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Republic of the Philippines
SUPREME COURT
Manila

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REPUBLIC OF THE PHILIPPINES, represented by THE DEPARTMENT OF AGRICULTURE, THE BUREAU OF FISHERIES AND AQUATIC RESOURCES and THE NATIONAL TELECOMMUNICATIONS COMMISSION,

Petitioner,

- versus -

ROYALE FISHING CORPORATION, BONANZA FISHING AND MARKET RESOURCES, INC. and RBL FISHING CORPORATION,

Respondents.

G.R. NO. 256559

(Sp. Civil Action No. SCA20-002-MAL)

For: Petition for Review with Prayer for Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction

X-----X

PETITION FOR REVIEW
(WITH PRAYER FOR ISSUANCE OF TEMPORARY RESTRAINING ORDER AND/OR WRIT OF PRELIMINARY INJUNCTION)

Petitioner, Republic of the Philippines, represented by the Department of Agriculture (DA), Bureau of Fisheries and Aquatic Resources (BFAR), and National Telecommunications Commission (NTC), through the Office of the Solicitor General (OSG), to this Honorable Court, most respectfully states:

PRELIMINARY STATEMENT

1. As a backgrounder, prior to the filing of the instant Petition for Review on Certiorari under Rule 45, petitioner Republic filed a Petition for Certiorari dated May 18, 2021, under Rule 65, docketed as G.R. No. 256282, pending before

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PETITION FOR REVIEW
Republic vs. Royale Fishing Corp., et al.
G.R. No. 256559
(G.R. No. 256282; SCA No. SCA20-002-MAL)
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this Honorable Court, assailing the Order dated January 22, 2021, granting the Writ of Preliminary Injunction (WPI) issued by the public respondent Judge Zaldy B. Docena of the Regional Trial Court (RTC), Branch 170, Malabon City, docketed as SCA No. SCA20-002-MAL.

2. On June 1, 2021, the trial court rendered its Decision on the merits and declared Fisheries Administrative Order No. 266 (FAO 266) as null and void for being unconstitutional, and thus *ultra vires*, and contrary to the provisions of Republic Act (RA) No. 8550, as amended, and the WPI previously issued and assailed in the Petition for Certiorari was, likewise, made permanent.

3. Thus, the instant Petition for Review has a compelling transcendental public interest and petitioner Republic implores this Honorable Court to take cognizance thereof as to finally settle the issues surrounding the legality and validity of FAO No. 266. The issues at hand require the immediate resolution of this Honorable Court with the urgent deadline set by the European Commission anent the country's compliance to address illegal, unreported, and unregulated (IUU) fishing.¹ The country's failure to do so will result in its failure to comply with other existing international arrangements that require the Vessel Monitoring System (VMS) as a tool to monitor Philippine flagged fishing vessels.

4. As will be discussed in this petition, the wisdom of this Honorable Court is exigent and urgently needed in order to sustain FAO 266, an environmental regulation that seeks to implement the Fisheries Code, as amended, in protecting and managing the country's fisheries and marine resources in a sustainable manner on account of the following, viz:

i. First. Direct resort to this Honorable Court is allowed because there is a genuine issue of constitutionality which must be immediately addressed. In the instant petition, the court *a quo* declared FAO 266 as unconstitutional contrary to law and existing jurisprudence.

¹ *Ifurung v. Carpio-Morales*, G.R. No. 232131, April 24, 2018.

ii. Second. The issues raised herein are of transcendental importance. In the instant petition, the Philippines needs to address illegal, unreported, and unregulated fishing. The decision of this Honorable Court will resolutely uphold the Republic's implementation and enforcement of the Fisheries Code, as amended, and in the performance of its mandate thereunder.

iii. Third. The constitutional issue raised in this petition is better decided by this Honorable Court which can rule with finality as to the constitutionality of FAO No. 266.

iv. Fourth. The time element involved in the instant petition cannot be ignored. It is imperative to rule on the instant petition to prevent an impending penalty from the European Commission on the country's fisheries and marine products.

NATURE AND TIMELINESS OF THE PETITION

5. This Petition for Review on Certiorari filed under Rule 45 of the Revised Rules of Court seeks to annul, reverse and set aside the Decision dated June 1, 2021 rendered by the Regional Trial Court (RTC), Branch 170, Malabon City, docketed as SCA No. SCA20-002-MAL, entitled: "Royale Fishing Corporation, Bonanza Fishing and Market Resources, Inc. and RBL Fishing Corporation v. DA, BFAR and the NTC," the dispositive portion of which reads:

WHEREFORE, the instant petition is **GRANTED**. Fisheries Administrative Order No. 266 Series of 2020 (FAO 266) is declared **NULL** and **VOID** for being **UNCONSTITUTIONAL** and thus *ultra vires*, illegal, void and contrary to the provisions of RA 8550, as amended. Consequently, all memoranda, orders and other issuances to public respondents' regional offices and other government agencies issued pursuant to or in implementing FAO 266 are declared null and void.

The writ of preliminary injunction (dated January 22, 2021) previously issued by this Court prohibiting the public respondents from

implementing or enforcing FAO 266 is hereby declared and made **PERMANENT**.

SO ORDERED.²

6. A certified true copy of the RTC Decision dated June 1, 2021 is hereto attached as **Annex "A"**.

7. On June 3, 2021, the OSG, statutory counsel for petitioner Republic received an electronic copy of the assailed RTC Decision dated June 1, 2021.

8. The OSG has fifteen (15) days or until June 18, 2021, within which to file a petition for review on certiorari under Section 4, Rule 45 of the Revised Rules of Court. On June 17, 2021, the OSG filed a Manifestation and Motion before the Honorable Court requesting for an additional period of fifteen (15) days or until July 3, 2021 within which to file the instant petition.³ Hence, the instant petition is being filed within the reglementary period allowed by the Rules.

9. Petitioner, exercising sovereign powers, is exempt from payment of court docket and other fees pursuant to Section 21 of Rule 141 of the Revised Rules of Court.

THE PARTIES

10. Petitioner, Republic of the Philippines, represented by the DA, BFAR and NTC are national government agencies. The DA and BFAR are government agencies tasked to implement Republic Act (RA) No. 8550, as amended by RA No. 10654, otherwise known as the Philippine Fisheries Code, as amended. Both agencies promulgated the assailed Fisheries Administrative Order (FAO) No. 266. While the NTC is the government agency tasked by BFAR for the issuance of Maritime Mobile Service Identity (MMSI) to licensed fishing vessels as one of the requirements prior to the installation of the Vessel Monitoring System (VMS). Petitioner Republic is being represented by its statutory counsel, the OSG with

² p. 31, RTC Decision.

³ Attached hereto as **Annex "B"**.

implementing or enforcing FAO 266 is hereby declared and made **PERMANENT**.

SO ORDERED.²

6. A certified true copy of the RTC Decision dated June 1, 2021 is hereto attached as **Annex "A"**.

7. On June 3, 2021, the OSG, statutory counsel for petitioner Republic received an electronic copy of the assailed RTC Decision dated June 1, 2021.

8. The OSG has fifteen (15) days or until June 18, 2021, within which to file a petition for review on certiorari under Section 4, Rule 45 of the Revised Rules of Court. On June 17, 2021, the OSG filed a Manifestation and Motion before the Honorable Court requesting for an additional period of fifteen (15) days or until July 3, 2021 within which to file the instant petition.³ Hence, the instant petition is being filed within the reglementary period allowed by the Rules.

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² p. 31, RTC Decision.

³ Attached hereto as **Annex "B"**.

office address at 134 Amorsolo Street, Legaspi Village, Makati City where it may be served with the legal processes of this Honorable Court. It may, likewise, be served through the OSG's official e-mail at: efile@osg.gov.ph.

11. Respondents Royale Fishing Corporation, Bonanza Fishing and Market Resources, Inc. and RBL Fishing Corporation are the petitioners in the petition for declaratory relief with application for issuance of TRO and/or WPI filed before the RTC, Branch 170, Malabon City, in whose favor the assailed Decision dated June 1, 2021 was rendered. They may be served with the legal processes of this Honorable Court, through their counsels on record, Atty. Arnold D. Naval, Atty. Hilario Paul H. Ragunjan, Jr., and Atty. Niel Marvin F. Genzola, with office address at 836-837, CityLand Mega Plaza, ADB Avenue corner Garnet Road, Ortigas Center, 1605 Pasig City.

12. Pursuant to Section 4, Rule 45 of the Revised Rules of Court, the RTC, Branch 170, Malabon City is not impleaded as a party in the instant case. It is, however, being served a copy of the instant petition at its official address at RTC, Branch 170, Malabon City.

STATEMENT OF RELEVANT FACTS AND PROCEEDINGS

*Brief history, legislative
and antecedent facts
relating to FAO No.266*

13. The use of the Vessel Monitoring System (VMS) in fisheries Monitoring Control and Surveillance (MCS) started in the mid-1980s. In the 1990s, several fishery agencies began its investigation and trials for the use of a VMS. Subsequent to these trials, a number of countries have implemented VMS on small to medium scales of between 30 to 150 vessels. In the European Union, large scale trials on VMS have been conducted in 1996 and 1997.⁴

⁴ FAO. *Report of the Expert Consultation on the Use of Vessel Monitoring Systems and Satellites for Fisheries Monitoring, Control and Surveillance*. Rome, 24-26 October 2006.

14. In 1998, the Fisheries Code of 1998 or RA No. 8550 was passed with one of its pillars, to achieve food security by ensuring the rational and sustainable development, management and conservation of the fishery and Aquatic resources in Philippine waters. In Section 14 of the 1998 Fisheries Code, the Department was directed by this law to establish a monitoring, control, and surveillance system. Globally, in the same year, the Food and Agricultural Organization adopted the Technical Guidelines for Responsible Fisheries No. 1. One of the identified tools in the Technical Guidelines is the "Vessel Monitoring System" for the Flagged States and Fisheries Managers to have timely and accurate knowledge and information to track all fishing vessels' movement and ensure that they are authorized to fish.

15. On September 5, 2000, the Philippines signed the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean and its Annexes in Honolulu, Hawaii. Under the Convention, each member of the Convention shall require its fishing vessels that fish for highly migratory fish stocks on the high seas in the Convention Area to use near real-time satellite position-fixing transmitters while in such areas. The standards, specifications, and procedures for the use of such transmitters shall be established by the Convention. The Convention was promulgated pursuant to the 1995 UN Fish Stocks Agreement (UNFSA) which took effect on December 11, 2001. In 2005, the Convention was ratified by the Senate of the Philippines⁵, while the UNFSA was ratified in 2014⁶.

16. Shortly thereafter, the Philippines became a member of three tuna Regional Management Organizations (RFMOs): the "Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean" (WCPFC), the Indian Ocean Tuna Commission (IOTC), and the International Commission for the Conservation of Atlantic Tunas (ICCAT). The Philippines was

⁵ See Fisheries Administrative Order No. 245-1, Series of 2013.

⁶ United Nations Treaty Collection. Retrieved on May 7, 2021, from https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXI7&chapter=21&clang=en

also a Cooperating Non-Member of the Convention for the Conservation of Southern Bluefin Tuna (CCSBT). The Philippines' membership to the IOTC and ICCAT was accepted on January 9, 2004.

17. Consequently, the RFMOs passed Resolutions and Conservation and Management Measures relevant to the implementation by State parties of the installation of a VMS within their respective jurisdictions.

18. Between the year 2003-2004, the Establishment and Operation of the Vessel Monitoring Center of the Bureau of Fisheries were conceptualized and proposed to source funding from several funding / granting institutions since BFAR had no available funds for Infrastructure and Equipment.

19. From 2004 to 2005, BFAR continued to secure support on the establishment and operation of the Vessel Monitoring Center as a tool on fisheries management to better aid in combatting Illegal, Unreported, Unregulated Fishing (IUUF). Several attempts were undertaken in coordination with various VMS Providers from the United Kingdom, France, Spain and the USA.

