

## 6.0 | Tenure reform in fisheries and aquatic resources

**F**isheries is an important industry and a source of livelihood in the Philippines. The country has 2,200,000 square kilometers of territorial waters including its Exclusive Economic Zone (EEZ), and a coastline length of 36,289 kilometers. Territorial waters consist of 266,000 square kilometers of coastal area, and 1,934,000 square kilometers of oceanic area. The coral reef area (within 10-20 fathoms where reef fisheries occur) covers some 27,000 square kilometers. Inland waters where small-scale fishers are also located, include swamplands, lakes, rivers and reservoirs that cover a combined area of 5,460 square kilometers (or 546,000 hectares). In 2015, the country ranked 9th among the top fish producing countries in the world, and 11<sup>th</sup> in aquaculture production (BFAR, 2015).

The Fisheries Profile of 2015 published by the Bureau of Fisheries and Aquatic Resources (BFAR) shows that municipal fisheries account for 26 percent of total fish production. Municipal fisheries refer to fishing activities in municipal waters (inland waters or within 15-kilometer from the coasts) that use fishing vessels of three gross tons or less, or fishing not requiring the use of fishing vessels (Fisheries Code, Sections 52-53). Meanwhile, aquaculture and commercial fisheries accounted for 51 percent and 23 percent, respectively, of total fish production. Overall, the fishing industry accounts for some 1.3 percent of the country's GDP.

The 2002 Census for Fisheries showed that the municipal fisheries sector accounted for 85 percent of all fishing operators nationwide. The rest (15 percent) are employed in the commercial and aquaculture sectors. The latest figures from the Fisheries Registration System of BFAR meanwhile show that there are some 1.93 million registered municipal fishers and some 202,000 registered boats as of April 2018.

Municipal fisherfolk are distributed fairly evenly across all regions of the country, based on their respective fishery resources and populations, except for inland regions (CAR and NCR). Among all regions, the ARMM

has the highest fisherfolk population (253,000) which accounts for 13 percent of the total.

However, as a sector, small or municipal fisherfolk rank among the poorest of the poor, where 34.3 percent live below the poverty line – a figure close to the poverty incidence among farmers at 34.0 percent. This was much higher than the country's poverty incidence of 21.6 percent for 2015. Fisherfolk and farmers consistently registered as the two sectors with the highest poverty incidence in 2006, 2009 and 2012 (PSA, 2017).

***Fisherfolk issues and the need for tenure reforms.*** As early as the 1980s, there were reports that fishery resources and fish catch were being depleted due to continued environmental degradation of the coastal system. Coral reefs, mangroves and seagrasses were all degraded, contributing to low fish catch for fishers. The causes included destructive fishing practices, siltation from upland areas, poor agricultural practices and inappropriate land use activities in coastal watersheds (Ferrer, et. al., 1996).

Fisherfolk communities continued to be marginalized as shown by low incomes and limited capital for improving fishing gears, venturing into fisheries-related livelihoods other than catching; markets controlled by few middlemen which affected prices of the produce; limited access to basic services; lack of tenurial instruments that would protect settlements of coastal dwellers; malnutrition and lack of health facilities; and, violence and discrimination against women (non-valuation of productive work or contribution to fishing or farming, multiple burden, lack of opportunities for development).

Enforcement of fishery laws and policies has been weak resulting in intrusion of commercial fishing vessels inside the municipal waters; poaching in marine protected areas; rampant use of illegal fishing gears and practices such as dynamite and poisonous/noxious substances; continued conversion of mangrove forest into fishpond areas; and, illegal wildlife trade.

Environmental degradation and related issues further plague the sector. These problems include among others: conversion of coastal habitats for tourism and development-related facilities; siltation due to soil erosion; overfishing; and, destructive fishing practices.

In 1994, several CSOs and fisherfolk organizations initiated the crafting of a new Fisheries Code to address issues such as overfishing, lack of tenurial security, and resource degradation due to illegal and destructive fishing.

## Philippine Fisheries Code

The Philippine Fisheries Code (RA 8550) was passed in 1998, after years of lobbying by civil society organizations working with the fisheries sector. The Code sets food security as the overriding consideration in the utilization, management, conservation and protection of the fishery resources.

Among the Code's multiple objectives are: (1) conservation, protection and sustained management of fishery and aquatic resources; (2) poverty alleviation and the provision of supplementary livelihood among municipal fisherfolk; and, (3) improved productivity in the industry through aquaculture, optimal utilization of offshore and deep-sea resources, and upgrading of post-harvest technology.

