

SUPREME COURT
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Republic of the Philippines
SUPREME COURT
Manila

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

Petitioners,

- versus -

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

Respondents.

x-----x
REPUBLIC OF THE
PHILIPPINES,

Petitioner,

- versus -

ROYALE FISHING
CORPORATION, et al.,

Respondents.

x-----x
REPUBLIC OF THE
PHILIPPINES,

Petitioner,

- versus -

ROYALE FISHING
CORPORATION, et al.,

Respondents.

x-----x

G.R. No. 257049

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

G.R. No. 256282

G.R. No. 256559

MEMORANDUM

Petitioners-Intervenors, **Oceana Philippines International, Pablo R. Rosales, and Ronaldo P. Reyes**, by counsel, respectfully submit this Memorandum in compliance with the 21 November 2023 verbal order of this Honorable Court, and state:

PREFATORY STATEMENT

“Ruin is the destination toward which all men rush, each pursuing his own best interest in a society that believes in the freedom of the commons. Freedom in the commons brings ruin to all.”¹

STATEMENT OF THE MATTERS INVOLVED

1. The Petitioners-Intervenors join these proceedings through 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 2021 and 23 June 2021, and Decision dated 1 June 2021.

2. The assailed Orders denied the Movant-Intervenors Oceana Philippines International, Pablo R. Rosales and Ronaldo P. Reyes’ (“Petitioners-Intervenors” for brevity) Motion to Intervene and Motion for Reconsideration, in an environmental suit where the Respondent commercial fishing corporations assailed the constitutionality of Fisheries Administrative Order No. 266 and Sections 14 and 119 of the Fisheries Code, as amended. The Decision dated 1 June 2021 declared Fisheries Administrative Order No. 266, and made the Writ of Preliminary Injunction against the implementation of FAO No. 266 permanent.

3. The nature of the proceedings is not in dispute – the Respondents themselves have characterized it so – ² and it concerns an **environmental case** under Rule 1 Section 2 of the Rules of Procedure for Environmental Cases:

¹ Garrett Hardin, The Tragedy of the Commons. Science 162, 1243-1248 (1968). DOI:10.1126/science.162.3859.1243

² Paragraph 4 of the Petition for Declaratory Relief dated 29 November 2020 states: “This is an environmental case pursuant to Section 2(q) of A.M. No. 09-6-8-SC, or “The Rules of Procedure for Environment Cases.”

“Section 2. Scope. — These Rules shall govern the procedure in civil, criminal and special civil actions before the Regional Trial Courts, Metropolitan Trial Courts, Municipal Trial Courts in Cities, Municipal Trial Courts and Municipal Circuit Trial Courts **involving enforcement or violations of environmental and other related laws, rules and regulations** such as but not limited to the following:

x x x

(q) R.A. No. 8550, Philippine Fisheries Code;

x x x

Rules of Procedure for Environmental Cases Act; R.A. No. 8048, Coconut Preservation Act; R.A. No. 8435, Agriculture and Fisheries Modernization Act of 1997; R.A. No. 9522, The Philippine Archipelagic Baselines Law; R.A. No. 9593, Renewable Energy Act of 2008; R.A. No. 9637, Philippine Biofuels Act; and **other existing laws that relate to the conservation, development, preservation, protection and utilization of the environment and natural resources.**”

4. More succinctly, this case concerns the Respondents assailing the implementation of environmental laws and regulations citing their own economic interest in protecting claimed trade secrets over the location of “their” fishing grounds.

5. In deference to the efforts of both the Legislature and the Executive to protect marine resources the government owns and holds in trust on behalf of all Filipinos, the decision by the court below must be reversed and Sec. 112 and 114 of R.A. No. 8550, as amended, and FAO No. 266 must be upheld.

6. The pursuit of profit must bend to the efforts of the government at preserving our common future.

STATEMENT OF FACTS

7. Overfishing is not a new problem. Simply put, overfishing occurs when humans exploit marine resources beyond its capacity to replenish itself.

8. Globally, the Food and Agriculture Organization of the United Nations (‘UN FAO’) has estimated the rate of humanity’s fishing at biologically unsustainable levels at “**10 percent in 1974 to 35.4 percent in 2019.**”³

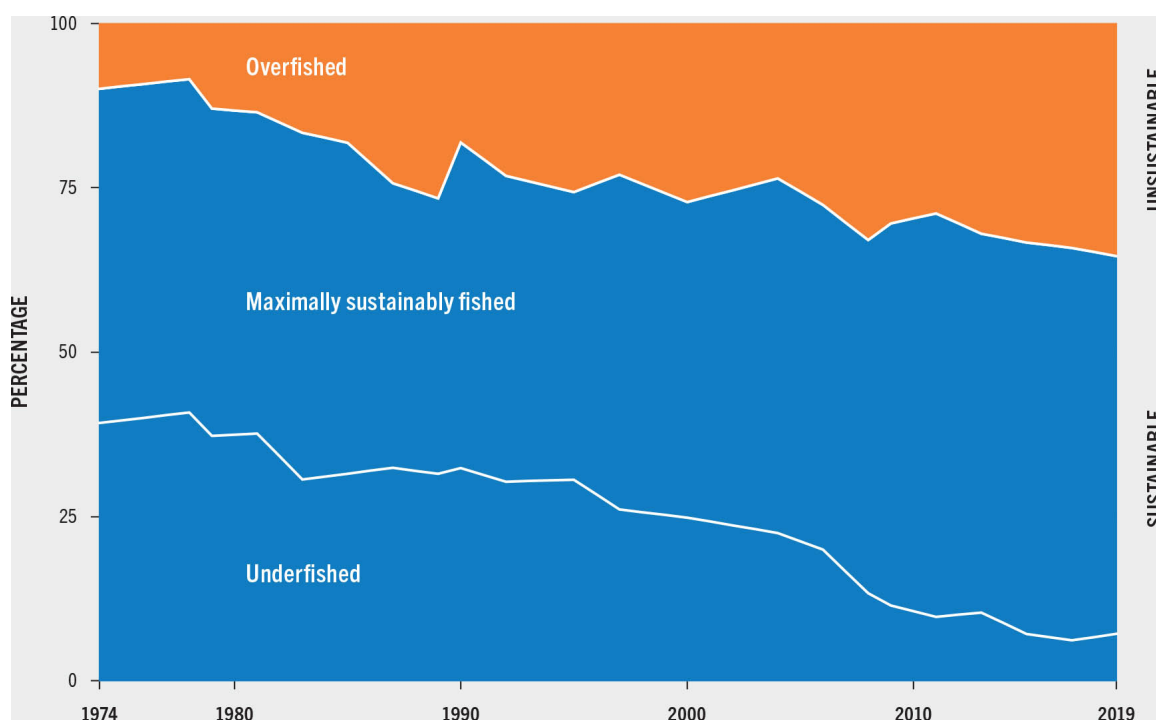


Figure 1. Global Trends In The State Of The World’s Marine Fishery Stocks, 1974–2019.⁴

9. Overfishing leads to several dire consequences: the collapse of an overfished stock,⁵ ecosystem collapse and the extinction of entire species,⁶ and food insecurity.⁷

³ FAO. 2022. **The State of World Fisheries and Aquaculture 2022. Towards Blue Transformation.** Rome, FAO. <https://doi.org/10.4060/cc0461en>

