

Republic of the Philippines
SUPREME COURT
Manila

OCEANA PHILIPPINES
INTERNATIONAL, PABLO R.
ROSALES, and RONALDO P.
REYES

Petitioners,

G.R. No. _____

- versus -

For: Petition for Review on
Certiorari under Rules 45 of
the Rules of Court

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

Respondents.

x-----

x

PETITION FOR REVIEW
ON CERTIORARI

Petitioners, Oceana Philippines International, Pablo R.
Rosales, and Ronaldo P. Reyes, by counsel, respectfully state:

PREFATORY STATEMENT

“A little over one hundred years ago, scientists proclaimed that the food of the sea was “inexhaustible” and that it would be impossible for humans to deplete it. This was probably true then, but in recent times, the ability to fish no longer means you can guarantee food on a daily basis. Times have changed dramatically, and there is now a huge fisheries crisis in the world. This still-growing and creeping crisis is witnessing the collapse of one fishery after another, and the rapid decline of many fisheries around the world.”¹

¹ Green, et al, 2003. *Philippine Fisheries in Crisis: A Framework for Management*. Available at: http://onc.ocean.org/download/db_files/philippine_fisheries_in_crisis.pdf (last accessed: 16 July 2021).

NATURE OF THE PETITION

1. This is a verified Petition for Review on Certiorari pursuant to Rule 45 of the Rules of Court, seeking a review of pure questions of law in the final orders of the Regional Trial Court of the City of Malabon Branch 170, dated 25 May 2021² and 23 June 2021.³ The assailed Orders denied then Movant-Intervenors Oceana Philippines International, Pablo R. Rosales and Ronaldo P. Reyes' ("Petitioners-Intervenors" for brevity) Motion to Intervene⁴ and Motion for Reconsideration,⁵ in an environmental suit where the Respondent commercial fishing corporations questioned the constitutionality of Fisheries Administrative Order No. 266 and Sections 14 and 119 of the Fisheries Code, as amended.

2. Further, this Petition for Review on Certiorari assails the Decision promulgated by the RTC of the City Malabon Branch 170 and dated 1 June 2021,⁶ which declared Fisheries Administrative Order No. 266, Series of 2020 as null and void for being unconstitutional, and made the Writ of Preliminary Injunction against the implementation FAO No. 266 permanent.

3. This case is governed by A.M. No. 09-6-8-SC, otherwise known as the Rules of Procedure for Environmental Cases.

4. Under Section 12, Rule II of the Rules of Procedure for Environmental Cases, the Petitioner-Intervenors are exempt from the payment of filing and other legal fees shall be deferred until after judgment as to constitute first lien on the judgment award.

5. This petition is filed on the ground that the Regional Trial Court of the City of Malabon, Branch 170 decided in contravention of law and the applicable decisions of the Supreme Court (a) in refusing to apply the Rules of Procedure in Environmental Cases in what is clearly an environmental case; (b) in refusing to recognize citizen standing under Section 5 Rule II Part II of the Rules of Procedure for Environmental Cases and to exercise liberality in the granting of the Motion for Intervention to

² The certified true copy of the Regional Trial Court of Malabon Branch 170's Order dated May 25, 2021 is attached as **Annex A**.

³ The certified true copy of the Regional Trial Court of Malabon Branch 170's Order dated June 23, 2021 is attached as **Annex B**.

⁴ Dated 19 April 2021, attached as **Annex C**.

⁵ Attached as **Annex D**.

⁶ The certified true copy of the Regional Trial Court of Malabon Branch 170's Decision dated June 1, 2021 is attached as **Annex E**.

an environmental case filed by the Petitioner-Intervenors, (c) in issuing a TRO against environmental laws in contravention of the Supreme Court's prohibition in A.M. No. 09-6-8-SC; and (d) in declaring Fisheries Administrative Order No. 266, Series of 2020 unconstitutional, and making the writ of preliminary injunction against its implementation permanent, in contravention of established law and jurisprudence.

6. Petitioner-Intervenors further emphasize that in addition to disregarding established law and jurisprudence in justifying its assailed Orders and Decision, the lower court has also conducted the proceedings in a manner that departed from the accepted and usual course of judicial proceedings, necessitating the exercise of the Supreme Court's power of supervision.

THE PARTIES

7. Petitioner **Oceana Philippines International**, is a non-government advocacy organization that promotes sustainable fisheries and marine conservation, fosters national policies for the protection and sustainability of marine resources in the country, and works to restore the abundance of Philippine oceans. It is duly registered with the Securities and Exchange Commission as a branch office of **Oceana, Inc.**, which is duly issued a License to Transact Business in the Philippines.⁷ Pertinently, Petitioner Oceana invoked citizen standing under Section 5 Rule II Part II of the Rules of Procedure for Environmental Cases on behalf of all Filipinos when it filed the Motion for Intervention. Petitioner Oceana's office is located at Unit 201 Kalayaan Center Building, Brgy. Pinyahan, Quezon City, and they may be served with all pleadings, summons, orders, decisions and court processes through undersigned counsel at: Unit 403 FSS Building I, 20 Scout Tuazon St. Cor. Scout Castor St., Brgy. Laging Handa, 1103 Diliman, Quezon City, Metro Manila.

8. Petitioners **Pablo Rosales** and **Ronald Reyes**, are Filipinos, of legal age, and are residents of Brgy. Hulong Duhat, Malabon, Metro Manila and Ancheta St., Asinan Proper, Subic, Zambales, respectively. They are municipal fisherfolk engaged in municipal fishing and other related fishing activities and, as such, are directly affected by the disposition concerning the constitutionality and implementation of Fisheries Code and Fisheries Administrative Order No. 266 ("FAO 266"). Petitioners

⁷ Attached as Annex F.

Rosales and Reyes invoked their standing as municipal fisherfolk who stand to be directly injured by any decision of the Regional Trial Court. They may be served with all pleadings, summons, orders, decisions and court processes through undersigned counsel at: 207-208 West City Plaza Building, No. 66 West Ave., West Triangle, Quezon City

9. Respondents **Royale Fishing Corporation, Bonanza Fishing and Market Resources, Inc.** and **RBL Fishing Corporation**, are domestic stock corporations engaged in commercial fishing in Philippine waters. The principal office of Royale Fishing Corporation is at Block 17, Lot 24-34 Phase 2AB Dalagang Bukid, Dagat-dagatan, Malabon City; the principal office of Bonanza Fishing & Market Resources is at 1112 M. Naval St., San Jose, Navotas City; and the principal office of RBL Fishing Corporation is at 65 Rizal Street Corner Manalo Street, Brgy. Tenga-Tenga, Cuyo, Palawan.

10. Private respondents may be served with all pleadings, summons, orders, decisions and court processes through their counsel at: 836-837 City & Land Mega Plaza, ADB Avenue cor. Garnet Road, Ortigas Center, 1605 Pasig City.

TIMELINESS OF THE PETITION AND STATEMENT OF MATERIAL DATES

11. On 25 May 2021, Petitioner-Intervenors, through counsel, received by electronic means a copy of the Order of even date⁸ in the case entitled "*Royale Fishing Corporation, Bonanza Fishing and Market Resources, Inc. & RBL Fishing Corporation v. Department of Agriculture, Bureau of Fisheries and Aquatic Resources, and National Telecommunications Commission*" docketed as Special Civil Action Case No. 20-002-MAL before the Regional Trial Court of Malabon, Br. 170. The Order dated 25 May 2021 denied herein Petitioners' Motion to Intervene⁹ in the said case, prompting Petitioners to file a Motion for Reconsideration on 31 May 2021.¹⁰

⁸ Annex A.

⁹ Dated 19 April 2021, attached as Annex C.

¹⁰ Dated 31 May 2021, attached as Annex D.

12. The trial court denied the Motion for Reconsideration in an Order dated 23 June 2021,¹¹ a copy of which undersigned counsel received on 8 July 2021.

13. Thus, this Petition for Review on Certiorari is timely filed.

STATEMENT OF FACTS AND MATTERS INVOLVED

Material Antecedents

14. In order to fully appreciate the issues in this case, it is necessary to contextualize R.A. No. 8550, otherwise known as the Fisheries Code of 1998, and the BFAR issuances on Vessel Monitoring Measures (VMM) and Electronic Reporting System (ERS) that sprang from it.

15. On February 25, 1998, the Congress of the Philippines enacted R.A. No. 8550 or the Fisheries Code of 1998. Through this law, Congress aimed to achieve food security by limiting access to the fishery and aquatic resources of the country, managing and developing fishing areas, supporting the fishery sector and protecting the rights of fisherfolks. Section 2 of the law provides the following state policies:¹²

a. to achieve food security as the overriding consideration in the utilization, management, development, conservation and protection of fishery resources in order to provide the food needs of the population. A flexible policy towards the attainment of food security shall be adopted in response to changes in demographic trends for fish, emerging trends in the trade of fish and other aquatic products in domestic and international markets, and the law of supply and demand;

b. to limit access to the fishery and aquatic resources of the Philippines for the exclusive use and enjoyment of Filipino citizens;

¹¹ Attached as Annex B.

¹² Section 2, R.A. No. 8550.

c. 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;

d. to protect the rights of fisherfolk, especially of the local communities with priority to municipal fisherfolk, in the preferential use of the municipal waters. Such preferential use, shall be based on, but not limited to, Maximum Sustainable Yield (MSY) or Total Allowable Catch (TAC) on the basis of resources and ecological conditions, and shall be consistent with our commitments under international treaties and agreements;

e. to provide support to the fishery sector, primarily to the municipal fisherfolk, including women and youth sectors, through appropriate technology and research, adequate financial, production, construction of post-harvest facilities, marketing assistance, and other services. The protection of municipal fisherfolk against foreign intrusion shall extend to offshore fishing grounds. Fishworkers shall receive a just share for their labor in the utilization of marine and fishery resources;

f. to manage fishery and aquatic resources, in a manner consistent with the concept of an integrated coastal area management in specific natural fishery management areas, appropriately supported by research, technical services and guidance provided by the State; and

g. to grant the private sector the privilege to utilize fishery resources under the basic concept that the grantee, licensee or permittee thereof shall not only be a privileged beneficiary of the State but also active

participant and partner of the Government in the sustainable development, management, conservation and protection of the fishery and aquatic resources of the country.

The state shall ensure the attainment of the following objectives of the fishery sector:

1. Conservation, protection and sustained management of the country's fishery and aquatic resources;
2. Poverty alleviation and the provision of supplementary livelihood among municipal fisherfolk;
3. Improvement of productivity of aquaculture within ecological limits;
4. Optimal utilization of offshore and deep-sea resources; and
5. Upgrading of post-harvest technology.

16. Among others, the 1998 Fisheries Code mandated the establishment of a monitoring, control and surveillance system by the Department of Agriculture, in coordination with LGUs, FARMCs, the private sector and other concerned agencies to **"ensure that the fisheries and aquatic resources in Philippine waters are judiciously and wisely utilized and managed on a sustainable basis and conserved for the benefit and enjoyment exclusively of Filipino citizens."**

17. The 1998 Fisheries Code also institutionalized the Fisheries and Aquatic Resources Management Councils (FARMCs) as a mechanism for participatory management from the government, fisherfolk, academe, non-government offices, and various sectors: commercial fishing, aquaculture and fish processing. It is led by the National Fisheries and Aquatic Resources Management Council (NFARMC), a council composed of fifteen (15) members with representatives from the said sectors, which shall serve as the highest recommendatory and advisory body to the Department of Agriculture for the formulation of policies for the protection, sustainable development and management of fishery and aquatic resources.

18. Moreover, the Fisheries Code expressly gave municipal fisherfolk preferential use over “**municipal waters,**” which is defined to include not only “*streams, lakes, inland bodies of water and tidal waters within the municipality* which are not included within the protected areas as defined under Republic Act No. 7586 (The NIPAS Law), public forest, timber lands, forest reserves or fishery reserves, but also **marine waters included between two (2) lines drawn perpendicular to the general coastline** from points where the boundary lines of the municipality touch the sea at low tide and a third line parallel with the general coastline including offshore islands **and fifteen (15) kilometers from such coastline.**”¹³

19. This policy of protecting the rights of municipal fisherfolk above other types of fishing operations¹⁴ was adopted because of the goal of the State towards “poverty alleviation and the provision of supplementary livelihood among municipal fisherfolk.”¹⁵

20. Despite the passage of the Fisheries Code, however, illegal, unreported and unregulated fishing (IUUF) continued to plague the Philippine fisheries sector.

21. The European Commission, which stringently applies the EU Regulation on IUU¹⁶ against countries that fail to fulfill its commitment in deterring and preventing IUU fishing, eventually issued a yellow card against the Philippines in June 2014 for “inadequately addressing IUUF.”

¹³ No. 58, Sec. 4 R.A. No. 8550, as amended.