20. In 2005, under Japan's KR II Project known as the Bantay Dagat Program in partnership and cooperation with the United Nations Development Program Office, BFAR was able to acquire minimal financial support for the construction of the BFAR MCS Center and Fishing Technology laboratory which will house the BFAR VMS Center. The VMS Office was completed, and the provision of funds in acquiring heavy-duty server and computer hardware to initially operate the VMS Center were provided.

21. The year 2005 was the active year for BFAR to coordinate with Technical Experts from Malaysia and Indonesia for technical and advisory supports on the establishment and operation of the VMS System. Indonesian Department of Fisheries VMS Experts were the Consultants who assisted BFAR in determining technical Design and facilities needed to operationalize BFAR-VMS.

22. In 2006, despite funding limitations, the VMS's Office started its operations using the acquired initial I.T. equipment/hardware from the UNDP. BFAR explored the establishment of its Vessel Monitoring System, starting with the hiring of Programmers, who designed and developed the Vessel Data Base Management System to serve as a basis for the initial VMS' operationalization.

23. In 2007, VMS Center activities were focused on creating and developing the individual Vessel's Data Base of All Registered Commercial Fishing Vessels considering its historical records from acquisition to present status to form part of the Vessel Data Base Management System. The BFAR then started to search for several VMS Providers from the US and Europe. These providers were invited to discuss with BFAR and its Stakeholders the Vessel Monitoring System's intricate operations and how fishing vessels can be tracked. Each provider demonstrated the features and operational functions of their respective Automatic Location Communication (ALCS).

24. On December 2-7, 2007, the Conservation and Management Measure Number (CMM) 2007-02 was approved. During the session, a Commission Vessel Monitoring System was established for the WCPFC convention area.

25. In 2008, the BFAR invited several VMS Providers to demonstrate the capabilities and features of various VMS Systems used in different countries to guide BFAR to determine the appropriate VMS that will comply with the needs and requirements of various RFMOs and the other Coastal States which the Philippines has a Bilateral Agreement. Corollary to the evolution of events to operationalize a stand-alone Vessel Monitoring System in the Philippines to be able to track all Philippine Flagged Vessels operating within the national jurisdiction, High Seas and other Coastal States in the Pacific where the Philippines has bilateral access agreement, the WCPFC approved the passage of CMM 2008-01 during the 5th WCPFC Regular Commission.

26. Thereafter, on December 8-12, 2008, the Conservation and Management Measure 2008-01 was passed,

declaring the high seas pocket depicted in Appendix D of CMM 2008-01 will be closed from January 1, 2010 unless the Commission decides otherwise at its sixth WCPFC Commission in December 2009.

27. In 2009, the VMS Project was given the minimal funding for its operations. Hence, BFAR conducted an International Competitive Bidding on the acquisition of the VMS Software. In December 2009, the six-month bidding was concluded and resulted in installing the VMS Software by its Technical Provider, collected localization Satellites (CLS), to run the Fisheries Monitoring Center of BFAR.

28. On December 7-11, 2009, during the Sixth Regular Session, the WCPFC Commission declared the closure of all high seas pockets in the Convention Area between 20 north and 20 south. However, despite efforts by the Philippine delegation during the Sixth Regular Session in Papeete, French Polynesia, the WCPFC Commission did not decide to reopen the said high seas pockets. As a result, no Philippine flagged fishing vessel fished in the said area for the period beginning January 1, 2010.

29. In 2010, the BFAR has operationalized the Fisheries Monitoring Center (VMS Center) at the BFAR MCS Station and Fishing Technology Laboratory in Navotas which covered three (3) Components of the BFAR MCS Strategy. This MCS will provide BFAR with efficient monitoring and tracking of Philippine Fishing Fleets operating in the high seas and other coastal states where the Philippines has bilateral agreements as well as the IUUF Vessels operating and /or poaching in Philippine Waters and its EEZ.

30. Fisheries Administrative Order No 232, Series of 2010 entitled Limiting Commercial Fishing in Manila Bay, in compliance with the Supreme Court's decision in G.R. Nos. 171947-48 dated December 18, 2008. This FAO was the first regulation that required those who would renew their fishing vessels' license to install transponders in their fishing vessels with corresponding prohibitions and penalties.

31. On March 26-30, 2012, during the WCPFC Eighth Regular Session, the Conservation and Management Measure CMM 2011-01 was agreed upon. CMM 2011-01 provided an opening for Philippine flagged fishing vessels to operate in high seas pocket number 1 (HSP-1) under certain conditions which included the installation and operation of an Automatic Location Communicator (ALC) pursuant to CMM 2007-02. The Commission shall provide continuous real-time VMS information to the adjacent coastal States/ Territories for monitoring purposes. Access to VMS and other data related to HSP-1 shall be in accordance with the WCPFC's Rules and Procedures.

32. To comply with WCPFC CMM 2011-01, the Philippine Government thru DA BFAR issued Compatible Conservation and Management Measures to operationalize both CMMs 2008-01 for bigeye and yellowfin tuna in the Western and Central Pacific Ocean, including the applicable provisions of CMM 2011-01 at the HSP 1.

33. On March 26-30, 2012, during the Western and Central Pacific Fisheries Commission (WCPFC) 8th Regular Session in Guam, USA, CMM 2011-01 was approved, which provided an opening for Philippine Flagged Fishing Vessels to operate in HSP1 under certain conditions, which included the installation and operation of an Automatic Location Communicator.

34. In 2012, BFAR promulgated FAO 241 Series of 2012 on the Regulations and Implementation of the Vessel Monitoring System in the High Seas. FAO 241 required the VMS for all licensed Philippine flagged commercial fishing boats/vessels [purse seine, longline, ring net, trawlers, other fishing gears and fish carriers and transshipment vessels] authorized by petitioner BFAR to operate in the high seas and those fishing vessels with access rights to fish in other countries' exclusive economic zones.

35. In 2015, Republic Act No. 10654: An Act to Prevent, Deter & Eliminate Illegal, Unreported & Unregulated Fishing amended the provisions of RA 8550. Section 119 of the amended Fisheries Code required the installation of VMS.

36. On October 5, 2018, petitioner BFAR issued FAO No. 260 - Rules and Regulations on the implementation of Vessel Monitoring Measures (VMM) and Electronic Reporting System (ERS) for Commercial Philippine Flagged Fishing Vessels Targeting Straddling Highly Migratory Fish Stock which was a further development of Section 119 of RA 10654.⁷

37. In 2020, recognizing that the coverage of FAO 260 is limited only to licensed Philippine flagged fishing vessels targeting straddling and highly migratory fish stocks within and outside Philippine waters, petitioner BFAR issued FAO No. 266 - Rules and Regulations on the Implementation of VMM and ERS for Commercial Philippine-flagged Fishing Vessels, amending FAO 260 Series of 2018.

38. Petitioner BFAR conducted a series of regional and national public consultations on FAO 266, from November 2019 to January 2020. The FAO likewise underwent deliberations before the National Fisheries and Aquatic Resources Council (NFARMC) prior to its endorsement to the Secretary of Agriculture for signature.

39. On October 12, 2020, DA Secretary William D. Dar signed FAO 266. On October 15, 2020, it was published in the Manila Times and the Philippine Star, and was filed with the Office of the National Administrative Register on October 20, 2020.

Proceedings before the RTC

40. On December 3, 2020, respondents Royale Fishing Corporation, Bonanza Fishing and Market Resources, Inc. and RBL Fishing Corporation filed a petition for declaratory relief with application for issuance of a TRO and/or WPI before the RTC, Branch 170 of Malabon City, docketed as SCA20-002-MAL.⁸

⁷ FAO 260 required vessel monitoring measures on licensed Philippine flagged fishing vessels targeting straddling and highly migratory fish stocks within and outside Philippine waters (those operating in the high seas and other countries' exclusive economic zone).

⁸ Attached as Annex "E" to our Petition for Certiorari in G.R. No. 256282.

41. On December 7, 2020, respondents' prayer for issuance of a TRO/WPI was set for hearing by the trial court. After presentation of respondents' witnesses and formal offer of evidence, the trial court declared in open court that the prayer for issuance of the TRO is now submitted for decision. Thereafter, Petitioner manifested that it be given the opportunity to present its evidence in support of its Opposition to respondents' prayer for issuance of TRO. Petitioner presented its witnesses, Marlo B. Demo-os, the BFAR Fisheries Observer Program Coordinator; Maria Joy Mabanglo, the Operator Team Leader of the VMS Operators; Rollan Geronimo, the Fisheries Management Expert; and Atty. Benjamin F. S. Tabios, Jr., the Chairman of the TWG for FAO No.266.

42. On January 19, 2021, petitioner filed its written formal offer of evidence.⁹ On even date, respondents filed their Comment to petitioners' formal offer of evidence.

43. On January 22, 2021, the trial court issued the assailed Order granting the respondents' prayer for issuance of WPI and directed the parties to file their respective Memorandum. The assailed Order dated January 22, 2021 is the subject of the Petition for Certiorari dated May 18, 2021 pending before the Honorable Court, docketed as G.R. No. 256282. On February 4, 2021, petitioner, through the OSG, filed a motion for reconsideration of the assailed Order dated January 22, 2021.¹⁰

44. On February 2, 2021, petitioner filed a Manifestation requesting for the suspension of the proceedings until the resolution of its Motion for Reconsideration. Respondents filed their Comment to petitioner's Manifestation with request for Extension of time to file Memorandum.

45. On February 8, 2021, the trial court issued an Order denying petitioner's Manifestation to suspend proceedings and reiterated its Order to the parties to file their respective Memorandum, the dispositive portion of which reads:

⁹ Attached as Annex "F", *ibid.*

¹⁰ Annex "G" of the Petition dated May 18, 2021.

WHEREFORE, premises considered, respondents' prayer for the suspension of the proceedings of the main petition (SCA20-002-MAL, Royale Fishing Corp., et.al., v. BFAR, et.al.) is hereby DENIED. Instead and to afford all Parties the time needed to prepare and submit their respective memorandum, they are given an extension of fifteen (15) days within which to file the same counted from the last day of the filing thereof on February 6, 2021 or until February 21, 2021. Thereafter, with or without said memorandum of the Parties this case shall then be submitted for decision as the issues have been joined already with the filing of respondents' **ANSWER** and petitioners' **REPLY** thereto. Regarding the above-mentioned Motion for Reconsideration filed by the respondents of the January 22, 2021 Order of this Court, the petitioners are **DIRECTED** to file their comment/opposition thereto within ten (10) days from notice. But with or without said comment/opposition, the Motion for Reconsideration shall then be submitted for resolution after the lapse of the aforementioned period.¹¹

46. On February 16, 2021, the trial court issued an Order declaring that the Motion for Reconsideration filed by petitioner is submitted for Decision and further reiterated its Order directing the parties to file their Memorandum. The trial court further stated that *sans* memorandum, the case would now be submitted for decision as the main petition raises purely constitutional and legal issues.¹²

47. In response thereto, the petitioner filed a Manifestation stating that the filing of Memorandum in lieu of the continuation of the trial is not sanctioned by the Rules on Environmental Procedure and prayed that the case be set for pre-trial. Thus, the case was set for pre-trial on March 3, 2021. Respondents manifested that they would adopt the evidence they presented during the hearing on the application for TRO/WPI, and would not present any other witnesses, but reserved its right to present rebuttal witnesses.

¹¹ Annex "H" of the Petition in G.R. No. 256282 dated May 18, 2021.

¹² Annex "I" of the Petition, *ibid.*

48. On March 16, 2021, the petitioner filed a Manifestation and Motion praying that the Writ of Preliminary Injunction be lifted, and the pending Motion for Reconsideration of petitioner be resolved. Likewise, on April 15, 2021, the petitioners filed an Urgent Manifestation and Motion, reiterating its earlier plea to the trial court to resolve its Motion for Reconsideration, in view of the official communication from the European Commission (EU) noting with urgency the "level of equipment of the Philippine commercial fishing vessels with vessel monitoring systems". Said communication further manifested that such "issue is being taken into account with the trade flows between the Philippines and the EU".¹³

49. Despite the two Urgent Manifestation and Motions, the trial court without resolving the pending incidents, proceeded with the continuation of the trial of the main case through its Order dated April 6, 2021, received electronically by the OSG on April 13, 2021.

