated by the National Mapping and Resource Information Authority (NAMRIA) under the DENR. However, in 2003, then Secretary Elisea Gozun, who replaced Secretary Alvarez, revoked DAO-17 through the issuance of DAO-7. This is in pursuant to the legal opinion issued by the Department of Justice declaring that DENR has no mandate to issue implementing guidelines for the delineation of municipal waters. Instead, the DA issued DAO-1 in 2004, which adapted the guidelines on the delineation of municipal waters without offshore islands as earlier formulated by NAMRIA in DAO-17. However, the DA has yet to issue guidelines on the delineation of municipal waters with offshore islands.

As of May 2006, the NAMRIA was able to delineate 915 municipalities and cities pursuant to the guidelines released by the DA. Of the 915 municipalities/cities, 432 are without offshore islands, 182 are with overlapping waters and 301 are with offshore islands. The 614 without offshore islands or with overlapping water as delineated by NAMRIA can proceed under the provisions of DAO-17 and DAO-01 series of 2004. However, contentions are deep on the remaining 301 municipalities/cities with offshore island, 72.4% (218 municipalities) have offshore islands 5 km. or less from the mainland, 17.3% (52 municipalities) are within the 5.1 to 10 km. range and 10.3% (31 municipalities) have islands in 10.1 km. or more from the mainland.[16]

The gravity of the issue on the delineation of municipal waters is apparently taking its toll especially at the municipal fishers, whose livelihood security is always put at risk. The impact of the revocation of DAO 17 was worse than the absence of a guideline to delineate and delimit municipal waters. The revocation gave the impression that commercial fishing was already allowed inside municipal waters. There arises the need to immediately set a technically sound guideline that will recognize the rights of fishers, the impact of delineation and delimitation on the management of fishery resources, and the dynamics between municipal governments who share common fishing grounds.[17]

The small fishers are likewise aware of the illegal intrusion of commercial fishing vessels in their fishing territory within the 15 kilometer radius. These fishermen are big capitalists who employed modern fishing techniques, adequate storage to preserve the catch and their ability to influence some local authorities to circumvent fishery law at the expense of small fishers. Due to stiff competition, some small fishermen likewise

[16] Presented at the Legal Conference on Archipelagic Principle sponsored by the NGOs for Fisheries Reform in Conspiracy Café last May 22, 2006.
[17] Vera, Cesar Allan. Standing Firm on the Path of Industrialization, A Case Study of Coastal Communities Along Balayan Bay. Unpublished.

resort to illegal fishing activities using dynamite and sodium cyanide jeopardizing people's health and environment.[18]

This hopelessness by the municipal fishers is aggravated by the declining health of marine and coastal resources, which has immediate effects to their fish catch and income. One of the apparent implication of such is the decline in the per capita consumption of fish of fishing households. For example, in 1988 per capita consumption of fish among fishing households was about 40 kilogram/year, which includes consumption of fresh, dried and processed fish. However, ten years later, this has decreased to 36 kilogram/year.[19] The fact that municipal fishers live below poverty line is further corroborated by actual studies conducted in specific fishing communities such as those conducted by the Institute of Social Order in the Municipality of Panukulan, Quezon and Municipality of Mercedes, Camarines Norte. The studies revealed that the minimum income earning of a fishing household in the Municipality of Panukulan was 1,621.36 per month which was way below the poverty threshold of Php10,044 per month in 1998 for Region IV. The same is true in the Municipality of Mercedes, where the minimum income earnings of a fishing household was Php4,663 per month as against the poverty threshold of Php8,933 per month in 1995 for Region V.[20]

On the other hand, the commercial fishers, specifically the small-scale and medium-scale, also wanted to increase their fish catch productivity by expressing user's rights over the municipal waters. Section 3 (10) of RA 8550 defines small scale commercial fishing as "*fishing with passive or active gear utilizing fishing vessels of 3.2 gross tons (GT) up to twenty (20) GT*" while medium scale commercial fishing refers to "*fishing utilizing active gears and vessels of 20.1 GT up to one hundred fifty (150) GT*".

Essentially, the issue on municipal waters highlights the conflict between two legitimate resource users: the municipal and commercial fishers. The need to resolve the reckoning point of the municipal waters should immediately be addressed.

Contending Groups, Contending Views

The bone of contention in the interpretation of Section 4 (58) is whether or not offshore islands of municipalities are entitled to generate their own municipal waters. As stated in the previous chapter, the manifestation of the municipal application of the archipelagic principle is the issuance of DENR of DAO-17. The conflicting views as to how municipal waters should be delineated may be addressed through an examination of

[18] Quitangon, Gregorio L. July 2002. The Camarines Norte Institution Building Program (CNIBP): A Case Study, A Paper Developed Under the Model Building Project of PHILSSA_CORD-AID.
[19] Cruz-Trinidad, Alan T. White, Mary Gleason and Leo Pura. Philippine Fisheries in Crisis: A Prescription for Recovery taken from OneOcean. Overseas. October 22, 2002. Vol.5, No.10.
[20] Statistical figures are from the Social Transformation and Grassroots Empowerment Program Proposal of the Institute of Social Order, which is dated June 2003.

positions taken by different sectors and groups interested with respect to DENR DAO-17 revocation.

A. Position of the Department of Environment and Natural Resources

The position of DENR is shifting with the changes in the leadership of the Department. During the tenure of Secretary Alvarez, DAO-17 was argued to be valid and issued by DENR pursuant to DA-DENR Joint Memorandum Order.

When Secretary Alvarez was replaced by Secretary Elisea Gozun, DAO-17 was revoked through a Department Administrative Order No. 07, series of 2003 issued pursuant to a second DOJ legal opinion declaring that DENR has no power to issue the implementing guidelines for the delineation of municipal waters.

B. Position of NAMRIA

The position of NAMRIA can be summarized as follows:

1.) the phrase "including offshore islands" refers to the phrase "to the general coastline" which implies that the general coastline from where the 15-kilometers will be reckoned includes the third line;

2.) that on the legal aspect, in order to measure the municipal waters, one must be able to properly define:

    a.) boundary lines of the municipality and
    b.) general coastline;

3.) that on the technical aspect, the tests of parallelism and perpendicularity of lines with the general coastline be satisfied;

4.) that some municipalities are archipelagic (meaning having offshore island/s) cannot be denied otherwise there will be absurd results in the delineation;

5.) that DAO-17 is validly issued by DENR pursuant to a Joint Memorandum Order[21] with DA and by principle of estoppel on the part of DA. DA and BFAR actively participated in the process for coming up with the mplementing guidelines.

C. Position of Department of Agriculture-Bureau of Fisheries and Aquatic Resources

[21] Joint DENR-DAO-1, series of 2000, art.4, § 1.

The DA-BFAR lobbied for the non-archipelagic principle in delineating municipal waters. They based their claim on the interpretation of section 4 (58) that the phrase "including offshore islands" refer to the phrase "third line parallel" which translates to the proposition that the third line encloses the offshore islands. They also claim subsequently that DENR does not have authority to issue the Implementing Rules and Regulations for the delineation of municipal waters.

However, through a memorandum of Atty. Romeo B. Sagun, Legal Officer-BFAR, dated December 3, 1999 to Malcolm Sarmiento, BFAR Director, he explains that the archipelagic principle is applicable as supported by the National Territory provision in the 1987 Constitution, PD 1599[22], PD 704, Letter of Instruction No. 1328,[23] Fisheries Administrative Order No. 156,[24] and Fisheries Administrative Order No. 164[25]; and by reference to RA 7160 and RA 8550 providing for the use of the archipelagic principle.[26]

But it was immediately contended by BFAR Director Malcolm Sarmiento. On December 10, 1999, through a memorandum of BFAR Director Sarmiento to DA Undersecretary Cesar M. Drilon, Jr., states that the archipelagic principle is not applicable because the definition of municipal waters under RA 8550 added the phrase "including offshore islands" which phrase was inexistent in previous laws providing for municipal waters, thus, the argument that it abandoned the archipelagic principle embodied in previous laws.[27]

D. Position of Congress

The Committee on Appropriations of the House of Representatives adopted Resolution No. 2001-01 entitled, "Resolution Declaring the Existence of Legal Infirmities Affecting DENR A.O. No. 2001-17 and Concern Over the Possible Adverse Effects Resulting from the Implementation Thereof and Recommending its Revocation," stated that DENR has