¹⁴ Sec. 2 (d) of R.A. No. 8550, as amended, states:

Section 2. Declaration of Policy. - It is hereby declared the policy of the State:

(d) **to protect the rights of fisherfolk, especially of the local communities with priority to municipal fisherfolk**, in the preferential use of the municipal waters. Such preferential use, shall be based on, but not limited to, Maximum Sustainable Yield (MSY) or Total Allowable Catch (TAC) on the basis of resources and ecological conditions, and shall be consistent with our commitments under international treaties and agreements;

¹⁵ *Id.*

¹⁶ Council Regulation (EC) No 1005/2008 of September 29, 2008, establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulations (EC) No 1093/94 and (EC) No 1447/1999. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02008R1005-20110309> (last accessed: July 16, 2021).

22. In the meantime and as a response to the unabated IUUF in the country, the Philippine government introduced policy and structural reforms to demonstrate its commitment to deterring IUUF in the Philippines. In December 2013, Executive Order No. 154 was issued, adopting a National Plan of Action to Prevent, Deter, and Eliminate Illegal, Unreported and Unregulated Fishing,¹⁷ recognizing that:

“IUU activities are in total contradiction to the principles and goals of the Fisheries Code. Whereas the Fisheries Code seeks to achieve food security, IUU fishing diminishes fish stocks and destroys fish sanctuaries and the marine habitat. Whereas the Fisheries Code seeks for rational and sustainable development, conservation and management of the fishery and aquatic resources in Philippine waters, IUU fishing leads to overexploitation and depletion of these resources. x x x”

23. It thus included, among other things, an action plan for Monitoring, Control and Surveillance (MCS) to carry out the provisions of the Fisheries Code on the MCS system.¹⁸

24. Most notable in these reforms was Congress' passing of R.A. No. 10654 which amended and introduced improvements to the Fisheries Code of the Philippines. For one, the law reinforced the state policies in managing protecting our fishery and aquatic resources, to wit:

x x x

(c) 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

¹⁷ Available at:

<https://www.officialgazette.gov.ph/downloads/2013/12dec/20131206-EO-0154-BSA.pdf> (last accessed: July 16, 2021).

¹⁸ II.B. National Instruments (g) Monitoring, Control and Surveillance, pages 27-29 of the National Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, adopted by Executive Order No. 154, Series of 2013. Available at:

<https://www.officialgazette.gov.ph/downloads/2013/12dec/20131206-EO-0154-BSA.pdf> (last accessed: July 16, 2021).

maintaining a sound ecological balance, protecting and enhancing the quality of the environment. The Philippines shall pursue its commitment to international 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;

x x x

(f) To adopt the precautionary principle and manage fishery and aquatic resources, in a manner consistent with the concept of an ecosystem-based approach to fisheries management and integrated coastal area management in specific natural fishery management areas, appropriately supported by research, technical services and guidance provided by the State; and

x x x”

25. For another, R.A. No. 10654 amended the Fisheries Code provision on the monitoring, control and surveillance by clarifying the scope of such system. Specifically, Section 14 now reads:

“SEC. 14. Monitoring, Control and Surveillance (MCS) of Fishing in all Philippine Waters and Philippine Flagged Distant Water Fishing Vessels. – A monitoring, control and surveillance system shall be established by the Department in coordination with LGUs, FARMCs, the private sector and other agencies concerned to ensure that the fisheries and aquatic resources in Philippine waters are judiciously and wisely utilized and managed on a sustainable basis and conserved for the benefit and enjoyment exclusively of Filipino citizens. **The MCS system shall encompass all Philippine flagged fishing vessels regardless of fishing area and final destination of catch.**”

26. R.A. No. 10654 further reinforced the establishment of the monitoring system first mandated by the Fisheries Code by adding a requirement that “No municipal, commercial or distant water fishing vessel shall engage in fishing activity without complying with the vessel monitoring measures promulgated by the Department in coordination with the LGUs” adding a penal provision on the non-compliance with vessel monitoring measures (VMM).¹⁹

27. The EU took notice of the Philippine government’s efforts to curb IUUF in the Philippines, and eventually lifted the warning on a potential import ban against Philippine fish products.

28. The Department of Agriculture later issued Administrative Order No. 10, Series of 2015, or the Implementing Rules and Regulations for the Fisheries Code, as amended. With respect to the monitoring system mandated by the Fisheries Code, as amended, DA-BFAR was given a period of one (1) year from the effectivity of the IRR to determine the appropriate VMM technology.

¹⁹ Section 119, R.A. No. 10654 provides:

“SEC. 119. Noncompliance with Vessel Monitoring Measures. – No municipal, commercial or distant water fishing vessel shall engage in fishing activity without complying with the vessel monitoring measures promulgated by the Department in coordination with the LGUs: Provided, That for vessels operating in Philippine waters, only the catcher vessel shall be covered by this requirement. It shall also be unlawful to intentionally tamper with, switch off or disable the vessel monitoring system.

Upon a summary finding of administrative liability, the fishing vessel owner, master or any other person acting on behalf of the vessel owner shall be punished with confiscation of catch, suspension or revocation of the license and an administrative fine equivalent to twice the value of the catch or the amount indicated below, whichever is higher:

- (1) Ten thousand pesos (P10,000.00) for municipal fishing or community service in case of failure to pay the fine;
- (2) Two hundred fifty thousand pesos (P250,000.00) for small-scale commercial fishing;
- (3) Five hundred thousand pesos (P500,000.00) for medium-scale commercial fishing; and
- (4) Two million five hundred thousand pesos (P2,500,000.00) for large-scale commercial fishing.

In case of violation committed in waters beyond national jurisdiction, the administrative fine shall be equivalent to five times the value of the catch or twice the amount indicated above, whichever is higher.

Upon conviction by a court of law, the master or any other person acting on behalf of the vessel owner shall be punished with imprisonment of six (6) months to two (2) years and fine twice the amount of the administrative fine, confiscation of catch and suspension or revocation of the license.”

International commitments of the Republic of the Philippines pursuant to regional and international agreements

29. Further, the Philippines has bound itself by ratification, accession, and/or signing several international treaties and conventions on the use of VMS and other related measures. These include the **1995 United Nations Fish Stock Agreement**,²⁰ the **1994 United Nations Convention on the Law of the Sea**,²¹ the **2004 Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC Convention)**,²² and the **1974 International Convention for the Safety of Life at Sea (SOLAS)**, all of which, in some form or another, require the implementation of a VMM to counter illegal, unreported, and unregulated fishing activities.

30. Moreover, several Regional Fisheries Management Agreements and International Fisheries Commissions, to which the Philippines is bound, also require the same. The **Western Central Pacific Commissions (WCPFC)** provides that “Members [must] require their fishing vessels that fish for highly migratory stocks on the high seas to use near real-time satellite position-fixing transmitters while in their respective management areas.”²³ So, too, the **Commission for the Conservation of Southern Blue Fin Tuna (CCSBT)**,²⁴ the **Indian Ocean Tuna**

²⁰ One of the duties of Flag States is the development and implementation of VMS in accordance with regional, subregional or global programmes. See Art. 18(3)(e), Art. 18(3)(g)(iii) and Art. 5(j) thereof.

²¹ Art. 62(4)(e) therefor pertains to the “right of a coastal State to require vessels of other States that fish in its EEZ to **submit certain information**.”

²² Conservation and Management Measure 2011-02 thereof requires ALC/VMS for “all fishing vessels that fish for highly migratory fish stocks on the high seas within the Convention Area.”

²³ See Secs. 4 and 6 thereof.

<https://www.wcpfc.int/doc/cmm-2014-02/conservation-and-management-measure-commission-vms> (last accessed: July 16, 2021).

²⁴ See Sec. 1 and 2.

https://www.ccsbt.org/sites/ccsbt.org/files/userfiles/file/docs_english/operational_resolutions/Resolution_VMS.pdf (last accessed: July 16, 2021).

Commission (IOTC),²⁵ and the International Commission for the Conservation of Atlantic Tunas (ICCAT).²⁶

31. In addition to these agreements, the Philippines has “considered itself duty-bound to implement the voluntary prescriptions” of **FAO Code of Conduct for Responsible Fisheries (CCRF)**²⁷ and “adheres to the **1992 United Nations Conference on Environment and Development (UNCED) Agenda 21.**”²⁸

Implementation of the Vessel Monitoring System in the Philippines

32. Even prior to the amendment of the Fisheries Code under R.A. No. 10654, the Philippines has complied with the monitoring, control and surveillance requirements of the various agreements where it is a party to.

33. For instance, the BFAR issued **Fisheries Administrative Order No. 241** in 2012²⁹ which provides for the Regulations and Implementation of the Vessel Monitoring System (VMS) in the High Seas. FAO No. 241 required all licensed Philippine flagged commercial fishing boats/vessels authorized by the BFAR to operate in the high seas and those fishing vessels with access rights to fish in other countries’ exclusive economic zones to comply with the VMS requirement. The VMS requirement entailed the installation of a two-way Automatic Location Communicator (ALC) or Mobile Tracking-Transceiver Unit that transmits information “concerning the Philippines

²⁵ Art I provides: “Each Contracting Party and Cooperating Non-Contracting Party (CPC) shall adopt a satellite-based vessel monitoring system (VMS) for all vessels flying its flag 24 metres in length overall or above or in case of vessels less than 24 metres, those operating in waters outside the Economic Exclusive Zone of the Flag State fishing for species covered by the IOTC Agreement within the IOTC area of competence.” See: <https://www.iotc.org/cmm/resolution-1503-vessel-monitoring-system-vms-programme> (last accessed: July 16, 2021).

²⁶ ICCAT Resolutions dated February 22, 2002 and June 19, 2004 requires “members, cooperating non-members and fishing entities to install satellite-based VMS onboard large-scale tuna longline fishing vessels (exceeding 20meters b/n perpendiculars or 24 meters length overall)”

²⁷ Available at: <http://www.fao.org/fishery/code/en> (last accessed: July 16, 2021).

²⁸ II.A. International Instruments, pages 20-23 of the National Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, adopted by Executive Order No. 154, Series of 2013. Available at: <https://www.officialgazette.gov.ph/downloads/2013/12dec/20131206-EO-0154-BSA.pdf> (last accessed: July 16, 2021).

²⁹ Attached as **Annex H.**

flagged fishing vessels positions, fishing activities, and any other activity of the vessel as may be required.”

34. FAO No. 241 provided for penalties for, among others, the failure to install the ALC or tamper its operation.

35. In the same year, BFAR also issued **Fisheries Administrative Order No. 245**, Series of 2012,³⁰ providing for the “Regulations and Implementing Guidelines on Group Tuna Purse Seine Operations in High Seas Pocket 1 as a Special Management Area.” FAO No. 245 aimed to implement the conservation measures as provided in the WCPFC Conservation and Management (CMM) 2008-01 for Bigeye and Yellowfin Tuna in the Western and Central Pacific Ocean. It thus mandated all catcher vessels granted access to the HSP1-SMA with not more than 250GT issued with the International Fishing Permits, and listed in the WCPFC to be equipped with and operate a two-way ALC in accordance with FAO No. 241.

36. As with FAO No. 241, FAO No. 245 provided for penalties for the intentional non-reporting of position manually upon notice from the BFAR-FMC, should the ALC fail to transmit the pertinent information.

37. In compliance with the strengthened provisions on vessel monitoring found in the Fisheries Code, as amended, and its implementing rules, the Bureau of Fisheries and Aquatic Resources constituted the Technical Working Group for the vessel monitoring requirement in 2016 and conducted several public consultations for the study of the establishment of a vessel monitoring system in the Philippines. The output of the Technical Working Group, the discussion from the public consultation and the recommendation from the NFARMC³¹ resulted in the issuance of **Fisheries Administrative Order No. 260** entitled, “Rules and Regulations on the Implementation of Vessel Monitoring System (VMS) for Commercial Flagged Fishing Vessels Targeting Straddling and Highly Migratory Fish Stocks” in 2018.³² This did not include commercial fishing vessels with gross tonnage from 3.1 to 29.9.

³⁰ Attached As **Annex I**.

³¹ NFARMC Resolution No. 21, Series of 2018 dated 4 September 2018, attached as Exhibit “29” to the Judicial Affidavit of Mr. Daniel M. Ocampo dated April 19, 2021.

³² Attached as **Annex J**.