50. On April 7, 2021, an Answer-in-Intervention was filed by intervenors, Oceana Philippines, Inc., and municipal fisherfolk Pablo Rosales and Ronald Reyes.

51. On May 7, 2021, petitioner presented its three witnesses: Jean Francois Bonnin, of SRT Marine; Zaldy Perez, from the BFAR; and Juanito Dacillo, a Municipal fisherfolk. On May 12, 2021, petitioner moved for the resetting of the presentation of its witness, Atty. Demosthenes Escoto, of the BFAR. Respondents, however, manifested their waiver to cross-examine the said witness and presentation of Atty. Escoto was dispensed with.¹⁴

52. On May 17, 2021, petitioner filed its Formal Offer of Evidence.¹⁵ On May 24, 2021, the trial court, however, issued an Order declaring petitioner to have waived its right to file its formal offer of evidence.¹⁶

¹³ Attached as Annexes "C" and "D" to the Petition for Certiorari in G.R. No. 256282, *ibid.*

¹⁴ Attached hereto as Annexes "C" (TSN dated May 7, 2021, pp. 4-30/Exhibit 16), "C-1" (Perez/Exhibit 17); "C-2" (Dacillo/Exhibit 18); "C-3" (Escoto/Exhibit 19).

¹⁵ Attached hereto as Annex "D".

¹⁶ Attached hereto as Annex "E".

53. On May 26, 2021, the trial court issued an Order denying petitioner's motion for reconsideration against the writ of preliminary injunction.¹⁷

54. On May 27, 2021, the trial court issued an Order wherein it noted and admitted the Formal Offer of Evidence filed by petitioner.¹⁸

55. On May 28, 2021, the trial court issued an Order wherein it denied the Motion for Intervention filed by Oceana Philippines, Inc., Pablo Rosales and Ronald Reyes.

56. On June 1, 2021, the trial court rendered its Decision declaring FAO No. 266 as null and void for being unconstitutional and the writ of preliminary injunction dated January 22, 2021 previously issued is made permanent,¹⁹ the dispositive portion of which reads:

WHEREFORE, the instant petition is **GRANTED**. Fisheries Administrative Order No. 266 Series of 2020 (FAO 266) is declared **NULL** and **VOID** for being **UNCONSTITUTIONAL** and thus *ultra vires*, illegal, void and contrary to the provisions of RA 8550, as amended. Consequently, all memoranda, orders and other issuances to public respondents' regional offices and other government agencies issued pursuant to or in implementing FAO 266 are declared null and void.

The writ of preliminary injunction (dated January 22, 2021) previously issued by this Court prohibiting the public respondents from implementing or enforcing FAO 266 is hereby declared and made **PERMANENT**.

SO ORDERED.

57. On June 3, 2021, the OSG received an electronic copy of the assailed Decision dated June 1, 2021. Due to the

¹⁷ Attached hereto as Annex "F".

¹⁸ Attached hereto as Annex "G".

¹⁹ Annex "A" of this Petition.

transcendental issues raised at hand, petitioner Republic is constrained, on June 17, 2021, to request this Honorable Court for an additional period of fifteen (15) days within which to file the instant petition.

58. Hence, the instant petition.

GROUND FOR THE ALLOWANCE OF THE PETITION

59. The issues raised in this Petition for Review are of transcendental importance warranting the exercise of this Honorable Court's power of judicial review.

60. Two main issues interlock with the nature of the controversy, namely: the trial court's decision on the merits declaring FAO No. 266 as null and void for being unconstitutional; and the WPI previously issued was declared and made permanent despite the clear directive in the Rules of Procedure for Environmental Cases (RPEC) that only the Honorable Supreme Court can issue Injunction in cases involving the enforcement of environmental laws.²⁰

61. The VMS have long been established in other countries for their fishing fleets since the 1990s. The Vessel Monitoring Measure (VMM) is a tool to help the country address illegal, unreported, and unregulated fishing, in parallel with other mechanisms. This tool is also important for the BFAR to ensure control over Philippine flagged fishing vessels, and to secure that municipal fisherfolks are guaranteed of their preferential treatment over municipal waters. Without the VMS, Philippine caught fishery products cannot receive due recognition within the international markets that they were not sourced through illegal, unreported, and unregulated fishing. These issues are of transcendental importance that the petitioner Republic seeks the intercession of this Honorable Court. The immediate resolution of these issues by this Honorable Court would, therefore, allow the petitioner Republic, through the national government agencies DA and BFAR, to proceed with its

²⁰ Rule 2, Section 10, Rules of Procedure on Environmental Cases.

mandate to protect, conserve, and manage the country's fishery resources in a sustainable manner for the benefit of present and future generations.²¹

62. In ***Gios-Samar v. Department of Transportation and Communications***²², the Honorable Court enunciated the instances allowing parties to seek direct relief before this Honorable Court upon serious and important reasons. Citing the case of ***The Diocese of Bacolod v. Commission on Elections***²³, the following are recognized exceptions to the hierarchy of courts:

(1) when there are genuine issues of constitutionality that must be addressed at the most immediate time;

(2) when the issues involved are of transcendental importance;

(3) cases of first impression;

(4) the constitutional issues raised are better decided by the Court;

(5) exigency in certain situations;

(6) the filed petition reviews the act of a constitutional organ;

(7) when petitioners rightly claim that they had no other plain, speedy, and adequate remedy in the ordinary course of law that could free them from the injurious effects of respondents' acts in violation of their right to freedom of expression; [and]

(8) the petition includes questions that are "dictated by public welfare and the advancement of public policy, or demanded by the broader interest of justice, or the orders complained of were found to be patent nullities, or the appeal was considered as clearly an inappropriate remedy."

63. In the petition for declaratory relief filed before the court *a quo*, the trial court granted the petition by declaring FAO 266 as null and void for being unconstitutional on the ground that it violated the constitutional rights to privacy and unlawful searches of herein respondents. The present petition

²¹ Section 14, RA 8550.

²² G.R. No. 217158, March 12, 2019.

²³ *Ibid*, citing *The Diocese of Bacolod v. COMELEC*, G.R. No. 205728, January 21, 2015.

would, however, explicate that the trial court's Decision is a travesty of the Fisheries Code, the Constitution and existing jurisprudence.

64. The instant petition, likewise, advances a well-meaning public policy to protect, conserve, and manage the country's fishery resources in a sustainable manner. Without the VMS, the state of the country's fishery and marine resources which are on a decline will continue to suffer a serious beating through the illegal, unregulated, and unreported fishing of our licensed fishing vessels. Thus, the instant petition is filed based on the following grounds:

I.

THE TRIAL COURT GRAVELY ERRED IN NOT DECLARING THAT RESPONDENTS' PETITION FILED BEFORE THE COURT A *QUO* RAISED A JUSTICIABLE CONTROVERSY WARRANTING RELIEF FROM THE COURTS.

II.

THE TRIAL COURT GRAVELY ERRED IN RULING THAT FAO NO. 266 IS NULL AND VOID FOR BEING UNCONSTITUTIONAL.

III.

THE TRIAL COURT GRAVELY ERRED IN DECLARING *SANS* EVIDENCE AND LEGAL BASIS THAT THE VESSEL MONITORING DEVICES INFRINGE ON THE RIGHT TO PRIVACY OF RESPONDENTS, THUS, CONSTITUTE UNLAWFUL SEARCHES ON THEIR PROPERTIES.

IV.

THE TRIAL COURT GRAVELY ERRED IN RULING THAT FAO NO. 266 VIOLATED

THE EQUAL PROTECTION CLAUSE.

V.

THE TRIAL COURT GRAVELY ERRED IN CONCLUDING THAT THERE WAS NO DUE PROCESS AND PARTICIPATION IN DECISION-MAKING PROCESSES PRIOR TO THE ISSUANCE OF FAO NO. 266

DISCUSSION

I. Respondents' petition filed before the court *a quo* presents no justiciable controversy.

65. The trial court, in declaring that FAO 266 violates respondents' right to privacy and the right against unreasonable searches and seizures, held that the information to be recorded and reported to the VMS, *i.e.*, the position of the vessel, the date and time of the vessel's activity, are part of their trade secrets and properties.

66. It is respectfully submitted that the trial court's declaration is bereft of basis and contrary to what FAO 266 and the Fisheries Code, as amended espouse.

67. Firstly, it must be emphasized that the Fisheries Code, as amended or RA No. 10654 was enacted to enhance the Philippines' efforts to prevent, deter, and eliminate illegal, unreported, and unregulated fishing. This is to ensure the rational and sustainable development, management and conservation of the fishery and aquatic resources in Philippine waters including the Exclusive Economic Zone (EEZ) and in the adjacent high seas, consistent with the primordial objective of maintaining a sound ecological balance, protecting, and enhancing the quality of the environment.²⁴ Likewise, in the amended Fisheries Code, the Philippines intends to further pursue its commitment to international

²⁴ Section 1, Declaration of Policy, RA No. 10654 (2015).

conventions and cooperate with other States and international bodies, in order to conserve and manage threatened, aquatic species, straddling and highly migratory fish stocks and other living marine resources.²⁵

68. Secondly, the respondents and all fisherfolks are considered active participants and partners of the Government in the sustainable development, management, conservation and protection of the fishery and aquatic resources of the country.²⁶ Thus, the basic concept in the Fisheries Code advocates that the grantee, licensee, or permittee, such as the private respondents, are mere privileged beneficiaries of the State in the utilization of our marine resources.²⁷ Ironically, respondents' municipal fisherfolk witness described this active partnership and privileged nature of the marine resource which is meant to be shared by *all*:

11. *Tanong: Bilang isang mangingisda, ikaw ba ay sang-ayon na itago ang lugar sa karagatan kung saan kayo nangingisda? (As a fisherman, are you in favor of maintaining the secrecy of your fishing grounds and fishing activities?)*

Sagot: Ang alam ko lahat po ng mangingisda ay hindi naman nagtatago kung saan sila nangingisda dahil lahat naman kame nagbibigayan sa aming level sa municipal.

Ang alam kong intensyon ng mga malalaking palakaya (commercial fishers) ay hindi sila mamonitor na sila ay pumapasok sa katubigang municipal na parati nilang ginagawa. (To my knowledge, not all fishermen wish to keep to themselves the area of their fishing grounds as we are open to sharing these resources to other municipal fisherfolk, insofar as municipal fishermen are concerned. From what I know, the intention of these commercial fishers is not to be monitored since they have been fishing within our municipal waters which they often do.)²⁸

²⁵ *Ibid.*

²⁶ Section 2(g), Fisheries Code or RA No. 8550.

²⁷ Section 2(g), Fisheries Code or RA No. 8550.

²⁸ pp. 5-6, Judicial Affidavit of witness Justino Dacillo, attached hereto as Annex "C-2".

69. Thirdly, the subject matter of the instant petition dwells on the VMM. As defined, VMM is a method or a system used to track and monitor the position, course, and speed of the vessels at any given time for the purpose of management of fishing effort and fisheries resources and for traceability; this shall cover VMS and other measures.²⁹ The Vessel Monitoring Measure is part of the Monitoring, Control and Surveillance System (MCS) tools required to be established by the petitioners DA and BFAR pursuant to Sections 14 and 119 of the Fisheries Code. The MCS system shall encompass all Philippine flagged fishing vessels regardless of fishing area and final destination of catch.

70. Fourthly, to implement this VMM, FAO Nos. 241³⁰ (2012), 260³¹ (2018), and 266³² (2020) were passed requiring fishing vessels to install a VMS. The Vessel Monitoring System is a system that tracks, monitors, and manages fishing vessels. The VMS which includes the Automatic Location Communicator/Transceiver³³ and Electronic Reporting System³⁴ devices are required to be turned on and activated when the fishing vessel is active.

71. Finally, contrary to the understanding of the respondents, the information to be reported/gathered by the VMS are classified as private, which access is limited only by the vessel owner who reported that data.³⁵ In the same manner, these data are treated as sensitive information, and the disclosure is punishable by imprisonment and fine, to wit:

²⁹ Section 2(v), FAO No. 266.