[22] On June 11, 1978, PD 1599 was issued establishing the exclusive economic zone.
[23] On May 25, 1983, LOI 1328 was issued to provide municipal and small-scale fishermen a wider area within which to operate fishing boats of three (3) gross tons, prohibited the operation of commercial trawls and purse seines in marine waters within a distance of seven (7) kilometers from the shorelines.
[24] Fisheries Administrative Order No. 156 effective September 10, 1986 implementing LOI 1328, mandated that "in provinces comprising of several islands or islets where the distance between them or among them is 14 kilometers or less, the same shall be treated as one island or islet and the 7-kilometer distance shall be reckoned from the outer shorelines of such group or islet."
[25]Fisheries Administrative Order No. 164 effective October 31, 1987, banning the operation of hulbot-hulbot using fine-meshed net within the 7-kilometer expanse of marine waters, providing that "in provinces comprising of several islands or islets where the distance between them or among them is 14 kilometers or less, the same shall be treated as one island or islet and the 7-kilometer distance shall be reckoned from the outer shorelines of such group or islet."
[26] Memorandum of Atty. Romeo B. Sagun, Legal Officer-BFAR, dated December 3, 1999 to Malcom Sarmiento, BFAR Director explaining why the archipelagic principle applies to delineating municipal waters at 4.
[27] Memorandum of BFAR Director Malcolm Sarmiento to DA Undersecretary Cesar M. Drilon, Jr. dated December 10, 1999 at 4.

no jurisdiction to issue the IRR pursuant to Section 123[28] and Section 4 (15)[29] of RA 8550.[30] It further claimed that the insertion of the phrase "including offshore islands" was intended by the legislature to resolve the issue on whether the archipelagic method would be adopted in the delineation of municipal waters. The phrase "including offshore islands" indicates that offshore islands are deemed to be within the 15 kilometers from the shoreline, thus negating the applicability of the archipelagic method, which is the official position adopted by BFAR (BFAR) on the issue.[31]

The Congress also interpreted that the DENR through DAO-17 violated Section 118 of RA 7160 and Rule III of its IRR, providing that boundary or territorial disputes between local government units (LGUs) shall be referred for resolution to their respective legislative bodies, and providing for an appeal therefrom to the Regional Trial Court (RTC).[32] DAO-17 provides that disputes between municipalities over the delineation of municipal waters shall be decided upon by the NAMRIA (NAMRIA) which is in contravention of the mentioned laws.[33] The Resolution also argued that there will be reduction of fishing grounds if DAO-17 was enforced.[34] DAO-17 will also force and cause massive lay-offs in the fishing industry nationwide,[35] will also adversely and negatively affect the operations of fish processors, ship repair, ice plants, fish haulers, fish peddlers and market vendors[36] and will ultimately affect the nation's food security.[37]

The Legal Affairs Bureau of the House of Representatives through the Executive Director and Chief Counsel, Leonardo B. Palicte III issued a Memorandum regarding the validity of DAO-17 addressed to Rep. Rolando Andaya, Jr., Chairman of House Committee on Appropriations stating that DAO-17 is violative of the delegating statute, RA 8550. It cited several reasons, to wit:

> 1.) DAO-17 contradicts Section 4(58) of RA 8550 on the basis that the phrase "including offshore islands" means that the municipal waters are those

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[28] THE PHILIPPINE FISHERIES CODE OF 1998, ch. 7, § 123. *Charting of Navigational Lanes and Delineation of Municipal Waters.* The Department shall authors the National Mapping and Resource Information Authority (NAMRIA) for the designation and charting of navigational lanes in fishery areas and delineation of municipal waters. The Philippine coast Guard shall exercise control and supervision over such designated navigational lanes.

[29] THE PHILIPPINE FISHERIES CODE OF 1998, ch. 1, § 4 (15). Department shall mean the Department of Agriculture.

[30] Committee on Appropriations of the House of Representatives adopted Resolution No. 2001-0, "Resolution Declaring the Existence of Legal Infirmities Affecting DENR A.O. No. 2001-17 and Concern Over the Possible Adverse Effects Resulting from the Implementation Thereof and Recommending its Revocation" September 21, 2001 at 2.

[31] *Ibid.* 3.

[32] *Ibid.* 4.

[33] *Ibid.*

[34] *Ibid.* 4.

[35] *Ibid.*

[36] *Ibid*

[37] *Ibid.*

which fall 15 kilometers from the general coastline of the main island, and waters not within the said 15 kilometers are not considered municipal waters. Accordingly, this interpretation does away with the application of the archipelagic method since groups of islands are not interconnected to form an intrinsic geographical unit, as the shoreline, from which the 15 kilometers will be reckoned.[38] RA 8550 provides a clear reference point where the 15 kilometers will be measured as evidenced by the inclusion of the phrase "including offshore islands;"

2.) DAO-17 uses imaginary coastline as basis with the adoption of the archipelagic principle;[39]

3.) The application of the archipelagic principle will lead to absurdity as there will be two (2) kinds of "offshore islands": (1) those islands that are interconnected to form the coastline from where to start the 15 kilometer boundary line, and (2) those outside of the archipelagic baseline resulting in an absurdity. Hence, there will be no offshore island to speak of, since all kinds of islands will necessarily be connected;[40]

4.) The contemporaneous construction of DA as embodied in DA AO No. 3 should be adopted because DA is the Department to which the statute has delegated the power to implement the law in accordance with the ruling of the Supreme Court in the case of Ramos vs. Court of Industrial Relations;[41]

5.) There is the distinction of application of archipelagic principle to the national territorial waters and the move to apply the archipelagic principle to municipal waters;[42]

6.) The interpretation of the law by the DENR as contained in the questioned rules and regulation cannot prevail over the clear purpose, intent and spirit of the law, mainly due to the fact that the implementing rules and regulation must not only conform to the standard that the law prescribes (Director of Forestry vs. Munoz, 23 SCRA 1184) but the rules and regulations may be issued for the sole purpose of carrying into effect the general provisions of the law (Shell Phil., Inc. vs. Central Bank 162 SCRA 628);[43] and

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[38] Memorandum of Leonardo B. Palicte III, Executive Director and Chief of Counsel of the Legal Affairs Bureau of the House of Representatives regarding the validity of DAO-17 to Rep. Rolando Andaya, Jr., Chairman of House Committee on Appropriations, November 5, 2003.
[39] *Ibid.* 5.
[40] *Ibid.* 5-6.
[41] *Ibid.* 6.
[42] *Ibid.* 7.
[43] *Ibid.* 8.

7.) The DENR failed to consider or did not take into account the phrase "including offshore islands" and the definition of "mainland" in promulgating the subject IRR and if their interpretation is followed, it will result in the illegal amendment of the law, by an entity that does not have the authority nor the prerogative to make or alter laws, as this is lodged solely in the Congress.[44]

E. Position of Non-Government Organizations

The NGOs for Fisheries Reform (NFR) is a loose coalition of NGOs formed initially to provide technical support for national fisherfolk federations and coalitions in their lobbying efforts for the passage of a meaningful fisheries code. Its member-NGOs then were CERD, HARIBON, HAYUMA, ISO, OTRADEV, PHILDHRRA, PRRM, SALIGAN, SIKAT, TDC, and TK. In response to the legal opinion of the Legal Bureau of the House of Representatives, NFR issued an article addressing the issues, to wit:

1.) DA participated in the discussions initiated by the DENR, apparently in respect of the Memorandum of Agreement entered into by the two agencies. The content of the discussions involve, among others, arrangements on the delineation of municipal waters. It is true that the BFAR, particularly Director Malcolm Sarmiento, have had disagreements as to how the delineation should be done. But definitely, he or the DA Secretary never interposed any objection to DENR laying down the rules for delineation. Certainly, the DA recognizes the expertise of NAMRIA, an attached agency of the DENR, in determining the manner of delineation or mapping of municipal waters. During the Fisheries Trade Liberalization Conference sponsored by NFR at the Institute of Social Order held on July 25, 2001, Director Samiento categorically declared that the DA is in full support of DAO 17;

2.) Sec. 4. Par. 58 of the Implementing Rules and Regulations of R.A. 8550 was vaguely stated, making it open to two distinct interpretation. In this case, the NAMRIA interpretation should clearly be given weight, not only because it cites the Constitution in applying the archipelagic principle, but also because of its specific expertise in delineation and delimitation;