⁴ *Id.*

⁵ For notable examples, *See* Thurstan, R., Brockington, S. & Roberts, C. **The effects of 118 years of industrial fishing on UK bottom trawl fisheries.** *Nat Commun* 1, 15 (2010). <https://doi.org/10.1038/ncomms1013>

and Schijns, R., Froese, R., Hutchings, J. A., Pauly, D., & Raicevich, S. (2021). **Five centuries of cod catches in Eastern Canada.** *ICES Journal of Marine Science.* <https://doi.org/10.1093/icesjms/fsab153>

⁶ Jeremy B. C. Jackson et al., **Historical Overfishing and the Recent Collapse of Coastal Ecosystems.** *Science* 293, 629-637 (2001). DOI:10.1126/science.1059199

⁷ Andreoli, V., Meeuwig, J.J., Skerritt, D.J. et al. **Fisheries subsidies exacerbate inequities in accessing seafood nutrients in the Indian Ocean.** *npj Ocean Sustain* 2, 23 (2023). <https://doi.org/10.1038/s44183-023-00031-9>

10. Closer to home, the situation is objectively more dire as the Philippines is currently in the middle of an 11-year sustained decline in capture fishing, the longest in its history.

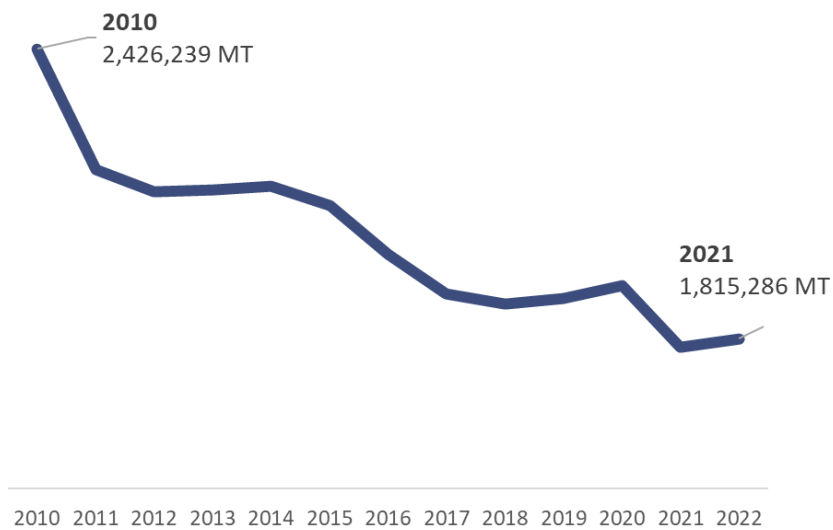


Figure 2. Total fisheries capture from 2010 to 2021.⁸

11. For the last 50 years, fishing productivity has seen a sustained and massive decline from the perspective of small pelagic fisherfolk.⁹

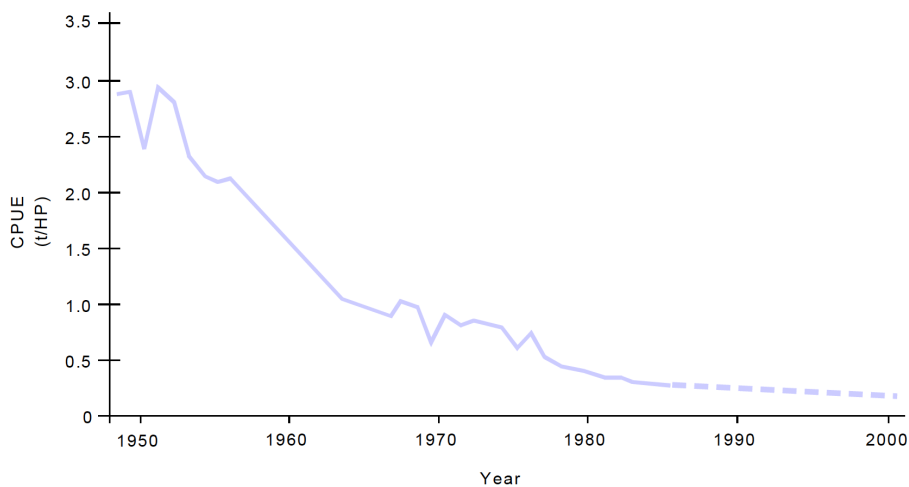


Figure 3. Catch per unit effort for small pelagic fisheries in the Philippines since 1948.¹⁰

⁸ National Stock Assessment Program, NSAP: The Philippine Atlas Capture Fisheries Atlas

Dr. Mudjekeewis D Santos, Noel C Barut, Dr. Drusila Esther E Bayate, CESO IV. Copy available at

<https://www.nfrdi.da.gov.ph/tpjf/etc/NSAP%20Capture%20Fisheries%20Atlas%20NOV%2028%202017.pdf>

⁹ Green, SJ, et al., 2003, **Philippine Fisheries in Crisis: A framework for management.** Coastal Resource Management Project of the Department of Environment and Natural Resources. Copy available at: https://pdf.usaid.gov/pdf_docs/PNACU789.pdf

¹⁰ *Id.*

12. Declining fish stocks have also been found to exacerbate extreme poverty in many coastal communities.¹¹

13. To a nation that derives 34% of its animal protein consumption from seafood,¹² these trendlines should alarm.

14. It is this history and context of unfettered exploitation that Congress passed R.A. No. 8550, otherwise known as the Fisheries Code of 1998, and later R.A. No. 10654, and BFAR implemented the law's intended monitoring, control and surveillance mechanisms through its issuances relating to Vessel Monitoring Measures (VMM) and Electronic Reporting System (ERS).

15. The aim of the law is to achieve food security by limiting access to the fishery and aquatic resources of the country, ensuring rational and sustainable management and conservation of fishery and aquatic resources, supporting the fishery sector and protecting the rights of fisherfolks.

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 fisherfolk organizations/cooperatives and NGOs in the locality

18. At the national level, it is led by the National Fisheries and Aquatic Resources Management Council (NFARMC), a council composed of fifteen (15) members with representatives from different sectors. The NFARMC serves 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.

¹¹ Anticamara JAand Go, KTB (2016). **Spatio-Temporal Declines in Philippine Fisheries and its Implications to Coastal Municipal Fishers' Catch and Income.** Front.Mar.Sci.3:21. doi: 10.3389/fmars.2016.00021

¹² Philippine data can be accessed through **Hannah Ritchie and Max Roser (2021) - “Fish and Overfishing”** Published online at OurWorldInData.org. See <https://ourworldindata.org/fish-and-overfishing>

19. 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

20. 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

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

22. The European Commission, which stringently applies the EU Regulation on IUU fishing¹⁶ against countries that fail to fulfill its commitment in deterring and preventing IUU fishing, eventually issued a yellow card warning against the Philippines in June 2014 for “inadequately addressing IUUF.”

23. 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

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).

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”

24. 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

25. Most notable in these reforms was the passing of R.A. No. 10654 which amended and introduced improvements to the Fisheries Code of the Philippines. For one, R.A. No. 10654 amended the Fisheries Code provision on the monitoring, control and surveillance by clarifying the scope of such a 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**”

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).

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,

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.”

as amended, DA-BFAR was given a period of one (1) year from the effectivity of the IRR to determine the appropriate VMM technology.

29. On 4 September 2018, DA-BFAR issued **FAO No. 260** requiring all commercial vessels “targeting straddling and highly migratory fish stocks within and outside Philippine waters” to comply with vessel monitoring measures before engaging in any fishing activities.

