Current Legal Options of Certain Fishing Communities in the West Philippine Sea

Jay L. Batongbacal, JSD

Peoples Development Institute
91 Madasalin Street, Teachers' Village East
Quezon City, Philippines

Published by **Peoples Development Institute**
91 Madasalin Street, Teachers' Village East 1101
Quezon City, Philippines

Lay-out by Ramon T. Ayco, Sr.
Set in Times New Roman Tst LT Std. pt. 12

Published in the Philippines

CURRENT LEGAL OPTIONS OF CERTAIN FISHING COMMUNITIES FACING THE WEST PHILIPPINE SEA

Second Report for the
Project on Protecting the Maritime Rights
of the Fisherfolk of the Bataan-Zambales-Pangasinan
Fishing Communities and the Future Generations

submitted to
The Institut für Auslandsbeziehungen

by the
Peoples Development Institute
December 2022

Jay L Batongbacal
Janela D Salazar
PDI Community Coordinators
BIGKIS ng Mangingisda Leaders

Introduction

Research and field investigations into the situation of certain fishing communities in Pangasinan, Zambales, and Bataan have revealed a number of common issues and problems. Most are concentrated in the nearshore areas encompassed by the municipal waters of the subject municipalities, and are characterized by competing resource uses and users/stakeholders, with the poor fishing communities receiving or absorbing the negative impacts of the resource uses that have come to predominate. Each of the identified issues and problems are subject to specific legal regimes, and there are available administrative and judicial remedies. This paper will take stock of these issues and discuss the applicable laws and regulations, to shed light on particular remedies that fishing communities may avail themselves of.

Proliferation of fish cages in the municipal waters of Infanta, Pangasinan and Masinloc, Zambales

The municipal waters of Infanta, Pangasinan and Masinloc, Zambales are becoming congested with fish cages that have been rapidly proliferating since 2019. Satellite imagery corroborates the complaint of the fishers that this has been a quite recent phenomenon.

In terms of intensity, it appears that Infanta suffers worse, on account of the large areas currently devoted to fish cage culture, and the sheer number of fish cages currently operating; furthermore, Infanta also has the smallest area of municipal waters among all the municipalities along the west coast of Luzon; the fish cages occupy areas roughly center of its coastal waters. Its municipal waters cover an

area of only about 73.4 sq km and do not abut national waters which begin at 15 km offshore due to the concave configuration of the coastline. Infanta's coastline not only curves inward between the adjacent waters of Dasol, Pangasinan and Sta. Cruz, Zambales, but is also enclosed by offshore islands of the latter.

Masinloc, Zambales also suffers from the proliferation of fish cages, though to a lesser extent and concentrate in three particular areas of its municipal waters: the inner portion of Oyon Bay, the waters east of Barangay Bamban, and the confined strait between Matalvis Island and the mainland of the municipality. Masinloc's municipal waters span approximately 156 sq km and are not enclosed by neighboring waters.

Obstruction to Navigation

In both cases, the fish cage complexes span across the municipal coastline in large groups adjacent to/seaward of the points of shoreline access of their respective fishing communities. As a result, their direct access to the sea is impeded; navigation to fishing grounds is impossible without weaving in between the numerous fish cages. An ocular inspection at Infanta showed that practically from any point on the shore where fishing vessels are anchored or beached, the entire horizon is covered by fish cages; there is no straight-forward navigational access to the sea.

In addition, fishers complain that the fish cages cannot be seen in the dark; there are no lights or other material visible to fishermen when they attempt to traverse the municipal waters either in the early evening or morning. The older, square fish cages made of bamboo are left in their natural colors, that do not reflect ambient light at night, while

the newer, round fish cages are made of black PVC components. Collision with either the hull or outriggers could lead to entanglement and damage.

Worse, some fish cages have armed guards who have been seen attempting to intimidate and warn away fishers with their weapons during the day.

The Fisheries Code[1] as amended provides:

> Sec. 55. Non-Obstruction to Navigation. – Nothing in the foregoing sections shall be construed as permitting the lessee, licensee, or permittee to undertake any construction which will obstruct the free navigation in any stream, river, lakes or bays flowing through or adjoining the fish pens, fish cages, fish traps, and fishponds, or impede the flow of the tide to and from the area. Any construction made in violation hereof shall be removed upon the order of the Department in coordination with the other government agencies concerned at the expense of the lessee, or occupants thereof, whenever applicable. The Department shall within thirty (30) days after the effectivity of this Code formulate and implement rules and regulations for the immediate dismantling of existing obstruction to navigation.
>
> x x x
>
> Sec. 111. Obstruction to Navigation or Flow or Ebb of Tide in any Stream, River, Lake or Bay. – It shall be unlawful for any person to cause obstruction to

[1] Rep. Act No. 8550 (1995), as amended by Rep. Act No. 10654 (2014)

> navigation or flow or ebb of tide.
> Upon a summary finding of administrative liability, the offender shall be punished with a fine of Two hundred thousand pesos (P200,000.00) and the dismantling of the obstruction, fish corrals/traps, fish pens or fish cages at the expense of the offender. Upon conviction by a court of law, the offender shall be punished with imprisonment from one (1) month and one (1) day to six (6) months and fine of twice the amount of the administrative fine, confiscation of stocks and dismantling of the obstruction, fish corrals/traps, fish pens or fish cages at the expense of the violator.