***Fishery tenure reforms.*** In terms of instituting tenure reforms, the Fisheries Code has certain provisions that need to be highlighted:

- *Local governance over municipal waters.* LGUs are given jurisdiction over municipal waters as defined by the Code. LGUs in consultation with the Fisheries and Aquatic Resource Management Councils (FARMCs) are given responsibility for the management, conservation, development, protection, utilization, and disposition of all fish and fishery/aquatic resources within their respective municipal waters. FARMCs are to be formed by fisherfolk organizations and NGOs in the locality and assisted by the LGUs and other government entities. In the case of bays and lakes which straddle several municipalities and cities, the LGUs which share or border such resources may group themselves and coordinate with each other to achieve the objectives of integrated fishery resource management.
- *Preferential access.* The Code limits access to fishery and aquatic resources in the country to Filipino citizens and gives small fisherfolk and their organizations the preferential use of municipal waters. Municipal waters are defined to include not only streams, lakes, inland bodies of water and tidal waters within the municipality which are not included within the protected areas as defined under RA 7586 (NIPAS Law), public forest, timber lands, forest reserves or fishery reserves, but also coastal marine waters within 15-kilometer from the shore. Commercial-scale fishing is not allowed in municipal waters, except in special cases where they are given municipal permits, and only in waters over 10 kilometers from the shore with a depth of at least seven fathoms (12.8 meters).
- *Fisherfolk organizations/cooperatives whose members are listed in the registry of municipal fisherfolk, may be granted use of demarcated fishery areas to*

*engage in fish capture, mariculture and/or fish farming.* Such registry will be updated annually and shall be available for public inspection.

- *Fisherfolk settlements.* Section 108 of the Code mandates the creation of fisherfolk settlement areas, to be located in certain areas of the public domain, near fishery areas.
- *Protection of fishworkers.* Fishworkers in commercial fishing are entitled to the benefits and privileges accorded to other workers under the Labor Code and other laws or social legislation for workers.
- *Support services to municipal fisherfolk.* BFAR and the LGUs are to provide support to municipal fisherfolk through appropriate technology and research, credit, production and marketing assistance and other services such as training supplementary livelihood.

**Civil society review of RA 8550.** In anticipation of the possible mandatory review of RA 8550, in 2004 the NGOs for Fisheries Reform (NFR) conducted consultations to critically analyze the contents of the law and to draw up recommendations. Some of these were:<sup>21</sup>

- *On Declaration of Policy:* from “to achieve food security as the overriding consideration...” to “to ensure the sustainability of the country’s fisheries and aquatic resources that will guarantee food security”
- *On Definition of Fisherfolk:* from “people directly or personally and physically engaged...” to “men and women directly or personally and physically engaged...”
- *On Definition of Municipal Waters:* to include the phrase “where the territory of a municipality includes several islands, the outer most points of such islands shall be used as base points and connected by archipelagic baselines, irrespective of the lengths of such baselines from the main coastline.”
- *On Section 108 on Fisherfolk Settlement Areas:* The NFR drafted a proposed revision that would require that certain areas of the public domain, specifically near the fishing grounds, be reserved for the settlement of the municipal fisherfolk. But in the absence thereof, that Fisherfolk Settlement areas shall be established on private lands, subject to the payment of just compensation. Preference shall be given primarily to municipal fisherfolk who are members of fisherfolk cooperatives and organizations. Moreover, the NFR recommended that the DENR in consultation with the LGUs shall prepare an inventory of lands in the public domain along coastal areas for fisherfolk settlements. The proposal also sought to protect municipal fisherfolk against eviction and demolition, unless several safeguards were met, including proper resettlement.

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<sup>21</sup> Note: NFR proposals are highlighted in italics.

When the mandatory review did not happen on the fifth year of the Fisheries Code, NFR and its partner organizations decided not to actively call for one as the mandatory review could also threaten the favorable provisions of the Code.

***Related tenure reform policies.*** The Fisheries Code of 1998 highlights the principles of decentralized local governance, community-based resource management, and preference for smallholders in granting access and tenure rights to public domain areas on which their livelihoods depend. These are consistent with earlier laws and programs, specifically the Local Government Code of 1991 and Executive Order 263 of 1995 on CBFM.

