



**A POLICY STUDY
ON THE CLARIFICATION OF JURISDICTION BETWEEN
THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
AND THE DEPARTMENT OF AGRICULTURE
FOR COASTAL RESOURCE MANAGEMENT**

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EXECUTIVE SUMMARY

The enactment of the Philippine Fisheries Code of 1998 (RA 8550), even without the polarized and politicized debate over the allocation of the various fishery rights and privileges among the interested sectors, was confronted with a complicated jurisdictional tangle that had resulted from decades of sectoral management of the country's natural resources. Of particular importance is the impact of the Fisheries Code on the Department of Environment and Natural Resources (DENR), which, on account of its broad and encompassing mandates for the national management of the environment and all other resources, would be most likely to come into conflict with the Department of Agriculture-Bureau of Fisheries and Aquatic Resources (DA-BFAR) in the implementation of their various programs, projects, and jurisdictions in the coastal area. Aside from the general management policy, many provisions of the Fisheries Code would also affect the DENR either directly or indirectly, and their respective jurisdictions often touch upon the same area, subject matter, or activity in many varied ways.

This study, conducted at the request of DENR, seeks to identify the jurisdictional issues that have been created by the enactment of the Fisheries Code, to suggest a framework for how such issues are to be clarified, and recommend concrete measures to allocate and harmonize the responsibilities of the two agencies. Such measures are then contained in a draft Joint Administrative Order recommended to be jointly addressed by the two Departments, which is hoped to assist in the formulation and implementation of coastal management strategies in the Philippines. The Coastal Resources Management Project (CRMP), a technical assistance project of the DENR funded by the United States Agency for International Development (USAID), as part of its policy support component commissioned this policy study whose whole intent is to assess this specific concern. CRMP engaged the services of Atty. Jay Batongbacal of the Philippine Center for Marine Science with substantive involvement from CRMP's Policy Advisor Ms. Abbie Trinidad and the CRMP staff headed by its Chief of Party, Dr. Kitty Courtney.

A review of the Fisheries Code will reveal quite a number of provisions in which the jurisdictions of DA-BFAR and DENR may intersect, ranging from practical implementation problems to higher-level policy guidance. These intersection points are better appreciated by categorizing them into two general classes, namely:

Express Intersections: This category of provisions refer to those in which the involvement of the DENR is clearly required by the Fisheries Code or the IRRs. They expressly require coordination of efforts between the DENR and DA-BFAR, acknowledging that each bears its own responsibilities in the area or subject matter referred to by the specific provision. From the nature of the provisions, the common threads which appear to be the basis for requiring coordination of the efforts are either:

- Geographical proximity of the areas under the respective jurisdictions of the two agencies, or
- Acknowledgment of the existing mandates, institutions, and/or resources within the respective departments.

Implied Intersection: Implied intersections pose the greater difficulty in resolving jurisdictional issues between the DENR and DA-BFAR since the point of origin of the issue is not so obvious, and can arise out of actual implementation in the field, or in apparent conflicts in operational guidelines, or inconsistencies in the agencies respective policies. Moreover, since the Fisheries Code is silent on how these issues are to be addressed or resolved, it is up to the Departments to address them on their own in the best way they can without either surpassing their respective legal mandates or abandoning their legal duties as a result. Implied interactions arise out of the following:

- Unmentioned roles of other agencies in the implementation of the particular provision,
- Unavoidable interaction between the agencies when the particular provision is actually implemented, arising out of their respective responsibilities, and
- Geographic confluence or proximity of the agencies' respective activities with respect to the provision in question.

Each of these intersections have been found to be further classifiable according to the nature of the function involved, to wit:

1. Strategic Planning,
2. Standard Setting,
3. Area Classification,
4. Monitoring and Evaluation.

Table 1 presents in summary the findings of this analyses and identifies the focal areas of collaboration and cooperation between DENR and DA-BFAR. Given this, the draft Joint Administrative Order is recommended as a mechanism for initiating the jurisdiction clarification process and in the long run pave the way for enhancing the implementation of the Code.

1.0 INTRODUCTION

Since the enactment of the Philippine Fisheries Code of 1998 (RA 8550), a critical issue in implementing integrated coastal zone management in the Philippines as mandated under RA 8550 is the translation of certain provisions of the said code that have institutional implications amongst national government agencies. RA 8550 is considered as one of the landmark legislation in the context of its responsiveness to the issues of the times and value in shaping the future development of the fisheries sector in the country. For this reason, Congress has seen no less the importance of institutional collaboration, particularly between the Department of Environment and Natural Resources (DENR) and the Department of Agriculture (DA), and provided a mechanism wherein these two agencies can work together through the preparation of the code's Implementing Rules and Regulations (IRR). The collaborative mechanism was further expanded through the continued flexing out of operational procedures to implement the IRR.

More than a year after the completion and Fisheries Code IRR, the full implementation of the Code has never been fulfilled. Part of the problem stems from the incomplete work between the DENR and DA in resolving certain provisions of the Code and the IRR that impinges on the jurisdictional overlaps of mandates between the two agencies. This has far reaching implications as it affects more the coastal municipalities. More than its direct impact however, is the continued impasse in some of these provisions defeat the very reason for why the Code, on the first place, was enacted by Congress.

Driven by the clamor of the LGUs for the concerned national agencies to immediately address this pressing issue of clarifying jurisdictional overlaps between DENR and DA, the DENR requested that the Coastal Resources Management Project (CRMP), a technical assistance project of the DENR funded by the United States Agency for International Development (USAID) as part of its policy support component conduct a policy study whose whole intent is to assess this specific concern. CRMP engaged the services of Atty. Jay Batongbacal of the Philippine Center for Marine Science with the substantive involvement from CRMP's Policy Advisor Ms. Abbie Trinidad and the CRMP staff headed by its Chief of Party, Dr. Kitty Courtney. The study is comprised of two parts; the first being the policy review which examines the areas of clarification and the reason for why efforts are to be concentrated in these areas and; second is the suggested mechanism for resolving these issues which is through a Joint Administrative Order, which draft is attached for review by the two concerned agencies.