The fish cages are demonstrably obstructions to navigation and are arguably illegal for violation of Sec. 55 above. The fishers of both municipalities may file a class action suit under Sec. 111 before either the administrative tribunal of the DA-BFAR, also established under the provisions of the Fisheries Code, in accordance with the second paragraph, or by means of a court action under the third paragraph.

The Implementing Rules and Regulations (IRR's) of the Fisheries Code defines an obstruction above-cited as follows:

> Obstruction to navigation and flow of water – refers to all forms of water and landbased structures, whether permanent or movable, constructed without proper authorization from an appropriate government agency, which obstruct navigation or impede the flow of water, causing water stagnation, pollution or massive flooding, provided, that in

> the case of rivers or streams, the structures are constructed at least one-fourth (¼) of the width of the river or stream measured from where the structure is erected or constructed.

From the above definition, it would appear that there is a possible challenge in the condition that the obstruction have been "constructed without proper authorization from the appropriate government agency." This would imply that a fish cage that has been issued a permit may be characterized prima facie as legally not an obstruction, even though it is an obstruction in reality. This may be a subject of contention in either an administrative or judicial case, hence it is important that the presumption of legality be directly challenged and put in issue in any complaint.

Further, the current Implementing Rules and Regulations of the Fisheries Code[2] as amended, with respect to obstructions to navigation provide as follows:

> Rule 55.1. Regulation. – The DA-BFAR, in consultation with LGUs and/or other agencies and FARMCs, shall update FAO No. 216, Series of 2001, for purposes of this Section.

It does not appear that Fisheries Administrative Order No. 216, s. 2001 has actually been updated as of the date of this writing, which means that it is still in force, although the law has already increased the judicial penalty and added an administrative penalty. This may be advantageous since FAO No. 216 provides more clearly that:

[2] DA Admin. Order No. 10, s. 2015

> SECTION 2. Prohibition. - It shall be unlawful for any person, lessee, licensee or permittee, to undertake or place any construction which will obstruct the free navigation in any stream, river, lake or bays flowing through or adjoining fish pens, fish traps and fishponds or impede the flow of the tide to and from the area. Any obstruction made in violation thereof shall be removed upon the order of the Secretary of Agriculture in coordination with other government agencies concerned at the expense of the lessee, licensee or occupants thereof, whenever applicable.

It may be noted that the above provision does not automatically consider a licensed/permitted fish cage to be a non-obstruction, as originally implied in the definition under the IRR's. Instead, it is clearly accepted that a licensed/permitted structure may still be considered as an obstruction to free navigation, and may be subject to an order of removal by the Secretary of Agriculture.

Whether or not the fish cages all have licenses or permits may also be verified. Under the Fisheries Code as amended,

> Section 87. Engaging in Unauthorized Fisheries Activities. – It shall be unlawful for any person to exploit, occupy, produce, breed or culture fish, fry or fingerlings of any fishery species or fishery products or construct and operate fish corrals, fish traps, fish pens and fish cages or fishponds without a license, lease or permit.
>
> The discovery of any person engaging in any of the above activities without a lease, license or permit

> shall constitute & prima facie presumption that the person is engaged in unauthorized fisheries activity.
>
> Upon a summary finding of administrative liability, the offender shall be penalized with an administrative fine of Five hundred thousand pesos (P500,000.00) to One million pesos (P1,000,000.00), the dismantling or removal of the structure at the expense of the offender, the rehabilitation of the area affected by the activity and confiscation of stocks.
>
> Upon conviction by a court of law, the offender shall suffer the penalty of imprisonment of six (6) months, a fine equivalent to twice the amount of the administrative fine, the dismantling or removal of the structure at the expense of the offender, the rehabilitation of the area affected by the activity and confiscation of stocks.

Whether or not the fish cages have all been properly licensed is thus worth looking into.

