



MENDING NETS



**A handbook on the prosecution of
fishery and coastal law violations**

Mending Nets



A handbook on the prosecution of
fishery and coastal law violations

This handbook was produced by the



Environmental Legal Assistance Center

in collaboration with member organizations of the National Law Enforcement
Coordinating Committee, Non-government Organizations, Local Government Units
and other assisting organizations

through the



Coastal Resource Management Project

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Mending Nets: A Handbook on the Prosecution of Fishery and Coastal Law Violations

by

The Environmental Legal Assistance Center

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The Environmental Legal Assistance Center, Inc. (ELAC) is a non-government organization that helps marginalized communities in defending their environmental rights through developmental legal assistance, education & training, research & publications, advocacy, law enforcement, and community-based resource management. It has offices in Cebu, Palawan, Bohol, Eastern Visayas, Western Visayas and Northern Mindanao.

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DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

The Philippine coastal and marine environment supports about 5,000 marine plant and animal species. Of these, 4,000 are found in our coral reefs alone, 481 in seagrass beds and 370 in mangrove forests. These rich resources make the Philippines one of the seventeen (17) megadiverse countries in the world.

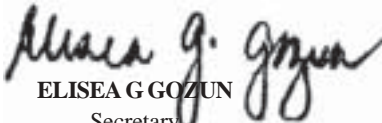
Unfortunately, the existence and survival of our marine resources is under tremendous threat due to human activities. If current destructive trends are not reversed, our coastal resources and people who depend on them face a bleak future. Our country has sufficient laws, rules and regulations that ensure the conservation and protection of our coastal and marine environment. We in government have to enforce these properly, strictly, and consistently. At the same time, though, we need to conduct a more extensive information, education and communication campaign so that our people understand the value of our coastal and marine resources, and the adverse impacts of the continued degradation of these resources.

The compilation and writing of this “**Handbook on the Prosecution of Fishery and Coastal Law Violations**” is indeed timely given the state of our coastal and marine resources. It is a quick and easy reference for national and local officials, law enforcers, prosecutors and judges who are involved in coastal-related violations/cases. It is also a very informative tool for local communities and workers and environmentalists who truly want to conserve and protect our coastal and marine resources.

We in the DENR extend our sincerest congratulations to the Coastal Resource Management Project, the Environmental Legal Assistance Center and other agencies, non-government organizations and local government units who have worked with us to make this publication possible.

We look forward to more meaningful enforcement of environmental laws.

Very truly yours,


ELISEA G GOZUN
Secretary



DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT

The real success of environmental enforcement is not measured by the quantity of the items seized or the number of persons arrested but by the extent of natural resources saved.

While the adage that goes “an ounce of prevention is better than a pound of cure” is still true today, we must also acknowledge the fact that there remain some sections of our society that will continue to intentionally violate the law for whatever reason. It is to them that the weight of justice must apply.

This Handbook on the Prosecution of Fishery and Coastal Law Violations is useful to four of the five pillars of justice: the law enforcers, the prosecutors, the courts and the community.

The local government units and the police to whom the main stewardship and protection of fishery and coastal resources are entrusted will find this handbook a helpful companion in enforcing fishery laws and ordinances in the municipal waters. The prosecutors and judges on the other hand will find this a good reference material to ensure violators are meted the maximum sanction of law.

And thus, our coastal communities who mostly depend on the yield of the sea for subsistence and livelihood will greatly benefit from an effective conservation and protection of coastal and marine environment.

I therefore congratulate the Environmental Legal Assistance Center and the Coastal Resource Management Project of the Department of Environment and Natural Resources for jointly and painstakingly compiling this handbook. And lastly, to the United States Agency for International Development for providing the needed support to have the handbook published and distributed.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jose D Lina, Jr.", written in a cursive style.

JOSE D LINA, JR

Secretary



**DEPARTMENT OF AGRICULTURE —
BUREAU OF FISHERIES AND AQUATIC RESOURCES**

In these times of environmental abuse and apparent disregard for conservation of resources, especially in the coastal areas, the publication of a valuable reference such as “Mending Nets: A Handbook on the Prosecution of Fishery and Coastal Law Violations” is truly a welcome development.

A readily available source of information on the proper handling of coastal law violations, covering appropriate apprehension procedures, the gathering of evidence, eventual prosecution, and the legal provisions upon which these actions are based, will significantly enhance the efficiency of prosecutors, law enforcers and local government officials in the effective prosecution of coastal law violators.

The Bureau of Fisheries and Aquatic Resources recognizes the impact that this Handbook will have on coastal law enforcement. The implementation guidance provided in one comprehensive volume provides the convenience that coastal law enforcers need, and also simplifies an otherwise complicated operation.

We laud the Handbook’s invaluable contribution to effective law enforcement. Users will definitely benefit from it.

MALCOLM SARMIENTO, JR
Director





NATIONAL LAW ENFORCEMENT COORDINATING COMMITTEE PHILIPPINE NATIONAL POLICE

“All members of the PNP shall help in the development and conservation of our natural resources for the ecological balance and posterity as these are the inalienable heritage of our people” (*Article 3, Sec 2.11, the PNP Code of Conduct and Ethical Standards*)

Coastal law enforcement is one area in the O.N.E. PNP program that is consistent with the mission of fostering good neighborhood partnership for community-based anti-crime programs.

Our coastal areas are saddled with the persistent problem of illegal and destructive fishing practices. Above these, overfishing further drives coastal communities to poverty and adverse socio-economic effects. This critical mix, we know from studies, may give rise to criminality if not addressed at the onset.

However, the growing sophistication involved in coastal and maritime violations and the technical and legal expertise needed to address them are far beyond the conventional training of the PNP.

We, therefore, welcome this Handbook on Prosecution of Fishery and Coastal Law Violations because this will equip our field offices especially the PNP Maritime Group and the Police Environment Desk Officers (PEDO) with the necessary tools to improve the implementation of coastal and fishery laws to include the prosecution of violators.

We have been effective in battling crime in the streets. Now, we shall elevate the battle to a higher field – in the courtroom. We shall do this with the help of our partners in the other national government agencies, local government units, non-government organizations, and the communities. We know this is a doable endeavor because the Environment Legal Assistance Center, the Coastal Resource Management Project, the Department of Agriculture, and our other partners made it possible through this Handbook.

This Handbook is a requirement for all Regional, Provincial, District, and City/Municipal Police Offices especially those located along the coastal areas.

Again, for and in behalf of the Philippine National Police and all members of the law enforcement community, congratulations!



HERMOGENES E EBDANE, JR
Police Director General
Chief, PNP
Chairman, NALECC

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List of Acronyms

AFMA	Agriculture and Fisheries Modernization Act
AO	Administrative Order
BFAR	Bureau of Fisheries and Aquatic Resources
BFARMC	Barangay FARMC
BP	Batasang Pambansa
CA	Court of Appeals
CBFMA	Community-based Forest Management Agreement
CDO	Cease and Desist Order
CENRO	Community Environment and Natural Resources Officer
CEP	Coastal Environment Program
CFVGL	Commercial Fishing Vessel and Gear License
CITES	Convention on the International Trade of Endangered Species
CMMO	Coastal and Marine Management Office
CRM	coastal resource management
CRMP	Coastal Resource Management Project
CSC	Civil Service Commission
DA	Department of Agriculture
DAO	DENR Administrative Order
DENR	Department of Environment and Natural Resources
DFA	Department of Foreign Affairs
DFPC	Davao Fish Port Complex
DILG	Department of the Interior and Local Government
DND	Department of National Defense
DOJ	Department of Justice
DOLE	Department of Labor and Employment
DSPWIEMD	Directorate on Special Projects for Water and Integrated Ecosystems Management and Development
DSWD	Department of Social Welfare and Development
ECC	Environmental Compliance Certificate

EIA	Environmental Impact Assessment
EIS	Environmental Impact Statement
ELAC	Environmental Legal Assistance Center
EMB	Environmental Management Bureau
EMP	Environmental Management Plan
EO	Executive Order
FAO	Fisheries Administrative Order
FARMC	Fisheries and Aquatic Resources Management Council
FLA	Foreshore Lease Agreement
GT	gross tonnage
HACCP	hazard analysis critical control point
IEE	Initial Environmental Examination
IPRA	Indigenous People's Rights Act
IRR	Implementing Rules and Regulations
LGC	Local Government Code
LGU	local government unit
LOI	Letter of Instruction
MAO	Municipal Agriculturist's Office
MARINA	Maritime Industry Authority
MARO	Municipal Agrarian Reform Officer
MC	Memorandum Circular
MCTC	Municipal Circuit Trial Court
MeTC	Metropolitan Trial Court
MFARMC	Municipal FARMC
MNR	Ministry of Natural Resources
MTC	Municipal Trial Court
MTCC	Municipal Trial Court in Cities
NALECC	National Law Enforcement Coordinating Committee
NAMRIA	National Mapping and Resource Information Authority
NCIE	National Committee on Illegal Entrants
NCIP	National Commission on Indigenous Peoples
NFARMC	National FARMC
NGA	national government agency
NGO	non-government organization

NIPAS	National Integrated Protected Areas System
NPCC	National Pollution Control Commission
OSHC	Occupational Safety and Health Center
PAMB	Protected Area Management Board
PAWB	Protected Areas and Wildlife Bureau
PCG	Philippine Coast Guard
PD	Presidential Decree
PEA	Public Estates Authority
PENRO	Provincial Environment and Natural Resources Officer
PI	preliminary investigation
PN	Philippine Navy
PNP	Philippine National Police
PNP-MARIG	PNP Maritime Group
PO	people's organization
RA	Republic Act
RED	Regional Executive Director
RPC	Revised Penal Code
RSP	Regional State Prosecutor
RTC	Regional Trial Court
RTD	Regional Technical Director
SB	Sangguniang Bayan
SC	Supreme Court
SEMS	Senior Environmental Management Specialist
SFMS	Senior Forest Management Specialist
SP	Sangguniang Panlungsod
TSN	Transcript of Stenographic Notes

Acknowledgments

This book would not exist without the collaborative efforts of technical and administrative support staff of the Environmental Legal Assistance Center and the Coastal Resource Management Project, and the valuable technical inputs of various national government agencies, local government units, academic institutions, and non-government organizations from different regions across the country.

Any errors, failures, or unpopular opinions that may be found in this book are assumed by the main authors and the editor.

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Foreword

The Coastal Resource Management Project of the Department of Environment and Natural Resources with the support of the United States Agency for International Development in the Philippines is very pleased to be able to assist with the compilation and production of this valuable publication. "Mending Nets: A Handbook on the prosecution of fishery and coastal law violations" provides a rich source of easily accessible information and guidance on how to make prosecution of fishery and coastal law infractions more efficient, transparent and effective. Given the plight of our coastal and marine resources, especially fisheries, "Mending Nets..." is a timely and useful tool for all those concerned with apprehension and prosecution of coastal law violators. The content of this book has been carefully researched and written by lawyers of the Environmental Legal Assistance Center in association with technical reviewers from most concerned agencies and organizations. I am certain that this book will assist in the various national and local efforts to conserve and manage our coastal and marine resources in the Philippines today.

Alan T. White, Ph.D.

Preface

In our many years of working with fisherfolk communities and collaborating with various groups in the fisheries sector, ELAC has been constantly confronted with the depressing status of our fishery resources. Apparently, despite efforts of well meaning-groups and individuals, and the existence of laws and practices which seek to secure our resources against destructive activities and fishing methods, fish stocks and marine habitats continue to dwindle.

The many loopholes in fisheries resources management can no longer be left open if we are to succeed in our efforts to rehabilitate and protect whatever is left of our resources. Among these loopholes is failure in law enforcement in which prosecution plays a very crucial part. Most people, even law enforcers, prosecutors and judges, are unaware of special laws on fisheries. They either fail to properly gather, preserve and present evidence in accordance with these laws, or worse, they do not know that these laws exist. As a result, there have been quite a number of improper dismissal of actions and acquittals of violators.

ELAC has been making efforts to help solve the above-mentioned problems through education initiatives, community organizing and even through media advocacy. But we can reach out to only so many. Then in 2003, our Executive Director, Atty. Jose Andres Canivel, shared his dream of publishing a book that would reach even the farthest municipalities. But we did not have the resources.

One day, Mar Guidote of CRMP, with whom ELAC has a relatively long history of collaboration, handed us a draft of a “prosecution guidebook” for comments. It all started at that moment. From then on, our team started a series of debates and brainstorming sessions on what to include in the book, who it should be primarily for and how it should be presented, who would write which chapter and so on.

Writing the book proved to be physically, emotionally and intellectually demanding. At one point, we were “forced” to stay together for four days to finalize our chapters after a consultative review of the draft with invited experts from the national and local governments, non-government organizations and the private sector. But despite the challenges in writing the book, the team persevered.

It was also a learning experience for us. We discovered new and relevant information from all those who shared with us during the workshop their experiences and expertise in fisheries law enforcement and prosecution. The series of consultations, reviews, and critiquing sessions that began from the conceptualization of the content to the revision of the lay-out involved a wide range of participants such as local government officials, staff of national government agencies, police investigators, NGO workers, and members of the NALECC. In the end, the pooling of ideas of experienced law enforcers and prosecutors from different offices all over the country made the book richer, more practical and more substantial than what it would have been had we decided to base it on ELAC experiences alone.

This handbook was written with the intention of equipping everyone involved in law enforcement and prosecution with a handy reference material that hopefully contains all the necessary basic information—and some helpful notes as well—that they need in the performance of their tasks.

“Mending Nets” symbolizes our aspiration to mend the gaps in enforcement that are analogous to frayed nets that allow fisheries law offenders to escape the nets of justice because of our lack of concern and effort. It is our hope that this book on prosecution will bring us a step closer to improving law enforcement in the Philippines and ultimately bring us a bountiful sea once again.

The Authors

About the Book

In Lanao del Norte, illegal fishers file a countersuit against the Bantay Dagat, and consequently retrieve their confiscated gear. In Palawan, a public prosecutor dismisses a complaint for sand and pebble quarrying on the grounds that the law prohibits quarrying only in the marine, not the coastal, habitat. In Samar, a judge tries a case based on an outdated, 14-year old fisheries code.

All across the country, fisheries cases are losing. Of the thousands of coastal law offenders apprehended every year, only a small fraction are actually charged for their crimes; even fewer are tried in court. Those that are tried and plead guilty often get away with paying a token fine, free once again to repeat their offenses the very next day—and the next.

The Philippines has no shortage of environmental laws; however, any public officer or, for that matter, any concerned citizen seeking to help manage the environment will immediately point to deficiencies in law enforcement as a major factor in continued habitat destruction. Essential to effective coastal resource management then is a strong law enforcement continuum: the prevention, apprehension, and prosecution of crimes committed by those who, despite knowing the tragic consequences for both present and future generations, persist in destroying the environment for personal gain.

Especially crucial to law enforcement is prosecution—the stage where cases are filed and tried in court for appropriate penalties to be meted out. A failure in prosecution, in essence, means a failure in serving justice to the environment and to all who depend on it for survival. Efforts of dedicated law enforcement groups that put life and limb on the line are brought to nothing: lack of knowledge of current legal issuances and procedures, narrow interpretation of coastal laws, and corruption and intervention of politicians and judicial authorities in law enforcement often put coastal and fisheries law cases at the risk of dismissal at every stage of the prosecution.

Indeed, the nets of justice have many holes that law offenders can easily slip through. **Mending Nets** aims to provide the information needed to strengthen the case for the protection of the coastal and marine environment, and to deter law offenders from robbing communities of their resources again.

What is this book?

- ◆ A handbook that is light enough to carry around, but heavy with essential information
- ◆ A quick reference at work to ensure proper handling of coastal law violations
- ◆ A refresher on appropriate laws and procedures related to dealing with coastal law violations
- ◆ A guide for those who are new at dealing with coastal law violation cases
- ◆ A source of ideas and examples for resolving issues not tackled by the law but commonly encountered in actual cases

Who is it for?

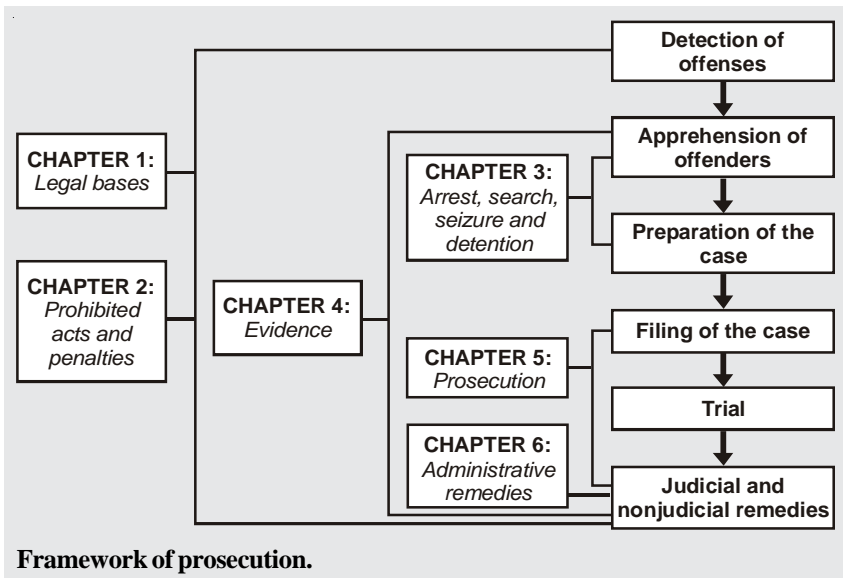
This book is primarily for prosecutors—both lawyers and non-lawyers by profession—who are tasked to bring coastal law offenders to justice. These include fiscals, Chiefs of Police, and other authorized individuals. It is also for judges, uniformed and community-based law enforcers, and local government officials who wish to further define their roles in supporting and facilitating the prosecution of coastal law violations.

Readers from other sectors—such as civil society, national government agencies, and the media—may also find this book a helpful source of information for various applications in their line of work, especially in monitoring the appropriateness of laws, procedures and grounds used by those directly involved in the law enforcement continuum.

What is its scope?

Though this book is essentially meant to be a handbook for prosecution of coastal law violators, it necessarily goes beyond the mere filing of cases and even trial proper. To ensure the successful prosecution of such cases, this book deals with the larger framework within which prosecution operates.

In this handbook, the word “coastal” is used in its general sense to cover the whole extent of Philippine fisheries—within municipal waters (inland bodies of water, inter-tidal areas and the open seas 15 km from shore) up to the Exclusive Economic Zone (a maximum of 212 nautical miles from shore). Violations of laws involving lakes, rivers, wetlands, beaches and marine areas, as well as the resources found in these habitats, are therefore all referred to as “coastal law violations”.



How is it organized?

Chapter 1 Legal Bases

- ◆ Enumerates laws and legal issuances that may be cited and referred to during prosecution

Chapter 2 Prohibited Acts and Penalties

- ◆ Classifies the prohibited acts according to the nature of the offense or the resource violated for easy reference
- ◆ Lists the elements and penalties of each prohibited act as prescribed by the relevant laws
- ◆ Discusses the details of each prohibited act as applied in real-life situations, providing tips and reminders where needed

Chapter 3 Arrest, Search, Seizure and Detention

- ◆ Deals with procedures prior to prosecution that may make or break fisheries cases

Chapter 4 Evidence

- ◆ Lays down the rules on evidence
- ◆ Gives guidelines on how different kinds of evidence are presented in court
- ◆ Provides a checklist of evidence that may be used to establish probable cause for each prohibited act, providing tips and reminders where needed

Chapter 5 Prosecution

- ♦ Answers basic questions on who should prosecute, when, why and where
- ♦ Traces the flow of prosecution from investigation to final judgment, and details the procedures involved in different types of coastal law violations

Chapter 6 Administrative Remedies

- ♦ Provides the what and how of cases that law enforcers and prosecutors can file with different government bodies to further discourage offenders from repeating their violations

Annexes

- ♦ Some reminders and tips on how to preserve evidence
- ♦ Samples of forms to be presented in court for successful prosecution
- ♦ A list of agencies and bodies involved in coastal law enforcement, and their respective mandates
- ♦ A guide to looking up the laws, rules and cases cited in this book

An Index of Definitions is provided instead of a glossary for easy location of frequently used legal terms already defined within the book.

Each chapter is introduced by a flash page that quickly outlines the chapter's contents. The flash page also provides the reader with a list of special topics tackled by the chapter, along with a list of figures that illustrate the chapter's relevant procedures and concepts.

Specific topics are introduced and discussed in the form of questions that the prosecutor would naturally ask in the course of his or her work.

Icons are used throughout the book to help readers quickly find the kind of information they need.



Definition

an explanation of legal terms or concepts for users with no background in law



Example

particular objects or situations that further explain a concept



Reminder

a procedure or legal detail that must be taken note of and always kept in mind



Warning

an action that, if committed, might weaken or put the prosecution in danger



Tip

an action not required by legal procedure but which may facilitate and improve the prosecution



Issue

an actual case, experience or idea commonly found to be an obstacle to effective prosecution or as an object of contention, with discussions on how it may be or has been resolved

Chapter 1

Legal Bases

- I. The 1987 Philippine Constitution
- II. National Laws
- III. International Treaties and Agreements
- IV. Executive Orders
- V. Administrative Orders
 - A. DA Fisheries Administrative Orders (FAOs)
 - B. DENR Administrative Orders (DAOs) and Circulars
 - C. DILG Memorandum Circular
- VI. Ordinances of Local Government Units

Figure

1.1 Hierarchy of laws in the Philippines



The first part of the paper discusses the importance of maintaining accurate records in a business. It highlights how proper record-keeping can help in decision-making, legal compliance, and financial management. The author emphasizes that records should be organized, up-to-date, and easily accessible.

In the second section, the author explores various methods for record-keeping, including manual filing systems and digital databases. The benefits of digital records are discussed, such as ease of search, backup, and sharing. However, the author also notes the importance of security and data protection when using digital systems.

The third part of the paper focuses on the legal aspects of record-keeping. It discusses the requirements for retaining records and the consequences of non-compliance. The author provides examples of industries with specific record-keeping regulations, such as healthcare and finance.

Finally, the author concludes by emphasizing the long-term value of maintaining accurate records. It is not just a legal obligation but a strategic business practice that can lead to better performance and risk management.

Chapter 1

Legal Bases

The elements that decide the fate of the coastal environment—from who watches over it, to how it is protected and used, to the attitudes people have towards coastal resources—is reflected in, and at the same time determined by the law. Knowledge of relevant laws and legal issuances is therefore the necessary starting point of a successful prosecution, as it provides the legal foundation for any action directed towards the protection of the coastal environment.

The following laws are listed according to hierarchy: from pertinent provisions of the Philippine Constitution, to national laws and international treaties and agreements, to Executive Orders of the President, to Administrative Orders and Circulars issued by government agencies. The role of ordinances enacted by local government units is also briefly discussed. In each section, the laws are listed in reverse chronological order, from the most recent to the oldest.

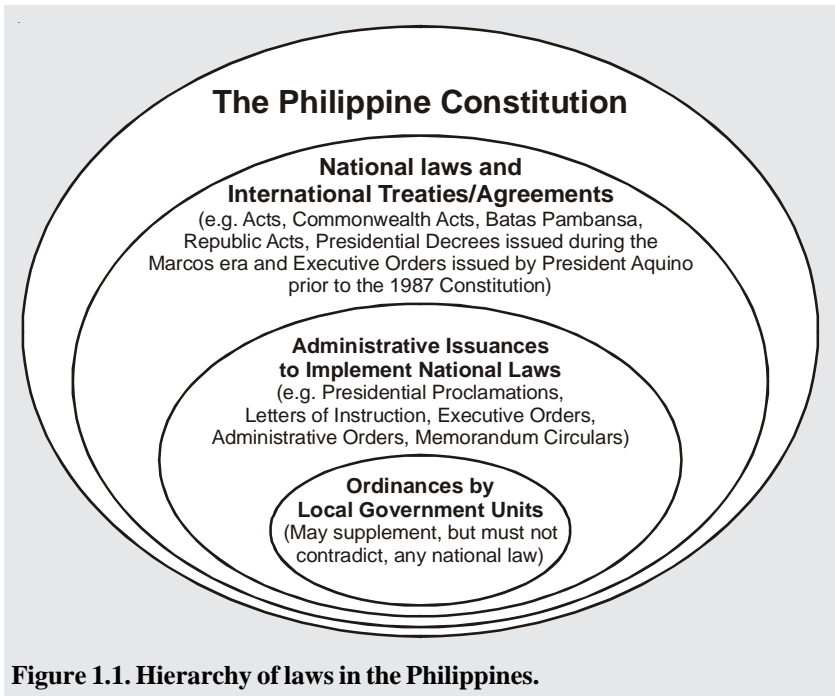


Figure 1.1. Hierarchy of laws in the Philippines.

THE 1987 PHILIPPINE CONSTITUTION

The Constitution establishes, limits and defines the fundamental powers of government. As the highest law of the land, all other laws and legal issuances may be said to spring from—and must be in harmony with—these constitutional provisions.

The following provisions of the 1987 Philippine Constitution lay down the State policies and principles significant to the coastal environment and to the rights of the people to the country's coastal resources.

Article I - National Territory

"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 sea, 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."

Article II, Section 15

"The State shall protect and promote the right to health of the people..."

Article II, Section 16

"The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature."

Article XII, Section 2

"All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty *per centum* of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law. In cases of water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant.

“The State shall protect the nation’s marine wealth in its archipelagic waters, territorial sea and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens.

“The Congress may, by law, allow small-scale utilization of natural resources by Filipino citizens, as well as cooperative fish farming, with priority to subsistence fishermen and fish-workers in rivers, lakes, bays, and lagoons.”

Article XIII, Section 7

“The State shall protect the rights of subsistence fishermen, especially of local communities, to the preferential use of the communal marine and fishing resources, both inland and offshore. It shall provide support to such fishermen through appropriate technology and research, adequate financial, production, and marketing assistance, and other services. The State shall also protect, develop, and conserve such resources. The protection shall extend to offshore fishing grounds of subsistence fishermen against foreign intrusion. Fishworkers shall receive a just share from their labor in the utilization of marine and fishing resources.”

NATIONAL LAWS



National laws are those statutes enacted by the legislative authority of the Philippines. Although legislative authority generally resides in Congress, there have been instances in history when the executive branch exercised this power. One example is Amendment 6 of 1976, which gave full legislative powers to then Pres. Ferdinand Marcos.

As such, certain Presidential Decrees (PDs) issued by Marcos are considered as national laws, such as PD No. 705, otherwise known as “The Forestry Reform Code of the Philippines”, which is still the governing law on forestry to date.

Some laws listed below might appear as having nothing to do with the coastal environment. These were included as they contain provisions applicable to some aspects of coastal law enforcement. An example would be the Labor Code of the Philippines, which covers agricultural workers, including fishworkers.

- ◆ RA 9275 (2004) Philippine Clean Water Act of 2004
- ◆ RA 9147 (2001) The Wildlife Resources Conservation and Protection Act
- ◆ RA 8550 (1998) The Philippine Fisheries Code
- ◆ RA 8435 (1997) The Agriculture and Fisheries Modernization Act
- ◆ RA 8371 (1997) The Indigenous People’s Rights Act (includes the indigenous people’s ownership and management of their ancestral waters)

- ♦ **RA 7586 (1992)** The National Integrated Protected Areas Systems Act
- ♦ **RA 7942 (1995)** The Philippine Mining Act
- ♦ **RA 7611 (1992)** The Strategic Environmental Plan for Palawan
- ♦ **RA 7161 (1991)** An Act Incorporating Certain Sections of the National Internal Revenue Code of 1977, as Amended, to PD No. 705, as Amended, Otherwise Known as the “Revised Forestry Code of the Philippines...”
(Section 4, amending Section 71 of PD 705, prohibits the cutting of all mangrove species)
- ♦ **RA 7160 (1991)** The Local Government Code of 1991
(rights and responsibilities of LGUs and offices include management and protection of the coastal environment, see Annex 2)
- ♦ **PD 1586 (1978)** The Environmental Impact Statement Law Establishing an Environmental Impact Statement System, Including Other Environmental Management Related Measures and for Other Purposes
- ♦ **PD 1084 (1977)** (Amended by EO 525) Creating the Public Estates Authority
(which is responsible for integrating, directing and coordinating all reclamation projects for and in behalf of the government)
- ♦ **PD 1198 (1977)** Requiring All Individuals, Partnerships or Corporations Engaged in the Exploration, Development or Exploitation of Natural Resources or in the Construction of Infrastructure Projects to Restore or Rehabilitate to Their Original Condition Areas Subject Thereof or Affected Thereby
- ♦ **PD 1160 (1977)** Vesting Authority in Barangay Captains to Enforce Pollution and Environmental Control Laws and for Other Purposes
- ♦ **PD 1152 (1977)** The Philippine Environmental Code
- ♦ **PD 1067 (1976)** The Water Code of the Philippines
- ♦ **PD 984 (1976)** The Pollution Control Law
- ♦ **PD 979 (1976)** The Marine Pollution Decree
- ♦ **PD 813 (1975)** Further Amending RA 4850, Otherwise Known as “An Act Creating the Laguna Lake Development Authority Prescribing Its Powers, Functions and Duties, Providing Funds Therefor and for Other Purposes”
- ♦ **PD 705 (1975)** The Forestry Reform Code of the Philippines
(contains provisions covering mangroves)
- ♦ **PD 601 (1974)** The Revised Coast Guard Law
- ♦ **PD 442 (1974)** The Labor Code of the Philippines
(applicable to agricultural workers)
- ♦ **RA 4850 (1966)** An Act Creating the Laguna Lake Development Authority, Prescribing Its Powers, Functions and Duties, Providing Funds Therefor and for Other Purposes
- ♦ **Commonwealth Act 141 (1936)** The Public Land Act

INTERNATIONAL TREATIES AND AGREEMENTS

International treaties and agreements, once ratified by the Senate, become part of Philippine law. Section 21 of the 1987 Constitution provides that treaties and international agreements are valid and take effect when concurred by at least two-thirds of the Senate.

The following enumeration includes treaties and international agreements entered into by the Philippines that are relevant to the protection of the coastal environment:

- ♦ Cartagena Protocol on Biosafety (2000)
- ♦ Code of Conduct for Responsible Fisheries (1995)
- ♦ Action Agenda for Sustainable Development, Earth Summit (Agenda 21) (1992)
- ♦ Convention on Biological Diversity (1992)
- ♦ World Commission on Environment and Development (1987)
- ♦ Convention on Migratory Species (The Bonn Convention) (1983)
- ♦ United Nations Convention on the Law of the Sea (1982)
- ♦ Convention on the International Trade of Endangered Species of Wild Flora and Fauna (CITES) (1973)
- ♦ Convention Concerning the Protection of the World Cultural and Natural Heritage (1972)
- ♦ Convention on Wetlands of International Importance (The Ramsar Convention) (1971)

EXECUTIVE ORDERS



Executive Orders (EOs) are acts of the President which provide for rules of a general or permanent character to implement constitutional or statutory powers (*De Leon, 1998*).

Following are EOs that are relevant to coastal environment protection:

- ♦ EO No. 305 (2004) Devolving to Municipal and City Governments the Registration of Fishing Vessels Three (3) Gross Tonnage Below
- ♦ EO No. 247 (1995) Prescribing Guidelines for the Prospecting of Biological and Genetic Resources
- ♦ EO No. 240 (1995) Creating the Fisheries and Aquatic Resources Management Councils (FARMCs) in Barangays, Cities and Municipalities, Their Composition and Functions
- ♦ EO No. 149 (1993) Streamlining the Office of the President, Resulting to the Transfer of Administrative Supervision of the Laguna Lake Development Authority to the Department of Environment and Natural Resources
- ♦ EO No. 292 (1987) The Philippine Administrative Code
- ♦ EO No. 192 (1987) The Reorganization Act of the DENR

- ♦ EO No. 927 (1983) Further Defining Certain Functions and Powers of the Laguna Lake Development Authority
- ♦ EO No. 525 (1979) Designating the Public Estates Authority as the Agency Primarily Responsible For All Reclamation Projects
- ♦ EO No. 542 (1979) Creating the Task Force *Pawikan* and Appropriating Funds Therefor

ADMINISTRATIVE ORDERS AND CIRCULARS



Administrative Orders (AOs) are issuances directed to particular offices, officials or employees for compliance on specific matters. **Circulars** are issuances that prescribe policies, rules and regulations and procedures applicable to individuals and organizations outside the government. They are designed to supplement provisions of the law or to provide means and information for carrying out these provisions. (*De Leon, 1998*).

An examination of AOs and circulars issued by government agencies, however, shows that the terms “order” and “circular” are used interchangeably.

Many of the AOs in this list cite related but older AOs as an additional reference. Some of these earlier AOs are still effective, as they have not been expressly repealed, and may contain provisions that remain consistent with newer AOs.

Older AOs that have been supplanted by the newer AOs are still cited because they contain definitions that may prove useful in interpreting the newer AOs. If anything else, these repealed AOs are still helpful in giving the reader a historical perspective of the development of policies regarding the covered subjects.

Department of Agriculture (DA) Fisheries Administrative Orders (FAOs)

- ♦ DA AO No. 01 (Series of 2004) Guidelines for Delineating/ Delimiting Municipal Waters for Municipalities and Cities without Offshore Islands
- ♦ FAO 223 (Series of 2003) Moratorium on the Issuance of New Commercial Fishing Vessel and Gear License (CFVGL) as Part of a Precautionary Approach to Fisheries Management
- ♦ FAO 222 (Series of 2003) Regulations on the Operation of Danish Seine (Hulbot-Hulbot)
- ♦ FAO 221 (Series of 2003) Further Regulating the Importation of Live Fish and Fishery/Aquatic Products under FAO No. 135 s. 1981 to Include Microorganisms and Biomolecules
- ♦ FAO 218 (Series of 2001) Yearly Report on Aquaculture Projects
- ♦ FAO 217 (Series of 2001) Obstruction to Defined Migration Paths

- ◆ **FAO 216** (Series of 2001) Obstruction to Navigation in Streams, Rivers, Lakes and Bays
- ◆ **FAO 214** (Series of 2001) Code of Practice for Aquaculture
(see FAO 160 s. 1986: Rules and Regulations Governing the Construction, Establishment or Operation of Fishpens and Fish Cages in Philippines; FAO 161 s. 1986: Revised Rules and Regulations Governing the Issuance of Lease for Pearl Culture; FAO 168 s. 1990: Rules and Regulations Governing the Gathering, Culture and Exportation of Shelled Mollusks [Phylum *Mollusca*])
- ◆ **FAO 213** (Series of 2001) Establishment and Maintenance of BFAR's Quality Control Laboratories and Collection of Fees and Charges for Examination Services
- ◆ **FAO 212** (Series of 2001) Guideline on the Implementation of Hazard Analysis Critical Control Point (HACCP) System
- ◆ **FAO 210** (Series of 2001) Rules and Regulations on the Exportation of Fresh, Chilled and Frozen Fish and Fishery/ Aquatic Products
(see FAO 162 s. 1986: Rules and Regulations Governing the Issuance of Permit for the Exportation of Live Mud Crabs or *Alimango* (*Scylla serrata*); FAO 168 s. 1990: Rules and Regulations Governing the Gathering, Culture and Exportation of Shelled Mollusks [Phylum *Mollusca*])
- ◆ **FAO 209** (Series of 2001) Guideline on the Production and Transportation of Shellfish for Implementation of the Local Government
- ◆ **FAO 208** (Series of 2001) Conservation of Rare, Threatened and Endangered Fishery Species
(see FAO 185 s. 1992: Ban on Taking or Catching, Selling, Purchasing, Possessing, Transporting and Exporting of Dolphins)
- ◆ **FAO 207** (Series of 2001) Prohibiting the Importation and Culture of Imported Live Shrimp and Prawn of All Stages
(see FAO 189 s. 1993: Prohibiting the Importation of Live Shrimp and Prawn of All Stages)
- ◆ **FAO 206** (Series of 2001) Disposal of Confiscated Fish and Other Items in Fishing through Explosives and Noxious or Poisonous Substances
- ◆ **FAO 204** (Series of 2000) Restriction on the Use of Superlights in Fishing
- ◆ **FAO 203** (Series of 2000) Banning Fishing by means of "Muro-ami" and the Like Destructive to Coral Reefs and Other Marine Habitats
(see FAO 163 s. 1986: Prohibition on the Operation of "Muro-ami" and "Kayakas" in All Philippine Waters)
- ◆ **FAO 202** (Series of 2000) Ban on Coral Exploitation and Exportation
(see FAO 184 s. 1992: Guidelines on the Experimental Collection of Precious and Semi-precious Corals in Philippine Waters)

- ♦ **FAO 201 (Series of 2000) Ban on Fishing with Active Gear**
(see FAO 156 s. 1986: Guidelines and Procedures in the Effective Implementation of Letter of Instruction [LOI] No. 1328; FAO 164 s. 1997: Rules and Regulations Governing the Operation of *Hulbot-hulbot* in the Philippines Waters; FAO 188 s. 1993: Regulations Governing the Operation of Commercial Fishing Boats in Philippine Waters Using Tuna Purse Seine Nets; FAO 190 s. 1994: Regulations Governing *Pa-aling* Fishing Operation in Philippine Waters)
- ♦ **FAO 200 (Series of 2000) Guidelines and Procedures in Implementing Section 87 of the Philippine Fisheries Code of 1998**
- ♦ **FAO 199 (Series of 2000) Guidelines on Fish Transshipment**
- ♦ **FAO 198 (Series of 2000) Rules and Regulations on Commercial Fishing**
(see FAO 156 s. 1986: Covers Regulations Prohibiting the Operation of Commercial Trawl and Purse Seine in Marine Water Areas Within a Distance of Seven Kilometers from the Shoreline; FAO 188 s. 1993: Regulations Governing the Operation of Commercial Fishing Boats in Philippine Waters Using Tuna Purse Seine Nets; FAO 190 s. 1994: Regulations Governing *Pa-aling* Fishing Operation in Philippine Waters)
- ♦ **FAO 197 (Series of 2000) Rules and Regulations Governing the Lease of Public Lands for Fishponds Development**
(see FAO 125 s. 1979: Rules and Regulations Governing Conversion of Ordinary Fishpond Permits and Ten (10) Year Fishpond Lease Agreements into Twenty-Five (25) Year Fishpond Lease Agreements and Other Related Matters)
- ♦ **FAO 196 (Series of 2000) Guidelines on the Creation and Implementation of Fisheries and Aquatic Resources Management Councils (FARMCs)**
- ♦ **FAO 195 (Series of 1999) Rules and Regulations Governing Importation of Fresh/Chilled/Frozen Fish and Fishery/Aquatic Products**
(see FAO 183: Prohibiting the Importation of Yellow Fin Tuna and Tuna Products from Certain Countries)
- ♦ **DA AO No. 3 (Series of 1998) Implementing Rules and Regulations of RA 8550**
- ♦ **FAO 193 (Series of 1998) Ban on the Taking, Catching, Selling, Purchasing and Possessing, Transporting and Exporting of Whale Sharks and Manta Rays**
- ♦ **FAO 191 (Series of 1994) Employment of Foreign Crew Members Aboard Highly Specialized Commercial Fishing Vessels**
- ♦ **FAO 190 (Series of 1994) Regulations Governing *Pa-aling* Fishing Operation in Philippine Waters**
- ♦ **FAO 189 (Series of 1993) Prohibiting the Importation of Live Shrimp and Prawn of All Stages**
- ♦ **FAO 188 (Series of 1993) Regulations Governing the Operation of Commercial Fishing Boats in Philippine Waters Using Tuna Purse Seine Nets**

- ♦ FAO 185 (Series of 1992) Ban on Taking or Catching, Selling, Purchasing, Possessing, Transporting and Exporting of Dolphins
- ♦ FAO 184 (Series of 1992) Guidelines on the Experimental Collection of Precious and Semi-precious Corals in Philippine Waters
- ♦ FAO 183-1 (Series of 1992) Amending Section 1 of FAO 183 s. 1992
- ♦ FAO 183 (Series of 1992) Prohibiting the Importation of Yellow Fin Tuna and Tuna Products from Certain Countries
- ♦ FAO 173-1 (Series of 1991) Amending Section 1 of FAO No. 173 s. 1991, Banning the Exportation of Bangus Fingerlings (*Hatirin*)
- ♦ FAO 173 (Series of 1991) Banning the Exportation of Bangus Fingerlings (*Hatirin*)
- ♦ FAO 168 (Series of 1990) Rules and Regulations Governing the Gathering, Culture and Exportation of Shelled Mollusks (Phylum *Mollusca*)
- ♦ FAO 164 (Series of 1997) Rules and Regulations Governing the Operation of *Hulbot-Hulbot* in the Philippines Waters
- ♦ FAO 163 (Series of 1986) Prohibiting the Operation of “Muro-ami” and “Kayakas” in All Philippine Waters
- ♦ FAO 162 (Series of 1986) Rules and Regulations Governing the Issuance of Permit for the Exportation of Live Mud Crabs or *Alimango (Scylla serrata)*
- ♦ FAO 161 (Series of 1986) Revised Rules and Regulations Governing the Issuance of Lease for Pearl Culture
- ♦ FAO 160 (Series of 1986) Rules and Regulations Governing the Construction, Establishment or Operation of Fishpens and Fishcages in the Philippines
- ♦ FAO 158 (Series of 1986) Prohibition on the Gathering, Taking, Conducting, Selling, Transporting, or Possessing for Sale of Mollusks Belonging to the Genus *Triton charonia* and *Cassia*
- ♦ FAO 156-1 (Series of 1986) Prohibition on the Gathering, Taking, Collecting, Selling, Transporting, or Possessing of Mollusk Belonging to the Genus *Triton* and *Cassia*
- ♦ FAO 156 (Series of 1986) Guidelines and Procedures in the Effective Implementation of LOI No. 1328
(covers regulations prohibiting the operation of commercial trawl and purse seine in marine water areas within a distance of 7 km from the shoreline)
- ♦ FAO 155-1 (Series of 1994) Amending Section 2 of FAO No. 155, Regulating the Use of Fine-meshed Nets in Fishing
- ♦ FAO 155 (Series of 1986) Regulating the Use of Fine-meshed Nets in Fishing

- ♦ **FAO 125** Rules and Regulations Governing Conversion of Ordinary Fishpond Permits and Ten (10) Year Fishpond Lease Agreements into Twenty-Five (25) Year Fishpond Lease Agreements and Other Related Matters
- ♦ **FAO 88** (Series of 1968) Regulations for the Conservation of Turtles, Turtle Eggs and Turtle Shells in the Philippines
- ♦ **FAO 76** Regulations Governing the Collecting and Gathering of Marine Turtles
- ♦ **FAO 68** (Series of 1968) Amending Section 2 of FAO No. 36, prohibiting the Killing, Gathering, Possessing and Selling of Marine Turtles
- ♦ **FAO 36** Establishing a Closed Season Period for the Gathering or Killing of Marine Turtles, Turtle Eggs and Turtle Shells

**Department of Environment and Natural Resources (DENR)
Administrative Orders (DAOs) and Circulars**

- ♦ **Joint DENR-DA-PCSD AO No. 01** (Series of 2004) Joint Implementing Rules and Regulations (IRR) Pursuant to Republic Act No. 9147: "An Act Providing for the Conservation and Protection of Wildlife Resources and their Habitats, Appropriating Funds Therefor and for Other Purposes"
- ♦ **Memorandum Circular No. 2004-01** (Series of 2004) Providing for the Guidelines in the Collection, Deposit and Distribution of Management/Service/Environmental User's Fee on the Extraction of Seabed Dredgefill Materials for Government Reclamation Projects
- ♦ **Joint DENR-NCIP Memorandum Circular No. 2003-01** (Series of 2003) Harmonization of the Implementation of the Indigenous People Rights Act (IPRA) and Environment and Natural Resources (ENR) Laws and Policies
- ♦ **DAO 30** (Series of 2003) Implementing Rules and Regulations (IRR) for the Philippine Environmental Impact Statement (EIS) System
- ♦ **DAO 7** (Series of 2003) Revocation of DENR AO 17 s. 2000 (DAO 17 provides guidelines for the delineation of municipal waters)
- ♦ **DAO 6** (Series of 2003) Revocation of DENR AO No. 2000-83 and Memorandum Circular 2001-05 (Revokes regulations governing management and development of small islands and their coastal areas, and lifts the moratorium [dated 6 July 1999] on the disposition and granting of any title, concession, permit or lease on all small islands nationwide)
- ♦ **DAO 2** (Series of 2001) Amending Relevant Provisions of DAO 2000-68, Institutionalizing the Directorate on Special Projects for Water and Integrated Ecosystems Management and Development (DSPWIEMD) and DAO No. 2000-70, Suspending

DAO 2000-68 and Including Biodiversity Conservation Programs and Projects Within the Protected Areas and Wildlife Bureau (PAWB)

(DENR's coastal and marine resource management and development program and biodiversity conservation programs/projects/activities are institutionalized under PAWB.)