³⁰ For all licensed Philippine flagged commercial fishing boats/vessels [purse seine, longline, ring net, trawlers, other fishing gears and fish carriers and transshipment vessels] authorized by petitioner BFAR to operate in the high seas and those fishing vessels with access rights to fish in other countries' exclusive economic zones.

³¹ For Commercial Philippine Flagged Fishing Vessels Targeting Straddling Highly Migratory Fish Stock

³² Applies to all licensed Philippine flagged commercial fishing vessels.

³³ An automatic tracking device approved by the Bureau to be installed on the fishing vessels that utilizes radio data communications to transmit information concerning the Philippine flagged fishing vessels positions, fishing activities, and any other activity of the vessel as may be required.

³⁴ Is used to record, report, process, store and send fisheries data (catch, landing, and transshipment).

³⁵ Section 8, FAO 266. Data Access by Vessel Operators. Vessel operators shall have access to data generated by VMS via the ERS interfaces. The DA-BFAR shall grant access of the VMS data to the fishing vessel owner/operator who acquired and installed the ALC and ERS to their own fishing vessel. The VMS data that the commercial fishing vessel owner/operator can access is only as regards their own fishing fleets.

Section 127. Unauthorized Disclosure of Sensitive Technical Information. – Data from the vessel monitoring system or vessel monitoring measure and other related data arising therefrom shall be considered as sensitive technical information. Any unauthorized disclosure of said data including all other data referred to in Section 155 in this Code, by any person shall be penalized with imprisonment of six (6) months and one day to six (6) years, removal from office and forfeiture of all retirement benefits, where applicable. means that the release .

72. The sensitive handling of the VMS data is in fact supported by science, contrary to the finding of the trial court. The trial court quoting the petitioner's expert witness Rollan Geronimo, who precisely confirmed that VMS as a device is well-known for its strong confidential and data privacy measures, while recognizing that these may be considered as part of fishers' secrets. The VMS's strong confidential capabilities was likewise confirmed by the product supplier of the VMS, SRT Marine. Their testimonies are as follows:

Rollan Geronimo

Q Mr. Geronimo look at your Answer No. 8 the last paragraph "**Most VMS have strong confidential and data privacy measures in place** since the location of fishing areas are usually considered as part of fishers' secrets."

A Yes, sir.³⁶

Jean Francois Bonnin (SRT Marine)³⁷

Q: Yes, Mr. Witness? Mr. Witness did the SRT by your experience had any data breaches with respect to the BMS³⁸ (*sic*) and ERS devices it had installed previously to other suppliers? You didn't encounter any data breaches?

³⁶ pp. 9, TSN January 13, 2021; for a complete answer, please refer to page 8 of Geronimo's Judicial Affidavit, Annex "J" of the Petition for Certiorari dated May 18, 2021.

³⁷ pp. 20-23, TSN May 7, 2021.

³⁸ Should be VMS, which stands for Vessel Monitoring System.

Jean Francois Bonnin:

A : I see... from my experience and the fisheries management and the... from what we seen in the past we never seen in any data breach in our system or in any system from Fisheries or data or leak or breach and I would like also to explain that Fisheries Management is existing since more than Thirty (30) years now and Electronic Fisheries Monitoring is existing since Thirty (30) years and the IT security has improved a lot over the last Thirty (3) years so the risk of data leak on this kind of data is very limited and we are from specific as what security to avoid a possible intrusion.

Court:

Alright.. Proceed proceed...

Senior State Solicitor Pimentel:

Q : Can I just go back again to the Encryption Certificate that we've asked you to identify? In that Certificate, you mentioned that the transmissions from the BMS (*sic*) transceiver are encrypted using Military strength and can you elaborate or explain to us, what this Encryption process signify or means?

x x x

Jean Francois Bonnin:

A : So that mean that's the way we are generating we are creating the encryption system is approved at a Military level so for example the US Coast Guard are using our encryption system to transfer the data.

Court:

Alright.

Jean Francois Bonnin:

A : That's the Military strengths and about encryption to the way encryption in the simplified world the way encryption is working is you take a sentence that you can read you reply another reason on it to transform it to something nobody can read and only the people in front of you what exactly the same...we call this a key what exactly the same can encrypt the message, otherwise, you just have plenty of different character with no meaning... that's the rule of encryption.

Senior State Solicitor Pimentel:

Q : In relation to the encryption process you mentioned a key and who has access to this synchronized key in order to access the data from this DNS?

Jean Francois Bonnin:

A : So the way the key is generated since I don't want to make these over complex is you take what we called a seat so could it be props your password... Okay? Then you apply an algorithm to encrypt this password and you had also we called rolling period which means that each in the example of BFAR is each two weeks the key is changed in all the systems and this key is also encrypted. It's a doubled encryption if I could say even if you have the key the encryption is going to changed automatically every two weeks so which means on worst worst case you have the key you can enter the key but you can't use the key because it's changing too quickly to get access.

Court:

Okay.

Senior State Solicitor Pimentel:

Q : Does SRT Marine have any access to that synchronized key?

Jean Francois Bonnin:

A: No, once the key is produced let's say the rolling period is something like 100 years so nobody can stop the system it's 100 years of encryption.

Senior State Solicitor Pimentel:

Q: And who has the sole access to this synchronized key for the data generated from the BMS and ERS?

Jean Francois Bonnin:

A : So the key is installed in the BFAR premise and the reality is there is only one person who has access which is the IT Administrator but even if he has access to the key he can't use the key because it's encrypted.

73. Based on the foregoing, there is absolutely no basis that the respondents' right to privacy are being violated by the mere installation of the VMS devices. The data generated and forwarded to the System of the BFAR is highly secured and treated with utmost confidentiality. To bolster this fact, the Memorandum of Agreement between the petitioner BFAR and the vessel owner for the installation of the VMS explicitly states that BFAR has the obligation to always observe the security/confidentiality of data generated from the fishing vessel operations, tracking and log sheet information.³⁹ That being said, the legal issue being raised by the respondents anent the violation of their right to privacy and unlawful searches has yet to happen or the violation thereof has not yet occurred.

74. In ***Southern Hemisphere v. The Anti-Terrorism Council***⁴⁰, the Honorable Court explained when the power of judicial review operates:

By constitutional fiat, judicial power operates only when there is an actual case or controversy.

x x x

An actual case or controversy means an existing case or controversy that is appropriate or ripe for determination, not conjectural or anticipatory, lest the decision of the court would amount to an advisory opinion.

Information Technology Foundation of the Philippines v. COMELEC cannot be more emphatic:

[C]ourts do not sit to adjudicate mere academic questions to satisfy scholarly interest, however intellectually challenging. The controversy must be justiciable—definite and concrete, touching on the legal relations of parties having adverse legal interests. In other words, the pleadings must show an active antagonistic assertion of a legal right, on the one hand, and a denial thereof on the other hand; that is, it must concern a real and not merely a theoretical question or issue. There ought to be an actual and

³⁹ See Memorandum of Agreement attached to the Judicial Affidavit of fishing vessel operator Jefferson dela Cruz, Exhibit "8" of petitioners' witnesses during the application for TRO/preliminary injunction. Attached as Annex "M" of the Petition dated May 18, 2021.

⁴⁰ G.R. No. 178552, October 5, 2010.

substantial controversy admitting of specific relief through a decree conclusive in nature, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts.

X X X

The list of cases denying claims resting on purely hypothetical or anticipatory grounds goes on ad infinitum.

The Court is not unaware that a reasonable certainty of the occurrence of a perceived threat to any constitutional interest suffices to provide a basis for mounting a constitutional challenge. This, however, is qualified by the requirement that there must be sufficient facts to enable the Court to intelligently adjudicate the issues.

Very recently, the US Supreme Court, in *Holder v. Humanitarian Law Project*, allowed the pre-enforcement review of a criminal statute, challenged on vagueness grounds, since plaintiffs faced a "credible threat of prosecution" and "should not be required to await and undergo a criminal prosecution as the sole means of seeking relief."

X X X X

Prevailing American **jurisprudence allows an adjudication on the merits when an anticipatory petition clearly shows that the challenged prohibition forbids the conduct or activity that a petitioner seeks to do, as there would then be a justiciable controversy.**

Unlike the plaintiffs in *Holder*, however, herein petitioners have failed to show that the challenged provisions of RA 9372 forbid constitutionally protected conduct or activity that they seek to do. No demonstrable threat has been established, much less a real and existing one.

X X X

Without any justiciable controversy, the petitions have become pleas for declaratory relief, over which the Court has no original jurisdiction. **Then again, declaratory actions characterized by "double contingency," where both the activity the petitioners intend to undertake and the anticipated reaction to it of a public official are merely theorized, lie beyond judicial review for lack of ripeness.**

The possibility of abuse in the implementation of RA 9372 does not avail to take the present petitions out of the realm of the surreal and merely imagined. Such possibility is not peculiar to RA 9372 since the exercise of any power granted by law may be abused. Allegations of abuse must be anchored on real events before courts may step in to settle actual controversies involving rights which are legally demandable and enforceable.⁴¹

75. The petition filed by respondents before the trial court must have shown "an active antagonistic assertion of a legal right on one side and a denial thereof on the other concerning a real, and not a mere theoretical question or issue. The question is whether the facts alleged a substantial controversy between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory relief."⁴² "The power does not extend to hypothetical questions since any attempt at abstraction could only lead to dialectics and barren legal questions and to sterile conclusions unrelated to actualities."⁴³

76. Hence, respondents have failed to demonstrate how they would sustain or whether they are in immediate danger to sustain some direct injury as a result of the enforcement of FAO 266. As their petition before the trial court would disclose, the reporting of data of their fishing activities are within the ambit of regulatory powers of the petitioner Republic, and part of the terms of their fishing vessel licenses. Moreover, as to whether the reporting of the vessel's activities through the VMS would allegedly result to a disclosure of their trade secrets have not yet materialized. As noted by the trial court, quoting the representative of respondent Bonanza Fishing:

Thus, any unwarranted disclosure of these information affects the competitive advantage of a fishing company and it exposes them to suffer big losses which *will eventually* result to irreparable injury.⁴⁴

⁴¹ Emphasis supplied.

⁴² *Jumamil v. Cafe, et al.*, G.R. No. 144570, September 21, 2005.

⁴³ *La Bugal-B'laan Tribal Association, Inc. v. Ramos*, 465 Phil. 860 (2004).

⁴⁴ pp. 19, RTC Decision.

77. To be clear, the alleged violation of their right to privacy is not automatic by the mere reporting through the VMS and to the petitioner BFAR which agency is not their trade competitor in the fishing industry. Thus, it was grave error on the part of the trial court to uphold the claim of respondents that there was a violation of their constitutional rights so as to invoke its power of judicial review.

78. Respondents, likewise, have failed to exhaust administrative remedies. Section 138 (c) of the Fisheries Code, as amended explicates the Citizen's Suit⁴⁵ provision which proscribes the filing of any action under the Fisheries Code, without first notifying the public officers concerned, to wit:

Section 138. Citizen's Suits. – For the purposes of enforcing the provisions of this Code and its implementing rules and regulations, any citizen may file an appropriate civil, criminal or administrative action in the proper courts/bodies against:

xxxx

(b) The Department or other implementing agencies with respect to orders, rules and regulations issued inconsistent with this Act; and

(c) Any public officer who willfully or grossly neglects the performance of a duty specifically enjoined by this Code and its implementing rules and regulations; or abuses authority in the performance of duty; or, in any manner improperly performs duties under this Code and its implementing rules and regulations: **Provided, however, That no suit can be filed until after fifteen (15) days notice has been given the public officer and the alleged offender and no appropriate action has been taken thereon.**

⁴⁵ Section 138, c, RA No. 8650, as amended by RA No. 10654, known as The Philippine Fisheries Code, as amended.