Marine Pollution from Fish Cage Operations

Fishers complain that quite often, the municipal waters become murky and dark especially during the times when the fish cage operators dump feeds and other inputs into the fish cages. During the ocular inspection, the odor of the fish feeds, similar to what one encounters in the vicinity of poultry farms or piggeries, was very strong out at sea and completely overpowered the usual smell of salty sea air. Fish-kills are also often witnessed by fishers. The possibility of marine pollution through the excessive

nutrient inputs is well-documented in other places like Lingayen Gulf, where fish cage operations has been ongoing for decades, resulting in fish-kills.[3]

Several laws and regulations may be applicable, and subject of separate causes of action, beginning with the Fisheries Code, which also covers "aquatic pollution" in Sec. 107:

> SEC. 107. Aquatic Pollution. – Aquatic pollution, as defined in this Code, shall be unlawful.
>
> Upon a summary finding of administrative liability, the offender shall be punished with fine of Three hundred thousand pesos (P300,000.00) to Five hundred thousand pesos (P500,000.00) and an additional fine of Fifteen thousand pesos (P15,000.00) per day until the violation ceases and the fines are paid, the imposition of cease and desist order, closure or suspension of the development, construction or facility, or cessation of operations, or disconnection of water supply. The order may be issued ex parte pending resolution of the case.
>
> Upon conviction by a court of law, the offender shall be punished with imprisonment of six (6) years and one (1) day to twelve (12) years and a fine twice the amount of the administrative fine and an additional fine of Fifteen thousand pesos (P15,000.00) per day until the violation ceases and

[3] Pabico, A. Too many fishpens choking coastal ecosystems. Philippine Star, 17 June 2002. Online, https://www.philstar.com/headlines/2002/06/17/164919/too-many-fishpens-choking-coastal-ecosystems; Jacinto, G. Fish Kill in the Philippines. Science Diliman (July-December 2011) 23:2, 1-3. Online, https://journals.upd.edu.ph/index.php/sciencediliman/article/download/2835/2636.

> the fines are paid, the imposition of cease and desist order, closure or suspension of the development, construction or facility, or cessation of operations, or disconnection of water supply. The order may be issued ex parte pending resolution of the case.

Aquatic pollution is defined broadly by the Fisheries Code:

> ***Aquatic Pollution*** – 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 non-living aquatic resources, pose potential and/or real hazard to human health, hindrance to aquatic activities such as fishing and navigation, including dumping/disposal of waste and other marine litters, 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. Deforestation, unsound agricultural practices such as the use of banned chemicals and excessive use of chemicals, intensive use of artificial fish feed, and wetland conversion, which cause similar hazards and deleterious effects shall also constitute aquatic pollution.[4]

It may be noted that "intensive use of artificial fish feed" is clearly considered aquatic pollution; the operations in Infanta and Masinloc may therefore also be legally challenged on this ground.

[4] Fisheries Code, s. 4(4)

The operations in Infanta and Masinloc may also be subject to inspection on whether they are compliant with the Code of Good Aquaculture Practices issued by the Department of Agriculture in 2020.[5] Although the Code does not provide for any penalties or punishment for non-compliance, the Department of Agriculture is legally mandated to ensure that aquaculture operations are subject to certain minimum standards:

> Section 47. Code of Practice for Aquaculture. - The Department shall establish a code of practice for aquaculture that will outline general principles and guidelines for environmentally-sound design and operation to promote the sustainable development of the industry. Such Code shall be developed through a consultative process with the DENR, the fishworkers, FLA holders, fishpond owners, fisherfolk cooperatives, smallscale operators, research institutions and the academe, and other potential stakeholders. The Department may consult with specialized international organizations in the formulation of the code of practice.

In the case of Masinloc, it is additionally necessary to examine the area's Protected Area Management Plan. The municipal waters of Masinloc are mostly included in a designated National Integrated Protected Areas System Site, called the Masinloc-Oyon Bay Protected Landscape and Seascape, and should be managed by a multi-sectoral Protected Area Management Board in

[5] Bureau of Agriculture and Fisheries Standards. Code of Good Aquaculture Practices (PNS/BAFS 135:2014). Online, https://bafs.da.gov.ph/bafs_admin/admin_page/publications_pdf/Explanatory%20Manual%20for%20GAqP%2006 172021FINAL_compressed.pdf

accordance with a Protected Area Management Plan under the Enhanced National Integrated Protected Areas System Act.[6]

Marine pollution in the municipal waters of Infanta, Pangasinan and Sta. Cruz, Candelaria, and Masinloc, Zambales from mining activities

The four municipalities of Infanta, Sta. Cruz, Candelaria, and Masinloc all suffer from marine pollution in the form of mine tailings and wastes emanating from either rivers and streams (non-point sources) or from mineral oar stockpiles on the shore (point sources).

Mineral stockpiles next to small private piers have been established as several points in Infanta and Sta. Cruz in order to allow the loading of mineral oars onto barges for direct shipment of ores to foreign mineral processing plants. Mining operations in the mountains inland of Sta. Cruz and Candelaria also apparently discharge mine tailings and wastes into their rivers and

streams. Such rivers and streams are at the same time among the principal food and freshwater sources of the local communities and municipalities in these areas.

