



Most, if not all of the questions answered in this section were generated from CRMP's six learning sites in San Vicente, Palawan; Olango Island, Cebu; Northwest, Bohol; Bais Bay, Negros Oriental; Malalag Bay, Davao del Sur, and Sarangani Bay, Sarangani Province. These questions have been asked in fora organized by the project including Coastal Resource Leadership Challenge Workshops, Policy Forum, Technical Working Group Meetings, and Consultation Workshops (Annex C). Some questions are truly "commonly asked" while some others were drafted by the project to clarify or respond to some prevailing issue. A small number are theoretical and anticipatory in nature.

Using various forms of legislation, attempts were made to respond to these questions. In addition, a rigorous procedure of review by DENR, DA-BFAR, and DILG was initiated to attain a level of confidence and consensus. The questions are grouped under several relevant subjects.

**Q** 5.1.1 Does a municipal ordinance banning the use of certain fishing gears within municipal waters need approval from the national agencies for the ordinance to be effective?

**A** No. The municipality or city may institute ordinances banning the use of certain fishing gears without approval from the national agencies. Sections 48 to 59 of the LGC enumerate the step-by-step procedure in local law-making vested on the Mayor and the Sangguniang Bayan (SB) and the manner of approving and validating local legislation by the Sangguniang Panlalawigan (SP) pursuant to Sections 54 and 56, respectively. Section 534 (e) expressly repeals only Sections 2, 16, and 29 of PD 704 and not section 4, which provides for Department approval before any ordinance is passed. Section 534 (f) states that "*all general and special laws, acts, city charters, decrees, executive orders, proclamations*

*and administrative regulations, or part or parts thereof which are inconsistent with any of the provisions of this Code are hereby repealed or modified accordingly.*" This provision thus renders section 4 of PD 704 irrelevant.

Section 17 of the LGC clearly devolves the enforcement function to the appropriate LGU, i.e. "*for a municipality: enforcement of fishery laws in municipal waters...*". Section 149 further reinforces this capability by identifying the appropriate entity, the SB, specifying its powers and the mechanism to enforce such powers through ordinances: "*the SB shall, by appropriate ordinance, penalize the use of explosives, noxious or poisonous substances, electricity, muro-ami, and other deleterious methods of fishing and prescribe a criminal penalty in accordance with provisions of this code; the SB shall have the authority to prosecute any violation of applicable fishery laws*".

## 5.1 CAPTURE FISHERIES AND FISHERY LAW ENFORCEMENT





**Q** 5.1.2 Who should delineate municipal fishing boundaries?

**A** The LGC of 1991 devolves to municipalities the exclusive authority to grant fishery privileges within municipal waters which have been redefined under Section 131 (r) to include all marine waters between the municipality's coastline up to a distance of 15 km offshore and parallel to the coastline.

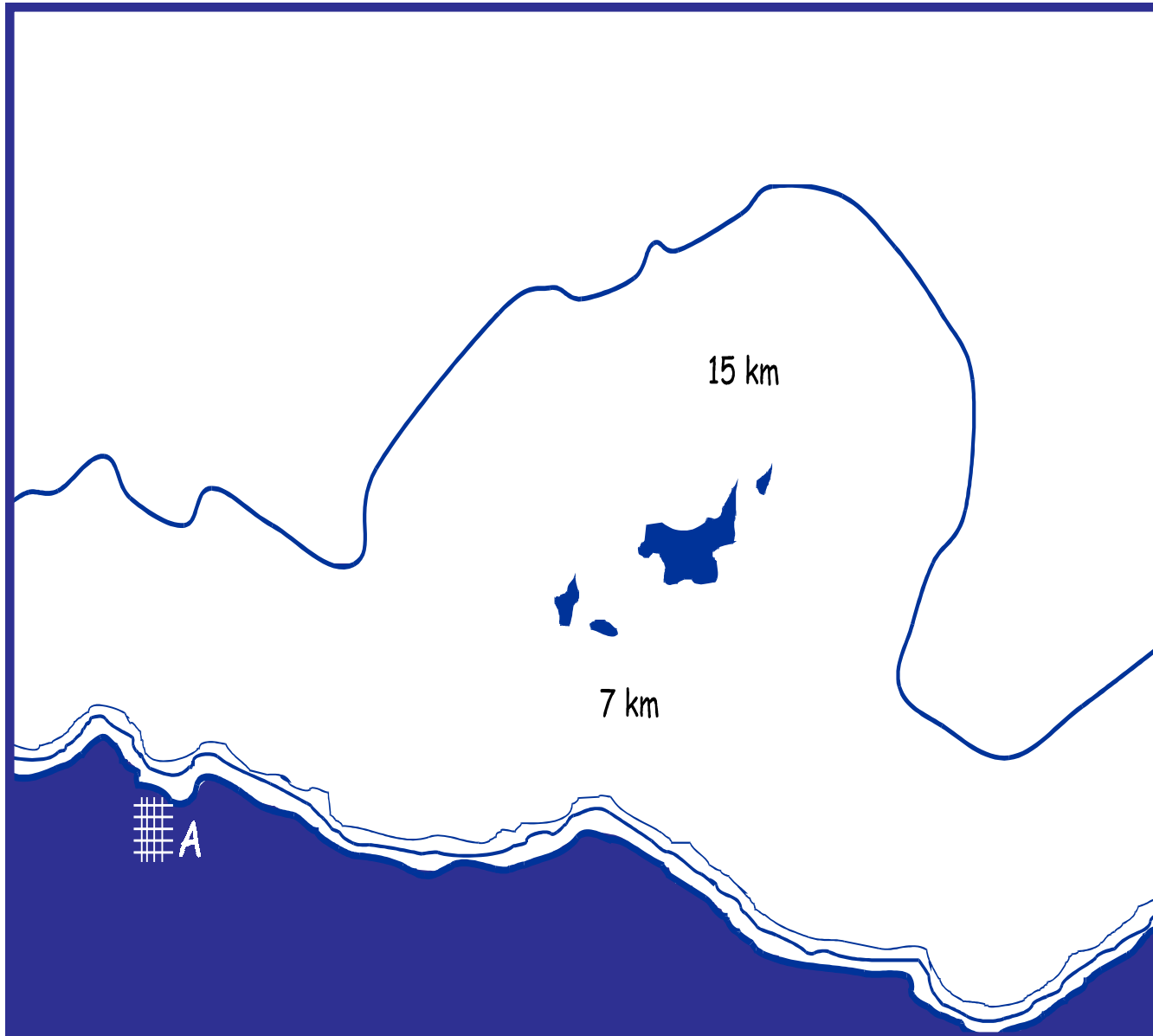
Based on these provisions, it becomes incumbent for the municipal governments to measure, delineate, zonify, and produce maps of their respective territorial boundaries, employing in the process the services of a certified geodetic engineer. Such a measure is a pre-requisite for the issuance of fishery privileges and the effective governance of the fishery resources. For purposes of efficiency and expediency, the delineation of municipal territorial waters should be undertaken jointly by contiguous municipalities to avoid future controversies in boundary lines.

The provisions for the amicable settlement of boundary disputes between barangays, municipalities, and component cities are found in LGC Section 118.

**Q** 5.1.3 How should different prototypes of coastal municipalities measure their municipal waters?

**A** Section 131 of the LGC defines "municipal waters" as "including not only streams, lakes, and tidal waters within the municipality, not being the subject of private ownership and not comprised within the national parks, public forest, timber lands, forest reserves or fishery reserves, but also marine waters included between two lines drawn perpendicularly to the general coastline from points where boundary lines of the

municipality or city touch the sea at low tide and a third line parallel with the general coastline and fifteen (15) kilometers from it. Where two (2) municipalities are so situated on the opposite shores that there is less than fifteen (15) kilometers of marine waters between them, the third line shall be equally distant from opposite shores of the respective municipalities". The measurement of municipal waters for three prototypes of coastal municipalities are shown in Figures 5-1, 5-2, and 5-3.



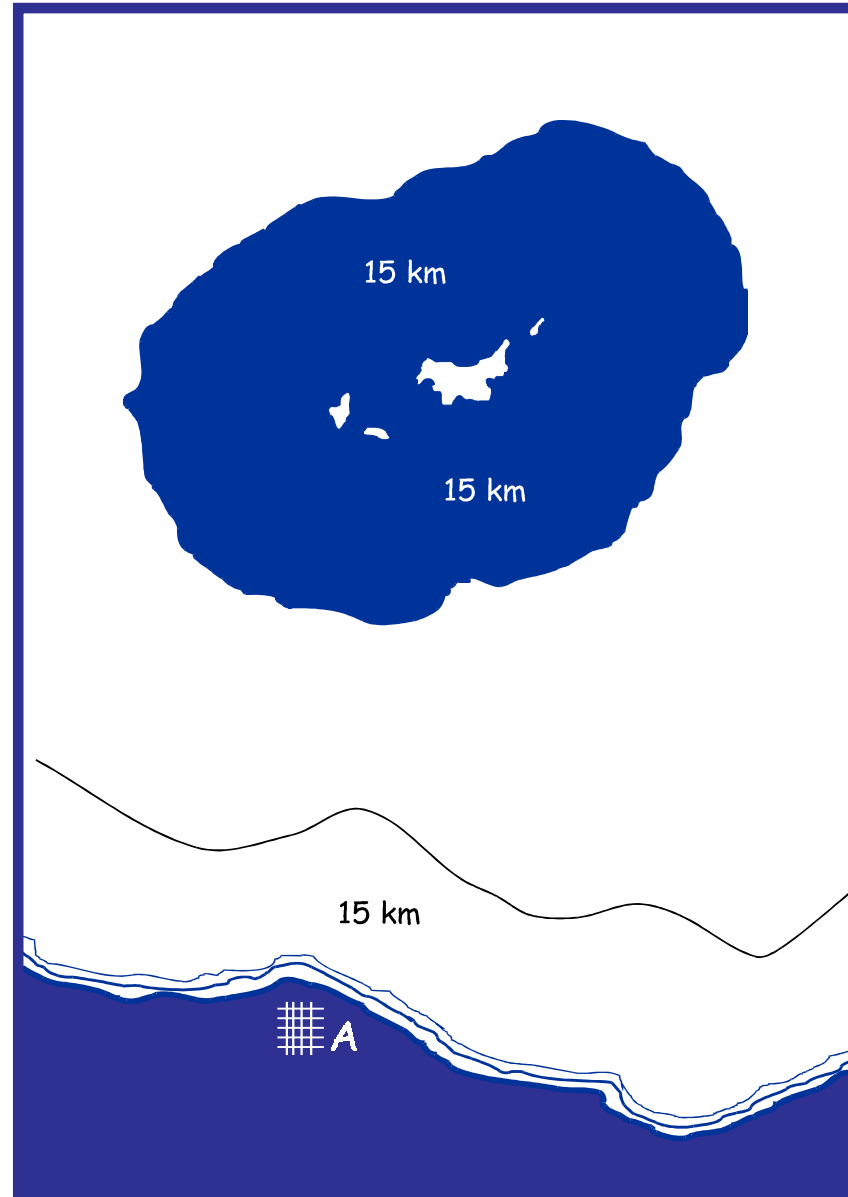
**FIGURE 5-1.**  
**CASE 1: THE MUNICIPAL TERRITORIAL WATERS SHALL BE MEASURED FROM THE OUTERMOST POINTS OF ISLANDS BELONGING TO THAT MUNICIPALITY**