38. However, as FAO No. 260 was only limited in the scope of its application to specific vessels targeting certain fish stocks, the issuance was met with calls from the fisherfolk community and the civil society organizations, urging for the formulation of rules fully compliant with the mandates under the Fisheries Code and its implementing rules. The government's failure to fully implement the vessel monitoring system compelled herein Petitioner-Intervenor Oceana Philippines, along with affected fisherfolks, to file a case for continuing mandamus against the BFAR for the performance of its mandates under the Fisheries Code, as amended, including crafting the vessel monitoring rules for commercial fishing vessels from 3.1-29.9 GT which are prevalent in municipal waters.³³

39. In the meantime, commercial fishing vessels continued to violate the Constitutional and legislative policy on the municipal fisherfolks' preferential rights to fish within municipal fishing waters and existing ordinances that expressly prohibit the operation of commercial fishing vessels within municipal waters. In various instances, commercial fishing vessels, including herein Respondent RBL Fishing Corporation, have been apprehended for illegally fishing in municipal waters.³⁴

40. In the following year, BFAR constituted another Technical Working Group in 2019³⁵ to finalize the rules and regulations on the implementation of vessel monitoring measures and electronic reporting system for commercial Philippine-flagged fishing vessels.

41. In compliance with the provisions of the Fisheries Code' implementing rules, the Technical Working Group conducted a series of public consultations with the affected stakeholders in the country: fisherfolk, commercial fishing sector, local government units, and civil society organizations. The members of

³³ "Oceana sues government over vessel monitoring system," Philippine Star, October 21, 2018.

Available at:

<https://www.philstar.com/business/agriculture/2018/10/21/1861716/oceana-sues-government-over-vessel-monitoring-system> (last accessed: July 16, 2021).

³⁴ "4 commercial vessels nabbed for illegal fishing off municipal waters in Palawan," Manila Bulletin, August 17, 2019. Available at:

<https://mb.com.ph/2019/08/17/4-commercial-vessels-nabbed-for-illegal-fishing-off-municipal-waters-in-palawan/> (last accessed: July 22, 2021); "BFAR issues warning vs. illegal fishing operators in C. Visayas," Philippine News Agency, January 21, 2021. Available at:

<https://www.pna.gov.ph/articles/1128048> (last accessed: July 22, 2021); "Commercial vessels nabbed for fishery code violation," Sun Star Zamboanga, July 18, 2021. Available at:

<https://www.sunstar.com.ph/article/1892256/Zamboanga/Local-News/Commercial-vessel-nabbed-for-fishery-code-violation> (last accessed: July 22, 2021).

³⁵ Fisheries Office Order No. 249, Series of 2019 creating the Technical Working Group.

the TWG presented the draft rules for the vessel monitoring system³⁶ and solicited comments from the participants.

42. Following the deliberation of the NFARMC on May 12, 2020 and its official endorsement of the draft rules, the Department of Agriculture issued **Fisheries Administrative Order No. 266** on October 12, 2020.³⁷ FAO No. 266 amended FAO No. 260 and laid down the rules and regulations on the implementation of Vessel Monitoring Measures (VMM) and Electronic Reporting System (ERS) for commercial Philippine-flagged fishing vessels with 3.1GT and heavier.

Procedural Antecedents

43. On 4 December 2020, Respondents Royale Fishing Corporation, Bonanza Fishing and Market Resources, Inc. and RBL Fishing Corporation filed a Petition for Declaratory Relief³⁸ with application for temporary restraining order and/or a writ of preliminary injunction before the RTC of the City of Malabon. Respondents assailed the constitutionality of Sections 14 and 119 of the Fisheries Code, as amended, and Fisheries Administrative Order No. 266, Series of 2020, which provides for the implementation of the Vessel Monitoring Measures for all commercial catcher fishing vessels operating in Philippine waters and fishing vessels in distant waters with 3.1GT and heavier.

44. In essence, the Respondent commercial fishing corporations argued that these regulations violate their constitutional rights to privacy and against unlawful searches, insisting that the information recorded by and reported through the Electronic Reporting System under the VMM (species and volume of fish caught, position of the vessel where the fish was caught, date and time, vessel activity, port of origin and arrival, tracking and reporting devices used, margin of tolerance and weight for catch reporting, data manual reporting in case of operational failure) comprise "trade secrets" which are protected and privileged information.

45. The commercial fishing vessel-corporations also insist that FAO No. 266 violates the equal protection clause because it

³⁶ Attached as Annex "28" to the Judicial Affidavit of Mr. Daniel M. Ocampo dated April 19, 2021.

³⁷ Attached as Annex K.

³⁸ Dated 29 November 2020, attached as Annex L.

“singled out commercial catcher fishing vessels and excluded municipal fishing vessels.” They also claimed that the issuance of FAO No. 266 violated their right to due process and to participate in decision-making processes because “there was no prior conduct of any scientific study and consultation with stakeholders in the affected regions, barring stakeholders the opportunity to nominate their own scientists or experts to participate in the study.”

46. The commercial fishing vessel-corporations also asked the court to issue an injunction while the decision on the main case was still pending.

47. Notably, Respondents themselves invoked A.M. No. 09-6-8-SC, or The Rules of Procedure for Environmental Cases, in bringing the case before the trial court.

48. Yet, and despite the clear, unequivocal and consistent prohibition against the issuance of a TRO and preliminary injunction against the lawful enforcement of environmental laws,³⁹ the Regional Trial Court of Malabon, Branch 170 granted the Respondents’ application for injunction in an Order dated 22 January 2021.⁴⁰ It forthwith issued a Writ of Preliminary Injunction⁴¹ restraining the implementation of FAO 266, to wit:

“x x x a Writ of Preliminary Injunction is hereby issued, enjoining all public respondents Department of Agriculture, Bureau of Fisheries and Aquatic Resources and National Telecommunications Commission, their agents or duly authorized representative and any other entities or persons acting for and in behalf to cease and desist from implementing Fisheries Administrative Order No. 266, Series of 2020 (FAO 266) until the question of its constitutionality is finally resolved in the instant Petition.”

49. In the same Order dated 22 January 2021, the trial court directed the parties to submit their respective Memorandum in the main case.

³⁹ Section 134, R.A. No. 8550, as amended by R.A. No. 10654; See also Rule 2, Section 10 of the Rules of Procedure for Environmental Cases.

⁴⁰ Attached as Annex M.

⁴¹ Dated 28 January 2021, attached as Annex N.

50. Upon the public respondents' Manifestation and Motion (in lieu of Memorandum)⁴² seeking setting of the case for pre-trial/preliminary conference as provided under the Rules on Environmental Cases, the pre-trial of the case was conducted. Trial thereafter proceeded.

51. In the meantime, and considering the *direct, actual and material injury* caused to herein Petitioners-Intervenors by the non-implementation of the assailed regulations, Petitioner-Intervenors sought to intervene in the proceedings. Thus, Petitioner-Intervenors served and filed their Motion to Intervene dated 19 April 2021 by registered mail on 21 April 2021, attaching their Answer-in-Intervention⁴³ and a Motion to Lift the Writ of Preliminary Injunction.⁴⁴

52. Owing to the community quarantine that was still in effect,⁴⁵ Petitioners again filed and served the same Motion to Intervene, Answer-in-Intervention and Motion to Lift the Writ of Preliminary Injunction along with its annexures by electronic means on 27 April 2021.⁴⁶

53. In its Motion to Intervene, Petitioner-Intervenor Oceana Philippines International invoked citizen standing to intervene in the proceedings on behalf of all Filipinos for the protection of their constitutional right to a balanced and healthful ecology, for the protection and preservation of the nation's marine wealth in its archipelagic waters, territorial sea and exclusive economic zone, and highlighted the direct and material injury that will be caused to Petitioner-Intervenors and municipal fisherfolk Rosales and Reyes due to the non-implementation of the vessel monitoring measures.

54. Their Answer-in-Intervention responded to the commercial fishing vessel-corporations' arguments on the supposed unconstitutionality of FAO No.266, Sections 14 and 119 of the Fisheries Code, as amended. Herein Petitioner-Intervenors contended that the provisions of the Fisheries Code, as amended, and FAO No. 266 providing for the vessel monitoring measures are valid and constitutional as it was enacted pursuant to the State's

⁴² Attached as Annex O.

⁴³ Dated 19 April 2021, attached as Annex P.

⁴⁴ Dated 19 April 2021, attached as Annex Q.

⁴⁵ Administrative Circular No. 22-2021 dated 14 April 2021.

⁴⁶ Attached as Annex R.

mandate to protect and preserve its natural resources and to advance the right of the people to a balanced and healthful ecology. Principally enacted to prevent illegal, unreported and unregulated fishing, and to ensure that the aquatic resources in the Philippines are judiciously utilized and managed on a sustainable basis, the VMM implemented by FAO No. 266 is reasonable and constitutionally permissible.

55. Petitioner-Intervenors further directly debunked the commercial fishing vessel-corporations' arguments on the supposed violation of their rights: the information captured by the ERS does not constitute "trade secrets" since it does not fall within the definition, and more importantly, since the commercial fishing vessels' enjoyment of a license does not ripen into ownership over the natural resources themselves. Their fishing rights are but a mere privilege and, as such, continue to be subject to the management objectives of the State for sustainable development and judicious management and utilization of fisheries resources. There is likewise no violation of equal protection clause since FAO No. 266 merely widens the VMM already implemented under FAO No. 260, and considering the policy of protection for municipal fisherfolk necessitating the classification between the two distinct groups. The Answer-in-Intervention further argued that there is no violation of due process considering that public consultations were in fact conducted in various parts of the Philippines and in which the commercial fishing vessel-corporations themselves took part in.

56. Likewise attached to the Answer-in-Intervention were the Judicial Affidavits of Petitioner-Intervenors fisherfolk Rosales,⁴⁷ Reyes⁴⁸ and Oceana Philippines International's Senior Campaign Manager Daniel M. Ocampo.⁴⁹

57. On 30 April 2021, herein private Respondents filed their Opposition to the Motion to Intervene,⁵⁰ arguing in the main that the Petitioner-Intervenors are supposedly not real-parties-in-interest, and that the proposed intervention will cause further delay.

⁴⁷ Attached as Annex S.

⁴⁸ Attached as Annex T.

⁴⁹ Attached as Annex U.

⁵⁰ Dated 30 April 2021, attached as Annex V.

58. On 5 May 2021, Petitioner-Intervenors filed their Reply to the Opposition of even date,⁵¹ emphasizing the actual subject matter of the litigation:

“x x x

Ultimately, the Petition for Declaratory Relief requires an examination of the correct interpretation and application of the Constitutional provisions concerning state policies on the protection of marine and aquatic resources and of our fisherfolk, of the public right to a balanced and healthful ecology, of the Fisheries Code of the Philippines and of Fisheries Administrative Order No. 266. Given the lens with which the suit must be properly appreciated, Intervenors unquestionably have legal and material interest in the instant suit warranting their Intervention.

x x x”

59. On 17 May 2021, Petitioner-Intervenors filed a Motion to Resolve of even date,⁵² imploring the immediate resolution of their Motion to Intervene, considering the foremost the Constitutional rights to a healthful and balanced ecology of the public at large, in general, and the rights of Intervenors Rosales and Reyes as municipal fisherfolk, in particular.

60. In an Order dated 25 May 2021,⁵³ a copy of which Petitioner-Intervenors received via electronic means on the same date, the court denied the Motion to Intervene. The denial was based on the supposed lack of material and interest in the subject matter of the litigation, and the that the proposed intervention “will only cause further delay to the proceedings” based on the “high probability that other entities of similar standing would also intervene” as “Oceana Philippines is just one of the many NGOs whose advocacies include the conservation of marine resources while Rosales and Reyes are just two of the thousands of municipal fishermen in the country.”

⁵¹ Attached as Annex W.

⁵² Attached as Annex X.

⁵³ Attached as Annex A.

61. Petitioner-Intervenors immediately filed their Motion for Reconsideration on 31 May 2021.⁵⁴

62. However, the court denied the Motion for Reconsideration in an Order dated 23 June 2021, a copy of which undersigned counsel received on 8 July 2021.

63. Upon inquiry with the trial court, herein Petitioner-Intervenors learned that the trial court has also issued a Decision on the Petition for Declaratory Relief on 1 June 2021,⁵⁵ ruling in favor of the commercial fishing vessel-corporations on all points.

64. Hence, this present Petition for Review on Certiorari.

GROUND OR REASONS FOR ALLOWANCE OF APPEAL

I. This Petition should be given due course as the trial court decided in contravention of law and applicable jurisprudence when it denied the Petitioner-Intervenors' intervention in the proceedings below;

I. A. The subject matter of the litigation before RTC of Malabon Br. 170 involves the enforcement of Constitutional and State policies on marine and fisheries' resources conservation and management efforts and objectives, over which Petitioner-Intervenors have direct, actual and material interest

I. B. The Intervention is necessary as the Petitioner-Intervenors' rights cannot be fully protected in a

⁵⁴ Attached as Annex D.