The discharges cause marine pollution in the municipal waters and sedimentation in the principal rivers and streams that empty out to sea. The discharges add to the marine pollution discharges from fish cage operations in Infanta and Masinloc, doubling the pressure on the marine environment upon which the local fishers depend for their livelihood and sustenance.

[6] Rep. Act No. 11038 (2018)

CURRENT LEGAL OPTIONS

There are several possible ways to legally contest these polluting operations through class action suits. The first is by challenging the concerned mining companies' permit to operate on account of possible non-compliance with their Environmental Compliance Certificate (ECC) issued under the Environmental Impact Statement System Act,[7] and which should be among the requirements for execution of the Mineral Production Sharing Agreements covering the large-scale mining operations in the Zambales-Pangasinan area. Large-scale mining companies are required to comply with the terms and conditions of the ECC issued to them as a condition for the execution of a Mineral Production Sharing Agreement with the DENR-MGB. According to the Mining Act of 1995,[8]

> Section 108. Violation of the Terms and Conditions of the Environmental Compliance Certificate. — Any person who willfully violates or grossly neglects to abide by the terms and conditions of the environmental compliance certificate issued to said person and which causes environmental damage through pollution shall suffer the penalty of imprisonment of six (6) months to six (6) years or a fine of Fifty thousand pesos (P50,000.00) to Two hundred thousand pesos (P200,000.00), or both, at the discretion of the court.

This will require examination of the respective ECC's of the companies involved in either the mining operations in the mountainous areas of Zambales, or the companies operating and managing the three mineral stockpiles and loading ports currently in Infanta and Sta. Cruz.

[7] Pres. Decree No. 1596 (1978)
[8] Rep. Act No. 7942 (1995)

It may also be possible to challenge the companies operating the mineral stockpiles and piers by filing a criminal complaint for violation of the Marine Pollution Decree.[9] The law provides that

> Section 4. Deposit of Refuse in Navigable Water. — It shall be unlawful to throw, discharge, or deposit, or cause, suffer, or procure to be thrown, discharged, or deposited either from or out of any ship, barge, or other floating craft of any kind, or from the shore, wharf, manufacturing establishment, or mill of any kind, any refuse matter of any kind or description whatever other than that flowing from streets and sewers and passing therefrom in a liquid state, into any navigable water of the Philippines, or into any tributary of any navigable water from which the same shall float or be washed into such navigable water; and it shall be unlawful to deposit, or cause, suffer or procure to be deposited material of any kind in any place on the bank of any navigable water or on the bank of any tributary of any navigable water, where the same shall be liable to be washed into such navigable water, either by ordinary or high tides, or by storms or floods, or otherwise, whereby navigation shall or may be impeded or obstructed or increase the level of pollution of such waters: Provided, that nothing herein contained shall extend to, apply to, or prohibit the operations in connection with the improvement of navigable waters or construction of public works; Provided, further, That the Commandant, Philippine Coast Guard, whenever in

[9] Pres. Decree No. 600 (1974)

> his judgment navigation will not be injured thereby, may permit the deposit of any material above mentioned in navigable waters, within limits to be defined and under conditions to be prescribed by him, provided application is made to him prior to depositing such material; and whenever any permit is so granted the conditions thereof shall be strictly complied with and any violation thereof shall be unlawful.
>
> SECTION 5. Prohibition Against Discharge of Oil and Other Harmful Substances. — Except in case of emergency imperiling life or property, or unavoidable accident, collision, or stranding, and except as otherwise permitted by regulations prescribed by the Commandant, Philippine Coast Guard, it shall be unlawful for any person to discharge, or suffer, or permit the discharge of oil, noxious liquid substances and other harmful substances, by any method, means or manner into or upon the territorial and inland waters of the Philippines.

Under the provisions above, the operator of the mineral stockpile is obliged to take measures to ensure that the stockpile does not "leak" uncontrollably into the sea.

Notably, the mineral stockpile in Infanta, Pangasinan is located right beside a PCG Detachment Office. It may be speculated that in case the fishers successfully pursue their rights against the mineral stockpile company, the PCG would be able to directly monitor and ensure compliance with any prospective orders of an administrative or judicial tribunal.