30. On 20 October 2022, DA-BFAR issued **FAO No. 266** which expanded the scope by requiring “all commercial catcher fishing vessels operating in Philippine waters and all fishing vessels in distant waters” to comply with vessel monitoring measures before they may engage in any fishing activity. It cited Sec. 119 of the Fisheries Code, as amended.

Procedural Antecedents

31. On 4 December 2020, Respondents Royale Fishing Corporation, Bonanza Fishing and Market Resources, Inc. and RBL Fishing Corporation filed a Petition for Declaratory Relief²⁰ 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 114 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.

32. Pertinently, the Respondents characterize their petition as an “environmental case”²¹ and, as such, the case was assigned to the sole Environmental Court of Malabon, RTC Malabon Branch 170.

33. 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

²⁰ Dated 29 November 2020, attached to the Petition as **Annex L**.

²¹ Par. 4 of the Respondent’s Petition for Declaratory Relief dated 29 November 2020.

reporting, data manual reporting in case of operational failure) comprise “trade secrets” which are protected and privileged information.

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

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

36. Despite the clear, unequivocal and consistent prohibition against the issuance of a TRO and preliminary injunction against the lawful enforcement of environmental laws,²² the Regional Trial Court of Malabon, Branch 170 granted the Respondents’ application for injunction in an Order dated 22 January 2021.²³ It forthwith issued a Writ of Preliminary Injunction²⁴ 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.”

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

²² 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.

²³ Attached to the Petition as **Annex M**.

²⁴ Dated 28 January 2021, attached to the Petition as **Annex N**.

38. Upon the public respondents' Manifestation and Motion (in lieu of Memorandum)²⁵ 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.

39. 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-Intervention²⁶ and a Motion to Lift the Writ of Preliminary Injunction.²⁷

40. Owing to the community quarantine that was still in effect,²⁸ 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 2021.²⁹

41. 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.

42. 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

²⁵ Attached to the Petition as **Annex O**.

²⁶ Dated 19 April 2021, attached to the Petition as **Annex P**.

²⁷ Dated 19 April 2021, attached to the Petition as **Annex Q**.

²⁸ Administrative Circular No. 22-2021 dated 14 April 2021.

²⁹ Attached to the Petition as **Annex R**.

valid and constitutional as it was enacted pursuant to the State's 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.

43. 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.

44. Likewise attached to the Answer-in-Intervention were the Judicial Affidavits of Petitioner-Intervenors fisherfolk Rosales,³⁰ Reyes³¹ and Oceana Philippines International's Senior Campaign Manager Daniel M. Ocampo.³²

45. On 30 April 2021, herein private Respondents filed their Opposition to the Motion to Intervene,³³ arguing in the main that the Petitioner-Intervenors are supposedly not real-parties-in-interest, and that the proposed intervention will cause further delay.

³⁰ Attached to the Petition as **Annex S**.

³¹ Attached to the Petition as **Annex T**.

³² Attached to the Petition as **Annex U**.

³³ Dated 30 April 2021, attached to the Petition as **Annex V**.

46. On 5 May 2021, Petitioner-Intervenors filed their Reply to the Opposition of even date,³⁴ 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”

47. On 17 May 2021, Petitioner-Intervenors filed a Motion to Resolve of even date,³⁵ 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.

48. In an Order dated 25 May 2021,³⁶ 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 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.”

³⁴ Attached to the Petition as **Annex W**.

³⁵ Attached to the Petition as **Annex X**.

³⁶ Attached to the Petition as **Annex A**.

49. Petitioner-Intervenors immediately filed their Motion for Reconsideration on 31 May 2021.³⁷

50. 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.

51. 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 2021,³⁸ ruling in favor of the commercial fishing vessel-corporations on all points.

52. Petitioner-Intervenors filed their Petition for Review on Certiorari under Rule 45 on 16 July 2021.

53. On 26 September 2023, this Honorable Court set the case for oral arguments and oral arguments proceeded on 10 October 2023 and 21 November 2023.

54. The Honorable Court ordered all parties to submit their respective memoranda within 30 days at the closing of the oral arguments.

55. Hence this Memorandum.

³⁷ Attached to the Petition as **Annex D**.

³⁸ The certified true copy of the Decision dated 1 June 2021 is attached to the Petition as **Annex E**.

ARGUMENTS

I

BEING AN ENVIRONMENTAL CASE CONCERNING THE ECONOMIC PRIVILEGES ENJOYED BY THE RESPONDENTS, THE FOLLOWING LEGAL CONCLUSIONS CAN BE IMMEDIATELY DERIVED:

- A. THE APPROPRIATE JUDICIAL TEST IS RATIONAL BASIS.
- B. CITIZEN SUITS AND LIBERALIZED STANDING APPLY.
- C. THE APPROPRIATE MODE OF APPEAL IS RULE 45.

II

SECS. 14 AND 119 OF THE FISHERIES CODE, AS AMENDED, AND FAO NO. 266 SERIES OF 2020 DO NOT VIOLATE THE UNREASONABLE SEARCHES AND SEIZURES CLAUSE, THE DUE PROCESS CLAUSE, AND THE EQUAL PROTECTION CLAUSE.

- A. PROPERTY RIGHTS SUCH AS TRADE SECRETS GIVE WAY TO THE CONSTITUTIONAL RIGHT TO A BALANCED AND HEALTHFUL ECOLOGY AND THE LEGITIMATE GOVERNMENTAL INTERESTS UNDER THE FISHERIES CODE.
- B. QUASI-LEGISLATIVE PROCEEDINGS DO NOT REQUIRE NOTICE AND HEARING TO BE VALID.

**C. PRIVILEGES ENJOYED BY
COMMERCIAL FISHING
COMPANIES MUST GIVE WAY
TO REASONABLE
GOVERNMENT REGULATIONS
MEANT TO PRESERVE AND
SUSTAIN FISHING STOCKS.**

DISCUSSION

I. Being an environmental case concerning the economic privileges enjoyed by the Respondents, the following legal conclusions can be immediately derived:

A. The appropriate judicial test is Rational Basis.

56. Being a case that concerns the weighing of the interest of the government to protect and conserve marine resources, on the one hand, and the economic rights of the Respondents on the other, the appropriate level of scrutiny is easy to ascertain.

57. The Respondents have never claimed the application of strict scrutiny, nor could they, for the interest they seek to protect is purely economic. No fundamental rights are at stake here.

58. The appropriate test, therefore, is **Rational basis**.

59. Consistent with the deferential attitude adopted by this Court under the framework of rational basis, the presumption of constitutionality is given to legislative acts and the party assailing the constitutionality of the act has the burden of proving its invalidity.³⁹

60. No factual or legal issue was brought concerning the legal status of waters and fisheries. The State owns and protects these under the Regalian doctrine and the Public Trust doctrine:

“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 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

³⁹ *Municipality of San Mateo v. Smart Communications*, G.R. No. 219506, 23 June 2021

Filipino citizens, or corporations or associations at least 60 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 waterpower, 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.

The **Congress may, by law, allow** small-scale utilization of natural resources by Filipino citizens, as well as cooperative fish farming, with priority to subsistence fishermen and fish workers in rivers, lakes, bays, and lagoons. x x x”

61. Any utilization of these resources are enjoyed as **privileges**, not as rights, and the State is well within its constitutional prerogative to subject it to conditions or to withhold its enjoyment completely.