3.) The lower house is clearly misinformed. Item (C)(3), Section 4 (Role/Responsibility of Agencies) of DAO 17 is categorical. The LGUs themselves are to "settle disputes with adjacent or opposite municipalities arising from the delineation/delimitation through the *Sangguniang Bayan/Panlungsod* or *Panlalawigan* or in any appropriate body;"

4.) DAO 17 does not intend to reduce fishing grounds. Rightly so because it cannot reduce fishing grounds, in law and in fact. Sec. 2. par. c. of RA 8550

[44] *Ibid*. 8.

states that the policy of the state is "to protect the rights of fisherfolk, especially of the local communities with priority to municipal fisherfolk, in the preferential use of the municipal waters." Thus, increasing the size of the municipal waters does not translate to a decrease in fishing grounds but an increase in the fishing grounds of the small municipal fisherfolk;

5.) It is to be noted that the 56,715-strong fishworkers are small fishers themselves, or are capable of becoming part of the 675,677 small/municipal fishers. Conservation experience within Balayan Bay in Batangas, and Tayabas Bay in Quezon has shown that the exclusion of commercial fishing operations from municipal waters results in a dramatic increase of fish catch within a short span of barely one year. In the case of Anilao, the increase in catch was from barely 2 kg./family/day to an estimated 10-12 kg./family/day. DAO 17 will create millions of new livelihood for small fisherfolk throughout the country;

6.) When RA 8550 was enacted, we already knew that it will change the state of affairs of Philippine fisheries. The Congress knew it when it passed said legislation. Be that as it may, there was no intent to downgrade or oppress the commercial fishing and the processing sub-sectors. That is one of the reasons why RA 8550 itself provides for ways by which government can assist the development of the fisheries industries to enable commercial fishers to benefit from the gifts of the offshore waters, possibly until the ends of the country's Exclusive Economic Zone (EEZ);

7.) On the contrary, the overfishing due to the continued overexploitation of fishery resources in the municipal waters endangers food security. After the passage of R.A. 8550, the municipal fisheries production increased by an average of 3% annually. Director Sarmiento, during the same conference mentioned previously, explained that this was primarily an effect of the expansion of the municipal waters to 15 kilometers. On the other hand, commercial fishers reduced operations substantially yet the sector still managed to increase production by an average of 0.3%. This illustrates the fact that protecting the 15 kilometer zone from overexploitation will have beneficial effect on the sustainable catch of both municipal and commercial fishers.

F. Position of the National Anti-Poverty Commission

On January 19, 2003, the National Anti-Poverty Commission Fisherfolk Sectoral Council issued Resolution No. 10 Series of 2003, entitled a "Resolution to Oppose the Recommendation of DENR for the Review of DENR-DAO 2001-17." Said resolution states

that pursuant to Republic Act No. 8425 otherwise known as the Social Reform and Anti-Poverty Alleviation Act, National Anti-Poverty Commission Fisherfolk Sectoral Council was created as a recommendatory body and a government partner in the implementation of plans and programs to fight poverty that affects the sector and industry concerned.[45] It is opposing the review of DAO-17 stating that it is of utmost importance to the fisheries sector as reference in the formulation of Municipal Fisheries Development Plan.

G. Position of the League of Municipalities of the Philippines

On February 6, 2003, League of Municipalities of the Philippines issued Resolution No. 001, Series of 2003, entitled "Resolution Expressing the Strong Commitment of the League of Municipalities of the Philippines and the Various NGOs and POs, Comprising the Movement for DAO-17 to pursue the Delineation/Delimitation of Municipal Waters Pursuant to the Provisions of Republic Act No. 7160 and Republic Act No. 8550 in Accordance with the Guidelines Set Forth in DENR Administrative Order No. 17." This resolution supported DAO-17 citing as legal support Article I of the 1987 Constitution, RA 7160, and RA 8550 and as a response, formed M-17 Alliance for the purpose of pushing for DAO-17.[46]

With the various groups having contending views on the issue of the delineation of municipal waters, the NGOs for Fisheries Reform (NFR) along its partner fisherfolk organizations carefully guarded the legislative bodies in anticipation of maneuverings on the part of the commercial fishers. The NFR likewise presented two bills to the Lower House of Congress, with the aim of addressing the deficiencies in the provisions in the Philippine Fisheries Code of 1998.

Engagement with Policy Makers

For this first half of the 2005, NFR strengthened its legislative lobbying efforts by looking for potential allies both in the Lower and Upper House of Congress. The result of NFR's 2004 Legislative Forum facilitated the widening of awareness of legislators on fisheries issues and concerns. This led to the sponsorship of Congressman Lorenzo "Erin" Tañada, III of HB 3423 and HB 3424, which were earlier formulated by NFR after consultation with its partner fisherfolk organizations. HB 3423 suggests the incorporation of the archipelagic principle in the definition of coastline under the Philippine Fisheries Code of 1998 while HB 3424 amends the prohibition and penalties on the use of illegal fishing

[46] League of Municipalities of the Philippines issued Resolution No. 001, Series of 2003, entitled "Resolution Expressing the Strong Commitment of the League of Municipalities of the Philippines and the Various NGOs and Pos, Comprising the Movement for DAO-17 to pursue the Delineation/Delimitation of Municipal Waters Pursuant to the Provisions of Republic Act No. 7160 and Republic Act No. 8550 in Accordance with the Guidelines Set Forth in DENR Administrative Order No. 17 3 (February 6, 2003).

gears. Copies of the two bills were distributed to other legislators and encouraged them to co-sponsor the said bills.

The first hearing was conducted along with the bills of Representative Darlene Custodio on Tuna Handline Bill and Representative Abayon on municipal waters. At present, there are twenty (20) legislators that committed to support the two proposed bills. Akbayan Party-List Representative Mayong Aguja also filed revised versions of the two bills in the form of HB 4132 and HB 4270. To further gain support for HB 3423 and HB 3424 filed by Congressman Tañada of Quezon, NFR discussed the bills with the Office of Congressman Luis Villafuerte of Camarines Sur, the incumbent Chair of the Committee on Fisheries and Aquaculture.

Due to legislative monitoring of NFR, the coalition was able to see the need to register its stand against the bills of Congressman Federico Sandoval and Senator Manuel Villar on amending the definition of commercial fishing, which will have detrimental effects to the municipal waters. To echo this development to partner fishers organizations, a PO-NGO Forum was conducted last April 8, 2005. Twenty-six (26) fisherfolk leaders and NGO representatives attended the said forum. The result of the forum was the drafting of a Unity Statement on the position of the fisherfolks and NGOs against the bills. Copies of the Unity Statement were given to legislators and partner fisherfolk organizations. To strengthen the campaign, a signature campaign was launched to block the anti-fisherfolks bills of Congressman Sandoval and Senator Villar.

To voice out these concerns of the fisherfolks and NGOs, NFR met with Congressman Sandoval last year in the City of Malabon. Ka Tessie Timog of Task Force Women in Fisheries and Ka Ruperto "Uper" Aleroza of SAMMACA joined NFR in explaining the consequences of Sandoval's bills especially to the plight of municipal fishers. However, no agreement was reached.

The NFR also met with Senator Aquilino Pimentel to discuss with him the possibility of sponsoring the two bills formulated by NFR to the Senate. Senator Pimentel gave a positive response on NFR's request. NFR also gave a copy of the proposed bills to Senator Ramon Magsaysay, Jr. who is the incumbent Chair of Senate Committee on Agriculture. However, after two weeks of meeting with Senator Pimentel, Atty. Lavarias, who is in charge of studying NFR proposed bills, commented that there are some provisions in the bills that might possibly resort to amending the Local Government Code. The Office of Senator Pimentel decided to first consult the director in charge of the Omnibus Amendment to the Local Government Code before recommending the sponsorship of NFR's proposed bills.

However, due to the present political conundrum, wherein the House of the Representatives and the Senate are focused on the General Appropriations Act of 2006 and the Charter Change, it is very difficult to push fisheries legislative reform.