2.0 BACKGROUND OF THE POLICY

The enactment of the Philippine Fisheries Code of 1998¹ was one of the most earnestly demanded and highly controversial reforms under the Ramos Administration. Even without the polarized and politicized debate over the allocation of the various fishery rights and privileges among the interested sectors, the Fisheries Code was confronted with a complicated jurisdictional tangle that had resulted from decades of sectoral management of the country's natural resources. The decade saw the heightening conflict of the

¹ Rep. Act No. 8550 (1998)

imperatives of food security and maximum utilization of resources, against ecological stability and long-term sustainable development. The fisheries resources of the nation, traditionally subject to policies of full utilization and exploitation, began to show signs of collapse, with the impoverished and resource-dependent artisanal fisheries sector both contributing to and directly bearing the brunt of resource depletion. On the other hand, the growing commercial fisheries sector, encouraged by previous profitability, was finding less and less room to fish, and coming into direct and open conflict with smaller community fishers. These conflicts found their arena in the coastal areas surrounding the many islands of the country.

The decade also saw the resort to new and alternative approaches to management of resources. Internationally, it became accepted that the ocean's resources could no longer be effectively and sustainably managed through the traditional sectorally-focused and fragmented systems that had been created. Sustainable development demanded an integrated and holistic approach. Among its many recommendations for sustainable development, Agenda 21 encouraged all nations to implement integrated coastal zone management strategies in the management of coastal resources and activities. Integrated coastal management had become the buzzword, and any new strategy or policy for ocean resources almost always had to refer to the concept.

Even before Agenda 21 was signed in 1992, the Philippines had already achieved some progress in this particular field. The Department of Agriculture-Bureau of Fisheries and Aquatic Resources (DA-BFAR) had included in its Medium Term Fisheries Management and Development Plan for 1992-1996, a component for the integrated management of bays and gulfs, while the DENR had created a Coastal Environment Program which pilot-tested integrated management strategies for the protection and maintenance of small coastal habitats and environment. In many places, there were also many community-based and NGO²-initiated projects that also sought to implement integrated management in coastal communities and towns.

When the Fisheries Code was enacted, it was not immune to these developments, and this in its declaration of policy, a reference was made to an over-arching framework that defined a management approach,

"XXX

F. To manage fishery and aquatic resources, in manner consistent with the concept of an integrated coastal area management in specific natural fishery management areas, appropriately supported by research, technical services and guidance provided by the State, XXX"³

This provision is the first express mention of integrated coastal management found in a law. For many, this was a welcome provision in that it legally validated and mandated the use of the integrated approach in the management of the coastal area; and its particular location in a Fisheries Code meant that priority would be given to the objective of

² Non-Government Organization

³ Sec. 2, RA 8559 (1998)

maintaining the valuable fisheries resources. However, it also created a doubt as to whether it placed integrated coastal management solely and completely within the competence of the DA-BFAR, which may be of some concern considering that fisheries is not the only activity existing in the coastal areas, and that it would impact upon other departments and bureaus with jurisdiction over other legitimate activities in the coast.

Of particular importance is the impact of the Fisheries Code on the DENR, which, on account of its broad and encompassing mandates for the national management of the environment and all other resources, would be most likely to come into conflict with the DA-BFAR in the implementation of their various programs, projects, and jurisdictions in the coastal area. Aside from the general management policy cited above, many provisions of the Fisheries Code would also affect the DENR either directly or indirectly, and their respective jurisdictions often touch upon the same area, subject matter, or activity in many varied ways.

This study seeks to identify the jurisdictional issues that have been created by the enactment of the Fisheries Code, suggest a framework for how such issues are to be clarified, and recommend concrete measures to allocate and harmonize the responsibilities of the two agencies. Such measures are then contained in a draft Joint Administrative Order recommended to be issued jointly by the two Departments, which is hoped to assist in the formulation and implementation of coastal management strategies in the Philippines. This Joint Administrative Order may be issued pursuant to Rule 3.2 of the Fisheries Code, which requires the DA-BFAR and DENR to issue such in order to clarify their respective jurisdiction and authority over the management of fisheries resources.

3.0 THE FISHERIES CODE

A review of the Fisheries Code will reveal quite a number of provisions in which the jurisdictions of DA-BFAR and DENR may intersect, ranging from practical implementation problems to higher-level policy guidance. These intersection points may be better appreciated by categorizing them into two general classes, namely:

1. Express Intersections, i.e., Those where the Fisheries Code, or its Implementing Rules and Regulations (IRRs)⁴ expressly refer to the involvement of the DENR at certain points of implementing the particular provision of the Fisheries Code.
2. Implied Intersection, i.e. Those where there is no reference to the DENR in either the Fisheries Code or its IRRs, but it is likely that the DENR's involvement is necessary on account of the nature of the work required for implementation of the particular provision.

Each of these intersections have been found to be further classifiable according to the nature of the function involved, to wit:

A. Strategic Planning

⁴ DA Administrative Order No. 3, Series of 1998 (May 8, 1998)

- B. Standard Setting
- C. Area Classification
- D. Monitoring and Evaluation

This classifications are important since they will be the basis for defining the framework for rationalization and harmonization of the jurisdictions of the two departments.