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**FIGURE 5-2.**  
**CASE 2: WHERE A GROUP OF ISLANDS BELONGING TO MUNICIPALITY A IS LOCATED WAY OFFSHORE (SAY MORE THAN 30 KM), THE GROUP OF ISLANDS SHALL ASSUME ITS OWN 15 KM BOUNDARY**





**FIGURE 5-3.**  
**CASE 3: WHERE THERE IS LESS THAN 30 KM OF MARINE WATERS BETWEEN THE SHORES OF MUNICIPALITY A AND THE OUTERMOST POINTS OF ISLANDS BELONGING TO MUNICIPALITY B, THE MUNICIPAL WATERS SHALL BE EQUIDISTANT BETWEEN THE SHORES OF A AND THE ISLANDS OF B**





**Q** 5.1.4 Is commercial fishing allowed within municipal waters?

**A** The issue of whether commercial fishing within the 15-km municipal territorial waters is legal or not has been interpreted in various and often conflicting angles, largely depending on sectoral interests. While the different interpretations remain unchallenged, DA-BFAR, which has jurisdiction over fisheries, has issued its official position on the matter: it declares that the

commercial fishing licenses issued by the BFAR are not valid for fishing operations within municipal waters. This position is contained in three policy instruments:

- ◆ A Memorandum dated 12 December 1991 from then DA Secretary Senen Bacani to the Officer-in-Charge of the BFAR and all DA Regional Directors directing that, “[i]n line with the DA’s efforts to equitably distribute access to the country’s marine resources and help uplift the livelihood of sustenance fishermen, all licensing units are hereby instructed to place the following notation on all commercial fishing boat licenses: “NOT VALID FOR FISHING OPERATIONS WITHIN MUNICIPAL WATERS AS PROVIDED BY LAW.”
- ◆ On August 24, 1993, in response to persistent queries on the matter, then BFAR Director Guillermo Morales issued an Inter-Office Memorandum declaring the “official stand (of the BFAR) on the issue of commercial fishing in municipal waters”. The Memorandum states: “Our official stand on the above matter is that DA/ BFAR cannot issue Commercial Fishing Boat Licenses for operations within 15 km because the jurisdiction in municipal waters is exclusive to the LGUs. On the other hand, we also believe that LGUs cannot issue permits for commercial fishing boats to operate within 15 km because their authority is only limited to the issuance of permits/licenses to boats 3 gross tons or less”. In this pronouncement, BFAR based its position on Section 149 of the Local Government Code which provides that municipalities shall have the exclusive authority to grant fishery privileges in municipal waters, including the licensing of fishing vessels 3 GT or less.
- ◆ To strengthen this official position, then DA Secretary Roberto Sebastian issued on November 26, 1993 a Memorandum to all DA Regional Directors quoting verbatim the entirety of and reaffirming the foregoing BFAR Inter-Office Memorandum.



**Q** 5.1.5 Should municipal fishers be disallowed from fishing in waters beyond their municipal boundaries?

**A** There is no national law that prohibits municipal fishers from fishing beyond their municipal boundaries, i.e, fishing in municipal waters in which they are non-residents. However, Sec. 149 of the Local Government Code provides for the *Sangguniang Bayan* to promulgate rules and regulations regarding the issuances of fishing boat licenses, including

the possibility of prohibiting non-resident municipal fishers from fishing in contiguous municipal waters. It is strongly suggested, though, in the spirit of cooperative undertaking (RA 7160, Sec. 33), that contiguous coastal municipalities develop a uniform fishery ordinance for said resource system.

**Q** 5.1.6 Can the SB promulgate payment of a fisherman's license or permit?

**A** Yes. Section 3 (d) of the LGC states that “*local government units shall have the power to create and broaden their own sources of revenue...* ”. Municipal fishers not belonging to the group defined as marginal may be imposed a license for regulatory purposes. Moreover, Section 149 (a) states that municipalities shall have the exclusive authority to grant fishery privileges in

municipal waters and impose rentals, fees, or charges therefor while Section 149(b)(3) grants the SB the power to “*issue licenses for the operation of fishing vessels of three (3) tons or less, for which purpose the Sangguniang Bayan shall promulgate rules and regulations regarding the issuance of such licenses to qualified applicants under existing law*”.

**Q** 5.1.7 Can the SB or mayor via ordinance prohibit the use of certain gears not otherwise covered in existing FAOs and alter the mesh sizes provided by law?

**A** Yes. The broad implication of Section 149 of the LGC, “*the Sanggunian concerned shall, by appropriate ordinance penalize the use of...., and other deleterious methods of fishing and prescribe a criminal penalty therefor*” and the specific powers and functions expressly stated in Section 447(a)(1)(vi) mean that the SB may prohibit the use of certain gears. Moreover, LGC Section 3(I) supports such move by saying that the LGC shall share with the national

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government the maintenance of ecological balance. These statements, however, put the burden of proof on the SB to conclusively determine the deleterious effect of the gear discriminated upon.

Municipal ordinances affecting mesh size of nets should conform to existing national laws and administrative orders, such as FAOs on mesh sizes – FAO 155 (less than 3 cm) , FAO 155-1 (based on fishing gear), FAO 188 (tuna purse seine to take effect in Sept 1998), and FAO 190 (*pa-aling*).

**Q** 5.1.8 Before any Bantay Dagat members are organized and authorized by the LGUs, if there is any illegal fishing within view of the local fishermen and stakeholders, will they be able to make arrests and seizures? Is the citizen's arrest allowed or is there a need to inform the

**A** Yes, by virtue of citizen's arrest under the Rules on Criminal Procedure, as amended. PCG's prior consent or knowledge is not necessary.

**Q** 5.1.9 Marginal fishers can freely gather, take, or catch bangus fry, prawn fry (*kawag-kawag* or fry of other fish species) and fish from the municipal waters. How will the LGU ensure the enforcement of this LGC provision? Who will ensure such enforcement – LGUs or the BFAR?

**A** LGUs. However, they are not prohibited from seeking the assistance of other government enforcement agencies like BFAR or the PCG. (LGC, Section 444 (b) (2) (vi) ).



**Q** 5.1.10 A public bidding was conducted to award a 5-year fry concession to the highest bidder (assuming that there are no organized cooperatives of marginal municipal fishers). However, the lessee petitioned the council to lower the lease rates by 20%. Moreover, an extension of the original lease

**A** No. The requirement of competitive bidding, in the event that there are no marginalized groups participating, is for the purpose of inviting competition and to guard against favoritism, fraud, and corruption in the

letting of fishery privileges. There is no doubt that the original lease contract in this case was awarded to the highest bidder, but the reduction of the rental and the extension of the term of the lease appear to have been granted without previous public bidding. The resolution is null and void as it is contrary to law and public policy.

**Q** 5.1.11 Can community health officers give permits to those engaged in fishing with use of compressors?

**A** Community health officers certify only the dive-worthiness of individuals and not the fishing activity held in conjunction with the diving. The granting of fishery privileges, regardless of the gear(s) to be used, is exclusive to the SB. The SB may require health certificates for those who are engaged in fishing with the use of compressors but this shall not in any way substitute as a fishery license.

**Q** 5.1.12 Is fishing with the use of compressors legal?

**A** There is no law (national) that bans the use of compressors as an aid to fishing. However, if the fishing operation involved, such as the use of cyanide, is prohibited by a national law, then the diver using a compressor shall be liable under PD 704 as amended by PD 1058. If the fishing activity comprises the gathering of marine mollusks, the diver should possess a shell fishing license from BFAR (FAO 11).  
A municipality has the discretion of banning compressors in



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fishing through an appropriate municipal ordinance if the fact that compressor diving in association with specific fishing activities causes ecological imbalance is established.

**Q** 5.1.13 Who has jurisdiction over the enforcement of fishery and environmental laws within municipal waters?

its implementing FAOs) and locally (municipal fishery ordinance) promulgated.

**A** Under Section 17 of the LGC, enforcement of fishery laws within the territorial waters of a municipality has been devolved to the respective municipal or city governments. On the other hand, the enforcement of community-based forestry laws, small-scale mining laws, pollution control laws, and other laws on the protection of the environment has been devolved from DENR to the provincial governments. For fishery laws, it has been clarified by BFAR that it is the duty of the LGUs to enforce fishery laws that are both nationally (PD 704 and

**Q** 5.1.14 What is illegal fishing?

**A** Illegal fishing is fishing with the use of destructive materials or substances such as dynamite or its derivatives, noxious or poisonous substances, electricity or the use of fishing gear prohibited by existing fishery laws, rules, and regulations.

**Q** 5.1.15 What laws prescribe penalties for illegal fishing activities and what are the respective penalties?

**A** See Table 5-1.



**TABLE 5-1.  
LAWS GOVERNING ILLEGAL FISHING  
ACTIVITIES AND PENALTY  
SCHEDULE**

***Blast or dynamite fishing* ..... PD 704; as amended by PD 1058**

- √ Mere possession of explosives: imprisonment ranging from 12 to 25 years
- √ Fishing with explosives: imprisonment ranging from 25 years to life imprisonment: provided that if the use of explosives results in:
  - ◆ Physical injury to any person; the penalty shall be imprisonment ranging from 25 years to life imprisonment; or
  - ◆ The loss of human life; the penalty shall be life imprisonment or death.

***Cyanide fishing* ..... PD 704; as amended by PD 1058**

- √ Imprisonment ranging from 8 to 10 years, provided that if the use of substance results in:
  - ◆ Physical injury to any person; the penalty shall be imprisonment from 10 to 12 years; or
  - ◆ The loss of human life, the penalty shall be imprisonment from 20 years to life, or death.