V. Policy Issue: Deficient Definition of Municipal Waters in RA 8550

The issue on the delineation of DAO-17 even reached the courts. The legality of DAO 17, which reckons that the 15 kilometer municipal waters should start from the farthest island of the municipality, has been constantly challenged in the court. The first case was a petition for prohibition and mandamus with application for temporary restraining order and preliminary injunction, which was filed before the Regional Trial Court (RTC) of Malabon Branch 170 by commercial fishers and various organizations of commercial fishers, namely: Alliance of Philippine Fishing Federations, Inc.; Inter-Island Deep Sea Fishing Association; IRMA Fishing and Trading, Inc.; RBL Fishing Corp.; Southern Philippines Deep Sea Fishing, and others. The petition impleaded DENR Secretary Heherson Alvarez and NAMRIA as respondents. The petition seeks to declare DENR DAO-17 void for being formulated and issued by DENR without authority and for being violative of RA 8550 and Executive Order 292 or Administrative Code of 1987. The said petition was dismissed pursuant to a motion to dismiss subsequently filed by petitioners without prejudice to the refiling thereof.[47]

The second case was filed before the Regional Trial Court of Negros Occidental Branch 60 of Cadiz City. Petitioner, Pablo Sarabia Jr., filed a petition for mandamus with prayer for preliminary injunction and temporary restraining order to enjoin respondents Secretary of Environment and Natural Resources and NAMRIA from enforcing DAO-17. However, the court dismissed the said petition on the ground that "constitutional questions involved in these complex questions of law should be better left to the Supreme Court to resolve in view of the passage of RA 8975 which explicitly and unequivocally withdrew from lower courts the power and authority to issue any TRO or Preliminary Injunctions and Preliminary Mandatory Injunctions on any activities mentioned in Section 3 thereof as the nature and interpretation of RA 8550." The court in the same order posited that "petition should have been one for Declaratory Relief and not Mandamus."[48]

The third case deemed symptomatic. Following the dismissal of the second case, a petition for declaratory relief was filed before the Regional Trial Court of Malabon Branch 74 on February 18, 2004 by Rosendo de Borja, a commercial fisher. The petition seeks the construction and interpretation of the court regarding the reckoning point of the 15 kilometer range of the municipal waters. On June 8 of the same year, the Office of the Solicitor General (OSG) filed its comment on the petition, which states that the reckoning point of the 15 kilometer municipal waters should be the shoreline of the mainland municipalities whether or not such municipalities have outer islands or islets. In line with this, Tambuyog Development Center, PUMALU-MV, and SAMMACA, filed a Motion for Leave to file Petiton-in-Intervention. However, the court adapted the

[47] Go, Mahleene. March 11, 2005. Clearing the Waters: A Study on the Nature of Regime of Municipal Waters and A Proposal For the Adoption of the Archipelagic Municipal Waters. Ateneo de Manila University Law School, Rockwell Makati.
[48] Ibid.

interpretation of the OSG.[49] The three legal cases directly challenge the definition of municipal waters under the Philippine Fisheries Code of 1998.

Section 4(58) of RA 8550 defines municipal waters as those which "*include not only streams, lakes, inland bodies of water and tidal waters within the municipality, which are not included within the protected areas as defined under Republic Act No. 7586 (the NIPAS Law), public forest, timber lands, forest reserves, or fishery reserves, but also marine waters included between two (2) lines drawn perpendicular to the general coastline from points where the boundary of the 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*". Competing groups contend the insertion of the words '*including offshore islands*' in the definition of general coastline.

In the interpretation of the abovementioned definition, the DOJ and the commercial fishers suggest that the mainland principle should be adapted in the delineation of municipal waters. In the de Borja's petition, he cited DAO No. 3 series of 1998 or the Implementing Rules and Regulations of RA 8550, wherein coastline has been defined as the "outline of the mainland shore touching the sea at mean lower tide". On the other hand, non-government organizations and their partner fishers organizations suggest that the archipelagic principle should be adapted in the delineation of municipal waters. In support of their claims, they cited DAO-01 series of 2004, which defines coastline as "*the line where shore and water meet at mean lower tide*". However, the said order also defines general coastline without offshore island as "*the points where the boundary lines of the municipality touch the sea at lower tide*".

The relentless debate on the interpretation over how the municipal waters should be delineated is rooted from the deficiency in the definition of municipal waters in RA 8550. There are two main contentions regarding this issue, namely:

1. *Adapt mainland principle*, which states that the reckoning point of the 15 kilometer municipal waters should be the mainland of the municipality with or without offshore islands; and
2. *Adapt the archipelagic principle*, which states that the reckoning point of the 15 kilometer municipal waters should be the outermost island of the municipality.

VI. Policy Option: Adapt the Archipelagic Principle in the Definition of General Coastline

This paper proposes that the archipelagic principle should be adapted in the definition of general coastline for the following reasons:

[49] Presented by Atty. Macario Maderazo during the Legal Conference on the Archipelagic Principle held in Conspiracy Café last May 22, 2006.

1. Supported by Legal and Technical Bases;
2. Addresses the bio-physical features of the country;
3. Enhances the Territorial Jurisdiction of the Local Government Units Over the Municipal Waters;
4. Promotes Accountability in the Management of Coastal Resources

Hopefully, the resolution of the issue of municipal waters will lessen the conflict between the municipal, small-scale and medium scale commercial fishers. Based on the BFAR's Philippine Fisheries Profile (2003:4), there are an estimated 675,677 municipal fishers and 56,715 commercial fishers. Both municipal and commercial fishers compete with small pelagic fishes, which include roundscad, slipmouth and anchovies, among others. Based on the study by BFAR (2005) of the eight top species caught by both municipal and commercial fishers, almost two thirds were harvested by the commercial fishers compared with one-third caught by municipal fishers. In fact, in one Senate hearing on the Fisheries Code in 1997, a representative of commercial fisher's organizations said 90% of their fish catch came from within the 15-kilometer municipal waters.[50] This only indicates that even though they are purportedly to be distinct sub-sectors in the fisheries industry, they are in fact competing directly with each other.[51]

This conflict is further heightened by the declining health of the fisheries resource in the country. As Zaragoza et. al. (2004) puts it given the high fishing pressure evident in small pelagic fishes, competition and conflict between and among municipal and commercial fishers has increased. They suggested that stricter enforcement of exclusive use of municipal fishing grounds by municipal fishers requires attention.[52]

This paper suggests that the archipelagic principle should be adapted for the following reasons:

A. Legal and Technical Bases of Archipelagic Principle

The archipelagic principle is not without legal and technical bases. It is governed by the United Nations Convention on the Law of the Sea (UNCLOS), wherein its underlying basis is the unity of land, water and people into a single entity. It is for the purpose of achieving, maintaining, and preserving this unity that an archipelagic state is conceived as one whose component islands and other natural features form an intrinsic geographical, economic and political entity, and historically have or may have been

[50] Lacanilao, Flor. State of Philippine Coastal Fisheries. Keynote Address at the Symposium on "Food Security and Fishery Resources", 65th Anniversary of the National Research Council of the Philippines, University of the Philippines, Diliman, Quezon City, Decmber 10, 1998.
[51] http://www.fao.org/fi/fcp/en/PHL/profile.htm
[52] ZARAGOZA, E.C., C.R. PAGDILAO and E.P. MORENO. 2004. Overview of the small pelagic fishes, pp.32-37. In DA-BFAR. In Turbulent Seas. The Status of Philippine Marine Fisheries. Coastal Resource Management Project, Cebu City, Philippines.

regarded as such.[53] Thus, as a matter of policy, it is best to apply the archipelagic principle in the delineation of internal waters of the state. Engineer Enrique Macaspac of the Municipal Waters Unit of the Coast and Geodetic Survey Department of NAMRIA shares the same sentiment. Engr. Macaspac shares that the training of geodetic engineers is highly extracted from the rules embodied in UNCLOS. He further reasons that since it is difficult, if not impossible, to come up with a manner of measurement of waters in general, it will be wise to adopt the methods of measurement under UNCLOS.[54]

Since the Philippines is a signatory of UNCLOS, it is logical that the country adapts the archipelagic principle in the delineation of municipal waters. The value of the application is to be able to come up with a regime of archipelagic municipal waters, which could serve as evidence to bolster our adherence to the archipelagic principle. The Philippines cannot claim that it adheres to the archipelagic principle but at the same time go against the basic tenets of the principle by discriminating against municipalities, especially those with offshore islands, and depriving those municipalities of their own municipal waters.[55]

Equally important, the archipelagic principle is enshrined in the 1986 Philippine Constitution. Article II of the Philippine Constitution states that "*The national territory comprises the Philippine archipelago, with all the islands and waters embraced therein, and all other territories over which the Philippines has sovereignty or jurisdiction, consisting of its terrestrial, fluvial, and aerial domains, including its territorial seas, the seabed, the subsoil, the insular shelves, and other submarine areas. The waters around, between, and connecting the islands of the archipelago, regardless of their breadth and dimensions, form part of the internal waters of the Philippines*."[56]