*Executive Order 263* establishes community-based forest management as the national strategy in recognition of indispensable role of local communities in forest protection, rehabilitation, development and management. Participating organized communities are granted access to forestland resources under long-term tenurial agreements (25 years, renewable for another 25 years) using environment-friendly and sustainable harvesting methods as stipulated in a site-specific management plan. Mangroves, as part of forest resources, may also be covered by CBFM agreements that can be availed by organized fisherfolk communities.

*BFAR Fisheries Administrative Order 197-1 of 2000* gives preference to fisherfolk organizations as well as micro, small and medium enterprises (MSMEs) in the lease of public lands for fishponds and mangrove-friendly aquaculture through the issuance of FLAs and MASCs. Among the notable terms of the leases are annual rentals to be paid by the lessee to the government, and the required production quotas (in kilograms per hectare). Leases may be cancelled on grounds that include: violation of fishery laws, non-adherence to good aquaculture practices, sub-leasing or development of the area for other purposes, as well as abandonment, and non-development or underutilization of the area.

*Republic Act 10654 of 2014* amended the Fishery Code strengthened measures to prevent and deter illegal, unreported and unregulated fishing. It increased the penalties for commercial fishing violators and poachers, and mandated the installation of monitoring, control and surveillance systems on all flagged Philippine fishing vessels.

## Status of tenure reforms

***Delineation of municipal waters.*** As the Fisheries Code gave municipal fishers priority access to the municipal waters, the delineation of the municipal waters is imperative to designate the exact areas where municipal fishers have preferential rights, and to establish violations of commercial fishing vessels, i.e. intrusion and illegal fishing in municipal waters.

However, in a meeting with BFAR on 14 August 2018, BFAR reported that of the country's 928 coastal municipalities, only 305 have delineated their municipal waters with certified maps. And of these 305 LGUs, only 67 have issued the required local ordinances thus completing the delineation process.

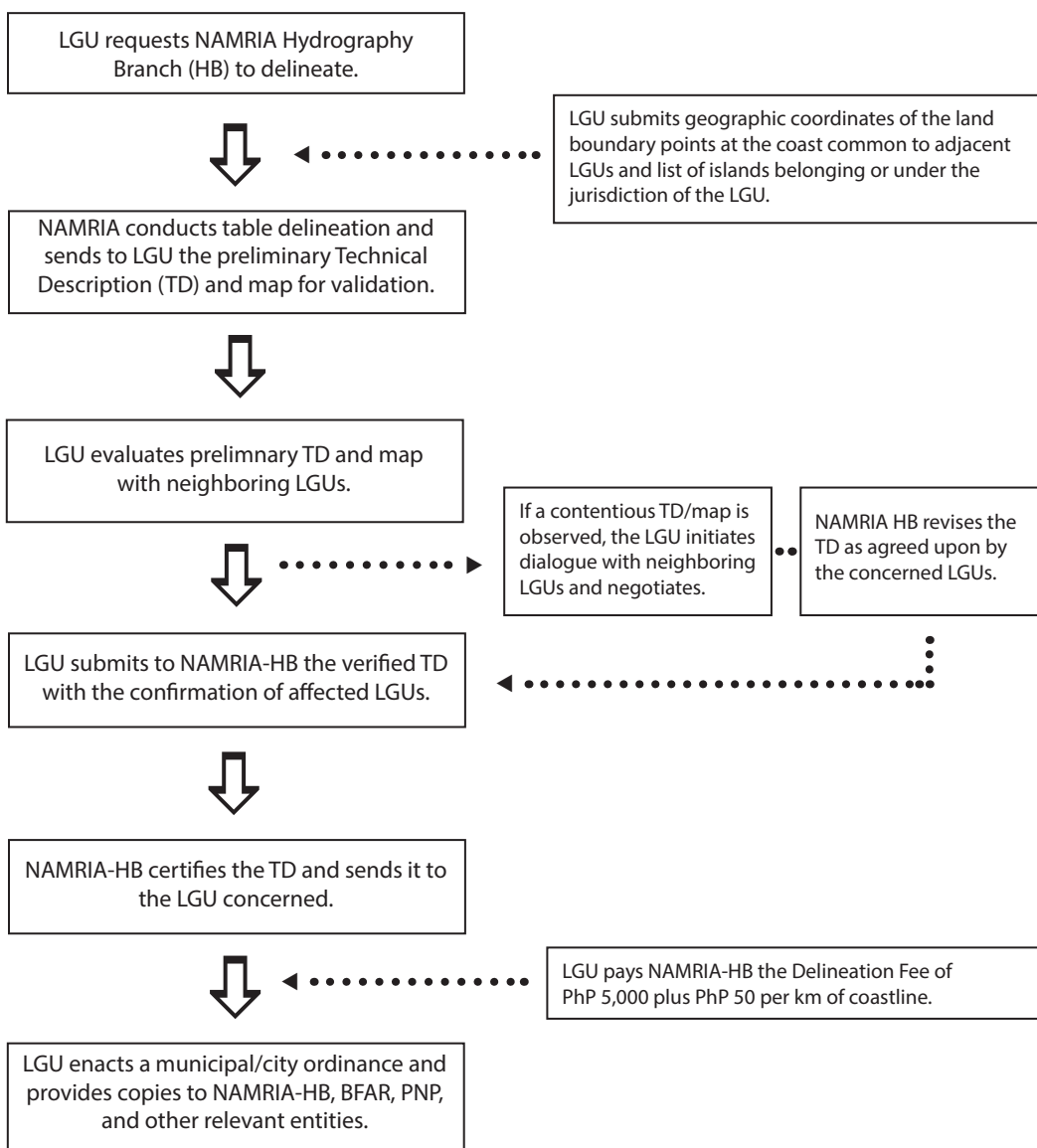
NAMRIA also mentioned in a meeting with legislators at the House of Representatives that as of 15 August 2018, some 263 local governments have not yet applied for municipal water delineation. The common problem encountered in completing the municipal water delineation is the establishment of the reckoning point, which is often contested by adjacent LGUs.