- ◆ **DA-DENR Joint Memorandum Order No. 1** (Series of 2000) Identifying/Defining Areas of Cooperation and Collaboration between the DA and DENR in the Implementation of RA 8550, the Philippine Fisheries Code
- ◆ **DAO 83** (Series of 2000) Guidelines for the Management and Development of Small Islands, including Its Coastal Areas
- ◆ **DAO 68** (Series of 2000) Institutionalization of the DSPWIEMD and Related Functions
- ◆ **DAO 57** (Series of 2000) Guidelines Governing the Implementation and Management of Mangrove Sub-projects under the Forestry Sector Project
- ◆ **DAO 35** (Series of 1999) Revised Guidelines in the Implementation of the Resource Use Permit in Community-based Forest Management (CBFM) Program
- ◆ **DAO 17** (Series of 1999) Updating DAO No. 35 s. 1990, otherwise known as the Revised Effluent Regulations of 1990, Revising and Amending the Effluent Regulations of 1982
- ◆ **DAO 10** (Series of 1998) Guidelines on the Establishment and Management of CBFM Projects within Mangrove Areas
- ◆ **Memorandum Circular 06** (Series of 1998) Guidelines in Water Quality Monitoring
- ◆ **DAO 39** (Series of 1997) Chemical Control Order for Cyanide and Cyanide Compounds
- ◆ **DAO 32** (Series of 1997) Rules for Adjudication of Illegal Forest Products
- ◆ **DAO 27** (Series of 1997) Amendment of Section 15 (Transitory Provisions) of DAO No. 96-20, also known as the Implementing Rules and Regulations on the Prospecting of Biological and Genetic Resources
- ◆ **DAO 17** (Series of 1997) Establishing the Disposition Program for Confiscated and Donated Wildlife in the Custody of DENR Wildlife Rescue Centers and Similar DENR Facilities and Providing Guidelines Thereof
- ◆ **DAO 5** (Series of 1997) Procedures in the Retention of Areas within CBFM Areas
- ◆ **Joint DENR-DA-DILG (Department of the Interior and Local Government)-DND (Department of National Defense) AO No. 01** (Series of 1997) Setting of Moratorium on the Deployment of Artificial Reefs Nationwide

- ◆ DAO 37 (Series of 1996) Revising DENR AO No. 21 s. 1992, Further Strengthening the Implementation of the EIS System
- ◆ DAO 29 (Series of 1996) Rules and Regulations for the Implementation of EO 263, Otherwise Known as the Community-based Forest Management Strategy (CBFMS)
- ◆ DAO 20 (Series of 1996) Implementing Rules and Regulations on the Prospecting of Biological and Genetic Resources
- ◆ DAO 3 (Series of 1996) Implementing Guidelines on the Granting of Preferential Treatment to Small Fisherfolk Relative to the 15-km Municipal Waters
- ◆ DAO 19 (Series of 1993) Establishing the Coastal Environment Program (CEP) and Providing Funds Therefor
- ◆ DAO 25 (Series of 1992) National Integrated Protected Areas System (NIPAS) Implementing Rules and Regulations
- ◆ DAO 17 (Series of 1992) Delineation of Functions and Implementation of the Integrated Social Forestry Program After the Devolution of Functions to the Local Government Units (LGUs)
- ◆ DAO 55 (Series of 1991) Declaring Dugong or Sea Cow (*Dugong dugon*) as Protected Marine Mammal of the Philippines
- ◆ DAO 48 (Series of 1991) Establishment of a National List of Rare (R), Endangered (E), Threatened (T), Vulnerable (V), Indeterminate (I) and Insufficiently Known (K) Species of the Philippine Wild Birds, Mammals and Reptiles
- ◆ DAO 34 (Series of 1991) Guidelines for Issuance of Environmental Compliance Certificates (ECCs) for Fishpond Development
- ◆ DAO 3 (Series of 1991) Policy and Guidelines for the Award and Administration of the Mangrove Stewardship Agreement
- ◆ DA-DENR General Memorandum Order No. 3 (Series of 1991) Guidelines for Cancellation and Reversion of Foreshore Lease Agreements (FLAs) into Mangrove Forestlands
- ◆ DAO 15 (Series of 1990) Regulations Governing Management of Mangroves
- ◆ DAO 7 (Series of 1989) Suspending Acceptance of Prospecting Permits in Reservations
- ◆ DAO 76 (Series of 1987) Establishing Buffer Zones in Coastal and Estuarine Mangrove Areas
- ◆ MNR (Ministry of Natural Resources) AO 42 (Series of 1986) Expanding Mangrove Buffer Zones in Typhoon Prone Areas
- ◆ MNR Memorandum (1982) Management Authority over Marine Turtles
- ◆ MNR Memorandum Order 6 (Series of 1982) Suspension of Permits on Maritime Turtle Exploitation

- ♦ MNR Special Order 201 (1980) Creation of an Implementing Organization of the *Pawikan* Task Force to Implement the *Pawikan* Conservation Program of the Philippines
- ♦ MNR AO 12 (Series of 1979) Regulations for the Conservation of Marine Turtles
- ♦ Bureau of Forestry Development Circular 2 (Series of 1979) Regulations for the Conservation of Marine Turtles in the Philippines
- ♦ Bureau of Forestry AO 1 (Series of 1974) Regulations Governing the Collecting, Gathering and/or Disposing of Marine Turtles, Turtle Eggs and Its By-Products

Department of the Interior and Local Government (DILG) Memorandum Circular (MC)

- ♦ DILG MC 129 (Series of 2002) Banning the Use of Compressor as Breathing Apparatus in All Fishing Activities
(“Enjoins” LGUs to enact local ordinances that ban the use of compressors as breathing apparatus in all fishing activities.)

ORDINANCES OF LOCAL GOVERNMENT UNITS



Ordinances are the legislative enactments of the respective *sanggunian* (council) of LGUs. The power of LGUs to enact ordinances is rooted in the Local Government Code (RA 7160). Although ordinances issued by LGUs must not contravene any law passed by Congress, such ordinances may address local concerns that national laws fail to deal with. They are vital, as they may plug in the gaps existing in statutes or orders, especially problems particular to a province or municipality that national laws do not respond to.



An application of this is the ban on the use of compressors in fishing. While there is no express prohibition in RA 8550 regarding the use of compressors in fishing, it is commonly known that they are employed as breathing device by fishers using cyanide, which is by itself destructive and prohibited by law. That the use of compressors as a breathing device is detrimental to the health of fishers and fishworkers is also a concern that has been raised. Several cities and municipalities have filled the gap left by RA 8550 by enacting ordinances that ban the mere possession of compressors on board a *banca*, or by a fisher.

Ordinances, when carefully crafted, may also prove to be a greater deterrent for coastal law offenders, even though under RA 7160, the maximum imposable penalty is only a fine of P2,500 and imprisonment of 6 years. Violations of RA 8550 are often penalized by a fine *and/or* imprisonment; the court, at its discretion, usually imposes only a minimal fine. The violators are therefore not discouraged to stop their

criminal acts, and usually even plead guilty to the crimes, because the fine is a very small fraction of their profit from illegal activities.

Local government units, on the other hand, may enact fishery ordinances with a minimum penalty of both fine *and* imprisonment, leaving no discretion to the court. This will ensure that violators not only pay the fine, but are also imprisoned when they plead guilty. To increase the amount of the fine, and therefore discourage violators from committing the crime again, the P2,500-maximum fine may be imposed per individual just as RA 8550 does (e.g. for each crew member in a fleet of illegal commercial fishing vessels) instead of per violation. Aside from this, the ordinance may also include as penalty the confiscation of fishing vessels and all its appurtenances, fishing gears, and fish catch to prevent the offenders from using these in other crimes.

Penalties imposed accrue exclusively and automatically to the municipal treasury (*RA 7160, sec. 18*).



2

Chapter

Prohibited Acts and Penalties

I. Prohibitions/Regulations Under RA 8550

A. Based on Fishing Method Employed

1. Actual Use of Explosives, Noxious or Poisonous Substances, and/or Electricity for Illegal Fishing (Section 88)
2. Mere Possession of Explosive, Noxious or Poisonous Substances and/or Electrofishing Devices for Illegal Fishing (Section 88)
3. Dealing in, Selling, or Disposing of, for Profit, Illegally Caught, Fisheries Species (Section 88)
4. Use of Fine Mesh Net (Section 88)
5. Use of Active Gear in the Municipal Waters and Bays and Other Fishery Management Areas (Section 90)
6. Ban on Muro-Ami and Any of its Variations (Section 92)
7. Ban on Gear and Methods which Destroys Coral Reefs, Seagrass Beds and Other Fishery Marine Life Habitat (Section 92)
8. Illegal Use of Superlight within Municipal Waters (Section 93)

B. Based on Location of Fishery Activity

1. Commercial Fishing Vessels Fishing Within Municipal Waters (Section 86 in relation to Section 18)
2. Commercial Fishing Vessels Fishing in Bays and Fishery Management Areas Declared as Overexploited (Section 86, paragraph 3)
3. Commercial Fishing Activities by Municipal Fisherfolk Within Municipal Waters Without Being Listed in the Registry of Municipal Fisherfolk (Section 86, paragraph 5)
4. Poaching in Philippine Waters (Section 87)
5. Fishing in Overfished Areas and During Closed Season (Section 95)
6. Fishing in Fishery Reserves, Refuge, and Sanctuaries (Section 96)
7. Use of Active Gear in the Municipal Waters and Bays and Other Fishery Management Areas (Section 90)
8. Illegal Use of Superlight (Section 93)





C. Based on Resource Exploited

1. Ban on Coral Exploitation and Exportation (Section 91)
2. Ban on Gathering, Selling, Exporting of White Sand, Silica, Pebbles, and Other Substances that Make Up Marine Habitat (Section 92, paragraph 3)
3. Conversion of Mangroves (Section 94)
4. Fishing or Taking of Rare, Threatened or Endangered Species (Section 97)
5. Ban on the Taking or Catching, Selling, Purchasing, and Possessing, Transporting, and Exporting of Whale Sharks and Manta Rays (FAO 193 s. of 1998 pursuant to Sections 65 and 107 or RA 8550)
6. Capture of Sabalo and Other Breeders/Spawners (Section 98)
7. Exportation of Breeders, Spawners, Eggs, or Fry (Section 99)
8. Gathering and Marketing of Shell Fishes (Section 103, paragraph [c])

D. Other Prohibited/Regulated Activities

1. Engaging in Any Fishery Activity Within Philippine Waters without any License, Lease or Permit (Section 86, paragraph 1)
2. Importation or Exportation of Fish or Fishery Species (Section 100)
3. Violation of Catch Ceilings (Section 101)
4. Aquatic Pollution (Section 102)
5. Failure to Comply with Minimum Safety Standards (Section 103, subparagraph [a])
6. Failure to Conduct Yearly Report on all Fishponds, Fish Pens, and Fish Cages (Section 103, subparagraph [b])
7. Obstruction to Navigation or Flow and Ebb or Tide in any Stream, River, Lake, or Bay (Section 103, subparagraph [d])
8. Construction and Operation of Fish Corrals/Traps, Fish Pens and Fish Cages (Section 103, paragraph [e])
9. Obstruction to Defined Migration Paths (Section 105)
10. Commercial Fishing Vessel Operators Employing Unlicensed Fisherfolk or Fishworker or Crew (Section 104)
11. Obstruction to Fishery Law Enforcement Officer (Section 106)

II. Other Laws Prohibiting/Regulating Activities in Coastal Areas

1. NIPAS Act (RA 7586)
2. Wildlife Act (RA 9147)
3. Mining Act (RA 7942)
4. IPRA (RA 8371)
5. EIA Law (PD 1856)
6. Forestry Code (PD 705)
7. Clean Water Act (RA 9275)
8. Water Code (PD 1067)
9. Public Land Act (Commonwealth Act 141)

Chapter 2

Prohibited Acts and Penalties

As the primary law on fisheries, Republic Act (RA) 8550 is usually referred to in determining what acts are prohibited or regulated. This law and its implementing rules and regulations (IRR) integrate most of the coastal laws previously issued and provide penalties for a wide range of offenses.

This chapter divides the prohibitions/regulations and penalties in RA 8550 into four main categories for easier reference: based on fishing method employed, based on location of fishery activity, based on resource exploited, and other prohibited/regulated acts.

This classification is based on the major elements of the offenses associated with the prohibited acts of RA 8550. For example, commercial fishing with all the necessary permits is not a crime unless it is done within the 10-km minimum boundary of municipal waters. A major element of the offense, therefore, is *where* the fishing was done; commercial fishing within municipal waters (Sec. 86) has been classified in this chapter under prohibitions Based on Location of Fishery Activity.

All provisions cited are from RA 8550, unless otherwise indicated. A section citing other legal issuances that may affect the coastal environment and its resources is also included to provide a background on other laws that may be used to prosecute violations covered or not covered by RA 8550.

PROHIBITIONS/REGULATIONS UNDER RA 8550

A. Based on Fishing Method Employed

1. Section 88, paragraph 1(b) - Actual Use of Explosives, Noxious or Poisonous Substances and/or Electricity for Illegal Fishing

(See FAO 206 Series of 2001)

Elements	Penalty
<p>Fishing with explosives (Sec. 4, par. 42)</p> <p>Two modes of fishing with the use of explosives: First:</p> <ul style="list-style-type: none"> ⇒ The use of dynamite, other explosives or other chemical compounds ⇒ That contain combustible elements or ingredients 	<ul style="list-style-type: none"> ♦ Imprisonment of 5-10 years

Continued on next page

Elements	Penalty
<ul style="list-style-type: none"> ⇒ Which upon ignition by friction, concussion, percussion or detonation of all or parts of the compound ⇒ Will kill, stupefy, disable or render unconscious any fishery species <p>Second:</p> <ul style="list-style-type: none"> ⇒ The use of any other substance and/or device ⇒ Which causes an explosion that is capable of producing the said harmful effects ⇒ On any fishery species and aquatic resources and capable of damaging and altering the natural habitat <p>Fishing with noxious or poisonous substances (Sec. 4, par. 43)</p> <ul style="list-style-type: none"> ⇒ The use of any substance, plant extracts or juice thereof, sodium cyanide and/or cyanide compounds or other chemicals ⇒ Either in a raw or processed form ⇒ Harmful or harmless to human beings ⇒ Which will kill or stupefy, disable or render unconscious any fishery species and aquatic resources ⇒ And capable of damaging and altering the natural habitat <p>Electrofishing (Sec. 4, par. 16)</p> <ul style="list-style-type: none"> ⇒ The use of electricity generated by batteries, electric generators and other sources of electric power ⇒ To kill, stupefy, disable or render unconscious fishery species whether or not the same are subsequently recovered 	<ul style="list-style-type: none"> ♦ Forfeiture of explosives, noxious or poisonous substances and/or electrofishing devices, fishing vessels, fishing equipment and catch



This prohibition is not limited to dynamite or cyanide fishing. As long as the substances used fall within the definition of "explosives" and "noxious and poisonous substances", the prohibition applies.

Fish samples should be brought immediately to the laboratory for analysis (see Annex 1: Preservation of Evidence for guidelines).



Are blasting caps "explosives"?

Yes. Sec. 4, par. 42 of RA 8550 shows the definition of "explosives" as broad enough to include blasting caps.

Then Secretary of Justice Serafin Cuevas, in Department of Justice Resolution No. 137 s. 1999 (respecting the case of SPO1 Rolando T. Amurao R.C., Palawan Provincial Command vs. Roger Aganan, I.S. No. 96-117, for Illegal Possession of Explosives Intended for Illegal Fishing) explicitly ruled that: "... blasting caps contain highly combustible elements. They are thus within the context of the 3rd paragraph of Section 33 of Presidential Decree No. 704."

Is it always necessary to catch violators in the act of fishing for this prohibition to apply?

No. Sec. 88, par. 1(b) states that the discovery of explosives, noxious or poisonous substances and/or electrofishing devices *on board a fishing vessel, or in the possession of any fisherfolk, boat operator, fishing boat official or fishworker* constitutes prima facie evidence that the same was used for illegal fishing.

The same provision also states that *discovery of fish* caught or killed with the use of explosives, noxious or poisonous substances or by electricity *in any vessel* constitutes prima facie evidence that the fisherfolk, boat operator, boat official or fishworker is fishing with the use thereof.

What does "prima facie" evidence mean?



Prima facie evidence is evidence that establishes a fact and that, unless rebutted or explained, becomes conclusive and is considered as if fully proved. This amount of evidence is sufficient to counterbalance the general presumption of innocence and warrant a conviction, if not contradicted by other evidence that renders the fact improbable. (Regalado, 2000).

For the prohibition on cyanide fishing, Department of Environment and Natural Resources Administrative Order (DENR DAO) 39 s. 1997 (Chemical Control Order for Cyanide and Cyanide Compounds) may prove useful.



Separate criminal cases with their respective penalties can also be filed against the violator when the use of such explosives, noxious or poisonous substances and/or electrofishing devices result to physical injury or loss of human life.

2. Section 88, paragraph 2 - Mere Possession of Explosives, Noxious or Poisonous Substances and/or Electrofishing Devices for Illegal Fishing

Elements	Penalty
⇒ Explosives, noxious or poisonous substances and/or electrofishing devices were discovered not on board a fishing vessel	<ul style="list-style-type: none"> ◆ Imprisonment of 6 months to 2 years ◆ Forfeiture of explosives, noxious or poisonous substances and/or electrofishing devices
⇒ Explosives, noxious or poisonous substances and/or electrofishing devices were found in possession of persons other than fisherfolk, boat operator, fishing boat official or fishworker	
⇒ Explosives, noxious or poisonous substances and/or electrofishing devices were used or are to be used for illegal fishing	

What is the difference between “possession” under Section 88 paragraph 1(b) and Section 88 paragraph 2?

In paragraph 1 (b), possession of explosives, noxious or poisonous substances and/or electrofishing devices is by fisherfolk, operator, fishing boat official or fishworker. “Possession” under this provision may also be the mere discovery of these materials on board any fishing vessel. “Possession” under paragraph 1 (b) is enough evidence to presume that the materials were used for fishing in violation of RA 8550. Under paragraph 2, the materials are discovered in the possession of persons who are not fisherfolk, operator, fishing boat official or fishworker.

Why is it important to determine who is in possession and whether possession is on board a fishing vessel or not?



Since possession by any fisherfolk, boat operator, fishing boat official or fishworker, or on board a fishing vessel is *prima facie* evidence of *actual use*, it is meted a much higher penalty than mere possession (as defined above).

3. Section 88 - Dealing in, Selling or Disposing of, for Profit, Illegally Caught/Gathered Fisheries Species

(See FAO 206 s. 2001)

Elements	Penalty
⇒ Dealing in, selling or disposing of illegally caught/gathered fisheries species	♦ Imprisonment of 6 months to 2 years
⇒ Such activities must be for profit	♦ Forfeiture of fish catch

What is the difference between possession of illegally caught fish on board a fishing vessel and possession when dealing in, selling or disposing of illegally caught/gathered fish?

Discovery of the fish on board any fishing vessel is tantamount to *actual use* of explosives, noxious or poisonous substances and/or electrofishing devices, if the person in possession of the fish cannot prove otherwise. Mere possession of illegally caught fish *not on board* any fishing vessel, and in the course of dealing in, selling, or disposing of for profit, merits a lower penalty of imprisonment.

How should confiscated fish be disposed of?

Those *deemed fit for human consumption* may be donated to charitable or penal institutions, provided that these institutions execute a promissory note of their willingness to return the value of the catch upon acquittal of the accused. Fish *not deemed fit for human consumption*, especially those caught by cyanide or other noxious substances, are to be discarded by the apprehending officer in the

presence of a third ranking officer of the Bureau of Fisheries and Aquatic Resources (BFAR), a representative of the Office of the Prosecutor, or the Philippine National Police. The disposal process must be documented properly.

Who examines the illegally caught fish?

Samples of fish caught in blast fishing cases are brought to the nearest fish examiner or to any municipal health office or crime/hospital laboratory for examination. In cases of fish caught using noxious substances, samples must be brought to the BFAR Laboratory or any government crime/hospital laboratory for examination. (*FAO 206*) (See Annex 1: Preservation of Evidence for further guidelines).

4. Section 89 - Use of Fine Mesh Net

(See FAO 155 s. 1986 and FAO 155-1 s. 1994)

Elements	Penalty
<ul style="list-style-type: none"> ⇒ The mesh size of nets is smaller than that allowed by the Department of Agriculture (DA) ⇒ Such nets are used to engage in fishing ⇒ The fishery species gathered are not fry, glass eels, elvers, <i>tabios</i>, <i>alamang</i> and other species which by their nature are small but mature, to be identified by DA 	<ul style="list-style-type: none"> ◆ Imprisonment of 6 months to 2 years; and/or ◆ Fine of P2,000 to P20,000 at the discretion of the court



Fine-mesh nets are *currently defined* as those with mesh sizes less than 3 cm between 2 opposite knots of a full mesh when stretched (*Sec. 4, par. 21*).



If committed by a commercial fishing vessel, the boat captain, master fisher and vessel owner/operator are subject to the penalties provided.



Administrative fine and/or cancellation of the permit or license may be imposed by DA.

Have there been any new Fisheries Administrative Orders (FAOs) issued on this prohibition?



No. Since the DA-BFAR has yet to issue regulations on this section, FAO 155 s. 1986 and FAO 155-1 s. 1994 still apply. A common question is if the provision in FAO 155-1, exempting from this prohibition certain nets with a minimum limit of 1.9 cm mesh size, is still operative. These nets are identified as purse seines (*pangulong*), ring nets (*kubkob*, *pangulong*, *kalansisi*) and bagnets (*basnig*, *saklit*). But whether or not this exemption still exists, these nets are still classified as active fishing gear under Sec. 90 of RA 8550 and FAO 201 s. 2000. Therefore, they are still *prohibited within municipal waters*.

5. Section 90 - Use of Active Gear in the Municipal Waters and Bays and Other Fishery Management Areas

(See FAO 201 s. 2000)

Elements	Penalty
<ul style="list-style-type: none"> ⇒ Fishing gear/device is used for fishing ⇒ Fishing gear/device used is characterized by gear movement, and/or pursuit of the target species by towing, lifting and pushing the gears, surrounding, covering, dredging, pumping and scaring the target species to impoundments (Section 4, paragraph 40[a], RA 8550) 	<ul style="list-style-type: none"> ◆ Imprisonment of 2 to 6 years for the boat captain and master fisher ◆ Fine of P2,000 to P20,000 for the owner/operator of the vessel ◆ Confiscation and forfeiture of the catch

FAO 201 s. 2000 provides a list of examples of what DA considers as active fishing gear, such as all kinds of trawl, purse seines, Danish seines, ringnets, bagnets, drive-in nets, round haul seines and motorized pushnets.



The penalty of imprisonment is imposed only on the boat captain and master fisher. If the owner/operator is a corporation, the fine is imposed on the chief executive officer of the corporation. If the owner/operator is a partnership, the fine is imposed on the managing partner.



Is the prohibition on active gear applicable to handheld fishing gear used by municipal fishers?

No. Sec. 1 of FAO 201 provides that the prohibition on the use of active gear refers to those found on fishing boats, whether municipal or commercial, but not on fisher.

What law then can address concerns that handheld fishing gears are destructive to the aquatic environment?

Sec. 92 of RA 8550 not only prohibits muro-ami but also other fishing methods and gears destructive to coral reefs, seagrass beds and other fishery marine life habitat. Destructive, handheld fishing gears are therefore prohibited under this provision.



6. Section 92 - Ban on Muro-ami and Any of Its Variations

(See FAO 203 s. 2000)

Elements	Penalty
<ul style="list-style-type: none"> ⇒ Method and gear used for fishing require diving and other physical or mechanical acts to pound coral reefs and other habitats 	<ul style="list-style-type: none"> ◆ Imprisonment of 2 to 10 years for the operator, boat captain, master fisher and recruiter or organizer of the

Elements	Penalty
⇒ Act of pounding coral reefs and other habitats is meant to entrap, gather or catch fish	fishworkers who violate this prohibition; and/or fine of P100,000 to P500,000 ♦ Confiscation of catch and gear



The penalty of imprisonment is imposed only on the operator, boat captain, master fisher and recruiter or organizer of the fishworkers who violate this prohibition.

What is the difference between *muro-ami* and *pa-aling* methods of fishing?

Muro-ami:

- ♦ A fishing method used in reef fishing
- ♦ Consists of a movable bagnet, detachable wings and scarelines having plastic strips and iron/steel/stone weights
- ♦ Effecting fish capture by spreading the net in an area around the reefs or shoals and
- ♦ With the use of scare lines, a cordon of fishers drive the fish towards the waiting net while pounding the corals by means of heavy weights like iron/steel/stone or rock, making it destructive to the corals

(FAO 203 s. 2000, sec. 1, par. [a])

Pa-aling:

- ♦ A fishing gear consisting of a net set at coral/shoal reef areas
- ♦ Whereby fish are driven towards the net by means of air bubbles produced by compressors

(FAO 190 s. 1994)

Pa-aling was meant as a non-destructive alternative to *muro-ami*, as it employs basically the same method, but uses bubbles instead of weights or stones to scare and drive the fish towards the set-in net.

Why is it important to distinguish between *muro-ami* and *pa-aling*?

Muro-ami fishing operators often raise the defense that they are engaged in *pa-aling* fishing, as the latter is merely a legal variation of the former. It is always useful to determine whether the fishing vessel is in compliance with the provisions of FAO 190. An inventory of the fishing equipment on board the vessel, such as the number of weights, small boats, hoses, compressors, including the number of fishworkers, will usually not only show a violation of this FAO, but will also reveal the true fishing operation conducted by the fishing vessel.



7. Section 92 - Ban on Gear and Method which Destroys Coral Reefs, Seagrass Beds and Other Fishery Marine Life Habitats

Elements	Penalty
<ul style="list-style-type: none"> ⇒ Any person or entity engaged in fishing activity ⇒ Gear and method used for fishing are destructive to coral reefs, seagrass beds and other fishery marine life habitats as may be determined by DA 	<ul style="list-style-type: none"> ◆ Imprisonment of 2 to 10 years to the applicable person, natural or juridical; and/or fine of P100,000 to P500,000 ◆ Confiscation of catch and gear

Is it necessary for DA to issue a listing of destructive fishing gear before this prohibition can be enforced?

No. The phrase “as may be determined by the Department”, found in the first paragraph of Sec. 92, actually refers to “other fishery marine life habitat”.

It has been argued that the phrase “as may be determined by the Department” requires that DA first issue a list of destructive fishing gear for this provision to be enforceable. However, the intention of the legislature and the purpose of the law would be defeated if this requirement were interpreted from the provision, as offenders are always quick to modify their gear to evade technical definitions and circumvent rules and regulations. The law is clear that as long as a fishing gear is proven to be destructive, it falls under the prohibition of Sec. 92.

issue



8. Section 93 - Illegal Use of Superlight Within Municipal Waters

(See *FAO 204 s. 2000*)

Elements	Penalty
<ul style="list-style-type: none"> ⇒ Any person or entity engaged in fishing ⇒ Fishing activity is conducted within municipal waters ⇒ Such person or entity uses halogen or metal halide bulb/s pursuant to the definition of “superlights” under Section 4, paragraph 71 of RA 8550 	<ul style="list-style-type: none"> ◆ Imprisonment of 6 months to 2 years; and/or fine of P5,000 per superlight ◆ Confiscation of superlight, fishing gears and vessel

Are there instances where superlight fishing is allowed within municipal waters?

Yes. *FAO 204* provides that a gratuitous permit may be issued by the local chief executive, in consultation with its Fisheries and Aquatic Resources Management Council (FARMC), to any government or private research and educational institution for research, experimental, educational and scientific purposes, subject to such terms and conditions the local chief executive may deem wise to impose. However,

reminder



aside from the above exemption, superlight fishing is prohibited within municipal waters *regardless of the wattage of the bulb*. The wattage of the superlight bulb only matters for superlight fishing outside of municipal waters (*FAO 204 s. 2000*).

9. Section 93 - Illegal Use of Superlight Outside of Municipal Waters

(See *FAO 204 s. 2000*)

Elements	Penalty
<ul style="list-style-type: none"> ⇒ Any person or entity engaged in fishing ⇒ Fishing activity is conducted outside municipal waters ⇒ Bulb used for fishing is pursuant to the definition of “superlights” under Section 4, paragraph 71 of RA 8550 ⇒ Wattage of bulbs exceeds the specifications determined by the size of the commercial fishing boat 	<ul style="list-style-type: none"> ◆ Imprisonment of 6 months to 2 years; and/or fine of P5,000 per superlight ◆ Confiscation of superlight, fishing gears and vessel

The following specifies the allowable wattage according to the size of the fishing boat:

- ◆ Small scale (3.1 to 20 GT): 20 KW per vessel
- ◆ Medium scale (20.1 to 150 GT): 36 KW per vessel
- ◆ Large scale (more than 150 GT): 40 KW per vessel

(*FAO 204 s. 2000*)



Gratuitous permits to use superlight fishing outside of municipal waters may be issued by the Director of the BFAR, in consultation with the national FARMC, to any government or private research and educational institution for research, experimental, educational and scientific purposes, subject to such terms and conditions the director may deem wise to impose.

B. Based on Location of Fishery Activity

1. Section 86 in Relation to Section 18 - Commercial Fishing Vessels Fishing Within Municipal Waters

(See *FAO 198 s. 2000*)

Elements	Penalty
<ul style="list-style-type: none"> ⇒ Fishing must be for trade, business or profit, and not subsistence or sports fishing ⇒ Fishing vessel must weigh at least 3.1 GT ⇒ Fishing activity must be located within 15 km from coastline 	<ul style="list-style-type: none"> ◆ Imprisonment of 6 months ◆ Fine equivalent to the value of the catch or P10,000, whichever is higher ◆ Confiscation of catch and fishing gears ◆ Automatic revocation of license



The penalties of imprisonment and fine are imposed only on the boat captain or the three highest officers of the vessel.

Are commercial fishing vessels absolutely prohibited from fishing within municipal waters?

No. Commercial fishing vessels may fish within municipal waters if the following conditions are met:

- ◆ A municipal/city ordinance is passed allowing commercial fishing vessels to fish within 10.1 to 15 km of the municipal waters. The ordinance may only allow small-scale (3.1 to 20 GT) and medium-scale (20.1 to 150 GT) commercial fishing vessels.
- ◆ No commercial fishing is allowed in waters less than 7 fathoms deep, as certified by the appropriate agency.
- ◆ The fishing methods and gear used by the fishing vessel are consistent with national policies set by DA, and are in accordance with existing laws. Use of active gear within municipal waters or muro-ami fishing cannot be allowed as it runs contrary to RA 8550.
- ◆ The ordinance was passed after consultation, through a public hearing with the municipal/city FARMC.
- ◆ The small-scale and medium-scale commercial fishing vessels still secure a permit from the municipal/city government.
- ◆ The applicant vessel, as well as the shipowner, employer, captain and crew have been certified by the appropriate agency as not having violated RA 8550, as well as other environmental and related laws.

(Sec. 18)

Must a municipality/city first enact a fisheries ordinance delineating its waters before this prohibition can be enforced?

No. Although Rule 16.1 of IRR of RA 8550 mandates municipal/city governments to enact a basic Municipal Fisheries Ordinance (MFO) delineating the boundaries of their municipal waters, there is nothing in this rule that requires the passage of an MFO for the provisions of RA 8550 on municipal waters to apply. The extent of municipal waters is sufficiently defined under Sec. 4, par. 58 of RA 8550.

The discovery of any person in an area where he has no permit or registration papers for a fishing vessel constitutes *prima facie* evidence that such person and/or vessel is engaged in unauthorized fishing.



2. Section 86, paragraph 3 - Commercial Fishing by Commercial Fishing Vessels in Bays and Fishery Management Areas Declared as Over-exploited

Elements	Penalty
<ul style="list-style-type: none"> ⇒ Fishing vessel must weigh at least 3.1 GT ⇒ Fishing vessel fishes within an area declared as overexploited 	<ul style="list-style-type: none"> ◆ Imprisonment of 6 months ◆ Fine equivalent to the value of the catch or P10,000, whichever is higher ◆ Confiscation of catch and fishing gears ◆ Automatic revocation of license



The penalties of imprisonment and fine are imposed on the boat captain or the three highest officers of the vessel.

Who declares a particular area as over-exploited?

- ◆ The DA, if beyond municipal waters
- ◆ The local government unit (LGU), through an ordinance, after determination as such in coordination with DA and FARMC concerned, if within municipal waters

Doesn't Section 95 of RA 8550 also prohibit fishing in overexploited areas?



Yes. Sec. 95, which prohibits fishing in overfished areas, provides a much higher penalty than Section 86, but does not provide for the confiscation of the catch and fishing gears.

3. Section 86, paragraph 5 - Commercial Fishing Activities by Municipal Fisherfolk Within Municipal Waters Without Being Listed in the Registry of Municipal Fisherfolk

Elements	Penalty
<ul style="list-style-type: none"> ⇒ If fishing vessel is involved, it must be less than 3.1 GT ⇒ Municipal fisherfolk involved is not listed in the registry of municipal fisherfolk 	<ul style="list-style-type: none"> ◆ Fine of P500 ◆ Confiscation of catch



The discovery of any person in an area where he has no permit or registration papers for a fishing vessel constitutes *prima facie* evidence that such person and/or vessel is engaged in unauthorized fishing.

4. Section 87 - Poaching in Philippine Waters

(See FAO 200 s. 2000)

Elements	Penalty
<ul style="list-style-type: none">⇒ Foreign person, corporation or entity fishes or operates the fishing vessel⇒ Such fishing activity or operation of fishing vessel was conducted within Philippine waters	<ul style="list-style-type: none">◆ Fine of US\$100,000◆ Confiscation of the catch, fishing equipment and fishing vessel



The DA may also impose an administrative fine of US\$50,000 to \$200,000 or its equivalent in Philippine currency.

Does the mere entry of foreign fishing vessels within Philippine waters automatically lead to the presumption that they are poaching within the same?



While Sec. 87 provides that mere entry of foreign fishing vessels within Philippine waters is prima facie evidence that they are fishing or operating within the same, Sec. 3 of FAO 200 s. 2000 clarifies this portion of Sec. 87 by providing circumstances under which mere entry constitutes prima facie evidence.

Section 87 does not provide for imprisonment. May offenders be imprisoned pending trial of the case?

Yes. Although Sec. 87 does not provide for imprisonment, Philippine laws on the entry of illegal aliens may be used as basis for their detention.



Laws and legal issuances on illegal aliens include: Commonwealth Act 613, otherwise known as the Philippine Immigration Act of 1940 (as amended); Executive Order 236, organizing the National Committee on Illegal Entrants (NCIE); and NCIE Resolution 01-02, otherwise known as the Revised Implementing Guidelines, Rules and Regulations of the National Committee on Illegal Entrants.

What if the poacher fails to pay the fine?



Under Art. 39 of the Revised Penal Code (RPC), subsidiary imprisonment may be imposed on offenders in relation to violations of Sec. 87, Art. 10 of the RPC, provided that subsidiary imprisonment is supplementary to special laws, unless the special law particularly provides for the contrary. The case of *People v. Moreno (60 Phil. 712)* also provides that subsidiary imprisonment applies to special laws unless the law provides for another manner of service in case of insolvency.

5. Section 95 - Fishing in Overfished Areas and During Closed Season

Elements	Penalty
<ul style="list-style-type: none"> ⇒ Any person or entity engaged in fishing ⇒ Fishing activity is within an area declared to be overfished or is conducted during closed season 	<ul style="list-style-type: none"> ♦ Imprisonment of 6 months and 1 day to 6 years, and/ or fine of P6,000 ♦ Forfeiture of catch ♦ Cancellation of fishing permit or license

What is the difference between fishing within overexploited areas under Section 86, and fishing in overfished areas under Section 95?

The third paragraph of Sec. 86 specifically refers only to *commercial fishing vessels* fishing within areas declared to be *over-exploited*.

Sec. 95 refers to both *overfished areas* and areas where *closed seasons* have been declared. It would also appear that Sec. 95 applies to *any person or entity fishing* within such areas, whether a commercial fishing vessel or not. These two prohibitions still need to be harmonized, especially on their application to violations committed by commercial fishing vessels.

Who determines or declares overfished areas outside of municipal waters?

issue

It would seem that RA 8550 only provides for the declaration of overfished areas within municipal waters. There are express provisions in RA 8550 covering determination and declaration of *overfished* areas within municipal waters (*Sec. 23*), but there are no express provisions covering determination and declaration of overfished areas *outside municipal waters*. However, the powers of DA are broad enough to include the declaration of overfished areas outside of municipal waters or outside the jurisdiction of special agencies.

Who determines or declares closed seasons?

- ♦ The DA, if beyond municipal waters (*Sec. 9*)
- ♦ The LGU, on its own initiative but in consultation with FARMC, if within municipal waters

reminder

The DA may also declare closed seasons over areas under the jurisdiction of special agencies or within municipal waters, but it must first secure the concurrence and approval of the concerned special agencies, or the LGU and FARMC, whichever is appropriate.

6. Section 96 - Fishing in Fishery Reserves, Refuge and Sanctuaries

Elements	Penalty
<ul style="list-style-type: none"> ⇒ Any person or entity engaged in fishing ⇒ Fishing activity is conducted within a reserve, refuge or sanctuary ⇒ Such fishery reserve, refuge or sanctuary was declared as such by DA 	<ul style="list-style-type: none"> ♦ Imprisonment of 2 to 6 years and/or fine of P2,000 to P20,000 ♦ Forfeiture of catch ♦ Cancellation of fishing permit or license

What is the difference between a fishery refuge and sanctuary, and a fishery reserve?



Fishery refuges and sanctuaries are designated areas where fishing or other forms of activities that may damage the ecosystem of the area *are prohibited*. Human access may be restricted (*Sec. 4, par. 36*). A fishery reserve is a designated area where activities *are regulated* and set aside for educational and research purposes (*Sec. 4, par. 37*).

Are fishery reserves, refuges and sanctuaries declared by local governments covered by this prohibition?

No. Strictly construed, Sec. 96 refers only to those reserves, refuges and sanctuaries declared by DA. If the violation is committed within a municipality/city-declared refuge or sanctuary, then the local ordinance declaring the reserve/refuge/sanctuary applies, and not Sec. 96.

This is to be distinguished from fishing within *over-exploited* areas prohibited under Sec. 86, and fishing within *overfished* areas and during closed season under Sec. 95, as these prohibitions apply to those areas declared *by municipalities/cities or by DA*.

7. Section 90 - Use of Active Gear in the Municipal Waters and Bays and Other Fishery Management Areas

(See p. 20)

8. Section 93 - Illegal Use of Superlight Within Municipal Waters

(See p. 22)

(Note: These last two provisions are repeated in this category of prohibitions, because although these concern fishing gear, the location where these gears are used is also an essential element of these prohibitions.)

C. Based on Resource Exploited

1. Section 91 - Ban on Coral Exploitation and Exportation

(See FAO 202 s. 2002)

Elements	Penalty
<ul style="list-style-type: none"> ⇒ Ordinary, precious and/or semi-precious corals, whether raw or in processed form, are gathered, possessed, sold or exported by any person or corporation ⇒ Such activities respecting corals are not for scientific or research purposes 	<ul style="list-style-type: none"> ♦ Imprisonment of 6 months to 2 years and/or fine of P2,000 to P20,000 ♦ Forfeiture and proper disposition of the subject corals, including the vessel



Are dead corals included in this prohibition?

Yes. The prohibitions found in Sec. 91 apply to *whatever stage* the corals may be found, *whether in raw or processed form*.

Are the old laws on coral gathering still applicable?

No. This section repeals PD 1219 and PD 1698, which were the old laws on coral gathering. Sec. 91 is implemented by FAO 202 s. 2000. A significant feature of Sec. 91 is the express prohibition on the *mere possession*, as well as sale, of ordinary, precious and semi-precious corals.

How are the confiscated corals to be disposed of?

Confiscated corals must be returned to the sea, donated to schools and museums for educational or scientific purposes, or disposed of through other means (*Sec. 91*).

Who issues special permits for the gathering of corals?

The DA Secretary, through the Director of BFAR, may issue a special permit for the gathering of corals in limited quantities for scientific or research purposes, *except* those coral species listed in the appendices of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (*FAO 202 s. 2002, sec. 3*).

2. Section 92, paragraph 3 - Ban on Gathering, Selling, Exporting of White Sand, Silica, Pebbles and Other Substances that Make Up the Marine Habitat

Elements	Penalty
<ul style="list-style-type: none"> ⇒ White sand, silica, pebbles and other substances are gathered, sold or exported ⇒ Such white sand, silica, pebbles and other substances are gathered from the coastal and marine environment 	<ul style="list-style-type: none"> ♦ Imprisonment of 2 to 10 years and/or fine of P100,000 to P500,000 ♦ Confiscation of substance taken

Is beach quarrying covered by this prohibition?

ISSUE

Yes. Offenders as well as some government agencies have argued that the white sand, silica, pebbles and other substances referred to in Sec. 92 are not those taken from the *coastal environment*, but from the “marine habitat”. The prohibition therefore applies only to substances found at sea and not along the beaches or coasts.

To construe the term “marine habitat” as only referring to areas beyond the coastal domain would be to defeat the very purpose of the law. Previous to the enactment of RA 8550, *pebble picking was allowed by DAO 28-92*, but extraction of *sand and gravel from beaches was prohibited by Batas Pambansa Blg. 265*.

A Memorandum for then Pres. Fidel V. Ramos on the effects of beach quarrying at Luna, La Union, sent by the Office of the Executive Secretary on 24 September 1996, specifically recognized the importance of sand, gravel and pebbles along beaches in protecting coastal areas from erosion:

“The deposits of gravel and pebbles along the 7-km stretch of beach in Luna attain a height of five meters from the shoreline. These serve as natural barriers against big waves and thus protect the coastal villages by the shores.

The long years of pebble picking and extraction of sand and gravel has resulted in the coastal degradation of the area, as shown by the exposure of the base of the Spanish watchtower at Barangay Victoria. Continued extraction of sand and gravel along the beach would further reduce the width of the natural barrier which serves to protect the coastal villages from the onrush of big waves.”

Sec. 92 was primarily instituted to protect coastal areas from degradation as a result of widespread quarrying of sand and gravel, as well as pebbles, along beaches and shorelines. To interpret the term “marine habitat” as not applying to coastal areas would imply that Congress, rather than addressing the problem, even lifted the prohibition on sand and gravel quarrying along beaches. Ecologically, coastal areas are also necessarily part of the marine ecosystem because some marine species, such as turtles, can only lay their eggs along beaches.

3. Section 94 - Conversion of Mangroves

(See FAO 197 s. 2000)

Elements	Penalty
⇒ Mangroves are converted into fishponds, and/or ⇒ For any other use or purpose (e.g., mangrove clearing for the establishment of resorts, mangrove cutting for charcoal, de-barking as raw material for dyes, varnish, thinner, etc.)	♦ Imprisonment of 6 years and 1 day to 12 years and/or fine of P80,000



If the area requires rehabilitation or restoration, as determined by the court, the offender shall be required to restore, or compensate for the restoration of, the damage.



The municipal government may also file a civil case against the violator to recover civil indemnity. This indemnity may consist of compensation for the damage done to the environment, or payment of the cost of rehabilitation and restoration of the damaged area. (RA 8550, sec. 94)

Are there instances when mangroves may be legally cut?

As a tree species, mangroves are covered by the provisions of PD 705 (Forestry Code). Hence, they fall under the primary jurisdiction of DENR. DENR DAO 10 s. 1998 allows Community-based Forestry Management Agreement (*CBFMA*) holders to harvest plantation mangroves, but *not natural growth trees*. Uprooting of trees and natural regeneration growing in the mangrove areas is prohibited, except if wildlings are collected for plantation purposes.



However, Section 4 of RA 7161, which amends certain portions of PD 705, *expressly prohibits the cutting of all species of mangroves*, without distinction or qualification. It would seem then that pursuant to RA 7161, any form or type of permit for the cutting of mangroves may no longer be issued. This has been further reinforced by Section 94 of RA 8550, which specifically prohibits the *conversion* of mangroves, not only into fishponds but also for any other purposes, without exception.

4. Section 97 - Fishing or Taking of Rare, Threatened or Endangered Species

(See FAO 208 s. 2001)

Elements	Penalty
<ul style="list-style-type: none"> ⇒ Fishing or taking of aquatic resources and fishery species ⇒ Such aquatic resources or fishery species are classified as rare, threatened or endangered ⇒ Such classification is based on the CITES listing and/or as determined by DA 	<ul style="list-style-type: none"> ◆ Imprisonment of 12 years to 20 years and/or fine of P120,000 ◆ Forfeiture of catch ◆ Cancellation of fishing permit

Must the fishery species be included both in CITES and DA lists for it to be covered by this prohibition?