3.1 Express Intersections

This category of provisions refer to those in which the involvement of the DENR is clearly required by the Fisheries Code or the IRRs. They expressly require coordination of efforts between the DENR and DA-BFAR, acknowledging that each bears its own responsibilities in the area or subject matter referred to by the specific provision. From the nature of the provisions, the common threads which appear to be the basis for requiring coordination of the efforts are either:

- Geographical proximity of the areas under the respective jurisdictions of the two agencies, or
- Acknowledgment of the existing mandates, institutions, and/or resources within the respective departments.

3.1.1 Standard Setting

There are four areas where both DENR and DA-BFAR are required to establish quantifiable standards which are to be imposed in the management of certain areas or activities.

The first is in the classification of rare, threatened or endangered species of aquatic flora and fauna, as required in Sec. 4(17) and 11. Under Sec. 4(17), the definition of "rare, threatened, or endangered species" includes not only those defined as such by pertinent fishery laws, rules, and regulations, but also those identified by the Protected Areas and Wildlife Bureau (PAWB) of the DENR, as well as the convention on the International Trade of Endangered Species of Flora and Fauna, or CITES Convention, which is likewise the responsibility of the DENR to implement. Sec. 11, on the other hand, allows the DA-BFAR to issue its own Fisheries Administrative order to identify such species and require appropriate conservation measures.

The second area deals with the establishment of catch ceilings and closed seasons in certain waters. In Sec. 8 and 9, which authorize the DA-BFAR to set ceilings or close seasons, the waters under the municipalities, fishery management areas, and areas under the jurisdiction of special agencies are beyond the exclusive jurisdiction of DA-BFAR, such that in these areas catch ceilings or closed seasons can only be established with the concurrence and approval ore recommendation of the special agency or local government unit concerned. The DENR's Protected Areas Management Boards (PAMB), which are institutional mechanism for management of areas placed under the National Integrated Protected Areas System (NIPAS), qualify as special agencies with jurisdiction over the NIPAS protected areas. It is obvious that in areas where areas under BFAR jurisdiction and under PAMB or LGU jurisdiction are adjacent to one another, special attention needs to be

devoted to ensuring that the catch ceilings and closed seasons in one are not inconsistent with those in another as to render each other's measures practically useless, since the fish can freely move between the two areas.

The third area is in aquaculture, in which the DENR is required by Sec. 47 to work with the DA-BFAR in developing a Code of Practice for Aquaculture, and by Sec. 48 to formulate a system of incentives and disincentives for sustainable aquaculture practices. The involvement of the DENR is clearly because of its jurisdiction, expertise, and institutions geared towards environmental management, and the recognition that aquaculture activities can have adverse impacts on the environment of areas adjacent to or downstream of the fishponds. These impacts can be made far from the actual location of the aquaculture area, as is usually the case with pollution carried downstream, or eutrophication of waters bodies when the normal inlets or outlets for water are impeded.

Lastly, still with respect to aquaculture under Sec. 46, the DENR is to coordinate with DA-BFAR in establishing the guidelines for reforestation of river banks, streams, and the seashores fronting the dikes of fishpond areas under Fishpond Lease Agreements (FLA). These guidelines are clearly in the nature of reforestation activities which have been traditionally under the DENR's exclusive jurisdiction.

3.1.2 Monitoring and Evaluation

Sec. 12 and 13 refer to the requirement for the preparation of Environmental Impact Statements (EIS) and the issuance of the Environmental Compliance Certificate (ECC) in accordance with the EIA system under Pres. Decree no. 1586, which is implemented by the DENR. The EIS is supposed to serve as a planning tool, allowing government to input measures intended to safeguard to environment, as well as a basis for monitoring and evaluation of the activity to ensure that its actual implementation is still within the expected parameters and the impacts are kept to a manageable level.

3.1.3 Area Classification

The National Mapping and Resource Inventory Administration (NAMRIA) is an agency under the DENR that has the technical expertise to undertake the official mapping and surveying needs of the government. The Fisheries Code refers to the NAMRIA repeatedly in several provisions that require these special skills. In Sec. 18, the delineation of municipal waters over which the local municipal government exercises jurisdiction in many fisheries matters requires the NAMRIA to undertake the establishment of boundaries and determination of isobath depth. Sec. 26 requires NAMRIA to certify to the depth of the waters in order to segregate waters of at least 7 fathoms deep wherein commercial fishing vessels may be allowed to operate. Sec. 40 requires coordination with NAMRIA in producing an official map demarcating Philippine waters into distinct and coded fishery areas. Sec. 123 authorizes the NAMRIA to delineate municipal waters and to designate and chart navigational lanes in fishery areas referred to by Sec. 41, 55, 56, and 105.

3.2 Implied Intersection

Implied intersections pose the greater difficulty in resolving jurisdictional issues between the DENR and DA-BFAR, because the point of origin of the issue is not so obvious, and can arise out of actual implementation in the field, or in apparent conflicts in operational guidelines, or inconsistencies in the agencies respective policies. Moreover, since the Fisheries Code is silent on how these issues are to be addressed or resolved, it is up to the Departments to address them on their own in the best way they can without either surpassing their respective legal mandates or abandoning their legal duties as a result. In contrast to the express interactions being based on either geographic jurisdiction or inherent agency capability, implied interactions arise out of the following:

- Unmentioned roles of other agencies in the implementation of the particular provision,
- Unavoidable interaction between the agencies when the particular provision is actually implemented, arising out of their respective responsibilities, and
- Geographic confluence or proximity of the agencies' respective activities with respect to the provision in question.

These implied intersections of jurisdiction often also refer to certain standards or rules which are generally stated but not explicitly identified, which appear to mean that the DA-BFAR will either define the standards or issue the rules on its own, or rely on other agencies under whose mandates such standards or rules fall. The possibility of jurisdictional conflict is increased in the first case, as it is then possible for conflicting standards or rules to be issued by two or more agencies on the same subject matter.