62. The State's exercise of police power is most relevant in this area of human activity as it leads to the greatest good for the greatest number of people, without infringing on rights reserved for the People in their capacity as sovereign.

63. The application of Rational basis thus requires this Court to see if the Respondents were able to show (a) that the law is not imbued with a **legitimate interest** and (b) that there is **no rational connection between the law and the means employed** to achieve the State's objectives.⁴⁰

64. In both, the Respondents fail.

65. **First**, the legitimacy of the State's interest in preserving the nation's marine wealth has never been in dispute. The prevention of the “tragedy of the commons”⁴¹ from occurring within Philippine waters is not only a legitimate interest but an existential one. Fisheries and ecosystem collapse are points of no

⁴⁰ *SPARK v. Quezon City*, G.R. No. 225442, 8 August 2017.

⁴¹ Garrett Hardin, *The Tragedy of the Commons*. *Science* 162, 1243-1248 (1968). DOI:10.1126/science.162.3859.1243

return and regulatory torpor only ensures disaster. Respondents themselves recognize the direct benefit they will enjoy from the reduction of IUUF:

Q: Okay. Now, you would agree with me, Atty. Naval, that for the respondents, they will be directly benefited when IUUF is significantly reduced?

A: Yes, Your Honor.

Q: And fishing becomes sustainable?

A: Yes, Your Honor.⁴²

66. **Second**, the installation of VMM on commercial fishing vessels is a **reasonable measure** by the State, as owner and manager of the fishery resource, to monitor compliance with regulations aimed at preserving our common pool resources. Literature abounds on the effectiveness of VMS in increasing the effectiveness of States' monitoring, control and surveillance of fishing vessels.⁴³

67. By including VMM in R.A. No. 10654, Congress saw it as the most prudent and cost-efficient method of ensuring compliance with regulations against IUUF. Consistent with the

⁴² Transcript of Stenographic Notes (TSN) of the 10 October 2023 Oral Arguments, p. 47.

⁴³ FAO Technical Guidelines for Responsible Fisheries, which notably found: "VMS clearly makes it possible to improve the data in relation to the location of fish catches. Catch location and size has largely been provided by vessel operators in the past and has been notoriously unreliable. The single biggest factor which has allowed unscrupulous operators to provide false information and avoid compliance with management measures has been that fishing activity takes place out of view of the management agency or anyone other than the vessel crew. VMS provides relatively reliable and accurate information on the location of vessels and, with a reasonable degree of probability, where fishing activity takes place. VMS is the first practical means of collecting and using such information about all vessels, in the history of fisheries management." Available at: <https://www.fao.org/3/w9633e/w9633e.pdf>; See also: Canadian Technical Report of Fisheries and Aquatic Sciences, Vessel Tracking Datasets for Monitoring Canada's Conservation Effectiveness, which concluded among others: "In addition to assessing static fishing closures, vessel tracking data can be applied to address questions regarding effectiveness of other conservation measures (e.g. seasonal fishing closures, voluntary avoidance announcements, speed restrictions in whale migration routes) and vessel-related stressors (e.g. marine noise, physical disturbance, discharge, and pollution/spill potential). Collection of these vessel tracking data over the long term will enable the human pressures monitoring that is imperative to evaluate conservation effectiveness (Dunham et al. 2020)." Available at: https://epe.lac-bac.gc.ca/100/201/301/weekly_acquisitions_list-ef/2021/21-04/publications.gc.ca/collections/collection_2021/mpo-dfo/Fs97-6-3387-eng.pdf. See also Effectiveness of vessel monitoring systems in managing and monitoring fishing vessels in Ca Mau province, Vietnam, which concluded that "VMS plays a vital role in managing and monitoring fishing vessels at sea. The study's results show that VMS support effectively in combating IUU fishing and removing EC yellow card in Ca Mau province. Significantly, most of the surveyed fishers assessed that VMS was used effectively in some key functions and requirements." Available at: <https://iopscience.iop.org/article/10.1088/1755-1315/1278/1/012009/pdf>

principle of separation of powers, this wisdom is not subject to judicial review.

68. Because of its sheer size and characteristics, the common pool that is Philippine waters and fisheries is difficult and costly to monitor. Exclusion in the interest of preservation borders on the impossible when all **2,263,816 square kilometers** of Philippine waters require continuous monitoring.

69. As will be further discussed in this Memorandum, this measure is also consistent with international standards on the State's obligations with respect to fisheries assessment, management and conservation – measures, which Respondents themselves have voluntarily and faithfully complied with under different jurisdictions.

70. The alternative – unregulated and unfettered access to fishery resources – inevitably leads to the tragedy of the commons. The State's adoption of specific interventions is consistent with its constitutional mandate of judicious utilization of the fisheries and aquatic resources and equally comply with its mandate to protect the rights of subsistence fishermen, especially of local communities, to the preferential use of local marine and fishing resources, both inland and offshore.

B. Citizen suits and liberalized standing apply.

71. In the same breath that it granted the Respondents' "environmental case," the court *a quo* denied the Petitioner-Intervenors' motion to intervene on the following disquisition:

"The Court cannot agree with the movant-intervenors that the resolution of the petition can directly affect them as enforcers of environmental laws. The interest that movant-intervenors referred to, if it exists at all, is indirect, contingent, remote, conjectural, consequential and collateral."

72. To recall, the Petitioners-Intervenors cited direct injury to themselves. Further, Petitioner Oceana invoked 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, in general, and for the protection and preservation of the nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, in particular.”

73. Thus, with the wave of his pen, the judge of the court *a quo* deleted thirty years of jurisprudence from this Honorable Court in matters concerning *locus standi* in environmental cases.

74. Adding insult to injury, the court *a quo* effectively silenced Petitioners Rosales and Reyes, both municipal fisherfolk, from participating and invoking the very protection afforded to them by the Fisheries Code as municipal fisherfolk.

75. Without an effective way of monitoring, nothing stops the Respondents from fishing in municipal fishing waters, as they have repeatedly done so and been caught for and fined in the past:

Q: Okay. Are you familiar with F/V Anastacia? It is a ship registered as BFAR Registry Number 0000417, the registered company or owner is Royale Fishing Corporation, do you affirm?

A: I don't exactly know the names of their vessels, Your Honor.

Q: In any case, from sources, open source, we found out that Royale Fishing Vessel was apprehended on September 18, 2021 for illegal fishing activities. Would you know this?

A: I've heard of it, Your Honor.

Q: Yes, and that was for the use of superlights, which was illegal already. Correct?

A: Yes, Your Honor.⁴⁴

x x x

Q: That's possible. Now, are you aware of the fishing vessels of RBL, namely: Fishing Banca Monalinda-68, Morning Glory-XIX, Mayfair-XXI, and Morning Glory-XXXVII? Not really?

A: Apology, I don't. I have not memorized.

Q: So, it was caught violating Municipal Ordinance No. 139 for fishing 7.3 nautical miles

⁴⁴ TSN of the 21 November 2023 Oral Arguments, pp. 83-84.

from the shores of Barangay Tinintinan, which is still municipal waters, correct?

A: If I may, Your Honor.⁴⁵

x x x

Q: Yes, and therefore, it is the state's duty to make sure that our fisheries laws, our need to conserve resources, is actually protected, correct?