No. Offenders have argued that the wording of Section 97 requires that the species be *both* included in the CITES Appendices *and* determined by DA before the prohibition can cover it. However, such an interpretation would defeat the purpose of the law and unduly limit

the authority of DA. It would remove DA's right to include in its list any species that it may determine to be rare, threatened or endangered in the Philippines, if such species is not included in any of the CITES Appendices.

Are fishery species under DENR jurisdiction covered by this prohibition?

Yes. Although jurisdiction over such species is granted to DENR, the taking of these species still constitutes a violation of Sec. 97 of RA 8550, because they are included in the CITES Appendices.

The DENR is responsible for the management of dugongs, marine turtles and crocodiles (*Joint DA-DENR Memorandum Order No. 1 s. 2000, Art. III, sec. 1, par. [a]*). The Wildlife Act of 2001 expanded this authority by providing that DENR has jurisdiction over "all turtles and tortoises and wetland species, including but not limited to crocodiles, waterbirds and all amphibians and dugong". Sec. 97 applies to all fishery species that may be classified as rare, threatened or endangered; it makes no distinction on departmental jurisdiction.

5. FAO 193 s. 1998 - Ban on the Taking or Catching, Selling, Purchasing, and Possessing, Transporting, and Exporting of Whale Sharks and Manta Rays

(Pursuant to Sections 65 and 107 of RA 8550)

Elements	Penalty
⇒ Any person or entity takes, catches, sells, purchases, possesses, transports or exports whale sharks or manta rays	♦ Imprisonment of 6 months to 4 years and/or fine of P500 to P5,000

The BFAR Director is empowered to impose an administrative fine of not more than P5,000 and to cancel the permit/license of the offender. The administrative penalty may include the confiscation of the whale shark and/or manta rays for proper disposition/documentation of the government.



What does taking, catching, selling, purchasing, possessing, transporting or exporting mean?

FAO 193 defines such activities as follows:

- ♦ Sell - to barter, exchange, or offer or expose for sale
- ♦ Possess - to have actual or constructive possession or control of
- ♦ Transport - to carry or move or cause to be carried or moved
- ♦ Export - to send or ship out of the country



This prohibition is based on FAO 193 s. 1998. Are whale sharks also covered by Section 97?

Yes. Whale sharks were included in the CITES Appendix (II) on 13 February 2003. But although this recent inclusion now qualifies whale sharks under Sec. 97 of RA 8550, FAO 193 s. 1998 may still be used. Section 97 only prohibits the taking or catching of the species, while FAO 193 prohibits not only the taking or catching, but also *possession, transport and export*.



Are manta rays also protected under Section 97?

No. Manta rays are not yet part of the CITES appendices, nor have they been classified by DA as rare, threatened or endangered. As such, FAO 193 is still the main prohibition on the taking, catching, possession, transport and export of manta rays.



Both whale sharks and manta rays are also covered by RA 9147, otherwise known as the Wildlife Act.

6. Section 98 - Capture of *Sabalo* and Other Breeders/Spawners

Elements	Penalty
<ul style="list-style-type: none"> ⇒ Catching, gathering, capturing or possessing mature milkfish or <i>sabalo</i> and/or ⇒ Catching, gathering, capturing or possessing of such other breeders/spawners as may be determined by DA ⇒ Such activities are not for local breeding or scientific or research purposes as may be allowed by DA 	<ul style="list-style-type: none"> ♦ Imprisonment of 6 months and 1 day to 8 years and/or fine of P80,000 ♦ Forfeiture of catch, fishing equipment used ♦ Revocation of license

7. Section 99 - Exportation of Breeders, Spawners, Eggs or Fry

Elements	Penalty
<ul style="list-style-type: none"> ⇒ Exportation of breeders, spawners, eggs or fry as prohibited by related provisions of RA 8550 	<ul style="list-style-type: none"> ♦ Imprisonment of 8 years ♦ Confiscation of breeders, spawners, eggs or fry OR fine equivalent to double the value of the same ♦ Revocation of fishing and/or export license/permit

What related provisions of RA 8550 are referred to by Sec. 99?

Sec. 61 (b) provides that spawners, breeders, eggs and fry of *bangus, prawn and other endemic species*, as may be determined by DA, may not be exported or caused to be exported by any person.

8. Section 103, Subparagraph (c) - Gathering and Marketing of Shellfishes

Elements	Penalty
<ul style="list-style-type: none"> ⇒ Taking, selling, transferring or possessing of shellfish for any purpose ⇒ Shellfish is sexually mature, below the minimum size or above the maximum quantities prescribed by DA for particular species 	<ul style="list-style-type: none"> ◆ Imprisonment of 1 month and 1 day to 6 months and/or fine of P2,000 to P10,000



The DA Secretary may impose an administrative fine of not more than P10,000 and/or cancel the permit/license.



The Secretary, his duly authorized representative, or law enforcement agents are empowered to impound the shellfish with the assistance of the Philippine Coast Guard and the PNP-Maritime Command.

D. Other Prohibited/Regulated Activities

1. Section 86, Paragraph 1 - Engaging in Any Fishery Activity in Philippine Waters Without a License, Lease or Permit

Elements	Penalty
<ul style="list-style-type: none"> ⇒ Exploiting, occupying, producing, breeding, culturing, capturing, gathering fish, fry or fingerlings of any fishery species or fishery products or ⇒ Engaging in any fishery activity within Philippine waters ⇒ Such activities are conducted without the benefit of any license, lease or permit 	<ul style="list-style-type: none"> ◆ Imprisonment of 6 months and fine equivalent to the value of the catch or P10,000, whichever is higher ◆ Confiscation of catch and fishing gears ◆ Automatic revocation of license



The penalties of fine and imprisonment are imposed on the boat captain or the three highest officers of the boat involved.



This section may be regarded as the “catch-all provision” of RA 8550 with respect to prohibited acts, as it prohibits any fishery activity within Philippine waters without a license, lease or permit.

Theoretically, Section 86 may also be used in connection with violations committed within protected area waters under the National Integrated Protected Areas System (NIPAS) Act. Fishery activities conducted within protected area waters without the benefit of proper permit from the Protected Area Management Board may also constitute a violation of Sec. 86 of RA 8550.



An example of an act which may fall under this violation would be commercial fishing vessels fishing in Philippine waters without the benefit of any license or permit or whose license or permit has expired.

Is this prohibition applicable to all types of fishing vessels?



No. This general prohibition would seem to apply *only to violations committed by commercial fishing vessels*, as no penalties are provided for vessels of smaller size. A specific penalty is also provided for municipal fisherfolk who engage in commercial fishing activities within municipal waters without being listed in the municipal registry; however, no penalty is provided for fisherfolk who engage in commercial fishing activities without any license or permit *outside of municipal waters*.

The discovery of any person in an area where he has no permit or registration papers for a fishing vessel constitutes *prima facie* evidence that the person and/or vessel is engaged in unauthorized fishing.



Fishing for daily food sustenance, leisure (but not for commercial purposes), occupation or livelihood purposes may be allowed.

2. Section 100 - Importation or Exportation of Fish or Fishery Species

Elements	Penalty
⇨ Importation or exportation of fish or fishery species ⇨ Importation or exportation is in violation of RA 8550	<ul style="list-style-type: none"> ◆ Imprisonment of 8 years and fine of P80,000 ◆ Destruction of live fishery species or forfeiture of nonlive fishery species in favor of DA for proper disposition ◆ Ban of violators from being members or stockholders of companies engaged in fisheries, or companies to be created in the future (guidelines to be promulgated by DA)

What are the guidelines for the importation and exportation of fishery species?

These guidelines are mostly set by Sec. 61 of RA 8550:

- ◆ Any importation or exportation requires a permit from DA (*Sec. 61 [d]*).
- ◆ Exportation of fishery products is regulated whenever it affects domestic food security and production. Exportation of live fish is prohibited except for those hatched or propagated in accredited hatcheries and ponds (*Sec. 61 [a]*).
- ◆ Fishery products may be imported only when certified as

necessary by DA, in consultation with FARMC, and when all the requirements of RA 8550, as well as all existing rules and regulations have been complied with, provided that fish imports for canning/processing purposes only may be allowed without the necessary certification, but must still have secured a permit from DA (*Sec. 61[c]*).

See the following related FAOs on exportation and importation:

- ◆ FAO 173 s. 1991, FAO 173-1 s. 1991, FAO 183 s. 1992 (all on the Importation of Yellow Fin Tuna and Tuna Products from Certain Countries)
- ◆ FAO 189 s. 1993 (Prohibiting the Importation of Live Shrimp and Prawn of All Stages)
- ◆ FAO 195 s. 1999 (Rules and Regulations Governing Importation of Fresh/Chilled/Frozen Fish and Fishery Aquatic Products)
- ◆ FAO 207 s. 2001 (Prohibiting the Importation and Culture of Imported Live Shrimp and Prawn of All Stages)
- ◆ FAO 212 s. 2001 (Guideline on the Implementation of the Hazard Analysis Critical Control Points System)



3. Section 101 - Violation of Catch Ceilings

Elements	Penalty
<ul style="list-style-type: none"> ⇒ Fishing conducted is in violation of catch ceilings ⇒ Catch ceilings are determined by DA 	<ul style="list-style-type: none"> ◆ Imprisonment of 6 months and 1 day to 6 years and/or fine of P50,000 ◆ Forfeiture of catch and fishing equipment ◆ Revocation of license

Who exercises the power to declare catch ceilings?

The DA Secretary has the power to declare catch ceilings (*Sec. 8*). He/she may also declare catch ceilings through the Director of BFAR (*IRR of RA 8550, Rule 8.1*).

Can DA declare catch ceilings for areas under the jurisdiction of special agencies or LGUs?

Yes, but only upon the concurrence and approval or recommendation of the special agency, or of the concerned LGU in consultation with FARMC. Such catch ceilings may be established by the DA Secretary through the Director (*IRR of RA 8550, Rule 8.1*). This is done through a Joint Memorandum Order between DA and the concerned special agency or LGU, after consultation with FARMCs. The Order already includes provisions for its enforcement (*IRR of RA 8550, Rule 8.2*).

4. Section 102 - Aquatic Pollution

Elements	Penalty
<p>Aquatic pollution may be committed by:</p> <p>First,</p> <ul style="list-style-type: none"> ⇒ The introduction by human or machine, directly or indirectly ⇒ Of substances or energy to the aquatic environment ⇒ Which result, or is likely to result, in such deleterious effects as to harm living and nonliving aquatic resources <p>Second,</p> <ul style="list-style-type: none"> ⇒ The introduction by human or machine, directly or indirectly ⇒ Of substances or energy to the aquatic environment ⇒ Which pose potential and/or real hazards to human health <p>Third,</p> <ul style="list-style-type: none"> ⇒ The introduction by human or machine, directly or indirectly ⇒ Of substances or energy to the aquatic environment ⇒ Which pose a hindrance to aquatic activities such as fishing and navigation <p>Fourth,</p> <ul style="list-style-type: none"> ⇒ Dumping/disposal of waste and other marine litters ⇒ From any water, land or air transport or other human-made structure <p>Fifth,</p> <ul style="list-style-type: none"> ⇒ Discharge of petroleum or residual products of petroleum or carbonaceous materials/ substances, and other radioactive, noxious or harmful liquid, gaseous or solid substances ⇒ From any water, land or air transport or other human-made structure <p>Sixth,</p> <ul style="list-style-type: none"> ⇒ Deforestation ⇒ Which causes similar hazards and deleterious effects <p>Seventh,</p> <ul style="list-style-type: none"> ⇒ Unsound agricultural practices, such as the use of banned chemicals, intensive use of artificial fish feed and wetland conversion ⇒ Which cause similar hazards and deleterious effects <p>(RA 8550, sec. 4, par. 4)</p>	<ul style="list-style-type: none"> ♦ Imprisonment of 6 years and 1 day to 12 years and/or fine of P80,000 plus an additional P8,000 per day until such violation ceases and the fines are paid

Is it always necessary to prove the deleterious effects of aquatic pollution?



No. Under the law, aquatic pollution is committed with the introduction of substances that either results, or is *likely to result*, in deleterious effects.

Is a laboratory analysis of the alleged pollutive substances always necessary to prove aquatic pollution?

No. The definition of aquatic pollution under Section 4, paragraph 4 of RA 8550 includes the mere introduction of substances or matter that may pose a hindrance to fishing and navigation. For cases requiring laboratory analysis, see Annex 1: Preservation of Evidence for guidelines.

What other legal issuances can be used to prove aquatic pollution?

For those types of aquatic pollution that require laboratory analyses or evidence of a more technical or scientific nature, refer to the following policy issuances by DENR:

- ♦ DAO 39 s. 1997 (Chemical Control Order for Cyanide and Cyanide Compounds)
- ♦ DAO 38 s. 1997 (Chemical Control Order for Mercury and Mercury Compounds)
- ♦ MC No. 06 s. 1998 (Guidelines in Water Quality Monitoring)
- ♦ DAO 17 s. 1999 (Updating DAO 35 s. 1990, Otherwise Known as the Revised Effluent Regulations of 1990, Revising and Amending the Effluent Regulations of 1982)

FAO 214 s. 2001 (Code of Practice for Aquaculture) also provides regulations on water discharge and sludge/effluent management for aquaculture.

5. Section 103, Subparagraph (a) - Failure to Comply with Minimum Safety Standards

Elements	Penalty
⇒ The owner and captain of a commercial fishing vessel are engaged in fishing ⇒ They fail to exhibit or show proof of compliance with the safety standards provided under RA 8550	<ul style="list-style-type: none"> ♦ Fishing vessel shall be immediately prevented from continuing with fishing activity and escorted to nearest port of landing point ♦ Suspension of license until safety standard has been complied with

Are the penalties provided in the last paragraph of Sec. 103 applicable to this violation?

No. Subparagraph (a), similar to subparagraph (b) of Section 103, provides for its own penalties.

What are these minimum safety standards?

Provisions in RA 8550 on “safety standards” generally refer to standards to be provided by other related government agencies or offices. Regulations on the safety of vessels are mainly issued by the Maritime Industry Authority. Section 37 mandates that all fishing vessels be supplied with adequate medical supplies and life-saving devices to be determined by the Occupational Safety and Health Center (OSHC).

6. Section 103, Subparagraph (b) - Failure to Conduct Yearly Report on Fishponds, Fishpens and Fishcages

(See FAO 197 s. 2000)

Elements	Penalty
<ul style="list-style-type: none"> ⇒ Owner of a fishpond, fishpen or fishcage has valid license or permit ⇒ Owner fails to render to DA a yearly report on type of species and volume of production 	<ul style="list-style-type: none"> ◆ First offense: Fine of P500 per unreported hectare ◆ Second offense: Fine of P1,000 per unreported hectare ◆ Cancellation of the Fishpond Lease Agreement (FLAs) for fishponds

What other provisions of RA 8550 are relevant to this offense?

Section 57 of RA 8550 requires all fishpond, fishpen and fishcage operators to submit an annual report to DA on the type of species and volume of production in areas devoted to aquaculture. This provision is also implemented in part by FAO 197 s. 2000 (Rules and Regulations Governing the Lease of Public Lands for Fishpond Development).

Does failure to submit the required annual report result in the immediate cancellation of FLA?

issue

Section 103, subparagraph (b) provides for the immediate cancellation of FLAs. However, immediately after that statement, the provision provides for penalties for first and *subsequent* offenses, which seems to imply that erring owners are given the chance to rectify their failure to submit the annual report.

7. Section 103, Subparagraph (d) - Obstruction to Navigation or Flow and Ebb of Tide in any Stream, River, Lake or Bay

(See FAO 216 s. 2001)

Elements	Penalty
<ul style="list-style-type: none"> ⇒ Construction or placing of any structure in any stream, river, lake or bay 	<ul style="list-style-type: none"> ◆ Imprisonment of 1 month and 1 day to 6 months and/or fine of P2,000 to P20,000

Continued on next page

Elements	Penalty
⇒ Such structure obstructs free navigation or impedes flow of the tide	♦ Structure shall be removed upon order of the DA Secretary in coordination with other concerned government agencies



The expenses for removing the obstruction are to be shouldered by the lessee, licensee or occupants concerned.

What happens when the obstruction is a structure for the culture of fish with an appropriate permit from the government unit concerned?



Those structures will still be removed. Lessees, permittees or licensees are bound by this prohibition regardless of their leases, permits or licenses (*Sec. 55*). This policy is further implemented by FAO 216 s. 2001, which specifically includes in its coverage any person, lessee, licensee or permittee.

8. Section 103, Subparagraph (e) - Construction and Operation of Fish Corrals/Traps, Fish Pens and Fish Cages

(See FAO 214 s. 2001)

Elements	Penalty
⇒ Construction and operation of fish corrals/traps, fishpens and fishcages ⇒ Such construction and operation are without the benefit of a permit/license	♦ Imprisonment of 1 month and 1 day to 6 months and/ or fine of P2,000 to P20,000

What about fishponds constructed without a permit in public but non-mangrove areas?

This prohibition seems to have left out construction and operation of fishponds in public, non-mangrove areas without the benefit of any permit/license. Nonetheless, Section 25 of FAO 197 s. 2000 (Rules and Regulations Governing the Lease of Public Lands for Fishpond Development) provides that any improvements in areas intended for fishpond development introduced without a lease (prior to the effectivity of FAO 197) will be forfeited in favor of the government. The person illegally occupying the area without a lease will be made to vacate the area immediately.



If the person occupying the area is an applicant, he is charged double the ordinary rental charges. Upon failure to pay the charges mentioned, the applicant is liable for prosecution, and upon conviction may suffer a penalty of imprisonment from 6 months to 4 years and/or a fine of P5,000.

Do private fishponds need FLAs?

No. But even though private fishponds are not required to procure FLAs, they are still subject to regulation by the government. Section 57 of RA 8550 provides that private fishponds *must be registered* with the LGUs, which prescribe minimum standards for such facilities in consultation with DA. Section 57 also expressly provides that DA shall conduct a yearly inventory of all fishponds whether in public or private lands.

ISSUE WITH

Interestingly, Section 57 provides that *all fishpond owners* must annually report to DA the type of species found in their fishpond and their volume of production. However, this requirement seems to exclude private fishponds as the penalties provided in Section 103, subparagraph (e) for failure to submit such annual report only applies to those with FLAs.

9. Section 105 - Obstruction to Defined Migration Paths

(See FAO 217 s. 2001)

Elements	Penalty
<ul style="list-style-type: none"> ⇒ Construction is undertaken ⇒ Such construction obstructs defined migration paths of migratory species in areas including, but not limited, to river mouths and estuaries within a distance determined by concerned FARMCs 	<ul style="list-style-type: none"> ◆ Imprisonment of 7 years to 12 years and/or fine of P50,000 to P100,000 ◆ Cancellation of permit/license, if any ◆ Dismantling of obstruction at the expense of the offender

What happens when the obstruction is a structure for the culture of fish with an appropriate permit from the government unit concerned?

ISSUE WITH

Section 56 of RA 8550 provides that lessees, permittees or licencees of fishponds, fish pens or fish cages are bound by this prohibition regardless of their leases, permits or licenses.

Have migration paths and migratory species been identified by DA?

Yes. FAO 217 s. 2001 enumerates the rivers identified to be migratory paths, and the migratory species that pass through these rivers for breeding or feeding purposes, or as part of their life cycle. Section 3 of FAO 217 also provides that the prohibition extends up to 1 km seaward and 1 km upward of the mouths of the identified rivers.

10. Section 104 - Commercial Fishing Vessel Operators Employing Unlicensed Fisherfolk or Fishworker or Crew

(See FAO 198 s. 2000)

Elements	Penalty
<ul style="list-style-type: none"> ⇒ Employment of fisherfolk or fishworker or crew in a commercial fishing vessel operation ⇒ Fisherfolk, fishworker or crew is unlicensed 	<ul style="list-style-type: none"> ♦ Fine of P500 on owner/operator for each month of employment of each unlicensed fisherfolk or fishworker ♦ Fine of P1,000 on owner/operator for each month of employment of each unlicensed crew member



Section 30 of FAO 198 s. 2000 (Rules and Regulations on Commercial Fishing) provides for the issuance by the Regional Director of a Fishworker Identification Card subject to the submission of certain requirements.

11. Section 106 - Obstruction to Fishery Law Enforcement Officer

(See FAO 198 s. 2000)

Elements	Penalty
<ul style="list-style-type: none"> ⇒ Any fishery law enforcement officer of DA seeks to perform his duty ⇒ Boat owner, master fisher or operator or any person acting on his behalf evades, obstructs or hinders such fishery law enforcement officer from the performance of his duty 	<ul style="list-style-type: none"> ♦ Fine of P10,000 ♦ Cancellation of registration, permit and/or license of the vessel ♦ Cancellation of license of master fisher of the vessel



Section 26 of FAO 198 s. 2000 (Rules and Regulations on Commercial Fishing) provides that the Director, or any duly authorized fishery law enforcement officer in the performance of his official duties, must not be obstructed or hindered from lawfully boarding fishing vessels (whether licensed or not) for the purpose of inspecting the fish holds or boxes containing fish or fishery/aquatic products, as well as investigating the persons on the vessel.

OTHER LAWS PROHIBITING/REGULATING ACTIVITIES IN COASTAL AREAS

NIPAS Act - RA 7586

Coastal Activities Covered	Penal Provisions
<ul style="list-style-type: none"> ⇒ Activities conducted within protected areas, since “protected area” encompasses inland bodies of water, and coastal and marine areas ⇒ Activities involving all species and resources found in such protected areas 	<ul style="list-style-type: none"> ◆ Sections 20 and 21

Wildlife Act - RA 9147

Coastal Activities Covered	Penal Provisions
<ul style="list-style-type: none"> ⇒ Activities involving all wildlife resources and habitats in the Philippines, which include all aquatic species and their habitats 	<ul style="list-style-type: none"> ◆ Sections 27 and 28

Mining Act - RA 7942

(See DENR DAO No. 96 s. 1996)

Coastal Activities Covered	Penal Provisions
<ul style="list-style-type: none"> ⇒ Activities involving mineral resources within the territory and exclusive economic zone of the Philippines, which include the coastal and marine environment 	<ul style="list-style-type: none"> ◆ Sections 103 and 108 ◆ Sections 79 (a) of DAO 96 s. 1996

e.g.

- ◆ Quarrying along beaches 200 m from the mean low tide level
- ◆ Mining in offshore areas within 500 m from the coast
- ◆ Violation of the Environmental Compliance Certificate

IPRA - RA 8371

Coastal Activities Covered	Penal Provisions
<ul style="list-style-type: none"> ⇒ Activities within ancestral waters, which are included in the definition of ancestral domains 	<ul style="list-style-type: none"> ◆ Section 72 ◆ Customary laws of indigenous peoples

EIA Law - PD 1586

(See DENR DAO 30-03 and National Environmental Protection Council Office Circular No. 3 s. 1983)

Coastal Activities Covered	Penal Provisions
<ul style="list-style-type: none"> ⇒ Environmentally Critical Projects and projects located within, or that may affect, the coastal environment and its resources 	<ul style="list-style-type: none"> ◆ Section 16, Article IV of DAO 30-03

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Coastal Activities Covered	Penal Provisions
⇒ Undertakings within coastal areas classified as Environmentally Critical Areas	

e.g:

- ◆ Reclamation projects that involve the filling or draining of areas equal to or exceeding 1 ha
- ◆ Infrastructure in national parks, wildlife preserves and sanctuaries



Forestry Code - PD 705

Coastal Activities Covered	Penal Provisions
⇒ Illegal occupation of coastal areas	◆ Section 78
⇒ Illegal cutting, gathering, collecting and/or possession of mangroves	◆ Section 79

Clean Water Act - RA 9275

Coastal Activities Covered	Penal Provisions
⇒ Discharge or transport of pollutants in water bodies and the margins of any surface water	◆ Chapter 5
⇒ Land-based facilities that allow the direct or indirect pollution of water bodies, including groundwater sources, willfully or through gross negligence	

Water Code - PD 1067

Coastal Activities Covered	Penal Provisions
⇒ Activities involving water above ground, which includes rivers and lakes	◆ Article 90
⇒ Activities involving waters of the sea within the territorial jurisdiction of the Philippines	

e.g. Establishment of salvage or easement zones at the banks of rivers and streams, and at the shores of seas and lakes (*Article 51*)



Public Land Act - Commonwealth Act 141

Coastal Activities Covered	Penal Provisions
⇒ Use of foreshore areas	◆ Chapter XVI

e.g. Lease of foreshore lands (*Chapter IX*)



3

Chapter

Arrest, Search, Seizure and Detention

I. Arrest

A. Arrest Made with Warrant

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2. Offenses not requiring preliminary investigation

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2. When the offense has just been committed and probable cause exists
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II. Custodial Investigation

A. Custodial Investigation Rights

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III. Search and Seizure

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IV. Custody

1. Before the filing of the complaint or information
2. After the filing of the complaint or information

Special Topics

Arbitrary Detention

Charges for Resisting Arrest

Countersuits

Liability of Custodians

Affidavit of Undertaking

Replevin



MENDING NETS

Chapter 3

Arrest, Search, Seizure and Detention

A winning case, or a losing one, starts before the actual prosecution — that is, from the time of arrest, search and seizure. Arrests, if not properly made, become unlawful. Search and seizure, if not legally conducted, will render seized evidence inadmissible. Admissions and confessions, if not elicited in a manner prescribed by law, may amount to uncounseled confession. Protocols forgotten or ignored may result in countersuits against the law enforcers themselves.

Arrest, search, seizure and detention or ASSD refers to the groundwork that must be done—and done properly—prior to prosecution, for the purpose of establishing probable cause, if not the guilt, of the accused. It includes custodial investigation of the apprehended person, as well as custody of seized items. These activities may be done by law enforcement officers, or by private persons under citizens' arrest in instances of valid warrantless arrests.

All Rules cited are from the Revised Rules of Court, unless otherwise indicated.

ARREST



Arrest is the taking of a person into custody so he may answer charges for an offense. This may be made by actual restraint of the person to be arrested or by his voluntary submission to the custody of the person making the arrest (*Rule 113, sec. 1 & 2*).

Arrests may be made in two ways: first, with a warrant and second, through a valid warrantless arrest.

Who can make arrests?

Police officers, officers charged with the enforcement of coastal laws, or deputized fish wardens may conduct an arrest. Ordinary civilians may conduct arrests only in cases of valid warrantless arrests.

The earlier the Miranda Warning is given, the better. (See Custodial Investigation Rights). This removes any cause for the arrested person to claim later on that he was taken for questioning without being informed of his rights. The occasion when the Miranda Warning was given should be included in the affidavit.



Arrest Made with Warrant

Arrests are generally unlawful when not accompanied by a warrant. Whenever possible, a warrant must first be secured before the arrest is actually made.

What documents are required in procuring a warrant?

- ♦ Complaint signed by the offended party (e.g. Bantay Dagat, fish warden, fisherfolk)
- ♦ Or complaint subscribed by peace officer (usually the Chief of Police) or any other public officer charged with enforcing the law (e.g. Bureau of Fisheries and Aquatic Resources [BFAR] representative, municipal agricultural officer)
- ♦ Or information signed by the prosecutor
- ♦ Resolution by the prosecutor (for offenses requiring Preliminary Investigation)
- ♦ Other supporting affidavits and documents (e.g. certification of fine mesh, certification of non-registration) (*Rule 110, sec. 3 & 4 and Rule 112, sec. 6*)



How is a warrant of arrest issued?

Warrants can only be issued by a judge. The procedure for issuing the warrant depends on the type of offense, as distinguished below.

Offenses requiring preliminary investigation

Preliminary Investigation (PI) is required for offenses that have an imposable penalty of at least 4 years, 2 months and 1 day, without regard to the fine. (e.g. use of active gear, where the penalty imposed is 2 years to 6 years).



A PI is conducted by a prosecutor for the purpose of determining whether there is probable cause. To do this, the prosecutor requires the respondent to submit a counter-affidavit, after which he issues a resolution based on the complaint and counter-affidavit. After the PI, the judge evaluates the resolution of the prosecutor and its supporting evidence. If the judge finds probable cause, he issues the warrant of arrest. (*Rule 112, sec. 6*).

Probable cause is the existence of facts and circumstances that would lead an average person (even if not knowledgeable about the technical rules of evidence) to believe that an offense has been committed and that the item, article or object sought to be seized is in the place to be searched (*People v. Aruta, 288 SCRA 626, 1998*).



What if no prosecutor is assigned to the municipality?

The Municipal Trial Court (MTC) or Municipal Circuit Trial Court (MCTC) judge may conduct the PI himself. But generally, the investigating judge issues the warrant of arrest only after his findings

and recommendations are affirmed by the provincial or city prosecutor. However, the judge may issue the warrant when he finds probable cause before the investigation is finished, and even without the affirmation of the provincial or city prosecutor, if he finds that:

- ♦ probable cause exists after an examination in writing, and under oath of the complainant and his witnesses and
- ♦ there is a necessity of placing the respondent under immediate custody in order not to frustrate the ends of justice.

(Rule 112, sec. 6 [b])

Offenses not requiring preliminary investigation

This covers offenses that have a prescribed penalty of less than 4 years, 2 months and 1 day, without regard to the fine, but are not covered by the rule on summary procedure. (e.g. use of fine-mesh net, where the penalty imposed is 6 months to 2 years).



1. If the case is filed with the prosecutor

The prosecutor makes a resolution based on the complaint, the supporting affidavits and other documents. No counter-affidavits are needed from the respondents. The judge issues the warrant of arrest if he finds probable cause based on the resolution of the prosecutor and the supporting documents.

(Rule 112, sec. 9[a])

2. If the case is filed with the MTC or MCTC

The investigating judge personally evaluates the evidence, or examines in writing and under oath the complainant and his witnesses in the form of searching questions and answers. If the judge finds probable cause, the warrant is issued. *(Rule 112, sec. 9[b])*



What about offenses falling under the Summary Procedure?

A Summary Procedure covers violations of municipal ordinances and other criminal cases where the prescribed penalty does not exceed 6 months (see Chapter 5: Prosecution). No warrant of arrest is issued for this type of offense. The judge issues a warrant of arrest only if the accused fails to appear whenever required by the court. *(Revised Rules on Summary Procedure, Sec. 16)*. (e.g. violation of an ordinance regulating compressor fishing).



What makes a warrant of arrest valid?

The following have to be present for a warrant of arrest to be valid:

- ♦ Existence of probable cause
- ♦ Judge has examined the complainant and witnesses under oath
- ♦ Issuance is determined by the judge himself
- ♦ A particular description of the person to be arrested is provided

Does a warrant of arrest expire after 10 days?

No. Unlike a search warrant, a warrant of arrest does not expire within 10 days from receipt by the apprehending officer. It is only required that a return be made to the judge who issued the warrant after a lapse of 10 days, i.e., the judge must be informed that the warrant has not yet been served. (*Rule 113, sec. 4*)



What must be remembered when arresting with a warrant?

- ◆ Arrest may be made at any time of the day or night. (*Rule 113, sec. 6*)
- ◆ The person to be arrested must be informed of the cause of the arrest and the fact that a warrant of arrest has been issued. (*Rule 113, sec. 7*)
- ◆ Arrest may be made even if the officer does not have the warrant in his possession at the time of arrest, but it must be shown later. (*Rule 113, sec. 7*)

What kind of force may be used when making the arrest?

No unnecessary force should be used in restraining the accused (*Rule 113, sec. 2*). Warning shots are prohibited. Officers must use peaceful means in intervention, such as megaphones, whistles or other similar means (*Rule 4*). Use of firearms is justifiable only by virtue of the:



- ◆ Doctrine of Self-defense
- ◆ Defense of Relative
- ◆ Defense of Stranger, if the police has probable cause to believe that the suspect poses an imminent danger of death or serious physical injury to the police or other persons (Philippine National Police [PNP] National Police Operational Procedure, Rules of Engagement, Rules 4 & 5, 2002) e.g. when illegal fishers fire at law enforcers.



What if illegal fishers do not stop their vessels when asked by law enforcers?

The law enforcers still should not fire warning shots, but instead simply pursue the vessel. If they cannot overtake it, they should at least secure a positive identification of the vessel, such as its markings, colors, numbers, size and general direction, as well as of the suspected illegal fishers.



Warrantless Arrest

In coastal law enforcement, warrantless arrests become the general rule rather than the exception. Because the violators are aboard motored vessels that could easily speed away before a single sentence is written on the complaint, law enforcers must act quickly.

Warrantless arrests are valid only in the following instances:
(Rule 113, sec. 5)

1. While the offense is being committed

A person may be arrested when he has committed, is actually committing or is attempting to commit an offense in the presence of the person making the arrest.

e.g.

- ◆ A person is caught in the act of fishing inside a sanctuary
- ◆ A dynamite is seen inside the fishing vessel of a fisherman
- ◆ A person sees the offense from a distance or hears the disturbance created by it and proceeds at once to the scene (*People v. Sucro 195 SCRA 388, 1991*). This may apply to blast fishing.



2. When the offense has just been committed and probable cause exists

A person may be arrested when the offense has just been committed and the arresting officer or private person has probable cause to believe, based on personal knowledge of facts or on indicative circumstances, that that person was the one who committed the crime.

To be valid, this exception requires two conditions:

- ◆ The offense has just been committed
- ◆ The arresting officer has probable cause to believe, based on personal knowledge, that the person to be arrested has committed the offense.



When is an offense considered “has just been committed”?

The longest that the Supreme Court has allowed under the phrase “has just been committed” is 12 hours after the commission of the crime (*People v. Sinoc, 275 SCRA 357, 1997*). It nullified an arrest made after 19 hours (*People v. Mantulu, 231 SCRA 701, 1994*). Therefore, a warrantless arrest made within 12 hours is legally permissible under this exception. If the warrantless arrest is made between the 12th and 19th hours, the legality is debatable.

What does personal knowledge mean?

The decisions in some cases state that personal knowledge is derived from the sense perception of the arresting officers (*People v. del Rosario, 305 SCRA 740, 1999*). Most cases, however, validate an arrest based on the knowledge derived by the arresting officer from his investigation and the testimony of witnesses (*People v. Posadas, 342 SCRA 388, 2000*).

As a minimum, however, and to prevent abuse, an eyewitness or victim must accompany the arresting officer during the arrest. At the very least, material or physical evidence must be found linking the



person to be arrested to the crime. In *People v. Sinoc* (275 SCRA 357, 1997), the Court validated the arrest of the accused in a robbery case, because he was holding the key to the stolen vehicle. This would at least ensure that arrests are not based on mere suspicion.

3. *When the person has escaped from detention*

A person may be arrested when he has escaped from a penal institution, or any place where he is serving sentence or is temporarily confined while his case is pending.



An arrest made without a warrant or made under an invalid warrantless arrest will make the documents, things or articles seized during the illegal arrest inadmissible as evidence (*People v. Domatay*, 307 SCRA 1, 1999).

Who may conduct warrantless arrests?

Peace officers or private persons may conduct warrantless arrests. Deputized fish wardens or members of fisherfolk organizations usually apprehend illegal fishers while on patrol or while they themselves are fishing.

How is a warrantless arrest made?

The officer must inform the person to be arrested of his authority and of the cause of the arrest. This does not apply when:

- ♦ the person to be arrested is committing the offense, is pursued after its commission, has escaped, flees or forcibly resists arrest before the officer has had the opportunity to inform him
- ♦ giving such information will imperil the arrest.

When must a person arrested without a warrant be delivered to judicial authorities?

A person arrested and detained by virtue of a warrantless arrest must be delivered to proper judicial authorities within the following periods:

Penalty Imposed	Penalty Imposed	Period
Light	Imprisonment of 1 to 30 days/fine of less than P200	12 hours
Correccional	Imprisonment of 1 month & 1 day to 6 years/fine of not more than P6,000 but not less than P200	18 hours
Afflictive or capital	Imprisonment of 6 years & 1 day to 20 years/fine exceeding P6,000	36 hours



(RPC, Art. 125)



Use of active gear in municipal waters is penalized with an imprisonment of 2 years to 6 years, which falls under *correccional* penalties. The case must thus be filed within 18 hours.

arbitrary detention



What does “delivery” mean?

Delivery of a person to judicial authorities is the filing of a complaint or information before the court. Physical delivery of the accused to the police station is not delivery; neither is it the filing of the complaint with the Office of the Prosecutor for the purpose of inquest investigation. Therefore, the time it takes for the prosecutor to conduct an inquest and prepare the information must be considered in order to deliver the accused to the court within the required period. (See Prescriptive Periods in Chapter 5: Prosecution.)

Failure to comply with the requirement on delivery will make the detention officer or employee liable for delay in the delivery of detained persons to the proper judicial authorities under Article 125 of the RPC. A private individual who conducts a citizen’s arrest without complying with this law is liable for *arbitrary detention*.



The requirement, however, does not apply to arrests made by virtue of a warrant. In arrests made with a warrant, the person can be detained indefinitely.

What if the offender is arrested on a Saturday, Sunday or holiday?

On Saturdays and holidays, most prosecutor’s offices have a prosecutor assigned to conduct the inquest investigation.

What if no prosecutor is assigned to the municipality to conduct the inquest?

The complaint, together with the affidavits, may be filed directly by the offended party or peace officer with the proper court. (*Rule 112, sec. 7*)

What if the courts are not open, or far from the place of arrest?

The hours during which the courts are closed are not to be counted (*People v. Acasio, 60 Phil. 1030*). Also, the means of communication, hour of arrest and other circumstances, such as the time of surrender, should be considered in determining the applicable period for delivery (*People v. Acosta, CA, 54 O.G. 4739*).

If the complaint simply cannot be filed in time, it is better to release the suspect to avoid violating Article 125. The complaint can then be filed directly in court as soon as possible, and a warrant of arrest secured after a PI. (See Arrests Made with Warrant.)



charges for resisting arrest

What is the liability of persons resisting arrest?

The following criminal cases can be filed against a person who resists or hinders arrest, or abducts or assaults law enforcers:

Charge	Legal Bases	Applicability
Obstruction to fishery law enforcers	Section 106, Republic Act 8550	Law enforcers of DA and DENR (e.g. deputized fish wardens)
Direct assault	Article 148, Revised Penal Code	Persons in authority or agents of persons in authority (e.g. mayors, heads of Departments, barangay captains and councilors [kagawad], PNP, PCG, Bantay Dagat)
Indirect assault	Article 149, Revised Penal Code	Persons coming to the aid of persons in authority or their agents (e.g. private individuals)
Resistance and disobedience to a person in authority or his agents	Article 151, Revised Penal Code	Persons in authority and their agents, deputized law enforcers
Kidnapping and serious illegal detention	Article 267, Revised Penal Code, as amended	Persons in authority and their agents, deputized law enforcers, private citizens
Slight illegal detention	Article 268, Revised Penal Code	Persons in authority and their agents, deputized law enforcers, private citizens

CUSTODIAL INVESTIGATION

Custodial investigation refers to questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.

In *People v. Bolanos* (211 SCRA 262, 1992), while the accused was being brought to the police station on board a police jeep, he was asked by the police if he killed the victim. The accused admitted the crime. The Supreme Court ruled that while on board the police jeep, the accused was already under custodial investigation.

When does questioning become custodial investigation?

The investigation ceases to be a general inquiry when questioning focuses on a specific suspect of whom the police ask questions that tend to elicit statements that can be used to prosecute the suspect. (*People v. de la Cruz G.R. No. 118866-68, 17 September 1997*)

General inquiry:

What is your name?
Where are you from?

Questions that may elicit incriminatory statements:

Where did you catch the fish?
What is the GT of your boat?



Custodial Investigation Rights

A person under custodial investigation must be meaningfully informed of the Miranda rights, which are:

- ◆ Right to remain silent
- ◆ Right to a counsel of his own choice
- ◆ Right to be furnished an independent counsel by the State if he cannot afford one
- ◆ Right to be informed of these rights



These rights must be explained to the accused in a language or dialect understood by him.



Section 4 of RA No. 7438 imposes a maximum penalty of 8 years imprisonment to an arresting or investigating officer who fails to warn the accused of his rights.

Why is it important to inform the person under custodial investigation of his rights?

If an accused makes an admission or confession during custodial investigation, his admission is not admissible in any proceeding if he was not informed of his rights. Moreover, to be admissible, the admission must be in writing, signed by him in the presence of his counsel. The written admission must state that the same was made in the presence of the counsel of the arrested person. (*RA 7438, sec. 2 [d]*)

The requirement, however, does not apply to voluntary confessions made to a person other than the investigating officer (*Arroyo v. CA, 203 SCRA 750, 1991*). These include admissions or confessions given to civilians (*People v. Cabiles, 248 SCRA 199, 1998*) or media (*People v. Bernardo, 220 SCRA 31*) and *res gestae* statements (*People v. Dy, 158 SCRA 111, 1998*).



Res gestae statements are spontaneous statements made in connection with a startling occurrence (*People v. Nartea, 74 Phil 10*).

e.g. A police officer was asked by Mr. A if the police station is still open. The police answered yes and asked him why he wanted to know. Mr. A confessed that he accidentally killed B when he was fishing using dynamite.



How is the right to a lawyer validly waived?

The waiver must be in writing and in the presence of counsel (*People v. Cabiles, 248 SCRA 199, 1998*).

To whom should a person make an admission if he has validly waived his right to a lawyer?

The person may make a valid waiver and/or admission in the presence of any of his parents, older siblings, spouse, municipal mayor, municipal judge, district school supervisor, or priest or minister of the gospel (*RA 7438, sec. 2*).

What about admissions made during the PI?

PI is no longer part of custodial investigation. The prosecutors or judges who conduct it are not law enforcers. It would be best to have the admission or confession of the offender put down in writing if it is not being recorded by the prosecutor or judge conducting the PI.

One case in point is an experience in Davao del Sur where the accused made an admission during the PI. When the resolution came out, the investigating judge dismissed the case for lack of probable cause. Because the admission was not made in writing, the law enforcers had nothing to show for the alleged admission.

issue


example


Bail

When a person is detained, he may be allowed provisional liberty by posting bail. **Bail** is the security given for the release of a person, on the condition that he will appear before the court whenever required. Bail may be given in the form of cash deposit, corporate surety, property bond or recognizance.

definition


When is bail available?

A detained person has the right to apply for bail, but whether this is granted or not depends on certain conditions.

1. In the following instances, **bail is a matter of right**:
 - ◆ Before and after conviction by the MTC, MCTC or MTC in cities (MTCC)
 - ◆ Before conviction by the RTC of an offense not punishable by death, *reclusion perpetua* or life imprisonment(*Rule 114, sec. 4*)

reminder


In these cases, the prosecutor cannot oppose or present evidence against the granting of bail.

2. In the following instances, **bail may or may not be granted to the person detained**:
 - ◆ Before conviction of a capital offense or a crime punishable by death, *reclusion perpetua* or life imprisonment, when the evidence of guilt is strong
 - ◆ Upon conviction by the RTC of an offense where the penalty imposed is imprisonment exceeding 6 years but not more than 20 years (*Rule 114, sec. 5*)



Under these circumstances, bail is discretionary. The prosecutor has the right to present evidence for the denial of bail.

When may bail be denied or cancelled?

If the accused has been convicted and the imposed penalty is imprisonment exceeding 6 years, bail may be denied if the prosecution is able to show the following or other similar circumstances:

- ♦ The accused is a recidivist, quasi-recidivist or habitual delinquent, or has committed the crime aggravated by the circumstance of reiteration.
- ♦ The accused is found to have previously escaped from legal confinement, evaded sentence or has violated the condition of his bail without valid justification.
- ♦ The accused is found to have committed the offense while on probation, parole or under conditional pardon.
- ♦ The circumstances of the accused or his case indicate the probability of flight if released on bail.
- ♦ There is undue risk that during the pendency of the appeal, the accused may commit another crime.

(Rule 114, sec. 5)

SEARCH AND SEIZURE

Searches and seizures are conducted by law enforcers to obtain evidence. As a general rule, any evidence obtained without a search warrant is inadmissible.

Search and Seizure with Warrant

A search warrant is an order in writing issued in the name of the People of the Philippines and signed by the judge. It is directed to a peace officer, commanding him to search for personal properties described in the warrant and to bring them before the court. (Rule 126, sec. 1)



What documents are required in procuring a search warrant?

The affidavits of the complainant and/or his witnesses are needed. The judge issues the warrant if he determines that there is probable cause after he examines the complainant and the witnesses. (Rule 126, sec. 4 & 5)

Where is the application for a search warrant filed?

- ♦ Any court within whose territorial jurisdiction the crime was committed
- ♦ For compelling reasons, any court within the judicial region where the crime was committed, if the place of the commission

of the crime is known, or any court within the region where the warrant will be enforced

(*Rule 126, sec.2*)

If muro-ami was committed in Puerto Princesa, Palawan, the RTC in Puerto Princesa is the appropriate court. However, if the warrant is to be enforced in Santander, Cebu, then the application may also be filed there even if the muro-ami was committed in Puerto Princesa, provided there is a compelling reason.