***Electrofishing* ..... RA 6541**

- √ Imprisonment ranging from 2 to 4 years

***Use of fine-mesh nets* ..... FAO 155, s1986**

- √ A fine of not less than P500.00 but not more than P5,000.00 or imprisonment of not less than 6 months to 4 years, or both such fine and imprisonment, at the discretion of the court: Provided, however, that the Director of BFAR is empowered to impose upon the offender an administrative fine of not more than P5,000.00 including the confiscation of the fishery nets or paraphernalia and the fish catch.

***Knowingly possess, deal in, sell, or dispose for profit illegally caught, taken, or gathered fish or aquatic products* ..... Section 33 par. 2, PD 704 as amended**

- √ Imprisonment of 5 to 10 years (as amended by Sec. 3, PD 704).

***Fishing with the use of fine-mesh nets, except when these nets are used for catching bangus fry, glass eels, and other species which by nature are small but already mature* ..... Section 34 PD 704 & FAO 155 as amended by FAO 155-1 s1994**

- √ Imprisonment from 6 months to 4 years or a fine of not less than 500.00 but not more than P4,000.00 or both (PD 704, FAO 155)
- √ Taking or catching of *sabalo* (60 cm or more) or full-grown milkfish in Philippine waters (FAO 129, FAO 129-1 - except those caught in freshwater. FAO 129-2 - provided proper certificate from CENRO exists) Fine of P500.00 to P5,000.00 or imprisonment of 6 months to 4 years or both at court's discretion.



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**TABLE 5-1. (CONTINUED)  
LAWS GOVERNING ILLEGAL FISHING  
ACTIVITIES AND PENALTY  
SCHEDULE**

<i>Gathering, catching, taking, removing marine tropical or aquarium fishes without permit</i>	<i>FAO 124 as amended by FAO 148</i>
√ Imprisonment of 8 to 10 years	
<i>Exportation of bangus fry</i>	<i>Section 36 PD 704</i>
√ Imprisonment of 1 year to 5 years or a fine of P1,000.00 to P5,000.00 or both	
<i>Gathering and farming seaweed without license or permit</i>	<i>FAO 108 as amended by FAO 146</i>
√ Imprisonment of 6 months to 4 years or a fine of P500.00 to P5,000.00 or both	
<i>Exportation or importation of fish and fishery products without permit</i>	<i>Section 18 PD 704, FAO 157 &amp; 135</i>
√ Imprisonment of 6 months to 4 years or a fine of P500.00 to P5,000.00 or both	
<i>Transporting fishery products from point of origin to another place without auxiliary invoice</i>	<i>FAO 2-89/19-6, FAO 145</i>
√ Imprisonment of 6 months to 4 years or a fine of P500.00 to P5,000.00	
<i>Discharging and placing in Philippine waters substances or materials deleterious to fishery aquatic life</i>	<i>Section 27 PD 704</i>
√ Imprisonment of 6 months to 4 years or fine of P500.00 to P5,000.00 or both	
<i>Foreign boat illegally fishing in Philippine waters</i>	<i>Section 39 PD 704</i>
√ Confiscated administratively including the catch and fishing equipment without prejudice to criminal or civil action that may be taken against the owner or operator	
<i>Construction or establishment of fish pond or fish enclosures in inland waters without permit</i>	<i>FAO 109</i>
√ Imprisonment of 6 months to 4 years	
<i>Importation and/or possession of live piranha</i>	<i>FAO 126</i>
Imprisonment of 6 months to 4 years	
<i>Vessels entering fishery reserved or enclosed area</i>	
Fine not exceeding P5,000.00	





**TABLE 5-1. (CONTINUED)  
LAWS GOVERNING ILLEGAL FISHING  
ACTIVITIES AND PENALTY  
SCHEDULE**

<p><i>Collecting, gathering, utilizing, possessing, transporting, disposing of marine turtles, turtle eggs, or any of its products, except in Reg. 9 and 12..... MNR Adm. Order No. 12, Series 1975</i></p> <p>√ Imprisonment of not more than 6 years or a fine of P600.00 or both</p>
<p><i>Obstruction of fishery officer boarding fishing vessels for inspection ..... Section 41 (d) PD 704</i></p> <p>√ Fine not exceeding P500.00 and cancellation of license</p>
<p><i>Unlawful obstruction or delays in the inspection and/or movement of fish and fishery products when such inspection and movement are authorized..... PD 704 Section 38 (d) D 704</i></p> <p>√ Imprisonment of not more than 2 years or a fine of not more than P2,000.00 or both</p>
<p><i>Fishing in Philippine waters with the use of muro-ami (drive-in-net), kayakas, scareline (Serosca) FAO 163, s1996</i></p> <p>√ Imprisonment of 6 months to 4 years or fine of P500.00 to P5,000.00 or both</p>
<p><i>Catching, taking, selling, purchasing, possessing, and transporting Dolphins ..... FAO 185, s1992</i></p> <p>√ Imprisonment of 6 months to 4 years or fine of P500.00 to P5,000.00 or both</p>
<p><i>Importation of live shrimp and prawns at all stages except those with special permit ..... FAO 189, s1993</i></p> <p>√ Imprisonment of 6 months to 4 years or fine of P500.00 to P5,000.00 or both</p>

**Q** 5.1.16 What types of fishing gears are banned?

**A** The banning of specific types of fishing gears is provided for in several administrative issuances (FAOs). Gears which are banned totally or in relation to specific areas or fishing practices include:

- ♦ **Pantukos**, defined as a tuck seine operated from two boats during moonless nights for catching *siliniasi* (fry or young of fish belonging to the family *Clupeidae*, sardines and herring) whereby schools of fish are driven into the net by a cordon of driver boats. The prohibition is specific for the operation of *pantukos* with the use of lighted torch (*waswas*) and the use of



kerosene, crude oil, gasoline, or any flammable substance poured on any water area and ignited to scare or drive the fish towards the gear. FAO 122, s1977, is the relevant administrative issuance regulating this gear.

- ◆ ***Muro-ami***, or drive-in net, defined as a Japanese fishing gear used in reef fishing which consists of a movable bag net and two detachable wings effecting the capture of fish by spreading the net in an arc form around reefs and shoals. With the aid of scaring devices, a cordon of fishers drive the fish from the reefs toward the bag portion of the whole net. ***Kayakas***, a local version of the muro-ami but smaller in size uses bamboo or wood as scare devices as well as coconut or other leaves or materials as scarelines to drive fish out of the coral reefs. The use of said gears is prohibited in all Philippine waters (FAO 163, s1986).
- ◆ ***Hulbot-hulbot***, a fishing gear consisting of a conical net with a pair of wings, the ends of which are connected to two ropes with *buri*, plastic strips or any similar materials which, with hauling ropes passing through a metallic ring permanently attached to a tom weight, serve as scaring or herding device when hauled into a fishing boat. The prohibition is limited to the use of such gear with fine-mesh nets less than 3 cm within a distance of 7 km and using fishing boats more than 3 GT from the shoreline of all coastal provinces. Provided, however, that for provinces comprising several islands or islets, the 7-km distance shall be measured perpendicularly from the shorelines of such islands or islets. Provided, further, that in a group islands or islets where the distance between islands or islets is 14 km or less, the group shall be treated as one island or islet and the 7-km distance shall be reckoned from the outer shorelines of such group of islands or islets. Regulations pertaining to the use of *hulbot-hulbot* is provided by FAO 164, s1987.
- ◆ **Commercial trawls and purse seines** are prohibited from operating in marine waters within a distance of 7 km from the shorelines of all provinces of the Philippines. Provided, that in coastal areas 7 fathoms deep or more which are not reached by sustenance fishers, the operation of commercial trawl and purse seines may be allowed by the Minister of Natural Resources, upon the recommendation of the BFAR Director (1328 LOI 1983).
- ◆ **Tuna purse seine** nets with mesh size less than 3.5 cm are prohibited from operating in Philippine waters. FAO 188, s1993, specifies these provisions and includes a repealing clause for FAO 155, in so far as commercial fishing boats using tuna purse seine nets are concerned.
- ◆ ***Pa-aling*** refers to a fishing gear consisting of a net set at coral or shoal reef areas whereby fish are driven towards the net by means of air bubbles produced by compressors. FAO 190, s1994, defines as unlawful the use of commercial *pa-aling* within municipal waters as defined in the LGC; the water jurisdiction of the



PCSD under RA 7611; the water area east of 119°30', south of 13°00 and north of 10°30; and fish sanctuaries, protected areas, and marine parks and reserves.

**Q** 5.1.17 Is it unlawful to burn or destroy apprehended illegal fishing gears?

gears. Apprehension does not necessarily connote conviction. Unless the apprehended persons are declared guilty by final court judgment, they are presumed innocent. Thus, their fishing apparatus should be preserved until the court orders its destruction. The fishing apparatus serves as vital evidence in court.

**A** Yes. The penalties provided by law (PD 704 and appropriate FAOs) are imprisonment and/or fine, cancellation of permits or licenses, and the seizure of fishing boats and illegal fishing apparatus pending criminal proceedings. The LGC authorizes the LGUs to impose only fines and/or imprisonment for violation of ordinances. There is no law authorizing the burning and destruction of apprehended illegal fishing

**Q** 5.1.18 Who are deputized to enforce fishery laws, rules, and regulations?

**A** Members of the PCG, PNP, local police forces, government law enforcement agencies, and other competent government employees duly appointed in writing by the Secretary of Agriculture are made deputies of said Secretary in the enforcement of all fishery laws, rules, and regulations.

**Q** 5.1.19 Who are qualified to be deputized as Fish Wardens and what is the legal basis for such deputation?

**A** Municipal mayors, duly elected barangay officials, and officers of duly registered fishers associations. The legal basis is Section 40 of PD 704, as amended; LOI 550 and LOI 929.

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## Commonly Asked Questions Answered



### 5.2 MANGROVE FORESTRY AND AQUACULTURE

**Q** 5.2.1 The DA-BFAR is responsible for the leasing of fishponds on government land (fishpond lease agreements). Has the issuance of FLAs been devolved to the LGUs?

**A** No, the issuance of FLA has not been devolved to the LGU. This power is still retained by the DA-BFAR.

**Q** 5.2.2 Who has jurisdiction over mangrove resources?

**A** Under the LGC, the conservation of mangroves, as well as the implementation of community-based forestry projects (including integrated social forestry programs) has been devolved to the LGUs (municipality or city) pursuant to national policies and subject to the supervision, control, and review of DENR (Sec 17 (2)(i),(ii)). The pertinent guidelines to effect the

devolution of these functions are spelled out in DAO 30, s1992. Community-based forestry projects refer to DENR developmental projects involving local communities which include the integrated social forestry projects, family and community contract reforestation, forest land management agreements, community forestry program, and other similar projects. On the other hand, the management, protection, and development of all other areas outside communal forests remain with DENR.