3.2.1 Strategic Planning

The issue on this vital function is not so apparent from the Fisheries Code, but stems from an operational perspective of the broader framework of national resource management, i.e., Considering how the national agencies and laws will interact with each other in the fisheries management regime created under the Fisheries Code. There are actually only two items under this category, but both of them deal with the fundamental aspect of strategic planning in any management scheme that is sought to be applied in any fisheries area.

At the national level, the issue arises from the provision of the Declaration of Policies cited previously, where the management of fisheries and aquatic resources is supposed to be undertaken "in a manner consistent with the concept of an integrated coastal area management."⁵ The phrase "integrated coastal area management" implies the creation of an overall strategic policy framework, or a management plan, whose progenitor is unidentified. While it may be easy to point to the DA-BFAR to be responsible for such a management plan, considering that the provision is in the Fisheries Code, it needs to be pointed out that such a plan requires the participation and cooperation of agencies beyond the DA-BFAR's jurisdiction, as well as a subordination of all involved agencies' existing plans, objectives, and operations within the parameters of the management plan. Integrated management is necessarily a multi-agency effort, and DA-BFAR is not given by the Fisheries Code the wherewithal to require multi-agency cooperation.

⁵ Sec. 2(F), RA 8550 (1998)

Additionally, it further appears that the DA-BFAR's mandate to work within such a management plan is only to with reference to the management of fishery and aquatic resources "in specific natural fishery management areas," which implies a category of fishery areas segregated from the rest of the fishery areas of the country. As integrated coastal area management comprehends more than just fishery management (e.g. It also deals with transportation activities, coastal land use, pollution, etc.). The argument that it is DA-BFAR which has exclusive mandate to define this "integrated coastal area management" is rather weak. This therefore raises the question, what agency or agencies are mandated to formulate the integrated coastal area management plan or strategy with which the management of fishery and aquatic resources must be consistent?

The second strategic function concerns the local level of governance, as distinct from the national level involved in the above issue. Sec. 3 causes the application of the Fisheries Code in all Philippine waters, fishery and aquatic resources, and lands devoted to aquaculture as well as businesses and activities related to fisheries. The DA-BFAR, however, in its IRRs distinguishes municipal waters from the rest, emphasizing that with such waters the Fisheries Code grants extensive management control to the municipal or city governments. Sec. 16, on the other hand, further clarifies that such management control by the municipal or city government shall be exercised in consultation with the Fisheries and Aquatic Resource Management Councils (FARMC) of the cities or municipalities. It also states that contiguous fishery resources such as bays which straddle several municipalities shall be managed in an integrated manner as single resource systems, which is not dependent on the politically-based boundaries of municipal waters.

The management of bays as single resource systems is in fact also a integrated management approach, based on the geographical feature of the bay. In the same manner as the concept of "integrated coastal area management" on a national level, it entails management of activities other than fishing (e.g. Port, marine transportation, coastal land use, etc.) Within the bay are in order to be effective. The question will necessarily arise, what agency or agencies shall assist the local government units in their strategic planning, when the management objectives for the bay exceed the ambit of fisheries, as well as the jurisdiction of the DA-BFAR as contained in the Fisheries Code?

The point is that the overall strategic planning functions, whether on a national or local level, in order to be effective and comprehensive enough to be within an integrated management framework, will require inputs and resources beyond those that can be provided by the DA-BFAR. The latter cannot formulate and implement an effective fisheries plan without reference to a larger framework of integrated coastal management that goes beyond fisheries and aquatic resources, and delves deeper into the coastal- and land-based activities that have impacts on the coastal and marine waters where the fisheries are located.

3.2.2 Standard Setting

The control of pollution has long been within the jurisdiction of the DENR, which has developed the necessary institutional mechanisms, resources, and expertise. However,

the Fisheries Code created a category, called "aquatic pollution" in Sec. 4(4), which is very broadly defined to cover the introduction of any substance or energy into the aquatic environment resulting in deleterious effects as to harm living and non-living aquatic resources, pose potential and/or real hazards to human health, hinder aquatic activities such as fishing and navigation, including the dumping of wastes, and goes so far as to include within its definition deforestation, unsound agricultural practices like the use of banned or excessive chemicals, intensive use of artificial fish feed, and wetland conversion. These are punishable acts under Sec. 102.

The broad definition of aquatic pollution attempted to cover both point and non-point sources of pollution from land-based sources, but is clearly inappropriately worded in some aspects, as to be unimplementable from a theoretical and practical standpoint. For example, including wetland conversion in the definition of aquatic pollution would imply that any action to convert wetlands into fishponds or reclaimed areas would be illegal, no matter how legitimate or necessary pursuant to the normal development of an area. Deforestation of any kind, which necessarily results from any type of logging in forest areas, is likewise deemed illegal, even if legitimately carried out or only at a very low level.

On the other hand, the DENR has the clear mandate to enforce all types of pollution-control laws, and its powers and functions go beyond merely enforcement of an absolute prohibition and into the setting of standards of discharge of materials into the land, water, or air at specified levels. It has complete jurisdiction over the management of forests as well as all other natural resources on the land, regulation of the use of toxic chemicals, and management of waste materials. It is clear that at some inevitable point in time, conflicts will arise between the DA-BFAR's enforcement of the absolute prohibition on aquatic pollution, on one hand, and the DENR's own management of all activities that may result in actual or future, cumulative or non-cumulative, point and non-point sources of environmental pollution.

