

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

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ADB

**Case Study: Offshore Drilling in
Tañon Strait Protected Seascape**

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Purpose of the Tañon Strait Case study

- To examine:
 - Standing to sue in environmental case
 - Application of Environmental Impact Assessment Act in relation to protected areas

References:

Resident Marine Mammals v. Reyes, G.R. No. 180771,
April 21, 2015

Supreme Court Rules of Procedure for Environmental
Cases

Tañon Strait Protected Seascape

TAÑON STRAIT

One of the world's natural heritage

It belongs to the ecoregion with the highest marine biological diversity in the world (Carpenter & Springer, 2005)



One of the country's major fishing grounds

It supports more than 2.1 million people from the 42 surrounding municipalities and cities in 3 provinces - Cebu, Negros Oriental and Negros Occidental.

TAÑON STRAIT

An important migration corridor for endangered species of dolphins and whales

This site serves as their breeding, nursery, feeding and resting grounds



Facts

- Tanon Strait was declared as a protected seascape by former President Fidel V. Ramos. It is a rich fishing ground and the migratory pathway of 14 out of 29 species of whales and dolphins in the country
- The Department of Energy entered into a Service Contract with Japan Petroleum Exploration Co. (JAPEX) for the “exploration, development, and production of petroleum resources in a block covering approximately 2,850 square kilometers offshore in the Tañon Strait.”
- The fisherfolk opposed the seismic survey and drilling as they were displaced from their fishing grounds
- Two stewards represented the marine mammals in the case.



Controversy

- A. Standing to Sue
 - Can whales and dolphins sue?
- B. Environmental Impact Assessment (EIA)
 - Was there compliance in the EIA Law?
- C. Was the service contract for offshore drilling valid?

Supreme Court Ruling

- Standing to Sue - Liberal application of locus standi in environmental cases
- The Court applied the citizen suit provision in the 2010 Rules of Procedures for Environmental Cases retroactive effect. It relied on the Citizen suit provision in the Rules “To further encourage the protection of the environment, the Rules enable litigants enforcing environmental rights to file their cases as citizen suits. This provision liberalizes standing for all cases filed enforcing environmental laws and collapses the traditional rule on personal and direct interest, on the principle that humans are stewards of nature. The terminology of the text reflects the doctrine first enunciated in *Oposa v. Factoran*, insofar as it refers to minors and generations yet unborn.”

Citizen Suit

- “Although this petition was filed in 2007, years before the effectivity of the Rules of Procedure for Environmental Cases, it has been consistently held that rules of procedure "may be retroactively applied to actions pending and undetermined at the time of their passage and will not violate any right of a person who may feel that he is adversely affected, inasmuch as there is no vested rights in rules of procedure."



Supreme Court Ruling

- The Court reiterated its pronouncement in the landmark Oposa case (Minors v. Factoran, G.R. No. 101083, July 30, 1993)
- The suit was allowed to be brought in the name of generations yet unborn "based on the concept of intergenerational responsibility insofar as the right to a balanced and healthful ecology is concerned."
- "The right to a balanced and healthful ecology, a right that does not even need to be stated in our Constitution as it is assumed to exist from the inception of humankind, carries with it the correlative duty to refrain from impairing the environment."



EIA Process

- “JAPEX only started to secure an ECC prior to the second sub-phase of SC-46, which required the drilling of an oil exploration well. **This means that when the seismic surveys were done in the Tañon Strait, no such environmental impact evaluation was done.** Unless seismic surveys are part of the management plan of the Tañon Strait, such surveys were done in violation of Section 12 of the NIPAS Act and Section 4 of Presidential Decree No. 1586, which provides: Presidential Proclamation of Environmentally Critical Areas and Projects. - The President of the Philippines may, on his own initiative or upon recommendation of the National Environmental Protection Council, by proclamation declare certain projects, undertakings or areas in the country as environmentally critical. No person, partnership or corporation shall undertake or operate any such declared environmentally critical project or area without first securing an Environmental Compliance Certificate issued by the President or his duly authorized representative...”

EIA Process

- The Court held that the respondents' subsequent compliance with the EIS requirement for the second sub-phase of SC-46 **cannot and will not cure the violation.**
- It also declared that respondents failed to comply with the requirement of the NIPAS Act that “Any exploitation and utilization of energy resources found within NIPAS areas shall be allowed only through a law passed by Congress.” Thus, “no energy resource exploitation and utilization may be done in said protected seascape.”



QUESTIONS

- What lessons can be learned from this case?
- Give arguments in support of the (a) whales and dolphins; (b) the self-proclaimed guardians; (c) fisherfolk; (d) the government and (e) exploration company
- Do you agree with the ruling?