National policies and DENR guidelines for sustainable management of mangrove resources are contained in numerous legal instruments. The basic management framework is provided for in PD 705 or the Forestry Code of the Philippines which ascertains the jurisdiction of DENR in the management of forest land including that of mangroves. DAO 15, s1990 enumerates the various regulatory measures on mangrove conversion and conservation. Other laws that relate to mangrove resources include DAO 3, s1990 : policies for the award of mangrove stewardship contracts; DAO 76, s1987: establishment of buffer zones in mangrove areas; and DENR AOs, Memorandum Circulars, and BFAR Fisheries AOs relating to the control and management of fishpond lease areas converted from mangroves swamps.





**Q** 5.2.3 Which agency has jurisdiction over illegally expanded fishponds which employ the method of planting lines of mangrove to catch soil from the mainland, and in effect reclaiming land?

**A** Both DENR and BFAR can sue the FLA owner. If the fishpond owner has expanded and encroached in an area not released to BFAR for fishpond purposes, then DENR has jurisdiction over the case. On the other hand, BFAR, which has administrative jurisdiction and management over FLAs can prosecute the FLA owner for violating the terms and conditions of the FLA, which prohibits the illegal expansion of fishponds.

**Q** 5.2.4 Who has jurisdiction over reverted fishponds?

**A** DA-DENR Joint General Memorandum of Agreement (GMOA) Order No. 3, s1991 prescribes the guidelines for the reversion of FLAs into mangrove forest lands. Accordingly, FLAs found to be violating these guidelines will be reverted back to the administration of DENR. On the other hand, the DA-DAR AO 18, s1991, prescribes the guidelines to be followed in

the redistribution of cancelled and/or expired FLAs to agrarian reform beneficiaries. Cancelled FLAs can only be transferred to the administration of the DAR if the fishponds are situated in alienable and disposable lands; otherwise, they revert to the category of timberland which then becomes subject to the jurisdiction of DENR (DA-DENR Joint General Memorandum Order No. 3, s1991).

**Q** 5.2.5 What are illegal fishponds?

**A** Illegal fishponds can be any of three things: 1) fishponds sited in areas which are released for fishpond development but operate without FLAs, 2) fishponds sited in areas not released by DENR for fishpond development, and, 3) fishponds converted from mangrove swamps after the issuance of DAO 15, s1990, which prohibits further conversion of

thickly vegetated mangroves to fishponds.



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## Commonly Asked Questions Answered



The illegality of item 1) is borne by FAO 60, Section 24 of PD 704 and FAO 125, s1979. This provides the rules and regulations governing the conversion of ordinary fishpond permits (1 year) into 25-year FLAs, including eligibility for filing, where and how applications are filed, terms and conditions of the FLAs, rentals and surcharges and grounds for termination, cancellation, or rescission of FLA. Fishponds that operate in BFAR's area of jurisdiction without FLAs violate these laws and AOs. In this case, the Regional Fishery Officer should be alerted.

Item 2) is illegal because it is a violation of MNR AO No. 3. Item 3) is illegal because it is a violation of DAO 15, s1990.

**Q** 5.2.6 Who has jurisdiction over illegal fishponds?

**A** Fishponds sited in areas which have been released by DENR for fishpond development but which operate without FLAs are within the jurisdiction of BFAR.

prohibits further conversion of thickly vegetated mangroves into fishponds, are within the jurisdiction of DENR, specifically the Lands Management Services of the DENR Regional Office for public lands and the Forest Management Bureau for forest lands.

**Q** 5.2.7 What procedures are in place to legalize illegal fishponds?

**A** The joint DA-DENR GMOA 3, s1991 states that if the area released to DA-BFAR or any part thereof is actually occupied and developed prior to the effectivity of the Order, the occupant shall, within 180 days from effectivity, file a fishpond lease application thereon, comply with and submit to DA-BFAR all requirements for the issuance of a FLA, and pay the

penalties due pursuant to FAO 60 for each year since development began.

All applications for fishpond lease over forest lands which have not been released for fishpond development by DENR shall automatically be returned without being acted upon.





Q

**5.2.8 Are fishponds exempted from agrarian reform?**

A

Yes, fishponds are exempted from the Comprehensive Agrarian Reform Law (CARL). This is provided for by RA 7881 which amended certain provisions of RA 6657 or the CARL. Section 2 of RA 7881 amends Section 10 (b) of RA 6657, Exemptions and Exclusions, to read: “private lands, actually, directly and exclusively used for prawn farms and

fishponds shall be exempt from the coverage of this Act: Provided, that said prawn farms and fishponds have not been distributed and Certificate of Land Ownership Award (CLOA) issued to agrarian reform beneficiaries under the Comprehensive Agrarian Reform Program”.

Q

**5.2.9 Are ECCs necessary for fishponds?**

A

Yes. Fishponds, as defined by DAO 34, s1991, are aquaculture activities *within the mangroveecosystem* and include prawn and shrimp culture, seaweed farming, oyster, mussel and clam culture, saltbeds, and other fishpond production activities. Fishpond development thus imperils the extraction of mangrove products, which are classified as an ECP by DAO 96-37 and located in an ECA, which is the mangrove itself (*ibid*).

Q

**5.2.10 What is the coverage of the ECC for fishponds?**

A

All existing fishponds and new fishpond development projects regardless of area, situated in alienable or disposable lands or in mangrove forest lands which have been zonified as suited for such activity, are covered by the EIS system. Existing fishponds which were operational prior to 1982 except in cases where their operations are expanded in terms of daily production capacity or area, or the process is limited, or not

covered by the EIS System (sec. 20, Art II, DAO 96-37, s1996). Further, fishpond development projects shall be considered critical if such will involve utilization of areas equal to or greater than 25 ha (par 3, B, NEPC Office Circular No. 3, s1983). Fishponds are also subject to penalties or fines under DAO 96-37, s1997.

# 5

## Commonly Asked Questions Answered



### 5.3 PROTECTED AREAS

**Q** 5.3.1 Who has jurisdiction over areas designated as protected areas – the Protected Areas Management Board (under the NIPAS Act) or the LGU? In cases where the PAMB and the LGU do not agree on matters governing the protected areas, how is the conflict to be resolved?

**A** The PAMB. Section 10 of RA 7586 (NIPAS Act) provides for the administration and management of the NIPAS: “*the NIPAS is hereby placed under the control and administration of the DENR. For this purpose, there is hereby created a division in the regional offices of the Department to be called the Protected Areas and Wildlife Division in regions where protected areas have been established, which shall be under the supervision of a Regional Technical Director, and shall include subordinate officers, clerks, and employees as may be proposed by the Secretary, duly approved by the Department of Budget and Management, and appropriated for by Congress.*” Section 11 provides for a Protected Area Management Board (PAMB) which shall be established for

each protected area. Each PAMB includes several nominees from various LGUs, including one representative from the autonomous regional government, if applicable; the Provincial Development Officer; one representative from the municipal government; one representative from each barangay covering the protected area; one representative from each tribal community, if applicable; and, at least three representatives from NGOs or local community organizations; and, if necessary, one representative from other departments or NGAs involved in protected area management.

Section 7 of DAO 25 (s1992), or the implementing rules and regulations for RA 7586, further provide for a two-tiered management planning: “*NIPAS site management planning and implementation shall be undertaken by protected area staff, which may include an NGO component, and by technical specialists and representatives of local communities within and near the site following a general planning strategy prepared at the national level. The protected area management plan shall be contained within a management manual as provided by Section 9 of the Act. Protected area management shall be under the direction of a site-specific Protected Area Management Board as provided in Chapter V of this Order and NGOs are expected to play an important role in area management along with DENR staff.*”

The issue of jurisdiction for protected areas within municipal waters is also articulated in the definition of municipal waters, which expressly excludes “*streams, lakes, and tidal waters within the municipality, not being the subject of private ownership and not comprised within the national parks, public forests, timber lands, forest reserves or fishery reserves.....*” (LGC, Section 131r).

Since majority of the PAMB members are representatives from LGUs and considering that the Board is mandated by law as the site-specific policy-making body of protected areas, the LGUs have greater influence in the decision-making process than the other representative groups. Therefore, the decision of the Board carries the majority vote of





representatives from the LGUs.

It must be noted, however, that the legislative and taxation functions of the LGUs and the administrative authority of the PAMB have different legal bases which are not necessarily in conflict. The LGUs can legislate and impose taxes that shall be effective throughout their territorial jurisdiction, including that of protected areas, because these are functions guaranteed by the Constitution.

**Q** 5.3.2 Can the LGU create a fish sanctuary within its municipal waters without authority or approval from DENR, BFAR, or any other national agency?

**A** Yes, the LGU can create fish sanctuaries within its municipal waters without authority or approval from DA-BFAR. LGC Section 3 states that “*the LGU shall share with the National Government the responsibility in the management and maintenance of ecological balance within its territorial jurisdiction subject to the provisions of this*

*code and national policies*”. This can be done by issuing a specific ordinance. The LGU may seek technical assistance from DA-BFAR in establishing fish sanctuaries. DA GMOA 3 (s1990) provides the guidelines for the establishment of fish sanctuaries.

In cases where the initiative to create a fish sanctuary emanates from the NGA, permission has to be requested from the LGU as provided for by Section 27 of the LGC which states that “*no project or program initiated by the NGA shall be implemented unless approved by SB and appropriate consultations are made*”.

The establishment of fish sanctuaries within proclaimed protected seascapes (RA 7586) in municipal waters needs authorization from the PAMB.

**Q** 5.3.3 Is there a law or regulation governing the establishment, utilization, and management of artificial reefs (AR) in municipal waters?

**A** None. However, a joint DENR-DA-DILG-DND AO is in the process of being signed by the four departments.<sup>2</sup> This AO provides for a nationwide moratorium on artificial reef deployment

<sup>2</sup> DENR and DA have signed the memo as of July, 1997.



# 5

## Commonly Asked Questions Answered



pending formulation of policy guidelines. The moratorium will take effect for one year upon the signing of the joint AO.

**Q** 5.3.4 If the municipality decides that a coastal area will be developed as a tourism resort and disregards the mandate of the province that such area shall be declared as a protected seascape, will the province be able to overturn the municipality's decision?

**A** No (LGC section 56 (c). In relation to section 17 (b) (2) (xi) and section (b) (3)(xii), the reviewing power of the SP under Section 56 of the LGC is limited to a determination of whether the ordinance or action of a municipality or component city is within the power conferred upon it by law (Sec. 5.6). Since a municipality is empowered to provide tourism facilities and attractions within its territory (Sec. 17), the SP cannot overturn the municipality's action.