A: Correct, Your Honor.⁴⁶

76. Further, Petitioner Oceana is a global non-governmental organization focused on ocean conservation, protection, and restoration. Through the untiring efforts of its dedicated roster of scientists, campaigners, and lawyers, it has participated and gained peerless experience in ocean conservation litigation across the world. Specifically on fisheries, it has secured the following legal milestones:

a. In the United States, a three-judge panel of the D.C. Circuit Court of Appeals unanimously agreed with Oceana's position that the National Marine Fisheries Service must establish a credible system for measuring bycatch in Northeast fisheries after years of challenging the government's failure to promulgate an adequate bycatch reporting methodology for the federal fisheries in the Northeast United States;

b. In Chile, Oceana secured a landmark ruling to enforce the 2013 fisheries law where the Environmental Court for the first time reviewed a case related to fisheries management and struck down the Southern Hake quota. The Chilean Environmental Court ruled that the quota was established without sufficient scientific basis, violating the precautionary principle and the government's duty to protect the marine environment.

c. In Spain, the Supreme Court of Madrid ruled in favor of Oceana in recognizing the right to have access to bottom-trawl fishing vessel location data generated by the vessel's Vessel Monitoring Systems ("VMS").

⁴⁵ TSN of the 21 November 2023 Oral Arguments, p. 89.

⁴⁶ TSN of the 21 November 2023 Oral Arguments, p. 90.

d. In a separate case also in Spain, the Spanish National Court granted Oceana's motion and ordered the Spanish Oceanographic Institute to disclose information concerning the DRAGONSAL project related to characterizing the benthic ecosystem of the fishing ground located between Sa Dragonera and Cabo Ses Salines.

77. In 2018, Petitioner Oceana filed a petition for the issuance of a writ of continuing mandamus in *Arnulfo Febria et. al. v. Piñol*⁴⁷ to compel DA-BFAR to issue precisely the VMM now being disputed in these proceedings.

78. As early as 2007, the officers of Petitioner Oceana, Atty. Gloria Estenzo Ramos and Atty. Rose-Liza Eisma-Osorio, filed in their personal capacity and secured a victory in *Resident Marine Mammals v. Secretary Reyes* before this very Court as “stewards of nature.”⁴⁸

79. True to form, Petitioner Oceana has a long track record of giving life to this Honorable Court's description of the Public Trust doctrine in *Maynilad v. Secretary of the DENR*:⁴⁹

“These cases aim to impress upon everyone in the political sphere the import of the Public Trust Doctrine: the people are the ultimate owners of the country's resources, over which the State is a trustee, a subservient manager, a mere nominal holder.”

80. As stewards of nature, the Petitioner-Intervenors come again to invoke this Court's power and duty in protecting our common heritage.

B. The appropriate mode of appeal is Rule 45.

81. Being an environmental case, the appropriate mode of appeal is Rule 45 under Rule 7, Sec. 16 of the Rules of Procedure for Environmental Cases:

⁴⁷ GR No 242299, 7 December 2021.

⁴⁸ G.R. No. 180771, 21 April 2015.

⁴⁹ G.R. No. 202897, 19 July 2022.

“Section 16. Appeal. - Within fifteen (15) days from the date of notice of the adverse judgment or denial of motion for reconsideration, any party may appeal to the Supreme Court under Rule 45 of the Rules of Court. The appeal may raise questions of fact.”

82. Considering, further, the court a quo’s eventual disposition of the case, the ruling of this Court in *E.I Dupont De Nemours v. Director Francisco*⁵⁰ on the appropriateness of a Petition for Review under Rule 45 squarely applies:

“[When a lower court] has already resolved the question of intervention and the merits of the case, an appeal through a petition for review on certiorari under Rule 45 of the Rules of Court is the proper remedy.”

83. Lastly, the Petitioners-Intervenors have raised pure questions of law: their legal standing, the inappropriateness of the court a quo’s issuance of a TRO, the inapplicability of the search and seizure clause, the substantial distinctions warranting differences in the treatment of the Respondents, and the Respondents’ flimsy invocation of Due Process.

II. Secs. 14 and 119 of the Fisheries Code, as amended, and FAO No. 266 series of 2020 do not violate the unreasonable searches and seizures clause, the due process clause, and the equal protection clause.

A. Property rights such as trade secrets give way to the constitutional right to a balanced and healthful ecology and the legitimate governmental interests under the Fisheries Code.

84. Corporate pursuit of profit should yield to legislative measures that aim to promote the welfare of all, especially the right to a balanced and healthful ecology.

85. Citing *Air Philippines Corporation v. Pennswell, Inc.*,⁵¹ the Respondents argue that the location of “their” fishing

⁵⁰ G.R. No. 174379, 31 August 2016.

⁵¹ G.R. No. 172835, 13 December 2007.

grounds is a trade secret to be protected from government intrusion such as those under FAO No. 266.

86. The Petitioner-Intervenors respectfully direct this Court's attention to the two false premises of this argument:

- a. that the invocation of "trade secrets" by itself is sufficient to trigger the constitutional right against unreasonable searches and seizures, and
- b. more fundamentally, that they have the right to exclude other fishing vessels from "their" fishing grounds under the concept of ownership.

87. The search and seizure clause does not mention "trade secrets." Trade secrets, is an "amorphous, non-statutory concept,"⁵² and it cannot be found in the Constitution or any statutory text. Trade secrets involve the passing of information between and among commercial actors. It is not a constitutional right that can be invoked against the State.

88. Moreover, the right against unreasonable searches and seizures presupposes the confluence of two things: the conduct of a "search" by the government and a claim by one who has a lawful claim over the place or the thing searched.

89. This Court in *Lim v. Ponce de Leon*⁵³ ruled that "one who is not the owner, lessee, or lawful occupant of the premise searched cannot raise the question of validity of the search and seizure."

90. The Respondents claim none of the above listed proprietary interests over the location. Instead they claim that they possess a reasonable expectation of privacy over "location data."

91. As a concept more akin to intellectual property, trade secrets is limited by and subject to "public interest" under the Intellectual Property Code:⁵⁴

"Section 74. Use of Invention by Government. - 74.1. A Government agency or third person authorized by the Government may exploit the invention even without agreement of the patent owner where:

⁵² TSN of the 21 November 2023 Oral Arguments, p. 93.

⁵³ G.R. No. L-22554, 29 August 1975.

⁵⁴ See Sec. 74, 93.2, and 184 (h) of R.A. No. 8293, as amended.

(a) The public interest, in particular, national security, nutrition, health or the development of other sectors, as determined by the appropriate agency of the government, so requires; or *x x x*

x x x

Section 93. Grounds for Compulsory Licensing. - The Director of Legal Affairs may grant a license to exploit a patented invention, even without the agreement of the patent owner, in favor of any person who has shown his capability to exploit the invention, under any of the following circumstances:*x x x*

93.2. Where the public interest, in particular, national security, nutrition, health or the development of other vital sectors of the national economy as determined by the appropriate agency of the Government, so requires; or *x x x*

x x x

Section 184. Limitations on Copyright. - 184.1. Notwithstanding the provisions of Chapter V, the following acts shall not constitute infringement of copyright:

x x x

(h) The use made of a work by or under the direction or control of the Government, by the National Library or by educational, scientific or professional institutions where such use is in the public interest and is compatible with fair use; *xxx*"

92. Trade secrets, further, cannot be protected against discovery by **fair and honest means**.⁵⁵ The Respondents, who are mere beneficiaries of the privileges granted by the State, cannot prohibit the State as well as other fishing companies and fisherfolk from sailing within Philippine waters and discovering fishing grounds on their own.