If an information has already been filed, the application for the search warrant can only be made in the court where the criminal action is pending.



What makes a search warrant valid?

- ◆ Existence of probable cause
- ◆ Judge has examined complainant and the witnesses under oath
- ◆ Issuance is determined by the judge himself
- ◆ A particular description of the place to be searched and things to be seized is provided
- ◆ Issuance is in connection with one specific offense

(*Rule 126, sec. 4*)

When does a search warrant expire?

A search warrant is valid only for 10 days, after which it becomes void. Search and seized items under a void warrant are inadmissible.

(*Rule 126, sec. 9*)



What must be remembered when conducting searches and seizures?

- ◆ Searches are generally made only in the daytime, unless the warrant states that the search may be made at any time of the day or night (*Rule 126, sec. 9*).
- ◆ Doors or windows may be broken by the officer only if he is refused admittance to the place to be searched (*Rule 126, sec. 7*).
- ◆ The search warrant must particularly describe the places to be searched and the things to be seized. Thus the officer armed with the warrant should go only to the place stated in the warrant, and seize only the thing particularly described in the warrant. (*Constitution, Art. II, sec. 2*)



What must be done to prevent countersuits?

- ◆ No search of house, room or any other premises (e.g. fishing vessel) should be made without the presence of the lawful occupant or any member of his family or, in the absence of the latter, two witnesses of sufficient age and discretion residing in the same locality. (*Rule 126, sec. 8*) This is to negate the defense of *planting of evidence*.
- ◆ A detailed receipt of the seized property must be given to the lawful occupant of the premises. In the absence of the occupant, the receipt must be left in the premises, in the presence of two witnesses of sufficient age and discretion. This is to avoid countersuits of *robbery or theft*.
- ◆ The occupant must not be asked to sign the receipt. In *Gutang v. People (335 SCRA 479, 2000)*, the Court declared that a receipt of property seized signed by an accused without a counsel is considered an *uncounseled confession*. The entire document was excluded as evidence. Witnesses must instead be asked to sign the receipt, with the occupant’s name stated in the document.
- ◆ An accurate description of the condition and quantity of the items seized must be indicated to avoid countersuits of robbery, theft or *civil suit for damages*.
- ◆ The officer must immediately deliver the property seized to the judge who issued the warrant, together with the inventory of seized items duly verified under oath.
- ◆ Ten days after the issuance of the warrant, the officer must make a return to the judge if the warrant was not used. Failure to either make a return or deliver the seized items within 10 days constitutes *contempt of court*. (*Rule 126, sec. 12*)



Warrantless Search and Seizure

Searches and seizures may be conducted without warrant under the following exceptional circumstances, provided there is probable cause.

1. *Search incidental to a lawful arrest*

A person lawfully arrested by officers with or without a warrant may be searched for dangerous weapons, or anything that may have been used in or that may constitute proof of the commission of an offense (*Rules of Court, Rule 126, sec. 13*). In this case, the search must be made during the arrest, as the search is only “incidental” to the arrest (*Nolasco v. Cruz Pano, 139 SCRA 152, 1985*). (e.g. fine-mesh nets, dynamite, blasting caps or the fishing vessel)



The search may extend beyond the person arrested to include the premises or surroundings under his immediate control (*People v. Musa*, 217 SCRA 597). In the case of fishing vessels, "premises under immediate control" would mean the entire vessel, considering that in fishery offenses, the vessel itself is an essential tool in committing the offense.

issue
MTHH

2. Search of moving motor vehicle

Motor vehicles include fishing vessels and boats breaching fishery laws because these vessels are normally powered by high-speed engines that enable them to elude arrest by ships of the Philippine Navy, PCG or other government authorities (*Hizon v. CA*, G.R. No. 119619, 13 December 1996). However, there must be probable cause for searching the vessel.

3. Customs search

Seizure of dutiable or contraband items may be made by officers exercising authority under customs laws if there is probable cause. Probable cause may be based on a mere report. Vessels, warehouses, stores and enclosures may be searched, but not residences.

4. Seizure of evidence in plain view

Seizures may be made when prohibited articles are "open to the eye and hand", or when a police officer accidentally comes upon an incriminating object (*People v. Musa*, 217 SCRA 597). An object is incriminating if it is a tool used in the commission of the crime, a contraband or otherwise subject to seizure.

- ♦ Endangered species aboard a vessel can be seized by law enforcers if these are discovered while a regular inspection is being conducted.
- ♦ Fish wardens see a compressor installed in a boat in a municipality where mere possession of a compressor is prima facie evidence of cyanide fishing.

example
MTHH

5. Consented warrantless search

When the officers conducting the search have no right to do so, but the person subject to the search, or occupying the premises to be searched, consents to the search, then the person searched has waived his rights. For a valid waiver, the following must concur:

- ♦ The right exists
- ♦ The person involved had knowledge of the existence of such right
- ♦ The person had actual intention to relinquish such right (*de Garcia v. Locsin*, 65 Phil 689)



It is best to have the waiver written down to negate charges of lack of consent should the person later deny that he consented to the search. Include two witnesses who can testify to the valid waiver, in case the accused later alleges that he was pressured by police officers to give his consent to the search.

6. Stop and frisk

Stop and frisk is an act of a law enforcer to stop a person on the street, interrogate him and pat him for weapons or contraband. For this exception to apply, the person to be searched must be acting suspiciously. In *Manalili v. CA (280 SCRA 400)*, policepersons were conducting surveillance based on information that the Kalookan Cemetery was a haven for drug addicts when they chanced upon a man who appeared to be high on drugs. He had reddish eyes and swayed when he walked. He tried to avoid the police and resisted when asked what he was holding in his hands. The Supreme Court ruled that such actuations were suspicious.

Who may conduct warrantless searches and seizures?

Law enforcers may conduct warrantless searches and seizures. Civilians may do so only if the search and seizure is incidental to a valid citizen's arrest.

What may be seized?

- ◆ Subject matter of the offense
- ◆ Stolen or embezzled and other proceeds or fruits of the offense
- ◆ Objects used or intended to be used as a means of committing an offense (e.g. fishing vessels, dive mask, compressor, blasting caps, nets, fishery species)



CUSTODY

Seized articles are placed under the custody of the court that issued the warrant. These are delivered to the particular judge who issued the search warrant. (*Rule 126, sec. 12 [b]*)

For articles seized through a warrantless search and seizure, the following are assigned to take custody:

1. Before the filing of the complaint or information

- ◆ The PNP-Maritime Group (PNP-MARIG) or the local PNP in the area.

A memorandum of agreement of the National Law Enforcement Coordinating Committee (NALECC) states that whenever applicable, the PNP-MARIG shall take custody of impounded fishing boats, including fishing gear and other

paraphernalia in illegal fishing, pending the final resolution of the criminal or administrative case. (Art. 2 [b], par. 5, signed on 11 September 1995)

- ♦ The Police Evidence Custodian. (*Department of Justice Manual for Prosecutors, Part II, sec. 18*)

2. After the filing of the complaint or information

The court, through the clerk of court.

But the court may ask government or private agencies with appropriate facilities to undertake custody of the seized articles through an affidavit of undertaking.

Liability of custodians

What kind of diligence must a custodian exercise over seized articles?

Since the law is silent, custodians need to exercise only ordinary diligence. Thus, a custodian's responsibility is to exercise ordinary care and vigilance like a good father of a family, taking into consideration the nature of the articles and circumstances of persons, time and place (*Baer Sr. & Co. v. Compañía Maritima, 6 Phil. 218*).

Are custodians liable if seized articles or vessels are lost while in the custody of the law?

Custodians are liable for malversation of public property (*RPC, Art. 217*) if the seized articles are lost due to inexcusable negligence amounting to malice or fraud (*Gregorio, 1997*).

Are custodians civilly liable when seized articles are damaged while in their custody?

Custodians are liable only when negligence is proved. This is based on torts, a civil case where the owner of the seized articles and the custodian have no pre-existing contract. If the owner alleges damage, he must prove negligence on the part of the custodian.

Are custodians liable if the fishing vessel is damaged by a storm?

No. By principle of law, no one is liable for damages brought about by *force majeure* or acts of God.

ISSUE
WITH

affidavit of undertaking

Is an affidavit of undertaking valid?

Yes. When the complaint or information has been filed, the judge may issue an order releasing the seized items through an affidavit of undertaking. When the case is still under PI, the prosecutor may also issue an order releasing the items.

Prosecutors are advised, however, to oppose orders from the judge releasing seized items, since these are critical evidence and their integrity should be preserved. There have been cases where fine-mesh nets were replaced. During PI, the prosecutors should also be circumspect in releasing seized items back to owners. The courts and prosecutors should instead have the seized items placed in the custody of the PNP-Maritime, PCG, Philippine Navy, or other government agencies or private institutions that have adequate facilities.

Fishing vessels should *not* be released to the owner if the penalty of the offense includes confiscation of vessel. Otherwise, the possibility of its being returned would be nil. If the penalty does not include confiscation, it is sufficient to take a picture of the vessel. But if there are available berthing facilities, the vessel should be impounded.

If the confiscated property is lost or misappropriated while in the custody of the owner who signed the affidavit of undertaking, he may be charged with malversation of public property (*RPC, Art. 217*).



replevin

Will replevin prosper in cases of seized articles in the custody of law enforcement officers or local government officials?

No. In a *replevin* case, the plaintiff's cause of action has to be grounded, among others, on the fact that:

- ◆ The property is wrongfully detained by the defendant (the custodian of the seized property) and
- ◆ The property has not been placed under *custodia legis* (*Rule 60, sec. 2 [b] & [c]*).

Since lawfully seized fishing gear, superlights and vessels are under *custodia legis* and not wrongfully detained, the plaintiff has no cause of action against the defendant. It is basic that if the property is in *custodia legis*, a replevin suit will not prosper for the owner's recovery of the item (*Pagkalinawan v. Gomez, 21 SCRA 1275*).

Replevin is the return to—or recovery by—a person of goods or chattels claimed to be wrongfully detained. This is granted, however, on the condition that the person gives an assurance to try the matter in court, and to return the goods if the claim of unlawful detention is disproved. (*Tillson v. Court of Appeals, 197 SCRA 587*). **Unlawful**





detention is the keeping of property by a person without any pretense of authority or right.

An item is in *custodia legis* when it is shown that it has been, and is subjected to, the official custody of a judicial or executive officer. Law enforcers, such as the PNP, are specifically empowered to impound the property (*RA 8550, sec. 103 [e]*). Property lawfully seized with a search warrant or under a valid warrantless search and seizure is also considered in *custodia legis*. (*Bagalihog v. Fernandez, 198 SCRA 614*).

May administrative bodies or courts other than the court of jurisdiction issue a writ of replevin?

No. The jurisdiction acquired by a court over vessels through the filing of an information charging fishery violations cannot be interfered with by a co-equal and coordinate court. Only the court of jurisdiction can order the release of the vessel. In *Roldan, Jr. v. Arca, 65 SCRA 336*, not even the Agriculture & Natural Resources Secretary or the Fisheries Commissioner could direct that the fishing boat be turned over to any person or agency without risking contempt of court. It does not matter that the vessel may later be found within the territorial jurisdiction of another court. Once vested, jurisdiction attaches.

The court issues the writ of replevin *ex parte*, or without notice to the defendant. Thus, the defendant (e.g., BFAR field staff, police officers, LGU officials and community leaders) learn of the case only when the sheriff serves a copy of the writ with the intention of taking the property into his possession. Hence, the defendant is caught by surprise and is unable to make any legal move to prevent or at least delay the taking.



What is the countermeasure against a writ of replevin?

After the writ of replevin is served upon the person/s having custody, the defendant must immediately file an Omnibus Motion to Dismiss and to Quash Writ of Replevin. The Omnibus Motion is based on the ground that the complaint does not state a cause of action.

What are the remedies when the motion to quash the writ of replevin is denied?

The defendant should file with the Court of Appeals a petition for certiorari and prohibition under Rule 65 of the Rules of Court. The petition, which must be filed within 60 days from receipt of the order of denial, should include an application for a temporary restraining order/preliminary injunction to prevent the trial court from further proceeding with the case during the pendency of the petition.



Likewise, as the property shall have been delivered to the plaintiff at the time the petition is filed, there could also be a prayer for a preliminary mandatory injunction directing the trial court to return the property to the custody of the defendant. Should the Court of Appeals dismiss the petition, the defendant has a final remedy—a petition for review before the Supreme Court, within 30 days from receipt of the Court of Appeals' decision.

4

Chapter

Evidence

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C. Admissibility of Evidence

II. Offer of Evidence

A. Object or Real Evidence

B. Documentary Evidence

C. Testimonial Evidence

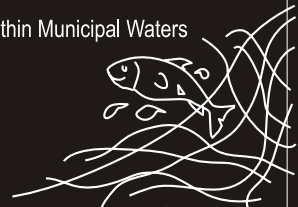
III. Establishing Criminal Liability

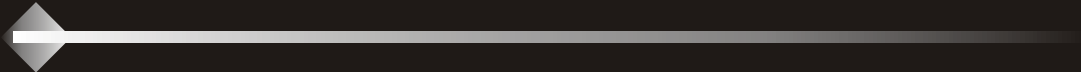
A. Based on Fishing Method Employed

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Chapter 4

Evidence

Successful prosecution of coastal law violations is often hampered by the dismissal of actions at the preliminary investigation stage or after trial—an obstacle often traced to lack of evidence linking the offender to the crime, or even failure to prove that the alleged offense was indeed committed.

Evidence is needed to establish truth and prove facts before the courts and quasi-judicial bodies. Knowing what evidence to present at which time and in what manner can make or break a criminal case.

All Rules cited are from the Revised Rules of Court, unless otherwise indicated.

GENERAL PRINCIPLES



Evidence is the means prescribed by the Rules of Court to determine and prove the truth of a fact. (*Rule 128, sec. 1*)

Proof is the result or effect of evidence. When the required amount of evidence of a particular fact has been duly admitted and given weight by the court, the result is called the proof of that fact.

The guidelines on what evidence is needed, and how it must be gathered and presented is set by the Rules on Evidence.

What are the sources of the Rules on Evidence?

- ◆ Article III, Sections 2 & 3 of the 1987 Constitution
- ◆ Rules 128 to 133 of the Revised Rules of Court
- ◆ Resolutions of the Supreme Court
- ◆ Statutes (see National Laws in Chapter 1: Legal Bases)
- ◆ Judicial decisions

Where do the Rules on Evidence apply?

The Rules on Evidence are applied uniformly in all judicial courts, from the Municipal Courts to the Supreme Court, and in all trials and hearings. The Rules on Evidence are specifically applicable only in judicial proceedings. In quasi-judicial proceedings, the rules apply by analogy, or in a suppletory character only, whenever practicable and convenient.

The Rules may be used to determine:

- ◆ the facts to be proven to establish liability
- ◆ the proof necessary to support these facts
- ◆ the process necessary to produce the proof

e.g. Fishing with the use of explosives

Facts to be proven

- ◆ That the accused was fishing
- ◆ That the accused used explosives

Proof of the Facts

- ◆ Testimony of arresting officer
- ◆ Confiscated fish
- ◆ Testing of fish samples

Process of producing proof

- ◆ Direct examination of apprehending officer and other witnesses
- ◆ Authentication of fish samples
- ◆ Presentation of results of fish examination



Kinds of Evidence

Evidence presented in court may be classified as:

1. Object or Real Evidence

Evidence that consists of tangible things exhibited or demonstrated either:

- ◆ in open court for examination or viewing
- ◆ in an ocular inspection, or
- ◆ at a place designated by the court for its view or observation of an exhibition, experiment or demonstration

(*Rule 130, sec. 1*)

(e.g. fish samples, fishing gear, fishing vessels, mangrove area converted into a fishpond, or the part of the coastline affected by aquatic pollution)



2. Documentary Evidence

Evidence that may be:

- ◆ supplied by written instruments
- ◆ documents consisting of writings
- ◆ any material containing letters, words, numbers, figures, symbols, or
- ◆ other modes of written expressions offered as proof of their contents

(*Rule 130, sec. 2*)

(e.g. permits and licenses, inventory and seizure receipts, or certifications from government agencies)



3. Testimonial Evidence

Evidence submitted to the court through the testimony or deposition of a witness

(e.g. testimony of members of the apprehending team, or depositions of witnesses)



Weight of Evidence

Evidence is weighed according to quality rather than quantity. Generally speaking, the weight of evidence is not a question of mathematics, but of its *effect in inducing belief*.

Generally, the court determines the weight of evidence by evaluating:

- ♦ the power of one side to have produced, and the power of the other side to have contradicted, the proof
- ♦ the reasonableness of the given evidence in producing the proof
- ♦ the surrounding circumstances and the inherent probabilities.

In criminal cases, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt.



Proof **beyond reasonable doubt** does not mean a degree of proof that, excluding possibility of error, produces absolute certainty. What is required is moral certainty, or the degree of proof that would convince an unprejudiced mind of the guilt of the accused. (*Rule 133, sec. 2*)

However, before guilt can be proven, the culpability of the accused for the offense charged must first be established.

How is culpability established?

The fact that the offense was indeed committed is proved either through direct evidence or circumstantial evidence.

1. Direct Evidence

Direct evidence is evidence that, if believed, proves the existence of the fact in issue without need for any presumption. e.g. A witness deposes that he saw X throw an explosive device to sea, which exploded, killing fish



2. Circumstantial Evidence

Circumstantial evidence is evidence that, without directly proving the existence of a fact, gives rise to a logical conclusion that such fact does exist.

Circumstantial evidence is sufficient for conviction in criminal cases if:

- ♦ there is more than one circumstance leading to the conclusion of the fact
- ♦ the conclusions or inferences are derived from facts duly proven
- ♦ the combination of all the evidence produces conviction beyond reasonable doubt.

(*Rule 113, sec. 4*)

e.g. Fish are found dead along a pier. X was earlier seen dumping a drum of liquid substances into the water, and is found in



possession of an empty drum. Tests of the liquid found in the drum indicate that it is the same liquid that caused the death of the fish.

What is the difference between direct and circumstantial evidence?

In direct evidence, the witness testifies directly of his own knowledge on the main facts to be proved. In circumstantial evidence, proof is given of facts and circumstances from which the court may reasonably infer other connected facts, which according to common human experience could logically be concluded from the proven facts.

Admissibility of Evidence

A piece of evidence is relevant to an alleged fact when it tends to prove or disprove the fact in issue. It becomes admissible in court when it is both competent and material to the fact in issue (*Rule 130*).

Evidence is **competent** when it is not excluded by the Rules on Evidence, statutes, or the Constitution. It is **material** when it is *directed* to prove the fact in issue, *as determined by the rules* of substantive law and proceedings.



OFFER OF EVIDENCE

The court will not consider evidence that has not been formally offered or presented. Testimonial evidence must be offered at the time the witness is called to testify. Documentary and object evidence are offered after the presentation of a party's testimonial evidence. This offer is done orally, unless the court allows the offer to be done in writing. The purpose for which the evidence is offered must also be specified. (*Rule 132, sec. 33 & 34*)

A transcript of the record of the entire trial or hearing, usually called the transcript of stenographic notes (TSN) and certified by the official stenographer, is deemed *prima facie* a correct statement of such proceedings (*Rule 132, sec. 2*). Make it a practice to obtain copies of the TSN, because this can be used as evidence for or against the prosecution, especially for appeals or motions for re-investigation.



Object or Real Evidence

When an object is relevant to a fact in issue, it may be exhibited to, examined or viewed by the court. The presentation of object evidence may be done as part of the testimony of the person who seized the object evidence, or who has custody of it. Object evidence must be authenticated, either by identification by witnesses, or admission by the parties. (*Rule 130, sec. 1*)

Documentary Evidence

As a general rule, when the subject of inquiry is the contents of a document, no evidence may be admissible other than the original document itself.

What are considered as originals?

Documents considered as originals are those:

- ◆ whose contents are the subject of inquiry
- ◆ executed in two or more copies at about the same time, with identical contents
- ◆ entries made in the regular course of business, one being copied from another, at or near the time of the transaction to which they refer

What if the original is not available?

Exceptions to the general rule may be accepted in the following cases:

- ◆ when the original has been lost or destroyed without bad faith
- ◆ when the original is in the custody of the other party, who fails to produce it after reasonable notice
- ◆ when the original consists of numerous accounts or documents that cannot be examined by the court without great loss of time, and if the fact to be established from them is the general result of the whole
- ◆ when the original is a public record in the custody of a public officer or is recorded in a public office.

(Rule 130, sec. 3)

In these cases, what may be presented in lieu of the original?

When the original document cannot be offered in evidence, its contents may be proved by:

- ◆ a copy
- ◆ a recital of its contents in some authentic document
- ◆ the testimony of witnesses.



These may be presented so long as proof of the original's execution or existence, and the cause of its unavailability are provided.

public and private documents

What are public and private documents?

For purposes of presentation in evidence, documents are either public or private. **Public documents** are:

- ♦ public records of official acts
- ♦ notarized documents
- ♦ public records of private documents required to be entered as public records.

All other writings are private. (*Rule 132, sec. 20*)

Why is it important to distinguish between public and private documents?

Entries in public records made in the performance of a duty by a public officer are prima facie evidence of the facts stated in the document. All other public documents are evidence of:

- ♦ the facts that gave rise to their execution, and
- ♦ the date of their execution.

(*Rule 132, sec. 23*)

presenting photos as evidence

How are photos presented as evidence?

As a general rule, photographers must identify how the photos were produced, and the circumstances with which they were produced. The photographer, however, is not the only witness who can identify the photos he has taken.

The admissibility of a photo is determined by its accuracy in portraying the scene of the crime. The correctness of the photo as a faithful representation of the object portrayed can be proved prima facie, therefore, either by the person who took it or by other competent witnesses who can testify to its exactness and accuracy (*Sison v. People, 250 SCRA 58*). These witnesses may be persons who are in the photo, or members of the apprehending team.

Testimonial Evidence

As a general rule, witnesses may testify only on matters that they themselves have witnessed or observed. Testimony given on matters not directly observed by a witness is considered as hearsay, and is not admissible.



Are there exceptions to the general rule?

Yes. Testimony on matters not directly observed by a witness is allowed in cases when:

- ♦ the person having direct knowledge of the matter communicated the relevant information to the witness just before the person died
- ♦ the offended party has previously declared in speech or in writing a statement from which the witness can conclude a fact that is against a party's interest
- ♦ the statement was made during, or immediately after or before, a startling occurrence
- ♦ the testimony is based on entries in official records
- ♦ the person having direct knowledge is deceased or is unable to testify, but the testimony is based on entries made in the course of his regular duty
- ♦ the testimony is the opinion of an expert witness
- ♦ commonly known facts on a party's reputation exist prior to the case
- ♦ the person deceased or unable to testify has previously deposed on the same matter involving the same parties at a former proceeding

(Rule 130)

Who can testify as a witness?

As a general rule, any person can be a witness, provided that he has the capacity to perceive, and the capacity to make his perception known to others.

What factors may render a witness incapable of testifying?

The testimony of a witness *may* be excluded by reason of the witness's:

- ♦ mental immaturity or insanity
- ♦ marriage to one of the parties
- ♦ communication with a party made in confidence as his legal counsel, doctor (or other medical professional), minister or priest, or as a public official protecting the public interest
- ♦ direct filial relationship with a party

(Rule 130)

How is the witness examined?

Witnesses presented in a trial or hearing are examined in open court, and under oath or affirmation. As a general rule, the answers of witnesses are given orally, unless the witness is incapacitated to speak, or the question calls for a different mode of answer. *(Rule 132, sec. 1)*

The order in which an individual witness may be examined is as follows:

1. direct examination by the proponent
2. cross-examination by the opposing counsel
3. re-direct examination by the proponent
4. re-cross-examination by the opposing counsel.

(Rule 132, sec. 4)

What are the rights of a witness?

A witness must answer the questions asked of him, even if his answer may tend to establish a claim against him. However, it is the right of a witness:

- ♦ to be protected from irrelevant, improper or insulting questions, and from a harsh or insulting demeanor
- ♦ not to be detained longer than the interests of justice require
- ♦ to be examined only on matters pertinent to the issue
- ♦ not to give answers that will tend to subject him to a penalty for an offense
- ♦ not to give an answer that will tend to degrade his reputation, unless his reputation is the fact in issue. However, a witness must answer to the fact of his previous final conviction for an offense.

(Rule 132, sec. 3)

How may a witness be impeached?

A witness may be impeached by the party whom he was called against by:

- ♦ contradictory evidence
- ♦ evidence that his general reputation for truth, honesty, or integrity is bad
- ♦ evidence that he has made at other times that is inconsistent with his present testimony.

(Rule 132, sec. 11)

On any trial or hearing, the judge may exclude from the court any witness not under examination at that time, to prevent him from hearing the testimony of other witnesses. The judge may also order witnesses to be kept separate and prevented from conversing with one another until all have been examined. *(Rule 132, sec. 15)*



ESTABLISHING CRIMINAL LIABILITY

The evidence necessary to establish criminal liability depends on the particular elements of an offense. The tables below contain suggested evidence that law enforcers and prosecutors can use to prove the existence of the elements of an offense (see Chapter 2: Prohibited

Acts and Penalties). The source is also indicated to facilitate the gathering of evidence.

The list is not all-inclusive; alternative methods to establish culpability are only limited by the law enforcer's or prosecutor's creativity. Also, the evidence listed below need not be presented at once during the preliminary investigation or inquest proceedings. What is necessary at the preliminary investigation stage is the evidence sufficient to establish probable cause that the offense was committed by the accused.

The prohibitions/regulations in this section are organized in the same way as Chapter 2.



Annex 1: Preservation of Evidence provides reminders and tips on how to preserve some of the evidence usually required in court.

A. Based on Fishing Method Employed

For offenses concerned mainly with illegal fishing gear or methods, it is important that the objects used in committing the crime are seized, identified by BFAR personnel, labeled accordingly, and counter-signed by the owner. The objects or gear must be presented as evidence in court; if impractical or physically impossible, a photo of the gear may be presented instead. Generally, affidavits by witnesses must also describe the gear and how it was used, to clearly illustrate that the gear is indeed active or—if not active—destructive to the environment.

1. Section 88 - Actual Use of Explosives, Noxious or Poisonous Substances and/or Electricity for Illegal Fishing

Suggested Evidence	Source
Affidavit indicating: ⇒ use of explosives, noxious or poisonous substances or electricity in fishing or ⇒ possession of explosives, noxious substances or electrofishing devices and fish catch (<i>People v. Vergara, 270 SCRA 624</i>)	Members of the apprehending team and/or other witnesses
Apprehension report with inventory and seizure receipt	Team leader of apprehending team
Fish samples	Custodial officer
Results of fish examination	Fish examiner
If recovered, samples of explosives, noxious or poisonous substances, or electrofishing devices	Custodial officer



Annex 1: Preservation of Evidence provides guidelines on preserving fish samples.

2. Section 88 - Mere Possession of Explosives, Noxious or Poisonous Substances and/or Electrofishing Devices for Illegal Fishing

Suggested Evidence	Source
Affidavit showing possession by accused and proof of intent to use in illegal fishing	Apprehending team and other witnesses
Apprehension report with inventory and seizure receipt	Investigating officer and/or apprehending team
Samples of explosives, poisonous substances or electrofishing devices	Property custodian or apprehending team
Results of examination of sample	Examiner
Or certification that materials are noxious substances	DENR/BFAR/other competent authority
Or identification that confiscated gear is used for illegal fishing	BFAR/municipal agricultural officer (MAO)/ other competent authority

When the explosives, noxious or poisonous substances and/or electrofishing devices are found on board any fishing vessel, or in possession of any fisherfolk, boat operator, fishing boat official or fishworker, the discovery is prima facie evidence that such substances or devices were used for illegal fishing.



3. Section 88 - Dealing in, Selling or Disposing of, for Profit, Illegally Caught/Gathered Fisheries Species

Suggested Evidence	Source
Affidavit indicating possession and/or disposition	Apprehending team and other witnesses
Apprehension report with inventory and seizure receipt	Investigating officer and/or apprehending team
Samples of fisheries species	Property custodian
Results of fish examination	Fish examiner

Only the discovery of illegally caught/gathered fish *on board* any fishing vessel constitutes prima facie evidence that the fisherfolk, operator or fishworker found in possession of such illegally caught fish is fishing with the use of illegal methods.



Annex 1: Preservation of Evidence provides guidelines on preserving fish samples.

4. Section 89 - Use of Fine Mesh Net

Suggested Evidence	Source
Affidavit indicating actual use	Apprehending team and other witnesses
Apprehension report with inventory and seizure receipt	Investigating officer and/or apprehending team
Fishing net, a part of the net, or a picture of the net indicating mesh size	Apprehending team
Identification of nets as fine-meshed	BFAR/MAO/other competent authority
Fish samples	Property custodian
Identification of species	BFAR/MAO/other competent authority

5. Section 90 - Use of Active Gear in the Municipal Waters and Bays and Other Fishery Management Areas

Suggested Evidence	Source
Affidavit indicating actual use and location	Apprehending team
Apprehension report with inventory and seizure receipt	Investigating officer and/or apprehending team
Gear used or picture of gear used	Property custodian or apprehending team
Certification of gear as active gear	BFAR/MAO/other competent authority
Documentary/testimonial evidence indicating position of vessel	Apprehending team and/or other witnesses

6. Section 92 - Ban on Muro-ami and Any of Its Variations

Suggested Evidence	Source
Affidavit indicating fishing activity and nature of operations	Apprehending team and other witnesses
Apprehension report with inventory and seizure receipt	Investigating officer and/or apprehending team
Inventory of crew	Apprehending team
Certification as to the nature of fishery operations or gear use	BFAR/MAO/other competent authority
Debris from nets or pictures of debris tangled in nets	Property custodian and/or apprehending team
Identification of debris	BFAR/MAO/other competent authority

7. Section 92 - Ban on Gear and Method which Destroys Coral Reefs, Seagrass Beds and Other Fishery Marine Life Habitats

Suggested Evidence	Source
Affidavit indicating fishing activity and nature of operations	Apprehending team and other witnesses
Apprehension report with inventory and seizure receipt	Investigating officer and/or apprehending team
Inventory of crew	Apprehending team
Certification as to the nature of fishery operations or gear use	BFAR/MAO/other competent authority
Debris from nets or pictures of debris tangled in nets	Property custodian and/or apprehending team
Identification of debris	BFAR/MAO/other competent authority

8. Section 93 - Illegal Use of Superlight Within Municipal Waters

Suggested Evidence	Source
Affidavit indicating actual use	Apprehending team or other witnesses
Apprehension report with inventory and seizure receipt	Investigating officer and/or apprehending team
Bulbs or pictures of bulbs indicating wattage	Custodial officer or apprehending team
Certification of bulbs as superlights	BFAR/other competent authority
Documentary/testimonial evidence indicating position of vessel	Apprehending team

9. Section 93 - Illegal Use of Superlight Outside of Municipal Waters

Suggested Evidence	Source
Affidavit indicating actual use	Apprehending team
Apprehension report with inventory and seizure receipt	Investigating officer and apprehending team
Bulbs or pictures of bulbs indicating wattage	Property custodian or apprehending team or other witnesses
Certification of bulbs as superlights	BFAR/other competent authority
Documentary/testimonial evidence indicating position of vessel	Apprehending team and/or other witnesses

B. Based on Location of Activity

The position of the fishing vessel, whether within municipal waters or not, is an element and necessary piece of evidence common to the offenses in this category. Failure to establish the position of the vessel is fatal to the charge.

The position of a vessel can be established with the use of a compass and a map, a GPS device, or even through reckoning from established and visible landmarks. If there is a lack of technical skill in determining distance, other forms of measurement—such as the travel time from the shore, or a photo taken of the vessel’s radarscope—may also be used and validated later. The vessel’s position must be immediately established upon boarding to avoid discrepancies caused by the vessel’s drifting or deliberate movement to another area. It is recommended that the position of the vessel be plotted in a navigational chart during the apprehension to facilitate its presentation as evidence.

For prohibitions in this category, maps or navigational charts are essential evidence in court. These, coupled with documents demarcating the area where fishing activities are prohibited or regulated, can ascertain the culpability of the violator. Affidavits of witnesses must indicate the method used to establish the position of the vessel. If travel time and landmarks were used as basis, the speed of the patrol boat, the time, and the location of the landmarks must be specified in the affidavit.

Discovery of any person in an area where he has no permit or registration papers for fishing constitutes *prima facie* evidence that such person and/or vessel is engaged in unauthorized fishing. (Sec. 86)



1. Section 86 in Relation to Section 18 - Commercial Fishing Vessels Fishing Within Municipal Waters

Suggested Evidence	Source
Affidavit indicating fishing activity and location	Apprehending team and other witnesses
Apprehension report with inventory and seizure receipt	Investigating officer and/or apprehending team
Assessment of value of catch	BFAR or other competent authority
Fishing vessel or photographs of the fishing vessel	Apprehending team or custodial officer
Documentary/testimonial evidence indicating position of vessel	Apprehending team
Copy of license or certification as to gross tonnage	BFAR/Maritime Industry Authority (MARINA)/Philippine Coast Guard (PCG)

2. Section 86 - Commercial Fishing by Commercial Fishing Vessels in Bays and Fishery Management Areas Declared as Over-exploited

Suggested Evidence	Source
Affidavits indicating fishing activity and location	Apprehending team and other witnesses
Apprehension report with inventory and seizure receipt	Investigating officer and/or apprehending team
Assessment of value of catch	BFAR/other competent authority
Fishing vessel or photographs of the fishing vessel	Apprehending team or custodial officer
Declaration that area is overexploited	BFAR or local government unit (LGU) concerned
Documentary/testimonial evidence indicating position of vessel	Apprehending team
Copy of license or certification as to gross tonnage	BFAR/MARINA/PCG

3. Section 86 - Commercial Fishing Activities by Municipal Fisherfolk Within Municipal Waters Without Being Listed in the Registry of Municipal Fisherfolk

Suggested Evidence	Source
Affidavits indicating fishing	Apprehending team or other witnesses
Apprehension report with inventory and seizure receipt	Investigating officer and/or apprehending team
Fishing vessel or photographs of the fishing vessel	Apprehending team or custodial officer
Certification that the accused is not registered	LGU concerned
Documentary/testimonial evidence indicating position of vessel	Apprehending team or other witnesses

4. Section 87 - Poaching in Philippine Waters

Suggested Evidence	Source
Affidavits indicating activity and identification as foreign vessel	Apprehending team and other witnesses
Apprehension report with inventory and seizure receipt	Investigating officer and/or apprehending team
Fishing vessel or photographs of the fishing vessel	Apprehending team or custodial officer
Assessment of fish catch	BFAR or other competent authority
Documentary/testimonial evidence indicating position of vessel	Apprehending team or other witnesses

5. Section 96 - Fishing in Fishery Reserves, Refuge and Sanctuaries

Suggested Evidence	Source
Affidavit indicating activity	Apprehending team
Apprehension report with inventory and seizure receipt	Investigating officer and/or apprehending team
Fishing vessel or photographs of the fishing vessel	Apprehending team or custodial officer
Proof of declaration	BFAR or LGU concerned
Documentary/testimonial evidence indicating position of vessel	Apprehending team

6. Section 90 - Use of Active Gear in the Municipal Waters and Bays and Other Fishery Management Areas

Suggested Evidence	Source
Affidavit indicating actual use	Apprehending team
Apprehension report with inventory and seizure receipt	Investigating officer and/or apprehending team
Gear used or picture of gear used	Custodial officer or apprehending team
Certification that such gear is active gear	BFAR/MAO/other competent authority
Documentary/testimonial evidence indicating position of vessel	Apprehending team or other witnesses

C. Based on Resource Exploited

Vital to the prosecution of offenses in this category is proving that a resource has indeed been extracted or exploited. Thus, the most important evidence is a sample or photo of the resource. During the apprehension, the resource itself, as well as the gear or device used in extracting it, must be confiscated, identified by BFAR, and properly labeled or tagged for presentation in court. It is also helpful to take photos of the area from which the resource was extracted.

1. Section 91 - Ban on Coral Exploitation and Exportation

Suggested Evidence	Source
Affidavit indicating possession and/or ownership of corals	Apprehending team and other witnesses
Apprehension report with inventory and seizure receipt	Investigating officer and/or apprehending team
Samples or picture of corals	Custodial officer, apprehending team or other witnesses
Identification of samples as corals	BFAR/DENR/other competent authority
Certification that no permit was issued in favor of the accused	BFAR/DENR

2. Section 92, Paragraph 3 - Ban on Gathering, Selling, Exporting of White Sand, Silica, Pebbles and Other Substances that Make Up the Marine Habitat

Suggested Evidence	Source
Affidavit indicating activity and possession of materials	Apprehending team and other witnesses
Apprehension report with inventory and seizure receipt	Investigating officer and/or apprehending team
Samples of sand, silica, pebbles and other substances that make up the marine habitat found in the possession of the accused	Custodial officer and apprehending team
Certification as to nature of items and probable source	BFAR/MAO

3. Section 94 - Conversion of Mangroves

Suggested Evidence	Source
Affidavit indicating either conduct of destructive activity or its destructive results	Apprehending team and other witnesses
Apprehension report with inventory and seizure receipt	Investigating officer and/or apprehending team
Samples of mangroves cut or pictures of the area	Custodial officer and apprehending team or other witnesses
Identification and scaling sheet	DENR/other competent authority
Certification that no permit was issued in favor of the accused	BFAR/DENR

4. Section 97 - Fishing or Taking of Rare, Threatened or Endangered Species

Suggested Evidence	Source
Affidavit indicating activity or control and possession of species	Apprehending team
Apprehension report with inventory and seizure receipt	Apprehending team
Samples or picture of specimen in possession of accused	Custodial officer and apprehending team and other witnesses
Identification of species	BFAR/DENR/other competent authority

5. Section 98 - Capture of *Sabalo* and Other Breeders/Spawners

Suggested Evidence	Source
Affidavit indicating possession and/or control of specimen	Apprehending team
Apprehension report with inventory and seizure receipt	Investigating officer and/or apprehending team
Sample or picture of specimen	Custodial officer and/or apprehending team and other witnesses
Identification of species	DENR/BFAR
Certification that no permit was issued in favor of the accused	BFAR/DENR

6. Section 99 - Exportation of Breeders, Spawners, Eggs or Fry

Suggested Evidence	Source
Affidavit indicating possession and/or control for purposes of exportation	Apprehending team and other witnesses
Apprehension report with inventory and seizure receipt	Investigating officer and/or apprehending team
Sample or picture of specimen	Custodial officer and/or apprehending team and other witnesses
Identification of species	DENR/BFAR
Certification that no permit was issued in favor of the accused	BFAR

7. Section 103, Subparagraph (c)- Gathering and Marketing of Shellfishes

Suggested Evidence	Source
Affidavit indicating the act of collecting, gathering and marketing of shellfish	Apprehending team and other witnesses
Apprehension report with inventory and seizure receipt	Investigating officer and/or apprehending team
Samples of shellfish	Custodial officer and/or apprehending team
Certification that the samples are: (a) sexually mature, (b) below minimum size or (c) above the maximum quantities for the particular species	BFAR/MAO/other competent authority

D. Other Prohibited/Regulated Activities

1. Section 86, Paragraph 1 - Engaging in Any Fishery Activity in Philippine Waters Without a License, Lease or Permit

Suggested Evidence	Source
Affidavit indicating: (a) conduct of fishery activity, (b) location where activity was conducted and (c) that upon apprehension, no permit, license or lease was presented by the accused	Apprehending team
Fishing vessel or photographs of the fishing vessel	Apprehending team or custodial officer
Apprehension report with inventory and seizure receipt	Investigating officer and/or apprehending team
Certification that no permit, lease or license was issued in favor of the accused	BFAR/LGU/other competent authority



Discovery of any person in an area where he has no permit or registration papers for a fishing vessel constitutes *prima facie* evidence that such person and/or vessel is engaged in unauthorized fishing. (Sec. 86)

2. Section 100 - Importation or Exportation of Fish or Fishery Species

Suggested Evidence	Source
Affidavit indicating possession and/or control for purposes of exportation and/or importation	Apprehending team and other witnesses
Apprehension report with inventory and seizure receipt	Investigating officer and/or apprehending team
Sample or picture of specimen	Custodial officer and/or apprehending team and other witnesses
Identification of species	DENR/BFAR
Certification that no permit was issued in favor of the accused	BFAR

3. Section 101 - Violation of Catch Ceilings

Suggested Evidence	Source
Affidavit indicating activity	Apprehending team and other witnesses
Apprehension report with inventory and seizure receipt	Investigating officer and/or apprehending team
Proof of declaration of catch ceiling	DA-BFAR
Documentary/testimonial evidence indicating position of vessel	Apprehending team

4. Section 102 - Aquatic Pollution

Suggested Evidence	Source
Affidavit indicating specific acts of introduction of substances or matter that cause or are likely to cause pollution or that pose a hindrance to fishing and navigation	Apprehending team and other witnesses
Apprehension or inspection report	Apprehending or investigating team
Water sample or sample of substance or matter	Custodial officer and/or inspection team
Laboratory analysis report	BFAR/DENR/other competent authority
Picture or sketch of materials that pose a hindrance to fishing and navigation	Apprehending team and other witnesses



A laboratory analysis report is not necessary if the case is for dumping of materials or for objects that pose a hindrance to fishing and navigation. For cases needing laboratory analysis, Annex 1: Preservation of Evidence provides guidelines for preserving and analyzing fish and water samples.

5. Section 103, Subparagraph (a) - Failure to Comply with Minimum Safety Standards

Suggested Evidence	Source
Affidavit indicating conduct of inspection and specific violations of safety standards	Apprehending team and other witnesses
Investigation report	Investigating officer and/or apprehending team
Photographs of the interior of the vessel	Apprehending team

6. Section 103, Subparagraph (b) - Failure to Conduct Yearly Report on Fishponds, Fish pens and Fish cages

Suggested Evidence	Source
Affidavit complaint indicating failure to file the necessary reports despite notice	Apprehending team and other witnesses
Investigation report	Investigating officer and/or apprehending team
Certification that the accused failed to file reports	Concerned BFAR office

7. Section 103, Subparagraph (d) - Obstruction to Navigation or Flow and Ebb of Tide in Any Stream, River, Lake or Bay

Suggested Evidence	Source
Affidavit indicating existence of structures constructed in a waterway that is a migration path	Apprehending team and other witnesses
Investigation report	Investigating officer and/or apprehending team
Picture or sketch of the structures	Apprehending team or other witnesses
Assessment or study that categorizes the allegedly obstructed waterway as a migration path	BFAR/other competent authority

8. Section 103, Subparagraph (e) - Construction and Operation of Fish Corrals/Traps, Fish Pens and Fish Cages

Suggested Evidence	Source
Affidavit indicating construction and/or use of fish traps, fish pens and fish cages	Apprehending team and other witnesses
Investigation report	Investigating officer and/or apprehending team
Samples of fish traps or pictures of fish traps, fish pens and fish cages	Apprehending team and other witnesses
Certification that no permit or license was issued in favor of the accused	BFAR/LGU/other competent authority

9. Section 105 - Obstruction to Defined Migration Paths

Suggested Evidence	Source
Affidavit indicating existence of structures in a waterway and the effect or impact of such structures on the ebb and flow of water	Apprehending team and other witnesses
Investigation report	Investigating officer and/or apprehending team
Picture or sketch of the structures	Apprehending team or other witnesses
Assessment or study declaring that such structures impede navigation or the ebb and flow of tides	PCG/other competent authority

10. Section 104 - Commercial Fishing Vessel Operators Employing Unlicensed Fisherfolk or Fishworker or Crew

Suggested Evidence	Source
Affidavit indicating that (a) at the time of apprehension, persons who were later found out to be unlicensed were employed as fishworkers or crew, and that (b) the apprehending team asked for their licenses but none could be presented	Apprehending team
Investigation report	Investigating officer and/or apprehending team
Inventory of crew	Apprehending team
Certification that no license had been issued in the name of the alleged unlicensed fishworkers and/or crew	Appropriate BFAR office

11. Section 106 - Obstruction to Fishery Law Enforcement Officer

Suggested Evidence	Source
Affidavit indicating specific acts that prevented the officer from boarding, inspecting the vessel, examining records of the vessel and crew, and other actions of similar nature	Apprehending team and other witnesses
Apprehension report	Apprehending team and/or other witnesses
Results of a physical examination, if the officer suffered injuries as a result of the obstruction	Medico-legal officer

5 Chapter

Prosecution

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MENDING NETS



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Chapter 5

Prosecution

To ensure environmental protection, laws are created to regulate and prohibit acts perceived to be detrimental to the environment. These laws aim to deter the commission of the acts that pose a danger to the sustainability of resources and to people's health by imposing penalties. Environmental laws, however, will not serve their purpose if not coupled with effective prosecution.