**Q** 5.3.5 What laws govern the catching of marine mammals and who has jurisdiction over them?

**A** The taking, catching, sale, purchase, possession, transport and export of whales, porpoises and dolphins are prohibited by FAO 185, s1992, and FAO 185-1, s1997. Jurisdiction over these types of marine mammals is with DA-BFAR while jurisdiction over the protection and conservation of the *dugong* or sea cow (*dugong dugon*) is with the PAWB as provided by DAO 55, s1991.

**Q** 5.3.6 Who has jurisdiction over the conservation of marine turtles?

**A** The DENR, specifically the PAWB, has jurisdiction over the conservation of marine turtles. This is provided for in MNR AO 12, s1979, which assigns to the (then) Bureau of Forest Development (BFD) and BFAR the enforcement of this order. PAWB absorbed the functions of BFD via EO 192, including jurisdiction over marine turtles.





**Q** 5.3.7 What are the proclaimed marine protected areas and where are they located?

**A** See Table 5-2.

NAME OF PROTECTED AREA	REGION	PROCLAMATION NO./DATE AREA (has)
Palau Island Marine Reserve	2	Proc. No. 447/August 16, 19947,415
Batanes Protected Landscape and Seascape	2	Proc. No. 335/February 28, 1994213,578
Masinloc and Oyon Bay Marine Reserve	3	Proc. No. 213/August 18, 19937,568
Tubbataha Reef National Marine Park	4	Proc. No. 306/August 11, 198833,200
Apo Reef Natural Park	4-B	Proc. No. 868/February 20, 199611,677
Taklong Island National Marine Reserve	6	Proc. No. 525/February 8, 19901,143.45
Sagay Protected Seascape	6	Proc. No. 592/June 1, 199528,300
Apo Island Protected Landscape and Seascape	7	Proc. No. 438/August 9, 1996691
Guiuan Protected Landscape and Seascape	8	Proc. No. 469/September 26, 199460,448
Turtle Island Heritage Protected Area	9	MOA inked between Malaysia and Philippines/May 31, 19961,740
Pujada Bay Protected Landscape and Seascape		11 Proc. No. 431/July 31, 199421,200
Sarangani Protected Seascape	11	Proc. No. 756/March 5, 1997215,950

**TABLE 5-2.  
MARINE PROTECTED AREAS**



# 5

## Commonly Asked Questions Answered



**Q** 5.3.8 In the event that a barangay has passed a resolution recommending the creation of a fish sanctuary within its waters, but the municipal mayor or the SB refuses to approve the resolution, what are the legal remedies?

**A** Section 398 of the LGC enumerates the powers of the barangay assembly to include the “adoption of initiative as a legal process whereby the registered voters of the barangay may directly propose, enact, or amend any ordinance”.

Section 121 and 122 of RA 7160 specifies who and how the process of local initiative may be carried out.

**Q** 5.3.9 Can the LGU apprehend fishers illegally fishing in protected marine waters?

**A** Yes. Section 149 of the LGC authorizes the SB to prosecute any violation of applicable fishery laws. The LGU and any of its deputies can therefore apprehend fishermen violating any fish sanctuary or protected area within its territorial jurisdiction. If the violation occurs within a protected marine area under the NIPAS Act, the LGU is likewise authorized to enforce

the provisions of the Act but its law enforcement officers must be deputized by the PAMB. The national law enforcers such as the PNP-MARICOM and the PCG may also apprehend illegal fishers.

## 5.4 ENVIRONMENTAL ISSUES, INCLUDING POLLUTION AND HABITAT MANAGEMENT

**Q** 5.4.1 What are the LGU's role and powers in enforcing effluent standards set by the DENR-EMB on wastewater?

**A** The relevant LGU which is vested with the power to enforce pollution control law is the city or province (LGC Sec. 17(b)(3)(iii); Sec. 17(b)(4) ). Nevertheless, this power is subject to the control and review of DENR. The broad guidelines provided by DENR with respect to devolved functions, including that of environmental management, is contained in DAO 30, s1992. The role and powers of the province in enforcing

wastewater standards include: (1) enforce pollution control law and other laws on the protection of the environment; (2) approve ordinances and pass resolutions that will protect the environment and impose appropriate penalties for





acts which endanger the environment and such other activities which result in pollution, acceleration of eutrophication of rivers and lakes or ecological imbalance; (3) adopt measures and safeguards against pollution in consonance with approved standards on environmental sanitation; and (4) implement cease-and-desist orders issued by the Pollution Adjudication Board (PAB).

The relevant effluent standards are embodied in DAO 35, s1990. DAO 96-37 provides guidance on the EIS system.

**Q**

**5.4.2 What law can be used to control solid waste disposal and who should enforce this?**

**A**

The LGU should enforce policies pertaining to solid waste disposal. Section 17 (Basic services and facilities) of the LGC states that “*local government units shall endeavor to be self-reliant and shall continue exercising the powers and discharging the duties and functions currently vested upon them. They shall also discharge the functions and responsibilities of national agencies and offices devolved to them pursuant to this code.*”

*Such basic services and facilities include, for a barangay, services and facilities related to general hygiene and sanitation, beautification, and solid waste collection; for a municipality, solid waste disposal system or environmental management system and services or facilities related to general hygiene and sanitation.”* The responsibility of cities and municipalities for providing an efficient system of collecting, transporting, and disposing refuse is also provided for in Section 82 of PD 856 (Sanitation Code).

PD 856 s 1975, Chapter XVIII, provides for a system of refuse (inclusive of all solid waste products such as garbage, rubbish, ashes, night soil, manure, dead animals, street sweepings, and industrial wastes) disposal.

**Q**

**5.4.3 Factory X is located in LGU 1, but only a hundred meters from the border of LGU 2. If the effluents of Factory X seep into the municipal waters of LGU 2, can the latter seek the closure of said factory?**

**A**

Yes. LGU 2, through its local council, can abate without judicial proceeding any nuisance which may injure or endanger the health of its inhabitants. The effluents from Factory X which had seeped into the municipal waters of LGU 2 can be declared as a nuisance and can then be abated. Homeowners Association of El Deposito v. Lood (47 SCRA 174, 29



September 1972) recognized the power of local governments to order abatement of nuisance per se. The police power of the State justifies the abatement or destruction by summary proceedings of public nuisances per se (Szitchon v. Aquino, 98 Phil 694).

LGU 2 can pass an ordinance relative to the protection of the environment such as an anti-pollution law and other measures against acts which may accelerate the eutrophication of rivers and lakes and cause ecological imbalance, or to support a complaint of the general public. It cannot, however, enact an ordinance seeking to directly control the activities of a factory or firm allegedly causing pollution. The proper action of LGU 2 would be to seek recourse by petitioning DENR to investigate the offending factory for possible violation of the EIS system and the cancellation of its ECC. It can also seek recourse through the provincial board (assuming that LGU 1 & 2 are municipalities within the jurisdiction of the same province) so that the issue can be investigated and settled with the PAB (see Annex 1 sec 5.29).

**Q** 5.4.4 What is role of the LGU in implementing the law on toxic substances, hazardous and nuclear wastes control act (RA 6969)?

**A** The rules and regulations governing the importation, manufacture, processing, sale, distribution, transportation, use, storage, and disposal of toxic and hazardous wastes as defined in RA 6969 shall be administered by the DENR Secretary or his duly authorized representative, or through any other department, bureau, office, agency, state university or college, and other instrumentalities of the Government for which assistance in the form of personnel, facilities, and other resources is sought by DENR in the discharge of its functions (Sec. 5 of DAO 29, s1992). In the discharge of his functions, the Secretary may appoint and deputize officers subject to the conditions, limitations, or restrictions as may be prescribed by him and in accordance with the provisions of DAO 29. In both RA 6969 and its implementing rules and regulations (DAO 29), the LGU has not been tasked with direct responsibilities for the control and prevention of toxic and hazardous wastes. Nevertheless, the overall LGU mandate for environmental management as provided for by the LGC implies that LGUs should be constantly monitoring activities related to toxic and hazardous wastes within its territorial jurisdiction and should report any illegal or ecologically dangerous activities to the DENR.



Yes. LGUs, in enforcing national laws, may



**Q** 5.4.5 Can LGUs prevent the passage of vessels carrying toxic and/or nuclear waste through its municipal waters?

prevent the passage of ships carrying toxic and/or nuclear wastes (RA 6969). Moreover, it is recommended that the LGU approach DENR which has jurisdiction over nuclear, hazardous, and toxic wastes or any of its designated environmental protection officers, who are authorized to stop, detain, inspect, and remove to some suitable place for inspection and examination any vehicle or boat believed or likely to be used for the transport of

chemical substances or hazardous wastes without the necessary permit from the DENR (Sec 9, DAO 29, s1992).

**Q** 5.4.6 Can an LGU enjoin a national project like an oil pipeline under its municipal waters?

**A** No. PD 1818 prohibits the issuance of restraining orders or injunctions in cases involving an infrastructure project, mining, fishery, forest or *other natural resource* development projects of the government. Corollarily, the LGUs cannot enjoin any government activity critical to the economic development effort of the nation. The pursuit of essential government projects such as an oil pipeline cannot be

hampered by the LGUs because it would imperil public interest. However, the LGC provides for a system of consultation between NGA and LGU for projects or programs that may cause “*pollution, climate change, depletion of non-renewable resources, etc.*” (Sec. 26 and 27). This is further strengthened by DILG Memo Circular No. 52, s1993, enjoining strict adherence to the aforementioned provisions of the LGC. Likewise, it is also assumed that the project does not violate the EIA Law (DAO 96-37) or the provisions/conditions of the ECC because if so, the LGU can seek the assistance of DENR and DENR-PAB for the issuance of a Notice of Violation or CDO.

**Q** 5.4.7 Who is responsible for the enforcement of anti-marine pollution laws within municipal waters?

**A** The local governments, specifically, the Province, the PCG, the PNP-MARICOM and its deputies, and DENR. PD 979, or the Marine Pollution Decree of 1976 and PD 601 of 1974 has delegated to the PCG the function of enforcing laws against the pollution of the sea. RA 6975 Section 35(b)(1) vests on the PNP-MARICOM the power to enforce laws, including



marine pollution laws, over all Philippine waters. PD 1160 deputizes the Barangay Captain, the Barangay Councilman and Barangay Zone Chairman to “enforce and implement national and local laws, ordinances and rules and regulations governing pollution control and other activities which create imbalance in the ecology or disturbance in environmental conditions”. Lastly, the LGC (Sec. 17(b)(3)(iii)) provides for the Province to enforce pollution control laws for CBBEs (under Kalakalan 20). Non-CBBEs are under the jurisdiction of the DENR.