Constitutional compliance is mandatory in the hierarchy of laws. There is no legal basis to question why the archipelagic principle is only good in the national level but not in the local level to justify abandoning the archipelagic doctrine in the delineation of municipal waters.[57] The proper application of the archipelagic principle demands that, as a national policy, we should treat all our islands in the same manner, not allowing

[53] Jorge R. Coquia, Development of the Archipelagic Doctrine as a Recognized Principle of International Law, 58, PHILIPPINE LAW JOURNAL 13, 20-21 (June 1983).
[54] Reaction of Engineer Enrique Macaspac during the Legal Conference on the Archipelagic Principle held at Conspiracy Café last May 22, 2006.
[55] Go, Mahleene. March 11, 2005. Clearing the Waters: A Study on the Nature of Regime of Municipal Waters and A Proposal For the Adoption of the Archipelagic Municipal Waters. Ateneo de Manila University Law School, Rockwell Makati.
[56] The 1987 Philippine Constitution.
[57] SANTOS, V.B. 2004. Waters of Missed Understanding, pp.261-264. In DA-BFAR. In Turbulent Seas: The Status of Philippine Marine Fisheries. Coastal Resource Management Project, Cebu City, Philippines. 378 p.

some of them to be insignificant or as if they were mere parts of the water, and that we should not allow the waters to create highly fragmented political units.[58]

B. Addresses the Bio-Physical Features of the Country

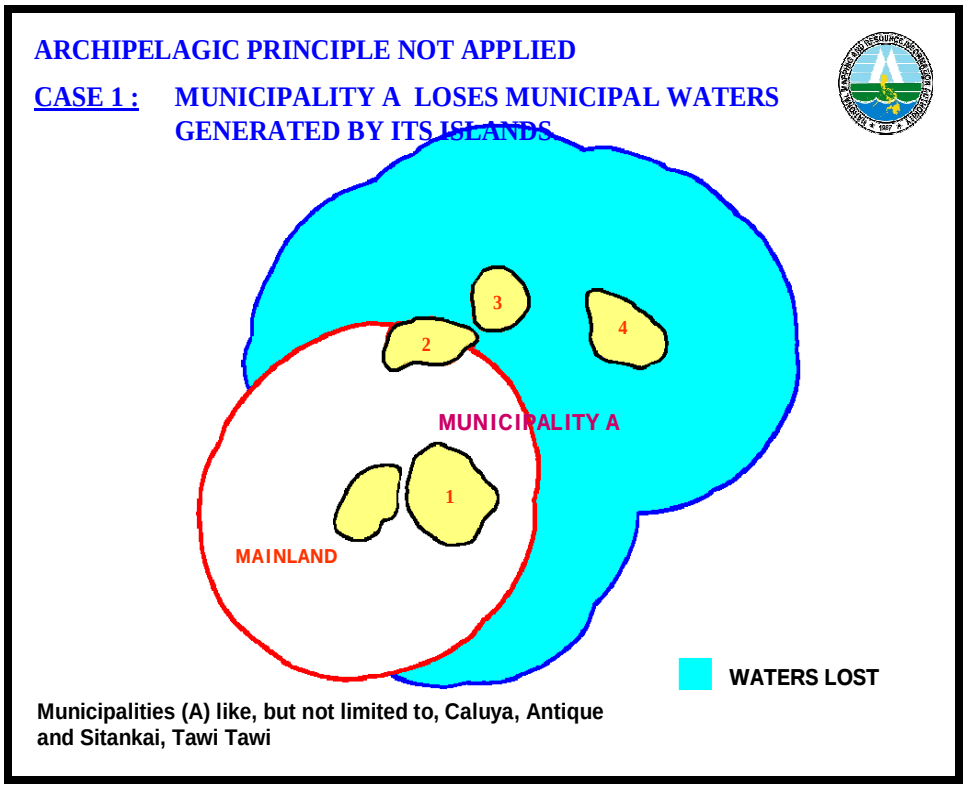
Engineer Enrique Macaspac of NAMRIA states that the inherent difficulty of delineating municipal waters is due to the sinuosities of the Philippine coastline. The refusal to adapt the archipelagic principle in the delineation of municipal waters will produce absurd results.[59] The cases below will illustrate that following the interpretation that offshore islands of municipalities shall not be entitled to generate their own waters, absurdity will result.

CASE 1: MUNICIPALITY WITH ISLANDS TRAVERSING AND OUTSIDE THE 15-KM. LINE

There are 336 archipelagic municipalities in the Philippines, those that have offshore islands. Some of the municipalities have islands that are either outside the third line or traversed by the third line drawn fifteen (15) kilometers from the mainland shore of a municipality at low tide. This is illustrated by Figure 3. Municipality A will have islands traversing the third line and islands outside the third line if "including offshore islands" will be made to refer to third line Municipality A will lose a great portion of its municipal waters if such construction be permitted. Municipality A is like, but not limited to, Caluya, Antique and Sitankai, Tawi-Tawi.

The blue color signifies the delineation of municipal waters of Municipality A pursuant to the archipelagic principle. The municipal waters will be dramatically reduced if the non-archipelagic principle is followed. Islands 3 and 4 will not generate their own municipal waters.

[58] Atty. Jay L. Batongbacal. Who's Afraid of Municipal Waters, 3 (NAMRIA Files on Delineation of Municipal Waters).
[59] Legal Conference on the Use of Archipelagic Principle in Delineating Municipal Waters held at Conspiracy Garden Café last May 22, 2006.

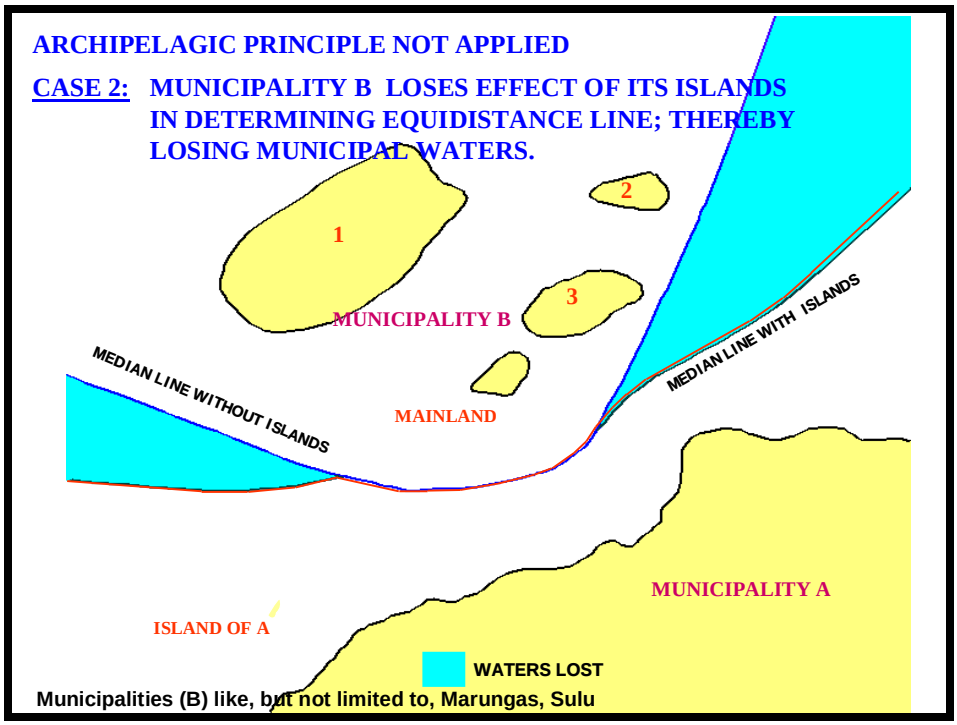


Source: NAMRIA

CASE 2: MUNICIPALITY B LOSES EFFECT OF ITS ISLANDS IN DETERMNING THE EQUIDISTANCE LINE

Municipality A abuts Municipality B's mainland but with a distance less than 30 kilometers from each other. Municipality B has offshore islands lying beneath the mainland. If the islands of Municipality B will not be allowed to generate municipal waters, in determining the equidistance line, Municipality B will lose a great deal of its municipal waters.