NAMRIA is the country's central mapping agency, depository, and distribution facility for natural resources data, and is the mandated agency under the Fisheries Code to lead in the delimitation and delineation of the municipal waters. However, while NAMRIA has completed the technical description of all coastal municipalities, these are often contested by the LGUs concerned as they are reluctant to concede control over disputed territory.

Thus, only 67 municipalities have completed their municipal water delineation with the enactment of a municipal ordinance, the last step of the process as shown in Figure 9. This last step is essential to firm up the legal basis for the delineation of municipal waters, and is vital for sustainable management, law enforcement, and the granting of preferential rights to municipal fisher within the 15-kilometer zone.

***Fisherfolk settlements.*** While the Fisheries Code (Section 108) mandates the setting up of fisherfolk settlement areas, there are still no clear implementing rules and regulations on how this is to be achieved, in spite of lobbying efforts from fisherfolk organizations. Many fisherfolk settlements are located in foreshores and public lands with no security of tenure, facing the constant risk of eviction.

**Figure 9. Flowchart of municipal waters delineation.**



**Fishery management areas.** BFAR is implementing ecosystem approach to fishery management through the setting of FMAs. In FMAs, the important element is inter-LGU cooperation and designation of zones where access and control of fishers are regulated. Hence, FMAs can be implemented even in areas not yet delineated.

**Preferential rights in the issuance of public lease agreements.** One of the BFAR programs that can help secure the fisherfolks in the coastal areas is the provision of Fishpond Lease Agreements (FLAs). However, of the 403 listed aquaculture farms as of June 2018, only two were issued to fisherfolk organizations.

Meanwhile there were 11 FLAs issued to organizations since 1973 (BFAR, 2018c). Also, there were already six applications for Mangrove Aquasilviculture Contract (MASC) filed by applicants in BFAR, and four of these were in cancelled or expired FLAs. However, in a forum on abandoned fishponds, BFAR stated no MASC has been approved yet as of June 2018.