79. Pursuant to the above-proviso, respondents still have other available remedies under the Fisheries Code, a direct resort to the courts is, therefore, premature and a wrong remedy. As aptly explained by the Honorable Court in ***Addition Hills Mandaluyong Civic & Social Organization, Inc. v. Megaworld Properties & Holdings, Inc., et al.***,⁴⁶ the premature seeking of redress to the trial court is fatal to respondents' cause of action, *viz*:

We have consistently declared that the doctrine of exhaustion of administrative remedies is a is that courts must allow administrative agencies to cornerstone of our judicial system. The thrust of the rule carry out their functions and discharge their responsibilities within the specialized areas of their respective competence. The rationale for this doctrine is obvious. It entails lesser expenses and provides for the speedier resolution of controversies. Comity and convenience also impel courts of justice to shy away from a dispute until the system of administrative redress has been completed.

x x x As discussed earlier, a litigant cannot go around the authority of the concerned administrative agency and directly seek redress from the courts. Thus, when the law provides for a remedy against a certain action of an administrative board, body, or officer, relief to the courts can be made only after exhausting all remedies provided therein. It is settled that non-observance of the doctrine of exhaustion of administrative remedies results in lack of cause of action, which is one of the grounds in the Rules of Court justifying dismissal of the complaint.

80. Evidently, nowhere from the records of the case would point to any referral or letter by respondents sent to any of the petitioner agencies, informing them of the issues raised against FAO 266 so as to give them the opportunity to take appropriate action, if necessary.

⁴⁶ G.R. No. 175039 dated April 18, 2012.

81. With the foregoing, for failure to exhaust administrative remedies, the trial court gravely erred in not dismissing the case for lack of cause of action.

II. The Constitution explicates that all natural resources belong to the State, which includes fishery and marine resources.

- a) **FAO 266 does not violate the right to privacy, nor does it constitute an unlawful search upon the fishing vessels of the respondents.**

82. With all due respect, the trial court committed a one-sided appreciation of the evidence submitted before it. Moreover, its grasp of the respondents' purported evidence was practically unmeritorious as it was not supported by any proof. Lamentably, the trial court simply attuned itself to the speculations and creative conjectures of respondents. No other supporting evidence was presented to prove the allegations and claims of the respondents. The basic rule is that mere allegation is not evidence and is not equivalent to proof.⁴⁷ Thus, it is incumbent upon the party who alleges to prove its claim, in this case, the respondents. It must be noted that as evidence, respondents only submitted two judicial affidavits, from the representatives of Bonanza Fishing and RBL Fishing Corporations. The representative of Royale Fishing Corporation was no longer presented as the Fishing Corporation already applied for installation of VMS on its fishing vessels last December 2020.⁴⁸

⁴⁷ *Agdeppa v. Office of the Ombudsman*, supra note 56, at 333 citing *De Jesus v. Guerrero III*, 614 Phil. 520, 529.

⁴⁸ Judicial Affidavit of Marlo Demo-os, attached to the Petition for Certiorari.

83. As already above explicated, and would be further discussed, FAO 266 does not violate any of the purported rights to privacy of respondents. The right to unlawful searches does not also apply by any stretch of imagination in this case. The rights being claimed by respondents are misapplied, or at most, are not applicable under the given circumstances.

84. According to respondents and as erroneously sustained by the trial court, the position and location where the fishes are caught are part of their trade secrets and that reporting this information to the VMS and ERS devices constitute a violation of their right to privacy. Such reporting, likewise, violates their right to unlawful searches, as claimed by the respondents.

85. In ***Spouses Hing v. Choachuy***⁴⁹, the Honorable Court ruminated on a person's right to privacy:

The right to privacy is enshrined in our Constitution and in our laws. It is defined as "the right to be free from unwarranted exploitation of one's person or from intrusion into one's private activities in such a way as to cause humiliation to a person's ordinary sensibilities." It is the right of an individual "to be free from unwarranted publicity, or to live without unwarranted interference by the public in matters in which the public is not necessarily concerned."⁴⁶ Simply put, the right to privacy is "the right to be let alone."

The Bill of Rights guarantees the people's right to privacy and protects them against the State's abuse of power. In this regard, the State recognizes the right of the people to be secure in their houses. No one, not even the State, except "in case of overriding social need and then only under the stringent procedural

⁴⁹ G.R. No. 179736, June 26, 2013.

safeguards," can disturb them in the privacy of their homes.

86. "The right to privacy is not confined to one's home or residence and may extend to places where one has the right to exclude the public or deny them access. The phrase 'prying into the privacy of another's residence,' has been held to include places, locations, or even situations which an individual considers as private. And if this right is recognized by society, other individuals may not infringe on the person's right to privacy."⁵⁰

87. From the foregoing, the right to privacy would only apply where a citizen has a legitimate expectation of privacy, which respondents cannot validly invoke. While it is true that respondents' fishing vessels are private property, the fishery resources, however, belong to the State. Precisely, this is evinced by the fishing vessel licenses which respondents and other commercial fishers obtain from the petitioner BFAR. Pursuant to their licenses, the conduct of fishing is subject to the regulatory powers of the State. The exercise of the respondents' privilege to fish is, therefore, subject to the rules and regulations set forth by the petitioner BFAR, as the government agency mandated to protect and conserve the country's fishery and marine resources. As a matter of fact, one of the requirements prior to the issuance of a commercial fishing vessel license under FAO 198-1, is to comply with the VMM and/or observer coverage requirement, in addition to its compliance with other existing fishery rules and regulations. This is a necessary consequence of the privileged nature of a commercial fishing vessel license issued to registered fishing vessels.⁵¹ Hence, no vested rights accrue to these licenses.⁵²

88. In ***Morfe v. Mutuc***⁵³, the Honorable Court pronounced that there is no infringement on the right to privacy in the exercise of the police power of the State.⁵⁴ The

⁵⁰ *Ibid.*

⁵¹ *Oposa v. Factoran*, G.R. No. 101083, July 30, 1983.

⁵² p. 57, Petition for Certiorari in G.R. No. 256282.

⁵³ 130 Phil. 415 (1968), G.R. No. L-20387, January 31, 1968.

⁵⁴ 130 Phil. 415 (1968).

government has this right upon grounds of public policy or subject to the general welfare.⁵⁵ In these cases, although considered a fundamental right, the right to privacy may nevertheless succumb to an opposing or overriding State interest deemed legitimate and compelling.⁵⁶

III. MDS does not violate the equal protection clause.

89. In the assailed Decision, the trial court narrowly applied the Fisheries Code and relevant laws on governance of our municipal waters. Importantly, the trial court missed out this legal context as pointed out by petitioner's witness, municipal fisherfolk Juanito Dacillo:

7. Tanong: Nabanggit ninyo na ang lalagyan ng VMS ayon sa FAO 266 ay mga malalaking pamalakaya. Ano ang nakasaad tungkol sa mga maliliit na bangkang pangngisda, kung mayroon man? (You mentioned that according to FAO 266, VMS will be installed in commercial fishing vessels. What does FAO 266 say about municipal fishing vessels, if any?)

Sagot: Hindi kame kasali sa FAO 266 dahil ang banka na may 3 gross tonnage at pababa ay saklaw ng EO 305⁵⁷ na ang pamamahala ay nasa ilalim ng mga kaniya-kaniyang LGU. (Municipal fishers are not included as boats with 3 gross tonnage and below are covered by E.O. 305 and regulated by their respective LGUs.)

8. Tanong: Ano po ang masasabi ninyo sa FAO 266? (What can you say about FAO 266?)

Sagot: Ito po ay malaking tulong para sa aming municipal na mangngisda dahil malalaman at ma-monitor ang mga pangngisda

⁵⁵ *Ibid.*

⁵⁶ *Gamboa v. Chan*, G.R. No. 193636, July 24, 2012.

⁵⁷ EXECUTIVE ORDER NO. 305, Series of 2004. DEVOLVING TO MUNICIPAL AND CITY GOVERNMENTS THE REGISTRATION OF FISHING VESSELS THREE (3) GROSS TONNAGE BELOW.

ng malalaking mangingisda/komersyal fishers kung sila ay pumapasok o nangigisda sa loob ng katubigan municipal na madalas nilang ginagawa at ipinagbabawal naman ng Batas. (This regulation is a huge assistance to municipal fisherfolk as through this FAO 266, the fishing activities of commercial fishing vessels would be monitored. It can then be determined if these commercial fishing vessels are fishing within municipal waters which they frequently do despite being prohibited by law.)⁵⁸

90. The Fisheries Code, as amended, recognizes the primary role of the Local Government Units (LGU) in managing its municipal waters. Thus, in relation to this, Section 65 (n) of the Fisheries Code only mandates petitioner BFAR to formulate and enforce all laws, rules and regulations governing the conservation and management of fishery resources, **except** in municipal waters. Executive Order No. 305, Series of 2004, likewise, devolves to cities and municipalities fishing vessels with three gross tonnage and below. Petitioner BFAR, however, may assist the LGUs in developing their technical capability in the development, management, regulation, conservation, and protection of the fishery resources.

91. Fisheries rules and regulations are supposed to be dynamic and evolving and needing serious actions for better resource management of the country's fishery resources. Evidently, there exists substantial distinctions between municipal and commercial fishing vessel operators, from the scale of fishing operations to the capacities of their respective fishing fleet, among others.

**IV. Petitioner BFAR
observed due process,
both substantive and
procedural, in its
issuance of FAO 266.**

⁵⁸ p. 4, Judicial Affidavit of Justino Dacillo, Annex "B-2"; Exhibit "18".

On substantive due process

There are legal and scientific bases to issue FAO 266.

92. The trial court ruled that the issuance of FAO 266 was in violation of the rights to due process and to participate in decision-making processes of respondents. In ruling so, the court *a quo* cited the lack of scientific studies and the installation of the VMS prior to the conduct of consultations with stakeholders. Regrettably, again, the trial court committed grave error.

93. Under the Fisheries Code, as amended, petitioner BFAR is mandated to enforce all laws, *formulate and enforce all rules and regulations* governing the conservation and management of fishery resources. In its promulgation of Fishery Rules and Regulations, the Implementing Rules of the Fisheries Code enunciate two requirements: a) the regulations shall be based on scientific studies, and b) consultations shall be conducted on affected stakeholders. These two requirements have been complied with by petitioner BFAR.

94. In issuing FAO 266, petitioner BFAR relied primarily on Sections 119 and 14 of RA 8550, requiring fishing vessels to comply with the Department's vessel monitoring measures before the conduct of any fishing activity. To clarify, the law does not limit scientific studies to be relied by the Department to be solely conducted with the affected stakeholders. Petitioner BFAR is not restricted from being guided by *any* scientific study in promulgating fisheries regulations. As pointed out by petitioner's witnesses, Rollan Geronimo and Atty. Demosthenes Escoto, VMS as a tool in fisheries management has already been recognized globally.⁵⁹ The scientific bases for the use of the VMS have been tested by many other countries which have required its use for its

⁵⁹ Judicial Affidavit of Rollan Geronimo has already been attached to the Petition for Certiorari as Annex "J". The Judicial Affidavit of Atty. Demosthenes Escoto is now being attached hereto as Annex "B-3"; Exhibit "19".

national fishing fleet. These scientific studies and other pertinent information relied upon by the petitioner BFAR should be respected. Petitioner BFAR is the agency endowed with the technical expertise in the conservation and management measures for the country's resources. Consistently, the rule in this jurisdiction is that such expertise is accorded with great respect by the courts, and courts should refrain from substituting its judgment with the wisdom of these government agencies in the exercise of their mandate pursuant to law.⁶⁰

95. Fisheries are central to the development of a country's marine resources, as fishes and their habitats are the key renewable resources in the country's territorial seas. The goal of fisheries management, including MCS, is to maximize the economic opportunities and benefits from the State's waters within sustainable harvesting limits. FAO 266 needs to be understood in light of this goal. Moreover, as indicated in the FAO itself, one of the objectives thereof is to utilize the data from the VMM as basis for fisheries management purposes to achieve long term sustainability.⁶¹ These objectives cannot be stunted by the feeble interpretation of the trial court as to how the petitioner Republic should implement the Fisheries Code. As stated emphatically in a number of cases, the interpretation of an administrative government agency, which is tasked to implement a statute, is accorded great respect and ordinarily controls the construction of the courts.⁶² The reason behind this rule was explained in **Nestle Philippines, Inc. vs. Court of Appeals**,⁶³ in this wise:

The rationale for this rule relates not only to the emergence of the multifarious needs of a modern or modernizing society and the establishment of diverse administrative agencies for addressing and satisfying those needs; it also relates to the accumulation of experience and growth of specialized

⁶⁰ *First Lepanto Ceramics, Inc. v. Court of Appeals*, 253 SCRA 552 [1996] Nestle, *Philippines, Inc. v. Court of Appeals*, 203 SCRA 504 [1991].

