

**IN DEFENSE OF FISHERFOLK RIGHTS:
THE MUNICIPAL WATER DELINEATION EXPERIENCE IN THE PHILIPPINES
By**

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Theme: Access, Rights and Responsibilities

On February 9, 1998, the Philippine 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 governs the utilization of fisheries and coastal resources. 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 As the most recent binding law on fisheries, R.A. 8550 outdated Presidential Decree 704, which was passed during the administration of President Ferdinand Marcos.

R.A. 8550 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, R.A. 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). In 2001, Department Administrative Order-17 was released by the Department of Environment and Natural Resources (DENR) that provides for the guidelines in municipal water delineation. Unfortunately, this was revoked due to technicalities and political reasons.

Based on the 2010 data of the National Mapping and Resource Information Authority (NAMRIA), which is the main agency tasked to delineate municipal waters, there are more than 900 coastal municipalities that have completed the municipal water delineation. Unfortunately, only 46 of these municipalities have passed their ordinances on municipal water delineation. It is hoped that through extensive dialogue, the LGUs and fishing communities will understand the added value of having their municipal waters delineation. These added values can be expressed in terms of improved resource management and territorial boundary dispute resolution. It has been emphasized in various occasions that a delineated municipal waters enhances inter-municipality cooperation because of resolution of territorial boundary disputes.

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 reckoring point of the 15 kilometer municipal waters should be the outermost island of the municipality.

This paper shows that the archipelagic principle should be adopted in municipal water delineation for the following reasons:

1. Supported by Legal and Technical Bases

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 regarded as such.¹ Thus, as a matter of policy, it is best to apply the archipelagic principle in the delineation of internal waters of the state.

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."*²

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.³ 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 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.⁴

¹ Jorge R. Coquia, Development of the Archipelagic Doctrine as a Recognized Principle of International Law, 58, PHILIPPINE LAW JOURNAL 13, 20-21 (June 1983).

² The 1987 Philippine Constitution.

³ 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.

⁴ Atty. Jay L. Batongbacal. Who's Afraid of Municipal Waters, 3 (NAMRIA Files on Delineation of Municipal Waters).

2. 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.⁵

3. Enhances the Territorial Jurisdiction of the Local Government Units Over the Municipal Waters

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.

4. Promotes Accountability in the 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 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.'⁶

⁵ Legal Conference on the Use of Archipelagic Principle in Delineating Municipal Waters held at Conspiracy Garden Café last May 22, 2006.

⁶ Records of the House of Representatives Committee on House Bill No. 7366, 37 (June 04, 1997).

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.⁷

5. Lessens sub-sector competition over the use of a fishery resource

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.⁸ 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.⁹

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

⁷ 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.

⁸ 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, December 10, 1998.

⁹ <http://www.fao.org/fi/fcp/en/PHL/profile.htm>

excluded.¹⁰ 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.

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.¹¹ It is thus firmly expressed under the Philippine Fisheries Code that the management of fisheries resources should be emphasized.

Inconsistency in National Laws. The 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).¹² Another example is the creation of different bodies through national laws. The Agriculture and Fisheries Modernization Act (AFMA) created the National Agriculture

¹⁰ 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.

¹¹ Ingles, Jose A. and Jimely O. Flores. Redefining the Existing Philippine Capture Fisheries Sectors. n.d.

¹² Escoton, Vivian-Dedase. 2005. Policy Journal on Fisheries Administration: The Civil Society Perspective. NGOs for Fisheries Reform; Quezon City.

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 assist in defining and formulating goals and scope of the 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.¹³

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¹³ Ibid.

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