93. To classify corporate regulatory disclosures involving compliance monitoring requirements as "searches" casts too wide a net as it may also subject the following to challenge: SEC General Information Sheets and Annual Financial Reports; DOLE

⁵⁵ *Kewanee Oil Co. v. Bicron Corp.*, 416 U.S. 470 (1974).

compliance reports; DENR Environmental Compliance Certificates, and other regulatory documentation required by government agencies as conditions to grants of permits and licenses.

94. In addition, the characterization of location data of fishing sites as the Respondents' "trade secret" conveniently sets aside both the Regalian Doctrine and the Public Trust doctrine.⁵⁶ Any benefit derived out of the privilege extended to them by the State cannot ripen into a constitutional right. As the spring cannot rise above the source, the privileges enjoyed by the Respondents cannot supersede the Regalian rights of the State. The Respondents themselves concede this point:

Q: Okay. Thank you. So, as a last point, you, of course, concede that all these resources are owned by the State?

A: Yes, Your Honor.

Q: And because they're all owned by the State, the State has the right to, you know, to regulate and to control?

A: Yes, Your Honor.

Q: And in doing that, the State can issue regulations like FAO 266?

A: Yes, Your Honor.⁵⁷

95. Even if this Court were to take the position that the disclosure of location data through VMM amounts to a "search," it can only fall under one of the recognized exceptions:

- a. plain view doctrine;
- b. search of a moving vehicle; and
- c. consented search.

96. Taken to its farthest logical extent, the availability of open-source satellite data belies any claim of secrecy in open waters. The following visual-infrared visualization presented through Karagatanpatrol.org, derived and collated through publicly available satellite data, eloquently shows what a thousand words cannot:

⁵⁶ Paras. 93-96 of the Petition dated 16 July 2021 filed by herein Petitioner-Intervenors.

⁵⁷ TSN of the 10 October 2023 Oral Arguments, p. 49. See also TSN of the 10 October 2023 Oral Arguments, p. 53-54.

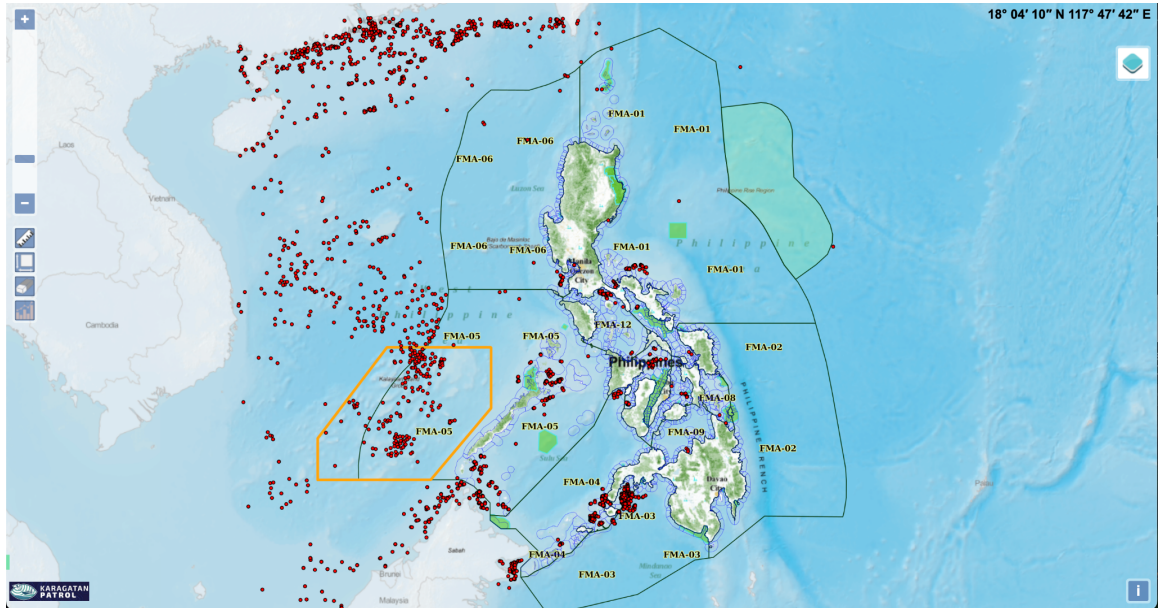


Figure 4. Near real-time visual satellite data of fishing vessels.⁵⁸

97. While Karagatan Patrol is limited to the Philippines, there has been a years-long global effort at monitoring location data at sea. They coined the project **Global Fishing Watch**, and it is spearheaded by Google, in partnership with Oceana and Sky Truth. Through a simple search through <https://globalfishingwatch.org/map/vessel-search>, the historical location data of every compliant fishing vessel in the world can be mapped and shown:

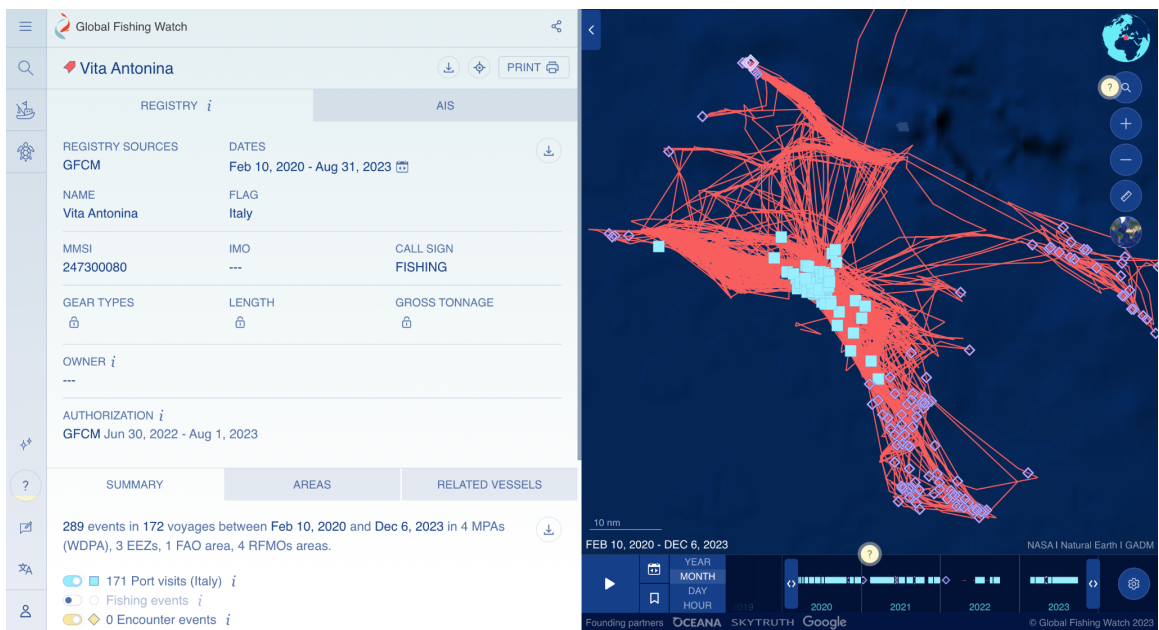


Figure 5. Near real-time AIS data from Global Fishing Watch.⁵⁹

⁵⁸ www.karagatanpatrol.org collects and collates publicly available satellite data. It was created and maintained by Petitioner-Intervenor Oceana to help law enforcement monitor compliance.