⁶¹ Section 1, FAO 266.

⁶² *Nestle, Philippines, Inc. v. Court of Appeals*, 203 SCRA 504 [1991].

⁶³ *Ibid.*

capabilities by the administrative agency charged with implementing a particular statute. In *Asturias Sugar Central, Inc. v. Commissioner of Customs*,¹² the Court stressed that executive officials are presumed to have familiarized themselves with all the considerations pertinent to the meaning and purpose of the law, and to have formed an independent, conscientious and competent expert opinion thereon. The courts give much weight to the government agency or officials charged with the implementation of the law, their competence, expertness, experience and informed judgment, and the fact that they frequently are drafters of the law they interpret.

96. The trial court propounds that VMS has been installed even before the promulgation of FAO 266. It must be noted that as early as 2012, the use of VMS has been required for all licensed Philippine flagged commercial fishing boats/vessels [purse seine, longline, ring net, trawlers, other fishing gears and fish carriers and transshipment vessels] authorized/licensed by BFAR to operate in the high seas and those fishing vessels with access rights to fish in other countries' exclusive economic zones.⁶⁴ As a matter of fact, the VMS as a tool has been developed and operationalized since 2000, when the petitioner BFAR started exploring its use for Philippine commercial fishing vessels.⁶⁵

97. Thus, the VMS supplier engaged by petitioner BFAR prior to SRT Marine, had already installed and had continued to supply specific fishing vessels operating in the Western Central Pacific Fisheries Commission (WCPFC) convention area, the required VMS under that convention and pursuant to FAOs 240 and 260.⁶⁶ Necessarily, the old supplier of BFAR's VMS continue to provide the installation of VMS to the covered fishing vessels within the WCPFC area while undergoing transition with the new provider, SRT Marine.⁶⁷

⁶⁴ Judicial Affidavit of Atty. Demosthenes Escoto outlines the legal antecedent FAOs requiring VMS prior to FAO 266; Annex "C-3"; Exhibit "19".

⁶⁵ Judicial Affidavit of Zaldy Perez, Annex "C-1"; Exhibit 17.

⁶⁶ *Ibid.*

⁶⁷ pp. 48-52, TSN, May 7, 2021.

Petitioner BFAR implemented this transition, as SRT Marine is still in the process of seeking its accreditation with the WCPFC.⁶⁸

On procedural due process

There was prior notice, consultation and hearing on FAO No. 266

98. To comply with the procedural requirements mandated by RA 10654, petitioner BFAR conducted a series of regional and national public consultations on FAO 266. These consultations were clustered in the Visayas (Region VI, Region VII, Region VIII⁶⁹), South Luzon (Region IV-A, Region IV-B, Region V⁷⁰) and North Luzon (Region I, Region II, Region III⁷¹), National Capital Region⁷² and Mindanao (Region IX, Region X, Region XI, Region XII, CARAGA and BARMM). The FAO was also deliberated upon by the National Fisheries and Aquatic Resources Council (NFARMC) before it was recommended for issuance to petitioner DA.

99. Official records would attest that respondents and the covered fishing vessel operators under FAO 266 were notified and given a chance to be heard on the subject FAO. The fact is that petitioner BFAR exerted due diligence in getting the position of the stakeholders, local governments, the academe, experts, non-government organizations, and fisherfolks before the issuance of FAO 266. These consultations were in fact admitted by respondents in open court.⁷³ Hence, the due process requirements of notice and hearing were met and complied with in the issuance of FAO 266.

⁶⁸ *Ibid.*

⁶⁹ November 7-9, 2019.

⁷⁰ November 14-16, 2019.

⁷¹ November 27-29, 2019.

⁷² January 16-18, 2020.

⁷³ pp. 19-21, TSN dated December 16, 2020; testimony of Peter Paul Santos, Bonanza Fishing and Marketing Resources, Inc. representative; pp 13, TSN dated December 18, 2020; testimony of Ferdinand Lim, representative of RBL Fishing.

100. Similarly, after the FAO's issuance, petitioner BFAR, likewise, conducted several special meetings/dialogues to assist fishing vessel operators on the free installation of VMS and ERS devices on a first come, first served basis to 5,000 fishing vessels. As a matter of fact, respondent Royale Fishing Corporation has already availed of and applied for installation of the VMS on its fishing vessels in December 2020.⁷⁴

V. The application of the precautionary principle for the protection of the country's fisheries and marine environment should remain inviolable.

101. The trial court, in refusing to apply the precautionary principle, seems to demand nothing less than a direct and absolute causal connection between the VMS and the scientific basis for its installation to justify FAO 266. It must be emphasized that FAO 266 was promulgated as a monitoring, control, and surveillance tool to ensure the sustainability of the country's fisheries and marine resources. In simple terms, the Vessel Monitoring System is a detection tool and is one of the recognized important tools now in the field of fisheries monitoring, surveillance and law enforcement operations.⁷⁵ To understand the VMS further, petitioner's expert witness, Rollan Geronimo's explanation on the matter is worth highlighting:

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The cost of VMS may be high per individual vessel but this is most likely insignificant compared with the overall loss due to IUU fishing in the Philippines, estimated between 40 to 60 billion pesos annually. A cost-benefit study on the use of VMS in Indonesia estimated that it could reduce violations by up to 50%.

⁷⁴ Exhibit 3 submitted by petitioners during the hearing on the application for TRO/preliminary injunction, as part of the Testimony of Marlo Demo-os.

⁷⁵ pp. 4, 6, Judicial Affidavit of Rollan Geronimo, already attached to our Petition in G.R. No. 256282.

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9. Question: How is this vessel monitoring system used in fisheries management?

Answer: The main use of VMS is for monitoring and surveillance as part of fishery law enforcement to combat illegal, unreported, and unregulated fishing. VMS enables fisheries managers to monitor the location of fishing vessels that are part of the system. **With the VMS, fisheries managers are able to implement fishery laws more effectively,** especially for provisions of the law that are spatial or location-dependent. Given that many of the Philippine fishery laws are tied to where the activity occurs (e.g., municipal waters, marine protected areas, etc.), VMS is a critical component of effective fisheries management in the country.

VMS can increase voluntary compliance to fishery laws. By tracking the location of fishing vessels, **fisheries managers are able to assist fishing vessels in complying with the law.**

In some cases, VMS also enables fishers to work together with authorities to detect and intercept fishing vessels suspected of committing violations. For vessels that do not have VMS, the system could still be used by authorities in close partnership with vessels that are part of the system. If a vessel without VMS and suspected to be conducting irregular and potentially illegal fishing activities is detected by a vessel with VMS, the latter could inform the FMC and the FMC could use the location of the reporting vessel as a reckoning point to locate and intercept the non-VMS fishing vessel. This provides law-abiding fishers with a tool to fight abuses by poachers and non-compliant fishers.

But VMS data are also useful for non-enforcement related purposes, especially when taken in aggregate. Individual fishing vessel locations are not very useful, by itself, for non-enforcement purposes. But taken in aggregate and coupled with fishing logbook data (either manual or electronic), VMS data can reveal group dynamics of fisheries and contribute information that are not readily apparent and available to fishers relying only on their own personal

experience. Aggregated location of fishing areas from VMS have been used to evaluate the effectiveness of various fisheries interventions in the Gulf of Mexico (Watson, et.al, 2018⁷⁶).

VMS also enables managers or regulatory authorities, such as the BFAR, to identify more accurately the fishing hotspots and direct their efforts accordingly to protect these hotspots from overfishing (Bastardie *et al.* 2010; Jennings and Lee 2012⁷⁷). VMS data are used to evaluate the impacts of fishing and allow fisheries managers to adapt their approaches accordingly to prevent the decimation of fish stocks, habitats, and ecosystems. (Amoroso *et al.* 2018⁷⁸)

Another use of VMS is to improve the quality, quantity, and reliability of fisheries data for fisheries stock assessments, which information is relevant for BFAR, in managing the country's fishery resources. The information on the location of catches and the catch itself (e.g., biomass, size of fish, types of fish caught, etc.) are often used by fisheries scientists to analyze the variability in fisheries production, develop more accurate and precise stock assessment models, and provide more concrete recommendations for fisheries managers and stakeholders on what to do to ensure that the fish stocks remain healthy. VMS data have been used to estimate fish biomass more accurately (Murray *et al.* 2013; Ducharme-Barth *et al.* 2018⁷⁹) and improve systematic marine conservation planning (Gonzalez-Mirelis *et al.* 2013⁸⁰).

⁷⁶ Watson, J.T., Haynie, A.C., Sullivan, P.J., Perruso, L., O'Farrell, S., Sanchirico, J.N. and Mueter, F.J. (2018) Vessel monitoring systems (VMS) reveal an increase in fishing efficiency following regulatory changes in a demersal longline fishery. *Fisheries Research* 207, 85–94.

⁷⁷ Bastardie, F., Nielsen, J.R., Ulrich, C., Egekvist, J. and Degel, H. (2010) Detailed mapping of fishing effort and landings by coupling fishing logbooks with satellite-recorded vessel geo-location. *Fisheries Research* 106, 41–53; Jennings, S. and Lee, J. (2012) Defining fishing grounds with vessel monitoring system data. *ICES Journal of Marine Science* 69, 51–63.

⁷⁸ Amoroso, R.O., Pitcher, C.R., Rijnsdorp, A.D., et al. (2018) Bottom trawl fishing footprints on the world's continental shelves. *Proceedings of the National Academy of Sciences of the United States of America* 115, E10275–E10282.

⁷⁹ Murray, L.G., Hinz, H., Hold, N. and Kaiser, M.J. (2013) The effectiveness of using CPUE data derived from Vessel Monitoring Systems and fisheries logbooks to estimate scallop biomass. *ICES Journal of Marine Science* 70, 1330–1340; Ducharme-Barth, N.D., Shertzer, K.W. and Ahrens, R.N.M. (2018) Indices of abundance in the Gulf of Mexico reef fish complex: A comparative approach using spatial data from vessel monitoring systems. *Fisheries Research* 198, 1–13.

⁸⁰ Gonzalez-Mirelis, G., Lindegarth, M. and Sköld, M. (2014) Using vessel monitoring system data to improve systematic conservation planning of a multiple-use marine protected area, the Kosterhavet National Park (Sweden). *Ambio* 43, 162–174.

VMS data in Indonesia, along with other satellite-derived data, have been used to quantify the potential benefits of reducing IUU fishing to the sustainability and catches of Indonesian fishers (Cabral *et al.* 2018⁸¹).

10. Question: What is the relevance or importance of this vessel monitoring system to:
- a. Regulatory authorities such as BFAR?
 - b. Vessel owners?
 - c. Other stakeholders?

Answer: **a. Regulatory authorities such as BFAR**

More than 40 countries are using VMS as part of their effective fisheries management. The Philippines very own Fisheries Code requires the establishment of a Vessel Monitoring Measure to help the BFAR improve the efficiency of monitoring, control, and surveillance of the country's fishery resources. Potential benefits include the deterrence of illegal fishing activities (spatial and temporal), reducing the cost of investigation for violations, and efficient at-sea or landing inspection.

VMS data could also be used to greatly enhance stock assessment by providing real-time fishing effort information. Alongside catch / logbook data, this would give the fisheries managers such as the BFAR, critical data to make scientifically-informed decisions to ensure that fish stocks remain healthy, viable, and profitable for Filipino fishers.

b. Vessel owners

Vessel owners usually are allowed access to their own VMS data since they subscribe to VMS providers. Similar to fleet management in logistics companies, this could help owners monitor their assets and use the information to improve the efficiency of their operations.