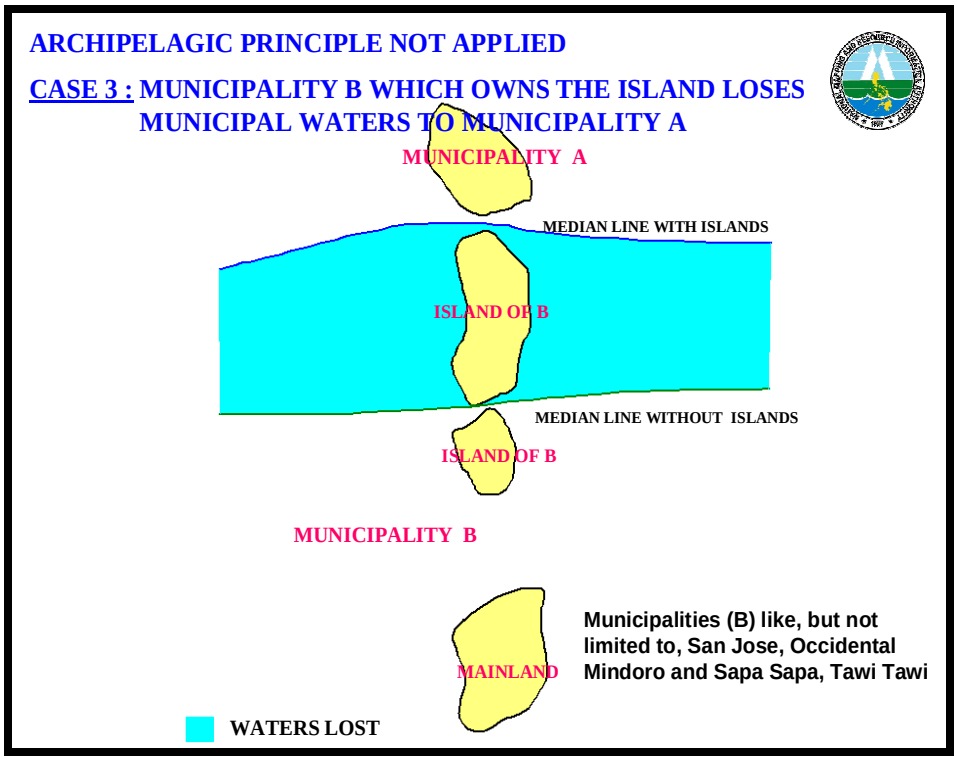
Figure 4 illustrates this implication. Municipality B is like, but not limited to, Marungas, Sulu. Municipality B is composed of 1 mainland and 3 offshore islands. Municipality B is facing Municipality A. Following the archipelagic principle, islands 1, 2 and 3 will generate their own municipal waters. Therefore Municipality A will not be prejudiced with respect to the application of the equidistance rule because the waters between Municipality A and Municipality B is less than 30 kilometers. The blue color represents Municipality A's lost waters if the non-archipelagic principle is applied. If the non-archipelagic principle is applied, islands 1, 2 and 3 will not generate their own waters. Their entitlement to municipal waters will be dependent on the municipal waters generated by the mainland. Therefore, Municipality A loses a great deal of municipal waters to Municipality B.



Source: NAMRIA

CASE 3: MUNICIPALITY B WHICH OWNS THE ISLANDS LOSES MUNCIPAL WATERS TO MUNICIPALITY A

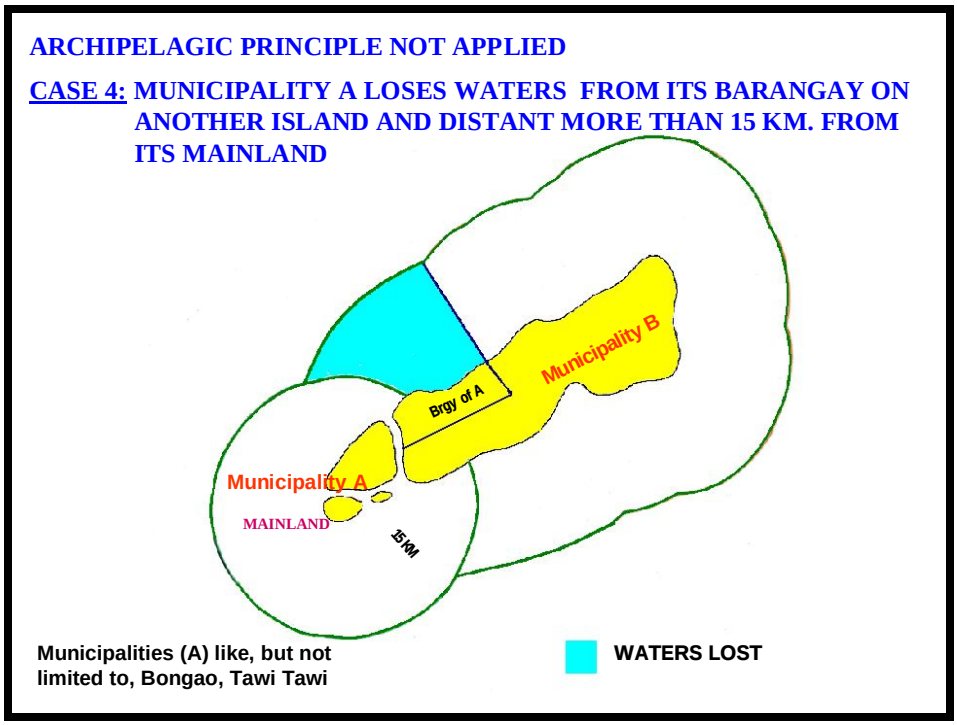
Municipality A and Municipality B abut each other but with a distance less than 15 kilometers. The offshore island of Municipality B faces Municipality A. There are two offshore islands of Municipality B lying at the front of Municipality A. Island 1 of Municipality B is within the 15-kilometer line from the mainland but Island 2 of Municipality B is outside the 15 kilometer line from the mainland. What happens is Municipality A which does not own Island 2 will have the municipal waters surrounding such island. Figure 5 illustrates this. Municipality B is like, but not limited to, San Jose, Occidental Mindoro and Sapa Sapa, Tawi-Tawi.



Source: NAMRIA

CASE 4: MUNICIPALITY A LOSES WATERS FROM ITS BARANGAY ON ANOTHER ISLAND AND DISTANT MORE THAN 15 KM. FROM ITS MAINLAND

Municipality A is comprised of a mainland, offshore island 1, offshore island 2, and a barangay located in the mainland of Municipality B. Part of the barangay lies outside the 15 kilometers. The barangay traverses the 15-kilometer line. Municipality A loses municipal waters generated by its barangay, which is part of its land boundary. Figure 6 illustrates this. Municipality A is like, but not limited to, Bongao, Tawi-Tawi.



Source: NAMRIA

C. Enhances the Territorial Jurisdiction of the LGU over the Municipal Waters

The Local Government Code of 1991 also strengthens the concept of municipal waters. Section 149 and 151 of the Republic Act 7160 or the Local Government Code of 1991 grants the municipalities/cities the exclusive authority to grant fishery privileges in the municipal waters and impose rentals, fees or charges. RA 7160 also grants to the municipality the power to grant the privilege of gathering fry, the power to issue fishing boat licenses of three (3) gross tons or less, the power to penalize deleterious modes of fishing, the power to protect the environment and the power to enforce the fishery laws. National laws like the Philippine Fisheries Code of 1998, the Local Government Code of 1991 and the Agriculture and Fisheries Modernization Act of 1997 must be interpreted to achieve its purpose, which is to attain sustainable development. In order for a municipality to have better management of its municipal waters, it is primarily important that such municipality be in charge of the management of fishery resources within and surrounding its land boundary. Thus, in applying the mainland principle, municipalities will not only be denied of municipal waters from its territory but will also lessen their marine resource over its municipal waters. This does not promote genuine autonomy for local government units because their source of wealth, especially marine resources, is being restricted unceremoniously.

In addition, the archipelagic principle enhances the policy of local autonomy, decentralization, and devolution powers to local governments In adapting the

archipelagic principle, the delineation of municipal waters ensures that the LGUs are able to manage clearly defined areas of municipal waters, enact effective conservation and management measures, impose revenue measures and regulations, and exercise enforcement and control functions over resource-use activities within the waters. This is more attuned in promoting local and fiscal autonomy of the LGUs, which the Local Government Code of 1991 envisions as well as to the authority explicitly given by RA 8550 to LGUs.