**Table 14. Jurisdictions over coastal areas.**

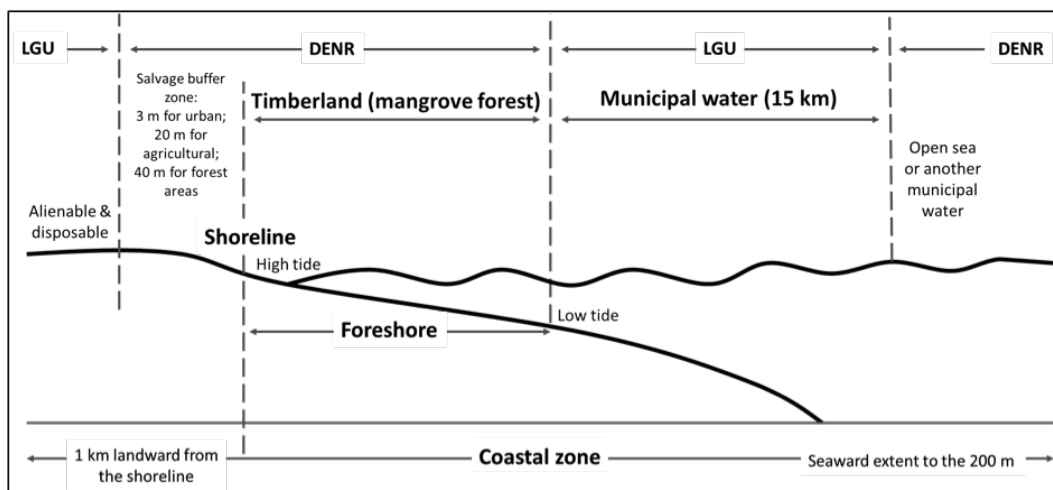
Agency	Role	Legal Provision
Department of Environment and Natural Resources (DENR)	Responsible over the survey and management of alienable and disposable public land, issuance of leases and permits, and over matters of forestry, mining and environmental concerns.	Commonwealth Act (CA) 141/ Executive Order (EO) 192
Department of Public Works and Highways (DPWH)	Responsible over cases involving construction and development along foreshore areas.	CA 141, Section 66
Philippine Ports Authority (PPA)	Issues permits regarding construction of piers/ports.	Presidential Decree (PD) 857
Bureau of Fisheries and Aquatic Resources (BFAR)	Issues or cancels Fishpond Lease Agreements.	Philippine Fisheries Code of 1998
Philippine Estates Authority (PEA) – now known as Philippine Reclamation Authority (PRA)	Responsible over activities pertaining to land reclamation.	EOs 525 and 654
Local Government Units (LGUs)	Regulates the construction and building activities and their uses covered by ordinances. Prepares comprehensive land use plans and zoning ordinances.	LGC 57, August 10, 1979 & Republic Act (RA) 7160
Housing and Land Use Regulatory Board (HLURB)	Promulgates zoning and land use standards and guidelines governing land use plans and zoning ordinances of LGUs.	EOs 648 and 72; and RA 7279

**Bantay-Dagat** (“sea guardian”) is a community-based law enforcement program that engages fisherfolk in coastal villages on a volunteer basis to support the detection and enforcement of illegal fishing in coastal waters. Bantay-Dagat is mandated under Sec 158 of the amended Fisheries Code (RA 10654) which enables government officials and employees, barangay officers and members of fisherfolk associations who have undergone training on law enforcement to be designated by BFAR as deputy fish wardens in the enforcement of fishery laws, rules and regulations.

**The National Greening Program (NGP).** The NGP is a massive forest rehabilitation program of the government established by virtue of Executive Order No. 26



**Figure 10. Jurisdiction over coastal zones and municipal waters.**



*Adapted from DENR-Land Management Bureau*

issued by former President Benigno Aquino III in 2011. Implemented under DENR, the program seeks to grow 1.5 billion trees in 1.5 million hectares nationwide in six years (2011 to 2016). Areas eligible for rehabilitation under NGP include mangroves, beach forests and protected areas, where fisherfolk organizations can be contracted for forest rehabilitation. In 2015, through EO 193, the NGP was further expanded to cover the remaining unproductive, denuded and degraded forest land, and extended to 2028. The Master Plan for Forestry Development (2016-2028) seeks to encourage and enhance development of forest plantations, with greater participation from the private sector, government units, and organized communities.

However, instead of helping secure fisherfolk access and management of the coastal areas, the NGP sometimes leads to conflicts among fisherfolk organizations. There are cases where organizations close to DENR personnel tend to be favored with NGP contracts. Some reforestation projects are implemented by organizations from outside the barangays.

## Issues and threats on fisherfolk access and tenure

**Multiple, overlapping agency jurisdictions.** There are several government agencies with jurisdiction over the coastal areas, particularly on foreshore and easement areas (LMB-DENR, 2018).

Thus, the coastal areas where fisherfolk live and work fall under the jurisdiction of different agencies of government.

This situation can be confusing to fisherfolk communities. Hence, fisherfolk communities need to understand the roles of these agencies in order to identify which government agency to approach regarding their concerns.

***Overlapping rights over waters in ancestral domains.*** IPRA mandated the recognition and protection of the rights of indigenous cultural communities (ICCs) and indigenous peoples (IPs) to their ancestral domains, and the preservation and development of their cultures, traditions and institutions.