VMS also provides added safety and security benefits for vessel owners to enable agencies to quickly respond to emergencies at sea. Similar to a black box

⁸¹ Cabral, R.B., Mayorga, J., Clemence, M., et al. (2018) Rapid and lasting gains from solving illegal fishing. *Nature Ecology & Evolution* 2, 650–658.

may bring about and cause irreparable damage to the marine ecosystem. Thus, the trial court gravely erred in declaring that the application of the precautionary principle in this case is improper.⁸⁶

**ALLEGATIONS IN SUPPORT OF THE PRAYER
FOR ISSUANCE OF A TRO AND/OR WPI**

103. Petitioner Republic is entitled to the reliefs prayed for, part of which consists of the issuance of a TRO and/or WPI to enjoin the implementation of the assailed Decision dated June 1, 2021 rendered by the RTC, Branch 170, Malabon City.

104. Petitioner Republic hereby re-states, re-pleads, and incorporates all the foregoing allegations in support of its prayer to restrain the illegal acts of respondents in refusing the installation of the VMS and ERS devices on their fishing vessels. The issues at hand are of paramount importance and would immediately affect the *ailing* state of the country's fisheries and marine resources, its habitats, and the ecosystem, which in the end, would affect all, including the future generations.

105. The trial court rendered the assailed Decision dated June 1, 2021, and made permanent the WPI previously issued, enjoining the petitioner Republic, and all persons acting on its behalf to halt the implementation of FAO 266, an environmental issuance that **enjoys the presumption of validity**. The trial court gravely erred in sustaining the petition of respondents and acted with manifest partiality against the implementation of FAO 266, despite the absence of proof of its invalidity or illegality.

106. Rule 58 of the Revised Rules of Court provides for the grounds for a WPI to issue:

"1) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or

⁸⁶ pp. 28, RTC Decision.

continuance of the act or acts complained of, or in requiring performance of an act or acts, either for a limited period or perpetually;

2) That the commission, continuance or non-performance of the acts complained of during the litigation would probably work injustice to the applicant; or

3) That a party, court or agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgement ineffectual."

107. Petitioner Republic is constrained to apply for the issuance of a TRO and/or WPI as harsh repercussion can ensue if the trial court's decision declaring FAO 266 as unconstitutional and the WPI previously issued made permanent would be implemented while the present petition remains pending before this Honorable Court. Moreover, the necessity and urgency for the issuance of a TRO and/or WPI so that pending the proceedings herein, FAO No. 266 remains to be valid and enforced, in view of the official and privileged communication from the European Commission noting with urgency the "level of equipment of the Philippine commercial fishing vessels with vessel monitoring systems."

108. Petitioner Republic hereby shares with this Honorable Court the strongly worded official communication from the Directorate General for Maritime Affairs and Fisheries of the European Commission dated June 1, 2021, the European Commission reiterated, "the installation of Vessel Monitoring Systems on board of the Philippines' commercial fishing vessels and support vessels is an **indispensable** tool to ensure control over the national fleet operating in Philippines waters and beyond". Pertinently, We quote the salient portions of the EU's communication:

"I am aware of the efforts that the Philippines is doing to beef up its policy to fight IUU fishing in line with its international obligations. However, I would like to

convey my concerns regarding the guarantees your country is currently offering to ensure that Philippines' fishery products exported to the EU do not stem from IUU fishing.

As you know, the establishment of a comprehensive system of monitoring, control and surveillance in the fisheries sector is essential to be able to prevent, deter and eliminate IUU fishing and ensure compliance with the appropriate conservation and management measures. Any flag State has the obligation to control the activities carried out by the fleet flying its flag, as foreseen by Article 94 of the UNCLOS. Point 24 of the IPOA IUU advises flag States to ensure effective monitoring, control and surveillance of fishing by implementing Vessels Monitoring Systems (VMS) in accordance with the relevant national, regional and international standards. We have reiterated in many occasions that the installation of VMS on board of the Philippines' commercial fishing vessels, carrier vessels and support vessels is an indispensable tool to ensure control over the national fleet operating in Philippines waters and beyond.

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It is of serious concern for the European Commission that 6 years after the lifting of the "yellow card" 38% of the tuna national fleet is still not equipped with VMS and only 7.4 % of the entire commercial fleet operating in domestic waters is controlled by VMS.⁸⁷ This is even more worrying taking into account the archipelagic nature of the Philippines with vast domestic fishing grounds.

In this context, we have serious doubts as regards the capability of BFAR to verify the catch area where the fishing activities take place and the date of the catch for all the fishing vessels that are not equipped with VMS.

Considering that the value of imports of fishery products from the Philippines into the EU accounted for 226 million Euros in 2020, and in the light of the explanations given above, your country is in the

⁸⁷ According to the last figures, there are in total 7527 commercial fishing vessels operating in Philippine domestic waters including catchers, carriers and support vessels, and only 557 of those have VMS.

spotlight of our actions to prevent IUU fish entering our market. The Philippines must guarantee that it has a sufficiently robust system to detect fishery products that stem from IUU fishing activities and ensure that they are not certified as valid for the European market.

I look forward to receiving from you a clear commitment to work on the resolution of the deficiencies identified in the Philippines fisheries control system with the description of the planned actions. I would be grateful to receive your confirmation that the whole **national tuna fleet** is equipped and monitored via VMS by **September 2021**. For the rest of the national commercial fishing fleet, including carrier and support vessels, we suggest to establish a roadmap with deadlines by size and type, with milestones by the end of 2021, by March 2022 and with the objective of having VMS on board of the whole national commercial fishing fleet by June 2022.

Taking into consideration the high volume of fishery products imported into the EU from the Philippines, **in case of failure to meet the proposed timeframe to equip the national fleet with VMS, the Commission cannot not exclude taking further measures** foreseen in Council Regulation (EC) No 1005/2008 (the EU IUU Regulation).⁸⁸

109. Thus, the delay in the installation of VMS on the country's fishing vessels would prejudice the interests of the Government, the country's fishery resources, and importantly, the stakeholder fishing vessel operators. Therefore, with utmost necessity and urgency, the Honorable Court's grant of the application for issuance of a TRO and/or WPI is respectfully sought and prayed for.

110. With the kind indulgence of this Honorable Court, it is worthy to note that in G.R. No. 212805, the Honorable

⁸⁸ Signed by Directorate General Charlina VITCHEVA, Maritime Affairs and Fisheries of the European Commission; cited also in our Very Urgent Manifestation to this Honorable Court, in G.R. No. pp. 4, 6, Judicial Affidavit of Rollan Geronimo, already attached to our Petition in G.R. No. 256282.

Court, upon the filing of the Petition⁸⁹ against the WPI issued by the same RTC, Branch 170, Malabon City on the validity of FAO No. 246, issued a **Temporary Restraining Order** enjoining the RTC, Branch 170, Malabon City, the respondents and their representatives from enforcing the TRO and WPI issued by the said trial court.⁹⁰ It is humbly moved that the instant petition merits a similar application/issuance from this Honorable Court.

111. Clearly, the foregoing discussion demonstrates the necessity and urgency for the issuance of a TRO and/or WPI so that pending the proceedings herein, FAO No. 266 remains to be valid and enforced. For these compelling considerations, therefore, petitioner Republic earnestly prays for the grant of its application and the immediate issuance of a TRO and/or WPI against the assailed RTC, Branch 170, Malabon City Decision dated June 1, 2021.

PRAYER

WHEREFORE, premises considered, it is respectfully prayed of this Honorable Court that, upon filing of the instant petition, the same be given due course by immediately issuing a TRO, followed by a WPI against the Decision dated June 1, 2021 rendered by the RTC, Branch 170, Malabon City; and that judgment be rendered as follows:

1. ANNULING, REVERSING AND SETTING ASIDE the assailed Decision dated June 1, 2021 of the RTC, Branch 170, Malabon City for having been rendered contrary to law, evidence and existing jurisprudence; and
2. DECLARING the WPI issued as permanent.

Other reliefs, just and equitable under the premises, are likewise prayed for.

⁸⁹ Filed by the Republic, represented by the Secretary of the DA and the Bureau Director of the BFAR vs. Malabon-Navotas Hulbot-Hulbot Fisherfolks Association Inc., and Hon. RTC Judge Zaldy B. Docena, Br. 170, Malabon City.

⁹⁰ July 7, 2014 Resolution of the Supreme Court in G.R. No. No. 212805.

Makati City for Manila, June 23, 2021.

JOSE C. CALIDA

Solicitor General

Roll No. 24852

IBP Lifetime No. 015360, 08/18/16

MCLE Exemption No. VII-000228, 11/5/19

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MCLE Compliance No. VI-0021121, 3/26/19

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Copy furnished:

JUN 25 2021

HON. ZALDY B. DOCENA
Regional Trial Court
National Capital Judicial Region
Branch 170, Malabon City 1470

RC 196 354 464 ZZ


JUN 25 2021

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JUN 25 2021

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JUN 25 2021

COM. EDGARDO V. CABARIOS
Deputy Commissioner
National Telecommunications Commission
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1104 Diliman, Quezon City

RC 196 354 084 ZZ


EXPLANATION

(Pursuant to Section 11, Rule 13 of the 2019 Amendments
To the 1997 Rules of Civil Procedure, A.M. 19-10-20-SC)

The foregoing Petition for Review will be filed and served with this Honorable Court personally. Copies of this petition will be served to the parties by registered mail because the OSG does not have sufficient personnel to personally serve all the numerous pleadings it prepares daily.

Melanie Pimentel

MELANIE P. PIMENTEL
Senior State Solicitor

**VERIFICATION AND CERTIFICATION
OF NON-FORUM SHOPPING**

I, **WILLIAM D. DAR**, Secretary, Department of Agriculture, after having been sworn to in accordance with law, hereby depose and state:

1. That I caused the preparation of the foregoing Petition entitled ***Department of Agriculture, Bureau of Fisheries and Aquatic Resources, and National Telecommunications Commission vs. Royale Fishing Corporation, Bonanza Fishing and Marketing Resources, Inc. and RBL Fishing Corporation;***

2. The allegations therein are true and correct, based on my personal knowledge and authentic records at hand;

3. The pleading is not filed to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

4. The factual allegations therein have evidentiary support or, if specifically, so identified, will likewise have evidentiary support after a reasonable opportunity for discovery;

5. The instant Petition is related to the Petition for Certiorari dated May 18, 2021 filed before this Honorable Court, docketed as G.R. No. 256282, entitled ***Republic of the Philippines rep. by the Department of Agriculture, Bureau of Fisheries and Aquatic Resources, and the National Telecommunications Commission vs. Royale Fishing Corporation, Bonanza Fishing and Market Resources, Inc., RBL Fishing Corporation and the Honorable RTC Judge Zaldy B. Docena, Branch 170, Malabon City.*** Except for the aforementioned petition pending before this Honorable Court, to the best of my knowledge, no other action or proceeding is pending before this Honorable Court, the Court of Appeals or any other tribunal or agency. Should I thereafter learn that the same or similar action or proceeding has been filed or is pending before this Honorable Court, the Court of Appeals or any other tribunal or agency, I will notify this Honorable Court, the tribunal or agency concerned within five (5) calendar days from notice.



