

**STRENGTHENING CAPACITY FOR ENVIRONMENTAL LAW IN
THE ASIA-PACIFIC : DEVELOPING ENVIRONMENTAL LAW
CHAMPIONS**

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Illegal Fishing in Philippines Waters by Foreign Nationals

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Regional Environmental Law (ASEAN)

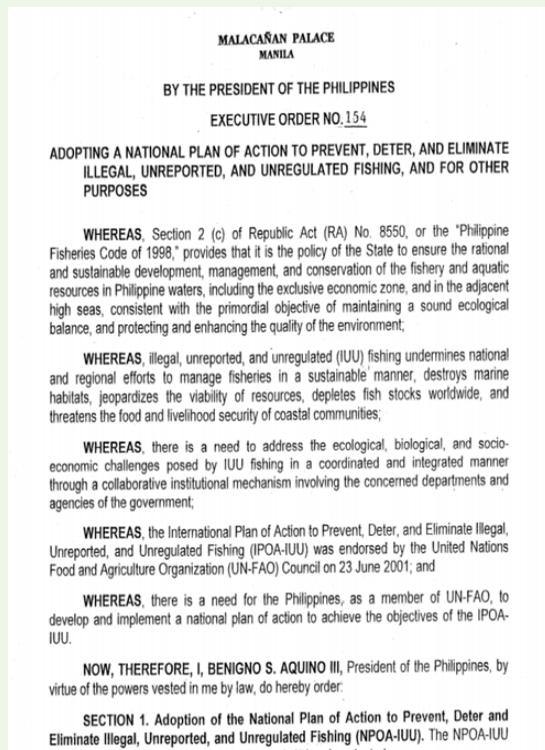
- To examine the role and significance of international/regional environmental law in cross-boundary illegal fishing
- To assess the policies of the Philippines on poaching and measures in strengthening its capacity to sustainably manage its fisheries

References:

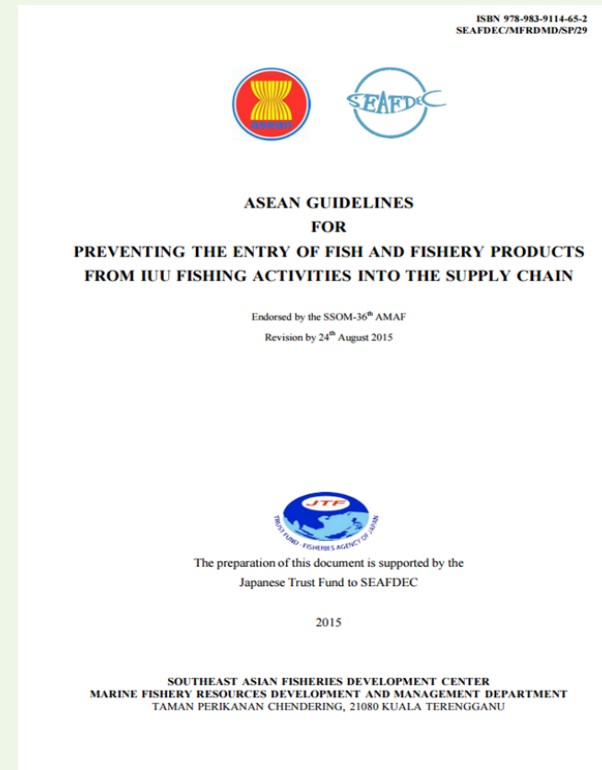
- Philippine Constitution
 - R.A. 10654 amending RA 8550 (Philippines Fisheries Code)
 - RA 7160, Local Government Code
 - National Plan of Action Against IUU Fishing
 - Regional Plan of Action to Promote Responsible Fishing Practices including Combating IUU Fishing in Southeast Asia (RPOA-IUU)
- ASEAN Guidelines For Preventing The Entry Of Fish And Fishery Products From IUU Fishing Activities Into The Supply Chain

Plan of Action to Fight IUU* Fishing

2013 NPOA-Philippines



2015 ASEAN Guidelines



*Illegal, Unreported and Unregulated



Yellow Card Warning Triggered Strong Action Against IUU Fishing in the Philippines

WITH CRISIS COMES OPPORTUNITIES FOR REFORMS

PHILIPPINES EU extends PH warning card vs illegal fishing

The Philippines has another 6 months before the EU decides whether or not to ban the country's fish products from entering its market.