IPRA defines Ancestral Domains as “all areas generally belonging to ICCs/IPs comprising lands, *inland waters, coastal areas, and natural resources therein*, held under a claim of ownership, occupied or possessed by ICCs/IPs, themselves or through their ancestors (...)” (emphasis supplied). The Certificate of Ancestral Domain Title (CADT) “refers to a title formally recognizing the rights of possession and ownership of ICCs/IPs over their ancestral domains identified and delineated in accordance with the law”.

There are cases where the coverage of municipal waters as defined by the Local Government Code (LGC) and the Fisheries Code comes in direct conflict with the IPRA.

In Coron, Palawan the ancestral waters of the Tagbanwa indigenous people overlaps with the municipal waters under the local government of Coron. In 2002, the NCIP issued a CADT to the Tagbanwa people, formally recognizing their rights of possession over their ancestral domains identified and delineated in accordance with the rules of the IPRA.

Upon further review of the claim, the NCIP promulgated Administrative Order 1, series of 2002 that determined with finality the validity of the CADT. This served as a precedent for the recognition of two other CADT claims in Northern Palawan, which included substantial parts of municipal waters. The CADTs of the Tagbanwa communities in *barangays* Tara, Malawig and Buenavista covering at least 75,639 hectares was approved in 2010 but had not yet been awarded as of 2017 (De Vera and Zingapan, 2017).

***Maritime disputes in municipal waters.*** Maritime disputes include the intrusion of commercial fishers in municipal waters. But with the incomplete delineation of municipal waters in many areas, violations become difficult to litigate.

Resource use conflicts also arise among municipal fishers – e.g., hook and line fishers cannot fish in areas where nets and pots had been set up. The LGU has the mandate to intervene in such cases.

***Land use conversion of coastal areas***, which comes from two sources:

*Industries.* Coastal areas are prime locations for industries. Moreover, industries provide LGUs with needed revenue through taxes and fees. Thus, LGUs allocate and convert land use in coastal areas for big industries at the expense of small fisherfolk. And without security of tenure over their settlements, fisherfolks are easily displaced and their houses demolished. They also lose their right-of-way to coastlines and denied access to fishing grounds near these establishments.

*Tourism.* While tourism may provide some form of resource protection, tourism businesses may compete directly with fisherfolk for access to foreshores and coastal waters. At times, foreshores are privatized, and fisherfolk are deprived of docking areas for their small boats. Sometimes, mangroves are cleared to build tourism facilities.

Ecotourism can help prevent fisherfolk displacement by involving them in the management of the tourism areas and by providing them with supplemental livelihoods. However, this will require active intervention and planning with the LGU.

***Climate change and natural disasters.*** Coastal communities are the first to bear the brunt of super typhoons brought about by climate change. Super typhoon Haiyan in 2014 exposed the vulnerability of coastal communities in the light of increasing intensity of typhoons as a result of climate change. Coastal areas affected by the typhoon were practically wiped out, their settlements were declared no dwelling zones, but there were no clear/secured resettlement areas. Tens of thousands of small boats, fishing equipment and supporting facilities were destroyed. Some 146,748 fisherfolk families and 21 of the country's 72 fishing provinces were directly affected by the storm, according to BFAR, and total damage to the fishing sector was about PhP2.1 billion, according to NDRRMC.

The impacts of climate change have become more evident in recent years, especially for coastal communities. There has been increasing frequency of extreme weather events like super typhoons, slow onset events like sea level rise, rising sea surface temperatures and coral bleaching.

## Summary of findings

In spite of the Fisheries Code, other laws and programs, municipal fisherfolk continue to experience inequality and conflicts over access to coastal resources.

First and foremost are the conflicting laws and policies, and the overlapping jurisdictions among government agencies. For instance, DA is mandated to ensure production of food and thus, requires coastal resources for the production of food. This sometimes leads to the conversion of mangrove forests into fishponds. The DENR on the other hand, is mandated to protect and manage the country's resources, including the coastal resources such as mangroves, corals and seagrass. Thus, it is supposed to protect the mangrove resources. But while reversion of abandoned fishponds is mandated by law, the DENR is constrained to establish jurisdiction over these areas until these fishponds are formally turned over to DENR.