Related to this is a separate provision in Sec. 88, prohibiting the use of noxious and poisonous substances in fishing, which makes an exception for the use of such substances to eradicate predators in fishponds in accordance with accepted scientific practices and without causing adverse environmental impact. The question of whether or not the use of substances are in accord with scientific practices and cause adverse impacts obviously straddles the DENR's general jurisdiction to determine whether environmental standards for certain areas, resources, or activities have been exceeded. As the impacts may also be carried away from the point of origin, it is possible that the DENR may find an activity to cause adverse impact and the DA-BFAR, limited as it is to the aquaculture areas, may not. The question that is raised is what agency will then be the appropriate body to determine that the use is in accord with scientific practice, and that it is without adverse environmental impact?

Sec. 57 authorizes local government units to prescribe minimum standards for fishpond facilities in consultation with the DA-BFAR, while Sec. 60 authorizes them to prescribe minimum standards for post-harvest facilities such as fish processing plants, ice plants, cold storage facilities, fish ports and landings, and other fishery business establishments likewise in consultation with DA-BFAR. What has not been considered here is that these

facilities all have major environmental impacts, and this the standards must also be in conformity with certain environmental standards. Fishponds, located as they are in mangrove areas, will have adverse impacts on the nearshore fisheries, and the design and management of such facilities will necessarily have to give consideration to ensuring the mitigation of such potential impacts. Fish processing plants, fish ports and landings, on the other hand, can have major waste pollution impacts owing to the nature of the activities that take place in them.

Similarly, Sec. 119 requires the DA-BFAR to identify community infrastructure facilities, which include those abovementioned, and prepare construction plans and designs “consistent with international environmental standards and occupational safety in sanitation and environmental impact.”

These incidents to the facilities open the door to possible jurisdictional issues with the DENR especially when minimum standards prescribed by the local government units pass the standards of the DA-BFAR but not the DENR.

3.2.3 Monitoring and Enforcement

Sec. 46 requires, as a condition of fishpond lease agreements, that the lessee will provide facilities that will minimize environmental pollution, with failure to do so being a ground for cancellation of the FLA. “Environmental pollution”, is not the “Aquatic pollution” defined in the Fisheries Code, and is a different category whose definition is not contained therein. Since the DENR has the general jurisdiction over all types of pollution, not just aquatic pollution, the DENR would need to be involved in the implementation of this provision.

International commitments and agreements on biosafety and biodiversity are required by Sec. 67(b) to be within the ambit of the Fisheries and Quarantine Inspection Service of the BFAR. These agreements and commitments are within the purview of the DENR’s existing biodiversity-related programs. Where species of aquatic flora and fauna are concerned, therefore, there is a need for a linkage between the DA-BFAR and the DENR on biodiversity protection.

3.2.4 Area Classification

Under Sec. 56 and 105, defined migration paths of migratory fish species such as those in rivers mouths and estuaries cannot be allowed to be obstructed by fish pens, fish corals, fish traps or similar structures. The agency which has the function of identifying these paths, and presumably causing their publication in official maps, has not been identified.

Sec. 108 allows the establishment of fisherfolk resettlement areas in the public domain, specially near the fishing grounds. The allocation of land areas for such use is in effect a disposition of public lands, if only for a specific purpose, and therefore falls within the general management jurisdiction of the DENR over public lands. It is useful to note that the IRR do not mention the DENR specifically, but instead refers to the Department of Agrarian Reform (DAR), which however has very limited jurisdiction over public lands in the coastal areas.

In Sec. 18, fishing is prohibited in bays that are in an “environmentally critical condition.” Although the DA-BFAR is granted the authority to make such a determination, it should be considered that the conclusion that any area is in an “environmentally critical condition” can also be made by the DENR, again subject to its own procedures and standards. Such a determination could be the basis for declaring an area as a marine protected area and initiating the procedure to include it under the NIPAS. Practically, the DA-BFAR does not have the exclusive competence to make such a conclusion; however, the Fisheries Code authorizes only the DA-BFAR to make such a determination with a view toward disauthorizing any fishing activities in bays. This could pose a problem where, for example, the DENR is attempting to protect an area, but is unable to disallow fishing in the same area on account of a lack of DA-BFAR determination that it is in an “Environmentally critical condition.”

Fishery reservations for the exclusive use of government, propagation, educational, research, and scientific purposes may be designated by the DA-BFAR under Sec. 80. On the other hand, Sec. 81 requires the establishment of fish refuges and sanctuaries in bay foreshore lands, continental shelf, or any fishing ground, which includes their being set aside for the cultivation of mangroves. Sec. 45 in the section on aquaculture further allows the DA-BFAR to establish reservations for fish sanctuary, conservation, and ecological purposes in areas already declared suitable for fishpond purposes. These provisions essentially deal with the creation of marine reservations and protected areas in the general sense, and therefore may possibly intersect with DENR initiatives on protected seascapes and NIPAS areas; likewise, any existing reserves, sanctuaries, or mangrove rehabilitation or reforestation areas may also be affected.

4.0 A FRAMEWORK FOR RESOLUTION

4.1 The ICM Mandate

From the outset, it can be safely stated that integrated coastal area management is not the exclusive mandate of the DA-BFAR by virtue of Sec. 2(f) of the Fisheries Code. For one, the wording of this Fisheries Code would seem to limit DA-BFAR’s mandate to use such a framework only in “specific fishery management areas”, apparently a geographically defineable unit that is not nationwide in scope.

Integrated coastal management, whether directed at a resource, areas, or ecosystem, is not a fixed concept, but rather a management approach that seeks to institutionalize coordinative mechanisms that minimize the conflicts, take advantage of complementarities, and address negative interactions of the many sectorally discrete and disparately managed activities. As an approach, its use is not subject to exclusive appropriation by any one government agency. What defines an integrated approach to coastal management is at the outset a common management framework that is acceptable to all the involved agencies, and allows them to act within the coastal area or zone in a manner that results in the achievement of their individual goals with the minimum of conflict. This management framework need not be the sole province or responsibility of only one specific agency, but

can be the common ground for the individual strategies pursued by the different agencies addressing their specific sectoral concerns.