SHIRLEY TO BAKETE, The Philippines exports billions of pesos worth of fish products to the EU, one of its biggest markets. Photo courtesy of Oceana

Stronger Fisheries Law and Rules

Oceana welcomes newly-signed implementing rules of amended Fisheries Code



DA Sec. Proceso Alcala

The fisheries sector recently got a much needed boost in protecting and conserving the country's marine and aquatic resources with the signing of the implementing rules and regulations (IRR) of the amended Fisheries Code. Agriculture Secretary Proceso J. Alcala signed on September 23, 2015 the IRR of the Fisheries Code of 1998 (or Republic Act 8550) as amended by RA 10564, an Act to prevent, deter and eliminate illegal, unreported and unregulated fishing (IUUF).

The IRR lays down the guidelines on the enforcement of various fisheries conservation measures, and specific procedures on how to impose penalties

to those who commit illegal, unreported and, unregulated (IUU) fishing activities, the Bureau of Fisheries and Aquatic Resources (BFAR) said in a statement.

"Once the IRR takes effect, the hard work starts," said DA Undersecretary for Fisheries Asis Perez, who serves concurrently as BFAR national director.

"We have always believed in the success of collaborative works. We



IMPACTS OF IUU FISHING

1. Overexploitation of fish stocks
2. Prevents recovery of fish population and ecosystems
3. Damages marine environment
4. Causes uneven playing field in the fisheries sector
5. Affects the economic and social well-being of fishing communities

Source: ASEAN Guidelines For Preventing The Entry Of Fish And Fishery Products From IUU Fishing Activities Into The Supply Chain



Laws and Policies on Poaching

1. Philippine Constitution, Articles !! And XII, section 2
 2. National Laws:
 - (a) Republic Act Nos. 10654 and 8550 (Philippine Fisheries Code, as amended), Section 91 (87) – Prohibits and Penalizes Poaching
 - (b) RA 7160, Local Government Code
 3. BFAR Administrative Regulations:
 - (a) Fishery Administrative Order No. 200, Series of 2000 – Guidelines and Procedures Implementing Section 87, RA 8550
 - (b) Executive Order No. 236 (1995), amending EO 656 (1981) – Organizing the National Committee on Illegal Entrants (NCIE
- © NCIE Resolution No. 1-02 - Revised Implementing Guidelines, Rules and Regulations of the NCIE



Territory of the Philippines

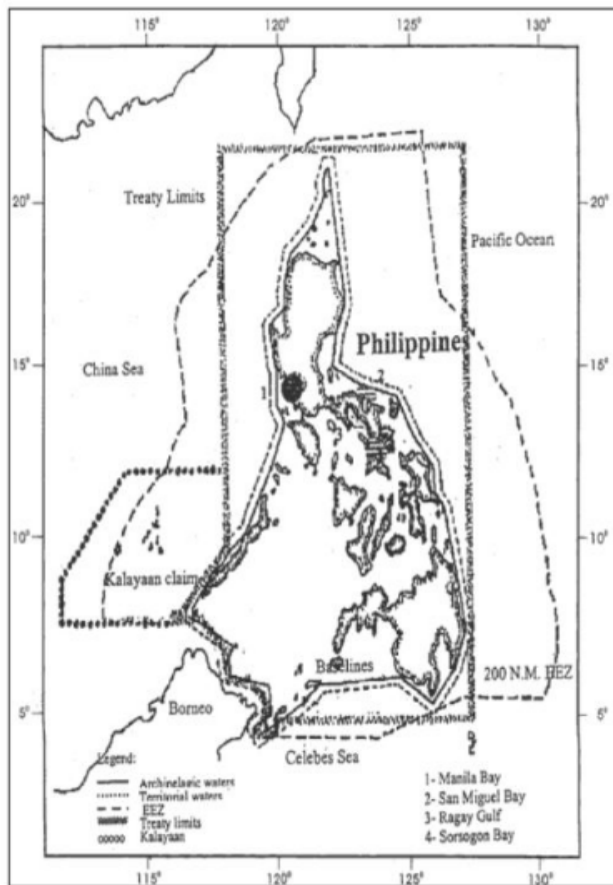


Figure 1. Map of the Philippines showing the limits of archipelagic, territorial waters treaty limits Exclusive Economic Zone (200 N. M. EEZ) and Kalayaan claim.