⁵⁵ The certified true copy of the Decision dated 1 June 2021 is attached as Annex E.

separate proceeding; the intervention will not cause undue delay

- II. **This Petition should be given due course as the trial court decided in contravention of law and applicable jurisprudence in granting the Petition for Declaratory Relief, declaring Fisheries Administrative Order No. 266, Series of 2020 as null and void for being unconstitutional, and making the writ of preliminary injunction against the implementation of FAO No. 266 permanent**

II. A. Republic Act No. 8550, as amended by R.A. No. 10654, its implementing rules and regulations and FAO No. 266 are valid exercises of police power

The State has a legitimate interest to prevent illegal, unreported and unregulated fishing, in line with the Precautionary Principle and the Principle of Sustainable Development

The means employed to prevent illegal, unreported and unregulated fishing, to prohibit the capture of endangered, rare, and threatened aquatic species, and to ensure judicious and wise utilization and management of fisheries and aquatic resources are reasonable.

The VMM has the added benefit of ensuring the safety of all ships and the efficiency of passage.

II. B. There is no violation of the right against privacy and unlawful searches; the information gathered by the VMS does not constitute trade secrets

II. C. There is no violation to due process; the Respondents have more than sufficiently participated in the decision-making process

II. D. The exclusion of municipal fishing vessels in FAO No. 266 does not violate the equal protection clause

ARGUMENTS and DISCUSSION

I. This Petition should be given due course as the trial court decided in contravention of law and applicable jurisprudence when it denied the Petitioner-Intervenors' intervention in the proceedings below

I.A. The subject matter of the litigation before RTC of Malabon Br. 170 involves the enforcement of Constitutional and State policies on marine and fisheries resources' conservation and management efforts and objectives, over which Petitioner-Intervenors have direct, actual and material interest

65. The trial court denied the intervention of herein Petitioner-Intervenors in the proceedings involving the challenge against the implementation of the vessel monitoring measures, as laid down by the Fisheries Code and FAO 266 upon the Petitioner-Intervenors' supposed lack of legal interest in the subject matter of the litigation. This is misplaced and has no basis in fact and in law.

66. It bears stressing at the outset that Section 1, Rule II of the Rules of the Environmental Procedure expressly includes a motion for intervention as among the *exclusive* list of pleadings

and motions that are allowed in an environmental suit. There can be no doubt, therefore, on the imprimatur accorded to the Intervention of affected parties in an environmental suit.

67. On the other hand, Section 1, Rule 19 of the 2019 Amendments to the Rules of Civil Procedure explicitly provides the legal interest upon which intervention shall be permitted:

“Section 1. Who may intervene. — A person who has a legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof may, with leave of court, be allowed to intervene in the action. x x x”

68. In *Ortega v. CA*,⁵⁶ the court explained the requisites for intervention in this wise:

“Both the old and new rules, however, have the same requisites for intervention of a non-party, to wit:

- (1) Legal interest in the matter in controversy; or
- (2) Legal interest in the success of either of the parties; or
- (3) Legal interest against both; or
- (4) So situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof;
- (5) Intervention will not unduly delay or prejudice the adjudication of rights of original parties;
- (6) Intervenor's rights may not be fully protected in a separate proceeding.”

69. Unlike the Rules of Civil Procedure, however, the Rules of Procedure for Environmental Cases introduced an innovation

⁵⁶ G.R. No. 125302, 16 November 1998

that directly bears upon the mechanism of intervention in an environmental suit. This innovation refers to the express recognition of the third-party citizen standing of “any Filipino citizen in representation of others, including minors or generations yet unborn,”⁵⁷ prescinding from the genealogy of jurisprudence beginning from *Oposa v. Factoran*⁵⁸ and including *Resident Marine Mammals v. Reyes*.⁵⁹

70. Contrary to the trial court’s mistaken finding, Petitioner-Intervenors more than sufficiently established their legal interest in the subject matter of the litigation as contemplated under the Rules.

71. The finding of the Petitioner-Intervenors’ supposed lack of legal interest owes to the trial court erroneous appreciation of the subject matter in litigation as involving merely the *private* and *economic rights* of the Respondents engaged in commercial fishing. This is not correct. More than the economic rights of the Respondents, the Petition for Declaratory Relief brought by them against Sections 14 and 19 of the Fisheries Code, as amended, and FAO No. 266 calls into question the interpretation and application of the Constitutional provisions concerning state policies on the protection of marine and aquatic resources and of our fisherfolk, of the public right to a balanced and healthful ecology, and of the Fisheries Code of the Philippines and of Fisheries Administrative Order No. 266.

72. In other words, the subject matter of the litigation before the RTC of Malabon, Br. 170 is the *State and constitutional policies on marine and fisheries resources’ conservation and management efforts and objectives* constituting the state interest behind the assailed regulations, and over which Petitioner-Intervenors have legal, material and direct interest.

73. To reiterate, Petitioner-Intervenor Oceana Philippines International, through its Vice President, Atty. Gloria E. Ramos, is invoked their third party citizen standing on behalf of all Filipinos, including minors or generations yet unborn, for the protection of their Constitutional right to a balanced and healthful ecology,⁶⁰ in general, and for the protection and preservation of the

⁵⁷ Section 5, Rule II, Part II of the Rules of Procedure for Environmental Cases.

⁵⁸ G.R. No. 101083, July 30, 1993, 224 SCRA 792.

⁵⁹ G.R. No. 180771, April 21, 2015.

⁶⁰ Art. II, Sec. 16 of the 1987 Constitution.

nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone,⁶¹ in particular. This interest is directly affected by the implementation or non-implementation of the State constitutional policies on marine and fisheries resources' conservation and management efforts and objectives.

74. Equally important is the actual and material damage to be directly suffered by Petitioner-Intervenors Rosales and Reyes caused by the voiding and non-implementation of the vessel monitoring measures. As municipal fisherfolk themselves, they have suffered the consequences of the unabated and unregulated overfishing by commercial fishing vessels in municipal waters, over which municipal fisherfolk enjoy preferential use.

75. This preferential right notwithstanding, commercial fishing vessels have consistently defied express prohibitions against their operation within municipal waters. In fact, commercial fishing corporations, including the private Respondents herein, have repeatedly violated the Fisheries Code and ordinance provisions against commercial fishing operations within municipal waters.⁶² Thus, the Petitioner-Intervenors will bear further injury should the unlawful restraining of the vessel measuring measures be allowed to continue as a result of the proceedings before the trial court.

76. Simply stated, they have a direct legal interest in the implementation or non-implementation of the assailed regulations, and are suffered to directly sustain the injuries caused by its non-implementation. Thus, they additionally have a legal interest in the success of the Department of Agriculture, the Bureau of Fisheries and Aquatic Resources and the National Telecommunications Commission's success in the proceedings. All these were established clearly before the trial court in the Petitioner-Intervenors' Motion to Intervene dated 19 April 2021⁶³ and in their Reply to the Opposition dated 5 May 2021.⁶⁴

77. The trial court ignored all these established rules and doctrines and reduced the Petitioner-Intervenors as "mere curious parties supporting the government in the enforcement of its laws." While conveniently omitting any mention of the legal interest of

⁶¹ Art. XII, Sec. 2 of the 1987 Constitution.

⁶² *Supra* note 34.

⁶³ Attached as Annex C.

⁶⁴ Attached as Annex W.

Petitioners Rosales and Reyes in the denial of their Motion to Intervene, the trial court further circumscribed the real parties in-interest in a suit involving a constitutional challenge to only “those whose rights are infringed and those who allegedly violate such rights.” This is likewise misguided, and, in fact, has long been settled by the Supreme Court in *Burroughs Limited v. Morfe*.⁶⁵

78. *Burroughs* also involved a petition for declaratory relief and injunction against the enforcement of a law, particularly of the Retail Trade Act. The Supreme Court upheld the Intervenor’s interest in the litigation considering the long and unanimous line of cases granting intervention with “liberality,” most especially when there are constitutional rights at stake. As the Court emphatically explained:

“This Court has consistently manifested fealty to the doctrine in a series of cases impressive for their number and unanimity that the discretion vested in courts to admit or deny a plea for intervention is to be exercised with liberality.”

x x x

“It does not admit of doubt that the decision to be reached would possess an impact on the nationalistic principle enshrined both in the 1935 Charter and the present Constitution. The Retail Trade Act has that basic objective in view. Its validity was sustained in *Ichong v. Hernandez*. That is not enough. It has to be faithfully implemented. If it were not thus, the statutory policy would be emasculated. There would be an obstacle to a desire able objective being fully attained. It does not matter that whatever the lower court does is susceptible to correction by this Tribunal. In this, as in other cases where a constitutional aspect may be discerned, *obsta principiis* should be the rule. It is conducive to fealty to constitutional mandates

⁶⁵ G.R. No. L-24053, 27 February 1976.

that at no time should there be the slightest doubt as to its scope. Until after a reversal is announced, assuming that the lower court decision reached would be objectionable, the political branches could conceivably be misled. The late Judge Morfe is therefore deserving of a commendation for allowing the intervention of a party that could take a stand opposed to that of petitioner especially so when, as in this case, the respondent public official was in agreement. Without the intervenor, therefore, only one side of the constitutional issue posed would be ventilated.

There is this further point to consider. Even on the question of standing to enable a party to assail the validity of a statute, there has been of late a considerably relaxed attitude. There are times when to all intents and purposes, not a party's interest but a public right is sought to be vindicated. The public right dogma as a means of keeping public officials staying on the path of constitutionalism is no longer looked upon as an inhibition. As was so well put by Jaffe: "The protection of private rights is an essential constituent of public interest and, conversely, without a well-ordered state there could be no enforcement of private rights. Private and public interests are, both in the substantive and procedural sense, aspects of the totality of the legal order." The case for intervenor is much stronger. It has convincingly shown how it could be affected adversely by an erroneous appreciation of the controlling principle. If it could be deemed as possessed of standing on a direct challenge to an order of respondent official at war with the basic objective of the Retail Trade Act, how could its plea for intervention be denied? Even

from the, purely procedural standpoint of having all aspects of the question looked into, the answer cannot be in doubt. How much more meritorious then was its motion to intervene, considering the constitutional implications of the basic legal issue.”
(citation omitted; emphasis and underscoring ours)

79. Considering that the Rules of Procedure on Environmental Cases and relevant case law liberally allows citizen standing, the Petitioners' intervention in the proceedings will not undermine the competence of the agencies involved. Rather, it will further strengthen the State policies on co-management, ecosystem-based approach to fisheries management and integrated coastal area management.

80. In other words, the Petitioner-Intervenors' participation in the proceedings for the declaratory relief petition is not only beneficial, as it fortifies the position of the government agencies concerned and all citizens affected, but it also serves to benefit the implementing agencies and the Courts in the adjudication of the real constitutional issues.

81. More importantly, their intervention is *warranted* under the circumstances, as they will be made to suffer direct, actual and material injury by the court's disposition on the issues without the ventilation of their arguments. As this Court stated in *Ombudsman v. Samaniego*,⁶⁶ "It is true that under our rule on intervention, the allowance or disallowance of a motion to intervene is left to the sound discretion of the court after a consideration of the appropriate circumstances. However, such discretion is not without limitations. One of the limits in the exercise of such discretion is that it must not be exercised in disregard of law and the Constitution."

82. Following this ruling, it was error for the trial court to deny the intervention of herein Petitioner-Intervenors despite the express standing granted by the RPEC, the Constitutional rights suffered to be affected and the direct, actual and material injury to the Petitioner-Intervenors.

⁶⁶ G.R. No. 175573, October 5, 2010.

I.B. The Intervention is necessary as the Petitioner-Intervenors' rights cannot be fully protected in a separate proceeding; the intervention will not cause undue delay

83. **Second**, the Petitioner-Intervenors' intervention in the proceedings before the trial court is further warranted as their rights cannot be fully protected in a separate proceeding.

84. Considering that the Respondent commercial fishing vessel corporations have submitted the specific issues before the RTC of Malabon, the Petitioner-Intervenors can no longer invoke their rights in a separate proceeding without offending the rule against forum shopping.

85. **Third**, the Petitioner-Intervenors' intervention in the case shall not cause any prejudice to the parties nor cause the delay of the proceedings.

86. It must also be pointed out that the allegation of the intervention's undue delay to the proceedings is a matter which the Oppositor to an intervention must persuasively bear,⁶⁷ and which herein Respondents failed to satisfy. Quite the opposite, Petitioner-Intervenors' intervention in the instant proceedings will deter any further delay to the implementation of the Fisheries Code and the State's management and conservation objectives for the sustainability of our fisheries and aquatic resources.

87. It is clear that the Motion to Intervene was timely made before the rendition of judgment, the period expressly provided by the Rules of Court. No delay is caused to the normal course of the proceedings which are set to proceed in conformity with the Rules, despite the lightning speed⁶⁸ at which the proceedings would have taken had the trial court not properly applied the Rules of Procedure for Environmental cases.