Prosecution entails proving that the crime was actually committed, a process that must be in accordance with the rules of procedure laid down in the Rules of Court. These rules are intended to ensure observance of the people's constitutional right to due process (*1987 Constitution, Art. III, sec. 1*).

Criminal procedure is the method prescribed in the Rules of Court for the apprehension and prosecution of a person accused of a criminal offense, and for the person's punishment, in case of conviction. It is concerned with the steps through which a criminal case passes, commencing from the initial investigation of a crime until the final decision by the Supreme Court.

For the successful prosecution of coastal law violators, therefore, it is imperative to know and follow the Rules on Criminal Procedure. The Rules cited in this chapter are from the Revised Rules of Court, unless otherwise indicated.

INSTITUTION OF CRIMINAL ACTIONS

The Rules on Criminal Procedure (Rules 110-127 of the Revised Rules of Court) provides the basics in the institution of criminal actions.

These rules have to be observed to avoid the dismissal of the case or the acquittal of the accused on the ground of technicality.

Criminal actions are instituted as follows:

- ♦ By filing a complaint with the proper officer (the prosecutor or the Municipal Trial Court [MTC] judge) for the purpose of conducting a Preliminary Investigation, in cases where it is required (see Preliminary Investigation)
- ♦ By filing a complaint or information directly with MTC or Municipal Circuit Trial Court (MCTC), or with the Office of the Prosecutor, for all other cases. In Manila and other chartered cities, the complaint must be filed with the Office of the Prosecutor, unless otherwise provided in their charters.

(*Rule 110, sec. 1*)



Complaints and Informations

A **complaint** is a *sworn* written statement charging a person with an offense, signed under oath by the offended party, any peace officer, or other public officer charged with the enforcement of the law violated (*Rule 110, sec. 2*). An **information** is an accusation in writing, charging a person with an offense, *subscribed by the prosecutor* and filed with the court (*Rule 110, sec. 3*).



Who may file complaints or informations?

A **complaint** may be filed by the following:

- ♦ The offended party
- ♦ Any peace officer
- ♦ Any other public officer charged with the enforcement of the law violated

(*Rule 110, sec. 3*)

An **information** is filed by a prosecutor.

Who are the public officers authorized to file complaints for violations of fishery laws, rules, regulations and ordinances?

- ♦ Law enforcement officers of the Department of Agriculture (DA)
- ♦ Philippine Navy (PN)
- ♦ Philippine Coast Guard (PCG)
- ♦ Philippine National Police (PNP)
- ♦ PNP-Maritime Command
- ♦ Law enforcement officers of local government units (i.e. Bantay Dagat)
- ♦ Other government enforcement agencies
- ♦ Fish wardens deputized in writing by DA (e.g. competent government officials and employees, barangay captains and officers, members of fisherfolk associations who have undergone training on law enforcement)



What must a complaint or information contain?

It must contain the following:

- ♦ The name of the accused

The alias or the nickname for which a person is known is allowed. If the name or alias is unknown, he must be described under a fictitious name such as John Doe.

In cases of John Doe warrants, there must be a particular description of the accused in such a way that he can be easily identified and will not leave to the arresting officer any discretion as to who to arrest.

e.g. 5' 4" male with butterfly tattoo on his left cheek, 30 years old, medium build, curly hair



- ♦ The designation of the offense given by the statute
- ♦ The acts of omissions complained of as constituting the offense
- ♦ The name of the offended party
- ♦ The approximate time of the commission of the offense
- ♦ The place where the offense was committed.



A complaint must always be under oath.

How many offenses may the complaint or information charge?

A complaint or information filed before the courts must charge only one offense. In cases, therefore, where several offenses were committed by the same person or group of persons on one occasion, there must be one complaint or information for each violation.

A fishing boat is seen fishing within municipal waters using superlights and cyanide. In this situation, two violations of Republic Act (RA) 8550 are violated: (1) illegal use of superlights and (2) fishing with the use of a poisonous substance. Separate actions, therefore, must be instituted: (1) a complaint for Fishing with Illegal Use of Superlights under Section 93, and (2) an information for Fishing with the Use of a Poisonous Substance under Section 88.



double jeopardy

Does the filing of both complaint and information in the example above constitute double jeopardy?

No. In the example above, there are two *different acts* and two *different offenses*; thus, there is no *double jeopardy*.

Double jeopardy is putting a person twice at the risk of being punished for the same offense or act. If an act is punishable by a law and an ordinance, conviction or acquittal under either constitutes a bar to another prosecution for the same act.

There are two prohibitions respecting double jeopardy: the first refers to being punished twice for the same offense; the second refers to being punished twice for the same act (*1987 Constitution, Art. 3, sec. 27*).

Two offenses are said to be the same offense when:

- ♦ The second offense is merely a frustration of or an attempt to commit the first, or
- ♦ The first offense necessarily includes, or is necessarily included, in the second offense

(*Rule 117, sec. 7*)

An offense charged necessarily includes another offense when some of its essential elements, as alleged in the complaint or information, constitute the second offense. It is necessarily included in another offense when its elements are included in the elements of the second offense (*Rule 120, sec. 5*).





The elements constituting Possession of Dynamite are included in the elements of the offense of Actual Use of Dynamite. Therefore, Possession of Dynamite is necessarily included in Actual Use of Dynamite.

Two acts are considered the same act if:

- ◆ the acts took place on the same occasion
- ◆ the acts were committed by the same person
- ◆ there is a continuing intent or voluntary design or negligence.

(People v. Relova, 148 SCRA 292)

Thus, the acquittal or conviction in a criminal case filed against the accused for violating an ordinance that prohibits Fishing with the Use of Active Gear within Municipal Waters will bar the filing of a criminal case for violating Section 90 of RA 8550, which also involves fishing with an active gear inside municipal waters. These two prohibitions involve the same offense and punish the same act.

Double jeopardy applies in this example even if the case is dismissed due to mere technicalities, as long as the accused has been duly arraigned (see Uniform Procedure). However, if the accused has not been arraigned yet, any of the criminal cases for violations of both a law and an ordinance may be filed. If the violations do not involve the same act or constitute the same offense, any number of cases may be filed both under the law and the ordinance. Administrative cases may be filed at any time without risk of double jeopardy (See Chapter 6: Administrative Remedies).



national law vs. ordinance

If both a national law and an ordinance punish an offense, on which grounds should the case be filed then?

The prosecution of coastal law violations has one primary objective: to deter violators from repeatedly destroying the coastal and marine environment. Although national laws are broader and more comprehensive in scope, ordinances may achieve this objective more effectively in particular instances (See Ordinances by Local Government Units in Chapter 1: Legal Bases). The case should be filed then based on the law or ordinance that provides the more severe penalty. Ideally, this penalty should include the cancellation of fishing licenses, and the confiscation of fishing vessels, fishing gears and other instruments used in committing the crime.



When can a case be validly dismissed on the ground of double jeopardy?

A motion to dismiss the complaint or information is only valid if *all* of the following elements were obtained in the previous prosecution:

- ◆ The case was based on a valid complaint or information
- ◆ The court had jurisdiction

- ◆ The accused had been arraigned and had pleaded
- ◆ The accused was either convicted or acquitted, or the case against him was dismissed or otherwise terminated without his express consent.

In the absence of one of the elements, the complainant or prosecutor may oppose the motion filed by the defendant to dismiss the case on the ground of double jeopardy.

The conviction of the accused for one offense does not bar the prosecution of another offense that necessarily includes the offense charged in a previous complaint or information if the plea of guilty to the lesser offense was made without the consent of the fiscal and of the offended party.

Prescriptive Periods



Criminal actions must be filed within the prescriptive periods. The **prescriptive period** is the time set by law within which an action must be filed.

When does the prescriptive period begin?

It starts to run from the time of the commission of the crime or, when unknown, from the discovery of the crime. The institution of proceedings—such as the filing of a complaint for Preliminary Investigation—interrupts the prescriptive period.

The following are the prescriptive periods for violations of special laws and municipal ordinances, unless otherwise provided in such special laws or ordinances:

Type of Offense	Prescriptive Period
Offenses punishable by a fine or imprisonment of not more than 1 month or both	1 year
Offenses punishable by imprisonment of more than 1 month but less than 2 years	4 years
Offenses punishable by imprisonment of 2 years or more but less than 6 years	8 years
Offenses punishable by imprisonment of 6 years or more	12 years
Violations of municipal ordinances	2 months

(Act No. 3326, as amended)



When the last day allowed for filing a complaint, information or any other pleading falls on a Saturday, Sunday or a non-working day, the filing may be done on the next working day.



If a violation of a municipal ordinance was committed on 27 October 2003, a case must be filed anytime from that date until 27 December 2003. The filing of a complaint on 28 December 2003 or later is no longer allowed. However, if the violation was known only on 1 November 2003 then the two-month prescriptive period starts to run from this date. A complaint for the violation, therefore, may be filed until 1 January 2004. But since January 1 is a holiday, the last day for filing is the next working day.



The filing of a case beyond the prescriptive period is a ground for dismissal.



The prescriptive period does not run when the offender is out of the country.

Jurisdiction



Complaints and informations must be filed in the court or prosecutor's office with the proper jurisdiction. In criminal prosecution, **jurisdiction** is the authority of a court to hear and try a particular offense, and to impose the appropriate punishment provided by law (*Albano, 1998*).



The filing of a case before a court that does not have jurisdiction over a particular offense causes the dismissal of the case. The erroneous filing does not stop the running of the prescriptive period. It is therefore important to correctly determine which court the case should be filed at.

How is jurisdiction determined?

In determining the court of proper jurisdiction, two questions must be asked:

1. Does the court have jurisdiction over the offense based on the imposable penalty and its nature?
2. Was the offense committed within the territorial jurisdiction of the court?

(*Agpalo, 2001*)

According to imposable penalty and nature of offense

Below are the different courts and corresponding cases within their jurisdiction based on the imposable penalties and nature of offense:

1. **Municipal Trial Courts (MTCs)**
 - ♦ All violations of municipal or city ordinances committed within their territorial jurisdiction
 - ♦ All offenses punishable with imprisonment not exceeding 6 years, irrespective of the amount of the fine (*BP Blg. 129, sec. 32, as amended by RA 7691*)
 - ♦ All offenses where the imposable penalty is only a fine not exceeding P4,000

2. Regional Trial Courts (RTCs)

- ◆ All criminal cases not within the exclusive jurisdiction of any other court, tribunal or body, except those falling under the exclusive and concurrent jurisdiction of the Sandiganbayan (*BP Blg. 129, sec. 20*)
- ◆ Offenses punishable with imprisonment of at least 6 years and 1 day
- ◆ Offenses where the imposable penalty is only a fine exceeding P4,000



Where the applicable penalty is imprisonment and/or a fine, jurisdiction is based on the penalty of imprisonment, and not on the fine.



If an offense provides for an imprisonment of 3 years and a fine of P6,000, the complaint or information must be filed before the MTC, MCTC or Metropolitan Trial Court (MeTC) even if the imposable fine is in excess of P4,000.

3. Sandiganbayan

Violations of the following laws by all national and local officials classified as “grade 27” or above:

- ◆ RA 3019, as amended, otherwise known as the Anti-graft and Corrupt Practices Act
- ◆ Bribery and Indirect Bribery of Public Officials (Articles 210 & 211 of the RPC)



These are the offenses applicable to fisheries cases, and are only two of several offenses cognizable by the Sandiganbayan.

According to the place of commission of the crime

It is important to know where the offense or any of its essential elements were committed to determine which court has territorial jurisdiction. As a general rule, the action is instituted and tried in the court of the municipality or territory where the offense was committed, or where any one of its elements took place (*Rule 110, sec. 15*).

e.g.

- ◆ Fishing with the use of fine-mesh net (*RA 8550, sec. 89*) was committed in Bogo, Cebu. The penalty imposable is a maximum imprisonment of only 2 years. Therefore, it is under the jurisdiction of the MTC. Since it was committed in Bogo, the complaint must be filed in the MTC of Bogo and not elsewhere.
- ◆ Mr. A was seen catching a whale shark, an endangered species, within the province of Bohol. The offense is punishable by imprisonment of up to 20 years. The case must therefore be filed in the RTC of Bohol.



For offenses committed on vehicles, the following rules apply for the filing of the action:

Place of Commission	Place to File
On board a vessel of Philippine registry in the course of its voyage e.g. possession of corals, endangered species and explosives	Proper court of the first port of entry, or of any municipality or territory through which the vessel passed during such voyage, subject to the generally accepted principles of international law
On an unregistered vessel or a foreign vessel	Court that has territorial jurisdiction over the sea where the vessel was at the time of the commission of the offense

(Rule 110, sec. 15)

e.g. A complaint against a foreign vessel fishing within the waters of Puerto Princesa must be filed with the RTC of Puerto Princesa.

It follows that for cases requiring Preliminary Investigation, the complaint is filed before the proper prosecutor following the above rule.

example

conflicts in jurisdiction over municipal waters

Which court has jurisdiction when a fishing vessel is caught on the boundary of two municipalities?

This is possible if the vessel is stationary and is on the boundary of two jurisdictions. At any rate, Section 15(a) of Rule 111 is applicable. The courts of either municipality can assume jurisdiction. The principle in Article 360 of the RPC should also apply by analogy—the court where the case is first filed acquires jurisdiction, to the exclusion of all other courts.

Does the absence of an ordinance delineating the municipal waters of a municipality or city deny the concerned LGU the right to manage its municipal waters?

No. The absence of such ordinance does not negate the LGU's authority to manage, conserve, rehabilitate and protect its municipal waters, the extent of which has been laid down by RA 8550. The LGU may still enforce all fishery laws, rules, regulations and ordinances within its jurisdiction. Therefore, a complaint for a fishery violation must be filed in the proper MTC, MeTC, MCTC or RTC that has jurisdiction over such municipal waters.

issue

PROCEDURES IN PROSECUTION

The different procedures that comprise the prosecution process begin with determining whether the accused should be subjected to a trial, and end with the final decision by the Supreme Court, if either the prosecution or the defense avails of remedies to amend or reverse decisions by lower courts. These procedures, laid down in the Rules of Court, ensure that the right of both the complainant and the accused to due process is protected.

Who may prosecute criminal actions?

Public prosecutors generally direct or control the prosecution of all criminal actions (*Rule 110, sec. 5*). They may be:

- ◆ Lawyers under the Department of Justice (DOJ) charged with prosecuting criminal offenses
- ◆ Chiefs of Police, in areas where there are no assigned fiscals

Private prosecutors may be allowed to prosecute criminal actions in cases of heavy work schedule of public prosecutors. However, they must be authorized in writing by the Chief of Prosecution Office or by the Regional State Prosecutor, and approved by the court. The authorized private prosecutor continues to act as prosecutor until the end of the trial in the absence of a public prosecutor, unless his authority is revoked or otherwise terminated (*Supreme Court Resolution dated 10 April 2002, in A.M. No. 02-2-07-SC*).

Preliminary Investigation



Preliminary Investigation (PI) is an inquiry or proceeding to determine whether there is sufficient ground to cause a well-founded belief that a crime has been committed, and that the respondent is probably guilty of that crime and should be held for trial. (*Rule 112, sec. 1, par. 1*)

When is a PI a matter of right?

It is a matter of right where the imposable penalty of the offense charged is at least 4 years, 2 months and 1 day, without regard to fine (*Rule 112, sec. 1, par. 2*). A PI must first be conducted before a complaint or information is filed in court by the prosecutor.

When is a PI not a matter of right?

When the accused is lawfully arrested without a warrant, the complaint or information may be filed by the prosecutor without need for a PI, even if the imposable penalty of the offense requires a PI. An inquest investigation is instead conducted. (See Inquest Investigation)

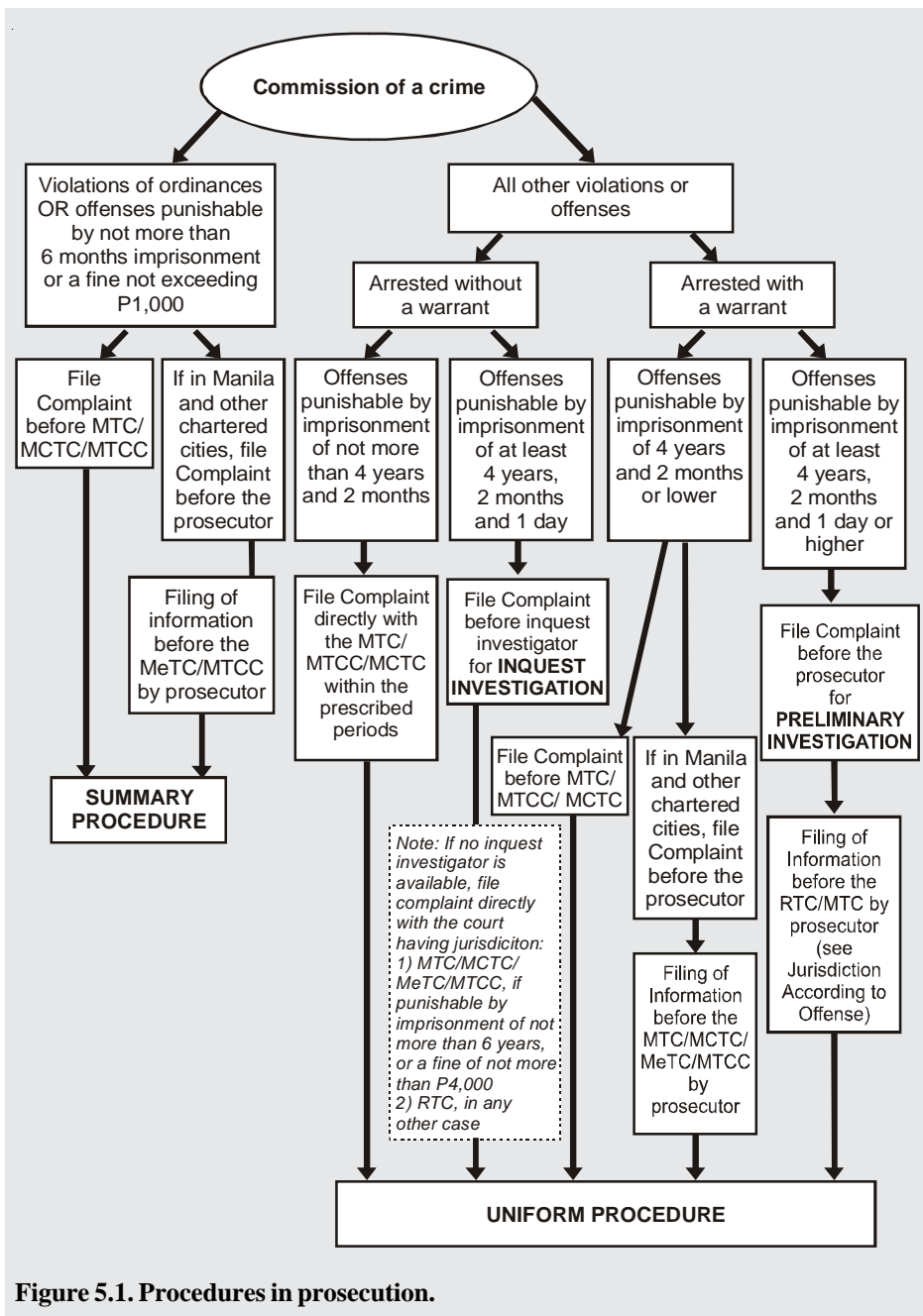


Figure 5.1. Procedures in prosecution.

How is a PI initiated?

It is initiated by the filing of a complaint before the officers authorized to conduct PIs. The complaint must state the known address of the accused, and be accompanied by affidavits of the complainant and his witnesses, as well as other supporting documents. It must be sworn before a fiscal, state prosecutor or government official authorized to administer oaths.



It may also be sworn before a notary public, who must certify that he has personally examined the affiants and that he is satisfied that they have voluntarily executed and understood their affidavits (*Rule on Summary Procedure, sec. 9a*).

Who may conduct PIs?

The following officers are authorized to conduct PIs:

- ◆ Provincial or city prosecutors and their assistants
- ◆ Judges of the MTCs and MCTCs in areas where there are *no assigned prosecutors*
- ◆ National and Regional State Prosecutors
- ◆ Other officers as may be authorized by law (e.g. Ombudsman).

(*Rule 112, sec. 2*)



The authority of the Ombudsman to conduct PIs is limited to offenses committed by public officials.

The number of copies of the complaint, as well as the supporting affidavits and other documents, must be the same as the number of respondents, plus 2 copies for the official file. At least two copies of all documents filed are best retained for the complainant's own file. These must also be signed and dated by the office where the documents were filed.



If a complaint is filed against two respondents, at least 6 copies of the complaint and its supporting documents and affidavits would be prepared.



A PI is not a trial but merely an inquiry to determine the existence or non-existence of a probable cause. The right of the accused, therefore, to cross-examine witnesses against him does not yet apply at this stage. The accused may, however, suggest to the investigating officer questions that may be asked of the complainant and his witnesses.



Is the lack of a PI a ground for dismissal?

No. However, if the accused invokes his right to a PI, the court must hold the case in abeyance or suspend the proceedings, and remand the case to the Office of the Prosecutor for PI.



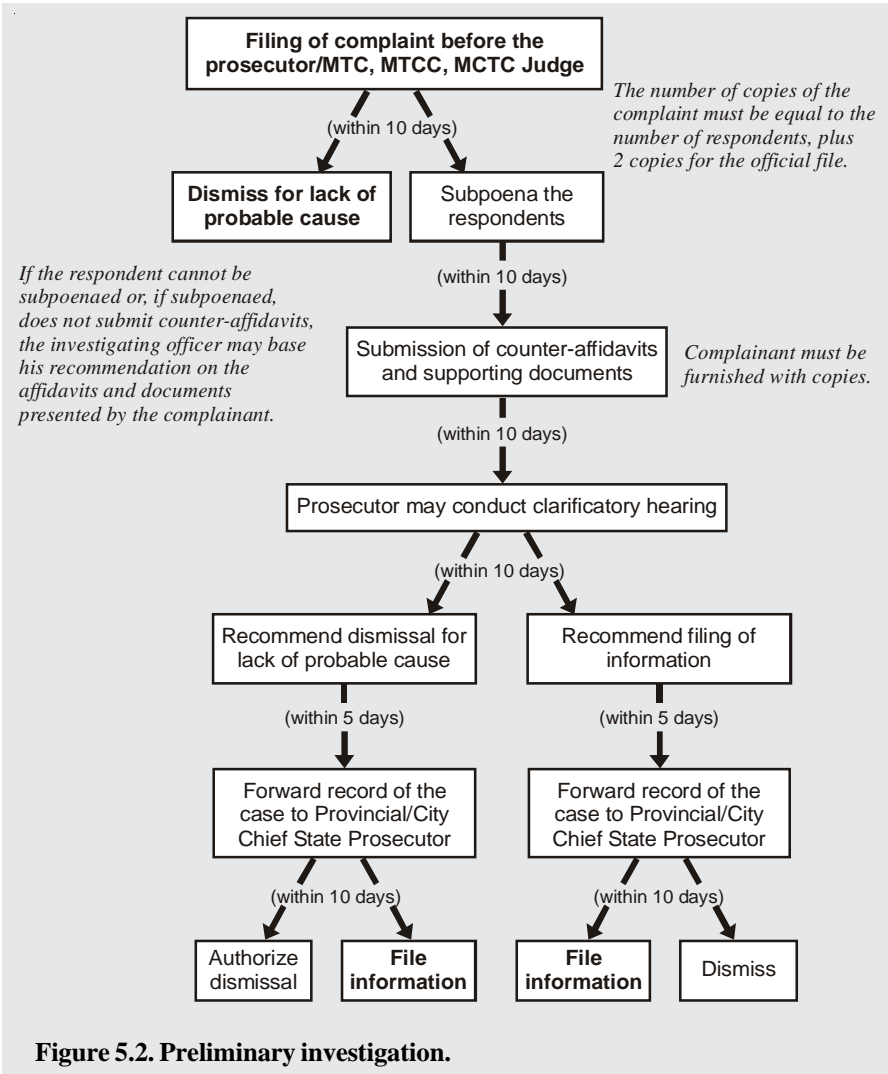


Figure 5.2. Preliminary investigation.

remedies for dismissal of complaint

What remedies are available if the complaint is dismissed after the PI?

1. Motion for reconsideration
2. Appeal
3. Mandamus
4. Filing of another complaint
5. Administrative action or criminal complaint against the officer who conducted the PI

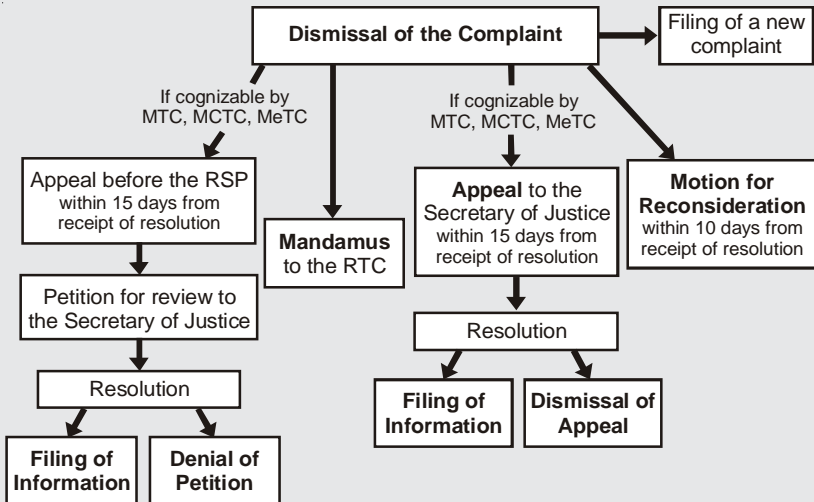


Figure 5.3. Remedies for dismissal of complaint after preliminary investigation.

1. Motion for reconsideration

When a party is dissatisfied with the decision of the investigating prosecutor, a motion for reconsideration may be filed with the office that rendered the decision. This must be done within 10 days from receipt of the adverse decision (*DOJ Circular No. 70*).

The aggrieved party may, however, directly file an appeal without filing a motion for reconsideration.

2. Appeal

When an aggrieved party is of the opinion that the investigating prosecutor will not reconsider the resolution, he may file an appeal within 15 days from receipt of the questioned resolution.

To whom should appeals be made?

- ♦ Before the Regional State Prosecutor, for cases under the jurisdiction of the MeTC, MTC and MCTC, except in the National Capital Region

- ◆ Before the Secretary of Justice, for cases not under the jurisdiction of the Regional State Prosecutor



The Secretary of Justice may review the resolutions of the Regional State Prosecutor in appealed cases (*DOJ Circular No. 70-A*).



If a motion for reconsideration had been previously filed, the appeal should be made within the remainder of the 15-day period for filing. For example, 10 days after the complainant receives the prosecutor's resolution, he files a motion for reconsideration, which is denied. The complainant may still file an appeal within 5 days from his receipt of the resolution denying the motion for reconsideration.



The appeal must allege that that appellant has caused the appeal to be prepared, has read and knows its contents, and that the allegations in the appeal are true to his own knowledge.

3. Mandamus

Mandamus may be filed when there is grave abuse of discretion on the part of the prosecutor. It is filed before the RTC.

The prosecutor may file an information in court at his discretion. Generally, the courts cannot intervene into this executive territory. However, mandamus may still be availed of in exceptional cases where there are unmistakable signs of grave abuse of discretion.



Mandamus is an order commanding the respondent to perform an act that must be done to protect the rights of the petitioner. Mandamus generally compels the performance of a ministerial duty. A duty is **ministerial** if fulfilling it does not require the exercise of either official discretion or judgment. It is a duty that an officer cannot refuse to do when all the legal requirements have been complied with by the petitioner.



What may be considered as the prosecutor's ministerial duties?

When a complaint has been validly filed for a PI, the prosecutor cannot refuse to conduct a PI. Also, if there is very clear evidence against the accused, the prosecutor cannot refuse to file the information. Through a mandamus, he may be compelled to fulfill these duties.



4. Filing of another complaint

The dismissal of a complaint by the prosecutor is not a bar to the filing of another complaint. This does not constitute double jeopardy since the PI is not part of the trial. (See previous discussion on Double Jeopardy.) The new complaint must, however, be filed within the prescriptive period.



5. Filing of an administrative and a criminal case

In cases where the investigating prosecutor has maliciously refrained from instituting a case for the punishment of law violators, a criminal case under Section 208 of the RPC may be filed. An administrative action may also be filed against the prosecutor for appropriate disciplinary action. (See Chapter 6: Administrative Remedies)

Inquest Investigation



An **inquest investigation** is an inquiry conducted by a prosecutor to determine whether or not the warrantless arrest was valid. (See Warrantless Arrests in Chapter 3: ASSD). An inquest investigation takes the place of a PI if the accused is arrested without a warrant of arrest.

What authority does the inquest investigator have?

- ◆ Order the release of the accused if he finds lack of sufficient ground to believe that the accused was lawfully arrested without a warrant
- ◆ Conduct further investigation
- ◆ File the complaint or information

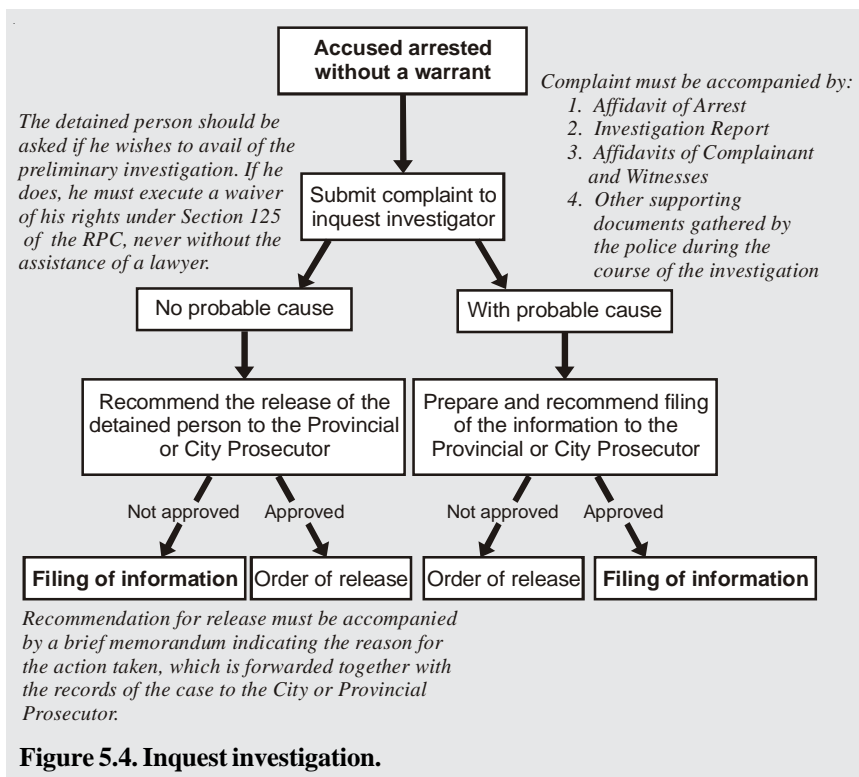



Figure 5.4. Inquest investigation.


When should the complaint or information be filed by the inquest investigator?

To avoid liability under Article 125 of the RPC, the complaint or information must be filed by the investigator within the periods provided below:


Nature of Penalty	Period for Filing
♦ Light	12 hours
♦ Correccional	18 hours
♦ Afflictive or capital	36 hours

(Rule 112, sec. 7)

 In case the complaint or information is not filed within the prescribed periods, the accused must be released, otherwise, the detention officer will be held liable for arbitrary detention. However, the case may still be filed against the person arrested, and a PI conducted instead.

 When the distance between the place of arrest and the courts makes it impossible to file the case in time, the complaint or information may be filed beyond the prescribed periods, but within the *soonest possible time*.

What if no inquest investigator is available?

 In case the assigned inquest investigator is not available, the complaint may be filed directly by the peace officer with the proper court, on the basis of the affidavits of the arresting officer or person (Rule 112, sec. 7).

Can the accused ask for a PI pending inquest investigation?

Yes, the accused may do so, provided he signs a waiver of his rights under Article 125 of the RPC in the presence of a lawyer. The accused may also ask for a PI within 5 days from the time he learns of the filing of a case in court against him.

Uniform Procedure

The procedure observed in the MeTC, MTC and MCTC is the same as in the RTC, except when a particular provision of a special law applies only to a specific court (Rule 123, sec. 1). Also, this procedure does not apply to criminal cases governed by the Rule on Summary Procedure. (See Summary Procedure)

1. Filing

A criminal proceeding in court begins with the filing of a complaint or information sufficient in form and substance. (See Institution of Criminal Actions.)

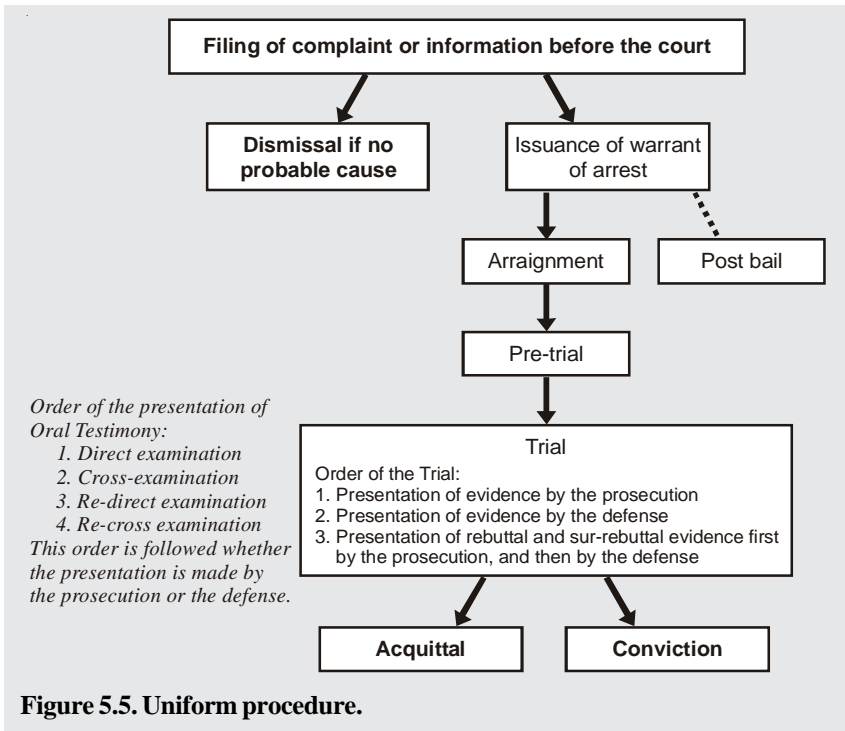


Figure 5.5. Uniform procedure.

motion to quash

Can the accused oppose the case at this stage?

Yes. Immediately after the case is filed and before the accused enters his plea, he may file a *motion to quash* the complaint or information on the following grounds:

1. The facts charged do not constitute an offense. The facts stated in the complaint and affidavits must constitute the elements of the crime (see Chapter 2: Prohibited Acts & Penalties).
2. The court has no jurisdiction over the offense charged.
e.g. A case for a crime punishable by 1 year is filed before the RTC, or the case for an offense committed in Tagbilaran City is filed in the MTC of Panglao, Bohol.
3. The court has no jurisdiction over the person of the accused.
e.g. The accused has not been served the summons.
4. The officer who filed the case had no authority to do so.
e.g. The information is filed by the investigating prosecutor without the authority of the city, provincial or state prosecutor, or is filed by a prosecutor who did not conduct the PI himself.

ISSUE

reminder

example

5. The complaint or information substantially does not conform to the prescribed form.
e.g. The complaint filed was not subscribed under oath.
6. More than one offense is charged.
e.g. Filing a single complaint before the MTC for violation of Sections 89 & 92 of RA 8550.
This ground is not valid when a single punishment for various offenses is prescribed by law.
7. The criminal action or liability has been extinguished.
e.g. A complaint for violation of an ordinance is filed 3 months after the offense was committed or was known to have been committed.
8. The complaint or information contains averments which, if true, would constitute a legal excuse or justification.
e.g. The age of the accused is below 9 years old.
(Rule 117, sec. 3)



Failure of the accused to file a motion to quash before he enters his plea is deemed a waiver of the grounds of the motion to quash.

Once the accused has entered his plea, can he still oppose the case?

Yes. The accused can still move to quash even if he has already pleaded if the motion is filed on the following grounds:

- ◆ No offense charged
- ◆ Lack of jurisdiction of the court over the offense charged
- ◆ Extinction of the offense or penalty
- ◆ Double jeopardy

(Rule 117, sec. 9)

provisional dismissal

Can the court dismiss the case at this stage?

Yes, the court may provisionally dismiss a case. Cases subjected to ***provisional dismissal*** must be revived by the prosecution within:

- ◆ 1 year if the offense is punishable by imprisonment of not more than 6 years, or a fine of whatever amount
- ◆ 2 years if the offense if punishable by imprisonment of more than 6 years.

Failure to revive the case within the specified period will make the provisional dismissal permanent.



2. Arraignment

Arraignment is the stage of prosecution when the accused is formally informed of the charges against him by the reading of the complaint or information in a language or dialect he can understand. He is then asked if he pleads *guilty* or *not guilty* of the offense charged.



At the arraignment, the trial may allow the accused, with the consent of the offended party and the prosecutor, to *plea bargain*. **Plea bargaining** is the opportunity given to the accused to plead guilty to a lesser offense, i.e., an offense that imposes a lower penalty.

plea bargaining

Should the offended party consent to plea bargaining?

It is discouraged, since this is one of the strategies used by violators to escape the full extent of the punishment provided by law. By plea bargaining, violators usually only receive the penalty of a fine without imprisonment. This undermines the very objective of environmental laws to protect coastal habitats. It creates the impression that offenders can continue violating environmental laws as long as they can afford to pay the fine. In most cases, the fine is far below the value of the coastal resource degraded or destroyed by the illegal act.



The plea is valid only if *all* of the following are present:

1. The lesser offense is necessarily included in the offense charged (*Amatan vs. Anjero, 248 SCRA 511*)
e.g. Actual Use of Dynamite in Fishing is reduced to Possession of Dynamite. The elements constituting Possession of Dynamite are included in the elements of the offense of Actual Use.
2. Consent of offended party
3. Consent of prosecutor
4. The plea is made during arraignment. The plea may also be made after arraignment, but before the trial and after the withdrawal of the plea of not guilty.

(*Rule 116, sec. 2*)

If the plea is valid, the filing of another case based on the same act or offense will constitute double jeopardy.



3. Pre-trial

After arraignment, and within 30 days from the date the court acquires jurisdiction over the person of the accused, the court orders a pre-trial conference to consider the following:

- ◆ Plea bargaining
- ◆ Stipulation of facts
- ◆ Marking of evidence for identification by the parties

- ♦ Waiver to objections of admissibility of evidence
- ♦ Modification of the order of the trial if the accused admits to the charge but interposes a lawful defense
- ♦ Other matters that may promote a fair and expeditious trial
(Rule 118, sec. 1)

Under the new rules, a pre-trial conference is *mandatory*. Any agreements made during pre-trial *must* be in writing and signed by both the accused and the counsel, otherwise these cannot be used against the accused (Rule 118, sec. 2).



4. Trial

Trial commences within 15 days of the court's issuance of a pre-trial order. Unless the accused has pleaded guilty and has interposed a lawful defense, the order of the trial is as follows:

1. Presentation of evidence by the prosecution
2. Presentation of evidence to prove defense by the accused
3. Presentation of rebuttal and sur-rebuttal evidence by the prosecution, and then by the accused

In case the judge fails to order a pre-trial or trial within the period prescribed by the rules, a motion to set the case for trial can be filed to avoid the dismissal of the case on the ground of violation of the right of the accused to a speedy trial.



demurrer to evidence

What other actions can the accused file to dismiss the case at this stage?

A common tactic used by the defense is the filing of a demurrer to evidence. This is an objection by one of the parties to the sufficiency of the evidence presented by the other party. It is a motion for the dismissal of the case on the ground that the prosecution has failed to establish guilt beyond reasonable doubt.

How is a demurrer to evidence filed?

- ♦ With leave of court
If with the permission or "leave" of the court, a motion for leave must first be filed within a non-extendible period of 5 days after the prosecution rests its case. Even if the motion for leave is denied, the accused will still be allowed to present evidence to prove his defense.
- ♦ Without leave of court
If the court denies the demurrer to evidence, the accused will no longer be allowed to present evidence to prove his defense. The court will then render a decision based on the evidence presented by the prosecution.



5. Judgment



Judgment is the decision by the court on whether the accused is **guilty** or **not guilty** of the offense charged, and on what proper penalty must be imposed on the accused (*Rule 120, sec. 1*). The prosecution or the defense may still move for the modification or for the setting aside of the judgment if the judgment is not final. (See Remedies After Decision)



In case of a judgment of conviction, the prosecutor is encouraged to notify the BFAR, DENR and PCG to facilitate the implementation of administrative remedies that will help discourage the offender from repeating the offense. (See Chapter 6: Administrative Remedies)

Summary Procedure

Some cases that fall under the jurisdiction of the MTC based on the impossible penalty are covered by the Rule on Summary Procedure. These are:

- ♦ Violations of municipal or city ordinances
- ♦ Criminal cases where the penalty prescribed by law for the offense charged does not exceed 6 months imprisonment or a fine of P1,000, or both (*Combate v. San Jose, Jr., 135 SCRA 693, 1985*).

These cases are commenced either by a complaint or information filed directly in court without need of a PI. However, in Metropolitan Manila and chartered cities, such cases are commenced only by the filing of an information. (*Rule on Summary Procedure, sec. 9a*)



Affidavits required to be submitted under this rule must state only facts of direct personal knowledge of the affiants. Only these are admissible as evidence. The affiants must also show their competence to testify on the matters stated in their affidavits. (*Rule on Summary Procedure, sec. 20*)

What pleadings are prohibited under the Rule on Summary Procedure?

The filing of the following pleadings will not be admitted in court:

- ♦ Motion to dismiss or quash except for lack of jurisdiction
- ♦ Motion for a bill of particulars
- ♦ Motion for new trial, reconsideration or re-opening of a trial
- ♦ Petition for relief from judgment
- ♦ Motion for extension of time to file pleadings or any other pleading
- ♦ Petition for certiorari, mandamus or prohibition against any interlocutory order of the court
- ♦ Motion to declare defendant in default
- ♦ Dilatory motions for postponement
- ♦ Reply

- ◆ Third-party complaints
- ◆ Interventions



No warrant of arrest is issued in cases covered by the Rules on Summary Procedure, except when the accused fails to appear in court when his presence is required. If the accused is under the custody of the law, he is immediately released.

REMEDIES AFTER DECISION

Before the court's decision becomes final, the parties may avail of the following remedies:

- ◆ Appeal
- ◆ Motion for Reconsideration
- ◆ Motion for New Trial
- ◆ Certiorari

Appeal



An **appeal** is the opportunity given to any aggrieved party to question the decision of the court hearing the case (*Rule 121*).



Aside from the right to appeal, the accused may also be allowed to file a motion for reconsideration and a motion for new trial. As a general rule, the prosecution is not allowed to file an appeal, as it might place the accused in double jeopardy.

When is an appeal by the prosecution allowed?

Appeals by the prosecution on judgments of dismissal or acquittal are allowed when the action does not place the accused in double jeopardy (*Rule 122, sec. 2*).

There is no double jeopardy if all of the following are true:

- ◆ The dismissal is made upon the motion, or with the express consent, of the accused
- ◆ The dismissal is not an acquittal based on the consideration of the evidence or of the merits of the case
- ◆ The question to be passed upon by the appellate court is purely legal (*People v. Villalon, 192 SCRA 521, 1990*).

Where must the appeal be made?

- ◆ To the RTC, in cases decided by the MTC, MCTC or MeTC
- ◆ To the Court of Appeals (CA), in cases decided by the RTC in either its original or appellate jurisdiction
- ◆ To the Supreme Court, in cases decided by the Court of Appeals (*Rule 122, sec. 3*)



The other party must always be furnished with a copy of the appeal.