Local Government Units are obliged under the Clean Water Act[10] to work with the DENR and DA to produce a Water Quality Management Plan. One of the purposes of the Clean Water Act is to ensure water quality for purposes including fisheries, and covers activities such as aquaculture. The DA-BFAR is charged with primary responsibility for ensuring water quality for fisheries purposes, under Sec. 22(c):

> c) DA, shall coordinate with the Department, in the formulation of guidelines for the reuse of wastewater for irrigation and other agricultural uses and for the prevention, control and abatement of pollution from agricultural and aquaculture activities: Provided, That discharges coming from non-point sources be categorized and further defined pursuant to this Act: Provided, further, That the Bureau of Fisheries and Aquatic Resources (BFAR) of the DA shall be primarily responsible for the prevention and control of water pollution for the development, management and conservation of the fisheries and aquatic resources;

To this end, LGUs and the national government are supposed to formulate and enforce Water Quality Management Plans and ensure proper prevention and control of water or marine pollution. The LGUs, DA-BFAR, and DENR regional or field offices may therefore be called to task to account for what measures are being undertaken to control the marine pollution activities along the coasts of these municipalities, and if they have not done so, to take action to put in place such measures.

[10] Rep. Act No. 9275 (2004)

Based on the above, it would be feasible for the fishers to initiate a class action suit against the operators of the mineral stockpile and mining activities and compel them to take action to stop the pollution of the coastline, clean up their operations, and prevent future pollution discharges.

And again, in the case of Masinloc, it is also necessary to look into any related provisions on marine pollution control in its Protected Area Management Plan.

Fishers' lack of security of tenure on residential land

The common anxieties of fishing communities in all of the municipalities about the lack of security of tenure over the lands on which they have established their residences have been heightened by their experiences, especially with the establishment of the mineral stockpiles that caused the eviction of people they know and used to be part of their community. The law has long sought to address this through the provision of a mandate in the Fisheries Code for the government to establish fisherfolk settlement areas:

> Sec. 141. Fisherfolk Settlement Areas.– The Department shall establish and create fisherfolk settlement areas in coordination with concerned agencies of the government, where certain areas of the public domain, specifically near the fishing grounds, shall be reserved for the settlement of the municipal fisherfolk. Nothing in this section shall be construed to vest ownership of any resettlement area to a municipal fisherfolk for whom said areas may have been reserved for or had been actually granted to.

The IRR's state that

> Rule 141.1. Fisherfolk Settlement Areas. – The DA-BFAR in coordination with Department of Agrarian Reform (DAR), DILG and other agencies concerned, shall establish a fisherfolk settlement area that shall be seen in the context of an integrated, holistic and self-reliant community to include alternative source of income.

There is no administrative or judicial process to compel implementation of the above provision with respect to specific fishers communities; there are no sanctions or penalties for inaction or slow implementation. However, it may be possible to invoke the above provisions to persuade the DA to initiate activities that lead to assurances that communities are not easily or arbitrarily forced to vacate their residential areas whenever a public or private entity seeks to make use of their location. Note that these provisions are ultimately inadequate because they precisely ensure that resettlement sites do not come within claims of ownership by the settlers.

Since the issue cannot be resolved through an administrative or judicial action, it falls within the realm of advocacy. The wider distribution and combined numbers of the fishing communities subject of this study should be sufficient to make an impression on the government leadership. A widely distributed petition for designation of the settlement areas and fixing of their tenure would likely catch attention. Notably, under Executive Order 841 series of 2009, LGUs should have already formulated comprehensive land use plans, which include the identification of sites for socialized housing and resettlement and relocation of vulnerable communities, like those of fishers.

Intrusion by fishers from outside the municipality

Another common complaint among the fishers of Infanta, Sta. Cruz, Candelaria, Botolan, and Mariveles are the reported intrusion of fishers from other municipalities into their municipal waters. There is a difference, however, in that the fishers of Infanta, Sta. Cruz, and Candelaria, point to such fishers using destructive fishing methods such as dynamite-fishing and cyanidefishing that adversely affect reef fisheries; indigenous peoples in Botolan complain of electrofishing being done in their lakes, rivers, and streams; while fishers of Mariveles are against the intrusion of hulbot-hulbot (Danish seine) fishing which take place in deep waters.

For all except the last group of communities, Sec. 92 of the Fisheries Code is directly relevant:

> Section 92. Fishing Through Explosives, Noxious or Poisonous Substance, or Electricity. – (a) It shall be unlawful for any person to catch, take or gather or cause to be caught, taken or gathered fish or any fishery species in Philippine waters with the use of explosives, noxious or poisonous substance such as sodium cyanide, which will kill, stupefy, disable or render unconscious fish or fishery species: Provided, That the Department, subject to such safeguards and conditions deemed necessary and with the endorsement from the concerned LGUs, may allow, for research, educational or scientific purposes only, the use of poisonous or noxious substances to catch, take or gather fish or fishery species: Provided, further, That the use of poisonous or noxious substances to eradicate predators and pests in fishponds in accordance with accepted scientific practices and without causing

adverse environmental impact in neighboring waters and grounds shall not be construed as illegal fishing.