- “...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.” (Article XII, Sec.2, Constitution)



Conflict with China



Philippines' Fisheries Contribution: 11th in the world

30-Mar-16

FAO Catch Data (10 yr average, 2005-2014)

Country	Catches by Country		
	Catch Weight (million mt)	Individual Percent (as a percentage of total global catch)	Cumulative Percent
1 China	13	16	16
>> 2 Peru	6.4	8.0	24
>> 3 EU	5.2	6.5	31
4 Indonesia	5.0	6.2	37
>> 5 USA	4.8	5.9	43
6 Japan	4.0	4.9	48
7 Russian Federation	3.6	4.5	52
8 India	3.2	4.0	56
>> 9 Chile	3.2	3.9	60
10 Norway	2.3	2.9	63
>> 11 Philippines	2.2	2.8	66
12 Viet Nam	2.2	2.7	69
13 Myanmar	1.9	2.4	71
14 Thailand	1.8	2.3	73
15 South Korea	1.7	2.2	75



Downward Trend

H. Five Year Fish Production, Trend 2010-2014

Year	Quantity (MT)	% Increase/ (Decrease)	Value ('000 P)	% Increase/ (Decrease)
2014	4,689,085	(0.3)	241,943,850	(1.1)
2013	4,705,413	(3.3)	244,551,675	2.9
2012	4,865,132	(2.2)	237,711,474	5.8
2011	4,973,588	(3.6)	224,695,079	1.6
2010	5,159,459	1.6	221,050,850	2.5
2009	5,079,977	2.3	215,582,068	(0.1)

Five Year Fish Production, Trend 2010-2014

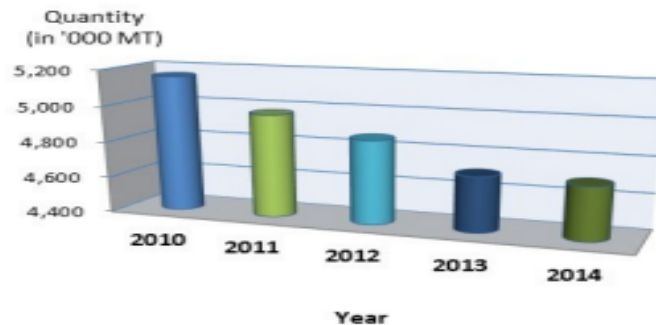


Figure 4



Definition of Terms

- Illegal Fishing – means fishing activities conducted by Philippine fishing vessels operating in violation of Philippine laws, Regional Fisheries Management Organization resolutions, and laws of other coastal states.
- Port State Measures – refers to the requirements established or interventions undertaken by port states, which a Philippine flagged or foreign fishing vessel must comply with as a condition for the use of ports within the port state.



Who is a Poacher?

- SEC. 91. Poaching in Philippine Waters. – It shall be **unlawful for any foreign person, corporation or entity to fish or operate any fishing vessel in Philippine waters.**
- **The entry of any foreign fishing vessel in Philippine waters shall constitute a prima facie presumption that the vessel is engaged in fishing in Philippine waters.**



Fines and Penalties

- Upon a summary finding of administrative liability, any foreign person, corporation or entity in violation of this section shall be punished by an administrative fine of Six hundred thousand US dollars (US\$600,000.00) to One million US dollars (US\$1,000,000.00) or its equivalent in Philippine currency.
- Upon conviction by a court of law, the offender shall be punished with a fine of One



Fines and Penalties

- million two hundred thousand US dollars (US\$1,200,000.00), or its equivalent in Philippine currency, and **confiscation of catch, fishing equipment and fishing vessel.**
- If the offender is caught within internal waters, an additional penalty of imprisonment of six (6) months and one (1) day to two (2) years and two (2) months shall be imposed. If apprehended for the second time within internal waters, the offender shall be punished with imprisonment of three (3) years and a fine of Two million four hundred thousand US dollars (US\$2,400,000.00) or its equivalent in Philippine currency: Provided, That no foreign person shall be deported without the payment of the imposed judicial and/or administrative fines and service of sentence, if any.