88. More importantly, the Intervenors' participation in the suit allows for a more expeditious litigation of matters pertaining

⁶⁷ *Neptune Metal Scrap Recycling, Inc. v. Manila Electric Company*, G.R. No. 204222, July 4, 2016, citing *Executive Secretary v. Northeast Freight Forwarders, Inc.*, G.R. No. 179516, March 17, 2009, 581 SCRA 736

⁶⁸ The Petition for Declaratory Relief was filed on 4 December 2020, and the case was already submitted for decision in an Order dated 16 February 2021.

to the implementation of the assailed regulation, as it prevents the bringing of multiplicity of suits as may be necessary for the protection of public policies and the rights of the affected parties.

89. Considering the real injury the Petitioner-Intervenors stood to lose, as well as the inherent interest of courts towards a full ventilation of the constitutional issues at hand, the proceedings are better served with the Petitioner-Intervenors' participation in the suit. Having satisfied the requisites for intervention, the trial court gravely erred as a matter of law in denying the Petitioner-Intervenors' motion seeking their intervention in the proceedings below.

II. This Petition should be given due course as the trial court decided in contravention of law and applicable jurisprudence in granting the Petition for Declaratory Relief, declaring Fisheries Administrative Order No. 266, Series of 2020 as null and void for being unconstitutional, and making the writ of preliminary injunction against the implementation of FAO No. 266 permanent

90. In its Decision promulgated only a day after the Petitioner-Intervenors filed their Motion for Reconsideration on 31 May 2021, the trial court granted the Petition for Declaratory Relief and ruled that FAO No. 266 is unconstitutional for violating the rights of the commercial fishing corporations. Apart from suffering from unsound legal basis, the Decision fails to account for material facts that would have been litigated in the proceedings, had the intervention been allowed.

91. Furthermore, the Decision only ruled on the constitutionality of Fisheries Administrative Order No. 266 and refused to even pass upon the constitutionality of Sections 14 and 119 of the Fisheries Code, as amended. In justifying this glaring omission, the trial court stated it had done so because these "were only cited because there are the two sections of the law which gave rise to the promulgation of FAO No. 266,"⁶⁹ contrary to the clear language of the Petition for Declaratory Relief. As a result, the Decision in passing upon the constitutionality of FAO No. 266 deliberately ignored the state interest behind the regulation.

⁶⁹ Page 18 of the Decision dated 1 June 2021.

92. As will be discussed below, the assailed regulation and provisions of the Fisheries Code, as amended, are valid exercises of police power, animated as they are by a state interest constituting the rational basis for its issuance.

**REPUBLIC ACT NO. 8550, AS
AMENDED BY R.A. NO. 10654,
ITS IMPLEMENTING RULES
AND REGULATIONS AND
FAO 266 ARE VALID AND
CONSTITUTIONAL
EXERCISES OF POLICE
POWER**

93. Petitioner-Intervenors reiterate that FAO No. 266, and Sections 14 and 119 of the Fisheries Code are valid exercises of police power. Police power is that inherent and plenary power of the State which enables it to prohibit all that is hurtful to the *comfort, safety, and welfare* of society.⁷⁰ Corollary to that power is the **Public Trust Doctrine**, which, among other things, is the duty of the State to exercise “continuing supervision over the taking and use of appropriated water.”⁷¹

94. The Constitution itself lays out the metes and bounds of the *Public Trust Doctrine* over aquatic resources in Article XII, Section 2, the same provision that lays out the Regalian Doctrine, thusly —

“Section 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control

⁷⁰ *Ermita-Malate Hotel and Motel Operators Association Inc. v. City Mayor of Manila*, G.R. No. L-24693. July 31, 1967.

⁷¹ Concurring Opinion of J. Leonen in *Maynilad Water Services Inc. v. Secretary of the Department of Environmental and Natural Resources*, G.R. No. 202897. August 6, 2019.

and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law. In cases of water rights for irrigation, water supply fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant.

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

x x x x'

95. Likewise, the Constitution provides the policy and mandate upon the State to protect and advance the right of the people to a balanced and healthful ecology as among its Declaration of Principles and State Policies under Article II, thus:

“SECTION 16. The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.”

96. Upon the burden of that Public Trust to “protect the nation's marine wealth,” the State's mandate to protect and advance the right of the people to a balanced and healthful ecology, and in the exercise of its Police Power, the State, through the legislature, passed Republic Act No. 8550, otherwise known as “**The Philippine Fisheries Code of 1998**” on February 25, 1998.

97. In contrast, the Respondents' reason for assailing the regulations are economic in nature and that the regulations do not *on their face* impinge fundamental constitutional rights. Any intrusion into constitutional rights, if these do exist here, are merely incidental.

98. Further, the Respondents are juridical *entities* who seek to protect their economic rights over the *location* and *contents* of their vessels, which they have described as "trade secrets."⁷² These rights are economic in nature and, as such, enjoy less protections than are ordinarily afforded to civil and political rights under the Constitution.⁷³

99. Bearing these observations in mind, the appropriate standard of review for challenges against legislation that regulate the right to property, otherwise known as economic legislation, is **Rational Basis**.⁷⁴ Under a rational basis examination, laws or ordinances are upheld if they rationally further a legitimate governmental interest.⁷⁵ The two prongs of this test are:

(a) the existence of a legitimate government interest, and

(b) there is a reasonable connection between that interest and the means employed to achieve it.⁷⁶

100. In contrast with the Strict Scrutiny test, which applies to laws "dealing with freedom of the mind or restricting the political process,"⁷⁷ a Rational Basis examination does not require "the presence of *compelling*, rather than substantial, governmental interest" nor "the absence of *less restrictive means* for achieving that interest."⁷⁸ It is more relaxed and merely requires "a reasonable connection" between the interest and the means. This is consistent with the principles of separation of powers and of judicial comity, and the Rational Basis standard affords every deference to the wisdom of the legislature when such economic legislation is assailed.

⁷² Paragraph 19, p. 7 of the Petition for Declaratory Relief dated November 29, 2020.

⁷³ *Simon v. Commission on Human Rights*, G.R. No. 100150, January 5, 1994.

⁷⁴ *White Light Corporation v. City of Manila*, G.R. No. 122846, January 20, 2009.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

101. In a recent case where the Supreme Court scrutinized the alleged intrusion against constitutional rights and the State's exercise of police power to preserve and protect its natural resources, the Court upheld the validity of the assailed governmental measure, to wit:⁷⁹

“That the assailed governmental measure in this case is within the scope of police power cannot be disputed. Verily, the statutes from which the said measure draws authority and the constitutional provisions which serve as its framework are primarily concerned with the environment and health, safety, and well-being of the people, the promotion and securing of which are clearly legitimate objectives of governmental efforts and regulations. The motivating factor in the issuance of Proclamation No. 475 is without a doubt the interest of the public in general. The only question now is whether the means employed are reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals.

The pressing need to implement urgent measures to rehabilitate Boracay is beyond cavil from the factual milieu that precipitated the President's issuance of Proclamation No. 475. This necessity is even made more critical and insistent by what the Court said in *Oposa v. Hon. Factoran, Jr.* in regard the rights to a balanced and healthful ecology and to health, which rights are likewise integral concerns in this case. **Oposa warned that unless the rights to a balanced and healthful ecology and to health are given continuing importance and the State assumes its solemn obligation to preserve and protect them, the time will come that nothing will be left not only for this generation but for the generations to come**

⁷⁹ *Zabal v. Duterte*, G.R. No. 238467, February 12, 2019.

as well. It further taught that the right to a balanced and healthful ecology carries with it the correlative duty to refrain from impairing the environment.

Against the foregoing backdrop, we now pose this question: Was the temporary closure of Boracay as a tourist destination for six months reasonably necessary under the circumstances? The answer is in the affirmative.

As earlier noted, one of the root causes of the problems that beset Boracay was tourist influx. Tourist arrivals in the island were clearly far more than Boracay could handle. As early as 2007, the DENR had already determined this as the major cause of the catastrophic depletion of the island's biodiversity. Also part of the equation is the lack of commitment to effectively enforce pertinent environmental laws. Unfortunately, direct action on these matters has been so elusive that the situation reached a critical level. Hence, by then, only bold and sweeping steps were required by the situation.” (citations omitted; emphasis and underscoring ours)

102. Despite the legitimacy of the State's interest in preserving the Nation's marine wealth and of achieving food security for all Filipinos, and despite the wealth of jurisprudence on this matter, the Decision dated 1 June 2021 hardly even touched upon the state interest animating the assailed the regulations, when any ruling on the constitutionality of a measure must examine the same.

The State has a legitimate interest to prevent illegal, unreported and unregulated fishing, in line with the Precautionary Principle and

the Principle of Sustainable Development.

103. As a first principle, the Constitution has enshrined the policy and duty of the State to protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.⁸⁰

104. With the passage of R.A. No. 8550, the legitimate State interests of effectively conserving, managing and preserving the Nation's fishery and aquatic resources and of achieving food security for Filipinos is further concretized. Foremost to that interest is the **prevention of IUUF** and the **prohibition on unregulated fishing of endangered, rare, and threatened aquatic species**. Towards this end, the law imposed catch ceiling limitations,⁸¹ established closed seasons for catching,⁸² limited fishery activities and access to fishery resources only to Filipinos⁸³ and to those with licenses and permits,⁸⁴ prohibited destructive fishing methods,⁸⁵ among many other regulations.

105. As part of these regulations, entry of fishing vessels into "overfished areas," "fishing area reserves," "fish refuge and sanctuaries" and "fishery management areas," is limited and controlled. *Vide*:

Section 23. Limited Entry Into Overfished Areas. - Whenever it is determined by the LGUs and the Department that a municipal water is overfished based on available data or information or in danger of being overfished, and that there is a need to regenerate the fishery resources in that water, the LGU shall prohibit or limit fishery activities in the said waters.

x x x x

⁸⁰ *Oposa v. Factoran*, G.R. No. 101083, July 30, 1993 .

⁸¹ Section 8

⁸² Section 9

⁸³ Section 5

⁸⁴ Sections 7, 17, 86

⁸⁵ Sections 88, 89, 90, 92, 93

Section 95. Fishing in Overfished Area and During Closed Season. - It shall be unlawful to fish in overfished area and during closed season.

Violation of the provision of this section shall be punished by imprisonment of six (6) months and one (1) day to six (6) years and/or fine of Six thousand pesos (P6,000.00) and by forfeiture of the catch and cancellation of fishing permit or license.

x x x x

Section 80. Fishing Areas Reserves for Exclusive Use of Government. - The Department may designate area or areas in Philippine waters beyond fifteen (15) kilometers from shoreline as fishery reservation for the exclusive use of the government or any of its political subdivisions, agencies or instrumentalities, for propagation, educational, research and scientific purposes: Provided, That in municipalities or cities, the concerned LGUs in consultation with the FARMCs may recommend to the Department that portion of the municipal waters be declared as fishery reserves for special or limited use, for educational, research, and/or special management purposes. The FARMCs may recommend to the Department portions of the municipal waters which can be declared as fisheries reserves for special or limited use for educational, research and special management purposes.

x x x x

Section 81. Fish Refuge and Sanctuaries. - The Department may establish fish refuge and sanctuaries to be administered in the manner to be prescribed by the BFAR at least twenty-five

percent (25%) but not more than forty percent (40%) of bays, foreshore lands, continental shelf or any fishing ground shall be set aside for the cultivation of mangroves to strengthen the habitat and the spawning grounds of fish. Within these areas no commercial fishing shall be allowed. All marine fishery reserves, fish sanctuaries and mangrove swamp reservations already declared or proclaimed by the President or legislated by the Congress of the Philippines shall be continuously administered and supervised by the concerned agency: Provided, however, That in municipal waters, the concerned LGU in consultation with the FARMCs may establish fishery refuge and sanctuaries. The FARMCs may also recommend fishery refuge and sanctuaries: Provided, further, That at least fifteen percent (15%) where applicable of the total coastal areas in each municipality shall be identified, based on the best available scientific data and in consultation with the Department, and automatically designated as fish sanctuaries by the LGUs in consultation with the concerned FARMCs.

x x x x

Section 86. Unauthorized Fishing or Engaging in Other Unauthorized Fisheries Activities. - No person shall exploit, occupy, produce, breed, culture, capture or gather fish, fry or fingerlings of any fishery species or fishery products, or engage in any fishery activity in Philippine waters without a license, lease or permit.

Discovery of any person in an area where he has no permit or registration papers for a fishing vessel shall constitute a prima facie presumption that the person and/or vessel is engaged in

unauthorized fishing: Provided, That fishing for daily food sustenance or for leisure which is not for commercial, occupation or livelihood purposes may be allowed.

It shall be unlawful for any commercial fishing vessel to fish in bays and in such other fishery management areas which may hereinafter be declared as over-exploited.