⁵⁹ www.karagatanpatrol.org collects and collates publicly available satellite data. It was created and maintained by Petitioner-Intervenor Oceana to help law enforcement monitor compliance.

98. In a similar vein, the Respondents' fishing vessels fall squarely under the purpose enunciated by this Court in *Evardo v. People*⁶⁰ of exempting moving vehicles from the warrant requirement:

“This exception is easy to understand. A search warrant may readily be obtained when the search is made in a store, dwelling house or other immobile structure. But it is impracticable to obtain a warrant when the search is conducted on a mobile ship, on an aircraft, or in other motor vehicles since they can quickly be moved out of the locality or jurisdiction where the warrant must be sought.”

99. The commercial fishing corporations' unsubstantiated claim of “trade secrets” collapses when the Respondents were confronted with the contents of their own fishing license:

Q: So, I presumed that all your vessels would have a license?

A: Yes, Your Honor.

Q: Okay, now, to obtain this license, you have to comply with certain requirements, right?

A: Yes, Your Honor.

Q: And one of these requirements is what is known as the grid map indicating the proposed fishing grounds?

A: Yes, Your Honor.

Q: Can you tell us what is this grid map? You may consult your client about this.

A: Your Honor, please, that requirement is being imposed against the applicant to show, for them to show the BFAR where they intend to fish.

Q: Yes, so therefore, part of the requirement of the license is that for the applicant to provide a map where they intend to fish?

⁶⁰ G.R. No. 234317, 10 May 2021.

A: Yes, Your Honor.

Q: Okay. So, therefore, **once the license is given, an area is basically identified for the fishing companies where they could fish?**

A: **Yes, Your Honor.**⁶¹

100. Consequently, their lengthy protest against FAO 266 rings hollow when the Respondents have already given the location data of their fishing grounds as a necessary condition to securing a license.

101. Historically, the Respondents have manually reported the location of their fishing grounds to DA-BFAR. They qualify this inconvenient fact by arguing that, somehow, a “real-time” disclosure amounts to a search when a post-hoc disclosure is not:

Q: Okay. Before the VMS or the ERS were required and before they were installed in your fishing vessels, were there measures already required by the BFAR and by the DA for fishing vessels, for commercial fishing vessels towards this end?

A: **Yes, Your Honor. We have the so-called manual reporting.** The data of the fish catch, the **location** of where they caught the fish, date and time, these are usually submitted, these are regularly submitted actually to the PFDA whenever the carriers come home with their catch, they report to the PFDA. And also on the renewal of their licenses, they submit logbooks containing their catch where they caught the fish manually, Your Honor.⁶²

x x x

Q: Is this the same information that is required to be transmitted by the ERS? ERS ba?

A: Yes, Your Honor.

⁶¹ TSN of the 10 October 2023 Oral Arguments, p. 61.

⁶² TSN of the 10 October 2023 Oral Arguments, p. 47.

Q: ERS. It's the same information?

A: It's the same information, Your Honor.

Q: **So, it's exactly the same information?**

A: **Yes, Your Honor.**⁶³

102. This reportorial hypocrisy is further highlighted in the following exchange where the Respondents admit that they essentially have been reporting the same set of data to foreign governments:

Q: Okay. In Indonesia, they require VMS.

A: Yes, Your Honor.

Q: **So, in Indonesia, is your client complying with VMS?**

A: **Yes, Your Honor, it's the requirement there, Your Honor.**

Q: Yes, so they can comply with the requirement of VMS in Indonesia, Thailand also requires VMS, but you do not wish it to be in the Philippines, correct?

A: Because they have no choice there, Your Honor.⁶⁴

No Objective Expectation of Privacy

103. Ultimately, however, the Respondents cannot invoke any putative right against unreasonable searches and seizures because the international maritime order has relied on the real-time reporting of location data for decades. Try as the Respondents may huff and puff, there simply is no objective expectation of privacy over a vessel's location at sea.

104. The Petitioners-Intervenors have previously outlined the international legal framework surrounding fisheries stock management in their petition:

⁶³ TSN of the 21 November 2023 Oral Arguments, p. 78.

⁶⁴ TSN of the 21 November 2023 Oral Arguments, pp. 86-87.

- a. the 1994 United Nations Convention on the Law of the Sea,⁶⁵
- b. the 1995 United Nations Fish Stock Agreement,⁶⁶
- c. the 2004 Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC Convention),⁶⁷

105. So, too, the Petitioners-Intervenors highlighted the existence of several Regional Fisheries Management Agreements and International Fisheries Commissions to which the Philippines is bound. The **Western Central Pacific Commissions (WCPFC)**, for example, 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.”⁶⁸ So, too, the **Commission for the Conservation of Southern Blue Fin Tuna (CCSBT)**,⁶⁹ the **Indian Ocean Tuna Commission (IOTC)**,⁷⁰ and the **International Commission for the Conservation of Atlantic Tunas (ICCAT)**.⁷¹

106. Concerningly, the WCPFC has already designated the Philippines as “**Priority Non-Compliant**” for the fourth straight

⁶⁵ 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.**”

⁶⁶ 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.

⁶⁷ 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.”

⁶⁸ See Secs. 4 and 6 thereof.

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

⁶⁹ See Sec. 1 and 2.

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

⁷⁰ 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>

⁷¹ 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)”

year in its obligation to “(ensure) that fishing vessels comply with the Commission standards of WCPFC VMS including being fitted with ALC/MTU that meet commission requirements.”⁷²

107. The Petitioner-Intervenors further highlighted that even the **1974 International Convention for the Safety of Life at Sea (SOLAS)**, an international legal instrument that has nothing to do with fishing conservation, requires the use of voyage data recorders (VDRs) and automatic ship identification systems (AIS).⁷³

108. Neither *United States v. Jones*⁷⁴ nor *Mexican Gulf v. U.S. Dept. of Comm.*,⁷⁵ apply to the facts of this case.

109. Besides being obviously at odds with the moving vehicle exception recognized by Philippine jurisprudence, *US v. Jones* concerned the government’s attachment of a GPS device to an accused’s vehicle *beyond* the spatial and temporal limitations set out by the issuing court in the search warrant. The US Supreme Court held there that the government’s use of the GPS device was a “search” such that its continued use beyond the original 10-day period and beyond the stated geographic limitations required another warrant. Neither economic interests nor statutory reportorial requirements are discussed here.

110. *Mexican Gulf v. U.S. Dept. of Comm* involved a challenge against a rule requiring charter-boat owners “to, at their own expense, install onboard a vessel monitoring system that continuously transmits the boat’s GPS location to the Government.” Put simply, the Fifth Circuit ruled that the Magnuson–Stevens Fishery Conservation and Management Act did not authorize the government to attach VMS to charter vessels. In contrast, R.A. No. 10654 expressly authorizes the establishment of a monitoring, control and surveillance system use which includes VMS and VMM. The costs to install these devices are borne by the government.⁷⁶

111. FAO No. 266 is not even the first implementation of the Philippines’ international commitments and of its own State

⁷² WCPFC 2021 Final Compliance Monitoring Report -covering 2020 activities, copy available at <https://www.wcpfc.int/doc/wcpfc18-2021-fcmr/2021-final-draft-compliance-monitoring-report-covering-2020-activities-adopted>

⁷³ 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.