The discovery of dynamite, other explosives and chemical compounds which contain combustible elements, or noxious or poisonous substances, or equipment or device for electrofishing in any fishing vessel or in the possession of any fisherfolk, operator, fishing boat official or fishworker shall constitute a prima facie presumption that any of these devices was used for fishing in violation of this Code.

The discovery in any fishing vessel of fish caught or killed with the use of explosives, noxious or poisonous substances, or by electricity shall constitute a prima facie presumption that the fisherfolk, operator, boat official or fishworker is fishing with the use thereof. Upon a summary finding of administrative liability, any person found liable for the actual use of explosives, noxious or poisonous substances shall be punished with confiscation of catch including those not caught illegally if co-mingled with those caught illegally, gear, explosives and noxious or poisonous substances, or electrofishing devices and paraphernalia and gear, and an administrative fine equivalent to five (5) times the value of the catch or the amount of fine indicated below whichever is higher:

(1) Thirty thousand pesos (P30,000.00) for municipal fishing;
(2) Three hundred thousand pesos (P300,000.00) for small-scale commercial fishing;
(3) One million five hundred thousand pesos (P1,500,000.00) for medium scale commercial fishing; and

(4) Three million pesos (P3,000,000.00) for large scale commercial fishing.

Upon conviction by a court of law, the offender shall be punished with imprisonment from five (5) to ten (10) years, confiscation of catch, including those not caught illegally if co-mingled with those caught illegally, gear, explosives and noxious or poisonous substances, or electrofishing devices and paraphernalia, gear, and a fine equivalent to twice the amount of the administrative fine, without prejudice to the filing of separate criminal cases when the use of the same result to physical injury or loss of human life.

The actual use of electrofishing devices for illegal fishing shall be punished with imprisonment of six (6) months and a fine of Five thousand pesos (P5,000.00).

(b) It shall be unlawful for any person to possess explosives, and noxious or poisonous substances for illegal fishing.

Upon a summary finding of administrative liability, the offender shall be punished with confiscation of catch, gear, and an administrative fine equivalent to five (5) times the value of the catch or the amount indicated below whichever is higher:

(1) Ten thousand, pesos (P10,000.00) for municipal fishing;
(2) One hundred thousand pesos (P100,000.00) for small-scale commercial fishing;
(3) Five hundred thousand pesos (P500,000.00) for medium scale commercial fishing; and

> (4) One million pesos (P1,000,000.00) for large scale commercial fishing.
>
> Violation of this provision shall be punished with imprisonment from six (6) months to two (2) years, and a fine equivalent to twice the amount of the administrative fine and confiscation of catch and gear.

Dynamite and cyanide fishing apparently plague the marine waters of Infanta, Sta. Cruz, and Candelaria, while electro-fishing occurs in the freshwaters of Botolan. For Mariveles, however, the problem of hulbot-hulbot activities occurs in deeper waters offshore. Hulbot-hulbot has been deemed illegal on account of their high efficiency in catch, making it prone to induce overfishing and to deprive other fishers of catch, and the destructive effects of the tom weights and scarelines used to control the net. This particular method has been prohibited by regulations[11] issued pursuant to the Fisheries Code:

> Section 2. *Prohibition* - It shall be unlawful for any person to operate municipal and commercial fishing boats using Danish Seine or Modified Danish Seine in catching fish in Philippine waters. Mere possession of Danish Seine or Modified Danish Seine and/or its paraphernalia by a fisherfolk or by any person in a fishing ground or inside a fishing vessel shall constitute a prima facie evidence that the fisherfolk or the person has committed this violation.
>
> Section 3. *Penalty* - The owner, operator, boat captain, master, fisher and recruiter/ organizer violating this Order shall, upon summary finding of administrative

[11] Fisheries AO No. 246-1 s. 2018

liability, suffer the penalty of administrative fine equivalent to five (5) times the value of fish caught or Two million pesos (P2,000,000.00), whichever is higher, and confiscation of catch and gear. The fishworkers who participated in the operation of Danish Seine or Modified Danish Seine shall be penalized by a fine of twenty Thousand Pesos (P20,000.00) or community service in case of failure to pay the fine.

Upon conviction by a court of law, the boat captain, fisherfolk, and recruiter or organizer of fishworkers shall be punished with imprisonment of two (2) years to ten (10) years and a fine equivalent to twice the amount of the administrative fine.

Aside from the abovementioned penalties, the Danish Seine or Modified Danish Seine and/ or any of its paraphernalia shall immediately be confiscated and the vessel/boat used for the operation shall be impounded. If the boat captain, fisherfolk, and recruiter or organizer of fishworkers is engaged in any other fishery activities that requires a license or permit from the DA-BFAR, he/ she shall be blacklisted.