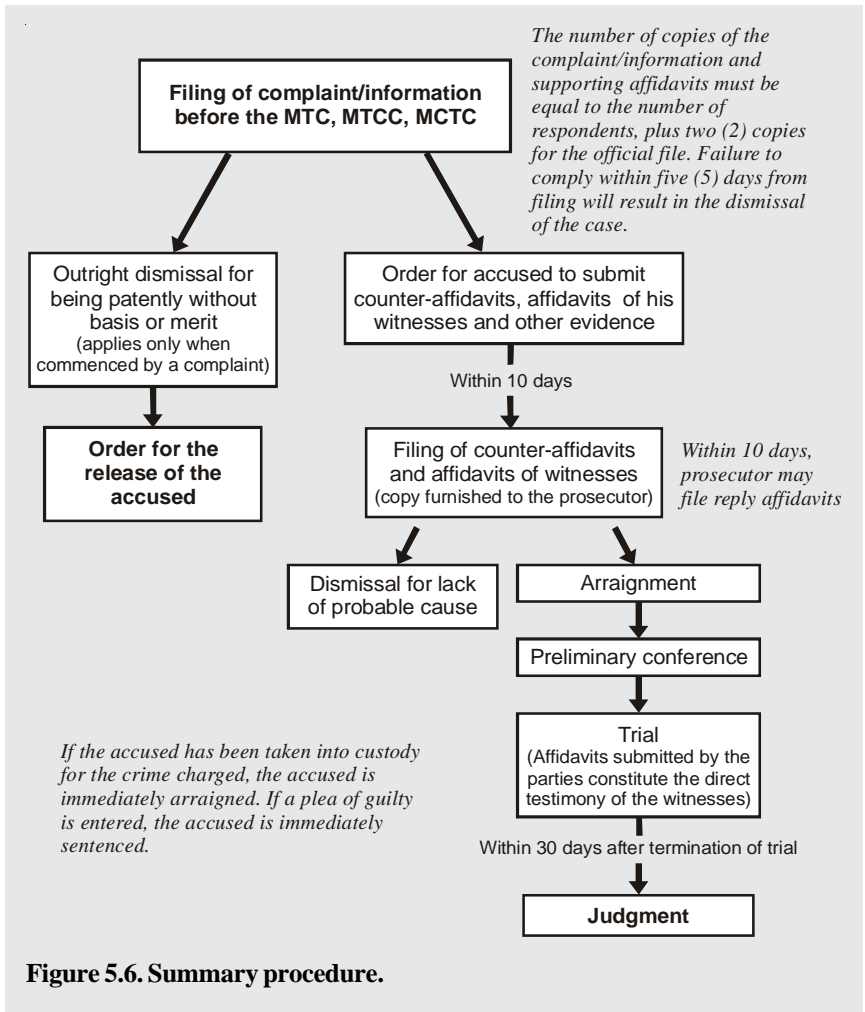


Figure 5.6. Summary procedure.

When should the appeal be made?

Appeals must be filed with the proper appellate court within 15 days of the promulgation of the adverse judgment. If a decision already appealed to the RTC is to be appealed again to the CA, the appeal must be filed within 15 days of the notice of the decision of the RTC.

Promulgation of judgment is the reading of the judge’s decision or sentence in the presence of the accused. If the conviction is for light offenses, promulgation before the counsel or representative is sufficient.



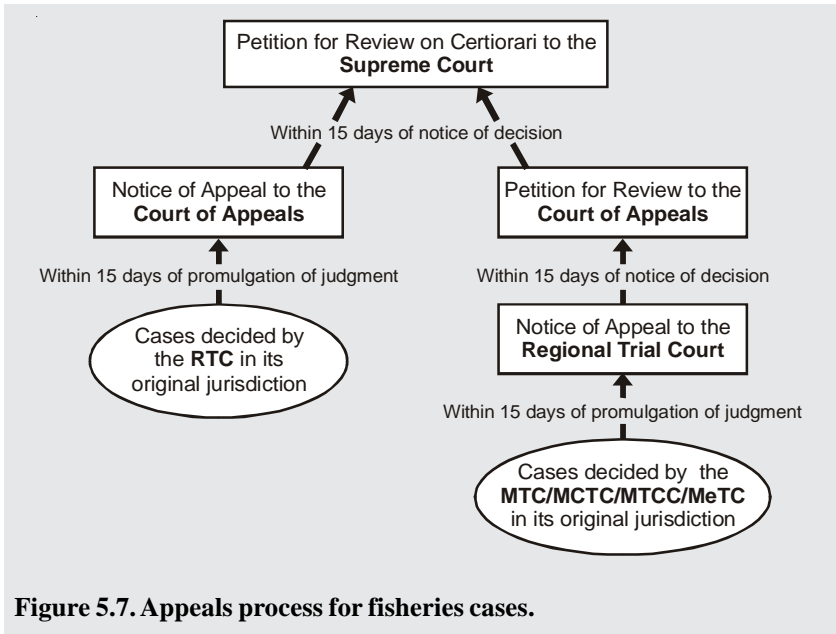


Figure 5.7. Appeals process for fisheries cases.

Motion for new trial

The court may, at the motion of the accused, or at its own instance but with the consent of the accused, grant a new trial when:

- ◆ Errors of law or irregularities prejudicial to the substantial rights of the accused have been committed during the trial
- ◆ New and material evidence have been discovered that the accused could not have, with reasonable diligence, discovered and produced at the trial and which, if introduced and admitted, would probably change the judgment

(Rule 121, sec. 1)



Only the defense may file a motion for new trial.

Motion for reconsideration

The court grants reconsideration of its decision on the ground of errors of law or fact in the judgment. This motion requires no further proceeding. Only the defense may file a motion for reconsideration.

Certiorari

The judgment or order of acquittal may be challenged in a petition for certiorari in cases where the lower court did not merely commit reversible errors, but also *grave abuse of discretion* amounting to lack or excess of jurisdiction, or resulting from a denial of due process by the prosecution or the court.



Any judgment rendered without proper jurisdiction is void. The rule on double jeopardy, therefore, will not apply if the same case is re-filed with the proper court.

FINAL JUDGMENT



Final judgment is a judgment that can no longer be appealed and thus must be executed. A judgment becomes final under any of the following conditions:

- ◆ The 15-day period for perfecting an appeal has lapsed
- ◆ The sentence has been partially or totally satisfied or served
- ◆ The accused expressly waives in writing his right to appeal
- ◆ The accused applies for probation

(*Rule 120, sec. 7*)



As a rule, judgments rendered by the Supreme Court are considered final.

alternatives to criminal cases

What can the complainant still do if the final judgment is an acquittal?

A new complaint for an offense that *necessarily includes* the offense charged in the original complaint or information may be filed if the plea of guilty to a lesser offense was made by the accused without the consent of the prosecutor and of the offended party.

Filing a civil case may be an option to abate (remove or stop) a coastal law violation that also constitutes a public nuisance, such as a fishpond that obstructs free passage to a village's traditional mooring area, or any form of pollution that affects a coastal community's living conditions. The complainant may also avail of administrative remedies. (See Chapter 6: Administrative Remedies)



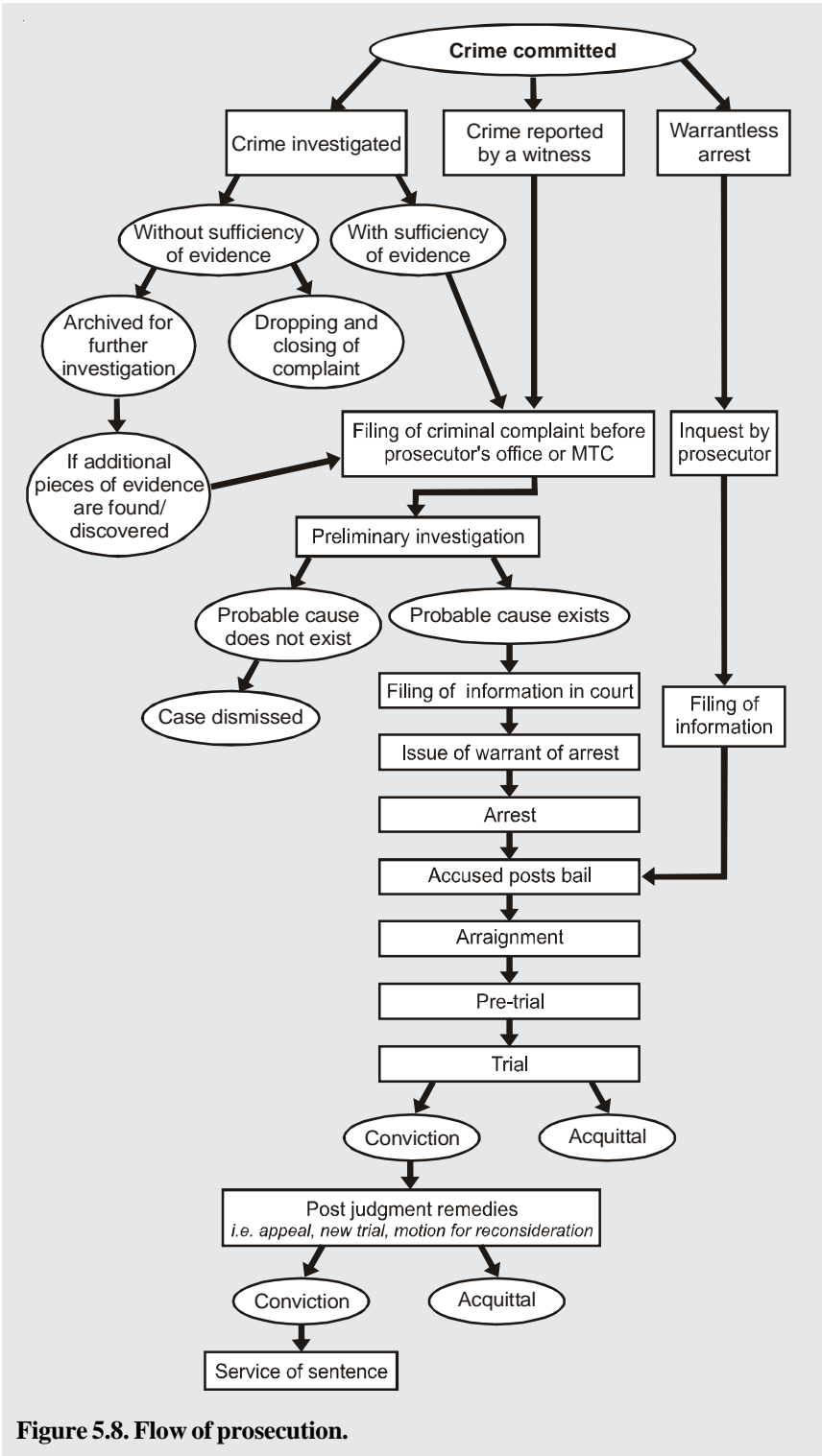


Figure 5.8. Flow of prosecution.

6

chapter

Administrative Remedies

I. General Procedures

A. Rights of the Parties in Administrative Cases

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1. Motion for Reconsideration
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MENDING NETS



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Chapter 6

Administrative Remedies

Judicial procedures are often tedious and expensive. These demand a lot of time and effort from those who dare pursue justice to its end. The high rate of cases dismissed due to the technical rigidity of the Rules on Criminal Procedure often discourages coastal law enforcers, who feel that all their labor goes to waste when coastal law violators go unpunished for their environmentally destructive acts.



An **administrative remedy** is a plain, speedy and effective non-judicial remedy provided by administrative agencies (*US v. Morton No. 1-4345*). It provides law enforcers with a venue for obtaining appropriate remedies for coastal law violations without the hassles, expenses and delays usually associated with judicial proceedings.

Arguably, administrative remedies are even more effective in deterring further destruction of the coastal environment. Administrative penalties, such as the closure and cessation of a commercial fishing operation or the confiscation of fishing vessels and gears, discourage the violator from further violating the law because of the bigger financial costs involved compared to the inadequate fines imposed by the regular court.

What process is used to resolve administrative cases?



Administrative adjudication refers to the process adopted by an administrative agency for the formulation of a final order or decision. This process includes the different principles and procedures in the resolution of both routine and contested matters, including the settlement of conflicting claims between an executive or administrative authority and an individual or private right. (*EO 292, Book Seven*)

Who may initiate an administrative action?

- ◆ Any aggrieved party
- ◆ An administrative agency on its own initiative, motion or complaint
- ◆ Stakeholders



Stakeholders are persons who may be significantly affected by the project or undertaking. Examples would be members of the local community, industry, local government unit, national government agencies, nongovernment organizations and people's organizations. (*DAO 2003-30, sec. 3*)

Who has the authority to adjudicate administrative cases?

- ♦ Any department, bureau, office, commission, authority or officer of the National Government authorized by law or executive order to issue licenses, grant rights or privileges, and adjudicate cases
- ♦ Research institutions with respect to licensing functions
- ♦ Government corporations with respect to functions regulating private right, privileges, occupation or business
- ♦ Public officials in the exercise of disciplinary power
- ♦ Local government units

(EO 292, Book Seven)

Although this list is broad in scope, an agency's authority to adjudicate is bestowed by the Constitution or by laws that provide the agency its mandates. This power, however, need not be expressly conferred upon it, but may be fairly or necessarily implied from what has been expressly provided.



When can administrative remedies be resorted to?

Administrative remedies can be availed of at any time because administrative cases are distinct and different in nature from criminal cases. They are governed by separate rules and regulations. Thus, a final conviction in a judicial or regular court is not necessary before an administrative case can be filed against the violator. Administrative remedies may also be resorted to without having to file a case in regular court, or even when a case is pending in court.

A final conviction for violations of RA 8550 is not a requirement for the cancellation of a commercial fishing vessel and gear license (CFVGL). FAO 198 provides that any violation of fishery-related laws is a ground for its cancellation. The violation can be proven by competent evidence other than a court's final decision.



GENERAL PROCEDURES

The general guideline for administrative proceedings is provided in the Administrative Code of the Philippines (EO 292). This guideline automatically applies when an administrative body has no specific rules and regulations of its own (see Specific Rules and Procedures). The Rules of Court is also used in administrative cases, but this applies only in a suppletory manner and without regard to the rigidity of technical rules.

To what agencies are the general procedures applicable?

This applies to all administrative proceedings undertaken by government agencies. Exceptions to this are proceedings by Congress, the Judiciary, the Constitutional Commissions, military establishments

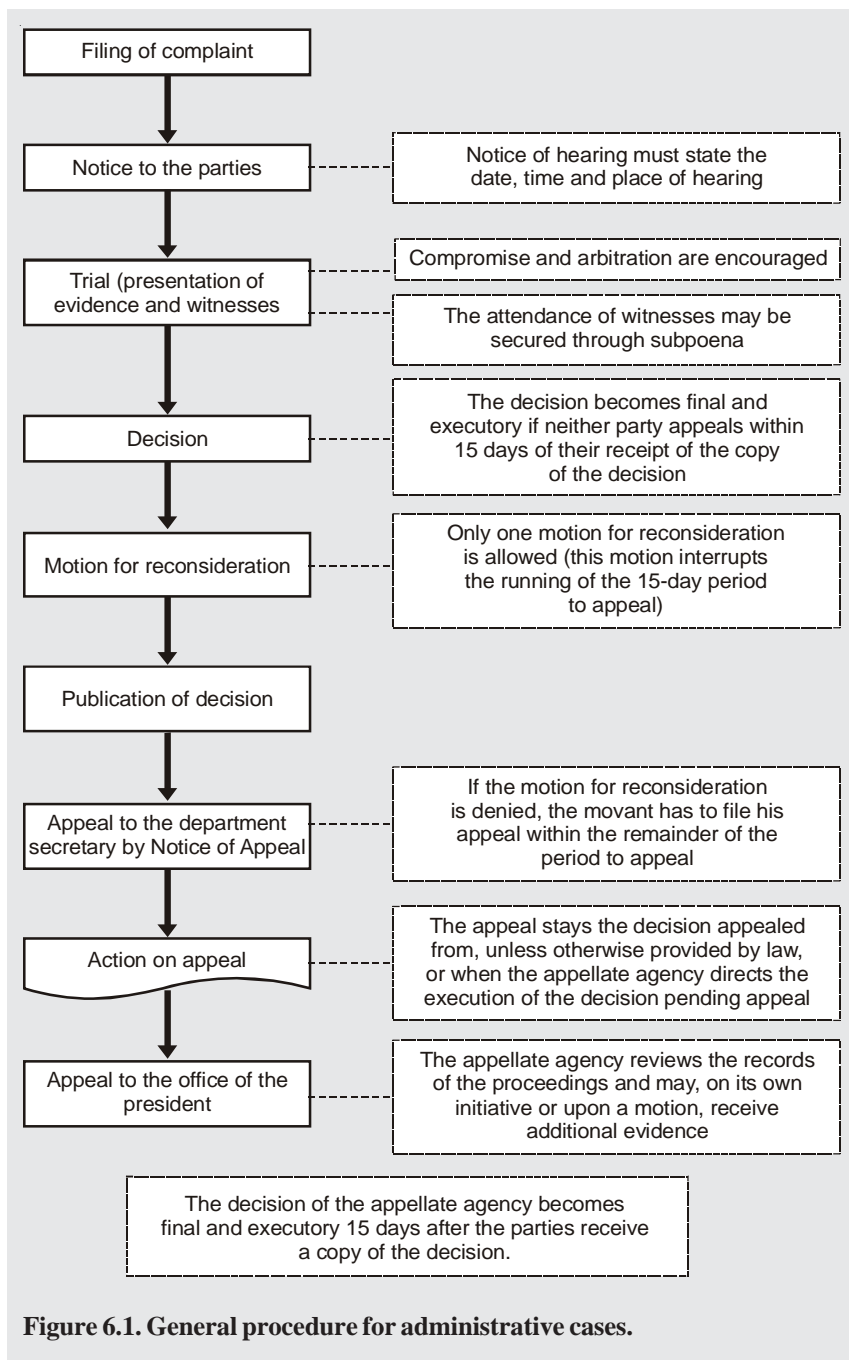


Figure 6.1. General procedure for administrative cases.

in all matters relating exclusively to Armed Forces personnel, the Board of Pardons and Parole, and state universities and colleges. (*EO 292, Book Seven*)

Rights of the Parties in Administrative Cases

The rights of the parties to due process are protected even in administrative adjudication. This is the doctrine laid down in *Ang Tibay v. Court of Industrial Relations* (69 Phil. 365) where the Supreme Court provides that the parties in administrative proceedings have cardinal primary rights that must be respected even in this kind of proceeding. These rights are the following:

- ♦ Right to a hearing, which includes the right of the party interested or affected to present his own case and submit evidence in support of it.
- ♦ Not only must the party be given an opportunity to present his case, but the tribunal must also consider the evidence he presents.
- ♦ The decision must be supported by facts.
- ♦ The evidence on which the decision is based must be substantial.
- ♦ The decision must be rendered on the evidence presented at the hearing or at least contained in the record and disclosed to the parties affected.
- ♦ The judges must act on their own independent consideration of the law and facts of the controversy.
- ♦ The decision must be rendered in such a manner that the parties to the proceeding can be informed of the various issues involved and the reasons for the decision rendered.

In *Air Manila Inc. v. Balatbat* (38 SCRA 489), the Supreme Court laid down additional fundamental procedural rights of the accused in administrative cases. These are the rights to:

- ♦ A notice, be it actual or constructive
- ♦ Reasonable opportunity to appear and defend his rights, and to introduce witnesses and relevant evidence in his favor
- ♦ A tribunal so constituted as to give him reasonable assurance of honesty and impartiality, and of competent jurisdiction
- ♦ A finding or decision by that tribunal supported by substantial evidence presented at the hearings or at least ascertained in the records or disclosed to the parties

What is due process in administrative proceedings?

Due process refers to the right of each party to be notified of the charges against him affecting his own person, property or right, and the opportunity for him to be heard and to present evidence on his behalf before any judgment is rendered against him (*Central Bank v. Cloribel*, 44 SCRA 307).



What kind of notice must be provided to the parties?

1. If the statute or rule provides the manner, form and time of notice, the notice must substantially conform to the prescribed provisions.

If the statute or rule provides that notice by publication is sufficient to acquire jurisdiction, then service of the notice of hearing personally to the accused is not necessary (*Lumiqued v. Exevea*, 89 SCRA 125). But if personal service is required, the posting of the notice on a billboard or in public places is not sufficient.



2. If the law or the rule does not specify a particular requirement, the notice must give the party sufficient time and information to prepare his defense or to meet the issues involved.

Is a formal hearing necessary in administrative proceedings?

No. It is sufficient that the accused party be given an opportunity to defend his interests. This opportunity is the very essence of due process; it respects the rights of the parties without having to conduct a formal hearing.

This opportunity for the accused to defend and present his case includes the responsibility of the administrative agency to consider the evidence presented, and to act on its own consideration of the law and the facts of the controversy. The agency must not simply accept the view of a subordinate who has conducted initial investigations, because a partial proceeding violates the right of the party to due process (*Doruelo v. Commission on Elections*, 183 SCRA 382).



Is a lawyer required in administrative proceedings?

No. In fact, some administrative agencies prohibit the appearance of a counsel in the proceeding.

What rules on evidence apply in administrative proceedings?

Administrative agencies are not bound by the strict rules governing the reception of evidence in court proceedings. However, they are mandated to observe some basic rules.

In the case of *Cortes v. Agcaoile* (294 SCRA 423), the Supreme Court provides that in administrative proceedings, there must be substantial evidence to support a finding or conclusion.

Substantial evidence is that amount of relevant evidence adequate and acceptable enough for a reasonable mind to justify a conclusion or support a decision. (*Rule 133, sec. 4*)



In case of contested cases, the following are the minimum guidelines:

- ♦ The agency may admit and give probative value to evidence commonly accepted by reasonably prudent men in the conduct of their affairs.

- ◆ Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, the parties are given the opportunity to compare the copy with the original. If the original is in the official custody of a public officer, a certified copy of the original may be accepted.
- ◆ Every party has the right to cross-examine witnesses presented against him and to submit rebuttal evidence.
- ◆ The agency may take notice of judicially cognizable facts and of generally cognizable technical or scientific facts within its specialized knowledge. The parties are notified and afforded an opportunity to contest the facts.

(EO 292, Book Seven, sec. 12)

Remedies after Decision

The decision on the administrative case can still be modified for as long as it is not final yet, and the case is still within the control of the administrative authorities.

When is the decision final?

The decision becomes final and executory if the parties do not appeal the case within 15 days after receipt of the copy of the decision (*De Leon, 1998*).

How is judgment modified?

Either party can move to modify the decision by filing a motion for reconsideration or an appeal within 15 days from receipt of the decision on the grounds of fraud of imposition, mistake, surprise, inadvertence, newly discovered evidence, or a changed condition.

Motion for Reconsideration

The filing of a motion for reconsideration interrupts the 15-day period to appeal. However, if the motion for reconsideration is denied, an appeal must be filed within the remaining period to appeal.

A motion for reconsideration should be filed only before the tribunal that made the decision. Only one motion for reconsideration may be filed.

Appeal

An appeal delays the execution of a decision, unless otherwise provided by law or when the appellate agency directs execution pending appeal.

Where is it filed?

If the decision is rendered by the Regional Director, it may be appealed to the Department Secretary. If the decision is rendered by the Department Secretary, the aggrieved party has two options:

- ♦ To file a notice of appeal with the Office of the President; this office exercises supervisory powers over all executive departments
- ♦ To file a petition for review with the Court of Appeals, as provided under Rule 43 of the Rules of Court

The principle of exhaustion of remedies does not apply when the respondent is a Department Secretary who acts as an alter-ego of the President, and whose decision bears his implied or assumed approval. The exhaustion of remedies, which in this case is to file an appeal before the Office of the President, is no longer necessary.



Other Remedies

If administrative adjudication does not yield the desired result, the party may also file the following petitions in the regular court:

1. **Petition for certiorari**
Annuls or modifies the proceedings of the tribunal, board or officers, and grants such incidental reliefs as law and justice may require
2. **Petition for mandamus**
Causes the concerned administrative official to perform an act necessary to protect the rights of the petitioners, and to pay the damages sustained by the petitioners due to his wrongful act
3. **Petition for prohibition**
Causes the tribunal to desist from further proceedings in the action or matter in question, and grants incidental reliefs as law and justice may require

What are the requisites for filing these petitions?

- ♦ The tribunal has acted without or in excess of its jurisdiction, or acted with grave abuse of discretion amounting to lack or excess of jurisdiction, and
- ♦ No appeal, or any plain, speedy, and adequate remedy in the course of the law is available

Administrative adjudication does not prevent the aggrieved party from filing an action in regular court, especially if administrative adjudication does not yield the desired result or causes unreasonable delays.



SPECIFIC RULES AND PROCEDURES

Many administrative bodies tasked with implementing coastal laws have issued their own rules and regulations for adjudicating administrative cases. In summary, these legal issuances are:

- ◆ DAO 32 s. 1997, governing the administrative confiscation of illegal forest products, tools, instruments and conveyances
- ◆ DAO 96-37, governing the imposition of fines and the cancellation/ revocation of Environmental Compliance Certificates
- ◆ PD 984, governing the imposition of fines and penalties in pollution cases
- ◆ Coast Guard MC No. 3 s. 1994, governing the administrative adjudication of marine pollution cases
- ◆ Ombudsman AO No. 07, governing the adjudication and investigation of cases filed against public officials.

These legal issuances provide for guidelines in the adjudication of administrative cases specific to each relevant government body, as well as the acts or omissions that may be a basis for filing an administrative complaint.

National Government Agencies

Bureau of Fisheries and Aquatic Resources

Section 65 of the Philippine Fisheries Code (RA 8550) empowers the DA-BFAR to enforce all laws, and to formulate and enforce all rules and regulations governing the conservation and management of fishery resources, except in municipal waters. BFAR is also mandated to settle conflicts of resource use and allocation in consultation with the national and local Fisheries and Aquatic Resources Management Councils and LGUs.

BFAR can only adjudicate administrative cases filed against violators licensed by the bureau. For violators that do *not* hold licenses, a petition may be filed with BFAR to blacklist the violators in case they attempt to apply for licenses or permits later on.



1. Remedies available simultaneous with the criminal case

Remedies	Grounds	Legal Bases
Cancellation of Fishpond Lease Agreements	Violation of existing fishery laws, rules and regulations and other applicable laws, such as: <ul style="list-style-type: none"> ◆ Fraudulent, false or misleading statements or information in the application and/or other documents submitted prior to or after the issuance of the lease 	FAO 197

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(Cont'd.)

Remedies	Grounds	Legal Bases
	<ul style="list-style-type: none">♦ Failure to submit the yearly reports♦ Development of the area other than for fishpond purposes♦ Failure to comply with the rules and regulations, terms and conditions of the lease♦ Failure of the lessee to provide facilities to minimize environmental pollution (e.g. settling ponds, reservoirs)	
Dismantling of obstructions	♦ Construction of structures that obstruct defined migration paths	FAO 217
	♦ Construction of structures that obstruct navigation in streams, rivers, lakes and bays	FAO 196
Suspension of the license to operate the commercial fishing vessel until safety standards are complied with	♦ Failure to comply with the Minimum Safety Standards	RA 8550, Section 103
Cancellation of accreditation to transship in the Philippines	<ul style="list-style-type: none">♦ Failure to secure Entry Clearance from the Department of Foreign Affairs (DFA)♦ Failure to secure special permit from Bureau of Customs for unloading fishes and loading of fishing paraphernalia♦ Failure to secure Departure Clearance from Fishport Office♦ Failure to secure Permit to Repair from Fishport Office	FAO 199



Transshipment is the process in which fish from a foreign fishing vessel is unloaded, cleaned, classified and packed at the Davao Fish Port Complex or any other designated government-owned or controlled regional fish port complex, and shipped by air freight to other countries of destination.



Transshipment is allowed only in duly designated government-owned or controlled regional fishport complexes, and only after clearance is secured from the DA, thru BFAR. Non-compliance with these requirements may make a foreign vessel liable for violating FAO 199 and for Poaching in Philippine Waters. (See Chapter 2: Prohibited Acts & Penalties)

2. Remedies available upon findings of violations

Remedies	Grounds	Legal Bases
Cancellation of CFVGL	<ul style="list-style-type: none"> ♦ Violations of any existing fishery laws, decrees, letters of instruction, or implementing rules and regulations 	FAO 198
Administrative fine	<ul style="list-style-type: none"> ♦ Poaching in Philippine waters 	FAO 200
	<ul style="list-style-type: none"> ♦ Taking or catching of dolphins in Philippine waters ♦ Sale, purchase, possession, transport or exportation of dolphins, whether dead or alive, in any state or form, whether raw or processed 	FAO 185
	<ul style="list-style-type: none"> ♦ Wounding or killing of dolphins in the course of catching other species of fish 	FAO 173
	<ul style="list-style-type: none"> ♦ Exportation of <i>bangus</i> fingerlings ♦ Taking or catching, sale, possession or transport of <i>sabalo</i> (full-grown <i>bangus</i> or milkfish) 	FAO 129
Cancellation of Fishpond Lease Agreements	<ul style="list-style-type: none"> ♦ Violation of existing fishery laws, rules and regulations, and other applicable laws ♦ Obstruction of navigation, streams, rivers and lakes 	FAO 197
	<ul style="list-style-type: none"> ♦ Obstruction of defined migration path 	FAO 217
Ban from being a member or stockholder of companies currently engaged in fisheries, or of companies to be created in the future	<ul style="list-style-type: none"> ♦ Importation of fishery products without permit 	FAO 195
	<ul style="list-style-type: none"> ♦ Importation of live shrimps and prawns of all stages without permit 	FAO 207
	<ul style="list-style-type: none"> ♦ Exportation of fishery products without permit 	FAO 210
Cancellation of special permit (Research Permit or Permit to Exhibit Dolphins)	<ul style="list-style-type: none"> ♦ Taking or catching of dolphins in Philippine waters ♦ Sale, purchase, possession, transport or exportation of dolphins, whether dead or alive, in any state or form, whether raw or processed ♦ Wounding or killing of dolphins in the course of catching other species of fish 	FAO 185



Because FAO 198 has such a general scope, the cancellation of the CFVGL may be applied as a remedy for all acts that violate fishery-related laws.

What documents are required for CFVGL cancellation?

A letter request or petition letter addressed to the Regional Director requesting for the cancellation of license or permit is needed. The letter or petition must specify the following:

1. Name of the operator, licensee or permittee, in the case of CFVGLs

The complete name of the boat must be specified (e.g. FB Jhun-jhun I and FB Jhun-jhun II)

2. Address of the operator, lessee, licensee or permittee
3. Narration of acts that would warrant cancellation or revocation
4. Name of the petitioner

Other documents supporting the petition must be attached (e.g. affidavits of witnesses, decision of the judicial court, certification from administrative agencies finding the respondent guilty of fishery-related laws).

The DA-BFAR has no specific rules governing its administrative proceeding, thus the general rules of procedure in the Administrative Code apply.



Department of Environment and Natural Resources

The DENR generally has the power to adjudicate cases related to forestry products and protected areas.

Section 2 of EO 277 (amending Section 68 of PD 705) gives authority to the DENR Secretary or his duly authorized representatives (e.g. Community Environment and Natural Resources Officer) to order the confiscation of any forest products illegally cut, gathered, removed, possessed or abandoned, and all conveyances used either by land, water or air in the commission of the offense. The same provision bestows it the authority to dispose of both products and conveyances in accordance with pertinent laws, regulations or policies.

DAO 32-97 provides guidelines on the administrative confiscation of illegal forest products and its conveyances. DAO No. 24 s. 2003 authorizes the administrative confiscation of chainsaws possessed, or used in the cutting, gathering, collection, removal and/or processing of timber or forest products without legal documents. The procedure provided in DAO 32-97 is adopted.

Section 10 of the National Integrated Protected Areas System law (RA 7586) empowers the DENR Secretary to extract administrative fees and fines for violations of the guidelines and rules and regulations of this act that endanger the viability of protected areas.

1. Remedies for violations of forestry laws

Remedies	Grounds	Legal Bases
Administrative confiscation of illegally cut, gathered, removed or possessed forest products	Cutting, gathering, collection, removal and/or processing of timber or forest products under any of the following conditions: <ul style="list-style-type: none"> ◆ Without license or permit ◆ Necessary documents incomplete ◆ Necessary documents already expired, cancelled or containing false information ◆ Fake license or documents 	DAO 32-97
Administrative confiscation of chainsaws	<ul style="list-style-type: none"> ◆ Cutting, gathering, collection, removal and/or processing of timber or forest products using a chainsaw without legal documents ◆ Possession of chainsaws without legal documents 	DAO 24 s. 2003



Mangroves are considered timber under PD 705.



Seizure is the removal of the illegal forest products from the possession of the law offenders during apprehension. The items are temporarily taken into custody while the administrative case is pending. **Confiscation**, on the other hand, is the permanent forfeiture of the seized items in favor of the government.

Who are authorized to seize illegal forest products?

- ◆ DENR officials
- ◆ Deputized DENR personnel
- ◆ Law enforcement agencies
- ◆ Private citizens



All the original documents or permits should always be carried by a person transporting or carrying forest products. The absence of the necessary documents is enough cause for the apprehension of the person and for the seizure of the forest products without need of a warrant.

What rules are followed in seizing illegal forest products?

1. The seizure must be due to the commission of an act violating any forestry-related law and/or its rules and regulations.
2. The seized items must be brought to the nearest Seizure Officer. If no Seizure Officer is available, the items may be deposited temporarily at the nearest government office or, if not practical, taken into custody by the apprehending team or person.
3. Upon receiving the items, the Seizure Officer issues a Seizure Receipt indicating the date and time of seizure, the name of the apprehending person, and a list of all the items seized.

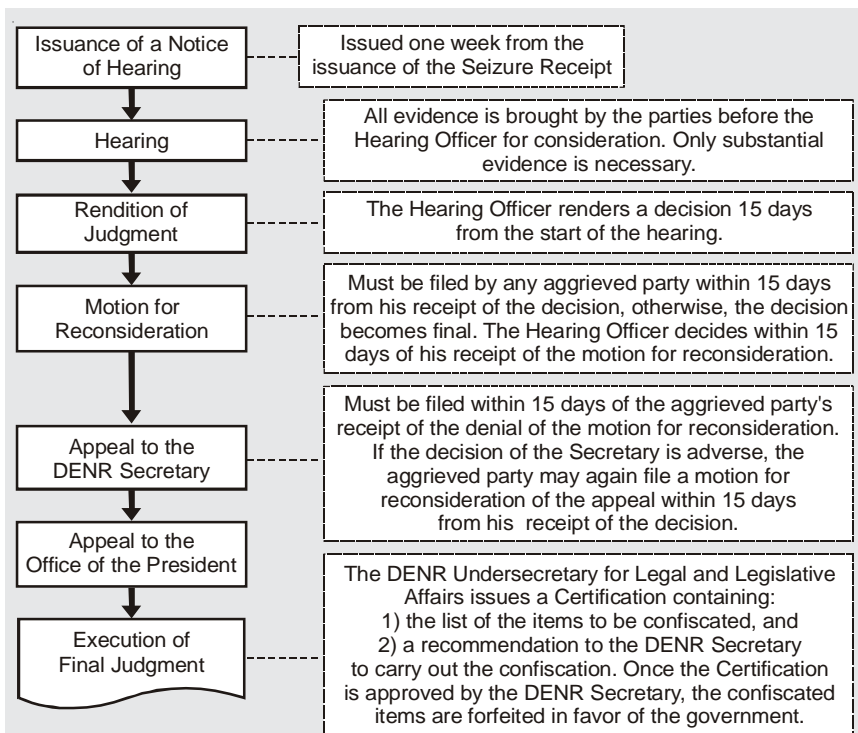


Figure 6.2. DENR procedure for administrative confiscation.

- The Seizure Officer must then determine if there is a *prima facie* case against the apprehended person.

A *prima facie* case exists if evidence shows that the forest products are illegal.

- If there is a finding of a *prima facie* case, the Seizure Officer issues a seizure order.



Who are the Seizure Officers?

- DENR Regional Executive Director (RED) or, in his absence, the Regional Technical Director (RTD)
- Provincial Environment and Natural Resources Officer (PENRO) or, in his absence, any Senior Forest Management Specialist or Senior Environmental Management Specialist based in the area where the seizure is conducted
- Community Environment and Natural Resources Officer (CENRO) or, in his absence, any DENR Forester III or Land Management Officer III assigned to the area where the seizure is conducted
- Any other person designated by the DENR Secretary

After the administrative hearing, the Hearing Officer must file a criminal complaint against the offender. (See Chapter 5: Prosecution for the Rules on Criminal Procedure)



vehicles used in transporting illegal forest products

What happens to the conveyance used in transporting the seized items while the administrative case is pending?

It may be released subject to the following conditions:

1. The owner of the conveyance submits to DENR his registration papers and other supporting documents.
2. He is not one of the accused in the pending administrative case.
3. He has not been previously found guilty of violating a forestry-related law and/or any of its rules and regulations.
4. Evidence does not show that he had any knowledge or participation in the transport of the seized products.
5. He is willing to execute an affidavit stating the following:
 - a. That he is the legal owner of the said vehicle
 - b. That he has not been previously found guilty of violating any forestry-related law and/or its rules and regulations in any administrative or criminal case
 - c. The legal purpose for which he intends to use his vehicle while the administrative case is pending
 - d. The current market value of the vehicle
 - e. That he will return the vehicle to DENR for final disposition
6. He is willing to pay a bond equal to 125% of the value of the vehicle.

abandoned illegal forest products

If the illegal forest products have been abandoned, what procedure is followed?

1. The abandoned forest products are seized and brought to the Seizure Officer.
2. A Notice of Apprehension is posted on a surface, wall or structure located near the area where the forest products were abandoned.
3. The Hearing Officer then issues a Notice of Hearing, which is posted at the barangay hall, municipal hall and DENR Office of the place where the products are seized. The Notice must be posted three times for three consecutive weeks.
4. If no person claims ownership, the seized products are then subjected to the Summary Confiscation Proceeding by the Hearing Officer.

2. Remedies for violations of Protected Area laws

Remedies	Grounds	Legal Bases
Administrative fines and penalties	Hunting, destruction, disturbance or possession of any plant, animal or products derived from protected areas without a permit	RA 7586



Confiscation and forfeiture of flora, fauna or any other product derived from protected areas is determined by a regular court.

Environmental Management Bureau

The Environmental Management Bureau (EMB), a line bureau of the DENR, is specifically authorized to adjudicate cases related to environmentally critical projects or projects in environmentally critical areas, and coastal pollution.

The Environmental Impact Statement (EIS) Law (PD 1586) gives EMB the authority to impose administrative penalties for violations of the provisions of EIS laws, and provides the procedure for the adjudication of such cases. Section 6, Article IX of DAO 96-37 provides the procedures for adjudicating cases of violations of the Environmental Compliance Certificate (ECC); DAO 30-2003 provides the remedies available to the aggrieved party.

Section 6 of the Pollution Control Law (PD 984) authorizes EMB to revoke, suspend or modify any permit issued under this decree whenever necessary, to prevent or abate pollution after due notice and hearing. The remedies are provided in Section 8 of PD 984.

1. Remedies for violations of EIS laws



An ECC is the document issued by the DENR Secretary or RED certifying the following:

- ◆ The proposed project or undertaking will not cause a significant negative environmental impact.
- ◆ The proponent has complied with all the requirements of the EIS System.
- ◆ The proponent is committed to the implementation of the approved Environmental Management Plan (EMP) in its EIS, or mitigation measures in its Initial Environmental Examination (IEE).

When does the EIS apply to fisheries activities?

All activities or projects that may affect the quality of the environment must have a detailed EIS (*IRR of RA 8550, sec. 12*). All government agencies, private corporations, firms and entities must prepare an EIS *prior* to their undertaking of a development activity or project.



What fisheries activities need an ECC?

- ◆ Operation of fishpond
- ◆ Operation of Pearl Farm Lease
- ◆ Operation of aquaculture activities
- ◆ Operation of ancillary activities as defined in RA 8550
- ◆ Sea farming
- ◆ Shellfish production
- ◆ Operation of processing plants



This list does not exclude other activities that may be determined to be detrimental to the environment.

DAO 30-2003 provides for the legal bases for adjudicating EIS violation cases.

Remedies	Grounds
Closure of business and imposition of administrative fine	Operating without an ECC
Suspension/cancellation of ECC, closure of business and/or imposition of administrative fine	Violation of ECC conditions, EMP or Rules and Regulations
Suspension/cancellation of ECC and/or imposition of administrative fine	Misrepresentations in IEE/EIS or other documents
Withdrawal of accreditation of IEE/EIS preparers	Misrepresentations in IEE/EIS or other documents

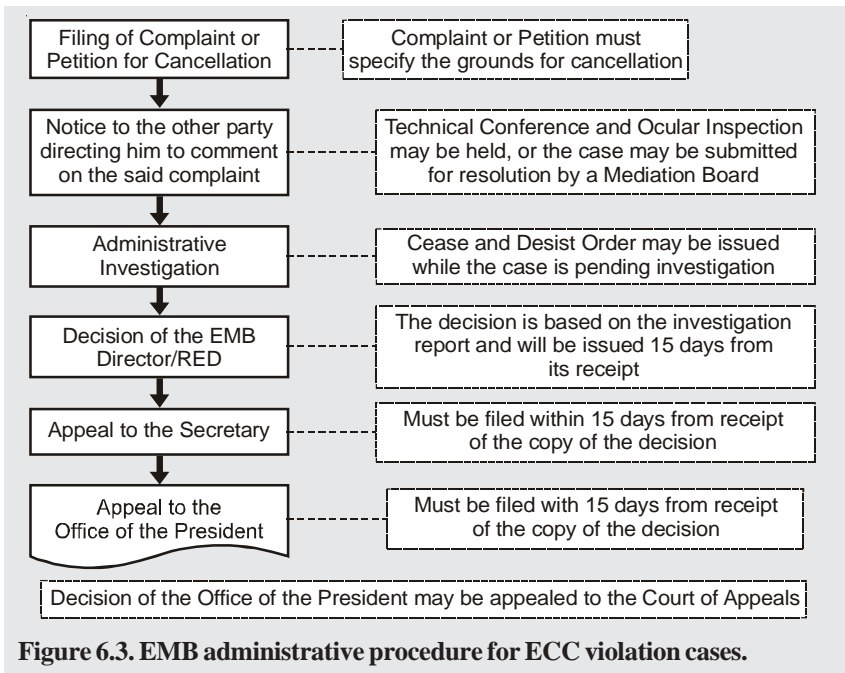


Figure 6.3. EMB administrative procedure for ECC violation cases.

Can the operation of the activity in question be stopped while the case is pending?

Yes, the complainant can request for the issuance of a Cease and Desist Order (CDO) on the ground that continuing the operation poses grave and irreparable injury to the environment. Once issued, the CDO becomes effective immediately.



2. Remedies for violations of pollution laws

Pollution is:

- ◆ Any alteration of the physical, chemical and biological properties of any water, air and/or land resources of the Philippines
- ◆ Any discharge of any liquid, gaseous or solid wastes that will or is likely to create or to render such water, air and land resources harmful, detrimental or injurious to public health, safety or welfare
- ◆ Any discharge of any liquid, gaseous or solid wastes that will adversely affect the utilization of these resources for domestic, commercial, industrial, agricultural, recreational or other legitimate purposes

Section 8 of PD 984 provides for the legal bases for adjudicating pollution cases.

Remedies	Grounds
Imposition of fine	Violation of or failure to comply with any order, decision or regulation of the Commission for the control or abatement of pollution
Closure of the operation of the establishment until the fine is paid	Failure to pay the fine within the time specified in the order or decision



The fine is imposed for every day that the violation or default continues.

“Commission” refers to the National Pollution Control Commission (NPCC), which is in charge of adjudicating pollution cases at the national level. The EMB represents the Commission at the regional level.

cease and desist order

Can the EMB issue a CDO while the administrative case is pending?

Yes. The CDO may be issued by the Commission even without a hearing when, upon investigation, it is shown that the discharged sewage or wastes are an immediate threat to life, public health, safety or welfare, or to animal or plant life. A CDO may also be issued if the discharge exceeds the allowable standards set by the Commission.

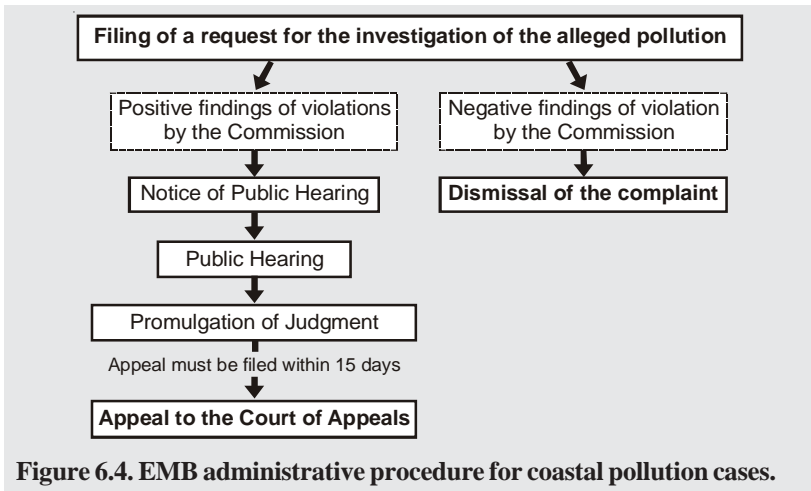
What is the effect and duration of the CDO?

The CDO is immediately executory and remains in force until the establishment or person prevents or abates the pollution to comply with the allowable standards, or until the CDO is modified or nullified by a competent court.