WILLIAM D. DAR, PH.D.
Secretary-Department of Agriculture



**VERIFICATION AND CERTIFICATION
OF NON-FORUM SHOPPING**

I, **HON. EDUARDO GONGONA**, National Director, Bureau of Fisheries and Aquatic Resources (BFAR) after having been sworn to in accordance with law, hereby depose and state:

1. That I caused the preparation of the foregoing Petition entitled ***Department of Agriculture, Bureau of Fisheries and Aquatic Resources, and National Telecommunications Commission vs. Royale Fishing Corporation, Bonanza Fishing and Marketing Resources, Inc. and RBL Fishing Corporation;***

2. The allegations therein are true and correct, based on my personal knowledge and authentic records at hand;

3. The pleading is not filed to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

4. The factual allegations therein have evidentiary support or, if specifically, so identified, will likewise have evidentiary support after a reasonable opportunity for discovery;

5. The instant Petition is related to the Petition for Certiorari dated May 18, 2021 filed before this Honorable Court, docketed as G.R. No. 256282, entitled ***Republic of the Philippines rep. by the Department of Agriculture, Bureau of Fisheries and Aquatic Resources, and the National Telecommunications Commission vs. Royale Fishing Corporation, Bonanza Fishing and Market Resources, Inc., RBL Fishing Corporation and the Honorable RTC Judge Zaldy B. Docena, Branch 170, Malabon City.*** Except for the aforementioned petition pending before this Honorable Court, to the best of my knowledge, no other action or proceeding is pending before this Honorable Court, the Court of Appeals or any other tribunal or agency. Should I thereafter learn that the same or similar action or proceeding has been filed or is pending before this Honorable Court, the Court of Appeals or any other tribunal or agency, I will notify this Honorable Court, the tribunal or agency concerned within five (5) calendar days from notice.


HON. EDUARDO GONGONA
National Director-BFAR

By Registered Mail To:

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Makati, Metro Manila, Philippines

ARTEMIO A. ESTOQUE, JR.
Chief Administrative Officer

JUN 25 2021
(Affiant)

SUBSCRIBED AND SWORN to before me this _____ at Makati
City, Philippines. Affiant exhibiting to me his _____ issued at Pasay City.

GSIS UMID # 006-0065-2137-0
[Signature]
LUCY L. BUTLER-TORRES
SENIOA STATE SOLICITOR

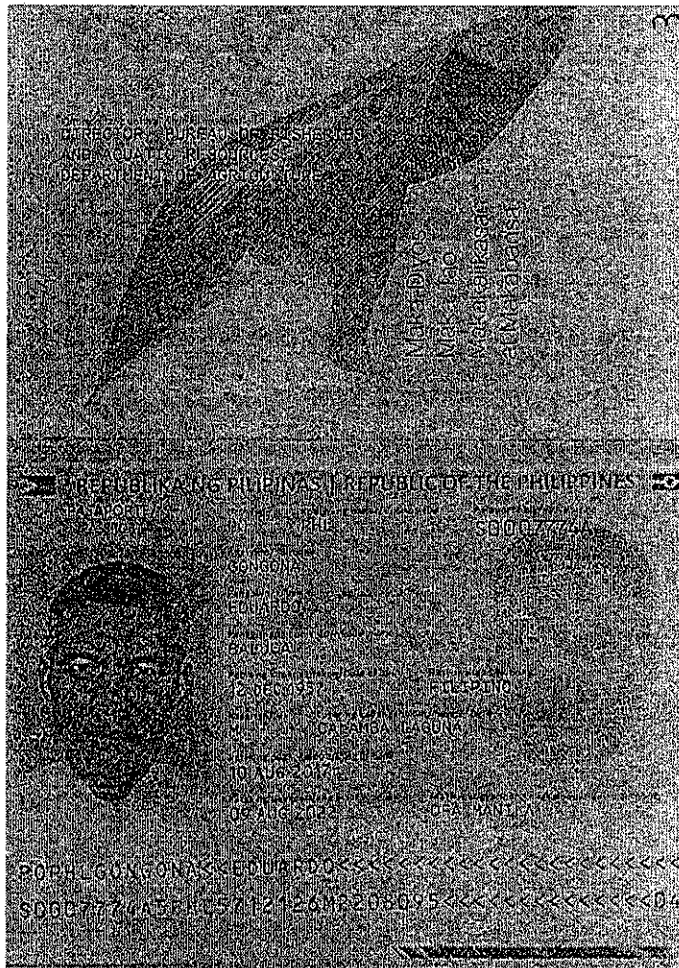


20-017379-0080

Solicitor, Officer Administering the Oath
Office of the Solicitor General

SUBSCRIBED AND SWORN to before me, this 23rd of June, Makati City, affiant exhibited to me his Philippine Passport No. S0007774A issued by the DFA, Manila on August 10, 2017.


MELANIE P. PIMENTEL
Senior State Solicitor



**VERIFICATION AND CERTIFICATION
OF NON-FORUM SHOPPING**

I, **GAMALIEL A. CORDOBA**, Commissioner, National Telecommunications Commission, after having been sworn to in accordance with law, hereby depose and state:

1. That I caused the preparation of the foregoing Petition entitled ***Department of Agriculture, Bureau of Fisheries and Aquatic Resources, and National Telecommunications Commission vs. Royale Fishing Corporation, Bonanza Fishing and Marketing Resources, Inc. and RBL Fishing Corporation;***

2. The allegations therein are true and correct, based on my personal knowledge and authentic records at hand;

3. The pleading is not filed to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

4. The factual allegations therein have evidentiary support or, if specifically, so identified, will likewise have evidentiary support after a reasonable opportunity for discovery;

5. The instant Petition is related to:

a) the Petition for Certiorari dated May 18, 2021 filed before this Honorable Court, docketed as G.R. No. 256282, entitled ***Republic of the Philippines rep. by the Department of Agriculture, Bureau of Fisheries and Aquatic Resources, and the National Telecommunications Commission vs. Royale Fishing Corporation, Bonanza Fishing and Market Resources, Inc., RBL Fishing Corporation and the Honorable RTC Judge Zaldy B. Docena, Branch 170, Malabon City, and***

b) ***Civil Case No. 7100 for Declaratory Relief with Prayer for the Issuance of a Writ of Preliminary Injunction and/or Temporary Restraining Order entitled Yu Fishing Corporation, et al. vs. William Dar, as Secretary of Agriculture, Eduardo B. Gongona as the Director of Bureau of Fisheries and Aquatic Resources, and Gamaliel A. Cordoba as Commissioner of National Telecommunications Commission pending before***

Branch 34 of the Regional Trial Court of Zamboanga City;

Except for the aforementioned petition pending before this Honorable Court and the Civil Case pending before the Regional Trial Court of Zamboanga, to the best of my knowledge, no other action or proceeding is pending before this Honorable Court, the Court of Appeals or any other tribunal or agency. Should I thereafter learn that the same or similar action or proceeding has been filed or is pending before this Honorable Court, the Court of Appeals or any other tribunal or agency, I will notify this Honorable Court, the tribunal or agency concerned within five (5) calendar days from notice.

GAMALIEL A. CORDOBA

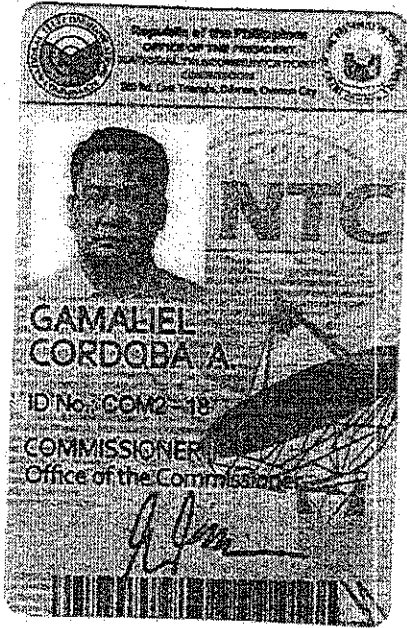
Commissioner

National Telecommunications Commission

SUBSCRIBED AND SWORN to before me this 24th day of June 2021, Makati City, affiant exhibited to me his NTC ID No. COM2-18 issued by the National Telecommunications Commission on July 15, 2016 in Quezon City, Philippines.

MA. RITA CECILIA C. DE LEON-ABAD

Senior State Solicitor



VERIFIED DECLARATION

I, MELANIE P. PIMENTEL, hereby declare that the documents hereto submitted electronically in accordance with the Efficient use of Paper Rule are complete and true copies of the documents filed with the Supreme Court.



MELANIE P. PIMENTEL
Senior State Solicitor

SUBSCRIBED AND SWORN TO before me this 23rd day of June 2021, affiant exhibiting to me her competent evidence of identity to wit: Office ID No. 2008-11106.



LUCY L. BUTLER-TORRES
Senior State Solicitor
Person/Administering Oath

REPUBLIC OF THE PHILIPPINES

ARTEMIO A. ESTOQUE, JR. AFFIDAVIT OF SERVICE
Chief Administrative Officer (Revised as of April 1992)

JUN 25 2021

I, _____ OFFICE OF THE SOLICITOR GENERAL ,
with Office address at 134 Amoroso St., Legaspi Village Makati City, after being sworn to depose and say:
GSIS UMID # 006-0065-2137-0

That on 06/24/2021, I caused to be served a copy of the following pleading/paper:

NATURE OF THE PLEADING

Petition for Review

In case No. G.R. NO. 256559, entitled REPUBLIC OF THE PHILIPPINES represented by THE
VS. ROYALE FISHING CORPORATION, BONANZA FISHING AND MARKET RESOURCES, INC., RBL

pursuant to Section 3,4,5 and 10, Rule 13 of the Rules of Court, as follows:

By Personal Service To:

SUPREME COURT

Manila, 1000, Philippines

() By depositing a copy to the party or his/her attorney on _____ as shown on p _____

() By leaving a copy in his/her clerk or with a person having charge thereof on _____ as shown on p _____

() By delivering a copy to the Court/Tribunal Office on _____ as shown on p _____

ARTEMIO A. ESTOQUE, JR.
Chief Administrative Officer
JUN 25 2021
GSIS UMID # 006-0065-2137-0

By Registered Mail To:

DR. WILLIAM DAR

Secretary

Department of Agriculture

Elliptical Road, Diliman, Quezon City, ,

Atty. Demosthenes Escoto

Head, Legal Division

Bureau of Fisheries & Aquatic Resources

PCA Compound, Elliptical Road, Diliman,

Quezon City

bfar.legal@gmail.com

, , Philippines

The Branch Clerk of Court

RTC - Branch 170

Malabon City

rtc1mal170@judiciary.gov.ph, , Philippines

COM. EDGARDO V. CABARIOS

Deputy Commissioner

National Telecommunications Commission

NTC Building, BIR Road, East Triangle

Diliman, Quezon City, , Philippines

Atty. Arnold D. Naval, Atty. Hilario Paul H.

Counsel for the Petitioners

836-837 City & Lanc Mega Plaza

ADB Avenue cor. Garnet Road

Ortigas Center, 1605 Pasig City

nflawoffices@gmail.com, , Philippines

() By depositing copy on _____ in the Post Office at _____ as evidenced by Registry Receipt(s) No.(s) _____ hereto attached and indicated after the name (s) of the addressee(s), and with instruction to the postmaster to return the mail to the sender after (10) days if undelivered.

By Registered Mail To:

DR. WILLIAM DAR
Secretary
Department of Agriculture
Elliptical Road, Diliman, Quezon City, ,

Atty. Demosthenes Escoto
Head, Legal Division
Bureau of Fisheries & Aquatic Resources
PCA Compound, Elliptical Road, Diliman,
Quezon City
bfar.legal@gmail.com
Philippines

The Branch Clerk of Court
RTC - Branch 170
Malabon City
rtc1mal170@judiciary.gov.ph, , Philippines

COM. EDGARDO V. CABARIOS
Deputy Commissioner
National Telecommunications Commission
NTC Building, BIR Road, East Triangle
Diliman, Quezon City, , Philippines

Atty. Arnold D. Naval, Atty. Hilario Paul H.
Counsel for the Petitioners
836-837 City & Lanc Mega Plaza
ADB Avenue cor. Garnet Road
Ortigas Center, 1605 Pasig City
nfrlawoffices@gmail.com, , Philippines

Makati, Metro Manila, Philippines

ARTEMIO A. ESTOQUE, JR.
Chief Administrative Officer

JUN 25 2021
(Affiant)

SUBSCRIBED AND SWORN to before me this _____
City, Philippines. Affiant exhibiting to me his _____

GSIS UMID #006-0065-2137-0 _____ at Makati
issued at Pasay City.

LUCY L. BUTLER-TORRES
SEN. STATE SOLICITOR

Solicitor, Officer Administering the Oath
Office of the Solicitor General



20-017379-0080