There are cases on the ground that saw the fulfillment of the objectives of enhancing the territorial waters of the LGU. For instance, a covenant was drafted and signed by the major stakeholders of the marine and fishery resources of Mariveles, Bataan during the early part of 1996 to pave the way for its sustainability. The effort was reinforced by the cooperation of the military and police units in the locality. In the presence of the Local Government Officials, the Mariveles Philippine National Philippine National Police, the Philippine National Police-Maritime Command, the Philippine Coast Guard, the Philippine Army-Special Forces-3rd Riverine Assault Company (RAC), the commercial fishing boat operators, the Institute of Social Order and the municipal fisherfolks. The covenant emphasized that the "15 kilometer (as mandated in the Local Government Code of 1991) is preferentially awarded to the small fisherfolks for their exclusive use.[60]

Furthermore, the institutionalization of community property rights in relation to municipal fishing grounds is hampered if the archipelagic principle is not recognized. DAO-17 would have corrected this by granting preferential rights to municipal fishers in the use of the municipal waters. With the revocation of DAO-17, there are no longer any law that protect the rights of municipal fishers over the utilization of municipal fishing grounds. Except for the Indigenous People's Rights Act (IPRA), there is no other law that provides for the application of community property rights in municipal fishing grounds.[61]

It is not surprising that the League of the Municipalities of the Philippines threw its support to the archipelagic principle as over-arching framework in the delineation of municipal waters. Thus, on February 6, 2003, the League of Municipalities of the Philippines issued Resolution No. 001, series of 2003, which expressed the strong commitment of the League of Municipalities of the Philippines and the various NGOs and POs to pursue the Delineation/Delimitation of Municipal Waters in accordance with DAO-17.

D. Promotes Management of Coastal Resources

Since the Philippine waters is a *de facto* open access, which means that everybody can extract coastal and marine resources. Open access is a situation where no one owns or

[60] Rosal, Joseph. 1998. Hayuma. p.14. Institute of Social Order, Quezon City.
[61] Overlapping Jurisdictions and Management Systems in the Philippine Coastal Zone: Palawan Experience. Atty. Grizelda "Gerthie" Mayo-Anda.. n.p, n.d.

controls the resources. The resources are open to anyone on a first-come-first-served basis. This very nature of the Philippine waters is one of the causes that brought about the depletion of most of the fishing grounds in the country. The unregulated fishing practices of municipal and commercial fishers hastened the rate of exploitation, which went beyond the sustainable limits of the country's coastal resources. As a result, the Philippine fishing grounds have been considered at the verge of non-sustainability. Symptoms of over-utilization are apparent in most of the coastal areas.

During the Congress deliberations of the Philippine Fisheries Code in 1997, there was a conscious effort to address the declining health of municipal waters in the country. Representative Florencio Abad in the House of Representatives Committee Deliberations stated that there was a scientific justification for setting the municipal waters at 15 kilometers. Citing a study of the University of the Philippines-Visayas College of Fisheries, Rep. Abad described the role of the outer stretch of municipal waters as 'an important transition zone whose biological features support fisheries production in the 0 to 7 kilometers'. On the other hand, the 8 to 15 kilometers is 'the natural area to sustain the first seven kilometers, a hedge area or transition zone that will help enrich the first seven kilometers.'[62]

It is accounted that about 85% of the country's municipal waters were declared over-fished. Such dismal state of the fishing grounds caused fish production to drop at its extreme low in 1996 when it registered 36.46% growth rate (Lim, 2005:5). The fishery in Lingayen Gulf, for example, has reached four times the optimum effort for the available fish stocks. Catch rates in the said gulf are only one-fifth of what they were 15 years ago. (http://www.fao.org/fi/fcp/en/PHL/profile.htm). A similar situation can be gleaned in San Miguel Bay, where fish stock density has consistently declined for the last 25 years. Current estimates of the stock density of demersal fish in San Miguel Bay decreased by 60 folds since 1947. Similarly, the present stock density is about 11 times less than it was 9 years ago. [63]

Similar situation can be gleaned in Bantayan Island Cebu. In a study conducted by the Institute of Social Order (ISO) and Small Economic Enterprise Development (SEED) in 2005, danggit production in the Municipality of Madridejos saw a significant decrease in the last years. In the 1960's, local fisherfolks used three types of fishing gears to capture *danggit*: gillnet (*sabay-sabay*), cast net (*laya)* and hoop net (*sungkit)*. Back then, their average fish production reached 30 kilos per operation. At present, however, municipal fishers produced an average of 2-3 kilos per fishing operation. The deterioration of coastal and marine environment manifests in the continuing decline of fish catch. For instance, production of marine products using fish corrals declined from 1960 up to the present. Furthermore, in 1960, fish corrals produced an estimated two (2) tons of

[62] Records of the House of Representatives Committee on House Bill No. 7366, 37 (June 04, 1997).
[63] Presented by DA-BFAR Region V at the Planning Workshop of the Integrated Fisheries and Aquatic Resources Management Council-San Miguel Bay last May 9-10 at Regent Hotel, Naga City.

captured fish. In 1970, the production of fish corrals dropped to one (1) ton and further declined to one half ton in 1980. The decline continued until the 1990, where the average volume of production of fish corrals is 100 kilos. Interestingly, fish catch significantly increased to 300 kilos at present because of increased time spent in fishing by the local fishers.[64] The fluctuating production of fish catch adversely affected the sources of income not only of the municipal fishers but also of the commercial fishers. Consequently, the decline of fish catch encouraged the proliferation of new fishing technologies and methods, which are often destructive, just to augment the volume of their production and income.

To take another case, the San Miguel Bay, in the Bicol Region, is characterized as overfished. Based on the charts on the Bureau of Coastal and Geodetic Survey, the maximum water depth in the area of municipal jurisdiction in San Miguel Bay does not exceed 5 fathoms. It appeared that only a very small portion of the municipal grounds exceed 4 fathoms. This is attributed to the gradual shallowing of the bay, which has put most of the trawling grounds outside municipal waters.[65] However, with the passage of R.A. 8550 or the Philippine Fisheries Code of 1998, all waters in San Miguel Bay are now municipal waters. It rendered all commercial fishing activities basically illegal in San Miguel Bay. Strict implementation of the law, however, is another prevailing problem in the country.

Conclusion and Recommendation

The revocation of DAO-17 and the non-adaption of archipelagic principle in the delineation of municipal waters result to absurd cases, as shown in this paper. Moreover, other legitimate social issues should also be emphasized. These issues include, among others:

Heightens Resource Use Conflict. Without clear delineation and delimitation of municipal waters, resource use conflicts arise. One of the reasons behind the decline in health of marine and coastal resources in the country is the deepening disputes over the use of resources. With the deadlock on the issue of the reckoning point of the 15 kilometer municipal waters, a great deal of uncertainty exists over who actually has the rights to the resources and who should be excluded.[66] The unsustainable and open access condition of our municipal waters results in increasing fishing effort and competition among resource users. If left unabated, this likely leads to the further destruction of coastal resources and marginalization of municipal fisherfolks.

[64] ISO/SEEDS. 2004. State of Coastal Resources in the Municipality of Madridejos, Bantayan Island Cebu.
[65] Lim, Cristina P., Yoshiaki Matsuda and yukio Shigemi. Problems and Constraints in the Philippine Municipal Fisheries: The Case of San Miguel Bay, Camarines Sur. n.d.
[66] Olive, Steve. Competition and Dispute Settlement for Fishery Resources: A Case Study of Property Regimes in Sarangani Bay.Paper presented at the 4th International Association for the Study of Common Property Conference, June 15-19, 1993, Philippine Village Hotel, Manila, Philippines.

Unsustainable utilization of the community's marine and coastal resources. Absence of management system contributes to the systematic deterioration of the marine environment in the country. As people depend more and more on the available coastal resources, they tend to exploit these resources without consideration of the future. Both municipal and commercial fishers are yet to recognize this, as manifested in the decline of their fish catch.

The "open access" treatment of the municipal waters and the absence of a concrete fish management plan aggravate the present problem of degradation of marine environment. Without concrete plan on how to responsibly explore the economic potentials in the fishing industry, Filipino fishers attempt to outdo each other in terms of production volume. As these resources continue to be subjected to the pressure coming from human activities, fish production and consequently, the income of fishers decline.