**Q** 5.4.8 Who will penalize industries that discharge effluents in coastal waters? Is it DENR through the PAB or LGUs? If it is the local council, is there a need for an enabling ordinance?

**A** Both the DENR, thru the Pollution Adjudication Board (PAB) and the LGU may penalize industrial owners who discharge untreated or insufficiently treated industrial effluents into the coastal waters. The former may penalize said polluters by virtue of PD 984, the National Pollution Control Decree of 1976, while the LGU may penalize said polluters through an enabling ordinance.

Under Section 19 of EO 192, the Reorganization Act of the Department of Environment and

Natural Resources (1987), the PAB assumed the powers and functions of the National Pollution Control Commission with respect to the adjudication of pollution cases under RA 3931 and PD 984. While RA 7160 conferred broad powers on the LGUs, these powers do not include those vested in the PAB by EO 192 in relation to PD 984. Therefore, the PAB retains exclusive jurisdiction over pollution cases under PD 984.

Such exertion by the PAB of exclusive jurisdiction over pollution cases covered by PD 984 does not, however, mean that the LGUs can no longer be effective partners of the national government in the management and maintenance of ecological balance within their respective territorial jurisdictions. Within their respective territorial jurisdictions, LGUs may still enhance the right of the people to a balanced ecology in at least three ways, i.e., by assisting the PAB in the implementation of its orders and decisions, by passing ordinances which penalize acts of pollution, and through abatement of nuisance.

Under Section 3.3 of DAO 30, s1992, the implementation of cease-and-desist orders issued by the PAB has been devolved to the LGUs. Such devolution is consistent with the LGUs’ power to enforce pollution control laws and other laws on the protection of the environment.

The act of discharging untreated or inadequately treated industrial effluents into the coastal waters may also be



penalized under a separate local ordinance, as authorized by Section 447 of the LGC for a municipal legislative body, Section 458 of the LGC for a city council, and Section 465 of the LGC for a provincial legislature. It is the specific ordinance that would authorize the LGU to impose fines and penalties, including imprisonment, on the erring firms, separate and distinct from those provided under PD 984.

Section 8 of RA 3931, An Act Creating the National Water and Air Pollution Control Commission (1964), which was subsequently amended by PD 984, provides that “[n]o investigation being conducted or ruling made by the Commission [the PAB’s predecessor] shall prejudice any action which may be filed in court by any person in accordance with the provisions of the New Civil Code on nuisance.” The aforementioned provision, in relation to Sections 447 and 458 of the LGC, empowers the municipal and city legislatures to penalize pollutive firms based on the Civil Code provisions, and their own ordinances, on nuisance.

While Section 16 of the LGC grants the LGUs police powers, the exercise of such police powers must be made in relation to enabling legislation, especially when the imposition of penalties such as closure, imprisonment, and imposition of fines is involved.

We reiterate therefore that both the PAB and the LGU may penalize the owners of industrial firms discharging untreated or inadequately treated effluents into coastal waters, although the powers of these two (2) entities to penalize the pollution arise from different laws.

**Q** 5.4.9 Who should enforce the law if cement mining plants discharge effluents that alter the marine environment. DENR or the LGUs? Assuming that such effluents will adversely affect the migrating whales because the marine mammal fauna is altered, is the cement mining plant penalized through an ordinance or an international treaty? If it is penalized thru a treaty, who will enforce such a treaty?

**A** Neither the DENR nor the LGUs shall enforce the applicable laws. The Coast Guard, together with the PNP, is tasked to enforce laws relating to marine pollution. PD 601, the Revised Coast Guard Law of 1974, provides that the one of the specific functions of the Coast Guard is:

*To enforce laws, promulgate and administer rules and regulations for the prevention of marine pollution within the territorial waters of the Philippines*





*in coordination with the National Pollution Control Commission (Section 5(p)).*

The PNP, on the other hand, is mandated under RA 6975, the Department of Interior and Local Government Act of 1990, to take over the functions of the Coast Guard:

*The PNP shall absorb xxx the police functions of the Coast Guard. In order to perform its powers and functions efficiently and effectively, the PNP shall be provided with adequate land, sea, and air capabilities and all necessary material means of resources.*

The PNP performs this function under the Maritime Police Unit. At present, the Maritime Police Unit and the Philippine Coast Guard are in close coordination in the enforcement of laws relative to marine pollution.

As a general rule, treaties cannot penalize individuals. Treaties are generally binding only on States which have ratified them, so the obligations imposed by a treaty are only directly binding on the State. Liability for failure to comply with the treaty obligations is imposed not on the individual but on the State-party to the treaty.

It is the obligation of the State-party to enforce the provisions of the treaty upon its citizens by virtue of a municipal law. The exception to the rule is when the treaty itself recognizes the legal personality of individuals under international law such as in certain human rights instruments and certain environmental treaties (e.g., adoption of the polluter-pay principle).

At present, there is no specific treaty penalizing individuals who have caused marine pollution. However, the Philippine Government is a State-party to the United Nations Convention on the Law of the Seas (UNCLOS). Under UNCLOS, the Philippine government is obligated to undertake measures to protect the marine environment. Article 207 of UNCLOS provides that:

- ◆ State shall adopt laws and regulations to prevent, reduce and control pollution of the marine environment from land-based sources, including rivers, estuaries, pipelines and outfall structures, taking into account internationally agreed rules, standards and recommended practices and procedures.
- ◆ States shall take other measures as may be necessary to prevent, reduce and control such pollution.
- ◆ The obligation imposed on the Philippine government is in the form of an undertaking to adopt laws pertaining to the marine environment. Individuals are not penalized under this treaty. We note, however, that



under Section 9(d) of PD 984:

*[a]ny person who violates any of the provisions of, or fails to perform any duty imposed by this Decree or its implementing rules and regulations or by Order or Decision of the Commission [now the PAB] promulgated pursuant to this Decree, thereby causing the death of fish or other aquatic life, shall in addition to the penalty above prescribed, be liable to pay the government damages for fish or aquatic life destroyed.*

Q

#### 5.4.10 Who has jurisdiction over siltation problems?

**A** Under Section 17 of the LGC, the LGU (province) has been tasked to enforce pollution control laws, small-scale mining laws, and other laws on the protection of the environment, pursuant to national policies and subject to the supervision, control, and review of DENR. Under Section 447 (a)(1)(vi), the SB is empowered to protect the environment, and impose

appropriate penalties for acts which endanger the environment including activities which result in pollution, acceleration of eutrophication of rivers and lakes, or of ecological imbalance. Within its territorial jurisdiction, therefore, the LGU is empowered to enact ordinances to mitigate siltation problems and enforce national laws concerning the matter. If siltation occurs as a downstream effect of an activity elsewhere beyond the LGU's territory, the LGU has the primary responsibility for monitoring and pinpointing the causative factors of siltation and reporting these to DENR and other concerned NGAs for appropriate action. The causes can be a wide range of activities - deforestation, mining, agricultural run-off, local dredging for roads and infrastructure, even sludge from localized sources. Where a complaint has been lodged by the LGU, the DENR regional office is tasked to investigate such complaints relating to possible violations of the EIS system (DAO 96-37). The EMB Director or the RED is empowered to impose penalties on persons or entities found violating the provisions of PD 1586 or its implementing rules and regulations, as well as issue a CDO. In cases where the cause of siltation comes from lands and resources directly under the LGU jurisdiction, such as slash-and-burn farming in LGU-covered lands of the public domain, the LGU can directly act against the violators by invoking appropriate local ordinances on the matter.

Under RA 7942 (Philippine Mining Act of 1995), the Regional Director of the Mines and Geosciences Bureau may issue CDOs or suspend mining or quarrying operations in cases of imminent danger to the environment, until the danger is removed or appropriate measures are taken. Moreover, the Regional Director, in consultation with the DENR-EMB, shall require the contractor, permit-holder, or lessee to remedy the practice which is not in accordance





with anti-pollution laws and regulations.

**Q** 5.4.11 Who has jurisdiction over the reclassification of lands?

determined by the DA or (2) where the land shall have substantially greater economic value for residential, commercial, or industrial purposes, as determined by the *Sanggunian* concerned (LGC, Sec. 20).

**A** The city or municipality may, through an ordinance passed by the *Sanggunian* after conducting public hearing for the purpose, authorize the reclassification of agricultural lands and provide for the manner of their utilization or disposition in the following cases: (1) when the land ceases to be economically suitable and sound for agricultural purposes as

**Q** 5.4.12 What guidelines can be used on the conversion of agricultural lands to non-agricultural uses?

**A** An ECC is required for the conversion of prime and non-prime agricultural lands (DAO 8, s1991). The conversion of prime agricultural lands, declared as environmentally critical under Proclamation No. 2146, to non-agricultural uses are covered by the EIS system and DAO 96-37, s1996. Non-prime agricultural lands cover the following:

- ◆ Lands that have ceased to be economically feasible and sound for agricultural purposes or the land or locality has become highly urbanized and has a greater economic value for residential, commercial, or industrial purposes
- ◆ Lands classified as commercial, industrial, and residential in new revised town plans approved by the Housing and Land Use Regulatory Board (HLURB) with the concurrence of the Inter-Agency Planning Task Force



- ◆ When the dominant use of the area surrounding the subject of the application is no longer agricultural, in the case of a city or municipality which does not have land use plans or integrated zoning ordinance duly approved by the HLURB

Applications for land conversion covering areas classified as prime agricultural lands above 5 ha shall be processed at DENR-EMB in accordance with existing rules and regulations under PD 1586. Land area which covers less than 5 ha and non-prime agricultural areas irrespective of land area shall be processed at the Environmental Management and Protected Areas Service (EMPAS) of the DENR Regional Office.

Q

5.4.13 Is it illegal to collect or harvest corals?

A

PD 1219, as amended by PD 1698, bans the gathering, collection, harvesting, transporting, possession, sale and/or export of *ordinary corals*. For precious and semi-precious corals, however, PD 1219 does not mention a prohibition on harvesting but declares nonetheless that “*the Minister of Natural Resources may issue a special permit to only one person/corporation for a*

*limited time to conduct experimental collection of precious and semi-precious corals*”. In section 11, moreover, it is stated that any person gathering precious or semi-precious corals without a permit shall be penalized by imprisonment or a fine, or both. Subsequently, FAO No. 184 provides the guidelines for the issuance of a special permit to collect precious and semi-precious corals.

Q

5.4.14 Is the cutting of mangroves prohibited in areas which were replanted by

A

Yes. Cutting of all mangrove species is prohibited under the RA 7161: “*An act incorporating certain sections of the National Internal Revenue Code of 1977, as amended, to PD 705, as amended, otherwise known as the ‘Revised Forestry Code of the Philippines’ and providing amendments thereto by increasing the forest charges on timber and other forest*

*products*”. The law does not provide for any exemption. For example, selective cutting or cutting from replanted areas is construed to effect a total and absolute ban.