How does EMB enforce its decision in pollution cases?

The EMB issues a writ of execution directing the City or Provincial Sheriff (or other peace officers it may appoint) to enforce the fine, or the order of closure or stoppage of operations.

A public hearing is required in promulgating a decision that orders the discontinuance of discharge of sewage, industrial wastes or other wastes.



Philippine Coast Guard

Section 7 of the Marine Pollution Decree (PD 979) authorizes the Philippine Coast Guard (PCG) to provide in its rules and regulations reasonable administrative penalties necessary for the effective implementation of this decree. It also gives the PCG authority to adjudicate cases of marine pollution in all bodies of water within the

territorial jurisdiction of the Philippines, including ports, coastlines, lakes, rivers and their tributaries.



Discharges/dumping of oil/wastewater *from industries and manufacturing plants* in any body of water of the Philippines are not under the jurisdiction of the PCG but are instead regulated by the EMB (PD 979).



Marine pollution is the alteration of the physical, chemical and biological properties of any body of water by discharges of substances in any form (liquid, gaseous or solid) that is likely to create or render such waters harmful, detrimental or injurious to public health, marine life, sea birds, safety and welfare, as well as to domestic, commercial, industrial, agricultural, recreational or other legitimate uses.

Coast Guard MC No. 03 s. 1994 provides for the legal bases for the adjudication of cases violating PD 979, including the grounds and remedies available.

Remedies	Grounds
<ul style="list-style-type: none"> ♦ Administrative fine of P4,000 to P7,000 and/or ♦ Reprimand of person responsible or suspension of his exercise of the marine profession/license for not more than 6 months. 	Discharge or dumping of oil or oily mixture (first offense)
<ul style="list-style-type: none"> ♦ Administrative fine of not less than P5,000 and not more than P8,000 upon the vessel, oil company/refinery or depot owners/ operators, and/or ♦ Suspension of the person directly responsible for the spill/discharge from the exercise of his marine profession/license for not less than 6 months and 1 day to a maximum of 1 year. 	Discharge or dumping of oil or oily mixture (second offense)
<ul style="list-style-type: none"> ♦ Administrative fine of not less than P7,000 and not more than P10,000 upon the vessel, oil company/refinery or depot owners/ operators, and/or ♦ Revocation or cancellation of license of the person(s) or officer(s) directly responsible for the spill/discharge 	Discharge or dumping of oil or oily mixture (third offense)
<ul style="list-style-type: none"> ♦ Administrative fine of P7,000 upon the owner/ operator of vessels, and/or ♦ Suspension of the officer directly responsible from the exercise of his marine profession for not more than 1 year 	Discharge or dumping of hazardous or noxious substances (first offense)
<ul style="list-style-type: none"> ♦ Administrative fine of P10,000 upon the owner/operator of vessels, and ♦ Revocation or cancellation of license of the responsible officer and/or crew member 	Discharge or dumping of hazardous or noxious substances (second offense)

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Remedies	Grounds
<ul style="list-style-type: none"> ♦ Administrative fine of not less than P5,000 but not more than P7,000 upon the owner/operator of vessel or oil company, and ♦ Reprimand or suspension of not more than 6 months of the person/officer directly responsible 	Throwing or dumping of any refuse matter (first offense)
<ul style="list-style-type: none"> ♦ Administrative fine of not less than P6,000 but not more than P8,000 upon the owner/operator of vessel or oil company, and/or ♦ Suspension of not more than 1 year of the responsible officer/person/crew member 	Throwing or dumping of any refuse matter (second offense)
<ul style="list-style-type: none"> ♦ Administrative fine of not less than P8,000 but not more than P10,000 upon the owner/operator of vessel or oil company, and ♦ Revocation or cancellation of license of the person/master or officer directly responsible 	Throwing or dumping of any refuse matter (third and subsequent offenses)
<ul style="list-style-type: none"> ♦ Administrative fine of P8,000 to P10,000, or ♦ Suspension/revocation of license of the Master/Chief Engineer at the discretion of the PCG Commandant, depending on the volume of the spill 	Failure of Master/Chief Engineer of vessel and Salvor who spilled/discharged oil or oily wastes, noxious gases or harmful substances to notify PCG of incident

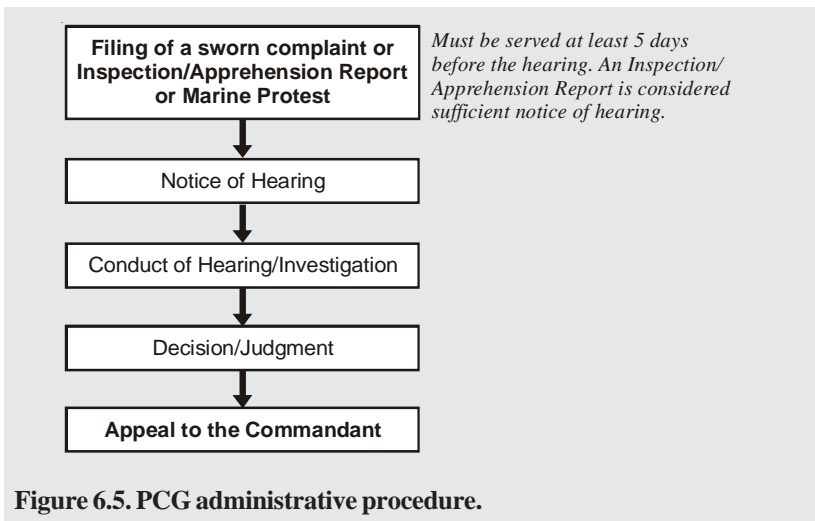


Figure 6.5. PCG administrative procedure.

Where must the complaint be filed?

The sworn complaint must be filed before the Investigation and Adjudication Officer of PCG.

What remedy is available if the decision is adverse?

In case of an adverse decision, a Notice of Appeal can be filed with the PCG Commandant within 30 days. A Notice of Appeal must specify and designate the judgment or decision or the part of it that is appealed.



liabilities for marine pollution

What other liabilities does the offender have in marine pollution cases?

- ◆ In the event that other agencies/entities assist in the clean-up, the spiller must pay for the corresponding cost spent in the clean-up operation as determined by the PCG, or
- ◆ The parties responsible may conduct clean-up operations using their personnel and resources as necessary until the clean-up is complete.

What measures will ensure the offender's compliance with these other liabilities?

The PCG Station Commander may require a cash bond to cover clean-up and containment costs as follows:

Type of Discharge	Cash Bond (P)
Minor discharge	100,000 - 500,000
Medium discharge	501,000 - 1,000,000
Major discharge	1,001,001 - 5,000,000

In case of damage to properties and persons, can the offender be required to post a cash bond to ensure payment of damages?

Yes. The amount is as follows:

Estimated Cost of Damage	Cash Bond (P)
P10,000 to P50,000	P1,000
P51,000 to P1,000,000	P10,000
P1,001,001 or more	P20,000

In case of non-payment of fines and other monetary obligations, the subject vessel's clearance for departure from any port of the Philippines may be withheld until appropriate measures are taken.



Office of the Ombudsman

Section 15 of RA 6770 gives the Office of the Ombudsman the authority to investigate and prosecute any act or omission of any public officer or employee, office or agency when the act or omission appears to be illegal, unjust, improper or inefficient.

Who is subject to adjudication by the Ombudsman?

The Office of the Ombudsman is given disciplinary authority over all elective and appointive officials of the government and its subdivisions, instrumentalities and agencies. These include members of the Cabinet, local governments, government-owned or -controlled corporations, and their subsidiaries.

The Office of the Ombudsman has *no* disciplinary authority over officials who may be removed only by impeachment, and over members of Congress and the Judiciary.



What are the grounds for administrative complaints?

Administrative complaints can be filed against acts or omissions committed by any of the above-mentioned public officials that:

- ◆ are contrary to law or regulation
- ◆ are unreasonable, unfair, oppressive or discriminatory
- ◆ are inconsistent with the general course of an agency's functions, though in accordance with the law
- ◆ proceed from a mistake of law or an arbitrary ascertainment of facts
- ◆ are in the exercise of discretionary powers but for an improper purpose
- ◆ are otherwise irregular, immoral or devoid of justification.

Public officials who obstruct the implementation of RA 8550 may be charged on any of these grounds. Criminal cases may also be filed against them.



Aside from their criminal liability as law offenders, public officials directly violating the provisions of RA 8550 are also administratively liable under the first ground cited above.

Who can initiate an administrative case before the Ombudsman?

- ◆ Any person, by filing a written complaint under oath accompanied by affidavits of witnesses and other evidence in support of the charge
- ◆ The Ombudsman, by filing case on its own initiative, or on the basis of a criminal complaint, a grievance complaint or a request for assistance

When may the complaint be dismissed?

The following are the possible grounds for the dismissal of a complaint:

- ◆ The complainant has an adequate remedy in another judicial or quasi-judicial body
- ◆ The complaint pertains to a matter outside the jurisdiction of the Office of the Ombudsman
- ◆ The complaint is trivial, frivolous, vexatious or made in bad faith
- ◆ The complainant has no sufficient personal interest in the subject matter of the grievance
- ◆ The complaint was filed one year after the occurrence of the act or omission complained of.

Is failure of either party to appear at the hearing a ground for the dismissal of the complaint?

No, but the party present will be allowed to present his evidence even in the absence of the adverse party, who is duly notified.

Who is allowed to testify before the Ombudsman?

Only a witness who submits his affidavit that has been served to the adverse party at least 5 days before he is presented as a witness may be allowed to testify at the hearing.

What is the privilege of a witness before the Ombudsman?

Any person whose testimony or production of evidence is necessary to determine the truth in an inquiry, hearing or proceeding may be granted immunity from criminal prosecution.



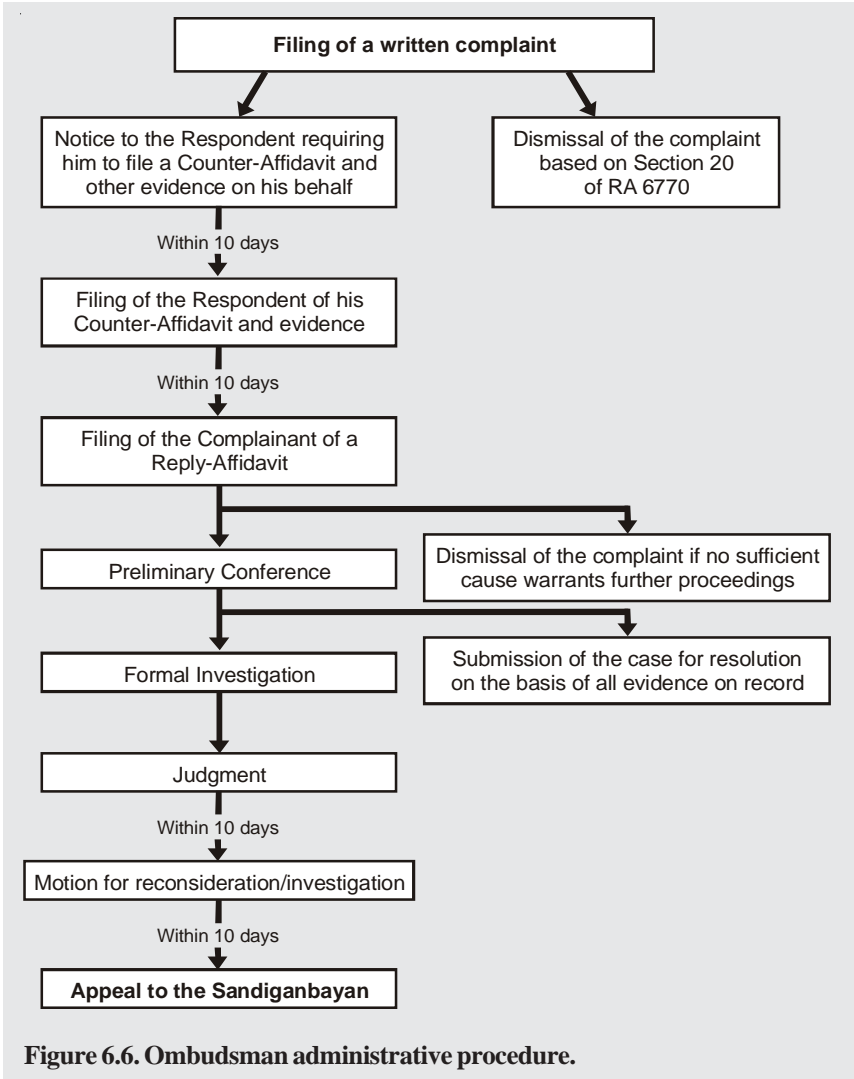
Can a person subpoenaed by the Ombudsman refuse to testify?

No, but he will be granted immunity from prosecution for any incriminating matter arising from his testimony.

Can the Ombudsman suspend the official under investigation while the case is pending?

Yes. The Ombudsman can preventively suspend any officer or employee under his authority pending an investigation, if in his judgment the evidence of guilt is strong and:

- ◆ the charge against such officer or employee involves dishonesty, oppression or grave misconduct or neglect in the performance of duty
- ◆ the charge would warrant removal from the service, or
- ◆ the respondent's continued stay in office may prejudice the case filed against him.



Is the decision of the Ombudsman final?

The decision of the Ombudsman is not final and can be appealed to the Sandiganbayan, *except* when the decision:

- ◆ absolves the respondent from the charges
- ◆ imposes the penalty of reprimand or public censure
- ◆ imposes the penalty of suspension of not more than one month
- ◆ imposes the penalty of a fine equivalent to not more than one month's salary



The decision can no longer be appealed if 10 days have elapsed since the parties' receipt of the decision.

What are the grounds for filing a Motion for Reconsideration?

- ◆ New evidence has been discovered that materially affects the order, directive or decision
- ◆ Irregularities or errors of fact or law have been committed that are prejudicial to the interest of the movant

Local Government Units

The Local Government Code (RA 7160) and RA 8550 give LGUs the authority to manage, develop, conserve, protect, utilize and dispose of all fish and fishery/aquatic resources within their respective municipal waters.

Where does the LGU derive its administrative authority to adjudicate cases?

Even though there is no direct provision that gives LGUs this power, it is nevertheless implied in RA 8550 as a necessary function for the effective management of the fishery resources found in its municipal waters.

issue
with

RA 7160 also gives the LGU the power to enact administrative rules as its incidental and implied power. When an ordinance is passed, the LGU may provide administrative details for its effective implementation (*Nolledo, 1992*). Furthermore, statutes conferring powers on administrative agencies should be liberally construed to enable the agencies to fulfill their assigned duties in accordance with the intention of the law (*Solid Homes, Inc. v. Payawal, 177 SCRA 72*).

How can the LGU exercise its power to adjudicate?

An ordinance must be passed by the Sangguniang Bayan authorizing the administrative adjudication of cases arising from violations of its ordinances. The following are the minimum requirements for valid adjudication:

1. There must be a valid ordinance. For an ordinance to be valid, it must:
 - ◆ be within the authority of LGU
 - ◆ be in consonance with the Constitution
 - ◆ be reasonable and not arbitrary
 - ◆ provide for the imposition of penalties for violations
 - ◆ fix or define such penalties
 - ◆ be posted and published, as required under Article 114 of the LGC.
2. The ordinance must authorize the adjudication of the cases by the LGU's executive branch, or by another body created for that purpose.
3. The LGU must still have jurisdiction over the case, i.e. it has not yet been filed with the regular court.

- The accused must be afforded due process as provided in *Ang Tibay v. CA* and *Air Manila Inc. v. Balatbat*. (See Rights of the Parties in Administrative Cases)

The procedure governing the adjudication of cases by the LGU is dependent on provisions of the ordinance, provided that the minimum requirements specified in *Air Manila Inc. v. Balatbat* are followed.



compromise agreements

Entering into *compromise agreements* or imposing administrative fines without meeting the minimum requirements for adjudication is unlawful. It is without valid authority from the Sangguniang Bayan and violates the right of the accused to due process. Officials who enter into compromise agreements without valid authority or without affording the accused due process may be sued for direct bribery, violation of the Anti-Graft and Corrupt Practices Act (RA 6713), and violation of the Code of Conduct and Ethical Standards for Public Officials and Employees (RA 3019).

Also, it must be remembered that administrative adjudication is essentially a procedure in coastal law enforcement, and therefore has two primary objectives: the protection of coastal resources, and the effective deterrence of coastal law violators. These two objectives *must* be the main consideration in determining the penalties to be imposed.



The Municipality

Section 16 of RA 8550 gives jurisdiction to the municipal/city government over municipal waters, and authorizes it to enact appropriate ordinances for this purpose in coordination with the FARMC. (See Responsibilities and Rights of LGUs in Municipal Waters in Annex 3: Mandates in Coastal Law Implementation).

Remedies	Grounds
Imposition of fines and confiscation of fishing vessel, its appurtenances and gear	Depends on the conditions specified in the ordinance
Cancellation of Permit to Operate Commercial Fishing within Municipal Waters	Violations of any existing fishery laws, decrees, letters of instruction, or implementing rules and regulations (<i>implied from RA 8550, sec. 18</i>)
Cancellation of registration in Municipal Fisherfolk Registry	Depends on the conditions specified in the ordinance

Continued on next page

(Cont'd.)

Remedies	Grounds
Cancellation of Pearl Farm Lease	Depends on the conditions specified in the ordinance
Cancellation of privileges in special demarcated areas	Depends on the conditions specified in the ordinance
Cancellation of Permit to Engage in Mariculture or Fish Farming	Depends on the conditions specified in the ordinance
Cancellation of other special permits as specified in the ordinance	Depends on the conditions specified in the ordinance
Cancellation of accreditation of non-government organization, people's organization or cooperative	Depends on the conditions specified in the ordinance

The Province

Sections 42 and 45 of Chapter VII of The Philippine Mining Act of 1995 (RA 7942) gives the Provincial Governor the authority to issue and cancel quarry permits, provided that before the cancellation of the permit, the permit holder is given the opportunity to be heard in an investigation conducted for the purpose.



The governor's authority covers only quarry operations with a maximum area of 5 ha. Sand and gravel extraction falls under his authority.

Remedies	Grounds
Cancellation of small-scale quarry permit	<ul style="list-style-type: none">◆ Violation of the Terms and Conditions of permit◆ Violation of the provisions of RA 7942◆ Violation of the Rules and Regulations of RA 7942

Preservation of Evidence

Annex 1

A. Fish and Water Samples

1. Use of explosives
2. Use of noxious substances
3. Aquatic pollution

B. Photos

C. Affidavits



MENDING NETS

The first part of the paper discusses the importance of the research and the objectives of the study. It highlights the need for a comprehensive understanding of the subject matter and the role of the researcher in this process. The second part of the paper delves into the methodology used, detailing the data collection and analysis techniques. This section is crucial for ensuring the reliability and validity of the findings. The third part of the paper presents the results of the study, which are discussed in the context of the research objectives. The final part of the paper concludes with a summary of the findings and offers suggestions for future research.

Annex 1

Preservation of Evidence

Crucial to the conviction of law offenders is the credibility and integrity of evidence presented to the court. This section offers guidelines and tips on how evidence gathered during the arrest is best preserved. Specifically, it deals with three types of evidence: fish and water samples, photos, and affidavits.

FISH AND WATER SAMPLES

All samples of fish and shellfish (in the case of fishkills due to environmental pollution) must be at least 100 g in weight, and number 3 to 5 pieces for big fish or 10 to 20 pieces for small fish or fingerlings. The water sample, preservation method, and analysis will depend on whether the fish was killed due to:

	Size of water sample	Preservation method before analysis	Laboratory Analysis	Inspecting Authority
1. Use of Explosives	None	Frozen or packed in ice	Dissection and observation	Licensed fish inspector
2. Use of Noxious Substances	One liter of water from scene of offense	Packed in polyethylene plastic; frozen or placed in a closed container or bottle with ice, ethyl alcohol or absolute alcohol (formalin must <i>never</i> be used); any container as long as water sample is analyzed within 4 hours	Cyanide testing	Cyanide Detection Laboratory at BFAR or other government crime/hospital laboratory
3. Aquatic Pollution	Half-liter of water or any liquid sample from various sampling sites	Stored on ice, <i>not</i> frozen	Heavy metals or pesticides (depending on suspected cause), BOD, dissolved oxygen, pH, salinity, temperature (preferably on-site)	BFAR or EMB



Samples should be brought ASAP to the laboratory to preserve the composition of the sample. The sample may be analyzed at any hospital or agency with an appropriately equipped laboratory, such as the BFAR, EMB, PNP or NBI.

PHOTOS

Photos are generally helpful to corroborate evidence of fishery violations, especially when the evidence to be presented is perishable. The following should especially be documented through photos:

- ◆ Fishery products seized, with proper identification visible
- ◆ Orderly conduct of the arrest, search or seizure to help negate allegations of planting of evidence
- ◆ Net with ruler indicating size

After the apprehension, secure the negatives and make duplicates.

AFFIDAVITS

Affidavits of arrest, search and seizure should be prepared as soon as possible. The longer the time elapsed between apprehension and preparation of affidavits, the less reliable the affidavits become. (See Annex 2: Forms)

The following are points to remember when preparing affidavits:

- ◆ Always include the Who, What, When, Where, Why and How.
- ◆ Be brief and direct to the point, but do not sacrifice accuracy for brevity.
- ◆ If someone else is preparing the affidavit for the affiant, the interviewer should ask probing questions. The affiant might not realize that he or she knows facts which are relevant to the case.
- ◆ Write the facts in chronological order. Start from the events leading to the arrest.
- ◆ Conclusions of law should be avoided. Stick to the facts as they were observed or seen during the proceedings, and give detailed descriptions.

e.g. instead of stating "Caught with a fine mesh net", state the actual size of the net.

- ◆ Match the facts with the elements of the offense committed. (See Chapter 2: Prohibited Acts & Penalties).
- ◆ State the name of the accused and his address. If not known, give a substantial description.
- ◆ Ascertaining the place of the commission of the crime is important to determine which court has jurisdiction.





- ♦ The exact location of the vessel should be stated in cases of offenses committed within municipal waters. (See prohibitions Based on Location of Fishery Activity in Chapter 4: Evidence) e.g. instead of stating “fishing inside municipal waters”, the specific geographic location or landmark should be described. This is also done to avoid making a conclusion of law.
- ♦ If someone else is preparing the affidavit for the affiant, the interviewer should explain the content again to the affiant before having the affidavit notarized.
- ♦ Affidavits must be notarized by a private lawyer, a prosecutor or a judge.

2

Forms

Annex

A. Legal Forms (Initiatory Pleadings and Affidavits)

1. Complaint for Preliminary Investigation
2. Complaint for Cases under MTC, MCTC, MeTC
3. Joint Affidavit of Witnesses
4. Application for a Search Warrant
5. Affidavit of Arrest

B. Forms Used in Arrests

1. Warrant of Arrest
2. Apprehension Report
3. Booking Sheet and Arrest Report

C. Forms Used in Searches

1. Search Warrant
2. Boarding Certificate
3. Inventory Report of Confiscated Articles
4. Receipt of Confiscated Fish
5. Receipt by Hospitals or Penal Institutions of Confiscated Fish
6. Receipt of Confiscated Gear
7. Receipt of Fish Samples Taken
8. Receipt of Impounded Boat
9. Receipt of Items for Temporary Custody

D. Forms Used in Scientific Investigations

1. Field Test Report
2. Fish Sample Evidence
3. Scientific Examination Report

E. Others

1. Commercial Fishing Vessel/Gear License
2. Gear Registration



MENDING NETS

The first part of the paper discusses the importance of maintaining accurate records in a business. It highlights how proper record-keeping can help in decision-making, legal compliance, and financial management. The author emphasizes that records should be organized, up-to-date, and easily accessible.

Next, the paper explores various methods for record-keeping, including manual filing systems and digital databases. It compares the pros and cons of each method, such as cost, space requirements, and searchability. The author suggests that a hybrid approach might be the most effective for many businesses.

The second part of the paper focuses on the legal aspects of record-keeping. It discusses the retention periods for different types of records and the consequences of non-compliance. The author provides practical advice on how to ensure that a business's record-keeping practices meet all relevant legal requirements.

Finally, the paper concludes by emphasizing the long-term benefits of a robust record-keeping system. It encourages business owners to invest in the necessary resources and training to ensure that their records are accurate and reliable for years to come.

Annex 2

Forms

This annex contains sample forms that are necessary or may be helpful in the course of prosecution.



Words enclosed in brackets and italicized describe the information that must be supplied on the form. These words should be excluded from the actual form.

A. Legal Forms (Initiatory Pleadings and Affidavits)

1. Complaint for Preliminary Investigation

Republic of the Philippines
OFFICE OF THE PROVINCIAL PROSECUTOR
Department of Justice
Province of Cebu

[Complainant/Arresting Officer] ,

Plaintiff,

- versus -

I.S. No. _____

FOR: Violation of Section 88 of RA 8550
(Fishing With the Use of Explosives,
Noxious or Poisonous Substance, and/or
Electricity)

[Name of Accused] ,

Accused

X-----/

COMPLAINT

The undersigned accuses:

1. [name] , of legal age, and a resident of [address] and
2. [name] , of legal age, and a resident of [address]

of violating Section 88 of RA 8550 known as Fishing through Explosives, Noxious or Poisonous Substance and/or Electricity committed as follows:

That on or about [date] , at around [time] in the waters of [place of commission] , the afore-named accused deliberately and intentionally did there and then used cyanide, a poisonous substance in catching fish.

This complaint is supported by the following:

- a) Joint affidavit of the arresting officers
 - a-1) _____;
 - a-2) _____;
- b) _____ Plastic bottles (blue and black) of liquefied cyanide;
- c) Receipt of _____ kilo of assorted small fish identified as _____ and others;
- d) _____ unit/s of paddle boat;
- e) _____ of mesh nets estimated at _____ length each;
- f) BFAR scientific/laboratory examination results;
- g) Letter of request to Director _____ for availability of Fish Examiners.

CONTRARY TO LAW.

Cebu City, Philippines. September 25, 2003.

[Complainant/Arresting Officer]

Complainant/Arresting Officer

An investigation was conducted by the undersigned on this particular case under my supervision, having examined the witnesses, depositions and other evidence. The complainant reserved its rights to adduce additional evidence as circumstances warrant.

Investigated by:

APPROVED:

(Signature over Printed Name)

(Signature over Printed Name)
Station Chief

2. Complaint for Cases under MTC, MCTC, MeTC

Republic of the Philippines
MUNICIPAL CIRCUIT TRIAL COURT
Loay-Albur-Baclayon
Province of Bohol

PEOPLE OF THE PHILIPPINES

Plaintiff,

– versus –

I.S. No. _____

FOR: Violation of Section 3 of Municipal Ordinance No. 12 known as Fishing with the Use of Fine-mesh Nets in Municipal Waters

[NAME OF ACCUSED],

Accused

X -----/

COMPLAINT

The undersigned accuse:

1. [name], of legal age, and a resident of [address] and
2. [name], of legal age, and a resident of [address]

of violating Section 3 of Municipal Ordinance No. 12 known as Fishing with the Use of Fine-Mesh Nets in Municipal Waters committed as follows:

That on or about [date], at around [time], the said accused deliberately, intentionally and unlawfully did there and then used FINE-MESH NETS in catching small and immature fishes within the municipal waters of [place of commission].

This complaint is supported by the following:

- a) Joint affidavit of the arresting officers
 - a-1) _____;
 - a-2) _____;
- b) _____ unit/s of paddle boat;
- c) _____ of mesh nets estimated at _____ length each;
- d) BFAR certification;
- e) Receipt of distributed confiscated fish;
- f) Letter of request to Director _____ for availability of Fish Examiners.

CONTRARY TO LAW.

Complainant PNP-[branch], _____, 20____.

Complainant PNP-[branch], _____, 20____.

SUBSCRIBED AND SWORN TO BEFORE me this ____ day of _____, 20____, at _____, Philippines, by _____ and _____. I hereby certify that I have personally examined the herein affiants and I am convinced and satisfied that they freely and voluntarily executed the foregoing complaint and that they understood the contents thereof, the same being within their personal knowledge.

3. Joint Affidavit of Witnesses

REPUBLIC OF THE PHILIPPINES)
PROVINCE OF _____)
MUNICIPALITY OF _____)S.s.

JOINT AFFIDAVIT

We, [name of apprehending officer], and [name of apprehending officer], of the [name of apprehending team], after being duly sworn in accordance with law, hereby depose and say:

1. That we are presently assigned with the [name of apprehending team] whose office is located at [address];

2. That as such, we are tasked, among others to guard and keep watch over the fishery and aquatic resources within our area of jurisdiction, as well as, to apprehend violators of the pertinent provisions of fishery laws;

3. That around [time] H on or about [date], 20__, while we were on a seaborne patrol in the vicinity of the seawater of [place of commission], about _____ meters from the shore, we spotted several fishermen in a fishing boat, some ten (10) meters away from where we were, who had in their possession and control bottles containing a substance which appeared to be cyanide, a poisonous substance;

4. That we immediately rushed to their position and saw dead fish floating around their boat;

5. That their position is plotted in a map attached as Annex "A" and made an integral part of this affidavit;

6. That we also saw 10 "banyeras" of fish, more or less, inside the fishing boat of herein accused;

7. That we identified ourselves as members of the [name of apprehending team] and effected arrest on the fishermen;

8. That we recovered and seized from the fishermen the 10 banyeras of fish and the following articles which they intended to use in fishing as well as bottles which contain traces of used up cyanide, as follows:

- a) _____
- b) _____
- c) _____

9. That we informed the arrested fishermen of their constitutional rights and in the investigation that followed, they gave their names and addresses, to wit:

Name _____	Name _____
Age _____	Age _____
Status _____	Status _____
Address _____	Address _____

10. That we execute this affidavit in order to support the complaint against the above-named persons for violation of Section 88 of RA 8550.

IN WITNESS WHEREOF, we have hereunto affixed our signatures this ____ day of _____, 20__ in _____, Philippines.

Affiant
CTC No. _____
Issued at _____
Issued on _____

Affiant
CTC No. _____
Issued at _____
Issued on _____

SUBSCRIBED AND SWORN TO BEFORE me this ____ day of _____, 20__, at [city or municipality, province], Philippines by [name of apprehending officer] and [name of apprehending officer] and I hereby certify that I have personally examined the herein affiants and I am convinced that they freely and voluntarily executed the foregoing affidavit.

[See Annex 1: Preservation of Evidence for more tips on preparing affidavits.]

4. Application for a Search Warrant

Republic of the Philippines
REGIONAL TRIAL COURT
7th Judicial Region
Branch _____
Cebu City

PEOPLE OF THE PHILIPPINES
Plaintiff,

SEARCH WARRANT NO. _____
FOR: POSSESSION OF CORALS

– versus –

[NAME OF ACCUSED] ,
of [address of the accused]
Accused

X -----/

APPLICATION FOR A SEARCH WARRANT

COMES NOW, the undersigned applicant and unto this Honorable Court respectfully alleges THAT:

1. He is presently the _____ [position] _____ of _____ Police Office, _____ [address] _____;
2. The applicant has been duly informed and verily believes that subject person at above premises are in possession and control of properties subject of the offense, or used or intended to be used as the means of committing an offense and stolen or embezzled and other proceeds or fruits of the offense;
3. That the undersigned has verified the report and found it to be true and in fact has the reasons/knowledge to believe that a search warrant should be issued to enable the undersigned to take possession and bring to the court the following [describe the properties]:

: Corals

THEREFORE, the undersigned prays to this Honorable Court to issue a search warrant commanding any Peace Officer to search the premises described in this application, and to seize and bring to this Honorable Court the personal property/properties above-described to be dealt with as the law directs.

Cebu City, Philippines.

_____ [name of officer] _____
-Applicant-

SUBSCRIBED AND SWORN to before me this _____ th day of August 2____, at Cebu City, Philippines.

[name of judge]
PRESIDING JUDGE
RTC BR. _____
CEBU CITY

5. Affidavit of Arrest

REPUBLIC OF THE PHILIPPINES)
PROVINCE OF DAVAO DEL SUR)S.s.
X-----/

JOINT AFFIDAVIT

We, _____, _____ and _____, of legal age, Filipinos, members of the [name of apprehending team] with addresses c/o, [address], after having been sworn in accordance with law, hereby depose and say:

1. That we are presently assigned with [name of apprehending team] whose office is located at [address];
2. That as such, we are tasked, among others, to guard and keep watch over the fishery and aquatic resources within our area of jurisdiction as well as to apprehend violators of the pertinent provisions of fishery laws;
3. That at about [time] H on [date], 20__, while we were on a seaborne patrol in the vicinity of [place of commission] waters, we spotted a fisherman who had in his possession and control improvised dynamites;
4. That we immediately rushed to his position and identified ourselves as members of the [apprehending team] and effected arrest on the lone fisherman;
5. That we were not able to recover and seize from the fisherman the bottles of improvised dynamite (kulafu) as the fisherman had thrown them into the sea;
6. That we arrested the fisherman and informed him of his constitutional rights and in the investigation he gave his name and other information as follows;

Name: [name of accused]

Age: _____

Status: _____

Address: [place of residence]

That we execute this affidavit in order to support the complaint against the above-named person for violation of Section 88 of RA 8550.

IN WITNESS WHEREOF, we have hereunto affixed our signatures this ____ day of _____, 20__ in _____, Philippines.

Affiant

Affiant

Affiant

SUBSCRIBED AND SWORN TO BEFORE me this ____ day of _____, 20__, at [city or municipality, province], Philippines by _____, _____ and _____ and I hereby certify that I have personally examined the herein affiants and I am convinced that they freely and voluntarily executed the foregoing affidavit.

[Always remember that in making the affidavit, the affiant must not make any conclusions of law. Write or cause to be written only the things or acts that were personally observed. Statements such as "We saw Pedro engaged in illegal fishing" or "Pedro was fishing with the use of active gear" are conclusions of law. Instead, write " We saw Pedro fishing with the use of blasting caps" or "Pedro was fishing with the use of purse seine." See Annex 1: Preservation of Evidence for more tips on preparing affidavits.]

B. Forms Used in Arrests

1. Warrant of Arrest

Republic of the Philippines
REGIONAL TRIAL COURT
7th Judicial Region
Branch _____
Cebu City

PEOPLE OF THE PHILIPPINES,
Plaintiff,
- versus -
[NAME OF ACCUSED] ,
Accused

CRM. CASE No. CBU-_____

X - - - - - /

WARRANT OF ARREST

TO: ANY OFFICER OF THE LAW:

THRU: _____

YOU ARE HEREBY COMMANDED TO ARREST [*name of person to be arrested*] who is/ are said to be found at [*address of person to be arrested*] and who has been charged before me with the offense of [*offense charged*] and deliver him to the nearest Police for bail if applicable.

YOU ARE HEREBY DIRECTED TO SERVE THIS WARRANT OF ARREST within ten (10) days from receipt hereof and within ten (10) days after expiration of period, you shall make a report to the undersigned issuing judge and in case of failure to execute the same state the reason therefore.

FOR the purpose of this warrant, an arrest may be made on any day and any time of the day or night.

THE BAIL for the release of the accused in this case is fixed at P _____ which may be furnished either in;

1. Cash bond - by the accused or any person acting in his/her behalf by depositing in cash with the nearest collecting or internal revenue or Provincial/City or Municipal Treasurer the said amount and subscribing a written undertaking showing compliance with the requirements of Section 24, Rule 114 of the 1983 Rules of Criminal Procedure or
2. Property bond - a written undertaking constituting as lien on the real property described therein, given as security for the amount of bail subscribed jointly by the accused and by one or more sureties who shall justify by affidavit taken before the JUDGE that he/she possesses the qualification and certificate of title if the land is registered shall be attached or
3. Corporate surety bond - a written undertaking of any corporation, licensed and currently authorized to act as surety showing compliance with the requirements of the afore-cited Section 2, Rule 114 of the Rules subscribed jointly by the accused and by the officer fully authorized by its board of directors.

IN ALL KINDS OF BONDS, the full name and address of the accused shall be stated, and passport-size photograph recently taken should be attached showing the FACE, LEFT and RIGHT profiles of the accused.

The BOND may be filed with this Court or with Regional Trial Court of the Province or City where the accused is held in the absence of the Regional Trial Judge or Municipal Circuit Trial Judge of said place may accept the bail bond. The judge accepting/approving the bail bond shall order the release of the accused and to forward the release paper together with the original and two copies of the bail bond to the Court.

Cebu City, Philippines, _____, 2003.

Judge

RECEIVED ORIGINAL & COPIES
FOR SERVICE BY:

2. Apprehension Report

APPREHENSION REPORT

At about _____H _____ 19____, the undersigned received information that more or less _____ person(s) aboard _____ pump boat(s) were at the sea of [place of commission], [location] who are fishing with the use of dynamite. Immediately, elements of this station led by [name of apprehending officer], PNP, and members of [name of apprehending team] namely:

[name of member],

[name of member],

[name of member], and

[name of member], immediately proceeded to the area.

Upon seeing the following persons:

[name of person apprehended],

[name of person apprehended],

[name of person apprehended], and

[name of person apprehended], actually fishing with the use of explosives, we immediately apprehended them and informed them of their constitutional rights;

They are all of legal age, Filipinos and residents of _____, _____

Thus, the following were confiscated:

- 1) _____
- 2) _____
- 3) _____

That the apprehended above-named persons were brought to the police station for booking, fingerprinting, photograph and investigation purposes.

A field test on the said fish has found out that they are killed through blast or explosion. Copy of the FIELD TEST REPORT is attached hereto.

The said apprehended persons are now detained in this station.

____th day of _____, 19____ at _____, Philippines.

Police Superintendent, PNP
Chief of Police

[The report must indicate that the apprehension was made in a regular, orderly manner.]

3. Booking Sheet and Arrest Report

_____ (Date)

BOOKING SHEET AND ARREST REPORT

NAME: _____ FILE NO. _____
(Last Name) (First Name) (Middle)

ADDRESS: _____ TIME/DATE BOOKED _____

PLACE AND DATE OF BIRTH: _____

NATIONALITY: _____ SEX: _____ MARITAL STATUS: _____

OCCUPATION: _____ EDUCATION: _____

COMPLEXION: _____ SCARS AND MARKS: _____

OTHER IDENTIFYING CHARACTERISTICS: _____

NAME AND ADDRESS OF NEAREST RELATIVE: _____

OFFENSE/VIOLATION: _____

ARRESTED BY: _____ UNIT: _____

WHERE: _____ TIME AND DATE: _____

FACTS KNOWN TO ARRESTING OFFICER: _____

SIGNATURE OF
PERSON ARRESTED: _____

ARRESTING OFFICER: _____

RIGHT-HAND FINGERPRINTS

1. THUMB	2. INDEX	3. MIDDLE	4. RING	5. LITTLE

LEFT-HAND FINGERPRINTS

1. THUMB	2. INDEX	3. MIDDLE	4. RING	5. LITTLE

TAKEN BY: _____

TIME: _____ DATE: _____

(SIGNATURE OF SUBJECT)

PLAIN FINGER IMPRESSION TAKEN SIMULTANEOUSLY

LEFT-HAND

RIGHT-HAND

--	--

(Attach picture when possible)

C. Forms Used in Searches
1. Search Warrant

Republic of the Philippines
REGIONAL TRIAL COURT
7th Judicial Region
Branch _____
Cebu City

PEOPLE OF THE PHILIPPINES,

Plaintiff/s,

– versus –

[NAME OF ACCUSED] ,

Resident of [address of accused]

Accused

X -----/

SEARCH WARRANT No. _____

FOR: POSSESSION OF CORALS

SEARCH WARRANT

TO ANY OFFICER OF THE LAW:

GREETINGS:

It appearing to the undersigned, after examination under oath, the applicant [name of applicant] and his witnesses, [names of witnesses], that there is probable cause to believe that a violation of Section 91 (Ban on Coral Exploitation and Exportation) of Republic Act 8550 has been committed and there is sufficient reason to believe that subject aforementioned person/s has/have in his/their possession, care and control:

: semi-precious corals

You are hereby commanded to make an immediate search, at any time of the day or night, of the house and immediate premises above-described, and forthwith seize and take possession of the aforementioned items and bring the said properties to the undersigned to be dealt with as the law directs.

WITNESS MY HAND this _____th day of _____[month]_____[year].

VALID UNTIL: _____

[name of judge]
PRESIDING JUDGE
RTC BR. ____
CEBU CITY

2. Boarding Certificate

Name of Vessel

Home Port/Flag State

(Date)

BOARDING CERTIFICATE

TO WHOM IT MAY CONCERN:

THIS IS TO CERTIFY that *F/B/F/V/M/V* _____ [*name of vessel*] _____
was boarded/inspected by the elements of _____ [*name of unit*] _____ at the
vicinity of _____ [*place*] _____ sometime in _____ [*date*] _____.

The inspecting team is composed of:

-----;

That the inspection was conducted in an orderly manner, without the use of force or violence upon my men, person(s) and properties;

That after the inspection, they disembarked from vessel and issued a receipt for properties seized;

That this statement is freely and voluntarily given without the use of threat or intimidation on us and that before we signed this statement, the contents were translated to us and we understood the same;

Name/Signature of Master

Name/Signature of Chief Engineer

Name of Vessel: _____

Owner/Operator: _____

Date/Time Boarded: _____

Name/Signature of Boarding Officers:

3. Inventory Report of Confiscated Articles

INVENTORY REPORT OF CONFISCATED ARTICLES

Place of confiscation: _____

Date of confiscation: _____

Received the following items believed to be explosives, noxious or poisonous substances in the possession of _____ [name of accused] at _____ [place of confiscation] for confiscation in violation of _____ [law violated: with specific section].

Quantity	Description	Estimated Value
_____	_____	_____
_____	_____	_____
_____	_____	_____

_____ day of _____, 200__ at _____, Philippines.

NOTE: The foregoing confiscated items were inventoried properly in the presence of the captain of the vessel and the boarding team.

Inventory Undertaken By:

(rank/name)

WITNESSES:

1) _____

2) _____

(signature of the leader of apprehending team)
Series of 2003

[Inventory reports must include all and only those items found on the vessel.]

4. Receipt of Confiscated Fish

RECEIPT OF CONFISCATED FISH

Place of confiscation: _____

Date of confiscation: _____

[The place must be indicated with specificity: House no. if any, barangay name, city, province, region and country; the date must indicate the day, month, year and time.]

Confiscated from _____ [owner, operator, master or person-in-charge, vendor or other possessor] unlawfully caught fish at _____ [fishing vessel and CFBL no., marketplace or other place] on _____ [date] at _____ [city/municipality/barangay] in the possession of the above-named person.

Vernacular name of fish	Scientific name	Quantity	Value
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Findings

_____ [to indicate if fish caught is positive to explosive substances or through other illegal means] _____

(fishery law enforcement officer's name and signature)

WITNESSES:

1) _____ 2) _____

(signature of the leader of apprehending team)

Distribution:

- Provincial Governor/Mayor [whenever applicable]
- Owner, Operator, Master/Person-in-Charge, Vendor, Other Possessor
- Director of Fisheries
- Regional Director concerned
- Fishery Law Enforcement Officer

[A seizure receipt must list only the particular items that were seized. The receipt must not be signed by the owner of the seized items.]

5. Receipt by Hospitals or Penal Institutions of Confiscated Fish

RECEIPT OF CONFISCATED FISH

TO WHOM IT MAY CONCERN:

This is to certify that we have received the following confiscated fish from

(name of officer)

Name of Fish	No. of Kilos	Market Value
_____	_____	_____
_____	_____	_____
_____	_____	_____

This is to certify that this office shall pay the above market value, in case the court order its reimbursement.

Issued this _____ day of _____, 20__ at _____, Philippines.

[name of hospital or penal institution]
Signature of Authorized Officer

6. Receipt of Confiscated Gear

RECEIPT OF CONFISCATED GEAR

Place of Issuance: _____

Date of issuance: _____

Confiscated from _____ [possessor] _____, for the reasons stated below, the following gears herein described:

_____ (owner/operator) _____ (name of vessel) _____ (commercial fishing gear license)

Reason(s) for Confiscation:

- _____ Use of active gear
- _____ Dynamite fishing
- _____ Possession of dynamite and other explosives
- _____ Encroachment of prohibited zone
- _____ Others (specify) _____

(law enforcement officer's name and signature)

WITNESSES:

1) _____

2) _____

ACKNOWLEDGEMENT

(signature of the leader of apprehending team)

[A seizure receipt must list only the particular items that were seized. The receipt must not be signed by the owner of the seized items.]