⁷⁴ 565 U.S. 400 (2012)

⁷⁵ No. 22-30105 (5th Cir. 2023)

⁷⁶ TSN of the 21 November 2023 Oral Arguments, pp. 39-40.

policies and objectives relative to fisheries management and preservation. BFAR has 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.”

B. Quasi-legislative proceedings do not require notice and hearing to be valid.

112. The Respondents maintain that FAO 266 violates procedural due process because it was issued without notice and without the benefit of a hearing. They point to Section 65.2 of the Implementing Rules and Regulations of R.A. 8550 as amended which supposedly gives them the power to appoint their own scientists.

113. In fine, the Respondents lament that the said administrative issuance was based merely on a unilateral evaluation in violation of their rights to due process and to participate in the decision-making process.

114. The Respondents seem to be mistaking two essential derivative powers of administrative agencies: quasi-legislative powers and quasi-judicial powers.

115. FAO 266 is a product of the BFAR’s exercise of its quasi-legislative power. This is to be distinguished from an act which is quasi-judicial in nature, which prescribes adherence to the due process requirements of notice and hearing. The ruling of this Honorable Court in *Abella, Jr. v. Civil Service Commission*,⁷⁷ is illuminating:

“In exercising its quasi-judicial function, an administrative body adjudicates the rights of persons before it, in accordance with the standards laid down by the law. The determination of facts and the applicable law, as

⁷⁷ G.R. No. 152574, 17 November 2004.

basis for official action and the exercise of judicial discretion, are essential for the performance of this function. On these considerations, it is elementary that due process requirements, as enumerated in *Ang Tibay*, must be observed. These requirements include prior notice and hearing.

On the other hand, quasi-legislative power is exercised by administrative agencies through the promulgation of rules and regulations within the confines of the granting statute and the doctrine of non-delegation of certain powers flowing from the separation of the great branches of the government. Prior notice to and hearing of every affected party, as elements of due process, are not required since there is no determination of past events or facts that have to be established or ascertained. As a general rule, prior notice and hearing are not essential to the validity of rules or regulations promulgated to govern future conduct.”

116. In this particular instance, FAO 266 was clearly promulgated by the BFAR in the exercise of its quasi-legislative powers.

117. Further, assuming *arguendo* that the requirements of procedural due process apply, the Respondents’ assertion fails on three (3) points:

a. They were, in fact, given a chance to participate in the proceedings which led to the issuance of FAO 266.

b. They were adequately represented considering the commercial fishing sector was given five (5) seats⁷⁸ in the NFARMC. This was alluded to during the interpellation:

Q: This NFARMC has a core function. What is the core function of this?

⁷⁸ Article II, Section 70(d) of the IRR of R.A. 10654.

A: Essentially you can derive it from the NFARMC – National Fisheries and Aquatic Resources Council, they formulate policies, they study policies to be recommended for the approval of the department secretary.

Q: And that council represents six (6) sectors in our society. Do you know these 6 sectors in our society represented in that council?

A: I will try, Your Honor.

Q: Commercial fishers, that is one.

A: Yes, Your Honor.

Q: **So you are represented in that?**

A: **Yes, Your Honor.**⁷⁹

c. 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.⁸⁰ This case should not be an exception.

118. In *Syjuco v. Abaya*,⁸¹ this Honorable Court clarified that “so long as interested parties are given an adequate opportunity and avenue to air their views prior to the adoption of a new rule, the essence of due process is deemed served.”

⁷⁹ TSN of the 10 October 2023 Oral Arguments, p. 73.

⁸⁰ *Microsoft Corporation v. Manansala*, G.R. No. 166391, 21 October 2015.

⁸¹ G.R. Nos. 215650, 215653, 215703, 215704 and 216735, 28 March 2023.

119. Consequently, in light of these submissions, it becomes apparent that the court a quo's nullification of FAO 266 on due process considerations is premised, at best, on an *imagined* lack of representation considering: (a) the Respondents were, in fact, adequately represented and heard; and (b) FAO 266 is a product of the BFAR's quasi-legislative functions not bound by the requirements of notice and hearing.

C. Privileges enjoyed by commercial fishing companies must give way to reasonable government regulations meant to preserve and sustain fishing stocks.

120. Finally, it stands to reason that the Respondents' enjoyment of the privilege of engaging in fishing is subservient to the interest of the State of preserving and conserving fishing stocks.

121. The Court in *Oposa v. Factoran*⁸² previously had occasion to explain the nature of licenses over natural resources – here, timber licenses – this way:

"x x x A timber license is an instrument by which the State regulates the utilization and disposition of forest resources to the end that public welfare is promoted. A timber license is not a contract within the purview of the due process clause; it is only a license or a privilege, which can be validly withdrawn whenever dictated by public interest or public welfare as in this case.

'A license is merely a permit or privilege to do what otherwise would be unlawful, and is not a contract between the authority, federal, state, or municipal, granting it and the person to whom it is granted; neither is it a property or a property right, nor does it create a vested right; nor is it taxation' (C.J. 168). Thus, this Court held that the granting of license does not create irrevocable rights, neither is it property or property rights (People vs. Ong Tin, 54 O.G. 7576). x x x"

⁸² G.R. No. 101083, 30 July 1993.

122. If the government can withdraw licenses “whenever dictated by public interest or public welfare,” so, too, can it subject the exercise of these privileges to conditions.⁸³

123. The Fisheries Code is replete with provisions on the utilization, management, development, conservation and allocation of fisheries and aquatic resources.⁸⁴ The policy declaration itself sets out that the private sector is only granted the “**privilege to utilize fishery resources** under the basic concept that the grantee, licensee or permittee thereof shall not only be 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.”⁸⁵

124. As a condition to the exercise of fishing privileges, Sec. 119 of the Fisheries Code, as amended, requires that municipal, commercial or distant water fishing vessels comply with vessel monitoring measures promulgated by the DA-BFAR in coordination with the LGUs. Non-compliance brings with it criminal liability, confiscation of catch, and suspension or revocation of the license.

125. Deeply concerning is the Respondents’ habitual non-compliance with the Fisheries Code, which was revealed further during oral arguments. The Petitioners-Intervenors respectfully urge this Honorable Court to exercise caution when dealing with the Respondents who have not come to court with clean hands.

126. It is the height of hypocrisy for the Respondents to waltz in court and claim violations of their constitutional rights yet all the while being mired in violations of the very laws and regulations they seek to exempt themselves from. The institution of this environmental case to defeat an environmental law and the restraining orders from the court *a quo* make a cruel mockery of the judicial system.

127. The government here should be commended, not restrained. For it has, for the first time in an environmental case, chosen to uphold and protect the thrust of the law instead of justifying inaction.

⁸³ *Republic v. Rosemoor Mining And Development Corporation*, G.R. No. 149927, 30 March 2004.

⁸⁴ Sections 5 to 15, Chapter II, R.A. No. 8550.

⁸⁵ Section 2 (g), R.A. No. 10654.

128. For reasons stated above, the Petitioners-Intervenors respectfully submit this Memorandum for the Court's consideration.

PRAYER

WHEREFORE, it is respectfully prayed that this 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 series of 2020 as **CONSTITUTIONAL** with finality; 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, 21 December, 2023.

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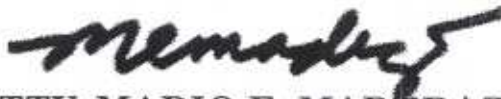
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