Any commercial fishing boat captain or the three (3) highest officers of the boat who commit any of the above prohibited acts upon conviction shall be punished by a fine equivalent to the value of catch or Ten thousand pesos (P10,000.00) whichever is higher, and imprisonment of six (6) months, confiscation of catch and fishing gears, and automatic revocation of license.

It shall be unlawful for any person not listed in the registry of municipal fisherfolk to engage in any commercial fishing activity in municipal waters. Any municipal fisherfolk who commits such violation shall be punished by confiscation of catch and a fine of Five hundred pesos (500.00).

x x x x"

106. Meanwhile, the monitoring, control and surveillance provisions of the Fisheries Code explicitly state the public interest sought to be advanced: *"to ensure that the fisheries and aquatic resources in Philippine waters are judiciously and wisely utilized and managed on a sustainable basis and conserved for the benefit and enjoyment exclusively of Filipino citizens."*

107. It is thus clear that the limitations and regulations established in the Fisheries Code, as amended, and the various administrative issuances issued in pursuit of achieving key state policies laid down in the law, are aligned with at least two (2) basic principles concerning the state's obligation to protect and one's right to the environment: the precautionary principle and

the principle of sustainable development. These two principles, having been directly adopted as a state policy,⁸⁶ provides the lens by which the assailed regulation is to be scrutinized.

108. The Supreme Court, through the promulgation of the Rules of Procedure for Environmental Cases, has expressly adopted the *precautionary principle*, and the principle extends to address environmental harm despite lack of scientific certainty. Further, Principle 15 of the Rio Declaration expressly provides:⁸⁷

“In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. **Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.**”

109. The principle of sustainable development meanwhile “implies meeting the needs of the present without compromising the ability of future generations to meet their own needs.”⁸⁸

The means employed to prevent illegal, unreported and unregulated fishing, to prohibit the capture of endangered, rare, and threatened aquatic species, and to ensure judicious and wise utilization and management of fisheries and aquatic resources are reasonable.

⁸⁶ Section 1, R.A. No. 10654.

⁸⁷ Rio Declaration on Environment and Development, Annex I to the Report of the United Nations Conference on the Human Environment, Rio de Janeiro, June 3-14, 1992. Available at: un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf (last accessed: April 19, 2021).

⁸⁸ Report of the World Commission on Environment and Development, U.N. Doc. A/RES/42/187 (Dec. 11, 1987). Available at: <https://undocs.org/pdf?symbol=en/A/RES/42/187>. (last accessed: April 19, 2021).

110. The means by which State controls and limits entry into and out of “overfished areas,” “fishing area reserves,” “fish refuge and sanctuaries” and “fishery management areas” and ultimately, by which it achieves the conservation and management of fisheries and aquatic resources in the Philippines is through the monitoring and control measures introduced by the Fisheries Code, as amended. As implemented, the Vessel Monitoring Measures (VMM) has two main components: 1. *locational monitoring* through the Automatic Location Communicator (ALC); and 2. the Electronic Reporting System (ERS). These provide the means by which the State monitors, controls and effectively regulates fishing activities and manages the fishing resources in the country. .

111. In particular, the ALC and the ERS are intended to capture the following relevant information:

1. Species and volume of fish caught;
2. Position of the vessel where the fish was caught;
3. Date and Time;
4. Vessel activity;
5. Port of Origin and Arrival;
6. Tracking and reporting devices used;
7. Margin of tolerance and weight for catch reporting;
8. Data manual reporting in case of operational failure;⁸⁹ and
9. Fishing vessels’ position, fishing activities and any other activity of the vessel as may be required.⁹⁰

112. It can be readily seen that these pieces of information are **absolutely essential** if the government is to ascertain whether a vessel has illegally entered “overfished areas,” “fishing area reserves,” “fish refuge and sanctuaries” and “fishery management areas.” Further, the mandatory reporting of the “species and volume of fish caught” goes into the very evil the law

⁸⁹ Section 4, Fisheries Administrative Order No. 266, series of 2020.

⁹⁰ Section 2(a), Fisheries Administrative Order No. 266, series of 2020.

seeks to curb: overfishing and the unregulated capture of endangered, rare, and threatened aquatic species.

113. Given that the Philippines has a coastline of **36,289 kilometres** and its Exclusive Economic Zone has a total area of **2,263,816 square-kilometers**, the means chosen by Congress to protect overfished waters and other protected areas through the VMM and the ERS is as *reasonable* as it is *expedient*. The State, through Congress, deemed it wise to require the real-time monitoring of the position and catch of all fishing vessels.

114. In contrast, the alternatives are either prohibitively expensive (e.g. having the coast guard monitor all 2,263,816 square-kilometers of the Philippine EEZ), or ineffective (e.g. having catcher vessels *voluntarily* report their catch and their location).

115. For the reasons stated above, the second prong of the Rational Basis standard has been met: the means employed (*i.e.* requiring the installation of VMM and ERS in commercial fishing vessels) has a reasonable connection to the interest sought to be achieved (*i.e.* the preservation and protection of aquatic resources).

The VMM has the added benefit of ensuring the safety of all ships and the efficiency of passage.

116. Aside from preserving the Nation's fishery and aquatic resources and ensuring food security for all Filipinos, these measures have particular benefits even to the Respondents, notwithstanding their protestations to the contrary.

117. The VMM involves the installation of the ALC, which has a built-in distress alert button. This ensures the safety of persons onboard the vessel because it continuously transmits the ship's name, position, course, speed, draft, and type of vessel to the Fisheries Monitoring Center.⁹¹ Thus, in the event of any accident or misfortune at sea, the distress signal can be activated to alert and locate the vessel, which signal shall then be simultaneously transmitted to the Philippine Coast Guard and other concerned

⁹¹ Section 5, Fisheries Administrative Order No. 266, Series of 2020.

agencies. Other vessels in the area can likewise pick up the distress signal.⁹²

118. The VMM is not just useful, however, because it is itself required by the various international and regional agreements and conventions as a globally recognized technological intervention for adoption by States to combat the global menace of IUUF. It is part of the science and information-based law enforcement mechanism that is required under various multi-state treaties and conventions to counter illegal, unreported and unregulated fishing activities.

119. First, Chapter V of the 1974 **International Convention for the Safety of Life at Sea (SOLAS)**, “makes mandatory the carriage of *voyage data recorders (VDRs)* and *automatic ship identification systems (AIS)*.”⁹³ Further, to ensure safety of navigation in international and national waters, the data generated by the AIS of all vessels, regardless of type or size, is *free* and *available* in a public database on the internet.⁹⁴

120. Further, the Philippines has bound itself by ratification, accession, and/or signing several international treaties and conventions on the use of VMS and other related measures. These include the **1995 United Nations Fish Stock Agreement**,⁹⁵ the **1994 United Nations Convention on the Law of the Sea**,⁹⁶ the **2004 Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC Convention)**,⁹⁷ and the **1974 International Convention for the Safety of Life at Sea (SOLAS)**, all of which, in some form or another, require the implementation of a VMM to counter illegal, unreported, and unregulated fishing activities.

⁹² Section 18, Fisheries Administrative Order No. 266, Series of 2020.

⁹³ International Convention for the Safety of Life at Sea (SOLAS), Chapter V Regulation 19, U.N.T.S. 1184 - 18961. Available at: <https://treaties.un.org/doc/Publication/UNTS/Volume%201184/volume-1184-I-18961-English.pdf>, last accessed: April 19, 2021.

⁹⁴ AIS Real-Time World-wide Tracking, (<https://www.vesselfinder.com/>)

⁹⁵ One of the duties of Flag States is the development and implementation of VMS in accordance with regional, subregional or global programmes. See Art. 18(3)(e), Art. 18(3)(g)(iii) and Art. 5(j) thereof.

⁹⁶ Art. 62(4)(e) therefor pertains to the “right of a coastal State to require vessels of other States that fish in its EEZ to **submit certain information.**”

⁹⁷ Conservation and Management Measure 2011-02 thereof requires ALC/VMS for “all fishing vessels that fish for highly migratory fish stocks on the high seas within the Convention Area.”

121. The Philippines has also consistently and voluntarily bound itself to the prescriptions of two (2) more international instruments.⁹⁸ By force of *pacta sunt servanda*, the State is duty bound to keep and comply with their agreements in good faith.⁹⁹

122. In particular, the Philippines ratified the 1974 SOLAS Convention in 1982 while the Instruments of Accession of the SOLAS Protocol 1978 and SOLAS Protocol 1988 were deposited to the International Maritime Organization (IMO) Secretary General on 24 April 2018 and 06 June 2018, respectively.¹⁰⁰ Highlighting the need and the benefit derived from such measures, the Maritime Industry Authority (MARINA), an agency attached to the Office of the President, has repeatedly lauded the Philippines' ratification of the 1974 SOLAS Convention.¹⁰¹

123. Moreover, several Regional Fisheries Management Agreements and International Fisheries Commissions, to which the Philippines is bound, also require the same. The **Western Central Pacific Commissions (WCPFC)** provides that "Members [must] require their fishing vessels that fish for highly migratory stocks on the high seas to use near real-time satellite position-fixing transmitters while in their respective management areas."¹⁰² So, too, the **Commission for the Conservation of Southern Blue Fin Tuna (CCSBT)**,¹⁰³ the **Indian Ocean Tuna**

⁹⁸ FAO Code of Conduct for Responsible Fisheries (CCRF), Available at: <http://www.fao.org/fishery/code/en> (last accessed: July 16, 2021); See also the 1992 United Nations Conference on Environment and Development (UNCED) Agenda 21, available at: <https://sustainabledevelopment.un.org/content/documents/Agenda21.pdf> (last accessed: July 16, 2021).

⁹⁹ *LandBank of the Philippines v. Atlanta Industries, Inc.*, G.R. No. 193796, July 2, 2014.

¹⁰⁰ "Ratifications by State," Status of Conventions, International Maritime Organization. Available at: <https://www.imo.org/en/About/Conventions/Pages/StatusOfConventions.aspx> (last accessed: April 19, 2021)

¹⁰¹ "MARINA strengthens Philippine Ship Registry; upholds commitment to IMO," MARINA.

Available at:

<https://marina.gov.ph/2019/01/20/marina-strengthens-philippine-ship-registry-upholds-commitment-to-imo/> (last accessed: April 19, 2021)

¹⁰² See Secs. 4 and 6 thereof.

<https://www.wcpfc.int/doc/cmm-2014-02/conservation-and-management-measure-commission-vms>

¹⁰³ See Sec. 1 and 2.

https://www.ccsbt.org/sites/ccsbt.org/files/userfiles/file/docs_english/operational_resolutions/Resolution_VMS.pdf

Commission (IOTC),¹⁰⁴ and the International Commission for the Conservation of Atlantic Tunas (ICCAT).¹⁰⁵

124. Clearly, the use of ALC, through the adoption of VMM, is not just a parochial or localized initiative of the State to counter IUUF; it is widespread and accepted by the community of nations and mandated by international law.

125. FAO No. 266 is also not the first implementation of the Philippines' international commitments and of its own State policies and objectives relative to fisheries management and preservation. As earlier stated, the BFAR issued Fisheries Administrative Order No. 241 and 245 in 2012, and Fisheries Administrative Order No. 260 in 2016. As with FAO No. 266, these Administrative Orders required the installation of vessel monitoring measures for covered vessels with the ultimate objective of ensuring that ***“the fisheries and aquatic resources in the Philippine waters are judiciously and wisely utilized and managed on a sustainable basis and conserved for the benefit and enjoyment exclusively of Filipino citizens.”***

126. In contrast, the Decision merely echoes the Respondent's economic interest in keeping their fishing sites as a “trade secret”, and justified the declaration of the VMM and ERS measures as void notwithstanding the legitimate interest of the State to preserve its maritime resources and of the international community to ensure safety of navigation and the protection and preservation of the dwindling fisheries resources.

127. As the Petitioner-Intervenors have laid out in painstaking in this Petition and in their Answer-in-Intervention, the State has a legitimate interest in preserving its marine resources under the Public Trust Doctrine. Further, the manner by which the State achieves this interest (VMM and ERS) is reasonably connected to the accomplishment of that legitimate interest. For having passed both elements alone, this Honorable Court ***must*** uphold the regulation and reverse the Decision dated 1 June 2021. Indeed, any inconvenience or burden which the

¹⁰⁴ Art 1 provides: “Each Contracting Party and Cooperating Non-Contracting Party (CPC) shall adopt a satellite-based vessel monitoring system (VMS) for all vessels flying its flag 24 metres in length overall or above or in case of vessels less than 24 meters, those operating in waters outside the Economic Exclusive Zone of the Flag State fishing for species covered by the IOTC Agreement within the IOTC area of competence.” See: <https://www.iotc.org/cmm/resolution-1503-vessel-monitoring-system-vms-programme>

¹⁰⁵ ICCAT Resolutions dated February 22, 2002 and June 19, 2004 requires “members, cooperating non-members and fishing entities to install satellite-based VMS onboard large-scale tuna longline fishing vessels (exceeding 20 meters b/n perpendiculars or 24 meters length overall)”

private Respondents perceive to have been placed upon their economic rights cannot override the legitimate exercise of the State's police power.