It appears, however, that the crux of the problem is the lack of fisheries law enforcement arising from (a) lack of surveillance and reporting among the fishers who would logically be the principal witnesses to these illegal activities when they happen, (b) absence of law enforcement presence in the coastal areas where these activities occur, (c) lack of sufficient law enforcement presence and effective operations, and (d) lack of efforts to prosecute offenders.

The use of illegal fishing methods, whether inshore, nearshore or offshore, should be addressed by preventive and remedial law enforcement. Preventive activities include education and information dissemination, to enable fishers to engage in peer pressure against other fishers they may encounter, as well as sensitize the community to the continuing and aggravating impacts of destructive fishing methods. Law enforcement presence can be made more efficient and cost-effective by enabling PCG or PNP-MG units to target areas for patrol activities and hopefully deter destructive fishers. Remedial law enforcement involves arrest and prosecution of erring fishers. This, however, may be much more difficult to pursue on account of scarcity of resources to conduct arrests, and frequent difficulties encountered by law enforcement agencies in prosecuting fisheries offenses (e.g., the arresting officer may have gotten reassigned elsewhere by the time a case is tried in court).

The administrative procedure established by DA-BFAR for charging and punishing fisheries law violations would theoretically assist in speeding up actions against violations; however, there is no data available on the case load and case resolution rate of this relatively new procedure. It may be worth pursuing cases through the administrative process, to test its effectiveness for future activities.

It is recommended that fishers undergo training as fisheries law enforcement officers, to be officially deputized and empowered by the DA-BFAR to act as fisheries law enforcers. The designation of leaders and members of fisherfolk organizations as "deputized fish wardens" to assist in fisheries law enforcement is specifically authorized by the Fisheries Code.[12] It is recommended that fishers

[12] Rep. Act No. 8550 (1998), s. 124

in the affected communities undergo formal and official training by the DA-BFAR in order to secure such status, and thereby augment the community's ability to police against illegal and destructive forms of fishing.

Negative environmental impacts of the Masinloc Coal Plant

The reported negative environmental impacts of the Masinloc Coal Plant are comprised of excessive rise of ambient water temperatures, which may be considered as a form of heat pollution, apparent emissions or air pollution, and navigational hazards posed by the plant's marker buoys. Ambient water temperatures in the immediate area surrounding the plant have apparently increased on account of the discharge of coolant water into Oyon Bay. The coral reefs in that area have reportedly all died and bleached, which is an indication that the water temperature is too high for sensitive coral polyps to survive in. The problem became much more noticeable after 2020 when the plant was upgraded.

Air pollution, which is reportedly strong enough to be smelled, is blamed for deteriorating quality of agricultural crops and trees, particularly mangoes, in the surrounding areas.

Fishers also complain that the plant's steel buoys, installed to assist daytime navigational operations of ships and barges supplying the coal plant, do not have any warning lights, making them a navigational hazard for fishers who have to transit the area at night.

The first recourse available to the fishers is to verify the plant's compliance with its Environmental Compliance Certificate, as required by law. Under the Environmental Impact Statement System,

> SECTION 108. Violation of the Terms and Conditions of the Environmental Compliance Certificate. — Any person who willfully violates or grossly neglects to abide by the terms and conditions of the environmental compliance certificate issued to said person and which causes environmental damage through pollution shall suffer the penalty of imprisonment of six (6) months to six (6) years or a fine of Fifty thousand pesos (P50,000.00) to Two hundred thousand pesos (P200,000.00), or both, at the discretion of the court.

The ECC should have been a necessary for approval and operation of the coal plant. Particular attention should be paid to compliance with any mitigating measures that should have been put in place with respect to the discharge of coolant water into the sea. A seabed survey is needed to verify the extent of the coral bleaching reported by the fishers; and monitoring of the water temperature in the area around the coal plant. It is recommended that such a survey be undertaken by a team of marine scientists to ensure proper documentation and useful evidence in any subsequent administrative or judicial proceeding.

Scientific analysis of the plant's aerial emissions and the conditions of the soil around the plant may be necessary to more clearly determine whether there is a causal link between the plant's emissions and the reported decline in quality and productivity of agriculture.

In the meantime, it may be possible to seek intervention from the Department of Energy, which is also responsible for ensuring that energy production plants operate within the allowable parameters, including social acceptability and environmental impact. A petition of grievances may

be submitted to the Department to require the coal plant to engage in talks with the local community about their concerns. This is a reasonable course of action in the meantime due to the difficulty of establishing a clear and causal link between the plant's airborne emissions and conditions of the soil around the plant.

Representations should also be made to the Protected Areas Management Board of the Masinloc-Oyon Bay Protected Landscape and Seascape. The municipal waters of Masinloc are mostly included in a designated National Integrated Protected Areas System Site, and therefore should be managed in accordance with a Protected Area Management Plan under the Enhanced National Integrated Protected Areas System Act.[13] Compliance of the coal plant with the Plan should be verified.