Poaching Challenges in the Philippines

- Losses from poaching in the Philippines amounts to P37 Billion annually (NPOA)



A picture made available on May 12 shows Filipino policemen unloading turtle carcasses seized from Chinese poachers at the port of Puerto Princesa, in the Philippines on May 10. *EUROPEAN PRESSPHOTO AGENCY*



Continuing Challenges

- Lack of Access to Data
- Almost Nil Case Monitoring
- Weak Implementation of Laws
- Inadequate Capacity of Enforcers, Prosecutors and Judges
- Intervention/Compromise by Public Officials
- Diplomatic Stand-off

POACHING IN PALAWAN*

Foreign Intrusion in Palawan, 1995-2002

Nationality	Number	Percentage
Chinese	469	65%
Malaysian	131	18%
Vietnamese	91	13%
Indonesian	26	3%
Taiwanese	10	1%
Total	727	100%

Source: PCSDS/Atty. Adel Villena

*Thanks to Atty. Gerthie Mayo Anda for the materials on Palawan poaching cases



Significant Increase of Poaching Incidents by Chinese Fishers

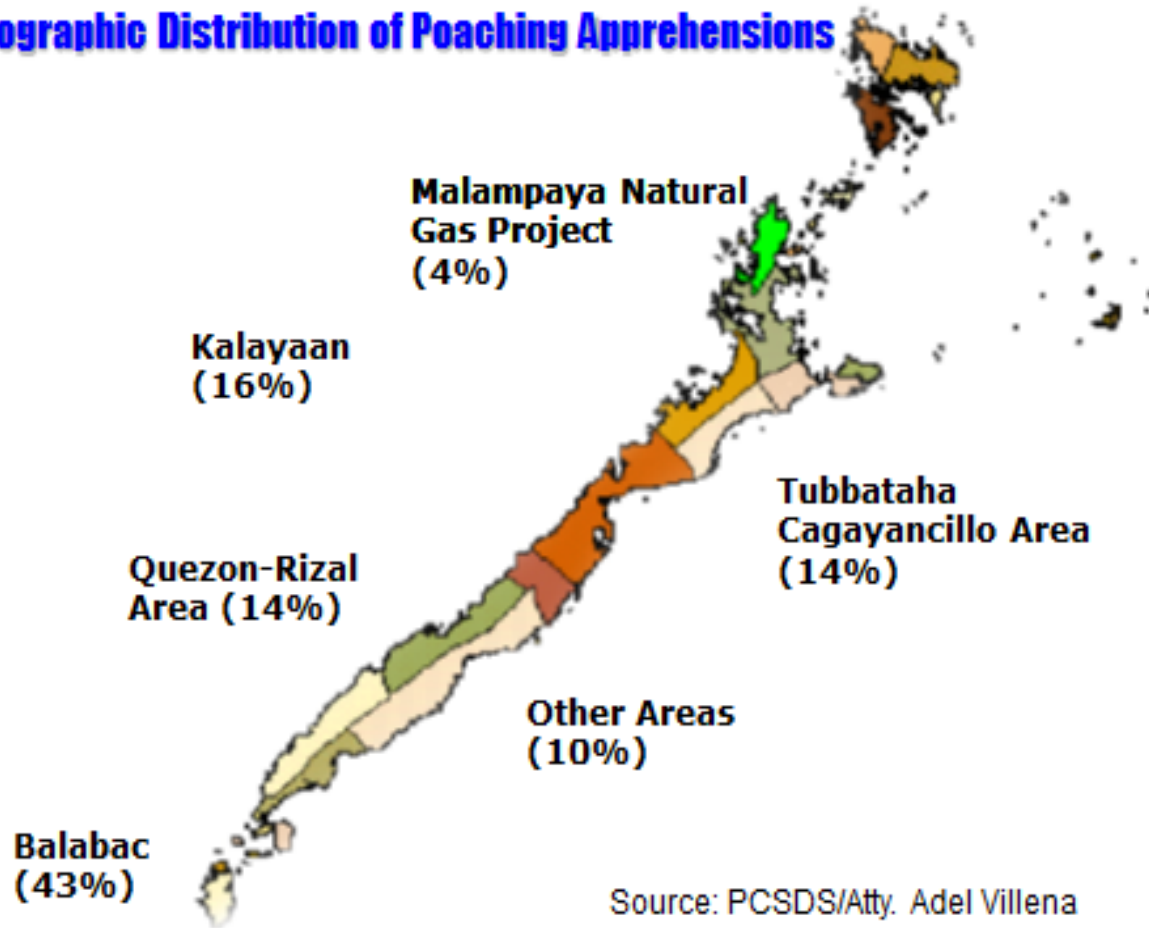
Chinese Poachers

Year	Total	Chinese
1995	88	76
1996	71	0
1997	23	23
1998	46	46
1999	121	35
2000	35	7
2001	117	108
2002	174	174