At a national level, then, integrated coastal management covers far more than fishery resource management; it goes beyond fisheries and encompasses other activities that may impact upon fisheries but are beyond the competence of fisheries authorities. It includes the management initiatives on the land, which is by far beyond the DA-BFAR's jurisdiction, except for those portion deemed to by aquaculture areas. Even if we were to assume that Sec. 2(f) gives the DA-BFAR a mandate for integrated coastal area management, it would appear to be limited by the Fisheries Code definition of the coastal area as encompassing only land areas within "a landmark limit of one (1) kilometer from the shoreline at high tide."⁶ This however, is obviously a very limited delineation of the land component of the zone, and the waters clearly are most often affected by processes much farther inland than one kilometer. Moreover, the seaward limit, describing a vertical depth instead of a horizontal distance, actually makes this definition rather untenable.

Regardless of the definition, it appears that the DA-BFAR has not been given the unequivocal mandate to define an integrated coastal management strategy that is nationwide in scope; all that is stated is that in certain pockets of areas the management of resources must be consistent with the integrated management concept.

Having shown that the DA-BFAR landward reach is rather short, it would be useful at this point to consider the range of activities that can take place in the sea, which demonstrates the possible breadth that needs to be addressed by a national integrated coastal management strategy when considering the water-based activities. These are:⁷

I. Actual Use of the Resources

A. Extractive Uses

1. Living
 - Gathering (of coral, sponges, shells, seaweed, etc.)
 - Hunting (fishing, sampling, etc.)
 - Aquaculture (inc. Mariculture)
2. Non-living
 - Minerals (hydrocarbons, dredging, etc.)
 - Water (desalination)
 - Energy (otec, wave, current, etc.)
 - Spatial (land reclamation, channel construction, etc.)
 - Cultural (archeology, specimen collection, etc.)
 - Recreation

B. Non-extractive Uses

⁶ Sec. 4(9)

⁷ Modified from Day, Douglas. Taxonomy of Ocean Uses. In Day, D. and A. Chiricop, lecture on competing demands for ocean use, in contemporary issues in ocean management and development, Volume 1, 209-234, Dalhousie University Marine Affairs Program (unpublished).

1. Living
Conservation (marine parks, fisheries reserves)
2. Non-living
Minerals (prospecting, exploration, surveying)
3. Cultural
Archeology (shipwrecks)

II. Non-resource Uses

A. Additive Uses

1. Fixed
Transportation infrastructure (pipeline, bridges, navigation aids, causeways, etc.)
Communications (submarine cables)
Recreation (offshore hotels)
Coastal infrastructure (dams, dykes, harbors, break-water)
2. Mobile
Wastes (land-based sources of pollution, vessel pollution, dumping, atmospheric sources)

B. Non-additive

1. Economic
Transportation and communications (shipping)
2. Scientific
Exploration (historical research)
Marine scientific research
Surveying (geophysical surveys, hydrographic surveys, fisheries research)
3. Political
Military uses
4. Leisure
Recreation
Tourism

From the above enumeration and classification, it can already be seen that the DA-BFAR's jurisdictional scope under the Fisheries Code, even with reference to Philippine waters, is largely concentrated on extractive use of living resources, with an additional hand in non-extractive use insofar as it is necessary for resource conservation. In all other ocean use activities, however, the DA-BFAR is clearly without direct or incidental powers.

The DENR, on the other hand, has a very broad mandate over all natural resources and activities for as long as they have environmental impacts, that effectively allows it to influence all other activities in the foregoing classification, with the exception of Political uses and perhaps some scientific uses. This is exercised through its various environmental management responsibilities, which provide the DENR with the ability to influence many

aspects of sectoral management in the ocean. Offhand, the major sectors under the classification would be marine transportation, public works, and tourism. The main sources of DENR's powers in integrated coastal management are its general authorities under the Revised Administrative Code of 1997,⁸ the Philippine Environment Code,⁹ the Environmental Impact Statement System,¹⁰ the Marine Pollution Decree,¹¹ and the Philippine Act,¹² activities, as well as geographic scope, the DENR clearly covers more ground (and water).

The implication of this fact to national planning is that the DENR is in a better position to lay the foundation for an integrated coastal management plan that covers both land and water components of the coastal areas. At the national level, the DENR has sufficient mandate and scope to establish a national ICM strategy, which would be the basis for formulation of more specific area-based coastal management strategies. It has two options: to utilize watershed-based approaches already provided for in existing laws and policies to coordinate management of downstream areas, or to take a much bolder initiative to promulgate an innovative island-based approach that considers islands as management units for planning and management. Both would necessarily involve a coastal component, that in turn includes the fisheries management component to be handled by the DA-BFAR.

The maintenance of the coastal fisheries are undoubtedly the priority for the Philippines, considering that most of the poverty-stricken coastal communities are directly dependent on them for subsistence, and that fish provide the greater part of the Filipino's protein intake. They are vital to ensuring long-term food security of the nation, and this it is essential for DA-BFAR to be able to achieve fisheries management objectives without having to come into constant direct conflict with environmental imperatives. An integrated coastal management strategy does not have to result in conflict between the DENR and DA-BFAR, and in fact they can play the major complementary roles in the policy-definition.