**Q** 5.4.15 What is the scope of the Environmental Impact Statement (EIS) System?

**A** DAO 96-37 (s1996) classifies the activities falling within the scope of the EIS system into two broad categories:  
1) Environmentally Critical Projects and 2) projects located in Environmentally Critical Areas. Specific activities falling within these two categories are:

**Environmentally Critical Projects**

- ◆ Heavy industries
- ◆ Non-ferrous metal industries
- ◆ Iron and steel mills
- ◆ Petroleum and petro-chemical industries including oil and gas
- ◆ Smelting plants
- ◆ Resource extractive industries
- ◆ Major mining and quarrying projects
- ◆ Forestry projects
- ◆ Logging
- ◆ Major wood processing projects
- ◆ Introduction of fauna (exotic animals) in public or private forests
- ◆ Forest occupancy
- ◆ Extraction of mangrove products
- ◆ Grazing
- ◆ Fishery projects
- ◆ Dikes for/and fishpond development projects
- ◆ Infrastructure projects
- ◆ Major dams
- ◆ Major power plants (fossil-fueled, nuclear fueled, hydro-electric or geothermal)
- ◆ Major reclamation projects
- ◆ Major roads and bridges
- ◆ Golf course projects



### Projects located in Environmentally Critical Areas

- ◆ All areas declared by law as national parks, watershed reserves, wildlife preserves, and sanctuaries
- ◆ Areas set aside as aesthetic potential tourist spots
- ◆ Areas which constitute the habitat for any endangered or threatened species of indigenous Philippine wildlife (flora and fauna)
- ◆ Areas of unique historic archeological or scientific interest
- ◆ Areas which are traditionally occupied by cultural communities or tribes (indigenous cultural communities)
- ◆ Areas frequently visited and/or hard-hit by natural calamities (geologic hazards, floods, typhoons, volcanic activity, and others)
- ◆ Areas with critical slopes
- ◆ Areas classified as prime agricultural lands
- ◆ Recharged area of aquifers
- ◆ Water bodies characterized by one or any combination of the following conditions:
  - Tapped for domestic purposes
  - Within the controlled and/or protected areas declared by appropriate authorities which support wildlife and fishery activities
- ◆ Mangrove areas characterized by one or any combination of the following conditions:
  - With primary pristine and dense young growth
  - Adjoining mouth of major river systems
  - Near or adjacent to traditional productive fry or fishing grounds which act as natural buffers against shore erosion and strong winds, and on which people are dependent for their livelihood
- ◆ Coral reefs characterized by one or a combination of the following conditions:
  - With live coralline cover 50% or above
  - Spawning and nursery grounds for fish which act as natural breakwater of coastlines

# 5

## Commonly Asked Questions Answered



**Q** 5.4.16 What projects are not covered by the EIS System?

**A** The following projects and undertakings are not covered by the EIS System:

- ◆ Projects which are not considered as environmentally critical or located within an ECA
- ◆ ECPs or projects within ECAs which were operational prior to 1982, except in cases where their operations are expanded in terms of daily production capacity and area, or if the process is modified
- ◆ CBBEs covered by RA 6810, otherwise known as the Magna Carta for Countryside and Barangay Business Enterprises (*Kalakalan 20*), and registered with the Department of Trade and Industry between 1991 and 1994. Provided, that unless otherwise amended by law, non-coverage of such CBBEs shall only subsist for a 5-year period from its date of registration.

## 5.5 LEGISLATION, TAXES, AND PENAL PROVISIONS

**Q** 5.5.1 Distinguish an ordinance from a resolution.

**A** An ordinance prescribes a permanent rule of conduct or government, while a resolution is of a temporary character only. It may be stated that, as a general rule, matters upon which the municipal corporation desires to legislate must be drawn up in the form of an ordinance, while all acts that are done in its ministerial capacity and for a temporary purpose may be put in the form

of a resolution. An ordinance requires greater formalities in its enactment than a resolution.

The term “resolution” denotes something less formal than the term “ordinance”. Generally, it is a mere expression of the opinion or mind of the council concerning some matter of administration coming within its official cognizance and provides for the dissolution of a particular item of administrative business of a municipal corporation.

**A** A *fee* is a charge fixed by law or agency for the services of a public officer. A *license* is a right





**Q**

**5.5.2 Define, fee, license, and tax.**

or permission granted in accordance with law by a competent authority to engage in some business, occupation, or transaction. In order for a license to be considered merely as a regulatory measure, it must only be of a sufficient amount to include the expenses of issuing the license and the cost of the necessary inspection of police surveillance, taking into account not only the expenses of direct regulation but also incidental consequences.

A *tax* is an enforced contribution, usually monetary in form, levied by the law-making body on persons and property subject to its jurisdiction for the precise purpose of supporting governmental needs. Taxes are for revenue purposes, whereas fees are for purposes of regulation. Taxes are levied in the exercise of taxing power, whereas fees are a consequence of the exercise of the police power. In view of these distinctions, a reasonable rate of fee must necessarily be lower than what may be deemed as a reasonable rate of tax.

LGC Section 133. *Limitations on the taxing powers of LGUs.* Marginal farmers or fishers are exempt from taxes, fees or charges on agricultural and aquatic products imposed by LGUs.

**Q**

**5.5.3 An ordinance imposing an annual tax for the operation of fishponds was enacted by a municipal council and approved by the Provincial Board. Does the ordinance need approval from the BFAR?**

**A** No. Sections 48 to 59 of the LGC enumerate the step-by-step procedure in local law-making vested on the Mayor and the SB and the manner of approving and validating local legislation by the Sangguniang Panlalawigan (SP) pursuant to Sections 54 and 56, respectively. While Section 534 (e) expressly repeals only Sections 2, 16, and 29 of PD 704 and not Section 4, which provides for Department approval before any ordinance is passed, Section 534 (f) of the LGC states that “*all general and special laws, acts, city charters, decrees, executive orders, proclamations and administrative regulations, or part or parts thereof which are inconsistent with any of the provisions of this Code are*

*hereby repealed or modified accordingly.*” This provision thus renders Section 4 of PD 704 irrelevant.



**Q** 5.5.4 Can an LGU issue a unique ordinance that has not been dealt with sufficiently by any national law?

*and of endangered species of flora and fauna, slash-and-burn farming, and such other activities which result in pollution, acceleration of eutrophication of rivers and lakes or ecological imbalance.”* An LGU may issue an ordinance that responds to the concerns raised above as long as it does not contradict any national law. For example, an LGU may issue a regulation regarding the anchoring of buoys which has not been covered sufficiently by any national legislation.

**A** The LGC provides for the ordinance-making function of the SB Section 447(a)(1)(vi) and that of the SP Section 468(a)(1)(vi) to include the enactment of ordinances or resolutions that “*protect the environment and impose appropriate penalties for acts which endanger the environment, such as dynamite fishing and other forms of destructive fishing, illegal logging and smuggling of logs, smuggling of natural resources products*

**Q** 5.5.5 Do LGUs have the authority to impose penalties?

general welfare of their constituents (Sec. 391(a)(1), thus deriving their authority to impose penalties.

**A** The authority of LGUs to impose penalties on acts that endanger the environment is borne by the LGC Sections 447(a)(1)(vi), for municipalities, and Section 458(a)(1)(vi), for cities and provinces. Barangays are also empowered to enact ordinances as may be necessary to discharge the responsibilities conferred on them by law and to promote the

**Q** 5.5.6 What types of penalties can be imposed and what are the limitations?

**A** Penalties may be in the form of fines or imprisonment or both. The LGC provides for a schedule of fines for different LGU levels.

Barangays, however, may only impose fines in amounts not exceeding P1,000.00 for violation of barangay ordinances (Sec. 391(a)(14)).



Municipalities may approve ordinances imposing a fine not exceeding P2,500.00 or imprisonment for a period not exceeding 6 months or both at the discretion of the court (Sec. 447(a)(1)(iii))

Cities and provinces may approve ordinances imposing a fine not exceeding P5,000.00 or imprisonment not exceeding 1 year or both at the discretion of the court (Sec. 458(a)(1)(iii) and Sec. 468(a)(1)(iii))

**Q**

**5.5.7 Can an LGU penalize acts that endanger the environment if national laws already provide for such penalties?**

**A** In enacting ordinances imposing penalties for acts that endanger the environment, LGUs must note the acts already penalized under national laws and statutes. This is because the Constitution provides that if an act is tried under an existing law and an ordinance, a conviction or acquittal under either shall constitute a bar against another prosecution for the same act (Constitution, Art. III, Sec. 21).

In order to avoid double jeopardy complications, it would be advisable for LGUs to enact ordinances that penalize only those acts that are not yet covered by national penal statutes. Insofar as acts already penalized by national laws are concerned, local ordinances may provide for strategies or modes to make their enforcement more effective, with the sanctions to be imposed in accordance with pertinent national laws or statutes.

**Q**

**5.5.8 What are the existing national penal laws on the environment?**

**A** Acts and omissions already penalized by national laws (excluding fisheries, which is tackled separately in item 6.13), include:

◆ **Forest Conservation**

Cutting, gathering, and collecting timber or other forest products without authority (P. D. 705, Sec. 68). The penalty for violation of the law is imprisonment of 2 to 20 years depending on the value of timber cut, gathered, or collected.



Possession of timber or other forest products without legal documents as required under existing forest laws and regulations (P. D. 705, Sec. 68). The penalty is imprisonment of 2 to 20 years depending on the value of timber possessed.

Unlawful occupation or destruction of forest lands. The penalty consists of a fine ranging from P5,000.00 to P20,000.00 and imprisonment ranging from 6 months to 2 years, and payment of 10 times the rental fees and other charges which would have accrued (P. D. 705, Sec. 69).

◆ **Pollution**

Throwing, running, draining, or disposing into any of the water, air, and land resources any organic or inorganic matter or any substance in gaseous or liquid form that shall cause pollution (P. D. 984, Sec. 8). The penalty consists of a fine of P200.00 to P5,000.00 per day during which the violation continues or imprisonment from 1 month to 6 years or both.

Littering or throwing of garbage, filth, or other waste matters in public places (P. D. 825, Sec. 2). Offenders are penalized with imprisonment of 5 days to 1 year or a fine P100.00 to P2,000.00 or both.

Discharging of oil, noxious, gaseous, and liquid substances from or out of any ship, vessel, barge, or other man-made structures at sea (P. D. 979, Sec. 4[a]). Penalty for violation is imprisonment of 30 days to 1 year or a fine of P200.00 to P1,000.00 or both.