There is also conflict in the exercise of fisherfolk rights to management of the coastal resources. While the law mandates the formation of FARMCs, their role is merely recommendatory, subject to the approval of the LGU and other policy makers. Members of FARMCs are all volunteers and can be constrained by lack of financial resources in carrying out their duties.

The formation of fish wardens is also mandated by law. But, as narrated by fisherfolk groups, volunteers in *bantay-dagat* and *bantay-laot* are sometimes the ones slapped with court cases, instead of being assisted to help prosecute apprehended violators. Some have been killed in the performance of their duties.

The delineation of the municipal waters was started by NAMRIA even prior to the implementation of the Fisheries Code. However, as of today (or 20 years after the Fisheries Code was legislated), only 67 (7.2 percent) out of the country's 928 coastal municipalities have finalized the delineation of their municipal waters. While FMAs can still be established even without the delineated municipal waters, the delineation of municipal waters is important in order to designate those areas where municipal fishers have priority access.

In spite of Section 108 of the Fisheries Code, there are still no clear guidelines on the establishment of fisherfolk settlement areas. Meanwhile, coastal lands continue to be converted into industrial uses, and public coastal lands continue to be titled, and fisherfolk are hit by stronger typhoons brought about by

climate change. All these factors contribute to the displacement of the coastal communities from their settlement areas and from their source of livelihood.

## Recommendations

- **Since there are a number of government agencies that have jurisdiction over the coastal resources, there has to be harmonization of policies and to ensure benefits for the municipal fisherfolk.** The Inter-agency Technical Working Group on fisherfolk settlements, facilitated by the National Anti-Poverty Commission (NAPC), is one initiative that should be supported.
- **The Implementing Rules and Regulations (IRR) on Section 108 (now Section 144) of the Fisheries Code should be immediately formulated.** There should be a policy instrument that secures the tenure of the fisherfolk in their settlement areas.
- **The DA-BFAR and DENR also need to harmonize their policies in the management of foreshore areas.** Support and preference must be given to fisherfolk organizations for them to access programs such as Foreshore and Fishpond Lease Agreements, National Greening Program, etc.
- **The delineation of municipal waters needs to be completed so that all coastal municipalities have defined municipal waters where the small fishers have priority access.** As of August 2018, some 263 municipalities have not yet applied for delineation.
- **For delineating municipal waters of municipalities with offshore islands,** BFAR has created a **technical working group (TWG)** that will formulate the guidelines. This group **should include members from different stakeholders** (including municipal fisherfolk and their support organizations) to ensure that all concerned sectors are involved and consulted.
- **Government should extend full support to the FARMCs and Bantay-Dagat patrols to enable fisherfolk to carry out their mandate to protect and manage the coastal and marine resources.** Funding should be secured not only for allowances and needed equipment, but also for social protection, legal assistance, and others. ■

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ILC Global Secretariat:  
c/o International Fund for Agricultural  
Development (IFAD)  
Via Paolo di Dono 44  
00142 - Rome, Italy  
Tel.: +390654592445  
Email: [info@landcoalition.org](mailto:info@landcoalition.org)

ILC Regional Coordination Unit:  
c/o Konsorsium Pembaruan Agraria (KPA)  
Komplek Liga Mas, Jl. Pancoran  
Indah I No. 1 Block E3  
Pancoran, South Jakarta 12760 Indonesia  
Tel: +62217984540  
Email: [asia@landcoalition.info](mailto:asia@landcoalition.info)



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We Effect is engaged in development cooperation in 25 countries including the Philippines.

Unit 206 Eagle Court Condominium,  
#26 Matalino St. Barangay Central  
Diliman, Quezon City, Philippines  
Email: [Jessica.soto@weeffect.org](mailto:Jessica.soto@weeffect.org)



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Rue Froissart 123-133  
B-1040 Bruxelles  
Tel.: +32 2 733 2282  
Website: [www.epd.eu](http://www.epd.eu)

This publication features land and resource tenure reform assessment studies conducted in four sectors, namely: agrarian reform in private lands, agrarian reform in public lands, ancestral lands, and aquatic resources. In the past 30 years, the combined area covered by land and resource tenure reforms has been significant. Asset reforms in the Philippines have brought about the transfer of ownership rights covering a total area of 12.74 million hectares (approximately 42 percent of the country's land area). However, as the study suggests, there is need for the enforcement of land rights, an enabling environment and support services to help poor rural households make their lands productive, basic social services accessible, and effective systems of governance where the voices of poor sectors are heard and addressed.