Other location-specific issues

Several issues and problems raised by fisheries are specific to their localities, thus the legal remedies may be likewise specific to their situation. These are (a) construction of causeways/jetties on coral reefs and tidal flats, (b) reportedly inconsistent application of the rule on fine mesh nets, (c) reported possible black sand mining activities.

The construction of the new causeways/jetties on the shore of Infanta, Pangasinan and Sta. Cruz, Zambales, either for purposes of supporting the fish cage operations or as loading docks for mineral ore stockpiles, respectively, should be raised before the Department of Environment and Natural Resources (DENR), Department of Public Works and Highways (DPWH), and Philippine Reclamation

[13] Rep. Act No. 11038 (2018)

Authority (PRA). The DENR has jurisdiction over nonfishery uses of the foreshore and submerged lands of the public domain, while DPWH has jurisdiction over all constructions and permanent works thereon. The construction activity may also qualify as a kind of reclamation activity which may be subject to the jurisdiction of the PRA. It must be verified whether, as reported, such constructions were carried out without a permit from the LGU, which should have also conducted prior public consultations and issued a resolution of non-objection on the part of the Sangguniang Bayan, as per the provisions of the Local Government Code.[14]

Certain fishers of San Salvador Island, Masinloc are particularly concerned about the apparent arbitrariness in the enforcement of the rules on fine mesh nets, which are used for tropical fish gathering or aquarium fishing. Live fish trade, particularly tropical fish, has been banned but apparently not applied consistently. This has led to dissatisfaction and lack of clarity as to whether and what mesh net sizes are legal and permissible. For this issue, it is necessary to make representations with the DA-BFAR, LGU and PAMB to clarify the scope and implementation of Sec. 93 of the Fisheries Code, which deals with fine mesh nets, and implemented by Fisheries Administrative Order No. 155, s. 1986 and Fisheries Administrative Order No. 155-1, s. 1994.

Concerns over possible black sand mining should be brought before the Mines and Geosciences Bureau for verification and investigation, to determine whether indeed there are any prospective black sand mining sites or mining concessions in the area of the subject municipalities. The

[14] Rep. Act No. 7160 (1991), s. 27

mere presence of barges or ships is not enough, and there is also a need to verify whether there are any places along the coastline in which it may be taking place.

Denial of Access to Offshore Fishing Grounds in the West Philippine Sea

Denial of access to the West Philippine Sea by Chinese activities asserting their excessive claims over Scarborough Shoal and the West Philippine Sea pose the most difficult challenges. Although indubitably contrary to international law, especially in light of the 2016 South China Sea Arbitration, China's activities straddle the "gray zone" between war and peace, under the cover of maritime law enforcement but intended to arbitrarily and illegally lay claim to vast waters practically up to the coasts of Southeast Asian States like the Philippines.

Scarborough Shoal has been recognized to be disputed territory; six rocks above high tide qualify it as subject to a territorial claim, capable of generating a 12 nautical mile territorial sea zone. The zone is currently under Chinese control and administration; despite the South China Sea Arbitration ruling that it should be subject to traditional fishing rights in favor of various nations like the Philippines, China prevents them from access to the inner lagoon which has been their traditional fishing ground. China also prevents Philippine government ships, such as coast guard and navy vessels, from approaching closer than 10 nautical miles of the shoal.

Legal action to compel government to take any particular course of action to assert the fishers' rights, however, is

precluded by the Supreme Court's consistent jurisprudence that the determination and pursuit of foreign policy, or any aspect thereof, is the exclusive prerogative of the Executive Branch. Judicial remedies cannot be resorted to force the Executive to act in a certain manner in foreign relations and foreign policy. Since the maritime and territorial disputes are subjects of foreign policy, judicial action cannot be resorted to.

Instead, fishers must be empowered to assist the Philippine government in pursuing diplomatic and legal remedies under international law, through systematic surveillance, documentation, and acquisition of firm evidence of China's activities. These are needed not only for governmental purposes in pursuing foreign policy, but also for educating and informing the public of the acts of the Chinese forces in the West Philippine Sea. A partnership is needed between Philippine fishers and the national government to bring China to account for its egregious acts and call for international support and pressure to bear upon its illegal activities.

Conclusion

The foregoing research paper identifies and describes the specific legal remedies that may be used to assert the fishing communities rights and protect their interests in their marine waters and sources of livelihood. Class action suits and petitions may be formulated and filed before the concerned government agencies, particularly the DA-BFAR on account of its administrative processes, and other Departments. The next step should be to document and gather evidence for the purpose, and prepare the necessary initiatory pleadings and petitions.

Peoples Development Institute
91 Madasalin Street, Teachers' Village East
Quezon City, Philippines