Throwing, discharging, disposing, dumping from out of any ship, vessel, barge or other floating craft or vessel, or from the shore, wharf, manufacturing establishment or mill, any refuse matter other than that flowing from streets and sewers (P. D. 979, Sec. 4[b]). Penalty for violation is imprisonment of 30 days to 1 year or a fine of P200.00 to P1,000.00 or both.

Disposing of material of any kind in any place on the bank of any navigable river (P. D. 979, Sec. 4[b]). Penalty for violation is imprisonment of 30 days to 1 year or a fine of P200.00 to P1,000.00 or both.

◆ **Environmental Protection**



Operating any ECP or ECA without first securing an ECC (PD 1586, Secs. 4 and 9). Penalty for violation is a fine of P50,000.00.

Violation of terms and conditions in the issuance of ECC (PD 1586, Sec. 9). Penalty is a fine of P50,000.00 for every violation.

◆ **Toxic Substance and Hazardous Wastes**

Knowingly using a chemical substance or mixture which is imported, manufactured, processed, or distributed in violation of RA 6969 and its rules and regulations (RA 6969, Sec. 13[a]). Penalty is imprisonment of 6 months and 1 day to 6 years and 1 day and fine of P600.00 to P4,000.00.

Failure or refusal to submit reports, notices or other information, allow access to records or permit inspection of establishment where chemicals are manufactured, processed, stored, or held (RA 6969, Sec. 13[b]). Penalty is imprisonment of 6 months and 1 day to 6 years and 1 day and fine of P600.00 to P4,000.00.

Failure or refusal to comply with pre-manufacture and pre-importation requirements (RA 6969, Sec. 13[C]). Penalty is imprisonment of 6 months and 1 day to 6 years and 1 day and a fine of P600.00 to P4,000.00.

Storage, importation or bringing into Philippine territory any amount of hazardous and nuclear wastes (RA 6969 Sec. 13[d]). Penalty is imprisonment of 12 years and 1 day to 20 years.

◆ **Protected Areas**

The penalty for the commission of any of these acts is a fine of P5,000.00 to P50,000.00 exclusive of the value of the thing damaged, or imprisonment of 1 to 6 years or both:

Hunting, destroying, disturbing, or mere possession of any plants or animals or products derived from protected areas without a permit (RA 7586, Sec. 20[a]).

Dumping of any waste products detrimental to the protected area, plants, and animals or inhabitants therein (RA 7586, Sec. 20[b]).

Use of motorized equipment within protected areas without a permit (RA 7586, Sec. 20[c]).

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## Commonly Asked Questions Answered



Mutilating, defacing, or destroying objects of natural beauty or objects of interest to cultural communities (RA 7586, Sec. 20[d]).

Damaging and leaving in damaged condition roads and trails in protected areas (RA 7586, Sec. 20[e]).

Squatting, mineral locating or otherwise occupying land in protected areas (RA 7586, Sec. 20[f]).

Constructing and maintaining any kind of structure, fence or enclosures, conducting any business enterprise in protected areas without a permit (RA 7586, Sec. 20[g]).

Leaving refuse or debris in exposed or unsanitary condition, or depositing this in ground or in bodies of water in protected areas (RA 7586, Sec. 20[h]).

Altering, removing, destroying, or defacing boundary marks or signs within protected areas (RA 7586, Sec. 20[I]).

## 5.6 MINING, QUARRYING AND FORESHORE

**Q** 5.6.1 Under the LGC, who is responsible for the granting of quarry permits, the Director of the Bureau of Mines and Geosciences or the Governor?

**A** Permits to extract sand, gravel, and other quarry resources from public lands and river beds shall be issued exclusively by the SP (LGC, Sec. 138). Quarry permit applications, commercial sand and gravel permit applications, and exclusive sand and gravel permit applications, may be filed with and processed by the Provincial or City Mining Regulatory Board. The corresponding quarry permit may be granted by the Provincial Governor or City Mayor to a qualified person covering an area of not more than 5 ha for a term of 5 years, renewable for one or more terms but not to exceed 25 years in the case of quarry permits. (RA 7942, Sec. 90 and 91).

Industrial sand and gravel permit applications may be filed with and processed by the DENR Regional Office with the





corresponding permit being granted by the RED to a qualified person for the removal of sand and gravel and other loose or unconsolidated materials that necessitate the use of mechanical processing covering an area of more than 5 ha but not to exceed 20 ha at any one time for a term of 5 years, renewable for like periods but not to exceed a total of 25 years. For areas covering 5 ha or less, an industrial sand and gravel permit may be filed at and processed by the Provincial or City Mining Regulatory Board and the corresponding permit granted by the Governor or City Mayor (RA 7942, Sec. 92 and 93).

**Q** 5.6.2 What are the conditions and limitations of quarry and commercial or industrial sand and gravel permits?

**A** The permit shall be for the exclusive use of the permit holder and cannot be transferred without prior written approval of the RED or the City Mayor or Provincial Governor.

Misrepresentations contained in the application shall be a cause for suspension or revocation of permit.

No extraction or removal of materials shall be allowed within a distance of 1 km from the boundaries of reservoirs

established for public water supply, archaeological and historical sites, and any public or private works or structures, unless prior clearance is obtained from the agency or owner concerned. No extraction or removal of materials shall likewise be allowed in offshore areas within a 500-meter distance from the coast and 200 meters from the mean low tide level along the beach. In addition, *extraction of sand and gravel along beaches is prohibited under Batas Pambansa Blg. 265.*

The removal or taking of materials under the permit shall be confined within the area specified therein.

The permit shall *ipso facto* terminate after the whole quantity of the kind of materials specified has been removed or taken.

For small quarry and commercial sand and gravel permits, commitment to secure an ECC must be made prior to the extraction, while large quarry and commercial sand and gravel permits and all industrial sand and gravel permits shall be required to secure an ECC before the application is processed.



**Q** 5.6.3 Who grants small-scale mining permits?

upon presentation of an area clearance from the concerned DENR regional office (DAO 50, s1993).

**A** Small-scale mining permits shall be issued by the Provincial Governor upon area clearance from the concerned DENR regional office and upon recommendation by the Provincial or City Mining Regulatory Board provided that for areas located within the municipalities of the National Capital Region, the permits shall likewise be issued by the concerned municipal mayors

**Q** 5.6.4 What is the legally accepted boundary for foreshore areas?

*equinoctial tides. Where the tides are not appreciable, the shore begins on the land side at the line reached by the sea during ordinary storms or tempests.* The absence of clear parameters with which to delineate foreshore from terrestrial land has resulted in the proliferation of illegal structures and appropriations in the foreshore area.

**A** The available definitions of foreshore lands do not indicate a measurable boundary: foreshore lands shall refer to *that part of the shore which is alternately covered and uncovered by the ebb and flow of the tide* (DAO 29, s1991). Land AO No. 8-3 of April 1936, as amended, defines “shore” as *that space covered and uncovered by the movement of the tide. Its interior or terrestrial limit is the line reached by the highest*

**Q** 5.6.5 Can foreshore areas be appropriated as private property?

means; (2) foreshore; (3) marshy lands or lands covered with water bordering upon the shores or banks of navigable lakes or rivers; and (4) lands not included in any of the foregoing classes. Lands classified as (1), (2) and (3) shall be disposed of to private parties by LEASE ONLY and NOT otherwise as soon as the President, upon recommendation by the Secretary of Agriculture and Natural Resources, declares that those land are not necessary for the public

**A** No. While the boundaries for foreshore remain unclear, its being part of the public domain cannot be questioned.

Commonwealth Act 141, Chapter IX, lists down the classification and concession of PUBLIC LANDS suitable for residence, commerce, and industry to include: (1) lands reclaimed by the government by dredging, filling, or other



service and are open to disposition under this chapter.

A recent decision of the Supreme Court G.R. No. 68166, February 12, 1997, on the titling of accreted land in Manila Bay invokes Article 4 of the Spanish Law of Waters of August 3, 1866, to establish the fact that foreshore areas constitute public lands, i.e., *“Lands added to the shores by accretions and alluvial deposits caused by the action of the sea, form part of the public domain. When they are no longer washed by the waters of the sea and are not necessary for purposes of public utility, or for the establishment of special industries, or for the coast-guard service, the Government shall declare them to be the property of the owners of the estates adjacent thereto and as increment thereof.”* The decision states that the foreshore of Manila Bay is public land and is therefore not capable of being appropriated by a private person.

**Q** 5.6.6 Who has jurisdiction over foreshore leases?

**A** The DENR. The powers and functions of the Department include the *“exercise of exclusive jurisdiction on the management and disposition of all lands of the public domain and [DENR] shall continue to be the sole agency responsible for classification, subclassification, surveying and titling of lands in consultation with appropriate agencies”* (EO 192).

**Q** 5.6.7 Who may approve foreshore leases?

**A** The Undersecretary for Field Operations approves original and renewal of leases of foreshore lands covering more than 50 ha. If the area is from 6 to 50 ha, it is the Regional Executive Director (RED); for area less than 6 ha, it is the PENRO (DAO 38, s1990).

**A** EO 240 recommends the creation of FARMCs

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## Commonly Asked Questions Answered



### 5.7 INSTITUTIONAL ISSUES

**Q** 5.7.1 Is the establishment of FARMCs obligatory?

discretion to adopt or reject any of its recommendations.

in coastal barangays, cities, and municipalities. However, in the absence of penal provisions to the contrary, LGU is not obligated to establish a FARMC. It now appears that the initiative should emanate from organized fisherfolk in the municipality or city. It should also be noted that EO 240 has specified that the decisions of a FARMC are only recommendatory and an LGU has the

**Q** 5.7.2 Is data gathering also a responsibility of LGUs?

information (Sec. 486 (b) (3) (1), LGC).

**A** Yes. The LGC has granted the LGUs with the power and authority to gather data which are essential to research and information service, and for the formulation of resolutions and ordinances (Secs. 17, 447 (a) (1) (vi) & Sec. 458 (a) (1) (vi)). Moreover, the Information Officer of the LGU has the duty and function relative to the gathering of relevant, adequate, and timely

**Q** 5.7.3 What law or national agency governs the issue of resettlement in coastal areas?

the relocation of their affected inhabitants.

**A** Section 27, in relation to Section 26 of the LGC, provides that occupants in areas where a project or program which may affect ecological balance is to be implemented shall not be evicted unless appropriate relocation sites have been provided in accordance with the provisions of the Constitution. Under the LGC, the LGUs are conferred with powers and authority to perform specific functions and responsibilities including