DENR should undertake to formulate a national integrated coastal management framework that seeks to enable coastal environmental management in support of sustainable fisheries management by the DA-BFAR. In essence, DENR must provide the general strategy that covers both land and water activities, which supports the DA-BFAR in management of the coastal fisheries. The management of all ocean use activities, whether non-extractive, additive, or non-additive, should result in supporting, not impeding, sustainable development of the extractive uses. For example, pollution management should always hold as a priority the prevention of coastal pollution so that fisheries will not be affected; coastal infrastructures should not result in fisheries habitat destruction, or mangrove management should be geared towards ensuring the integrity of the nearby fish stocks. In this manner, DENR can support the DA-BFAR in achieving the policy objectives of the Fisheries Code.

⁸ Exec. Order No. 292 (1987)

⁹ Pres. Decree No. 1152 (1977)

¹⁰ Pres. Decree No. 1586 (1978)

¹¹ Pres. Decree No. 979 (1976)

¹² Pres. Decree No. 7942 (1995)

4.2 Principles for Delineation and Harmonization of Jurisdiction

Delineation and harmonization of the jurisdictions of the DENR and DA-BFAR will be based on practical principles that consider the agencies' existing capabilities and jurisdictions, as well as minimize the need for substantial changes in their current operations. The main intention of this study is to promote inter-agency coordination and cooperation, as well as complementarity of their efforts, rather than the allocation of exclusive powers and functions. In consonance with these ideas, the following principles are to be followed to formulating recommended courses of action:

1. In cases of geographic proximity of two or more management areas under separate departments, standardization of procedures and harmonization of specific management goals will be encouraged.
2. Where both departments have resources or capabilities to address the same specific management issue, redundancy of agency efforts shall be avoided, and the procedures of both agencies in addressing the same management issue shall be standardized in order that the resulting agency response to the management issue will be more or less the same regardless of which agency actually responds.
3. Where there are currently existing mechanisms for addressing specific management issues in either department, such mechanisms will be utilized in order to effect implementation of management actions without need for new mechanisms that will only duplicate the functions of existing ones.
4. Where the law is not clear as to the roles of the agencies at certain stages of a management issue, the agency with existing mechanisms and resources that can effectively address such stage will be relied upon, and the creation of new units or mechanisms which only duplicate those mechanisms or resources will not be necessary.
5. Where management plans geographically converge, the two agencies shall undertake a process of effective consultation and, if necessary, take joint management action, in order to coordinate their management plans.

With these in mind, the following section discusses the jurisdictional issues previously enumerated and suggests how they may be resolved.

4.3 Management of intersections

4.3.1 Express intersections

Standard Setting

Classification of rare, threatened and endangered species under Sec. 4(17) & 11

There are existing listings of rare, threatened, or endangered species made by the DENR pursuant to implementation of the existing laws and international commitments. The DA-BFAR should reinforce this by making such listings the basic reference document for identifying rare, threatened and endangered species of fish and other aquatic resources. Considering the DA-BFAR's specific expertise on fisheries and aquatic resources, however, it should not be precluded from issuing FAOs that effectively amend the listing as far as such living resources are concerned. DA-BFAR should then inform the Protected Areas and Wildlife Bureau (PAWB) of the issuance of its FAO in order that the DENR may also adopt such additional species in its list of rare, threatened and endangered species. Ultimately, both agencies should have the exact same list of species.

Establishment of catch ceilings and closed seasons in waters under special agencies under Sec. 8 & 9

When fisheries areas under DA-BFAR jurisdiction and protected areas under DENR jurisdiction are adjacent to one another, the establishment of catch ceilings and closed seasons for one area should not be unilaterally decided without consulting the appropriate management body in the other, so that the ceilings or closed seasons are consistent in promoting the conservation of the resources which straddle the two management areas. This is to prevent the management decisions in one area from undermining the management strategies in the adjacent area.

Aquaculture under Sec. 46, 47, and 48

The provisions on the development of a Code of Practice for Aquaculture are quite clear. It is suggested, however, that the Code also include, as integral parts:

1. Guidelines for the application of the provisions of Sec. 12 & 13 on Environmental Impact Statement to aquaculture activities,
2. The system of incentives and disincentives for sustainable aquaculture practices under Sec. 48,
3. Guidelines for construction of facilities intended to minimize environmental pollution required under Sec. 46(h),
4. Recommended minimum standards for fishpond facilities for guidance of local government units which must prescribe such standards as required under Sec. 57,
5. Guidelines for the allowable use of noxious and poisonous substances in fishponds under Sec. 88, and
6. Guidelines to support reforestation of river banks, streams, and seashores fronting the dikes of fishponds areas as mentioned in Sec. 46.

Since the above guidelines and standards are more concerned with environmental management, in the creation of the Code the formulation of these portions should be the responsibility of the DENR.

Monitoring and Evaluation

Environmental Impact Assessment under Sec. 12 & 13

The DENR should promulgate appropriate rules and procedures for the application of the EIS system to fisheries-related development activities. A special board or committee of evaluators specializing in fisheries and coastal management should be constituted to evaluate such development projects. Monitoring of compliance and enforcement of the conditions of the ECC should be the responsibility of the DA-BFAR once the ECC has been issued, since the DA-BFAR will then be presume to be in a better position to monitor the development activity.

Area Classification

Mapping and surveying requirements under Sec. 18, 26, 40, 41, 55, 56, 105 and 123

The DA-BFAR should provide NAMRIA with sufficient financial and logistical support to accomplish the many mapping tasks that are required of it as basic references in the management of fisheries resources. The DA-BFAR may also undertake its own mapping efforts using its own resources, with the participation of NAMRIA personnel in order to facilitate the creation of official charts. The DA-BFAR's own charts, produced as a result of mapping activities following standard surveying procedures, should thereafter be submitted to the NAMRIA for review and approval for official publication by NAMRIA.