7. Receipt of Fish Samples Taken for Examination

----- (Date)			
RECEIPT OF FISH SAMPLES TAKEN FOR EXAMINATION			
----- (place of issuance)		----- (city/municipality/province)	
RECEIVED from _____ [<i>fishing boats/law enforcement officer/marketplace/etc.</i>] on _____ [<i>date</i>] at _____ [<i>time</i>] AM/PM with the following descriptions:			
Vernacular Name of Fish	Scientific Name	No. of Pieces	Estimated Market Value
-----	-----	-----	-----
-----	-----	-----	-----
-----	-----	-----	-----
-----	-----	-----	-----
RESULT OF EXAMINATION _____			
(These fish samples were sealed in a bottle of formalin bottle in the presence of the owner, operator, master, person-in-charge, vendor or other possessor named above).			
<i>[Note: Fish caught with the use of cyanide must not be placed in formalin.]</i>			
----- (fish examiner)			
WITNESSES:			

8. Receipt of Impounded Boat

RECEIPT OF IMPOUNDED BOAT

Place of Issuance: _____

Date of Issuance: _____

Received from _____ [possessor] _____ for impounding, for the reasons stated below, the vessel herein described:

_____ (Owner/Operator) _____ (CFVL No.) _____ (Name of vessel)

Reason(s) for Impounding:

- _____ Possession of dynamited fish
- _____ Using vessel for dynamite fishing
- _____ Possession of dynamite and other explosives
- _____ Encroachment into prohibited zone
- _____ Others (specify) _____

(law enforcement officer's name and signature)

WITNESSES:

1) _____

2) _____

ACKNOWLEDGEMENT

(signature of the leader of apprehending team)

Copy received: _____
(owner/operator of fishing boat)

9. Receipt of Items for Temporary Custody

OFFICE OF THE CITY MAYOR
Bantay Dagat _____
Province of _____

RECEIPT OF ITEMS FOR TEMPORARY CUSTODY

THIS IS TO CERTIFY that the following items were placed under the TEMPORARY CUSTODY of this office pending final disposition/adjudication of the case for violation of _____ [offense] _____.

ITEM	DESCRIPTION	QUANTITY	VALUE
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Receiving Officer/Custodian

Witnesses:

D. Forms Used in Scientific Investigations

1. Field Test Report

FIELD TEST REPORT

I, _____*[name of officer]*_____, hereby certify that I have conducted a physical examination of the fish caught/seized on _____*[date]*_____ at _____*[place]*_____ pursuant to the standards provided by the Bureau of Fisheries and Aquatic Resources; that as a result of the examination conducted there is reasonable ground to believe that the examined fish is caught/seized as a consequence of dynamite fishing or use of poisonous or noxious substance.

____th day of _____, 20__ at _____, Philippines.

FIELD TEST CONDUCTED BY:

2. Fish Sample Evidence

FISH SAMPLE EVIDENCE

Place: _____

Date: _____

Time: _____

NAME OF FISHING VESSEL/CARGO VEHICLE (IF APPLICABLE): _____

NAME OF OWNER/OPERATOR/OR IN-CHARGE OF FISH: _____

ADDRESS: _____

KIND AND QUANTITY OF FISH TAKEN AS SAMPLE:

SPECIES	QUANTITY
_____	_____
_____	_____
_____	_____

(law enforcement officer)

[This form is to be placed at the side of the formalin bottle.]

3. Scientific Examination Report

SCIENTIFIC EXAMINATION REPORT

MEMORANDUM FOR:

With reference to the fish samples taken for scientific examination during the Joint Operation led by _____ [*name of team*] of _____ on _____ at _____, please be informed of the following:

SOURCE OF FISH SAMPLE(S): _____
NAME OF OWNER/CLAIMANT: _____
DATE FISH SAMPLES TAKEN: _____
DATE AND TIME SAMPLES EXAMINED: _____
CARRIER: _____
SUBMITTED FOR EXAMINATION BY: _____ [*Apprehending Officers*] _____

NAME OF FISH SAMPLE		NO. OF PIECES	REMARKS
Local Name	Scientific Name		
1.	_____	_____	_____
2.	_____	_____	_____

CHARACTERISTICS NOTED ON FISH SAMPLES:

- A. EXTERNAL MANIFESTATIONS:
 - 1. _____
 - 2. _____

- B. INTERNAL MANIFESTATIONS:
 - 1. _____
 - 2. _____
 - 3. _____
 - 4. _____

CONCLUSION:

Examined by:

Fish Examiner

Noted by:

(Chief)

E. Others

1. Commercial Fishing Vessel/Gear License

Republic of the Philippines
Department of Agriculture
BUREAU OF FISHERIES AND AQUATIC RESOURCES
Regional Office No. 7
Arellano Blvd. Cebu City
Tel. Nos. 256-2772-76

COMMERCIAL FISHING VESSEL/GEAR LICENSE

CFVGL. No. _____

(Name of Company/Person)

(Address)

is hereby licensed to operate

Name of Vessel

Classification

Type of Gear

Vessel side number/call sign _____ with a gross tonnage of _____

This vessel is licensed to operate in support of the company fishing fleet/or fish with legally approved _____ gear for commercial fishing purposes in Philippine waters so authorized for such operation by law.

The owner, operator and Patron/Captain of the Vessel shall conduct fishing operations in accordance with the provisions of Republic Act No. 8550, otherwise known as the Philippine Fisheries Code of 1998, Fisheries Administrative Orders and the terms and conditions embodied at the back thereof.

The original of this license shall be framed and posted in a conspicuous place on board the fisheries vessel and readily available for inspection by any authorized fishery law enforcement officers.

This license is non-transferable and shall be returned to the Bureau of Fisheries and Aquatic Resources upon suspension, cancellation and revocation.

This license shall be valid for a period of three (3) years commencing from _____ until _____.

ISSUED this _____ day of _____ 200____, Cebu City, Philippines.

BFAR Official Seal

Regional Director

2. Gear Registration

Republic of the Philippines
Department of Agriculture
BUREAU OF FISHERIES AND AQUATIC RESOURCES
Regional Office No. 7
Arellano Blvd. Cebu City
Tel. Nos. 256-2772-76

GEAR REGISTRATION

(Name of Company/Person)

(Address)

is the owner of the gear in CFVL No. _____ known and described as
_____ (gear) with the following specifications:

Mouth/Opening: _____

Body/Belly: _____

Bunt/Bag: _____

The said gear is hereby registered to be used for legitimate fishing operation of F/V
"_____" in the Philippine waters.

ISSUED this _____ day of _____ 200____, Cebu City, Philippines.

Regional Director

Registration fee: _____

Under O.R. no.: _____

Dated: _____

3

Mandates in Coastal Law Enforcement

Annex

I. National Government Agencies

1. DA
2. DA-BFAR
3. DENR
4. PAMB
5. NAMRIA
6. PN
7. PCG
8. DILG
9. PNP
10. PNP-MARIG
11. MARINA
12. NCIP
13. PEA
14. DOLE
15. DSWD
16. DOJ
17. CSC

II. Local Government Units and Offices

A. The Barangay Government

1. Punong Barangay
2. Sangguniang Barangay

B. The Municipal/City Government

1. Municipal/City Mayor
2. Sangguniang Bayan/Panlungsod
3. MAO
4. CENRO
5. CLO

C. The Provincial Government

1. Governor
2. Sangguniang Panlalawigan
3. Provincial Agriculturist
4. PENRO
5. Legal Officer



MENDING NETS



III. Citizens

1. Citizen's Arrests
2. Fish Wardens
3. FARMCs

Special Topic

Responsibilities and Rights of LGUs over Municipal Waters

Tables

- 1 Mandates and right of LGUs in coastal environment protection (RA 7160)
- 2 Responsibilities and rights of LGUs over municipal waters (RA 8550)

Figures

Area-based mandates for implementation of coastal laws
Mandates for coastal areas in general
Mandates for protected seascapes
Mandates for ancestral waters

Annex 3

Mandates in Coastal Law Implementation

The legal mandates of the following government bodies define the respective roles of the different agencies and offices tasked with the implementation of coastal laws, and clarify their particular jurisdictions. The participation of people in coastal law enforcement is also discussed in the last section to stress the indispensable role of private citizens in resource management and protection.

NATIONAL GOVERNMENT AGENCIES

National government agencies, offices and bodies represent the central government in its executive function of implementing and enforcing coastal laws.

Department of Agriculture (DA)

- | | |
|---------------------------|---|
| General mandate | Promote agricultural development |
| Coastal-related functions | <ul style="list-style-type: none">◆ Formulate and enforce all laws, rules and regulations governing the conservation and proper utilization of agricultural and fishery resources (<i>EO No. 292, Title IV</i>)◆ Manage all declared aquatic critical habitats and all aquatic resources |

(This is subject to the exceptions provided under Section 4 of RA 9147, which grants jurisdiction to DENR over all turtles and tortoises and wetland species, including but not limited to crocodiles, waterbirds and all amphibians and dugong.)

DA-Bureau of Fisheries and Aquatic Resources (DA-BFAR)

(BFAR was reconstituted as a line bureau by RA 8550.)

- | | |
|---------------------------|--|
| Main line agency | DA |
| Coastal-related functions | <ul style="list-style-type: none">◆ Enforce all laws governing the conservation and management of fishery resources, except in municipal waters (<i>RA 8550, sec. 65</i>)◆ Formulate and enforce all rules and regulations governing the conservation and management of fishery resources, except in municipal waters (<i>RA 8550, sec. 65</i>) |

- ◆ Settle conflicts respecting resource use and allocation (*RA 8550, sec. 65*)
- ◆ Issue licenses for the operation of commercial fishing vessels (*RA 8550, sec. 65*)

Department of Environment and Natural Resources (DENR)

General mandate Manage and protect the country's natural resources (*EO 292 and EO 192, sec. 4*)

- Coastal-related functions
- ◆ Formulate, implement and supervise the implementation of policies, plans and programs related to the management, conservation, development, use and replenishment of the country's natural resources, which include waters, fisheries, wildlife and offshore areas (*EO 292, Title XIV*)
 - ◆ Implement the Environmental Impact Statement System (*PD 1586*)
 - ◆ Implement and assume overall administration and management of the National Integrated Protected Areas System (*RA 7586*)
 - ◆ Manage mangroves in coordination with DA (*DAO 15 s. 1990*)
 - ◆ Protect all turtles and tortoises and wetland species, including but not limited to crocodiles, waterbirds and all amphibians and dugong (*RA 9147, sec. 4*)
 - ◆ Identify and classify lands for fishpond purposes (*FAO 197 s. 2000, sec. 2*)

Protected Area Management Board (PAMB)

Main line agency ◆ DENR

- Coastal-related functions
- ◆ Directly administer and manage specific protected areas established under RA 7586 (*RA 7586, sec. 11*)

National Mapping and Resource Information Authority (NAMRIA)

(NAMRIA serves as the central mapping and resource information agency of the Philippines.)

Main line agency DENR

- Coastal-related functions
- ◆ Provide geographic and resource information through surveying, land

classification, remote sensing, mapping, and information management and dissemination services to both government and private sectors

- ◆ Determine the outer limits of municipal waters, in coordination with BFAR and the local government units concerned (*DA AO No. 3 s. 1998, Rule 123.2 and RA 8550, sec. 123*)
- ◆ Designate and chart navigational lanes in fishery areas through an interagency committee with Philippine Navy, Philippine Coast Guard, Maritime Industry Authority, other concerned agencies, and the National Fisheries and Aquatic Resources Management Council (*DA AO No. 3 s. 1998, Rule 123.1, and RA 8550, sec. 123*)

Philippine Navy (PN)

General mandate Naval defense of the Philippines

- Coastal-related functions
- ◆ Enforce laws and regulations related to navigation, safety of life at sea, immigration, customs, revenues, quarantine, fishing and the neutrality of the territorial contiguous waters of the Philippines, as well as other functions provided by law or assigned by higher authorities (*EO 292, Title VIII, sec. 52 & 53*)
 - ◆ Enforce RA 8550, as well as other fishery laws, rules and regulations (*RA 8550, sec. 124*)

Philippine Coast Guard (PCG)

General mandate Enforce, or assist in enforcing, all applicable laws upon the high seas and territorial waters of the Philippines (*PD 601, sec. 2*)

- Coastal-related functions
- ◆ Prevent and suppress illegal entry, illegal fishing, illegal gathering of corals and other marine products, smuggling, other customs frauds and violations of other maritime and fishery laws that may be committed within the waters of the Philippines (*PD 601, sec. 5*)

- ◆ Enforce laws for the prevention of marine pollution within the territorial waters of the Philippines (*PD 601, sec. 5*; also see *PD 600 & PD 979*)
- ◆ 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 (*PD 601, sec. 5*; also see *PD 600 & PD 979*)
- ◆ Assist (within its capabilities and upon request of the appropriate authorities) other government agencies in the performance of their functions, within the waters subject to the jurisdiction of the Philippines, relating to matters and activities not specifically mentioned in *PD 601 (PD 601, sec. 5)*
- ◆ Act as law enforcement agents of DA-BFAR, among others (*PD 601, sec. 5*)
- ◆ Enforce RA 8550, as well as other fishery laws, rules and regulations (*RA 8550, sec. 124*)

Department of Interior and Local Government (DILG)

General mandate Assist the President in exercising general supervision over local governments and in ensuring autonomy, decentralization and community empowerment (*RA 6975, Department of Interior and Local Government Act of 1990*)

Coastal-related functions

- ◆ Implement the state policy of promoting peace and order (*RA 6975*)
- ◆ Ensure public safety through the establishment of an efficient and competent police force that is national in scope and *civilian* in character (*RA 6975*)

Philippine National Police (PNP)

(The PNP consists of the members of the police forces, merged from the Integrated National Police pursuant to Presidential Decree No. 765, and the officers and enlisted personnel of the Philippine Constabulary.)

Main line agency DILG through the National Police Commission (NAPOLCOM) (*RA 6975*)

- Coastal-related functions**
- ◆ Enforce all laws and ordinances involving the protection of lives and properties, as well as the maintenance of peace and order (*RA 6975, sec. 24*)
 - ◆ Enforce RA 8550, as well as other fishery laws, rules and regulations along with the PNP-Marine Command (*RA 8550, sec. 124*)

Maritime Police Unit (PNP Maritime Group or PNP-MARIG)

(The PNP-MARIG was established as an operational support unit of PNP by RA 6975.)

- Main line agency** DILG
- Coastal-related functions** Perform all police functions over Philippine territorial waters and rivers (*RA 6975, sec. 35, par. b[1]*)

Maritime Industry Authority (MARINA)

- Main line agency** DOTC (*PD 474, EO 546 s. 1979, EO 1011 s. 1985, EO 125 & 125-A s. 1987*)
- Coastal-related functions**
- ◆ Oversee the promotion and development of the maritime industry
 - ◆ Oversee the effective regulation of shipping enterprises, and the establishment of routes, zones or areas of operation of public water services
 - ◆ Take charge of vessel registration, including issuance of licenses, certificates and related documents
 - ◆ Ensure safety in vessel construction and operations
 - ◆ License qualified seamen and harbor, bay and river pilots
 - ◆ Enforce maritime law

National Commission on Indigenous Peoples (NCIP)

- General mandate** Formulate and implement policies, plans and programs to protect the rights and well-being of indigenous cultural communities/ indigenous peoples (*RA 8371*)
- Coastal-related functions** Recognize and protect the rights of indigenous peoples to their ancestral domains, which include ancestral waters (*RA 8371*)

Public Estates Authority (PEA)

General mandate Undertake the reclamation of lands and, as a government corporation, ensure their maximum utilization in promoting public welfare and interests (*PD 1084*)

- Coastal-related functions**
- ♦ Integrate, direct and coordinate *all* reclamation projects for, and on behalf of, the National Government (*EO 525*)
 - ♦ Recommend reclamation projects for approval of the President; such projects may be undertaken by PEA itself or by executing a proper contract with any person or entity (*EO 525, sec. 1*)
 - ♦ Be consulted on the reclamation projects of any national government agency or entity authorized under its charter (*EO 525, sec. 1*)

Department of Labor and Employment (DOLE)

General mandate Serve as the primary policymaking, programming, coordinating and administrative entity of the Executive Branch of the government in the field of labor and employment

- Coastal-related functions**
- ♦ Enforce social and labor legislation to protect the working class and regulate relations between employers and employees (*EO 292, Title VII, sec. 2 & 3*)
 - ♦ Protect the rights of fishworkers, who are covered by the provisions of the Labor Code (*RA 8550, sec. 25*)

Department of Social Welfare and Development (DSWD)

General mandate Care for, protect and rehabilitate individuals, families and communities in need of social welfare assistance and social work intervention (*EO 292, Title XIV, sec. 1 & 2*)

- Coastal-related functions**
- ♦ Implement RA 7610, otherwise known as the "Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act"

(Violations of fisheries laws, such as muro-ami fishing, may involve minors and therefore violate Section 10 of RA 7610.)

- ♦ Take protective custody of minors who are victims of abuse and discrimination (RA 7610, sec. 28)

Department of Justice (DOJ)

(The DOJ is the primary law agency of the national government.)

- General mandate** Act as both legal counsel and prosecution arm of the national government (EO 292, Title III, sec. 1 & 3)
- Coastal-related functions** Strengthen the prosecution and conviction aspects of fishery law enforcement through:
1. Augmentation of the current complement of state prosecutors
 2. Continuous training and reorientation on fishery laws, rules and regulations
- (RA 8550, sec. 125)

Civil Service Commission (CSC)

- General mandate** Serve as the central personnel agency of the government (1987 Philippine Constitution, Article IX)
- Coastal-related functions**
- ♦ Hear and decide administrative cases instituted by or brought before it directly or on appeal, including contested appointments (EO 92, sec. 6)
 - ♦ Hold disciplinary jurisdiction over public officials and employees (EO 292, Book V, Chapter 6, subtitle A, sec. 47)

LOCAL GOVERNMENT UNITS AND OFFICES

In keeping with the constitutional directive of establishing a more responsive and accountable government structure, local governments have a significant mandate to manage and protect local coastal resources. This system of decentralization is instituted by the Local Government Code and the Philippine Fisheries Code.

The Barangay Government

The barangay is considered the most basic political unit. As such, it serves as the primary planning and implementing unit of government policies, plans, programs, projects and activities in the community. It is also a forum where the collective views of the people may be expressed, determined and considered, and where disputes may be amicably settled (RA 7160, sec. 384).

The barangay is particularly important as it is the government unit most rooted in the community and is thus at the forefront of protecting the coastal and marine environment.

Punong Barangay (Barangay Head)

- Position** Chief executive of the barangay government
- Coastal-related functions**
- ♦ Enforce all laws and ordinances applicable to the barangay, including laws and regulations relating to pollution control and environmental protection (*RA 7160, sec. 389, par. b[1]*)
 - ♦ Arrest violators for purposes of enforcing and implementing national and local laws, ordinances, and rules and regulations on pollution control and other activities that create an ecological imbalance or disturbance in environmental conditions (*PD 1160*)

Sangguniang Barangay (Barangay Council)

- Position** Legislative body of the barangay
- Coastal-related functions**
- ♦ Enact ordinances that promote the general welfare of its inhabitants (*RA 7160, sec. 391, par. 1*)
 - ♦ Assist the Punong Barangay in the performance of his functions (*RA 7160, sec. 392, par. a & b*)
 - ♦ Act as peace officers in the maintenance of public order and safety (*RA 7160, sec. 392, par. a & b*)
 - ♦ Arrest violators for purposes of enforcing and implementing national and local laws, ordinances, and rules and regulations on pollution control and other activities that create an ecological imbalance or disturbance in environmental conditions (*PD 1160*)

The Municipal/City Government

The municipality or city consists of a group of barangays. It principally serves as a general-purpose government that coordinates and delivers basic, regular and direct services to inhabitants within its territorial jurisdiction through effective governance (*RA 7160, sec. 440 & 448*). Such basic services include extension and on-site research services, and facilities related to agriculture and fishery activities (*RA 7160, sec. 17, par. b[2][i]*).

The role of the municipality/city in the management and protection of the coastal and marine environment is especially indispensable because of its primary jurisdiction over municipal waters. (See Rights and Responsibilities of LGUs over Municipal Waters.)

Municipal/City Mayor

Position Chief executive of the municipal/city government

- Coastal-related functions**
- ◆ Enforce all laws and ordinances related to the governance of the municipality/city (*RA 7160, sec. 444 [b][2] & sec. 455 [b][2]*)
 - ◆ Adopt measures to safeguard and conserve land, mineral, marine, forest and other resources of the municipality/city (*RA 7160, sec. 444, par. 3[vii] & sec. 455, par. b[3][vii]*)
 - ◆ Represent NAPOLCOM, and exercise operational supervision and control over PNP units in their respective jurisdictions, subject to certain exceptions (*RA 6975*)
 - ◆ As chair of the local peace and order council, develop and establish integrated area/community public safety plans for implementation by PNP stations (*RA 6975*)
 - ◆ Choose the chief of police from a list of 5 eligibles recommended by the provincial police director, preferably from the same province, city or municipality (*RA 6975*)
 - ◆ Administer oaths (*CA 270, as amended by CA 641*)

Sangguniang Bayan/Panlungsod (Municipal/City Council)

Position Legislative body of the municipality/city

- Coastal-related functions**
- ◆ Enact ordinances, approve resolutions and appropriate funds for the general welfare of the municipality/city and its inhabitants (*RA 7160, sec. 447, par. a & sec. 448, par. a*)
 - ◆ Enact ordinances that protect the environment, and impose appropriate penalties for acts that endanger the

environment (RA 7160, sec. 447, par. a[1][vi] & sec. 458, par. a[1][vi])

- ◆ Provide for the establishment, maintenance, protection and conservation of mangroves (RA 7160, sec. 447, par. a[5][i] & sec. 458, par. a[5][i])
- ◆ Authorize the establishment, maintenance and operation of ferries, wharves and other structures, and marine and seashore or offshore activities intended to accelerate productivity (RA 7160, sec. 447, par. a & sec. 458, par. a)
- ◆ Grant the exclusive privilege of constructing fish corrals or fishpens, or the taking of *bangus* fry, prawn fry or *kawag-kawag*, or fry of any species of fish within municipal waters (RA 7160, sec. 447, par. a[2][xi] & sec. 458, par. a[2][xi])

City/Municipal Agriculturist (MAO)

Position Administrative staff under the Mayor, optional for city/municipality

Coastal-related functions Provide support to the Mayor to ensure delivery of basic services and facilities involving agricultural services (RA 7160, sec. 482, par. b[1])

City Environment and Natural Resources Officer (CENRO)

Position Administrative staff under the Mayor, optional for city/municipality (RA 7160, sec. 484, par. a)

Coastal-related functions

- ◆ Provide support to the Mayor to ensure delivery of basic services and facilities involving environment and natural resources services (RA 7160, sec. 484, par. b[1])
- ◆ Maintain, protect and preserve mangroves (RA 7160, sec. 484, par. b[2][i])

City Legal Officer (CLO)

- Position** Chief legal counsel of municipality/city, mandatory for city but optional for municipality (*RA 7160, sec. 481, par. a*)
- Coastal-related functions**
- ◆ Represent the municipality/city in all civil actions and special proceedings
 - ◆ Draft ordinances, contracts and other legal documents (*RA 7160, sec. 481, par. c*)
 - ◆ Render opinions on any question of law, whenever required by the Mayor or the Sanggunian (*RA 7160, sec. 481, par. c*)
 - ◆ Review and submit recommendations on ordinances approved and executive orders issued by component units (*RA 7160, sec. 481, par. c*)

The Provincial Government

The province is composed of a cluster of municipalities, or of municipalities and component cities. It serves as a mechanism for developmental processes and effective governance for LGUs within its territorial jurisdiction (*RA 7160, sec. 459*). The provincial government is also empowered, and tasked, to provide basic services and facilities such as assistance in the organization of farmers' and fishers' cooperatives. It is also responsible for funding infrastructure facilities (e.g. reclamation projects) intended to service the needs of the residents of the province (*RA 7160, sec. 17, par. b[3][i] & [vii]*).

Governor

- Position** Chief executive of the provincial government
- Coastal-related functions**
- ◆ Enforce all laws and ordinances related to the governance of the province (*RA 7160, sec. 465, par. b[2]*)
 - ◆ Ensure that the acts of the component cities and municipalities of the province and of its officials and employees are within the scope of their prescribed powers, duties and functions (*RA 7160, sec. 465, par. b[2][1]*)
 - ◆ Adopt adequate measures to safeguard and conserve land, mineral, marine, forest and other resources of the province, in coordination with the Mayors of the component cities and municipalities (*RA 7160, sec. 465, par. b[3][v]*)

- ◆ Represent the NAPOLCOM (*RA 6975*)
- ◆ Choose the Provincial Director of the provincial police force from a list of 3 candidates recommended by the PNP Regional Director (*RA 6975*)
- ◆ As chair of the provincial peace and order council, oversee the implementation of the provincial public safety plan, which considers the integrated community safety plans prepared at the municipal/ city level (*RA 6975*)

Sangguniang Panlalawigan (Provincial Council)

- Position** Legislative body of the province
- Coastal-related functions**
- ◆ Enact ordinances, approve resolutions and appropriate funds for the general welfare of the province and its inhabitants (*RA 7160, sec. 468 [a]*)
 - ◆ Enact ordinances that protect the environment, and impose appropriate penalties for acts that endanger the environment (*RA 7160, sec. 468 [a][1][v]*)
 - ◆ Enact ordinances against pollution and for the preservation of the natural ecosystem in the province, in consonance with approved standards on human settlements and environmental sanitation (*RA 7160, sec. 468 [a][4][i]*)

Provincial Agriculturist

- Position** Administrative staff under the Governor, mandatory for province
- Coastal-related functions** Provide support to the Governor to ensure delivery of basic services and facilities involving agricultural services (*RA 7160, sec. 482 [b][1]*)

Provincial Environment and Natural Resources Officer (PENRO)

- Position** Administrative staff under the Governor, optional for province (*RA 7160, sec. 484, par. a*)
- Coastal-related functions**
- ◆ Provide support to the Governor to ensure delivery of basic services and facilities involving environment and

natural resources services (*RA 7160, sec. 484, par. b[2]*)

- ◆ Maintain, protect and preserve mangroves (*RA 7160, sec. 484, par. b[2][i]*)

Legal Officer

Position	Chief legal counsel of province, mandatory for province (<i>RA 7160, sec. 481, par. a</i>)
Coastal-related functions	<ul style="list-style-type: none"> ◆ Represent the province in all civil actions and special proceedings (<i>RA 7160, sec. 481, par. c</i>) ◆ Draft ordinances, contracts and other legal documents (<i>RA 7160, sec. 481, par. c</i>) ◆ Render opinions on any question of law, whenever required by the Governor, Mayor or the Sanggunian (<i>RA 7160, sec. 481, par. c</i>) ◆ Review and submit recommendations on ordinances approved and executive orders issued by component units (<i>RA 7160, sec. 481, par. c</i>)

Table 1. Mandates and rights of LGUs in coastal environment protection (RA 7160)

Mandates/Rights	Legal Bases
Share responsibility with the National Government in managing and maintaining ecological balance within their territorial jurisdictions	Section 3 [i]
Exercise powers granted (or necessarily implied) that are necessary, appropriate or incidental for efficient and effective governance, and for the promotion of the general welfare	Section 16
Enhance the right of the people to a balanced ecology	Section 16
Maintain peace and order and preserve the comfort and convenience of the inhabitants	Section 16
Discharge such other functions and responsibilities necessary, appropriate or incidental to efficient and effective provision of basic services and facilities	Section 17
Have an equitable share in the proceeds from the utilization and development of national wealth and resources within their territorial jurisdictions, and share the proceeds with inhabitants through direct benefits	Section 18

Table 1 (cont'd.)

Mandates/Rights	Legal Bases
<p>Be consulted in the planning and implementation of any government project or program that may cause pollution, climactic change, depletion of non-renewable resources, loss of cropland, rangeland, or forest cover, and extinction of animal or plant species. The goals and objectives of the project or program must be explained to LGUs, as well as its impact on the people and the community in terms of environmental or ecological balance, and the measures that will be undertaken to prevent or minimize its adverse effects.</p> <p>(No project or program shall be implemented by government authorities unless these consultations are complied with, and prior approval of the Sanggunian concerned is obtained [RA 7160, sec. 27])</p>	<p>Sections 2 [C] and 26,</p>

responsibilities and rights of LGUs over municipal waters

Jurisdiction over municipal waters is vested primarily with the municipal/city government. In consultation with the FARMC, the municipal/city government is responsible for the management, conservation, development, protection, utilization and disposition of all fish and fishery aquatic resources within municipal waters.

The DA Secretary may establish catch ceilings and closed seasons within municipal waters only upon the concurrence and approval or recommendation of the concerned LGU, in consultation with the FARMC (RA 8550, sec. 8 & 9).

In upholding the preferential right of municipal fishers, no new concessions, licenses, permits, leases and similar privileges for the establishment and operation of fish pens, fish cages, fish corrals/traps may be granted except to municipal fisherfolk and their organizations (RA 8550, sec. 53). All fish hatcheries, fish breeding facilities and private fishponds must be registered with the LGU (RA 8550, sec. 57).

While management responsibilities for municipal waters lie mostly with municipal government, barangays still perform essential functions in the protection of coastal resources under RA 7160 (see The Barangay Government). The provincial government is also involved in the management of municipal waters primarily through its review and approval of municipal ordinances.

Table 2. Responsibilities and rights of LGUs over municipal waters (RA 8550)

Mandates/Rights	Legal Bases
<p>Enact appropriate ordinances for the management of municipal waters in accordance with the National Fisheries Policy</p> <p>(Municipal ordinances are subject to review of the Sanggunian of the province)</p>	Section 16
<p>Enact a basic Municipal Fisheries Ordinance (MFO) delineating the boundaries of municipal waters, providing rules and regulations on licensing, issuance of permits and other fisheries activities</p>	Rule 16.1, DAAO No. 3 s. 1998 (IRR of RA 8550)
<p>Establish closed seasons for conservation and ecological purposes (only within municipal waters)</p>	Section 9
<p>Declare an area overfished and prohibit or limit fishery activities (only within municipal waters)</p>	Section 23
<p>Recommend to DA that a portion of the municipal waters be declared as fishery reserves for special or limited use, educational, research and/or special management purposes</p>	Section 80
<p>Establish fish refuges and sanctuaries</p>	Section 81
<p>Accord preference to duly registered fisherfolk organizations/cooperatives in the grant of fishery rights</p>	Section 17
<p>Maintain a registry of municipal fishing vessels by type of gear and of municipal fisherfolk who fish or may desire to fish in municipal waters, for the purposes of determining priorities among them, of limiting entry into municipal waters, and of monitoring fishery activities</p>	Section 19
<p>Grant demarcated fishery rights to fishery organizations/cooperatives for mariculture operation in specific areas identified by the DA</p>	Section 22
<p>Establish zones within municipal waters where fish pens, fish cages, fish traps and other structures for the culture of fish may be constructed and operated, and issue licenses for these</p>	Section 51
<p>Issue auxiliary invoices for fish and fishery products being transported from the municipality</p>	Section 15
<p>Grant pearl farm leases</p>	Section 52
<p>Establish post-harvest facilities for fishing communities</p>	Section 59

CITIZENS

Any effective effort to manage, conserve and protect coastal and marine resources will necessarily involve those communities who live nearest to, and are most dependent on these resources for their livelihood. The participation of citizens in the protection of the coastal and marine environment cannot be underestimated.

Citizen's Arrests

Private citizens are authorized to arrest violators of fishery laws, rules and regulations under the following circumstances:

- ♦ When the person to be arrested has committed, is actually committing or is attempting to commit an offense in the presence of the private citizen
- ♦ When an offense has in fact just been committed, and the citizen has personal knowledge of facts indicating that the person to be arrested has committed it
- ♦ When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another

(Revised Rules of Court, Rule 113, sec. 5)

(See Warrantless Arrests in Chapter 3: ASSD)

Fish Wardens (Bantay Dagat)

Members of fisherfolk organizations who have undergone training on law enforcement may be designated in writing by the DA as deputy fish wardens (*RA 8550, sec. 124*). Under the LGC, the municipal/city Mayor also has the power to deputize private citizens as municipal/city fish wardens or volunteer community paralegals (see above for coastal-related functions of Mayors). Likewise, the Sangguniang Bayan/Panlungsod is authorized to create or consolidate offices, such as a coastal law enforcement group, in the interest of efficiency and economy (*RA 7160, sec. 443, par. c[2 & 3] & sec. 454, par. c[2 & 3]*).

People's and non-government organizations (POs & NGOs) are encouraged to enter into active partnerships, joint ventures and other cooperative arrangements with local governments in the pursuit of local autonomy (*RA 7160, sec. 34*) and for the delivery of basic services, such as environmental protection and coastal law enforcement (*RA 7160, sec. 35*).

Fisheries and Aquatic Resources Management Councils (FARMCs)

One of the most significant avenues for people's participation in the protection and management of coastal resources are the FARMCs, which have the power to influence policy-making from the barangay to the national

level. FARMCs were originally created under EO 240 in 1995, and further strengthened and institutionalized under RA 8550.

The National FARMC (NFARMC) serves as an advisory/recommendatory body to the DA (*RA 8550, sec. 70*). Of its 15 members, 13 come from the private sector, broken down as follows:

- ◆ 5 fisherfolk and fishworkers
- ◆ 5 from the commercial fishing, and aquaculture operation & processing sectors
- ◆ 2 from the academe
- ◆ 1 from NGOs involved in fisheries

The Municipal/City FARMCs (M/CFARMCs), on the other hand, have at least 13 representatives, or approximately 75% membership, from the private sector, broken down as follows:

- ◆ 1 from an accredited NGO
- ◆ 1 from the private sector
- ◆ 7 municipal fisherfolk
- ◆ 1 fishworker
- ◆ 3 commercial fishers

(*RA 8550, sec. 73 & 75*)

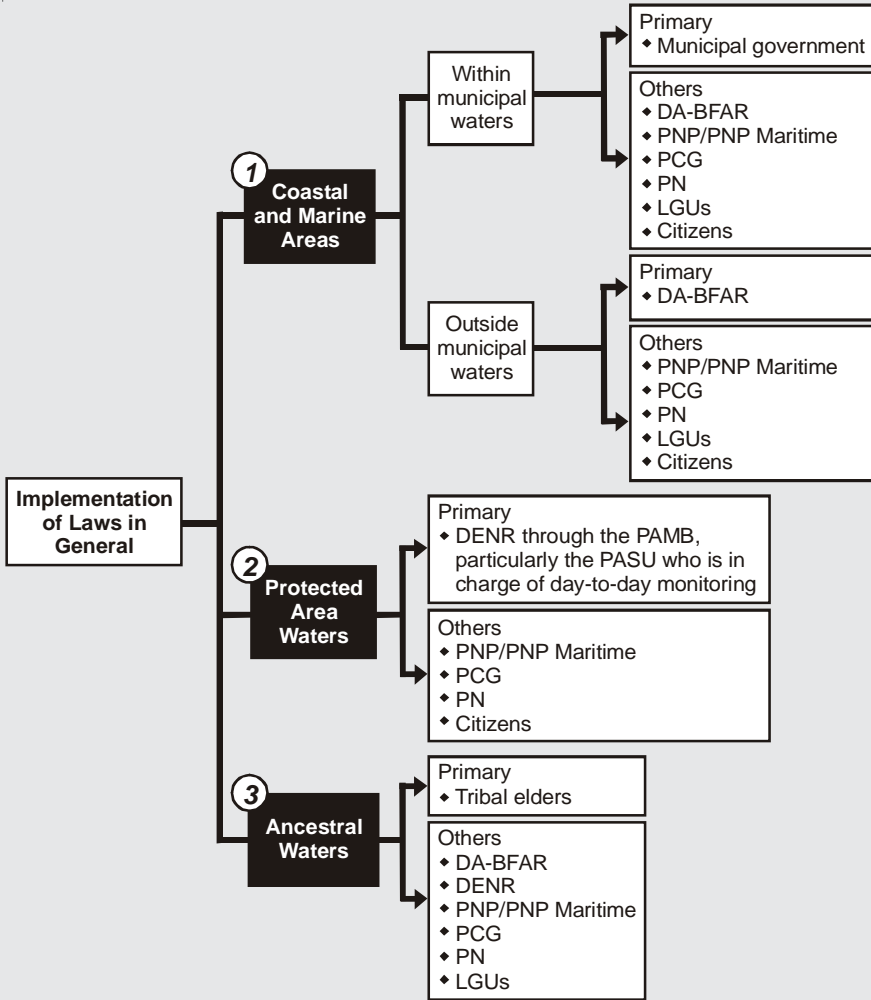
The principal functions of M/CFARMCs include making recommendations on the enactment of fishery ordinances (*RA 8550, sec. 77*) and assisting in the enforcement of fishery laws, rules and regulations in municipal waters (*RA 8550, sec. 74*).

Furthermore, RA 8550 mandates that the DA and/or the municipal government consult the FARMC when:

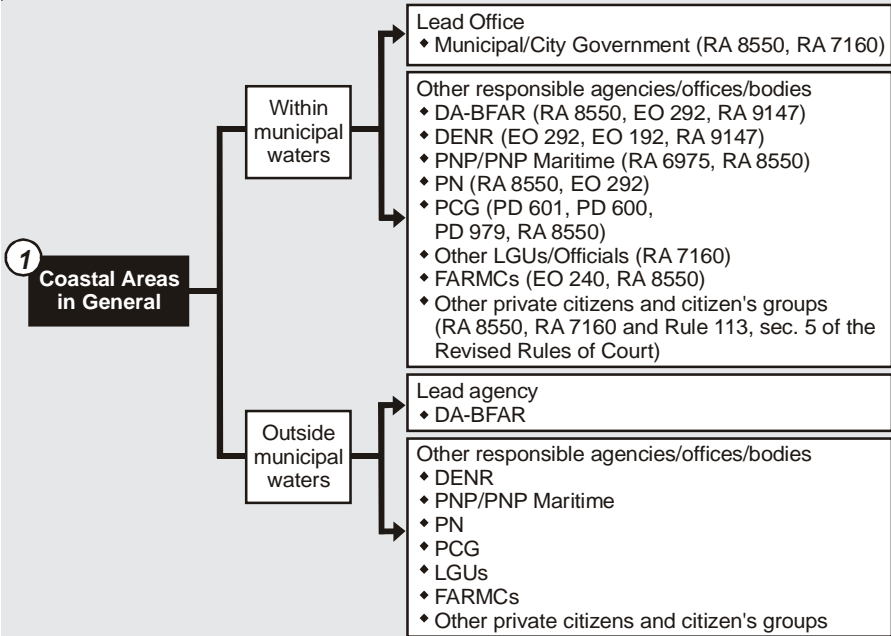
- ◆ establishing closed seasons, fishery refuges and sanctuaries (*RA 8550, sec. 9 & 81*)
- ◆ declaring a portion of the municipal waters as fishery reserves (*RA 8550, sec. 80*)
- ◆ establishing catch ceilings and closed seasons within municipal waters (*RA 8550, sec. 8 & 9*)
- ◆ designating zones within municipal waters where fish pens, fish cages, fish traps and other structures for the culture of fish may be constructed and operated (*RA 8550, sec. 51*).

Barangay FARMCs may also be created by LGUs under Section 73 of RA 8550.

Area-based mandates for implementation of coastal laws



Mandates for coastal areas in general



Mandates for protected seascapes

2 Protected Seascapes

Lead Agency
 ♦ DENR (RA 7586, DAO 25 s. 1992)

Protected Areas Wildlife Division
 ♦ Administration of the National Integrated Protected Areas System

Protected Area Management Board (PAMB)
 ♦ Site-based management body composed of:
 ▶ DENR Regional Executive Director (RED) as chairman
 ▶ Provincial Development Officer (PDO) from each province with territory within the protected area
 ▶ One representative from each Municipal Government with territory within the protected area
 ▶ One representative from each Barangay with territory within the protected area
 ▶ One representative from each tribal community residing within the protected area, if applicable
 ▶ At least three (3) representatives from local NGOs and community organizations, including people's organizations, church or other organizations based in or near the protected area
 ▶ One representative, if necessary, from other national government agencies that may be involved in protected area management
 ▶ One representative of the Autonomous Regional Government, where applicable
 ▶ DA-BFAR

Park Area Superintendent (PASU)
 ♦ Chief Operating DENR officer at the site

Other responsible agencies/offices/bodies
 ♦ PNP/PNP Maritime
 ♦ PN
 ♦ PCG
 ♦ Other LGU officials
 ♦ FARMCs
 ♦ Other private citizens/citizens' groups

Mandates for ancestral waters

3 Ancestral Waters

Lead Body
 ♦ Tribal elders (RA 8371) and members of the Indigenous Cultural Community

Other responsible agencies/offices/bodies
 ♦ National Commission on Indigenous Peoples (RA 8371)
 ♦ DA-BFAR
 ♦ DENR
 ♦ PNP/PNP Maritime
 ♦ PN
 ♦ PCG
 ♦ LGUs
 ♦ Other private citizens/citizens' groups

4

Guide to Legal References

Annex

- A. Jurisprudence
- B. Statutes and Legal Issuances
- C. Legal Texts



The first part of the paper discusses the importance of the research and the objectives of the study. It then proceeds to a literature review, followed by a description of the methodology used. The results of the study are presented in the next section, and the final section discusses the conclusions and implications of the findings.

The research was conducted in a laboratory setting, and the data collected was analyzed using statistical methods. The results show that there is a significant difference between the two groups, and this difference is attributed to the intervention.

The findings of this study have important implications for the field of research. They suggest that the intervention is effective in achieving the desired outcomes, and this information can be used to inform future research and practice.

In conclusion, the study has provided valuable insights into the effectiveness of the intervention. The results are promising, and further research is needed to confirm these findings and explore the underlying mechanisms.

Annex 4

Guide to Legal References

Legal references can be generally classified into three types:

- 1) jurisprudence
- 2) statutes and legal issuances
- 3) legal texts

Copies of these references may be obtained from the libraries and/or websites of the appropriate government offices (www.gov.ph). The Supreme Court website (www.supremecourt.gov.ph) is particularly useful in researching jurisprudence. Other sources such as law school libraries, bookstores, and the internet (e.g. www.lawphil.net, www.chanrobles.com, www.lexlibris.com.ph) may also be tapped.

This guide classifies the legal references cited in this book, with notes on how to interpret the citations.

Jurisprudence

Jurisprudence are Supreme Court decisions that may be used to support legal arguments or decisions of lower courts. Cases are reported in different compilations and are cited as follows:

Case name, vol. no. report title pg. no. (year of promulgation)
e.g. Diaz v. Estrera, 106 Phil. 637 (1947)

Acronym of Report Title

A.M.	Administrative Matters (compiled by the concerned administrative agency)
G.R.	General Reference*
I.S.	Information Sheet (compiled by the concerned public prosecutor)
O.G.	Official Gazette
Phil.	Philippine Reports
SCRA	Supreme Court Reports Annotated

*If the Supreme Court decision has not been reported in any compilation, the case is cited using the General Reference number assigned to the case, along with its *date* of promulgation. Cases decided by the American judicial system are simply cited using the case reference number.

Statutes and Legal Issuances

Statutes include national laws created by Congress or the President. Legal issuances include rules and regulations, resolutions, circulars, and other orders issued by administrative agencies to implement the national laws. The DOJ Manual for Prosecutors, for example, is a legal issuance.

The “Rules” cited in this book refer to the Revised Rules of Court, unless otherwise specified. See the List of Acronyms for the meaning of the acronyms used in citing laws.

Although copies of all the laws cited in this book are widely available, the authors have used annotated versions of some of these. The following texts were used:

- Agpalo, Ruben. (2001) *Handbook on Criminal Procedure*. (2001 edition). Manila: Rex Book Store.
- Bernas, Joaquin G., S.J. (1996) *The 1987 Philippine Constitution*. (1996 edition). Manila: Rex Book Store.
- Nolledo, Jose N. (1992) *The Local Government Code of 1991: Annotated*. (1992 edition). Mandaluyong City: National Bookstore.
- Regalado, Florenze D. (2000) *Remedial Law Compendium: Volume Two*. (8th edition). Manila: National Bookstore, Inc.

Legal Texts

The opinions of established legal authorities are occasionally cited in this book. The following publications were referred to:

- Albano, Ed Vincent S. (1998) *Remedial Law Reviewer*. (2nd edition). Manila: Rex Book Store.
- De Leon, Hector S. and Hector M. De Leon, Jr. (1998) *Administrative Law: Text and Cases*. (3rd edition). Manila: Rex Book Store.
- Department of Environment and Natural Resources, Bureau of Fisheries and Aquatic Resources of the Department of Agriculture, and Department of the Interior and Local Government. (2001) *Philippine Coastal Management Guidebook No. 8: Coastal Law Enforcement*. Cebu City: Coastal Resource Management Project of the Department of Environment and Natural Resources.
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Too often, coastal law violators escape the nets of justice because the nets have too many holes: a limited understanding of coastal laws, a lack of knowledge of technical procedures, or simply a confusion on the proper steps needed to effectively keep the violators from committing more crimes against the environment. **Mending Nets: A Handbook on the Prosecution of Fishery and Coastal Law Violations** is a guide to help patch up those holes so that environmental justice may truly be served.



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