II. B. There is no violation of the right against privacy and unlawful searches; the information gathered by the VMS does not constitute trade secrets

128. In finding that FAO No. 266 violated the right against the Respondents' rights to privacy and unlawful searches, the trial court considered the information gathered by the VMS as highly sensitive and part of their trade secrets or proprietary information. Further, the court agreed with the commercial fishing vessel-corporations that their right against unlawful searches was violated by the real time tracking of vessels. These could not be further from the truth.

129. First of all, the location, identity, and cargo of maritime vessels do not fall under the established definition of "trade secret" equivalent to "proprietary data."

130. In *Air Philippines Corporation v. Pennswell, Inc.*,¹⁰⁶ the Court itself laid down the pertinent test of what exactly constitutes a trade secret. There, the Supreme Court explained:

"A trade secret is defined as a **plan or process, tool, mechanism or compound** known only to its owner and those of his employees to whom it is necessary to confide it. The definition also extends to a secret formula or process not patented, but known only to certain individuals using it in compounding some article of trade having a commercial value. A trade secret may consist of **any formula, pattern, device, or compilation of information** that: (1) is used in one's business; and (2) gives the employer an opportunity to obtain an advantage over

¹⁰⁶ G.R. No. 172835, 13 December 2007.

competitors who do not possess the information. Generally, a trade secret is a process or device intended for continuous use in the operation of the business, for example, a machine or formula, but can be a price list or catalogue or specialized customer list. It is indubitable that trade secrets constitute proprietary rights. The inventor, discoverer, or possessor of a trade secret or similar innovation has rights therein which may be treated as property, and ordinarily an injunction will be granted to prevent the disclosure of the trade secret by one who obtained the information "in confidence" or through a "confidential relationship." American jurisprudence has utilized the following factors to determine if an information is a trade secret, to wit:

(1) the extent to which the information is known outside of the employer's business;

(2) the extent to which the information is known by employees and others involved in the business;

(3) the extent of measures taken by the employer to guard the secrecy of the information;

(4) the value of the information to the employer and to competitors;

(5) the amount of effort or money expended by the company in developing the information; and

(6) the extent to which the information could be easily or readily obtained through an independent source."

131. Pertinently, location data over fishing sites does not fall under “plan or process, tool, mechanism or compound.” Neither does it fall under “any formula, pattern, device, or compilation of information that is used in one's business and gives the employer an opportunity to obtain an advantage over competitors who do not possess the information.” The rule of construction *expressio unius est exclusio alterius* applies here. The above list is exclusive and precludes the addition of any other information, even by implication. In *Malinias v. COMELEC*,¹⁰⁷ the Supreme Court defined the maxim as the “express mention of one person, thing, or consequence implies the exclusion of all others.” *Pennswell* lists “plan or process, tool, mechanism or compound” or “any formula, pattern, device, or compilation of information.” Location data over maritime waters is not included. It is therefore excluded.

132. Further, the phrase “compilation of information” must be construed to be in the same class of information as the items before it, that is, “formula, pattern, device.” This is consistent with the maximum *noscitur a sociis*, where the meaning of a word or phrase “may be made clear and specific by considering the company of the words in which it is found or with which it is associated.”¹⁰⁸

133. Moreover, the Supreme Court has ruled in *Cocoland Development Corporation v. NLRC*¹⁰⁹ that a company does not have absolute discretion to claim what is and what is not a trade secret. There, the Court held —

“Petitioner's naked contention that its own determination of what constitutes a trade secret should be binding and conclusive upon public respondent is erroneous and dangerous, and deserves the barest consideration. As prudently observed by the Solicitor General, such a stand is contrary to the State's policy of affording protection to labor. Sustaining such contention would permit an employer to label almost anything a trade secret, and thereby create a weapon with which he/it may arbitrarily dismiss an employee on the

¹⁰⁷ G.R. No. 146943, October 4, 2002.

¹⁰⁸ *Kua v. Barbers*, G.R. No. 159410, January 28, 2008.

¹⁰⁹ G.R. No. 98458 July 17, 1996.

pretext that the latter somehow disclosed a trade secret, even if in fact there be none at all to speak of. Any determination by management as to the confidential nature of technologies, processes, formulae or other so-called trade secrets must have a substantial factual basis which can pass judicial scrutiny. This is but an ineludible corollary of the time-tested principle that "(t)he rules, instructions or commands in order to be a ground for discharge on the score of disobedience, must be reasonable and lawful, must be known to the employee, and must pertain to the duties which the employees have been engaged to discharge." A fictitious or non-existent "secret" (or a publicly known one as in the instant case) can in no wise be the basis of a reasonable and lawful rule or company policy regarding confidentiality."

134. The characterization of the commercial fishing vessels' location of fishing sites as their "trade secret" conveniently ignores the Regalian doctrine under Article XII, Section 2, where -

"All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable

for not more than twenty-five years, and under such terms and conditions as may be provided by law. In cases of water rights for irrigation, **water supply fisheries**, or industrial uses other than the development of water power, **beneficial use may be the measure and limit of the grant.**

135. Unfortunately, the trial court's Decision dated 1 June 2021 regrettably disregards that all waters are owned by the State, and that the utilization of its resources is under the State's full control and supervision. The Respondents are only able to conduct fishing operations in maritime waters precisely with the grace and under the auspices of the State. As the spring cannot rise above the source, the Respondents' rights cannot supersede the State's.

136. Further, the Supreme Court in *Maynilad Water Services, Inc. v. Secretary of the Department of Environment and Natural Resources*,¹¹⁰ explained the concept of the Public Trust Doctrine thus:

“[T]he state had the power to reconsider past allocation decisions even though an agency had made those decisions after due consideration of their effect on the public trust. This conclusion reflected the view that water users could not acquire a vested property right in the water itself; they merely obtained a usufructuary right to the water.

Academic literature further imparts that “[p]art of this consciousness involves restoring the view of public and state ownership of certain natural resources that benefit all. [...]” The “doctrine further holds that certain natural resources belong to all and cannot be privately owned or controlled because of their inherent importance to each individual and society as a whole. A clear declaration of public ownership, the doctrine

¹¹⁰ G.R. No. 202897, August 6, 2019.

reaffirms the superiority of public rights over private rights for critical resources. It impresses upon states the affirmative duties of a trustee to manage these natural resources for the benefit of present and future generations and embodies key principles of environmental protection: stewardship, communal responsibility, and sustainability.

In this framework, a relationship is formed - "the [s]tate is the trustee, which manages specific natural resources the trust principal - for the trust principal for the benefit of the current and future generations - the beneficiaries." "[T]he [S]tate has an affirmative duty to take the public trust into account in the planning and allocation of water resources, and to protect public trust uses whenever feasible." But with the birth of privatization of many basic utilities, including the supply of water, this has proved to be quite challenging. The State is in a continuing battle against lurking evils that has afflicted even itself, such as the excessive pursuit of profit rather than purely the public's interest.

These exigencies forced the public trust doctrine to evolve from a mere principle to a resource management term and tool flexible enough to adapt to changing social priorities and address the correlative and consequent dangers thereof. The public is regarded as the beneficial owner of trust resources, and courts can enforce the public trust doctrine even against the government itself." (citations omitted; emphasis and underscoring ours)

137. In other words, while the Petitioner commercial fishing companies may have been granted the license to conduct fishing activities by the State — a mere economic privilege — the enjoyment of such license does not ripen into ownership over the natural resources themselves. Instead, the Respondents' fishing

rights continue to be subject to the management objectives of the State for sustainable development and judicious management and utilization of its fisheries resources.

138. The State has a legitimate interest in preserving its marine resources under the Public Trust Doctrine. Likewise, the manner by which the State achieves this interest (VMM and ERS) is reasonably connected to the accomplishment of that legitimate interest.

139. Furthermore, the ill-informed characterization of data points over fishing sites as “trade secrets” defeats the policy of the Constitution towards sustainable fisheries management. It also renders the Fisheries Code’s conservation and management measures, such as the implementation of Fisheries Management Areas (FMAs), Target Reference Points (TRP), Limit Reference Points (LRP) and Harvest Control Rules (HCR) inutile, as these rules have been established under Fisheries Administrative Order No. 263, Series of 2019¹¹¹ and the Fisheries Code, respectively, to safeguard marine resources from illegal, unreported and unregulated fishing.

140. Precisely, the data points that go through the VMM implemented under FAO 266 presents the scientific data needed by key policymakers to effectuate the fisheries management objectives. As testified to by Mr. Ocampo:¹¹²

42. Q: What other benefit, if any, does FAO 266’s amendment to FAO 260 bring about?

A : The wider scope of coverage allows the collation of scientific and traceable data for a science-based fisheries management plan. The data set will allow the DA-BFAR to determine science-based Target Reference Points (TRP), Limit Reference Points (LRP) and Harvest Control Rules (HCR), which is mandated under the IRR of our Fisheries Code.

¹¹¹ Attached as Annex “3”.

¹¹² Pages 19-20 of the Judicial Affidavit of Daniel M. Ocampo dated April 19, 2021.

43. Q: What do you mean by Target Reference Points (TRP), Limit Reference Points (LRP) and Harvest Control Rules (HCR)?

A : Reference points refer to the set of indicators that describe the level of exploitation, status of fisheries or biological characteristics used as standards for regulatory purposes. It can either be “target” or “limit” where Target reference points refer to “ideal” specifications for fish stocks that help in ensuring sustainable fishing and ideal fish catches. Limit reference point is the maximum reference for the fish stocks to survive fishing pressure and should not be exceeded. Harvest control rules are management mechanisms in the form of regulatory measures that will make sure the target reference point is achieved and the limit reference point is avoided.

44. Q: What is the significance of TRP, LRP and HCR?

A : These are scientific bases for ensuring sustainable fisheries with fish catches are optimum levels and that fish stocks are not depleted.”

141. In other words, Respondent-commercial fishing vessels cannot arrogate upon themselves any specific location as their exclusive fishing grounds, and neither can they resist the collection of these scientific data necessary to bring to life the State’s management and conservation objectives by the mere expedient of calling it “trade secrets.” Any discussion on the alleged breaches to the security is therefore irrelevant at best and untruthful at best.

142. More importantly, the real-time tracking of vessels operating within Philippine waters do not violate the constitutional rights against unlawful searches. *US v. Jones*¹¹³ is inapplicable and the trial court’s reliance thereon is misplaced. The issue decided by the US Supreme Court there revolved on the admissibility of evidence in a criminal case that was obtained by the warrantless use of the GPS device, which intruded upon the

¹¹³ 565 U.S. 400, 132 S. Ct. 945 (2012).

private property of an individual. The equivalence placed by the trial court in the *Jones* case with the vessel monitoring system contemplated by FAO No. 266 and the Fisheries Code, as amended, is flawed. Unlike the GPS placed in the vehicle involved in *Jones*, the vessel monitoring system under FAO No. 266 was not surreptitiously placed and is meant to collect the location of vessels operating within Philippine waters to prevent IUUF.

143. Instead of *Jones*, the trial court should have applied *Katz v. United States*.¹¹⁴ In 1989, this Honorable Court cited *Katz* approvingly and read the doctrine in *Katz* into our own Constitution in *The Presidential Anti-Dollar Salting Task Force v. Court of Appeals*¹¹⁵ and in a long line of subsequent cases.

144. In *Katz*, the US Supreme Court held that the act of FBI agents in electronically recording a conversation made by a person in an enclosed public telephone booth violated his right to privacy and constituted a "search and seizure." Because the person there had a reasonable expectation of privacy in using the enclosed booth to make a personal telephone call, the protection of the Fourth Amendment extends to such area.¹¹⁶

145. Pertinently, *Katz* introduced a two-fold test¹¹⁷ to determine whether a particular governmental act violates a person's privacy and thus triggers the Search clause:

- a. First, the person must have exhibited an **actual (subjective) expectation of privacy**; and
- b. Second, the expectation is **one that society is prepared to recognize as reasonable (objective)**.

146. In applying *Katz*, it is important to note that the factual circumstances of the case determines the reasonableness of the expectation.¹¹⁸ The Honorable Court must therefore examine whether the person "by his conduct"¹¹⁹ has exhibited an expectation of privacy (subjective expectation) and whether the

¹¹⁴ 389 U.S. 347.

¹¹⁵ G.R. No. 83578, March 16, 1989.

¹¹⁶ See also *Pollo v. Constantino-David*, G.R. No. 181881, October 18, 2011.

¹¹⁷ *Id.* citing Justice Harlan's concurring opinion in *Katz v. U.S.*

¹¹⁸ *Ople v. Torres*, G.R. No. 127685 July 23, 1998.