In the current poor state of coastal resources, the needs to reduce fishing efforts and to limit the entry of fishers in designated zones are deemed important. The offshore limit of municipal waters was originally 3 nautical miles, which is equal to 5.4 kilometers in the Commonwealth Act 4003 of 1932. This was later extended to 7 kilometers in the Presidential Decree 704 of 1975, and to 15 kilometers in the Local Government Code of 1991. The 15 kilometer-municipal waters was adapted by the Philippine Fisheries Code in 1998. However, the specification of distance limits in the first three laws (C.A. 4003, P.D. 704 and R.A. 7160) was mainly for taxation purposes, whereas in the Fisheries Code of 1998, the distance limit was for fisheries resources management.[67] It is thus firmly expressed under the Philippine Fisheries Code that the management of fisheries resources should be emphasized.

Inconsistency in National Laws. Tthe Philippine Fisheries Code, as the governing policy of the state for fisheries, does not clearly define the complementation with other National Laws and Structures. This has resulted in inconsistency with other national laws and uncoordinated systems of fisheries administration by the state. This contributes very much in the failure of the government agencies in implementing its program for fisheries development. A major example to these is the confusion on which Department should issue the guidelines on the delimitation/delineation of municipal waters resulting to the revocation of DENR Administrative Order 2001-17 (DAO-17).[68] Another example is the creation of different bodies through national laws. The Agriculture and Fisheries Modernization Act (AFMA) created the National Agriculture and Fisheries Council (NAFC) which is mandated to act as an advisory body to ensure the success of the programs and activities of the DA related to agriculture and fisheries. It is tasked to serve as a consultative and feedback mechanism from the lowest level possible to the top decision-makers and to assists in defining and formulating goals and scope of the

[67] Ingles, Jose A. and Jimely O. Flores. Redefining the Existing Philippine Capture Fisheries Sectors. n.d.
[68] Escoton, Vivian-Dedase. 2005. Policy Journal on Fisheries Administration: The Civil Society Perspective. NGOs for Fisheries Reform; Quezon City.

country's food and agricultural policies, plans and programs. The council is organized from national, regional, provincial and regional level. The AFC almost has the same nature as the FARMC, which has confused the fisher folk as to what is the appropriate council that will best respond to the concerns of the fishery industry and where they can participate genuinely in the decision-making.[69]

Policy Recommendations

In the past 8 years since the passage of the Fisheries Code alone, there have been several crises that overcame the sector and affected the lives of the marginalized municipal fisherfolk, men and women alike. There were the rampant 'fish kills' that overwhelmed several fishing grounds in the country. There is also the continuing problem between the commercial and municipal fishers over municipal waters, and the continual degradation of the country's coastal and aquatic resources brought about by overfishing, a direct result of the open-access situation in the country. Not to mention the damage being incurred from the perpetual incidences of poaching in Philippine waters. All of these have affected the fisheries sector in varied but potentially threatening ways.

It is explictly expressed that the policy of RA 8550 is to protect the rights of fisherfolk, especially the local communities with priority to municipal fisherfolk, in the preferential use of the municipal waters and to ensure the rational and sustainable development, management and conservation of the fishery and aquatic resources in Philippine waters. In order maximize the potentials brought about by R.A. 8550, this paper suggests the following:

1. Adapt Archipelagic Principle in the Delineation of Municipal Waters

The Philippine Fisheries Code of 1998 or RA 8550 is aimed at the conservation, management and development of fishery resources. It attempts to do this by establishing a system of resource allocation. Under the said law, it is reserving the 15 kilometers of municipal waters to the use of municipal fisherfolks subject to the 10.1 to 15 kilometer exception given to small commercial fishing vessels weighing more than 3 gross tons but not exceeding 20 gross tons. In order for the state to do that, the inhabitants of coastal areas should be given municipal waters. There should be no substantial distinction between municipal fisherfolks inhabiting an offshore island

[69] Ibid.

beyond 15 kilometers from the general coastline which is not at all defined under RA 8550, only having as reference point "including offshore islands"; and those municipal fisherfolks inhabiting the mainland.

The absurd results as shown in this paper should draw one to conclude that what was meant to refer to the phrase "including offshore islands" is that it is included in the term "general coastline." Making the phrase "including offshore islands" refer to the third line 15 kilometer from general coastline which is the mainland will violate the requirement that the third line be drawn from where the boundary lines of the municipality touch the sea at low tide.

2. Implement Preferential Treatment to Municipal Fishers on the Use of Municipal Waters. Tenurial rights are imperative in ensuring that fisherfolk communities obtain permanent, exlusive rights over the resources in a specific area, that fickle politics or legislation will not eventually deprive them of the long term benefits of their management efforts.[70]

3. Establish Information Management System

The lack of a systematized information management for the fisheries results to differences in the modes of program intervention, which affect the impact of these interventions to target coastal communities. Under the Philippine Fisheries Code of 1998, the DA-BFAR is mandated to supervise the establishment of an information management system for the fisheries sector. However, this particular mandate of BFAR has yet to be emphasized. There are an increasing volume of studies that had been conducted by the government, particularly about its programs like the Fisheries Sector Program and the Fisheries Resources Management Program. The non-government organizations and its partner people's organizations have also produced significant volumes of research and case studies about coastal resources management all around the country. The task then is to gather all these important studies, put them in one database and make it available for everyone.

The establishment of a systematized information management can facilitate the sharing of knowledge and ideas of different sub-sectors in the fisheries industry. This is relevant since the core issue of municipal waters, in particular, and the Philippine Fisheries Code of 1998, in general, is the issue on resource management. These data are can be made as a very reliable replicable sources of learning not only among the government officials but also to the program implementers and policy makers. In fact, these data are also necessary in rationalizing management frameworks, which include temporal and spatial closures of fishing grounds, among others. Temporal closure includes reducing fishing

[70] GARCIA, J.R. 2004. Equitable Access and Preferential Use of Municipal Waters by Municipal Fisherfolk, pp.175-179. In DA-BFAR. In Turbulent Seas: The Status of Philippine Marine Fisheries. Coastal Resource Management Project, Cebu City, Philippines. 378 p.

efforts through limiting fishing during spawning season. Spatial closure, on the other hand, emphasizes the establishment of marine protected areas and marine sanctuaries, wherein fishing activities are basically off-limits.

4. Encourage inter-municipality cooperation among stakeholders. BFAR should encourage inter-municipality cooperation among LGUs in coastal resource protection and management wherever possible. The effect of whatever environmental destruction done nearing its land boundary will most likely be felt by the municipality near it. It is in the interest of such municipality to see to it that it will be ensured of waters capable of sustaining the development and needs of the inhabitants of the municipality without sacrificing the needs of the future generations of inhabitants. Furthermore, in case of doubt, one should resolve the doubt in favor of the municipal fisherfolk.

In order to implement a Coastal Resource Management Program that addresses the needs of the fishing industry, multi-sectoral collaboration is crucial. Republic Act 7160 (Local Government Code of 1991) and Republic Act 8550 (Philippine Fisheries Code of 1998) mandate the LGU to manage the municipal waters, covering ocean areas within fifteen (15) kilometers from the shorelines. Aside from this, the LGU must facilitate the formation and the strengthening of barangay and municipal-wide resource management organizations to assist the former in resolving fishery-related issues. The LGU must adopt Community-Based Coastal Resource Management (CB-CRM) as a management approach to sustainably utilize coastal resources. It must encourage the participation of coastal residents and people's organizations in the planning and management of coastal resources.

The Barangay and Municipal FARMCs are potential venues to encourage participation from the fisherfolks in policy-making in order to make government officials more accountable for their action and to allow policies and processes to be more transparent to the constituents. Strengthening these local bodies by conducting capability-building activities would help them attain their mandated goals. However, these councils are highly vulnerable to politicking. The current set-up puts emphasis on the role of the local municipal government in setting up the consultative body. The organized fisherfolk groups should initiate the formation of the body. The municipal government must facilitate the process only if there are no existing groups to initiate its formation. Also, the process must be made more inclusive in order to have a broader representation of the fisherfolk.

Establish Department of Fisheries

The fisheries sector especially the municipal fisheries have always been marginalized in terms of budget appropriation. Fisheries concerns have always been lumped under the budget for agriculture. In year 2004 alone, the fisheries budget stipulated in the general appropriations act and subsumed under the budget for the Department of Agriculture, amounts to a mere P435.7 million (14 percent) of the P3.1 billion budget. Under the

Agriculture and Fisheries Modernization Program of the government, the fisheries sector accounts for only P1.27 billion (10.3 percent) of the total P12.2 billion. And that's only what's written on paper, what gets allocated for program implementation is another matter.

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