Source: PCSDS/Atty. Adel Villena



Geographic Distribution of Poaching Apprehensions



Palawan Committee on Illegal Entrants

Results of cases handled by PCIE (1995-2001)

RESULTS	NUMBER	%
Dismissal by Prosecution for lack of evidence	11	28
Resolved by PCIE (no criminal charges/force majeure)	10	26
Conviction to lesser offense (malicious mischief)	9a/	23
Conviction to illegal entry/poaching	6b/	15
Dismissed by RTC for lack of interest to prosecute c/	2	5
Archived (at large)	1	3
Total	39d/	100

a/ 4 out of 9 were granted executive clemency by FVR

b/ other charge for violation of RA 8550 or PD 704 deemed absorbed by illegal entry/poaching or vice-versa

c/ Motion to quash filed by prosecution

d/ one case was filed by PCSD for violation of RA 9147 (Wildlife Act) but was dismissed by the prosecution on the ground that the Act was not yet effective due to absence of IRR yet



STATUS OF POACHERS' CASES IN PALAWAN

1995 to 2002 -- 44 apprehensions of 637 poachers, 68% Chinese; the conviction rate is estimated at 15% or 39 cases); other cases are either (i) dismissed by the Prosecution for lack of evidence, (ii) resolved by the Provincial Committee on Illegal Entrants (PCIE) without filing criminal charges, or (iii) have resulted in convictions to lesser offenses during plea bargaining, usually plea bargained to malicious mischief or other mischief.



Apprehended Vessels and Fishers



Source: PCSDS/Atty. Adel Villena



Repeat Offenders
F/V bow number 02038 - three times
F/V bow number 02039 - two times

Source: PCSDS/Atty. Adel Villena



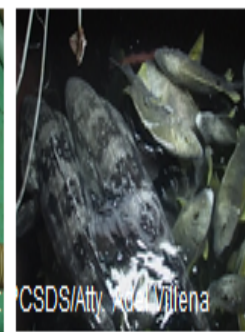
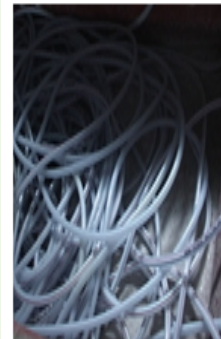
Pieces of evidence found on board the apprehended boats...



Source: PCSDS/Atty. Adel Villena



Pieces of Evidence Seized from Foreign Vessels



Source: PCSDS/Atty. Adel Villena



Some Legal Issues

1. Capacity - Interpretation of the Crime, the Applicable Law and Appreciation of Evidence (eg. Poaching and Illegal entry, Imposition of subsidiary imprisonment, marine turtles as rare/threatened/endangered species)
2. Offended Party (eg. Complainants like PCSDS, apprehending officers)
3. Plea of Guilty to a Lesser Offense (Plea bargaining)



STILL A PROBLEM

INTERVENTION BY EXECUTIVE AGENCIES

Case of Chinese poachers

122 Chinese poachers: apprehended on separate occasions aboard six fishing vessels caught fishing within the Tubbataha Reef National Marine Park and World Heritage Site, the municipal waters of Balabac, and the municipal waters of Cagayancillo. Seized from the poachers were marine turtles, corals and explosives paraphernalia.



Recommendations

Short-term

1. Passage of Provincial Ordinance imposing fine & imprisonment on poaching
2. Reorganizing PCIE to include LGUs, local bodies as PCSD and NGOs (amendment of EO 236 or its guidelines)
3. Continuing Dialogue with Office of the President, DFA, DOJ, NCIE towards vigorous implementation of NCIE policy guidelines
4. Strengthening NCIE and PCIE through regular meetings and refinement/firming up enforcement of guidelines
5. Sustain documentation of poaching cases

Long term

1. Serious Implementation of the Philippines Fisheries Code, as Amended
2. Orientation of Judiciary and Prosecution service on Poaching cases to address key legal issues