¹¹⁹ *Id.*

expectation is one that society finds reasonable (objective expectation). Naturally, customs, physical surroundings and practices of a particular activity, may serve to create or diminish this expectation.¹²⁰

147. As regards the first prong of the Katz test, not only have the Respondents shown, by their conduct, a lack of actual expectation of privacy, but they have shown the complete opposite when the Respondents themselves already use the Automated Identification System (AIS) discussed above. ***Their fishing vessels are already emitting, in real time, their position anywhere in the world.*** For instance, the fishing vessel ROYALE EXPEDITION (IMO: 8622919), which belongs to Petitioner Royale Fishing Corporation, can be tracked through publicly available databases such as those found in VesselFinder.¹²¹

148. Interestingly, the Respondents themselves expressly admit that if the information generated is “readily available from public sources, [they] may be considered to have waived the proprietary nature of these data.”¹²²

149. As regards the second prong of the *Katz* test, no objective expectation of privacy to one’s location in maritime waters which society deems reasonable currently exists.

150. The opposite is in fact true as international maritime practice has widely adopted the **Automated Identification System** (‘AIS’), which the VMS and the ERS fall under, and which serves as the ***air traffic control of the sea***. The AIS continuously transmits the ship’s name, position, course, speed, draft, and type of vessel not only to ground stations but also to other nearby ships. This ensures that other ships are made aware of their presence and their trajectory, thus avoiding collisions at sea and enhancing safety of navigation. Further, in the event of any accident or misfortune at sea, the AIS also ensures that the ship’s personnel can be found by simply tracing the ship’s last known location and trajectory, as it was transmitted and recorded through the system.

151. The installation of the AIS is not just a useful practice, but it is also required by the **1974 International Convention for the Safety of Life at Sea (SOLAS)**, a treaty which the

¹²⁰ *Id.*

¹²¹ AIS Real-Time World-wide Tracking, (<https://www.vesselfinder.com/>); Royale Expedition can be found here:

<https://www.vesselfinder.com/vessels/ROYALE-EXPEDITION-IMO-8622919-MMSI-0>

¹²² Par. 21. p. 7 of the Petition for Declaratory Relief dated November 29, 2020.

Philippines ratified in 1982. In particular, Chapter V of the SOLAS “makes mandatory the carriage of voyage data recorders (VDRs) and automatic ship identification systems (AIS).”¹²³ Further, to ensure safety of navigation in international and national waters, the data generated by the AIS of all vessels, regardless of type or size, is *free* and *available* in a public database on the internet.¹²⁴ Any person, anywhere in the world, may find any registered vessel, its type, its cargo, its location, its port of destination, and many other related information, on the internet because of the publicly available database generated by the AIS.

152. The Philippines itself ratified the 1974 SOLAS Convention in 1982 while the Instruments of Accession of the SOLAS Protocol 1978 and SOLAS Protocol 1988 were deposited to the International Maritime Organization (IMO) Secretary General on 24 April 2018 and 06 June 2018, respectively.¹²⁵ Highlighting the need and the benefit derived from such measures, the Maritime Industry Authority (MARINA), an agency attached to the Office of the President, has repeatedly lauded the Philippines’ ratification of the 1974 SOLAS Convention.¹²⁶

153. Of particular interest here is the fact that the Respondents’ fishing vessels are registered and can already be found, tracked, and monitored real-time, without any technical difficulty whatsoever, through international AIS databases that track all maritime vessels worldwide.

154. The widespread use and acceptance of the Automated Identification System (AIS), which reports all vessels’ identity, location, trajectory, etc., anywhere in the world and in real-time, shows without a doubt that **society does not have an objective expectation of privacy over the locational data of maritime vessels in general, and commercial fishing vessels in particular.**

¹²³ International Convention for the Safety of Life at Sea (SOLAS), Chapter V Regulation 19, U.N.T.S. 1184 - 18961, (<https://treaties.un.org/doc/Publication/UNTS/Volume%201184/volume-1184-I-18961-English.pdf>), last accessed: April 19, 2021.

¹²⁴ AIS Real-Time World-wide Tracking, (<https://www.vesselfinder.com/>)

¹²⁵ “Ratifications by State,” Status of Conventions, International Maritime Organization. Available at: <https://www.imo.org/en/About/Conventions/Pages/StatusOfConventions.aspx>, (last accessed: April 5, 2021)

¹²⁶ “MARINA strengthens Philippine Ship Registry; upholds commitment to IMO,” MARINA. Available at: <https://marina.gov.ph/2019/01/20/marina-strengthens-philippine-ship-registry-upholds-commitment-to-imo/>, (last accessed: April 19, 2021)

II. C. There is no violation to due process; the Respondents have more than sufficiently participated in the decision-making process

155. The court held that their right to due process was violated when no scientific study was presented to the stakeholders prior to the issuance and implementation of FAO 266.

156. Rule 65.2 of the IRR of RA 8550 merely uses the word “may” when it mentions “stakeholders *may* nominate their own scientist/s.” The word “may” connotes permissive language, and does not in any way connote that the provision *requires* all stakeholders to nominate their own scientist/s. Truly, the ludicrous construction would entail that all fishing corporations, all municipal fisherfolk, and anyone vaguely affected by FAO No. 266 (i.e. all 100 million or so Filipinos), *must* be allowed to nominate their own scientist. The Supreme Court has repeatedly disavowed absurd interpretations of the law.¹²⁷ This case should not be an exception.

157. Further, the trial court’s misapplication of the precautionary principle must be rectified. While *West Tower Condominium Corporation v. First Philippine Industrial Corporation* indeed pronounced that “The precautionary principle only applies when the link between the cause, that is the human activity sought to be inhibited, and the effect, that is the damage to the environment, cannot be established with full scientific certainty,” such pronouncement was a clarification on the precautionary principle as a rule of evidence under the RPEC.

158. This is separate from the precautionary principle as an *approach* to addressing environmental concerns, which is precisely what is being invoked by the government agencies and herein Petitioner-Intervenors in upholding FAO No. 266. The precautionary principle as an approach has been adopted by Congress as a state policy under the Fisheries Code, and is also expressly provided under Principle 15 of the Rio Declaration expressly provides:¹²⁸

¹²⁷ *Microsoft Corporation v. Manansala*, G.R. No. 166391, October 21, 2015.

¹²⁸ Rio Declaration on Environment and Development, Annex I to the Report of the United Nations Conference on the Human Environment, Rio de Janeiro, June 3-14, 1992. Available at:

“In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.”

159. As explained, “the concept of precautionary action aims generally at improving conservation of the environment and the resources by reducing the risk of inadvertently damaging them. More specifically, it aims at helping decision-makers and regulators to take a safeguarding decision, when the scientific work is inconclusive but a course of action has to be chosen.”¹²⁹

160. Thus, “this principle's most characteristic attributes are that: (a) it requires authorities to take preventive action when there is a risk of severe and irreversible damage to human beings; (b) action is required even in the absence of certainty about the damage and without having to wait for full scientific proof of the cause-effect relationship, and (c) when there is disagreement on the need to take action, the burden of providing the proof is reversed and placed on those who contend that the activity has or will have no impact.”¹³⁰

II. D. The exclusion of municipal fishing vessels in FAO No. 266 does not violate the equal protection clause

161. In its Decision, the trial court faulted the exclusion of municipal fishing vessels in the coverage of FAO 266 and found that it contravenes the provision of Section 119 of the Fisheries Code.

162. The distinction between commercial fishing vessels which is covered by FAO No. 266 and the municipal fishing vessels, which is excluded from the measure is *germane* to the

un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf (last accessed: April 19, 2021).

¹²⁹ The Precautionary Approach to Fisheries and its Implications for Fishery Research, Technology and Management: an Updated Review, Fishery Resources Division, FAO Fisheries Department. Available at: <http://www.fao.org/3/w1238e/W1238E01.htm>

¹³⁰ *Id.*

regulation and must be upheld as reasonably connected to the legitimate government interest of preserving the Nation's marine resources.

163. As the Supreme Court itself has ruled, any claim of Equal Protection necessitates the application of the Rational Basis test, except only when the classification is one deemed to be historically suspect (*i.e.* when the classification is based on race, religion, alienage, national origin, and ancestry), in which case the proper judicial test would be Strict Scrutiny.¹³¹

164. To recall, laws or ordinances are upheld in a Rational Basis examination if the measure rationally further a legitimate governmental interest.¹³² The two prongs of this test are:

(a) the existence of a legitimate government interest, and

(b) there is a reasonable connection between that interest and the means employed to achieve it.¹³³

165. In order to fully understand why the law distinguishes between commercial fishing vessels (*i.e.* those with gross tonnage 3.1 and above), on one hand, and municipal fishing vessels (*i.e.* those below gross tonnage 3.1), on the other, it is necessary to know exactly how "municipal," "commercial," and "distant water fishing vessels" are defined.

166. Under the Fisheries Code, as amended, "**municipal fishing**" refers to "fishing within municipal waters using fishing vessels of three (3.0) gross tons or less, or fishing not requiring the use of fishing vessels."¹³⁴ Those who engage in municipal fishing are called "**municipal fisherfolk**."¹³⁵

167. Moreover, the Fisheries Code expressly gives municipal fisherfolk preferential use over "**municipal waters**," which is defined to include not only "*streams, lakes, inland bodies of water and tidal waters within the municipality*" which are not included within the protected areas as defined under Republic Act No. 7586 (The NIPAS Law), public forest, timber lands, forest reserves or

¹³¹ *White Light Corporation v. City of Manila*, G.R. No. 122846, January 20, 2009. See also:

¹³² *Id.*

¹³³ *Id.*

¹³⁴ No. 57, Sec. 4 R.A. No. 8550, as amended.

¹³⁵ No. 56, Sec. 4 R.A. No. 8550, as amended.

fishery reserves, but also **marine waters included between two (2) lines drawn perpendicular to the general coastline** from points where the boundary lines of the municipality touch the sea at low tide and a third line parallel with the general coastline including offshore islands **and fifteen (15) kilometers from such coastline.**¹³⁶

168. This policy of protecting the rights of municipal fisherfolk above other types of fishing operations¹³⁷ was adopted because of the goal of the State towards “poverty alleviation and the provision of supplementary livelihood among municipal fisherfolk.”¹³⁸

169. This policy serves as the legitimate government interest that meets the first prong of the Rational Basis test.

170. Pursuant to such policy, Sec. 86 of the Fisheries Code penalizes “any person not listed in the registry of municipal fisherfolk to engage in any commercial fishing activity in municipal waters.”¹³⁹ It can be surmised from the nexus between Sec. 86 and FAO No. 266 that the State disallowed the entry of commercial fishing activity in municipal waters in Sec. 86 of the Fisheries Code in order to protect municipal fisherfolk from the incursions of commercial fishing operations into municipal waters, which would then hamper municipal fishing and defeat the thrust of the State to alleviate their poverty and provide for their supplementary livelihood.

171. Clearly, the installation of VMS and ERS and the monitoring of the commercial fishing vessels’ position data is ***reasonably connected*** to the legitimate government interest of ensuring food security for all and alleviating the poverty of municipal fisherfolk.

PRAYER

¹³⁶ No. 58, Sec. 4 R.A. No. 8550, as amended.

¹³⁷ Sec. 2 (d) of R.A. No. 8550, as amended, states:

Section 2. Declaration of Policy. - It is hereby declared the policy of the State:

(d) **to protect the rights of fisherfolk, especially of the local communities with priority to municipal fisherfolk** in the preferential use of the municipal waters. Such preferential use, shall be based on, but not limited to, Maximum Sustainable Yield (MSY) or Total Allowable Catch (TAC) on the basis of resources and ecological conditions, and shall be consistent with our commitments under international treaties and agreements;

¹³⁸ *Id.*

¹³⁹ Sec. 86 R.A. No. 8550, as amended.

WHEREFORE, it is respectfully prayed that the present Petition for Review on Certiorari be given due course, and after due proceedings, that the Honorable Court:

1. **REVERSE AND SET ASIDE** the Regional Trial Court of the City of Malabon, Br. 170's Orders dated 25 May 2021 and 23 June 2021, and instead **ALLOW** the intervention of Petitioner-Intervenors Oceana Philippines International, Ronaldo P. Reyes and Pablo R. Rosales, and considering their pleadings and arguments in the Appeal of the Decision dated 1 June 2021;
2. **REVERSE AND SET ASIDE** the Decision dated 1 June 2021, and instead **DECLARE** Fisheries Administrative Order No. 266 as **CONSTITUTIONAL**; and
3. **LIFT** the permanent injunction issued against Fisheries Administrative Order No. 266.

Other reliefs as may be just or equitable in the premises are likewise prayed for.

RESPECTFULLY SUBMITTED.

Quezon City for the City of Manila, 16 July, 2021.

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