4.3.2 Implied Intersections

Strategic Planning

National integrated coastal area management planning referred to in Sec. 2(f)

The DENR should take the initiative in formulating a National Integrated Coastal Management Strategy or Plan that will become the reference point for the creation of local management plans. Such a Strategy or Plan should provide the parameters for integrated management of the coastal environment, whether using the watershed approach or a broader and more innovative island ecosystem approach. One of the priority objectives of such a plan should be to support the sustainable development and utilization of fishery resources in consonance with the DA-BFAR National Fishery Plan. Coordination of the two plans, the first being broad and comprehensive in scope, the second being focused on specific activities and resources, is necessary and will likely require an inter-agency process in the formulation of the plans.

The DENR's national plan in essence should provide the parameters for non-fisheries activities and resource-uses in both land and sea to support the fisheries in a stable and

sustainable marine environment. For example, under such a strategy, pollution control in the coastal cities and towns should be directed towards mitigating the impact of coastal pollution on the fishery grounds, or mangrove management should be intended as a support mechanism for the nearby fishery. This is necessary because fisheries is only one sector among many, and yet directly affects the majority of the coastal population; likewise, the DENR has a broad jurisdictional scope that encompasses both land and water, all of which indirectly and cumulatively affect the fisheries.

Local integrated management planning under Sec. 3 & 16

The National Integrated Coastal Management Strategy should also lay the basis for integrated management of smaller areas by the local government units in accordance with existing laws. Municipal waters and special management areas outside the DA-BFAR's jurisdiction should operate within a local integrated management framework drawn from the national plan. In this regard, it will likely be necessary to formulate a separate Memorandum Order with the Department of Interior and Local Government (DILG) to harmonize jurisdiction with the LGUs and local units of the DENR and DA-BFAR.

Standard Setting

Definition of aquatic pollution under Sec. 4(4) and 88

The definition of aquatic pollution in the Fisheries Code is too broad. The DA-BFAR should provide the DENR with its views, inputs, or requirements regarding what types and levels of pollution will pose sufficient dangers to the viability of the fisheries in specific situations or areas. The DENR should then consider such views, inputs, or requirements as the minimum standards for aquatic pollution in relation to fisheries, and issue the appropriate regulations through the Environmental Management Bureau, and for purposes of enforcement by the Pollution Adjudication Boards.

Thereafter, the DA-BFAR shall be responsible on its own behalf or on behalf of private parties, for prosecuting the appropriate complaints with the Pollution Adjudication Board. The DENR shall decide such cases and impose such penalties as may be provided by law, including the Fisheries Code. On this note, perhaps it would be advisable for the Pollution Adjudication Board to constitute a special division to handle exclusively fisheries-related aquatic pollution cases.

The DA-BFAR also has the option of prosecuting the case before the regular courts. But this should be done without violating the rules of the court against forum shopping.

Minimum standards for certain facilities under Sec. 57, 60, and 119

The DA-BFAR should establish the minimum standards and basic plans for support facilities/infrastructure under these sections. Such standards and plans shall thereafter be reviewed by the DENR for the purpose of recommending such changes to the standards or plans as may be necessary to ensure the basic components required for the purpose environmental protection. The DA-BFAR shall thereafter integrate the DENR's

recommendations into the standards or plans, and issue the same as the minimum standards for such facilities or infrastructure.

Environmental pollution under Sec. 46

The DENR should define the term “environmental pollution” and establish the parameters which would determine whether environmental pollution exists and action should be taken against the fishpond owner.

Biosafety and biodiversity under Sec. 67(b)

DENR and DA-BFAR should establish common biosafety criteria and procedures for purposes of marine species protection, and submit the same for approval by the appropriate inter-agency committee responsible for the Biodiversity Conservation and biosafety protocols.

Area Classification

Identification of migration paths under Sec. 56 & 105

The DA-BFAR should formulate rules and procedures for rapidly identifying and documenting the migration paths of fish and other marine species, preferably with or through the participation of the Local Government Units. The information on these migration paths shall be recorded, collated, and consolidated by the DA-BFAR in a centralized database. A copy of such database shall be provided to the NAMRIA for the purposes of issuance or publication of appropriate official charts and maps.

Establishment of fisherfolk resettlement areas under Sec. 108

The DENR should identify portions of public lands suitable for resettlement in accordance with existing laws. DA-BFAR should not undertake resettlement without the certification of the DENR that such lands are suitable for resettlement. This is to ensure that resettlement does not have the effect of undermining DENR’s management of public lands.

Determination of “environmentally critical condition” under Sec. 18

The DENR and DA-BFAR should create common procedures, standards and criteria for determining whether a bay is in “environmentally critical condition.” This is intended to minimize the possibility that the two agencies might arrive at different conclusions with respect to the same area.

Establishment of reserves and sanctuaries under Sec. 45, 80, and 81

The DENR and DA-BFAR should also create common procedures, standards, and criteria for the establishment of reserves, sanctuaries, and protected areas for specific purposes. This

will minimize differences between the two agencies as to whether an area should be classified as such.

5.0 THE IMPORTANT ROLE OF LOCAL GOVERNMENT UNITS

While this study centered on the issue of clarifying the jurisdictional mandates of DENR and DA, it should be strongly emphasized that under the Local Government Code of 1991, the Local Government Units (LGU), in particular, municipalities and cities, play a pivotal role in the actual implementation of the Fisheries Code in the coastal areas and municipal waters. The most important planning functions for coastal management have been largely devolved to the local governments and the implementation of management measures within the strip of the coastal zone composed of the municipalities territory and municipal waters are largely within the powers and functions of the local chief executive and local legislature. Although this study was engaged for purposes of creating a Joint Administrative Order of the DENR and DA-BFAR, it is highly recommended that it subsequently be expanded to include the DILG in order to define the role of local governments within this jurisdictional framework.